U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF J-Z-

DATE: OCT. 1, 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 Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not establish eligibility for the classification. Specifically, the Chief determined that the Petitioner did not sufficiently document the lawful source of the investment funds his parents remitted on his behalf to [redacted] the NCE.[1] On appeal, the Petitioner submits additional evidence and maintains that he has shown eligibility for the classification.

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. Regional centers apply for designation as such with 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" (JCE). 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] The NCE is managed by [redacted], a United States Citizenship and Immigration Services (USCIS) designated regional center. 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).

## II. ANALYSIS

The Petitioner claims to have invested $500,000[2] in the NCE in January 2017. According to pages 6 and 7 of the August 2016 business plan, the NCE intends to raise up to $15,000,000 in EB-5 capital from 30 foreign national investors, and lend $5,000,000 to [redacted] to develop a residential rental building as well as invest $10,000,000 in [redacted] to develop a mixed-use rental building. Both projects are located in [redacted] New York. .

Upon a review of the record, we conclude that the Petitioner has not established his eligibility for the classification. Specifically, he has not demonstrated, by a preponderance of the evidence,[3] the lawful source of the $550,000 his parents remitted on his behalf to the NCE. To be eligible for the EB-5 classification, a petitioner must establish, among other requirements, that his or her invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e) (defining capital). Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the complete path of the funds back to a lawful source.[4] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

The Petitioner alleges that his investment funds came from his parents, stating that they sold their property in [redacted] China, and gifted him the proceeds. He offers documents to show that in January 2017, his parents, on his behalf, remitted to the NCE $500,000 as investment capital and $50,000 to cover fees and expenses. He claims that his parents engaged in currency swap with [redacted] to convert their Chinese currency (Renminbi, RMB) into United States dollar, and to bring their money out of China.

In his response to the Chief's request for evidence (RFE), the Petitioner explained that China "controls foreign currency exchange and international remittance of foreign currencies," and that the currency swap is "an alternative" used to circumvent such controls for "individuals [who] decide to exchange and remit a large amount of foreign currencies overseas within a short period of time." He further stated that [redacted] is not "a third party broker engaged in money exchange business," and does not "run a money service business"; rather, she "is a longtime friend of [the] Petitioner's mother" and was willing to help him.

The record does not contain sufficient evidence documenting the complete path of the funds the Petitioner's parents remitted to the NCE on his behalf. The bank records show that on December 16, 2016, his mother, [redacted] remitted 3,465,000 RMB from her account ending in 4836 to [redacted]

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

[3] If a petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also* 6 *USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[4] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program 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, in part, 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).

[redacted]'s account ending in 3158. Then on December 19 and 20, 2016, [redacted] transferred a total of $550,000 from her account ending in 0101 to [redacted] and her spouse's [redacted] account ending in 1833. Subsequently, [redacted] and [redacted] wired $550,000 to the NCE on January 23, 2017.

The evidence, however, does not confirm that [redacted]s 3,465,000 RMB, which [redacted] had accepted, ever left China, or that the $550,000 [redacted] and [redacted] received from [redacted] derived from the 3,465,000 RMB. Instead, the Petitioner stated in his RFE response that the $550,000 that [redacted] sent to his parents "was obtained lawfully from [redacted] salary, bonus and investment proceeds while working at some of the leading investment banks during the past few years." He further claimed that "[f]or privacy reasons, [redacted] was not willing to provide further personal financial documents."

In support of his RFE response and to support his position that [redacted]'s $550,000 – which his parents remitted to the NCE as his investment funds – came from lawful sources, the Petitioner presented a September 2018 statement from [redacted], documents relating to her professional accomplishments and employment history, and an August 2018 bank letter noting that her "balances averag[ed] low seven figures US dollar equivalent." In addition, on appeal, he offers a copy of [redacted]'s December 2016 Statement of Assets from an account ending in 7216, showing that her assets included "Liquidity (including foreign exchange products)," "Bond," "Stock," and "Hedge Fund and Private Market." He also submits a 2001 employment offer for [redacted] documents listing her earnings in 2005 and 2006, as well as a December 2010 press release concerning her appointment as the director of a company.

While the documents in the record establishes that [redacted] has been gainfully employed, they do not sufficiently confirm the lawful source of the $550,000 she sent to the Petitioner's parents. The record lacks sufficient evidence on how much of her earnings she retained as of December 2016, when she transferred the funds to the Petitioner's parents, or that verifies the entirety of the amount originated from her lawful income. As noted in the Chief's decision, the documentation "neither shows the source of [redacted]'s 'low seven figures in US dollar equivalent,' nor does it show the accumulation and maintenance" of $550,000. Although the Petitioner has presented some of [redacted]'s bank records, he has not provided sufficient transactional information for her account ending in 0101, from which she transferred $550,000 to his parents. Such material might reveal the sources of the funds. Without additional corroborating evidence, the Petitioner has not documented the lawful source of the $550,000 that his parents received from [redacted] which he claims to have financed his investment in the NCE. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. In short, he has not demonstrated, by a preponderance of the evidence, that the funds his parents remitted to the NCE on his behalf originated from the sale of their property or that [redacted] lawfully acquired the $550,000 she sent to them.

## III. CONCLUSION

The Petitioner has not demonstrated, by a preponderance of the evidence, the lawful source of the funds his parents received from [redacted], which they later remitted to the NCE on his behalf.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, 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, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-Z-*, ID# 4381721 (AAO Oct. 1, 2019)