U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21856606

Date: JUN. 15, 2022

Motion on Administrative Appeals 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 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 on two grounds. The Chief concluded that the Petitioner did not show that he invested or was actively in the process of investing at least $500,000[1] in [redacted] the new commercial enterprise (NCE); and he did not sufficiently document the lawful source of the EB-5 funds he claimed to have invested in the NCE. *See* 8 C.F.R. § 204.6(e) (defining "capital" and "invest"), (j) (2017).

The matter is now before us on a service motion. We initially rejected the Petitioner's appeal, erroneously concluding that he did not timely file his appeal. Subsequently, we reopened the matter on a service motion pursuant to 8 C.F.R. § 103.5(a)(5) to issue this decision on the merits of the appeal. In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, his eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).[2] Upon 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 new commercial enterprise. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). Under 8 C.F.R. § 204.6(j)(2), to be eligible for the EB-5 immigrant

[1] The Petitioner claims 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).

[2] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, he or she has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

investor classification, an investor must establish that he or she "has invested or is actively in the process of investing the required amount of capital" and must submit "evidence that [he or she] has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk." The regulation explains: "[e]vidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing" and that the petitioner "must show actual commitment of the required amount of capital." *Id.*

In addition, to be eligible for the EB-5 immigrant investor classification, an investor 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.[3] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

According to pages 1 and 2 of the petition, the Petitioner invested $500,000 in the NCE. A Fall 2015 business plan indicates that the NCE plans to develop and own "a [redacted] hotel located in downtown [redacted] California." The business plan notes that the hotel "will offer [redacted] rooms, a full-service restaurant, meeting space, a rooftop lounge with bar, valet parking, fitness room, and street-level retail shops."

A. Lawful Source of Funds

The Petitioner claims that his EB-5 funds derived from the proceeds of a 3,500,000 renminbi (RMB) loan he obtained in March 2017, for which he used a property in [redacted] China, as collateral. In his initial filing in support of the petition, the Petitioner stated that his father, [redacted] "provided funds to purchase [the] commercial property" in 2003, which was "registered under [the Petitioner's] name with the consent [of his father] and his wife, [redacted] as a gift and advancement of inheritance to their only child [the Petitioner]." In a March 2017 letter, the Petitioner's father, stated that he and his spouse "purchased [the] commercial property . . . at purchase price of RMB 1,301,265 in March 2003" and that the "funds of the purchase solely came from accumulation of [his] salary income." He further stated in the letter that he and his spouse "agreed to gift the property to [the Petitioner] and register the property under his name solely."

The Petitioner alleges that he engaged in a currency swap with an individual, [redacted] whom he calls a family friend. The Petitioner offers a March 7, 2017, "Memorandum of Understanding on Currency Exchange," executed by his father and [redacted] The record, including bank documents, appears to confirm that the Petitioner and [redacted] swapped currency pursuant to the terms of the "Memorandum of Understanding on Currency Exchange." The evidence shows the following: (1) on

[3] 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).

March 7, 2017, the Petitioner received 3,500,000 RMB loan proceeds in his account in China ending in 2916, he then transferred the entire amount out of the account to [redacted] account in China ending in 5584; (2) on March 7, 2017, [redacted] received 3,500,000 RMB in his account in China ending in 1803 from a "Reciprocal Acc." ending in 3166; (3) on March 8, 2017, [redacted] from his account in Hong Kong ending in 1882 remitted $500,000 to the Petitioner's account in the United States ending in 9660; (4) on March 8, 2017, the Petitioner's account in the United States ending in 9660 received $499,977 from [redacted] Hong Kong account; (5) on March 16, 2017, the Petitioner's account in the United States ending in 9660 received $977[4] from [redacted] Hong Kong account; (6) on March 16, 2017, the Petitioner transferred $500,000 from his United States account ending in 9660 to his United States account ending in 7750; (7) on March 16, 2017, the Petitioner obtained a $500,000 cashier's check payable to the NCE; and (8) on March 16, 2017, the NCE's bank account ending in 1865 received a $500,000 deposit.

In the notice of intent to deny the petition (NOID), the Chief did not question whether the Petitioner and [redacted] had swapped currency, rather, the Chief observed that "the record d[id] not contain any evidence to demonstrate the source of funds used by the exchanger [redacted] to assist the [P]etitioner with currency exchange," and that "USCIS [U.S. Citizenship and Immigration Services] [could] not determine that the funds exchanged by the exchanger were derived from lawful means." The Chief ultimately concluded in the NOID that the Petitioner did not establish the lawful source of his EB-5 funds, "[b]ecause [his] funds were routed through a third party exchanger, and there [was] insufficient documentation to demonstrate the legitimacy of the exchanger and the funds in [the exchanger's Hong Kong] account ending in 1882."

In his NOID response, the Petitioner submitted additional evidence, including: (1) a [redacted] China, business license for [redacted]; (2) a certification claiming that [redacted] owns 90% of the shares of [redacted]; and (3) [redacted] July 2020 statement, alleging that he and his spouse own a trading company called [redacted] that trades goods between [redacted] and Hong Kong and that its "average annual income is more than 2 million RMB." In his July 2020 statement, [redacted] further claims that he lives in [redacted] and travels to Hong Kong to visit his spouse and children weekly; that when he visits, he "will bring $10,000 to Hong Kong"; that he "owned a Hong Kong stock trading account [in 2015, and] traded there from time to time with [his] income from [his] legal business in [redacted]; and that he "mainly used the money received from stock trading proceeds as the source of currency exchange for [the Petitioner's] investment immigration."

