U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38775678

Date: AUG. 17, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

Form I-526E, Immigrant Petition by Regional Center Investor

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 (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Aliens may invest in a project associated with a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. *See* section 203(b)(5)(E)(i) of the Act.

U.S. Citizenship and Immigration Services (USCIS), through the Field Operations Directorate (FOD), denied the Form I-526, Immigrant Petition by Alien Entrepreneur (petition), concluding that the record did not establish that the capital invested or actively in the process of investing by the Petitioner was obtained through lawful means. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) 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 a petitioner cannot demonstrate were acquired directly or indirectly by lawful means 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).

[1] On March 15, 2022, the EB-5 Reform and Integrity Act 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. https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221006-EB5ReformAndIntegrityAct.pdf. As the Petitioner had filed this petition in April of 2021, the relevant law in existence on that date governs this appellate adjudication.

To show that the capital invested, or actively in the process of being invested, was obtained from a lawful source and through lawful means, a petitioner must document the path of the funds. *See generally* 6 *USCIS Policy Manual* G.2(A)(2), https://www.uscis.gov/policymanual (citing *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 NCE. *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.

II. ANALYSIS

The Petitioner claims eligibility based on an investment in [redacted] LLC under the Immigrant Investor Program. The petition and the evidence presented allege the Petitioner invested funds in [redacted] LLC, the NCE, on November 2, 2020. The NCE proposed to pool funds from 10 immigrant investors. According to the petition and supporting evidence, the NCE will lend the entire amount to invest in an equity interest in a job-creating entity that intends to build an apartment complex and is located in [redacted] The NCE and job creating entity are principally doing business within a targeted employment area.[2]

A. Capital Obtained Through Lawful Means

FOD denied the petition under the lawful source of funds banner relying on two bases: (1) capital obtained through lawful means, and (2) the path of funds on their journey to the NCE due to a currency exchange issue. As each of these is an independent basis that could serve to undermine the Petitioner's eligibility, we only will address one of them and we will reserve the second.

Under FOD's capital obtained through lawful means basis, they identified two evidentiary shortcomings in the record. One shortcoming being a lack of income tax returns that FOD sought in a request for evidence (RFE), and the second being documentation relating to the sale of property that served as the basis for the eventual investment. After reviewing the appeal brief, the Petitioner has demonstrated the record already contained all of the material FOD found necessary relating to the property sale.

However, that is not the case with the Petitioner's tax returns. And we note the reason FOD requested the tax returns went beyond showing that the taxes associated with the property sale were paid. In the RFE, FOD cited 8 C.F.R. § 204.6(j)(3)(ii) and requested personal or corporate tax returns from the Petitioner, filed in any jurisdiction, over the most recent five years. But the Petitioner did not submit tax returns in the RFE response despite them being required initial evidence under the regulation and being specifically requested in a USCIS notice. And now accompanying the appeal, the Petitioner offers his individual tax returns for 2019 and 2020, but still not for the five years that the regulation requires or that FOD requested.

[2] The EB-5 Reform and Integrity Act of 2022 made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See s*ection 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed the petition in 2021 and asserted that the NCE would be principally doing business within a TEA. Therefore, the requisite amount of capital investment was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2021).

The agency, by way of the regulation, sought multiple years of tax returns to allow USCIS to verify that EB-5 investment funds were accumulated lawfully over time, rather than relying on a single year that may not realistically support the amount of the investment. Multiple years of returns helps establish a consistent pattern of legitimate income, makes it possible to trace the origin and accumulation of capital, and provides a basis for the agency to compare claimed income with bank records, business financials, and other evidence. Requiring multiple years also supports fraud detection by revealing inconsistencies or unexplained significant increases in income. It also creates a uniform evidentiary standard that promotes more consistent adjudications across cases.

Because both the regulation and FOD's RFE put the Petitioner on notice and gave him a reasonable opportunity to provide this evidence, we will not exercise our de novo authority to consider it for the first time on appeal. If the Petitioner wished for the tax returns to be considered, the proper course of action was to submit it in the RFE response. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time). Additionally, 8 C.F.R. § 103.2(b)(14) notes that when "an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record." That same regulation reflects that the failure to submit requested evidence which precludes a material line of inquiry is itself grounds for denying the benefit request. When read together, these provisions establish that a petitioner who fails to respond adequately to an RFE cannot cure that deficiency at a later stage in the process by submitting the missing evidence for the first time on appeal.

