U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24745739

Date: MAR. 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) (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 document the lawful source of the $500,000 he claimed to have invested in [redacted] the NCE.[2] On appeal, the Petitioner submits a brief as well as additional evidence, maintaining that he has demonstrated 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 dismiss the appeal.

I. LAW

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).

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[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). As the Petitioner had filed his petition in April 2019, the relevant law then in existence governs this appellate adjudication.

[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 adjusted downward" to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2019). In addition, the Petitioner stated that the NCE is associated with [redacted], a U.S. Citizenship and Immigration Services (USCIS) designated regional center to participate in the EB-5 program. *See* 8 C.F.R. § 204.6(e) (defining "regional center").

In addition, a noncitizen must demonstrate that he or she has placed his or her own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are his [or her] own"). In addition, the 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. at 210-11; *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.

II. ANALYSIS

According to page 6 of the petition, the Petitioner invested $500,000, which he obtained through a gift, in the NCE. A bank wire document confirms that in March 2019, he remitted $535,000 to the NCE's escrow account, with $500,000 as his EB-5 investment and $35,000 as his administrative fees.

The Petitioner claims that his father gifted him his EB-5 capital. A document entitled "Deed of Gift" states that in January 2018, his father gifted him $596,727.[4] According to his April 2019 statement, his father purchased a condominium in [redacted] France, in [redacted] 2000 "for 1,650,000 French Francs (about USD $247,632)" and then sold it "on [redacted] 2016, for 655,000 Euros (about USD $743,333)."[5] He stated that "[his] father gifted [him] $596,727 of the sale proceeds for [his] EB-5 immigration." He also explained that in 2018 and 2019, his spouse transferred $35,000 of the gifted funds out of his account for living expenses, and that he "recapitalized [his] account with USD $35,000" that he received from his mother.[6]

According to the Petitioner's father's April 2019 statement, he worked as an ambassador of [redacted] "from 1995 to 2000," and that "[a]s an ambassador, [he] earned substantial income and was able to save [his] income over time." The Petitioner's father did not specify in his April 2019 statement that his financed his 2000 [redacted] condominium purchase with his earnings working as an ambassador. Instead, he claimed that he used "[his] investment savings and sale proceeds from properties [he] inherited from [his parents]" to finance the 2000 purchase. In a later statement, dated September 2021, the Petitioner's father claimed that he "used [his] savings from [his] salary income, investments, and income earned from selling [his] real properties in [redacted]" to finance the 2000 purchase of the [redacted] condominium. As noted on page 9 of the Chief's decision, the Petitioner's father's statements contain

[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] Statements for an account ending in [redacted] which is jointly owned by the Petitioner and his parents, show that the account received $596,727 in June 2016, and then remitted $558,000 to the Petitioner's account ending in [redacted] in January 2017.

[5] Bank record shows that in 2016, the Petitioner's father received €578,991 for selling the [redacted] condominium.

[6] According to the Petitioner's mother's September 2021 statement, she gifted $35,000 to the Petitioner in February 2019, and that those funds came from "proceeds that [she] earned selling [her] real property in [redacted] a property she purchased in 2011 "using the proceeds [she] earned from selling [her] real property in [redacted]

an inconsistency concerning whether the salary he received working as an ambassador financed the 2000 purchase. *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").

On page 3 of his appellate brief, the Petitioner maintains that his father's statements do not contain an inconsistency. He maintains that the two statements "discussed the source of the funds in a different order and use[d] different words, but provide[d] the same explanation [on] how the funds were earned and their lawful source." This, however, is not an accurate recitation of his father's two statements. As noted, in the April 2019 statement, when explaining how he financed the 2000 [redacted] condominium purchase, the Petitioner's father referenced "[his] investment savings" and "sale proceeds from properties," but did not specify that he also used his salary working as an ambassador for the purchase. In his later statement, dated September 2021, his father claimed that he also used his savings from "[his] salary income" to finance the purchase. The Petitioner has not sufficiently explained or reconciled the conflicting accounts concerning the source of the funds his father used for the 2000 purchase of the [redacted] condominium, the sale of which purportedly financed the Petitioner's EB-5 investment. *See Matter of Ho*, 19 I&N Dec. at 591-92.

In addition, while the Petitioner claims that his EB-5 investment derived from the sale of his father's [redacted] condominium, the record lacks sufficient documents confirming the lawful source of the funds his father used to purchase the condominium in 2000. A copy of an escrow account ending in [redacted] shows that to purchase the [redacted] condominium, the Petitioner's father remitted funds to the account in December 1999 and February 2000 in the following French Franc amounts: 165,000; 109,000; 291,000; 600,000; and 594,000. As noted on page 11 of the Chief's decision, the Petitioner, however, has not offered sufficient documents tracing the sources of these remittances.

On appeal, the Petitioner presents a June 2022 statement from the Embassy of [redacted] in Washington, D.C., indicating that his father worked for the [redacted] government between 1970s and 2000s, including serving as its ambassador to a number of countries. The letter explains that while he served as an ambassador between 1976 and 2000, the Petitioner's father "had a monthly salary and benefits range between 16,000 USD and 20,000 USD net of taxes and excluding compensation for other additional duties performed."[7] In his September 2021 statement, the Petitioner's father asserted that he "do[es] not have any financial records showing [his] earnings, or accumulation of income savings." Indeed, the record lacks sufficient documentation, such as bank or tax records, confirming the Petitioner's father saved enough lawfully obtained funds to purchase the [redacted] condominium in 2000.

