U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-T-M-T-

DATE: OCT. 15, 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 the lawful source of the funds she claimed to have invested in [redacted] the NCE. On appeal, the Petitioner submits additional evidence and maintains that she has shown her eligibility for the EB-5 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,[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).

In addition, a petitioner must show that his or her invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show the lawful source of the funds, an investor must submit evidence such as foreign business and tax records or documentation identifying sources of the

[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).

capital. *See* 8 C.F.R. § 204.6(j)(3). 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 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

The Petitioner claims to have invested $500,000[3] in the NCE, which is associated with a USCIS-designated regional center, [redacted] Regional Center LLC. The record indicates that the NCE intends to obtain up to $72,000,000 from 144 foreign national investors, including the Petitioner, to lend to [redacted]. The borrower and its affiliates plan to construct and operate a [redacted] in [redacted] Georgia.

The record reflects that in September 2016 the Petitioner obtained a loan from [redacted] for 12,500,000,000 VND using her properties as collateral. On September 23, 2016, she transferred 12,351,888,000 VND to [redacted], who then sent the funds to an account belonging to a private enterprise, [redacted]. [redacted] subsequently transferred the money to her counsel's [redacted] account in the United States and on September 26, 2016, her counsel sent the funds to the NCE on the Petitioner's behalf.

In denying the petition, the Chief found the Petitioner had not demonstrated that the funds transferred by a third party to the NCE were lawfully obtained and therefore, she failed to establish that the invested funds, directly or indirectly, were obtained through lawful means. She specifically noted that the Petitioner did not provide evidence showing how [redacted] was legally able to exchange VND to USD or submit financial documentation, such as tax returns and income statements, to establish the funds used by [redacted] were attained lawfully.

On appeal, the Petitioner indicates that due to currency regulations that prohibit an individual from transferring more than the equivalent of $5,000 out of Vietnam, she utilized the help of third party entities to indirectly transfer her funds to the NCE, a method she referred to as an "Alternative Remittance Service (ARS)." The Petitioner contends that [redacted] was an employee of [redacted], "who accepted the funds on behalf of [redacted]' prior to its funds transfer to the Petitioner's counsel in the United States. She further states that [redacted] is "not a registered licensed exchanger," it "is not authorized to perform any currency exchange," and "at this step in the money transfer process, no currency exchange has occurred." The "exchange from VND to USD was not performed by [redacted][,]" rather, it occurred when [redacted] requested a wire transfer "to come from their VND account, to be transferred to [her counsel], a USD account." The Petitioner contends "USCIS mistakenly concluded

[2] 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).

[3] The Petitioner indicates 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).

that [redacted] performed the currency exchange, when in fact, [redacted] performed the VND to USD exchange." When [redacted] requested the wire transfer, [redacted] "converted the currency and transferred the funds to the United States."

We find that the Petitioner has not established, by a preponderance of the evidence,[4] her eligibility for the classification. Specifically, she has not sufficiently documented the source of the funds [redacted] sent to her counsel's account and has not established the lawful source of the funds she claims to have invested in the NCE.

The [redacted] bank statement in the record shows only transactions on September 23, 2016, and indicates that the account had an initial balance of 1,056,000 VND. It then received two credits, a credit from [redacted] for 12,351,888,000 VND and another from [redacted] for 19,286,700,000 VND. The Petitioner has not provided an explanation or verifiable evidence concerning the source of the transfer into [redacted]'s account. The funds from these two deposits commingled in the account prior to the deduction to purchase foreign currency later that same day.

The record does not establish that the funds [redacted] transferred to the Petitioner's counsel derived solely from the loan proceeds the Petitioner received from [redacted] and which she transferred to [redacted]'s agent, [redacted]. Without evidence of the lawful source of the other monies transferred into the account [redacted] used to effectuate the currency transfer, the Petitioner has not demonstrated that the funds transferred to the Petitioner's counsel and, ultimately, the NCE, derived from a lawful source. *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.

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence the lawful source of the funds she claims to have invested in the NCE. 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 T-T-M-T-*, ID# 2941955 (AAO Oct. 15, 2019)

[4] 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.