U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 2917519

Date: MAR. 24, 2021

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.

According to pages 1 and 2 of the petition, the Petitioner invested $500,000[1] in [redacted] the NCE,[2] which is associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center, [redacted][3] The business plan that the Petitioner initially submitted in support of the petition indicates that the NCE plans to develop the [redacted] Project, a mixed-use real estate development near [redacted] Florida. The March 2015 Private Placement Memorandum states that the NCE seeks to raise up to $100,000,000 from 200 foreign national investors to facilitate the development of the project. Page 3 of the memorandum provides that "each $500,000 investor will receive a 0.002500% ownership of the common shares" in the NCE.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not demonstrate that the funds he remitted to the NCE in January 2015[4] met the statutory definition of "capital," because they derived from an unsecured loan he obtained from his sister, [redacted] *See* 8 C.F.R. § 204.6(e) (defining "capital") (2015). The Chief dismissed the Petitioner's subsequent combined motions to reconsider and reopen the proceeding, again finding that his funds did not constitute "capital" because he acquired them from [redacted] through an unsecured loan.

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[1] 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) (2015).

[2] The March 2015 Private Placement Memorandum indicates that the NCE's managing member is [redacted]

[3] 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).

[4] The Petitioner has presented a bank record entitled "Instance Type and Transmission," stating that he wired $525,000 to the NCE on January 20, 2015.

After the Petitioner appealed the Chief's decision to us, the U.S. Court of Appeals for the District of Columbia issued *Zhang v. USCIS*, 978 F. 3d 1314, 1319 (D.C. Cir. 2020), in which the Court affirmed the lower court's holding that "loan proceeds qualify as cash, not indebtedness, under the EB-5 visa program," and that loan proceeds satisfy the statutory definition of "capital." In light of the *Zhang* decision, the Petitioner has established that the proceeds he obtained from [redacted] constitute cash, and thus meet the statutory definition of "capital" under 8 C.F.R. § 204.6(e). We will therefore withdraw the Chief's decision and remand the matter for further action and consideration.

Upon remand, the Chief should consider whether the Petitioner has shown eligibility for the EB-5 classification by satisfying other eligibility requirements, including but not limiting to, documenting the lawful source of the funds that [redacted] loaned to him to invest in the NCE, as well as establishing the business plan in the record is comprehensive and credible, and it confirms that the NCE will likely need not fewer than 10 qualifying employees within the next two years.[5] *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998) (providing "[m]ost importantly, the business plan must be credible); *see also* 8 C.F.R. § 204.6(g)(1) (stating the NCE "may be used as the basis of [an EB-5] petition . . . by more than one investor, . . . provided each individual [investor's] investment results in the creation of at least ten full-time positions for qualifying employees").

In addition, USCIS records show that the Chief had approved EB-5 petitions other investors filed based on their investment in the NCE. USCIS policy provides that "[w]here USCIS has previously evaluated and approved certain aspects of an investment, USCIS generally defers to that favorable determination at a later stage in the process." *See* 6 *USCIS Policy Manual* G.6, https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-6. However, "USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts, upon which a favorable decision was made, have materially changed, there is evidence of fraud or misrepresentation, or the previously favorable decision is determined to be legally deficient." *Id.* Upon remand, the Chief should consider whether USCIS should in this case defer to previous favorable determinations concerning non-individualized eligibility criteria. *See id.* (noting that USCIS "conduct[s] a *de novo* review of each prospective immigrant investor's lawful source of funds and other individualized eligibility criteria).

Based on the reasons we have discussed above, we will remand the matter to the Chief for further action in accordance with this decision.

ORDER: The decision of the Chief is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[5] The two-year job creation period described in 8 C.F.R. § 204.6(j)(4)(i)(B) commences six months after the adjudication of the petition. *See* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2.