U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38266742

Date: AUG. 06, 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 aliens 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.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the Petitioner committed the required amount of capital at risk and that the funds invested in the NCE are from lawful sources. 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

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 their 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 their 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

[1] On March 15, 2022, the EB-5 Reform and Integrity Act (RIA) of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in INA 203(b)(5), 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 the instant petition prior to the enactment of the RIA, the relevant law in existence on that date governs this appellate adjudication.

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 asserted that on March 27, 2017, he invested $550,000 into the NCE, [redacted] LLC, which is associated with [redacted] LLC, a regional center. The NCE proposed to pool $200,000,000 from 400 immigrant investors and provide constructions loans to two job creating entities (JCEs): [redacted] LLC ([redacted] and [redacted] will use the loan to renovate a stadium and build a hotel, an office and restaurant complex, a convention center, and parking lot in [redacted] Ohio. [redacted] will use the loan to redevelop the former [redacted] headquarters in [redacted] Ohio, renovating an office building and constructing residential, retail, entertainment, and street improvement projects.

FOD denied the petition on the following two grounds. First, FOD concluded that the record did not establish that the Petitioner committed the required amount of his own capital at risk because the Petitioner was a minor when he signed various investment-related contracts, including the subscription agreement, escrow agreement, and confidential private placement memorandum.[3] Secondly, FOD concluded that the record did not establish that the investment funds are from lawful sources because the Petitioner did not sufficiently demonstrate: 1) the source of his parents' purchase of the real property in 1998 which formed the basis of their mortgage loan gifted to the Petitioner[4] and 2) the source and path of funds used by third-party currency exchangers in transferring the investment money to the NCE.

We agree with FOD that the Petitioner did not establish the lawful source and path of funds coming from third-party currency exchangers. As this is dispositive of the appeal, we will reserve our opinion on the issue of whether the Petitioner made the qualifying investment and decline to address the Petitioner's appellate arguments regarding whether there was sufficient evidence to show that his parents accumulated enough income to purchase a real estate property in 1998. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

The Petitioner claimed that his parents enlisted "a family friend," Mr. [redacted] to assist with currency exchange and remittance of his investment funds to the NCE's bank account in the United States. The Petitioner submitted transaction line item from Mr. [redacted] account

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[2] These requirements confirm that the funds utilized are not of suspect origin. *See 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 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] FOD questioned how these contracts are enforceable given that the Petitioner was only 17 years old at the time of transaction and noted the discrepancy regarding the acknowledgement of guardianship document signed by the Petitioner's father, as it was not submitted with the initial filing but introduced after the issuance of the notice of intent to deny (NOID).

[4] As explained in the gift letter, the Petitioner's father purchased a real estate property in 1998 at a discounted purchase price of Chinese Yuan Rembini (RMB) 166,493.45 using his accumulated employment income. In March 2017, the Petitioner's parents obtained a mortgage loan in the amount of RMB 4,000,000 secured by this real property and gifted the loaned money to the Petitioner. We note that the parents' gift letter in English is neither signed nor dated and the original version of this letter in Chinese is not found in the record.

ending in [redacted], to demonstrate that Mr. [redacted] received his parents' RMB 4,000,000 on March 15, 2017 and a memorandum dated March 14, 2017, signed by both the Petitioner and Mr. [redacted], in which Mr. [redacted] agrees to "purchase a total of USD 550,000 on March 15, 2017" and remit the funds to the NCE on the Petitioner's behalf. The record also includes a verification letter from [redacted], a business registered as a professional bitcoin trader in Hong Kong, describing the path of the funds as follows:

1. Mr. [redacted] will wire RMB to personal bank acct in China, these accts are related to [redacted] for its business. The money will be used to purchase bitcoin with the help from

2. Then under the instructions from Mr. [redacted] will sell the bitcoin into U.S. dollars, then from the business checking acct of [redacted] the dollar will be wired to a business checking acct in the U.S. belong to [redacted] LLC [redacted]. This LLC is 100% owned by [redacted].

   . . .

   And after [Mr. [redacted] gets the U.S. dollars from [redacted] he will wire these money to his personal acct, and then wire again from his personal acct to the EB5 programs his clients want to invest.

Although there is a letter from the NCE confirming receipt of $550,000 on behalf of the Petitioner on March 27, 2017, the confirmation of online wire transfer to the NCE from '[redacted]', checking account ending in [redacted] dated March 27, 2017, did not display the identity of the account owner or the source of money in the checking account. The record also includes two withdrawal slips in the amount of $250,000 from [redacted]) checking account ending in [redacted], dated March 23, 2017 and March 24, 2017, but once again, the documents do not identify the account owner or reveal the source of money in this checking account.

