U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 37349161

Date: AUG. 12, 2025

Appeal of Field Operations Directorate (FOD) 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) (2016).[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 (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. Aliens 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 of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended by section 575 of Pub. L. No. 114-113 (2015).

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish the lawful source of the funds the Petitioner invested in the NCE. 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. They may invest the required funds directly in an NCE or through a regional center,

[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 her petition in December 2016, the relevant law then in existence governs this appellate adjudication.

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) (2016).

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. § 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, the immigrant 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 complete path of the funds back to a lawful source.[2] *See Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, No. 23-5116, 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. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

## II. ANALYSIS

In November 2016, the Petitioner remitted $500,000 to the NCE's bank account as her EB-5 capital.[3] According to its business plan, the NCE intends to provide "a $33,000,000 EB-5 loan investment" to the borrower, [redacted] LLC. The EB5 investor capital will then be subsequently invested "into [redacted] LLC, the 'Developer' of the project for the purpose of constructing a luxury upscale apartment community with retail space in [redacted] New York, known as [redacted]."

As we will explain below, we find that the Petitioner has not established, by a preponderance of the evidence,[4] her eligibility for the classification. Specifically, she has not documented the lawful source of her funds.

Regarding the source of her funds, the Petitioner provided a December 2016 "Personal Statement" alleging that her EB-5 capital derived from a monetary gift by her parents obtained through a collateralized loan they received for a property her father purchased in [redacted] ("[redacted]"). She indicated that her father, using his "income saved over numerous years of work,"

[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 indicates that the NCE is located 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). She also remitted $50,000 to the NCE's managing member to cover fees and expenses.

[4] If a petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also* 6 *USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

provided money to buy the property in October 2009 for 643,581.00 renminbi (RMB) and that the property was later collateralized by her parents in November 2016 to secure a RMB 3,800,000.00 loan from [redacted] Bank. The Petitioner further asserted that [redacted] Bank transferred the loan proceeds of RMB 3,800,000.00 to her mother's account at that same bank in November 2016. In addition, she stated: "From Nov. 17, 2016 to Nov. 21, 2016, my mother, on behalf of me, successfully transferred RMB 3,800,000.00 to three friends' accounts in China. In exchange, three of these friends, on behalf of me, successfully transferred US $500,200.00 in total to [the NCE's bank account]."

The record also includes a December 2016 "Personal Statement" from the Petitioner's mother asserting that her spouse (the Petitioner's father) was employed by [redacted] (1981-1985), [redacted] (1985-1999), and [redacted] (1999-2016). The Petitioner's mother further indicated:

> On Oct. 27, 2009, my spouse . . . used his many years of savings to purchase a house located at [redacted] . . . The purchase price of this housing was RMB 643,581.00 and it was a one-off payment. This property was registered under my name.
>
> . . . .
>
> [O]n Nov. 14, 2016, we collateralized the property to [redacted] bank for a loan of RMB 3,800,000.00.

Furthermore, the Petitioner submitted her father's "Certificate of Work and Income" showing his earnings (RMB) from 1999 until purchasing [redacted] in 2009:

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|---|---|
| 1999 | 10.350.22 |
| 2000 | 64,120.25 |
| 2001 | 65,210.56 |
| 2002 | 67,862.78 |
| 2003 | 78,960.93 |
| 2004 | 79,128.46 |
| 2005 | 85,140.55 |
| 2006 | 87,210.36 |
| 2007 | 89,870.24 |
| 2008 | 96,125.39 |
| 2009 | 99,463.58 |
| Total | 823,443.32 |

In their February 2024 "Joint Declaration," the Petitioner and her parents stated that payment for the purchase of Room 1710 "was sourced from father's accumulated wages from 2000 to 2009 (RMB 823,443.32)." While their declaration indicated that the Petitioner's "father's wages were utilized for the property acquisition" in October 2009, the Petitioner has not provided sufficient evidence confirming that her father had retained enough savings from the above earnings to purchase [redacted]. Nor did the Petitioner submit financial records or other supporting evidence demonstrating that

his income was the source of the money used to purchase [redacted][5] For example, the record does not include evidence of financial transactions showing the father's earnings being deposited as savings during the above years or being disbursed from his holdings to buy the property.

In its decision denying the petition, FOD stated:

> Petitioner has not shown by preponderance of evidence that sufficient lawfully obtained funds were accumulated and saved and then were the actual source of funds used for RMB 643,581.00 purchase of [redacted] . . . . Petitioner submitted some documentation regarding Father's employment earnings but did not provide evidence regarding the accumulation and savings of those earnings. Nor did Petitioner submit sufficient evidence that the asserted earnings in the record were the actual source of the funds used to purchase [redacted], as claimed.

On appeal, the Petitioner argues that FOD's decision "fails to consider that the substantial lapse of time has rendered it exceedingly difficult, if not impossible, to obtain contemporaneous documentation or corroborative records to further substantiate the indirect source of funds." Because the Form I-526 petition in this matter was filed in 2016, we are not persuaded that obtaining evidence from the late 2000's represents an "exceedingly difficult" or "impossible" task as claimed. According to the regulation at 8 C.F.R. § 103.2(b)(2)(i), only where a petitioner demonstrates that primary evidence does not exist or cannot be obtained may they rely on secondary evidence, and only where secondary evidence is demonstrated to be unavailable may they rely on affidavits. We agree with FOD's determination that "there is insufficient objective, independent documentary evidence, such as bank records, transfer documentation, or other" corroborative material demonstrating that the Petitioner's "father accumulated and saved sufficient funds from his employment income" and that those funds were used to purchase [redacted] in 2009.

The Petitioner's appeal brief references a recent district court decision holding that the regulation requiring a petitioner to show that invested funds were obtained through lawful means does not require tracing of funds beyond their immediate source. *See Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024). Other district court decisions, however, 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 at 126-29, *aff'd*, No. 23-5116, 2024 WL 2762146; *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

[5] The Petitioner's mother is identified as the "Buyer" in the "House Subscription Contract," the "Payer" in the "Deed Tax Uniform Payment Certificate," and the "Owner" in the "House Ownership Certificate." The Petitioner asserts that we should "recognize that in a single-household family, it was customary for Mother to be listed as the signatory on such agreements, even if Father's income was used to finance the purchase."

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.

Absent evidence of accumulated savings from the Petitioner's father's wages continuing up to October 2009 and the transfer of these funds to purchase [redacted], the Petitioner has not shown the lawful source of funds for the property that secured the collateralized loan from [redacted] Bank. The Petitioner's submission of her father's job-related income, without additional corroborating evidence indicating that he had accumulated savings and then disbursed his money as payment for [redacted], is insufficient to establish the lawful source of funds used to purchase the property.

Based on the reasons stated above, we conclude that the Petitioner has not documented the lawful source of her EB-5 capital. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Specifically, she has not demonstrated, by a preponderance of the evidence, her father lawfully accumulated and provided the source of the funds that purchased the property used to secure the collateralized loan.

## III. CONCLUSION

The Petitioner has not documented the lawful source of the capital she remitted to the NCE. Because the Petitioner has not demonstrated the lawful source of the funds she invested, we need not reach, and therefore reserve, the remaining grounds for denial set forth in FOD's decision. *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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. at 369. Here, that burden has not been met.

**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 who are 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.