U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06369213

Date: MAY 18, 2020

Appeal of Immigrant Investor Program Office Decision

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 EB-5 classification. Specifically, the Chief determined that the Petitioner did not document the lawful source of the funds she remitted to [redacted] the NCE, which is affiliated with EB5 [redacted] Regional Center (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.[1] On appeal, the Petitioner maintains that she has shown eligibility for the EB-5 classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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] 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).

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 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 indicates she invested $500,000 in the NCE.[3] According to the August 2016 business plan, the NCE seeks to raise up to $125,000,000 EB-5 funds from 250 foreign national investors to loan to [redacted] the JCE. The JCE plans to use the EB-5 capital and other funds to develop the [redacted] in [redacted] California.

In this case, the Petitioner alleges that her EB-5 capital derived from 3,950,000 renminbi (RMB) of retained earnings belonging to her husband, Mr. [redacted] The record indicates Mr. [redacted] remitted his retained earnings into Ms. [redacted]'s [redacted] Bank account ending in 6888 on March 23, 2017. According to the Petitioner's statement submitted with her initial filing, she requested the assistance of her relatives and friends to exchange the RMB funds into USD. The Petitioner entered into a fund transfer agreement with Ms. [redacted] whereby the Petitioner would transfer 2,212,035.36 RMB of the retained earnings to Ms. [redacted]'s [redacted] Bank account in mainland China on April 8, 2017, and, in return, Ms. [redacted] would remit $321,734 from her [redacted] Bank account in Hong Kong to the Petitioner's [redacted] Bank account. The Petitioner remitted her EB-5 investment fund to the NCE on April 13, 2017.

The Chief issued a request for evidence (RFE) requesting the Petitioner provide evidence the $321,734 Ms. [redacted] transferred to the Petitioner derived from lawful sources and document the complete path of the funds invested in the NCE. The Petitioner responded to the RFE with a statement from the Ms. [redacted] claiming the USD funds in her Hong Kong bank account derived from her retained earnings with a company in Hong Kong. The Chief then denied the petition concluding that the bank statements from Ms. [redacted]'s Hong Kong bank account did not show the accumulation of her earnings and therefore the Petitioner failed to document the lawful sources of her investment funds, as required. *See Matter of Izummi*, 22 I&N Dec. 169 at 195. For the reasons we will discuss below, we find that the Petitioner has not established, by a preponderance of the evidence, her eligibility for the classification. Specifically, she has not sufficiently documented the lawful source of the funds provided from Ms. [redacted] and then invested in the NCE.

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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).

On appeal, the Petitioner argues there is no indication in the record that either she or Ms. [redacted] obtained any funds from unlawful activities and has therefore fully documented the lawful source of her investment funds. This argument is not persuasive as the Petitioner did not provide sufficient documentary evidence showing the path of Ms. [redacted]s retained earnings into her bank account in Hong Kong or any evidence that a valid currency exchange had taken place. The path of the Petitioner's documented investment funds stopped when they were deposited in Ms. [redacted]'s [redacted] Bank account in mainland China. The Petitioner's claim that she then received $321,734 from Ms. [redacted]'s retained earnings in Hong Kong is not sufficient to demonstrate the lawful source of these funds as the bank statements only showed the deposit and transfer of USD funds not the accumulation of Ms. [redacted]s earnings. Evidence of earnings, without additional corroboration demonstrating the earnings were retained in an account, is insufficient to establish the USD funds derived from lawful sources. 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). Without additional corroborating evidence confirming the source(s) of the funds Ms. [redacted] sent to the Petitioner, she has not established that the funds she received were derived by lawful means. *See* 8 C.F.R. § 204.6(i)(3).

The Petitioner also argues requesting evidence of the lawful source of funds from a third party is arbitrary and amounts to the application of an improper heightened standard. The Petitioner's claim is not convincing, as at the time of filing her I-526, the regulations required the Petitioner show her invested capital did not derive, directly or indirectly, from unlawful sources and that she must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(e) and 8 C.F.R. § 204.6(j)(3). While the Petitioner documented the source of her husband's retained earnings, the documentation of the path of these funds stopped when they were deposited in Ms. [redacted]s [redacted]s Bank account in China on April 8, 2017. When USCIS requested the Petitioner provide additional evidence due to this break in the path of funds, the Petitioner provided letters from Ms. [redacted]'s employer indicating she was gainfully employed but did not provide any bank statements showing Ms. [redacted] retained any of these lawful earnings in her [redacted]s Bank account in Hong Kong. Notwithstanding the Petitioner's statements claiming it is unreasonable to request third party financial documentation, 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 she received from Ms. [redacted] 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.