U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37689386

Date: AUG. 18, 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) (2015).[1] This fifth preference (EB-5) classification makes immigrant visas available to qualified immigrants 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 capital invested by the Petitioner was obtained through lawful means. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and additional evidence, maintaining that she has established eligibility for the benefit sought.

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 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 filed her petition in 2018, the relevant law then in existence governs this appellate adjudication.

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's supporting evidence indicates that on January 9, 2018, the required minimum investment of $500,000[2] was deposited, on the Petitioner's behalf, into the escrow account for [redacted] LLC, the new commercial enterprise (NCE). Sponsored by the [redacted] LLC[3] and pursuant to the Immigrant Investor Pilot Program, this NCE and an affiliated NCE proposed to raise $115 million from up to 230 immigrant investors to lend to [redacted] LLC, the job-creating entity (JCE), to partially fund the development and operation of a [redacted] hotel in [redacted] California.

The record indicates that the funds for the Petitioner's investment were derived from a mortgage loan against property purchased in 2002 with earned income. The funds for the loan were deposited into the Petitioner's [redacted] account in mainland China on January 8, 2018.

The Petitioner then utilized the assistance of her ex-spouse, [redacted] to facilitate the transfer the capital for her investment from China to the escrow account for the NCE in the United States. The record shows that the Petitioner transferred her investment funds from her account at [redacted] in China to [redacted] account in China. The record includes documentation showing that [redacted] then transferred $550,050 on January 9, 2018, from his [redacted] account to the escrow account for the NCE.

FOD determined that the record did not contain evidence sufficient to establish that the funds from [redacted] account originated from lawful sources, concluding that the Petitioner did not demonstrate by a preponderance of the evidence that her investment funds were obtained through lawful means.

On appeal, the Petitioner asserts that the denial of the petition was "based on a regulatory interpretation of 8 C.F.R. § 204.6(e) that the U.S. District Court for the District of Columbia has recently ruled 'arbitrary and capricious' in *Zhou v. Noem*, C.A. 19-2650 (TJK, (2025 U.S. Dist. LEXIS 21692 (D.C.)." The Petitioner asserts that the decision "verif[ies] that EB-5 regulations do not require an extensive tracking requirement extending beyond the petitioner's immediate source of funds, and that the Path of Funds requirement is not supported by the regulations and administrative decisions." We note that this decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). 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).

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[2] The Petitioner indicates that the NCE and JCE are 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).

[3] [redacted] is a regional center designated by USCIS to participate in the EB-5 program. A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (defining "regional center").

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. at 195; *see also Matter of Soffici*, 22 I. & N. Dec. at 165 (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).").

The Petitioner also explains on appeal that certain countries implement restrictions on the transfer of funds outside of those countries, necessitating the use of third parties to indirectly exchange funds and convert currency. Such limitations, however, do not exempt EB-5 investors from eligibility requirements. It is the Petitioner's burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of her purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

The Petitioner also asserts that, according to 8 C.F.R. § 204.6(g), petitioners "must prove the lawful source of the assets of third parties *only if such third parties had themselves also invested in the same new commercial enterprise*." In fact, the plain language of the regulation does not exclude from the lawful-sources requirement any assets used as capital for a petitioner's investment. Further, the plain language of 8 C.F.R. §§ 204.6(e) (defining "capital") and (j)(3) (describing evidence of lawfully sourced capital) supports the requirement of USCIS that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Borushevskyi v. USCIS*, 664 F.Supp.3d 117, 128-29 (D.C.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that USCIS' complete-path interpretation of the regulations is its authoritative position as explained in the 1998 precedential decisions and that these decisions require the petitioner to establish the complete path of funds to demonstrate that the funds were obtained through lawful means). *See also Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5 (D.D.C. June 28, 2023). The relevant path includes tracing the funds from their point of origin though *any intermediary accounts* (emphasis added). *Id.* at 6.

Upon review of the record, the evidence does not sufficiently demonstrate that the funds ultimately invested in the NCE were derived from lawful means. Although the record shows that funds for the Petitioner's investment were received into the NCE's escrow account from [redacted] the record does not reflect that the Petitioner's capital for her investment left mainland China. Because the record does not establish the complete path of the Petitioner's funds from mainland China to [redacted] and then to the United States, the Petitioner must demonstrate by a preponderance of the evidence that the funds occurring after the break in the path derived from lawful means. *See* 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210.

While the record shows that [redacted] bank account in mainland China contained funds from lawful sources, the record does not include evidence sufficient to show that he lawfully obtained the funds that were transferred from his [redacted] account to the escrow account for the NCE. The origin of the actual funds that [redacted] transferred for the Petitioner's investment are not documented in the record. Bank statements for [redacted] account depict unidentified deposits and withdrawals from July 2017 through December 2017, when the account's end-of-year balance totaled $27.57. Although bank documentation and a letter from the NCE demonstrate that funds for the Petitioner's investment were received from [redacted] account, the record does not contain documentation of funds deposited into the account in 2018 that were used for the escrow remittance. The record does not

sufficiently demonstrate that the funds indirectly exchanged in [redacted] for the Petitioner's investment originated from lawful sources.

Accordingly, we conclude the record remains insufficient to establish by a preponderance of the evidence the claimed lawful source of the funds invested by the Petitioner in the NCE.

III. CONCLUSION

The Petitioner has not adequately documented the claimed lawful source and the path of the investment funds. *See* 8 C.F.R. §§ 204.6(e), (j)(3); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Specifically, the Petitioner has not provided sufficient evidence showing the lawful origins of the funds in the third-party exchanger's bank account in [redacted] used for the Petitioner's investment. As the record does not sufficiently show that the funds invested by the Petitioner have been obtained through lawful means, the Petitioner has not established by a preponderance of the evidence eligibility for the immigrant investor visa classification.

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.