U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13437667

Date: MAY 10, 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) (2017). 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 that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Noncitizens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

The Chief of the Immigrant Investor Program Office initially approved the petition but subsequently issued a notice of intent to revoke (NOIR) the approval of the petition. The NOIR stated that the U.S. Embassy in Kabul, Afghanistan, returned the approved petition to the Chief for review and possible revocation. The NOIR further stated that the fact that the approval of the Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was revoked based on the derogatory information that he defrauded the U.S. government calls into question how the Petitioner acquired his investment funds. The Petitioner responded to the NOIR, but the Chief found the Petitioner's statement and additional evidence insufficient to overcome the reasons for the NOIR and revoked the approval of the petition.

The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Chief's decision was erroneous, and revocation of the approved petition should be reversed because the Chief relied on undisclosed evidence that he did not have a meaningful opportunity to rebut in violation of procedural due process and because the Chief acted arbitrarily and capriciously and not in accordance with law in violation of the Administrative Procedure Act.

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 dismiss the appeal.

I. LAW

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204 of the Act, 8 U.S.C. § 1154. *See also* 8 C.F.R. § 205.2(a) (stating that USCIS may revoke the approval of a petition upon notice to the petitioner on any ground other than those specified in 8 C.F.R. § 205.1 when the necessity for the revocation comes to the attention of USCIS).

There is "good and sufficient cause" within the meaning of section 205 of the Act to revoke approval of a visa petition if the evidence of record at the time of the decision, including any explanation or rebuttal submitted by the petitioner, warrants a denial based on the petitioner's failure to meet his or her burden of proof. *Matter of Estime*, 19 I&N Dec. 450, 452 (BIA 1987). In addition, the realization that the initial approval of the petition was in error may, in and of itself, be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). A revocation can only be grounded upon, and the petitioner is only obliged to respond to, the allegations in the notice of intent to revoke. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was his or her own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). To show that the capital was his or her own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the new commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner indicated on page 2 of his petition that on April 3, 2015, he invested $500,000[1] in [redacted] the new commercial enterprise (NCE), which is associated with [redacted] pursuant to the Immigrant Investor Program. According to the Confidential Private Offering Memorandum of the NCE, the NCE proposed to pool $25,500,000 from 51 immigrant investors and lend the entire amount to [redacted],[2] the job-creating entity (JCE). The business plan of [redacted] indicates that the

[1] On March 15, 2022, President Joe Biden signed the EB-5 Reform and Integrity Act of 2022, which made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See s*ection 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed his petition in 2015 and indicated that the project is located in a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

[2] On April 24, 2018, [redacted] filed a Certificate of Amendment to Certificate of Formation of [redacted] with the State of Delaware, Secretary of State, and the name of the limited liability company was changed to [redacted]

JCE, a development company, intends to transform a former hotel into a 323-unit senior living community in [redacted] Florida.

The Petitioner asserted that he derived his investment funds through the sale of a villa in [redacted] in December 2013 for 3,900,000 United Arab Emirates dirham (AED). The Petitioner further asserted that he purchased the villa in June 2009 for AED 2,550,000 using income from his family-owned company, [redacted], which provides services to the U.S. Army in Afghanistan related to the transportation of petroleum products and supply of commercial items.

After the Chief initially approved the Petitioner's Form I-526 in 2017, the U.S. Embassy in Kabul, Afghanistan, returned the approved petition to the Chief in 2019 for review and possible revocation. The U.S. Embassy explained that the Petitioner was previously denied a special immigrant visa for Iraqi and Afghan translators and interpreters under section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163 as amended by Public Law 110-36), which authorizes special immigrant status under section 101(a)(27) of the Act, 8 U.S.C. § 1101(a)(27), based on the information that he defrauded the U.S. government. The U.S. Embassy further stated that this information calls into question the legitimacy of the source of funds invested in the NCE.

The Director of the Nebraska Service Center initially approved the Petitioner's Form I-360 in 2006 but subsequently issued a NOIR the approval of the petition in 2008. In October 2007, a brigadier general of the U.S. Army, [redacted] in Kabul, Afghanistan, Department of Defense, sent a letter to the Director of the Nebraska Service Center, informing that the Petitioner has attempted to use his position of employment with the [redacted] to create a phony contract with the intent to defraud the U.S. government. The brigadier general also informed the Director that the [redacted] garrison commander has banned the Petitioner from [redacted] and the [redacted] has terminated the Petitioner's contract with the Department of Defense. The brigadier general stated that the Petitioner is no longer a good candidate to receive special immigration status under the special visa program for translators and recommended revocation of his visa before his travel to the United States. Based upon this information, the Director revoked the approval of the Petitioner's Form I-360 in 2009.

