U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-T-T-P-

DATE: OCT. 25, 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. Specifically, she did not insufficiently document the path of the funds from her to the NCE. On appeal, the Petitioner submits a brief challenging the Chief's determination and maintaining 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

[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).

submit evidence such as foreign business and tax records or documentation identifying sources of the 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

In this case, the Petitioner claims to have invested $500,000[3] in the NCE, which is associated with a USCIS-designated regional center, [redacted] The record, including the NCE's February 2015 business plan, indicates that the NCE intends to obtain up to $28,500,000 from 57 foreign national investors, including the Petitioner, to lend to [redacted] The borrower is affiliated with [redacted] and plans to develop a mixed-use development called the [redacted] Tower located in downtown [redacted] Indiana.

On appeal, the Petitioner indicates that she used an "Alternative Remittance Service ('ARS')" to "indirectly transfer funds out of Vietnam," her country of citizenship, due to its banking regulations. She explains that her spouse, [redacted] obtained a loan from the Vietnam [redacted] Commercial Bank, [redacted], using their properties as collateral. She transferred a substantial portion of the loan proceeds to an individual named [redacted] who was a representative for [redacted] a private enterprise. This private enterprise, which the Petitioner refers to as an ARS then directed two businesses – [redacted] and [redacted] – to send money to the Petitioner's counsel in the United States. She claims that in exchange [redacted] paid the two companies' expenses in Vietnam. After receiving $284,500 from [redacted] and $265,500 from [redacted], her counsel remitted $550,000 to the NCE as her $500,000 investment capital plus $50,000 "syndication price," as referenced in the NCE's January 2015 Confidential Private Placement Memorandum.

In her response to the Chief's request for evidence (RFE), the Petitioner acknowledged that [redacted] is a front company receiving funds" from individuals like her, and that [redacted] and [redacted]. "are companies capable of wiring funds to the U.S. due to their international business." She also claimed that "[redacted] and either of the mention[ed] companies know each other, use each other's services to complement each other with mutual benefits," and allow her to circumvent "the country's strict currency restriction laws." In addition, she stated in her response to the Chief's notice of intent to deny (NOID) the petition that [redacted] is NOT a registered licensed exchanger and legally cannot send funds overseas." (Emphasis in original.)

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[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).

For the reasons we will discuss below, 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 lawful source of the funds she claims to have invested in the NCE. First, while she has submitted a loan agreement between [redacted] and [redacted] as well as related documents referencing a 14,000,000,000 Vietnamese Dong (VND) loan, the record lacks sufficient documentation, such as bank statements, confirming that [redacted] received the loan proceeds. In addition, although [redacted]'s "Money Receipt[s]" show that on February 9, 2015, the Petitioner's account ending in 7860 had VND 5,602,000,000, which she sent to her "ACB" account, and VND 6,366,880,000, which she sent to [redacted] of [redacted], the record does not reveal the source(s) of these funds. For example, she has not presented bank statements verifying that these sums originated from [redacted]'s [redacted] loan. Moreover, the evidence is insufficient to verify that the Petitioner sent VND 11,968,880,000, equivalent of $558,250, to [redacted] for the purpose of investing in the NCE. She has offered a "Receipt" and a "Certificate of Work" from [redacted] alleging it received from her VND 11,968,880,000 on February 9, 2015. She, however, has not filed sufficient corroborating documents, such as bank statements, substantiating this allegation. Based on the above, the record is insufficient to demonstrate that the Petitioner lawfully obtained the purported investment funds or that she had sent VND 11,968,880,000 to [redacted] to invest in the NCE.

Second, assuming *arguendo* that the Petitioner had remitted funds to [redacted] which the record does not establish, she has not demonstrated that [redacted] wired $550,000 to her counsel in the United States. Rather, as discussed, [redacted] and [redacted] sent funds to her counsel. According to the transaction records, in February 2015, [redacted] wired $284,500 to her counsel as "payment for food products by invoice CA-12569," and [redacted] wired $265,500 to her counsel "for buying cars (Liquidated goods two bus[es] and two car[s])." These wire records do not indicate that the transactions are associated with the Petitioner's investment in the NCE. While the record includes letters purportedly from the two entities, discussing an arrangement between them and [redacted] the Petitioner has not sufficiently established that the individuals who executed the letters represent the companies, that the letters originated from the two businesses, or that their contents are reliable. The record also lacks materials such as contracts between [redacted] and the two companies formalizing their agreements.

Third, the Petitioner has not demonstrated the lawful source(s) of the funds that [redacted] and [redacted] remitted to her counsel. Indeed, she has presented limited information on the nature of the two entities' business. She alleges that [redacted] used the funds she purportedly obtained from [redacted]'s loan to pay the two companies' expenses in Vietnam. Therefore, according to her, the amounts her counsel received did not derive from the loan proceeds. Without additional corroborating evidence confirming the source(s) of the funds the two businesses sent to her counsel, the Petitioner has not established that the funds her counsel received either were derived by lawful means or came from her. *See* 8 C.F.R. § 204.6(j)(3).

[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.

In her NOID response to the Chief, the Petitioner claimed that "[i]ndividuals and companies alike from Vietnam do not want to disclose information on a process designed to circumvent local banking regulations." She similarly alleges on appeal that "[d]ue to the nature and context of the transfer transactions, certain companies and individuals associated with the transaction[s] are very hesitant to provide detailed information necessary to document such transactions." Notwithstanding these statements, it remains her burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of her investment with documents that trace the path of the funds back to a lawful source. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Here, for the reasons discussed, the Petitioner has not made such a showing.

III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not presented sufficient evidence tracing the path of the funds that her counsel remitted to the NCE on her behalf to 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. She has therefore 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-T-P-*, ID# 2288768 (AAO Oct. 25, 2019)