In the decision denying the petition, the Chief noted that the Petitioner had failed to "provide [redacted] professional credentials, assets, employment income, investments, bank statements, tax returns, or other probative evidence to demonstrate the lawful origin of funds in his [Hong Kong] account ending in 1882." The Chief then denied the petition, concluding, in part, that the Petitioner did not establish the lawful source of the funds he remitted to the NCE as his EB-5 investment, because his funds came from [redacted] and the record did not document the lawful source of [redacted] U.S. dollars. On appeal, the Petitioner acknowledges that "it is correct that [his] RMB capital never left Mainland China."

[4] The Petitioner's counsel's March 2017 letter, which the Petitioner offered initially in support of his petition, indicates that [redacted] sent the second remittance "to cover the loss in bank transfer fees" associated with his first remittance.

The record supports the Chief's adverse finding that the Petitioner has not sufficiently established the source of [redacted] U.S. dollars. [redacted] claims that he and his spouse own a business in [redacted] China, and that he earns an income from the business. While some documents, including the business license and company certificate, allege that [redacted] and his wife own [redacted] other documents, including [redacted] July 2020 statement, claim that they own [redacted] a company of a similar but different name. The Petitioner has submitted inconsistent documents concerning the source of [redacted] income, which he claims financed the parties' currency swap. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that "[i]t is incumbent upon [the petitioner] to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice").

Additionally, the Petitioner and [redacted] allege that when [redacted] traveled, he brought U.S. dollars from [redacted] to Hong Kong. The record, however, does not include evidence, such as bank documents, showing how he and/or his purported business acquired U.S. dollars in [redacted] China. [redacted] also claims that he had a "Hong Kong stock trading account" in 2015 and that funds, including proceeds, from that account financed the parties' currency swap in 2017. The record, however, lacks evidence substantiating the existence of the stock trading account in 2015 or confirming that [redacted] had funds from that account in 2017, when he remitted U.S. dollars to the Petitioner. Moreover, the evidence in the record shows that [redacted] account in China ending in 5584 received the Petitioner's 3,500,000 RMB loan proceeds, but then [redacted] account in China ending in 3166 remitted 3,500,000 RMB to his account ending in 1803. The Petitioner has not offered sufficient evidence, such as bank records, verifying the source of the funds that went from [redacted] account ending in 3166 to his account ending in 1803, or demonstrating that the funds derived from the Petitioner's loan proceeds. Based on these deficiencies in the record, the Petitioner has not sufficiently documented the complete path of his EB-5 funds, tracing them back to a lawful source. *See* 8 C.F.R. § 204.6(e) (defining "capital"); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

Furthermore, while the Petitioner alleges that his father's income financed the purchase of his [redacted] property, which he then used as collateral for the 3,500,000 RMB loan, the record is insufficient to substantiate this claim. The Petitioner indicates that his father's accumulated income between 1995 and 2003 was sufficient to pay for the property. Documents from his father's employer as well as a 2017 statement from his father similarly allege that his income was sufficient to purchase the property. The record, however, does not include documents, such as bank records, showing how much of his income his father had saved, or that his father had saved enough of his income to pay the property's 1,301,265 RMB purchasing price. In addition, the record lacks evidence, such as bank or property transfer documents, confirming that the Petitioner's father used his accumulated savings, rather than other sources of funds, to buy the property for the Petitioner.

Without additional evidence reconciling the inconsistencies in the record, as well as evidence demonstrating the source of [redacted] U.S. dollars, the Petitioner has not sufficiently established the lawful source of the U.S. dollars he received from [redacted] which he ultimately remitted to the NCE as his EB-5 capital. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Accordingly, we will dismiss the appeal because the record does not demonstrate, by a preponderance of the evidence, that the Petitioner's purported EB-5 capital did not derive, directly or indirectly, from unlawful means,

as the evidence does not trace the complete path of the funds back to a lawful source. *See* 8 C.F.R. § 204.6(e) (defining "capital"); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

B. Alternate Grounds for Denial

As discussed, the Chief denied the petition on other grounds, including finding that the Petitioner did not show that he invested or was actively in the process of investing at least $500,000 in the NCE; and that he did not establish the lawful source of funds of the NCE's other investors. *See* 8 C.F.R. § 204.6(g) (specifying that a petitioner must identify "the source(s) of all capital invested [in the NCE]" and show "all invested capital has been derived by lawful means"); *see also* 8 C.F.R. § 204.6(j)(2) (requiring a petitioner to "show actual commitment of the required amount of capital" not "mere intent to invest"). In light of our determination that the Petitioner has not sufficiently documented the lawful source of his EB-5 funds, we need not address the Chief's alternate grounds for denial. We will instead reserve these issues for future consideration should the need arise.

III. CONCLUSION

The Petitioner has not established his eligibility for the EB-5 classification because he has not documented the lawful source of the funds he remitted to the NCE. *See* 8 C.F.R. § 204.6(e), (j); *see also Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Skirball Cultural Ctr.*, 25 I&N Dec. at 806. Here, that burden has not been met.

ORDER: The appeal is dismissed.