On appeal, the Petitioner contends that he was never provided with a copy of the 2007 letter from the brigadier general and that without access to this letter, he lacked a meaningful opportunity to respond to the allegation that formed the bases for the Chief's proposed revocation.

Regarding the revocation of a visa petition under section 205 of the Act, the Board of Immigration Appeals held that pursuant to 8 C.F.R. § 103.2(b)(2) (1987), the notice of intention to revoke must include a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence (e.g., the investigative report). *Matter of Estime*, 19 I&N Dec. at 451-52. According to the Petitioner, the Chief must provide the Petitioner with a copy of the 2007 letter that contains the derogatory information. However, *Matter of Estime* only requires the Chief to provide a NOIR that includes: (1) a specific statement of the facts underlying the proposed action and (2) a specific statement of the supporting evidence.

In this case, the Chief provided a specific statement relating to the supporting evidence that established the derogatory information within the NOIR through the following: "USCIS subsequently received

an official letter, dated October 11, 2007, from the Office of the Deputy Commanding General (DCG) [redacted] Kabul, Afghanistan. In the letter, signed by Brigadier General [redacted] USCIS was informed that Petitioner had attempted to use his position for employment within the [redacted] to create a phony contract with the intent to defraud the United States Government. The letter withdrew the Command's previous recommendation that [redacted] received special immigration status because he is no longer a good candidate to receive such classification. The DCG also recommended revocation of his visa before he travels to the United States." Such a summary of the letter, rather than the letter itself, is sufficient. *See Ghaly v. INS*, 48 F.3d 1426, 1434 (7th Cir. 1995). The Chief provided a summary of the grounds sufficient in detail to explain her reasoning for the revocation of the Petitioner's visa petition. The regulations do not mandate that the Petitioner must be provided with an opportunity to review every letter or statement. The Chief explained her intentions plainly and clearly to revoke the approval of the Petitioner's visa petition based on the derogatory information provided in the letter.

On appeal, the Petitioner further contends that the 2007 letter and 2009 revocation of the Petitioner's Form I-360 were neither new nor undiscoverable as they were available to the Chief when she approved the Petitioner's Form I-526 in 2017. The Petitioner claims that since USCIS is responsible for adjudicating immigration petitions, including both Form I-360 and Form I-526, it is unrealistic to claim that the Chief did not have complete access to the Petitioner's immigration history; to suggest otherwise implies a blatant failure to exercise due diligence on the part of the Chief when she initially approved the Petitioner's Form I-526.

A review of both Form I-360 and Form I-526 reveals that the Petitioner has used two different names while submitting these forms to USCIS. In his Form I-360 filed in 2006, the Petitioner indicated that his full name is [redacted]." In his Form I-526 filed in 2015, the Petitioner indicated that his full name is [redacted]" Because the Petitioner used two different names, two A numbers were created for these two seemingly different individuals. As fingerprints checks are not required for these visa petitions, it appears that the 2007 letter and 2009 revocation of the Petitioner's Form I-360 were not easily discoverable and thus unavailable to the Chief when she initially approved the Form I-526 in 2017.

In addition to the derogatory information provided in the 2007 letter, upon de novo review, we determine that the evidence in the record does not sufficiently demonstrate that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital that has been obtained through lawful means for the reasons we will discuss below.

To support claims regarding the source and path of his investment funds, the Petitioner submitted various documents. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The Petitioner claimed that from May 2008 to September 2009, a total of $1,929,155.60 was transferred from [redacted] National Bank of Pakistan (NBP) account ending in [redacted] to the Petitioner's Kabul Bank account ending in [redacted] and that these funds were used by the Petitioner to purchase the villa in [redacted] To support this claim, the Petitioner submitted bank statements of [redacted] from NBP for its account ending in [redacted] and the Petitioner's bank statements from Kabul Bank for his account ending in [redacted] which show the transfers of funds from [redacted]

account to the Petitioner's account. However, the bank statements of [redacted] do not provide the sources of deposits. In addition, the record does not contain income tax returns, earning records, or other sufficient evidence to demonstrate the claimed earnings by the Petitioner from [redacted] the claimed business income of [redacted] and that commensurate taxes were paid by the Petitioner and [redacted] on their respective income.

