U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20430472

Date: AUG. 2, 2022

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 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 Petitioner's Immigrant Petition by Alien Entrepreneur (Form I-526) on multiple grounds, including the Petitioner did not invest and was not in the process of investing the required amount of capital in [redacted] (NCE), did not place the required capital at risk in the NCE, did not document the lawful source of the funds he claimed to have invested in the NCE, and did not show that the NCE would likely create the required number of jobs. *See* 8 C.F.R. § 204.6(e) (defining "capital" and "invest"), (j)(2)-(4) (2015); *see also Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). The matter is now on appeal. On appeal, the Petitioner submits a brief and resubmits evidence already in the record. He asserts that he has established eligibility for the EB-5 classification.

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).[1] 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 an NCE. 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

[1] 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, then he or she has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

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

In addition, an investor seeking EB-5 classification 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). The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.[3]

Prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998), explains that "[a] comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives" and that "[i]t should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions." *Matter of Ho*, 22 I&N Dec. at 213, specifies that to be "comprehensive," a business plan "must be sufficiently detailed to permit [U.S. Citizenship and Immigration Services (USCIS)] to draw reasonable inferences about the job-creation potential." "Mere conclusory assertions[, however,] do not enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation." *Id.* The decision concludes: "Most importantly, the business plan must be credible." *Id.*

II. ANALYSIS

The Petitioner alleged on page 2 of the petition that he invested $500,200[4] in the NCE. He presented to the Chief a business plan, page 8 of which indicates that the NCE, "operating under the licensed trade name [redacted] "will operate a fleet of European and high-end luxury cars, providing

[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 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. 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2.

[4] On March 15, 2022, President Joe 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). In this case, the Petitioner indicates that, at the time he filed the petition in 2015, the NCE was located in a targeted employment area and that 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).

comprehensive transportation and concierge-style services for corporate clients and high-net-worth individuals." Page 28 of the business plan claims that the NCE will create a total of 14 full-time positions within 24 months, "[b]eginning with the receipt of [the Petitioner's] investment funding." The business plan alleges that the NCE will hire a manager, an office staff, and 12 drivers. Based on the reasons we will discuss below, we conclude that the Petitioner has not established his eligibility for the EB-5 classification.

A. Lawful Source of Funds

On appeal, the Petitioner asserts that his earnings from his businesses financed his EB-5 investment. His supporting evidence includes materials relating to his businesses, documents from [redacted] his tax documents, his bank statements, and his September 2018 statement. According to his 2018 statement, the Petitioner "manage[s] three legitimate businesses outside of the United States" and "[t]hese have been the source of [his] income that covers [his] day-to-day expenses as well as the source of all [his] EB-5 investment funds." The record includes a document from [redacted] indicating that the company "evaluated financial information and bank accounts for [the Petitioner's] income from the different sources" and "confirm[s] that [he] is operating legally registered businesses in Iran and United Arab Emirates." The document states that "[t]o the best of our knowledge following statement is accurate and true," that the Petitioner's "total personal income" was $704,042 in 2014 and $619,140 in 2013. As discussed in the Chief's decision, however, the record lacks sufficient "evidence to corroborate the claims in the statement from [redacted]" and the Petitioner's 2018 statement.

Assuming *arguendo* that the income figures noted in the [redacted] statement are credible and accurate, the record is insufficient to confirm how much of his income the Petitioner had saved or that he had saved at least $500,200 – his purported EB-5 capital – to invest in the NCE in 2014. As noted, the Petitioner offers his bank statements, but they do not sufficiently establish that he had saved enough funds to finance his EB-5 investment. For example, his [redacted] Bank account ending in 9901 shows that he had funds in the account as of September 2014, and that on October 8, 2014, he made a cash deposit. Both his account balance and the cash deposit financed his $54,200 remittance to the NCE on October 9, 2014. The Petitioner, however, has not documented, through evidence such as additional bank statements, the source of the cash deposit or how he accumulated the account balance.

Similarly, the [redacted] Bank statement shows that on November 17, 2014, he made a cash deposit that financed his $21,000 remittance to the NCE on the same day, but he has not documented the source of that cash deposit. The record also includes a one-page statement from [redacted] for the Petitioner's account ending in 9758, providing that he had funds in the account as of November 1, 2014, that he made a deposit on November 15, 2014, and that his account balance and his cash deposit financed a remittance to the NCE on November 18, 2014.[5] The Petitioner, however, has not submitted sufficient documents tracing the account balance and cash deposit to his receipt of business earnings.

