U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37436026

Date: AUG. 05, 2025

Appeal of Field Operations Directorate 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).[1] 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 (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the funds invested by the Petitioner were obtained through lawful means. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. §204.6(j)(4)(iii) (2019).

An immigrant investor must demonstrate that they have placed their 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. §

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in section 203(b)(5) of the Act, and adding significant new integrity provisions. *See* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition in 2019, the relevant law then in existence governs this appellate adjudication.

204.6(e), that funds invested are [their] own"). In addition, the investor must show that their 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. *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds is USCIS' authoritative position recognized by other relevant precedent decisions); *see also 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.[2] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi,* 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner asserts that he invested $500,000 in [redacted] LLC (NCE) in May 2019. The NCE proposes to pool $30,000,000 from 60 investors to lend to [redacted], the job creating entity, to manufacture automobile parts for [redacted] vehicles.[3]

The record indicates that the Petitioner's mother gifted him 13,229,459,970 in Vietnamese dong (VND). She then transferred the gifted funds from her bank account ending in [redacted] to the bank account of [redacted] ending in [redacted]. The Petitioner states that [redacted] agent) is an agent of [redacted] then exchanged the money to U.S. dollars and transferred $555,090 to the NCE on the Petitioner's behalf. In May 2023 FOD issued a request for evidence (RFE) and then in August 2024, they denied the petition due to insufficient documentation regarding the transfer of the funds. FOD then reopened the petition and issued a notice of intent to deny (NOID). After a review of the NOID response, FOD issued a second denial in December 2024, stating that the record did not establish the lawful source of the funds used by the Petitioner's parents to purchase one of their properties.[4]

The Petitioner claims that his investment derives from an *inter vivos* gift from his mother which she obtained from the sale of two properties in Vietnam. The Petitioner contends his parents worked in the medical field and paid for the property located at [redacted] (Property 1) in cash that they saved from their income.[5] He states that it was common practice to purchase property with cash and provides statements and articles to corroborate this. FOD determined that "regardless of custom, the Petitioner bears burden of proving that the sales transaction was lawful since the proceeds of the sale was included in the source of funds for the investment." FOD further

[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 Petitioner contends that the job creating entities are 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) (2019).

[4] The Petitioner's appeal only addresses the December 2024 decision for this case; however, we will also address an additional concern in the record that was the subject of FOD's August 2024 decision.

[5] The purchase of Property 2, located at [redacted] is not at issue on appeal. The record contains evidence of bank transactions for the purchase of Property 2. Evidence of the means for purchasing Property 1 is what is at issue on appeal.

determined that although documentation was provided to establish cash was the customary payment method and the Petitioner's parents worked in the medical field, the record did not establish that the parents' income was the actual source of funds for Property 1. Upon review, we concur with FOD, that the evidence in the record does not establish his parents' income was the actual source of funds used to purchase Property 1 and, therefore, the evidence does not establish the invested capital was derived through lawful means.

The record contains evidence that demonstrates the Petitioner's parents owned Property 1 and they worked in the medical field in Vietnam[6]. The Petitioner's mother attests that her and her husband saved their money and paid for Property 1 with cash. On appeal, the Petitioner submits additional evidence of his parents' income, articles regarding the use of cash in Vietnam, and eight letters of support. The letters detail each author's relationship with the Petitioner's parents, the common use of cash in day-to-day life, and conversations or occurrences each author witnessed regarding the parents' use of cash.

On appeal, the Petitioner states, "due to the documented cultural, social, and economic circumstances in Vietnam which favored the use of cash in real estate transactions at the time of the purchase of the property, primary and secondary evidence of the accumulation and use of saved income to complete the purchase is unavailable." Instead, the Petitioner submits eight letters of support to corroborate his claims regarding the source of funds. The letters provide information about his parents and their common use of cash in day-to-day situations; however, none of the authors speak of having knowledge of Petitioner's parents paying for Property 1 with the cash saved from their income. For example, four of the eight letters are written by individuals who state that they met the Petitioner's parents after the purchase of "Property 1." Therefore, their testimony is not applicable to whether the property was purchased with the money saved from the Petitioner's parents' incomes. Additionally, the authors who knew the Petitioner's parents at the time Property 1 was purchased do not detail their purchase of the property but discuss various instances where they witnessed the Petitioner's parents pay with cash. However, none of the authors claim to have direct personal knowledge of the parents' purchase of Property 1. Although the Petitioner's mother details the purchase of the property, her assertions are not supported with relevant, probative, and credible evidence. *See Matter of Chawathe,* 25 I&N Dec. at 376. Here, the Petitioner's mother's assertions alone are insufficient and the letters of support and additional documentation in the record do not support her assertions. Therefore, we cannot conclude that the Petitioner has established the funds were lawfully obtained.

The Petitioner additionally contends that FOD's decision "impermissibly seeks to impose a substantive requirement that Petitioner trace the exact investment funds back to a period earlier than the immediate source from which Petitioner obtained the funds." We acknowledge the Petitioner's claims that FOD's decision does not comply with the applicable laws and regulations. However, contrary to the Petitioner's claims, pertinent regulations and precedent decisions support FOD's analysis regarding the lawful source of the money used to buy Property 1. 8 C.F.R. § 204.6(e) (defining "capital"), (j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998).