The Petitioner submitted copies of three checks issued for a total amount of AED 2,549,700.60 for the purchase of the villa in [redacted] in June 2009. On May 6, 2009, [redacted] issued a check for AED 255,000 from its [redacted] account ending in [redacted] On May 18, 2009, the Petitioner issued a check for AED 75,262.60 from his SCB account ending in [redacted] On June 18, 2009, [redacted] purchased a cashier's check for AED 1,542,438 from [redacted] The record contains a bank statement of the Petitioner from SCB for his account ending in [redacted] and a bank statement of [redacted] from [redacted] for its account ending in [redacted] However, the bank statements do not provide the sources of deposits. Moreover, the record does not contain sample contracts, complete bank statements, income tax returns, or other sufficient evidence to demonstrate the claimed lawful business activities of [redacted] and how [redacted] obtained the funds to purchase the cashier's check for AED 1,542,438 to partially fund the purchase of the villa by the Petitioner and his brother in 2009.

The sale proceeds of the villa in [redacted] have not been shown to derive from lawful means because the funds used to purchase the villa have not been shown to derive from lawful means.

In December 2013, the Petitioner sold the villa for AED 3,900,000. The Petitioner's bank statement from SCB for his account [redacted][3] shows a deposit of AED 3,878,888.89 into this account on December 14, 2013 and a withdrawal of AED 3,879053.37 from this account on December 15, 2013. However, the bank statement does not provide the source of deposit. An illegible copy of a remittance application form from SCB appears to indicate that on December 14, 2013, the Petitioner transferred $500,000 from his SCB account [redacted][4] to "[redacted]" However, the record does not contain complete bank statements or other sufficient evidence to demonstrate the source of the funds in the Petitioner's SCB account [redacted]

Wire transfer forms from PNC Bank and a bank statement of the NCE and [redacted][5] from TD Bank for their joint account ending in [redacted] show that on April 3, 2015, [redacted]" transferred $500,000 and $40,000 from its PNC Bank account ending in [redacted] to the NCE and [redacted] TD Bank joint account ending in [redacted] on behalf of the Petitioner. However, the record does not contain complete bank statements or other sufficient evidence to demonstrate how funds arrived in [redacted] PNC Bank account ending in [redacted] As noted above, on December 14, 2013, the Petitioner transferred $500,000 from his SCB account [redacted] to "[redacted]" The record does not contain complete bank statements or other sufficient evidence to demonstrate that the Petitioner's investment funds in the

[3] The Petitioner has multiple accounts with nearly identical account numbers. He has two separate SCB accounts ending in [redacted]

[4] The Petitioner has multiple accounts with nearly identical account numbers. He has two separate SCB accounts ending in [redacted]

[5] The Confidential Private Offering Memorandum of the NCE indicates on page 2 that [redacted] is the manager of the NCE.

amount of $500,000 were accumulated and maintained in [redacted] PNC Bank account ending in [redacted] from December 14, 2013 until deployment to the NCE's account on April 3, 2015 without commingling of funds from other sources not shown to derive from lawful means.

The Petitioner has not demonstrated that the funds transferred from [redacted] PNC Bank account on his behalf in 2015 derived from a lawful source. The record shows that funds were transferred from the Petitioner's SCB account to [redacted] in 2013, but no evidence shows a transfer of the Petitioner's funds from "[redacted] to [redacted] Moreover, the record lacks evidence showing that the Petitioner's funds were maintained in either entity's account and not commingled with other funds. As such, the Petitioner has not demonstrated that the funds transferred to the NCE on his behalf derived from a lawful source.

The Petitioner has failed to trace the path of funds back to a lawful source. Due to the numerous evidentiary insufficiencies found in the record, we conclude that the Petitioner has not demonstrated by a preponderance of the evidence that the claimed investment funds derived from lawful means. A petitioner must demonstrate by a preponderance of the evidence that the capital was his or her own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). Here, the Petitioner has not met this burden.

III. CONCLUSION

The Petitioner has not established his eligibility for the immigrant investor visa classification because he has not sufficiently documented the lawful source of funds he purportedly remitted to the NCE. *See* 8 C.F.R. § 204.6(e), (j)(3); *see also Matter of Ho*, 19 I&N Dec. at 588 (providing that "the burden remains with the petitioner in revocation proceedings to establish that [he] qualifies for the benefit sought under the immigration laws"). Accordingly, we affirm the Chief's revocation.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.