In the NOID, FOD raised concerns regarding a lack of documentation showing the paths or lawful source of the funds invested in the NCE as well as the lawfulness of the currency swap or exchange conducted by Mr. [redacted] or involvement of third-party companies, such as [redacted] and [redacted] FOD specifically requested the Petitioner provide bank statements and other documents, from all individuals and involved entities, demonstrating the path and lawful source of the Petitioner's investment funds. FOD also requested the Petitioner provide evidence of Mr. [redacted] relationship to the Petitioner and [redacted] as well as evidence that Mr. [redacted] is a registered and licensed as Money Services Business (MSB) money broker.[5]

In his response to the NOID, the Petitioner submitted evidence of [redacted] incorporation documents and its annual return for years 2016 through 2021 filed with Hong Kong Company Registrar, but did not address other deficiencies. FOD subsequently denied the petition, concluding that the record

[5] FOD also raised derogatory information regarding Mr. [redacted], specifically the issuance of a "Cease and Desist Order" in 2015 by the U.S. Securities and Exchange Commission (SEC) stating that Mr. [redacted] acted as an unregistered broker-dealer in violation of the Securities Exchange Act. Although we note that the Petitioner did not respond to the derogatory information regarding Mr. [redacted] in his NOID response or on appeal, our decision is not based on this SEC order.

lacked pertinent documentation to support the lawful source of the funds invested in the NCE or the lawfulness of the currency swap or exchange conducted in this case.

On appeal, the Petitioner does not raise any errors in FOD's conclusion regarding Mr. [redacted] role as a third-party exchanger, or the companies that assisted Mr. [redacted] in swapping the currency from RMB to U.S. dollars. The Petitioner also does not submit additional evidence, such as bank records of third-party entities to show the complete path of the Petitioner's investment funds into the NCE, demonstrating the lawful source of the funds used in the exchange. As the Petitioner does not contest this portion of FOD's decision on appeal, he has abandoned his claim regarding this issue. *E.g., Matter of Zhang*, 27 I&N Dec. 569, 569 n.2 (BIA 2019) (finding that issues not appealed are deemed as abandoned); *see also Chmukh v. Garland*, 124 F.4th 670, 675 n. 1 (9th Cir. 2024) (deciding the failure to address a claim in the appeal brief waives that issue on appeal). Although the Petitioner makes a statement that he has "already proved by the preponderance of the evidence that the investment capital was derived from a lawful source," such passing reference in the brief is not sufficient to preserve the issue on appeal. *Karsjens v. Harpstead*, 74 F.4th 561, 568 n.3 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 814 (2024) (quoting *Sitzer v. Nat'l Ass'n of Realtors*, 12 F.4th 853, 855 n.2 (8th Cir. 2021) (noting that appellants must do more than "merely mention an alleged error").

Even though we conclude that the Petitioner does not establish eligibility by failing to meaningfully challenge the issue on appeal, we will still address how the record does not demonstrate the path and lawful source of his investment funds. The Petitioner alleges his RMB funds were remitted to Mr. [redacted] then to [redacted] in Hong Kong, and eventually to [redacted] in the United States as part of a currency swap. However, the record does not support the Petitioner's contention. While he submitted wire transaction records from [redacted] and [redacted], which appear to transfer the required amount to the NCE, the record lacks other documentation, such as bank statements from Mr. [redacted] account, [redacted] (a company that engages in selling bitcoin in Hong Kong), or [redacted] (a company purportedly owned by Mr. [redacted], identifying the account owners or source of the money used in the currency exchange.

The plain language of 8 C.F.R. § 204.6(e) and (j)(3), as well as precedent court decisions, require petitioners to identify the source of funds and document the complete path of funds. *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. The relevant path includes tracing the funds from their point of origin though any intermediary accounts. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5-6 (D.D.C. June 28, 2023). USCIS' complete path interpretation of the regulations is its authoritative position, as explained in *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024). "These are hypertechnical requirements to serve a valid government interest; i.e., to confirm that the funds utilized in the program are not of suspect origin." *Spencer Enters., Inc., v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001).

Here, the record remains insufficient to establish by a preponderance of the evidence the claimed lawful sources of the funds invested by the Petitioner in the NCE. The Petitioner did not provide sufficient documentation showing the path of his investment funds into the NCE and did not document the lawful source of the USD funds invested in the NCE by third parties on the Petitioner's behalf. Therefore, the Petitioner has not established that the investment funds derive from lawful means.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). Here, the Petitioner has not met the 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.