[5] The Petitioner's [redacted] account indicates that he remitted €26,860.05 on November 18, 2014, and the NCE's [redacted] account shows that the NCE received $33,000 from the Petitioner's [redacted] account on the same day.

Moreover, according to a document entitled "Detail Investment Trace to [NCE] by the [Petitioner]," the Petitioner relied on '[redacted]' a purported currency exchange entity, to bring over $335,000 of his funds out of Iran, his country of citizenship, to the United States to invest in the NCE. The NCE's bank statements for an account ending in 1532, shows that the NCE received funds that originated from [redacted] and [redacted] The bank record does not indicate that these businesses are currency exchange entities or that they are associated with [redacted] Additionally, the information contained in the bank statement does not support a finding that funds the NCE received from these three businesses originated from the Petitioner or that they are for his EB-5 investment. For example, according to the bank statement regarding funds that originated from [redacted] the "payment detail" for the transaction was "Others Buy Vehicles 052001633 90082669." According to the bank statement regarding funds that originated from [redacted] the "payment detail" for the transaction was "purchasing goods 1529." On page 9 of his appellate brief, the Petitioner alleges that the three businesses are "intermediary foreign exchange institutions." He, however, has not offered evidence to support this statement.

Furthermore, the record does not sufficiently demonstrate that the Petitioner remitted his funds to [redacted] for currency exchange and currency transfer purposes. The Petitioner has presented partial copies of his [redacted] and [redacted] statements, showing that he issued a number of "cheque[s]" in 2014 from these accounts. He also has offered certifications from [redacted] alleging its receipt of the "cheque[s]." The record, however, lacks copies of the checks, bank records verifying that the checks listed [redacted] as the payee, or that the checks were for currency exchange purposes. Additionally, the [redacted] certifications indicate that another intermediary was used in these transactions: [redacted] in Kuwait." The [redacted] certifications, however, make no mention of [redacted] businesses that remitted funds to the NCE according to its bank statements.

The record also includes documents, purportedly from [redacted] requesting its bank to remit funds to the NCE. One of such documents, dated December 2014, notes that the transaction was "By Order: [redacted] for [redacted] LIC No [redacted]" The Petitioner has not offered additional information or evidence concerning [redacted] for [redacted] Additionally, none of the [redacted] documents references [redacted] or demonstrates that [redacted] was acting as a currency exchange for the Petitioner. Also, the Petitioner has not submitted sufficient evidence establishing that these entities – [redacted] and [redacted] – are legitimate currency exchange businesses or that funds from these businesses derived from lawful sources.

Finally, the Petitioner has not sufficiently demonstrated the lawful source of the funds in his [redacted] and [redacted] accounts. Similar to issues we have raised concerning funds in his [redacted] Bank and [redacted] accounts, the Petitioner has not submitted sufficient evidence, tracing the source of the funds in his [redacted] and [redacted] accounts to his receipt of business earnings. While there is documentation relating to his income from businesses, he has not established how much of his income he had saved in his accounts, or that the deposits and account balances from these accounts can be traced back to his income. The Petitioner has not presented

sufficient evidence tracing the complete path of his purported EB-5 capital – $500,200 – back to a lawful source. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Without additional corroborating evidence, the Petitioner has not sufficiently established that his purported EB-5 capital did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e) (defining "capital").

B. Job Creation

The Petitioner has not satisfied the job creation requirements under 8 C.F.R. § 204.6(j)(4). According to page 28 of the NCE's business plan, the NCE would create a total of 14 full-time positions – including positions for a manager, an office staff, and 12 drivers – within 24 months of receiving the Petitioner's funds. A document entitled "Detail Investment Trace to [NCE] by the [Petitioner]" indicates that the NCE received over $500,000 of the Petitioner's purported EB-5 investment as of December 2014. The record, however, does not demonstrate that the NCE had created 14 full-time positions, or at least 10 full-time positions, by December 2016, two years after the NCE's receipt of the funds, as the business plan claims that it would. This does not support a finding that the business plan, including its job creation projections, is credible. *See Matter of Ho*, 22 I&N Dec. at 213.