The Petitioner claims that the financial institution that his father used has not retained documents concerning his savings. In a September 2022 statement, which the Petitioner offers on appeal, he indicated that his father "had two accounts with [redacted][8] [redacted] a personal account and a family trust account holding through [redacted] and that "[b]oth accounts have been closed years ago." He claimed that "[redacted] could only provide personal account valuation records up

[7] The record also includes a June 2017 statement from the Embassy of [redacted] in Washington, D.C., discussing the Petitioner's father's employment with the [redacted] government.

[8] According to the Petitioner's father's September 2021 statement, [redacted] stands for [redacted]

to December 31, 2010, and family trust account up to March 31, 2002." In a May 2016 email, [redacted] also stated that "the oldest valuation that [it] hold[s] for the two accounts: (1) Personal account [was dated] 31.12.2010" and "(2) [redacted] [was dated] 31.03.2002." The email specifies that "[u]nfortunately [its] archives could not go back to the dates requested." This email and statements from the Petitioner and his father, however, do not satisfy requirements under 8 C.F.R. § 103.2(b)(2)(i), which provides that a petitioner "must demonstrate [the unavailability of primary evidence] and submit secondary evidence" and that if "secondary evidence also does not exist or cannot be obtained, the . . . petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances." Additionally, in his two statements, dated April 2019 and September 2021, the Petitioner's father, did not specify that he only deposited his income, earnings, savings and/or other forms of assets in the two [redacted] accounts before his 2000 purchase of the [redacted] condominium. Indeed, even if we were to accept that [redacted] does not have earlier records of the Petitioner's father's assets, the record is insufficient to demonstrate that assets from the [redacted] accounts financed the 2000 purchase.

The record includes a January 2007 letter from [redacted] identified as a company "owned by [redacted] as Trustees of the Hoor Trust," that indicates that the Petitioner and family members were beneficiaries of an irrevocable trust that was settled in September 1993. In an email, [redacted] explained: "under the trust set up the trustees hold the assets in the name of an offshore company which is owned by the trust" and that the "name of the offshore company was [redacted] and the beneficial owner of the company was [the Petitioner's] father." A document entitled "Portfolio Valuation" provides that as of March 2002, [redacted] had total net portfolio assets valued at $955,995.39. The record, however, does not include evidence specifying how much the Petitioner's family, including his father received upon the settlement of the trust in 1993. Additionally, the value of the portfolio in 2002 does not establish that funds from the portfolio financed the Petitioner's father's 2000 purchase of the [redacted] condominium.

The record also includes a partial translation of a [redacted] 1881 "Declaration of Land Inheritance" from [redacted], and a partial translation of a [redacted] 1943 "Inheritance of Land Deed" from [redacted].[9] In his September 2021 statement, the Petitioner's father explained that the Petitioner's great-grandfather inherited land in 1881; his grandfather inherited land in 1943; and then his father inherited land from his grandfather on an unspecified date. The Petitioner's father further stated that "[t]he lands [he] inherited were the seeds to [his] wealth" and that he "sold some of these lands to buy and sell other properties in [redacted] and accumulated savings to make financial investments." The record, however, does not include sufficient documents substantiating the amount the Petitioner's father earned or retained from these purported property transactions in [redacted] or establishing that the Petitioner's father's purported sale of these properties financed his 2000 purchase of the [redacted] condominium. As discussed on page 13 of the Chief's decision, "these documents, even when paired with a thorough review of the entire evidence of record, do not demonstrate by a preponderance of the evidence that the funds deposited into [the escrow account] to purchase [the [redacted] condominium] derived [from] the sale proceeds of the inherited real properties or other lawful source(s) as claimed."

[9] In his September 2021 statement, the Petitioner's father referenced these partial translations as "excerpts from [the] 1881 and 1943" documents.

In short, the Petitioner has offered documents demonstrated that his father has received funds from lawful sources, such as the compensation he received from the [redacted] government while working as its ambassador. However, the record is insufficient to confirm that the funds the Petitioner's father used to purchase the [redacted] condominium derived from lawful sources. Specifically, his father's two statements, dated April 2019 and September 2021, contain an unresolved inconsistency concerning whether he used his salary to finance the 2000 purchase. Additionally, the record lacks sufficient documentation tracing the path of the funds – multiple large sums in French Francs that he remitted to an escrow account in December 1999 and February 2000 for the purchase – back to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. As explained, the source of the funds for the 2000 purchase of the [redacted] condominium is relevant in this matter, because the Petitioner claims that his EB-5 capital derived from his father's sale of the [redacted] condominium in 2016.

On page 2 of his appellate brief, the Petitioner maintains that "[t]here is absolutely no evidence that [his and his father's] funds were derived from an illegal source." The relevant issue, however, is not whether there is evidence of funds coming from an illegal source. Rather, the relevant issue is whether the Petitioner has sufficiently documented that his purported EB-5 capital derived from a lawful source. For the reasons we have discussed above, we conclude that the Petitioner has not established, by a preponderance of the evidence, that his purported EB-5 capital derived from a lawful source. It is his burden to demonstrate his eligibility for the EB-5 classification, which includes establishing the lawful source of the funds he remitted to the NCE as EB-5 capital. *See Matter of Soffici*, 22 I&N Dec. at 162; *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Here, the Petitioner has not made such a showing.[10]

III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not established, by a preponderance of the evidence, his eligibility for the EB-5 classification. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[10] In light of this finding, we need not address the Chief's other concern over the funds the Petitioner received from his mother. We will reserve this issue for future consideration should the need arise.