Further, except in exigent circumstances and at USCIS' discretion, any new evidence submitted on appeal related to the lawful source of funds requirement will not be considered if the filing party was already notified of the requirement and given a meaningful opportunity to provide it before the denial. The appeal on that issue will be adjudicated based only on the evidence that was in the record before FOD. *Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017) (same); *Matter of Jin*, 29 I&N Dec. 441, 449 (BIA 2026) (citing *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988)).

Additional precedents reinforce this restriction, noting that the appellate process is not a venue for the primary submission of evidence. *See Matter of N-P-A-*, 29 I&N Dec. 347, 349 (BIA 2025) (quoting *Matter of German Santos*, 28 I&N Dec. 552, 561 n.4 (BIA 2022), *aff'd*, No. 22-2072, 2025 WL 2694101 (3d Cir. Sept. 22, 2025) ("[w]e do not consider new evidence for the first time on appeal")); *Matter of D-J-L-*, 29 I&N Dec. 485, 489 (BIA 2026); *Matter of D-G-E-A- & N-G-G-E-*, 29 I&N Dec. 570, 577 n.5 (BIA 2026) (citing *Matter of Fedorenko*, 19 I&N Dec. 57, 73–74 (BIA 1984)). If the Petitioner wished to submit new evidence, the proper venue was to file a motion to reopen with FOD or to file a new petition. *Matter of C-*, 20 I&N Dec. 529, 530 n.2 (BIA 1992); *Matter of Izaguirre*, 27 I&N Dec. at 71.

And there is no distinction here between appeals before the Board of Immigration Appeals (e.g., *Matter of Soriano* et al.) and the Administrative Appeals Office (AAO). Despite each entity being governed by separate regulations, the concept of forfeiture applies equally to both appellate bodies, and as we noted above, we are declining to exercise our discretion to allow such late-filed evidence to impact this case's outcome when it was clearly mandated by the regulation and subsequently included

in an RFE issued directly to the Petitioner. Without adequately presenting this issue before FOD, the Petitioner deprived them of the ability to sufficiently review and make a determination on the evidence. This is not a proper basis to raise these matters—or evidence—within this appeal.

Nor is there support in the AAO Practice Manual for the prospect that we will normally, or that we must, consider new evidence offered for the first time on appeal. The AAO Practice Manual under Chapter 3.4 *De novo* Standard of Review provides in pertinent part that this office "is independent of the field offices, and exercises de novo review of all issues of fact, law, policy, and discretion. This means that, on appeal, the AAO looks at the record anew and its decision may address new issues that were not raised or resolved in the prior decision." An AAO precedent decision—*Matter of Christo's Inc*., 26 I&N Dec. at 537 n.2—and the practice manual use the concept of "de novo review," which is defined by *Black's Law Dictionary* as: "An appeal in which the appellate court uses the trial court's record but reviews the evidence and law without deference to the trial court's rulings. — Also termed de novo review; de novo judicial review; merits review. Appeal, *Black's Law Dictionary* (12th ed. 2024).

Ultimately, while we may exercise our discretion to consider new evidence filed with an appeal, we exercise that authority strictly on a case-by-case basis, and only in exigent circumstances. This discretion is even more constrained when the evidence was previously requested and is required by regulation.

In the end, this evidentiary shortcoming leaves the Petitioner unable to demonstrate he has invested, or is actively in the process of investing, capital obtained through lawful means as the regulation at 8 C.F.R. § 204.6(j)(3) requires.

B. We Will Reserve Other Issues as the Above Shortcomings Are Dispositive of the Appeal

Although FOD also made other determinations about whether the Petitioner fully documented the path of his funds, which involved a third-party exchanger, it is unnecessary that we evaluate those topics as the above discussion has resolved the case. Where a case warrants a denial regardless of other eligibility considerations, it is unnecessary that we address those other deliberations. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of S-E-M-Z-*, 29 I&N Dec. 680, 689 (BIA 2026) (declining to address other issues when one determination is dispositive of a benefit request).

III. CONCLUSION

For the reasons we discuss 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. *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.

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.