In addition, the current operational and financial state of the NCE does not support a finding that it will more likely than not create the needed number of jobs. The Petitioner asserts on pages 12 and 13 of his appellate brief that the NCE "undertook significant operations and only ceased to be active [in 2017] after adjudication of [his Form] I-526 petition by USCIS had dragged on for years without a decision." He acknowledges on page 17 of his appellate brief that the NCE "was not actively in operation at the time of [the Chief's] adjudication of [his Form] I-526" in 2021. As noted on page 9 of the Chief's decision, the "Maryland Department of Assessments & Taxation's website shows that the NCE's current status is 'Forfeited'" and that the NCE had "fail[ed] to file a property return for 2017."[6]

At the time the Chief denied the petition in 2021, the Petitioner failed to show that the NCE had the necessary funds to create jobs as projected in the business plan. The Petitioner indicated to the Chief that upon approval of his petition, the NCE would resume operation and create jobs. As noted on page 14 of the Chief's decision, "the [NCE was] no longer operating, even if operations were to restart, additional funds would likely be needed to obtain licenses, permits, equipment including vehicles, obtaining office space, and other start-up costs," but the Petitioner did not present evidence to the Chief concerning "how any additional funding would be obtained . . . to restart the NCE's business." The Petitioner, thus, did not sufficiently explain or present adequate documentation to the Chief concerning the amount the NCE would need to restart operation or that it would have the needed funds to create the requisite number of jobs. *See* 8 C.F.R. § 103.2(b)(1) (providing that a "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication").

Other materials in the record similarly do not support a finding that the NCE will likely create the required number of jobs. Page 31 of the business plan indicates that the NCE would need $474,189

[6] As of August 1, 2022, the Maryland Department of Assessments and Taxation's website continues to show that the NCE's current status as "Forfeited."

in "total start-up assets." The Petitioner claims on page 2 of his appellate brief that the NCE "has spent $416,627.25 of his [EB-5] investment." He indicates on page 13 of the appellate brief that "[s]ome non-fungible assets such as the luxury vehicles purchased for providing transportation services to clients were sold due to the fact that the cars become [too] old" for business operation. The Petitioner, however, has not offered evidence concerning the amount, if any, the NCE recouped from the purported sale. Without additional evidence, such as the NCE's bank records and audited financial statements, the Petitioner has not sufficiently demonstrated that the NCE has the funds to restart operation or the funds to create jobs as specified in the business plan.

On appeal, the Petitioner argues that the NCE had to cease operation in 2017 because USCIS had taken a long time to adjudicate his Form I-526 petition and that he was unable to manage the NCE from overseas. As discussed on page 9 of the Chief's decision, the Petitioner's counsel was listed as the NCE's manager and president under its Operating Agreement. The Operating Agreement provides that the NCE's "business and affairs will be managed by its Manager[]," who "will direct, manage and control the [NCE]'s business to the best of [his] ability." Similarly, according to page 28 of the business plan, the NCE will hire a manager within the first month of its receipt of EB-5 funds, and that the "Manager will oversee the daily operations of the business, and will be in charge of client relations, business development activities, and tracking industry trends and changes in demand." On appeal, the Petitioner does not address the Chief's observation that the record did not show "what specific actions or duties [the] Petitioner would perform [in the United States] that the President [and Manager] of the NCE could not perform." The evidence thus does not support the Petitioner's assertion that the NCE had to cease operation because of USCIS's adjudicative time.

Based on the reasons we have discussed above, we conclude that the Petitioner has not sufficiently shown that his purported remittance to the NCE will likely result in the NCE creating at least 10 full-time jobs for qualifying employees. *See* 8 C.F.R. § 204.6(j)(4). Specifically, he has not submitted a credible and comprehensive business plan showing that the NCE, in its current operational and financial state, will likely create the requisite number of full-time positions for qualifying employees within the next two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *see also Matter of Ho*, 22 I&N Dec. at 213.

C. Other Issues

In light of our discussion on the Petitioner's failure to document the lawful source of funds he purportedly remitted to the NCE as EB-5 capital, and his failure to satisfy the job creation requirements, we need not consider the Chief's other grounds for denial, including the Petitioner failure to demonstrate that he invested or was in the process of investing at least $500,000 in the NCE or that he placed at least $500,000 at risk in the NCE. *See* 8 C.F.R. § 204.6(e) (defining "capital" and "invest"), (j)(2)-(4). We will reserve these and other eligibility issues for future consideration should the need arise.

III. CONCLUSION

The Petitioner has not documented the lawful source of the funds he claimed to have invested in the NCE, and he has not presented a comprehensive or credible business plan showing that, due to the nature and projected size of the NCE, it will likely create at least 10 full-time positions within the next

two years. *See* 8 C.F.R. § 204.6(e) (defining "capital"), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213; *Matter of Izummi*, 22 I&N Dec. at 195. Accordingly, the Petitioner has not demonstrated, by a preponderance of the evidence, his eligibility for the immigrant investor classification.

ORDER: The appeal is dismissed.