U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26763168

Date: FEB. 28, 2023

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) (2019).[1] This fifth preference (EB-5) classification makes immigrant visas available to noncitizens 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 sufficiently document the lawful source of at least $500,000 she claimed to have invested in [redacted] a NCE associated with [redacted] EB-5 Regional Center.[2] On appeal, the Petitioner submits a brief, a supplemental brief, and extensive additional evidence, including documentation relating to businesses that purportedly hired her to perform consulting work, the payments from which financed her EB-5 investment. The Petitioner maintains that she has demonstrated her eligibility for the EB-5 classification.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand the matter to the Chief for the entry of a new decision consistent with the foregoing analysis.

A noncitizen may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. The regulation specifies that an EB-5 petition "must be accompanied by evidence that the [noncitizen] has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise in the United States which will create full-time positions for not fewer than 10 qualifying employees." 8 C.F.R. § 204.6(j) (2019). In addition, the

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022).

[2] The Petitioner indicated on page 5 of the petition that the "petition is based on an investment in a targeted employment area for which the required investment amount of capital has been adjudicated downward." *See* 8 C.F.R. § 204.6(f)(2) (2019).

noncitizen 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.[3] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

In the decision denying the petition, the Chief discussed evidence the Petitioner submitted that indicated she entered into consulting services agreements with multiple U.S. and foreign businesses in 2018 and that she claimed the payments she received from the businesses financed her EB-5 investment in 2019. The Chief concluded that the record lacked sufficient documentation confirming that these entities were conducting lawful business activities,[4] had the authority to remit payments to the Petitioner, and/or had sufficient lawfully acquired funds to compensate her pursuant to the terms of the agreements. Additionally, the Chief stated that the "record suggest[ed] that [the] Petitioner [was] working illegally in the United States," because the consulting services agreements she had executed with U.S. businesses appeared to indicate that she worked for them while she was in the United States. The Chief also questioned the credibility of the consulting services agreements as they were all executed on the same day, contained identical language, and the associated payments were all made to the Petitioner in the same month.

In support of her appeal, the Petitioner submits additional evidence addressing the grounds upon which the Chief denied the petition. In addition, she claims that she was unable to provide these materials to the Chief because she and her family were infected with COVID-19. As the Petitioner has offered documentation that the Chief did not have an opportunity to review, we will withdraw the Chief's decision and remand the matter for the entry of a new decision.

On remand, the Chief should consider the additional documentation and determine if the Petitioner has established eligibility to be classified as an EB-5 immigrant investor, including determining whether she has presented sufficient documentation documenting the lawful source of the funds she claimed to have invested in the NCE.

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

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[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).

[4] The Chief noted on page 9 of the decision that the Petitioner failed to resolve "significant issues regarding [her] and her spouse's business activities" that the Chief raised in the notice of intent to deny (NOID) the petition. The tax documents for the U.S. businesses that purportedly hired the Petitioner to perform consulting work showed that she and her spouse owned these entities.