U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-L-

DATE: AUG. 30, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner seeks classification as an immigrant investor pursuant to the Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference (EB-5) classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

The Acting Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish, as required, that the Petitioner's investment into [redacted] the NCE, derived from lawful sources.

On appeal, the Petitioner submits a brief and asserts that the Chief incorrectly applied the preponderance of the evidence standard in denying his petition and that he is eligible for the benefit sought. Accordingly, he requests that we overturn the Chief's decision.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a NCE. The foreign national must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. An immigrant investor may invest the required funds directly in an NCE or through a regional center,[1] as the Petitioner has done in this case. Regional centers apply for designation as such with the United States Citizenship and Immigration Services (USCIS). Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project, taken on either directly by the NCE or by one or more separate entities known as the "job creating entity." Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii).

[1] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e).

A petitioner's invested capital must not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e),(j). To show the lawful source of the funds, an investor must submit, for example, foreign business and tax records or documentation identifying any other sources of funds. 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient. *Matter of Ho*, 22 I&N Dec. 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 195 (Assoc. Comm'r 1998). The record must trace the path of the funds back to a lawful source.[2] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

In August 2015, the Petitioner invested $500,000[3] in the NCE, which is associated with a USCIS-designated regional center, [redacted] He derived these funds from the sale of a house purchased using retained earnings in December 2009 for 4,147,345 renminbi (RMB) and sold in May 2015 for 13,000,000 RMB. The records shows that the proceeds from this sale were then deposited into the Petitioner's wife's account. She subsequently transferred a total of 3,482,766 RMB to third parties in exchange for $550,122.[4] In April 2017, the Chief issued a request for evidence (RFE) asking the Petitioner to clarify the source of funds used by these third parties in this currency exchange, among other concerns.[5]

In October 2017, USCIS officials conducted an overseas investigation during which they interviewed the Petitioner and others regarding the source of funds used in his investment. The Chief then issued a notice of intent to deny (NOID) the petition, finding that the Petitioner's timely RFE response had not addressed her concerns regarding the lawful source of the third parties' funds. She also determined that the Petitioner had not established the lawful source of the retained earnings used to purchase the real estate whose subsequent sale funded his investment into the NCE. The Chief notified the Petitioner of discrepancies between his statement of retained earnings in the record and earnings reported during the overseas investigation. The Chief concluded "The inconsistencies… case [*sic*] doubt on Petitioner's claims that his income… was lawful. As such, Petitioner has failed to show by a preponderance of the evidence that his EB-5 investment derived from a lawful source." Following the Petitioner's timely response to her NOID, the Chief denied the petition, concluding that he had not established the lawful source of the retained earnings used to purchase this real estate and accordingly had not demonstrated that his investment was lawfully sourced, as required. *See* 8 C.F.R. § 204.6(e),(j).

On appeal, the Petitioner opines that the Chief improperly applied the preponderance of the evidence standard in reaching her conclusion. Noting that the Chief's "main point of contention" is the amount of his income, he acknowledges that while "the exact dollar amounts of his income are murky nearly

---

[2] These requirements confirm that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001) (holding that a petitioner had not established the lawful source of her funds because she did not designate the nature of all of her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

[3] The Petitioner indicates that the NCE is located in a targeted employment area, and that the requisite amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2).

[4] Documents in the record establish that the Petitioner provided these funds to the NCE for his investment.

[5] The Chief also requested evidence establishing both that the NCE was actively undertaking meaningful business activity and the credibility of the business plan.

a decade after the fact, there is no evidence that [he] could not afford to purchase his property in 2009." (emphasis in original.) He therefore argues that he has established he was able to afford the property, and therefore acquired it using lawfully sourced funds. Accordingly, in "[t]he absence of any adverse documentation as well as the overwhelming presence of documentation supporting [his] claims," he has established eligibility for the benefit sought.

Here we find that the Petitioner misconstrues the Chief's findings. As we discussed above, she determined that he had not established the lawful source of these funds, as required, rather than whether they were sufficient to acquire the property. *See* 8 C.F.R. § 204.6(e). In the Chief's conclusion, she pointed to inconsistencies regarding the Petitioner's reported earnings found during USCIS' October 2017 overseas verification visit. On appeal, he provides no additional evidence addressing these inconsistencies, instead focusing on his ability to purchase the property from whose sale his investment derived. The Petitioner must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92. Absent such information, we cannot determine that these funds were sourced lawfully. Accordingly he has not established his eligibility for the classification sought pursuant to 8 C.F.R. § 204.6(e),(j).[6]

The Petitioner also asserts that the Chief improperly relied on these discrepancies in denying his petition because "no evidence of these statements or corroboration of their contents exists on the record...."[7] He therefore "has not been given ample chance to respond to many of the statements made in [the Chief's] request." We disagree. The Chief advised him of these findings in her NOID thus affording him the opportunity to respond, and he did so. Moreover, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here his assertion of a lack of derogatory information is not sufficient to meet this burden.

III. CONCLUSION

The Petitioner has not demonstrated the lawful source of funds used in his investment. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. at 799, 806. Here that burden has not been met.

---

[6] While not addressed by the Chief in her decision, we also note that the Petitioner has not demonstrated the lawful source of funds used by third party intermediaries, and provided to him for use in his investment. Specifically, the record lacks sufficient evidence establishing the lawful source of the U.S. dollars funds provided by [redacted] and [redacted] to [redacted] and [redacted], who in turn provided U.S. dollars to the Petitioner for use in his investment. The record contains income statements for both [redacted] and [redacted], along with sample documents indicating that from time to time these men purchased U.S. dollars, but the Petitioner does not provide sufficient evidence demonstrating that this currency was retained by [redacted] and [redacted] for use, indirectly, in his investment. He therefore has not identified the source of funds used to acquire the currency, and by extension has not shown that the U.S. dollars used in his investment were sourced lawfully as required. *See* 8 C.F.R. § 204.6(e),(j). Future filings should address this concern.

[7] The Petitioner also asserts on appeal that "there is no evidence or indication that USCIS provided any documents or identification to establish their authority to ask Petitioner the questions in the sworn statement or probe for the evidence sought." However, the statement, signed by the Petitioner, acknowledges that the USCIS officer provided identification and told him his statement must be made voluntarily, and that he was willing to make such a statement.

ORDER: The appeal is dismissed.

Cite as *Matter of Y-L-* ID# 2309008 (AAO Aug. 30, 2019)