The Petitioner references recent district court decisions holding that the regulation requiring a petitioner to show that invested funds were obtained through lawful means does not require tracing of

[6] The record establishes that the Petitioner's father donated his ownership of the property to the Petitioner's mother in December 2014. Therefore, the Petitioner's mother wholly owned the property when she sold it in April 2019.

funds beyond their immediate source. *See Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024); *Sun v. USCIS*, No. 21-1612 (CKK), 2025 WL 947463 (D.D.C. Mar. 28, 2025); *Zhou v. Noem*, No. 19-2650, 2025 WL 416152 (D.D.C. Feb. 6, 2025). Other district court decisions have found that petitioners must show the complete path of funds. *See Truong v. USCIS*, No. 21-316 (RC), 2023 WL 4234658, at *5 (D.D.C. Jun. 28, 2023); *Nguyen v. USCIS*, 637 F.Supp.3d 822 (C.D. Cal. 2022). In contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Further, the D.C. Circuit Court has affirmed a district court decision that held USCIS' complete path interpretation of the regulations is its authoritative position as explained in the precedential decisions. *Borushevskyi v. USCIS*, 664 F.Supp.3d 117, 126-29 (D.D.C. 2023), *aff'd*, No. 23-5116, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *see also Nguyen v. USCIS*, 637 F.Supp.3d 822, 835 (C.D. Cal. 2022) (affirming USCIS's denial of the petition where the petitioner's transfer of funds to a currency exchange "caus[ed] a clear break in the source, custody, and ownership of [the petitioner's] funds" and therefore there was insufficient evidence that the funds invested "were obtained from a lawful source"), *aff'd*, No. 22-56068, 2023 WL 8251320 (9th Cir. Nov. 29, 2023). These decisions require the Petitioner to document the path of funds to establish the lawful source of the funds invested in the NCE.

In the present case, there is insufficient evidence documenting that the Petitioner's parents purchased Property 1 with the cash they earned from their income. The plain language of 8 C.F.R. §204.6(e) and (j)(3) supports FOD's requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, 2023 WL 4234658, at *5. The relevant path includes tracing the funds from their point of origin though any intermediary accounts. *See id.* at *6. Moreover, 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. 169, 195 (Assoc. Comm'r 1998); *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating documentation of the source of funds "is relevant to the question of whether the funds have been lawfully obtained, which is a requirement under 8 C.F.R. § 204.6(j)(3)").

We further conclude that the record does not contain sufficient evidence of the path of funds. For example, the record does not establish that the company the Petitioner used to transfer the funds from Vietnam was authorized to operate in Vietnam. FOD's August 2024 decision determined that the company that transferred the Petitioner's funds, [redacted] is not authorized to conduct this kind of business in Vietnam and that there is insufficient evidence of the complete path of funds throughout the transfer. In a response to the RFE issued in August 2023, the Petitioner asserted that [redacted] is a company authorized to provide "cross border money transfer service[s]" and is licensed in Singapore. While the record establishes that [redacted] is authorized to perform these types of services in Singapore,[7] the record does not establish this company is authorized to perform "cross border money transfer services" in Vietnam. In addition, as stated above; the Petitioner's mother transferred the gifted funds to the agent in Vietnam. The record contains an agreement between the agent and [redacted]; however, the record does not establish that the agent is authorized to conduct official money transfer services in Vietnam. Further, the agreement between [redacted] and the agent states, "[the agent] shall provide receiving service[s] from its own bank account in Vietnam. . .," therefore stating that the bank account used to transfer the Petitioner's investment funds did not transfer through an official exchanger

[7] For example, the record contains [redacted] remittance license and a certificate of good standing in Singapore.

account, but through the agent's personal bank account. Here, the record does not establish [redacted] or the agent was authorized to provide official money transfer services in Vietnam.

As discussed above, documenting the complete path of funds includes tracing the funds from their point of origin though any intermediary accounts. *See Truong v. USCIS*, 2023 WL 4234658, at *6. Here, while the record establishes that the Petitioner's mother transferred her funds to the agent's personal bank account, the record does not show that the funds transferred from the agent's bank account in Vietnam to [redacted] in Singapore. The record does not demonstrate the complete path of the Petitioner's funds from their point of origin through intermediary accounts. Here, the record is insufficient to confirm that [redacted] ever received the Petitioner's funds. Rather, the record shows that the agent received the Petitioner's funds. However, the evidence, such as bank records, fails to show what the agent did with the Petitioner's funds or confirm that she remitted the funds to [redacted] The record therefore is insufficient to document [redacted] s receipt of the Petitioner's funds.

Based on the reasons we have discussed, the Petitioner has not sufficiently established that the funds he claimed to have invested in the NCE did not derive, directly or indirectly from unlawful means. *See* 8 C.F.R. § 204.6(e). The record, including evidence he offers on appeal, does not document the complete path of his EB-5 investment, and trace it back to a lawful source. *See Borushevskyi v. USCIS*, 664 F. Supp. 3d at 129; *see also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

III. CONCLUSION

For the reasons we have discussed above, we conclude that the Petitioner has not established, by a preponderance of the evidence, his eligibility for the classification. Specifically, he has not demonstrated the lawful source of his purported EB-5 investment nor documented the complete path of his EB-5 investment. *See* 8 C.F.R. § 204.6(j)(3), (e); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. It is the Petitioner's burden to demonstrate his eligibility for the EB-5 classification, which includes establishing the lawful source of his purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Here the Petitioner has not met this burden.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.