U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36189612

Date: AUG. 21, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Standalone 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). 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 required amount of capital the Petitioner has invested, or is actively in the process of investing, as well as any funds used to pay administrative costs and fees associated with his investment were obtained from a lawful source and through lawful means and that the NCE has created or will create at least 10 full-time positions for qualifying employees. 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

The term "capital" does not include any assets directly or indirectly acquired by unlawful means, including any cash proceeds of indebtedness secured by such assets. Section 203(b)(5)(D)(ii)(III) of the Act. An alien investor must demonstrate that the required amount of capital he or she has invested, or is actively in the process of investing, and any funds used to pay administrative costs and fees associated with his or her investment was obtained from a lawful source through lawful means. Section 203(b)(5)(L)(i) of the Act. 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 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 NCE. *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm.

1998); *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 petition indicates the Petitioner invested a total of $800,000 in [redacted] LLC (NCE).[1] According to the initial business plan, the NCE intends to develop a Chinese restaurant serving Asian and Chinese cuisine and a variety of refreshments at [redacted] Arizona. The business plan also states that the Petitioner's $800,000 investment will be used to develop the Chinese restaurant, finance the first year of its operation, purchase kitchen equipment, and provide working capital.

On appeal, the Petitioner offers additional evidence and contends that the invested funds were obtained from a lawful source and through lawful means. We conclude the record does not sufficiently demonstrate the claimed lawful source of the Petitioner's investment funds for the reasons we will discuss below.

The record contains a statement summary from a bank account ending in [redacted] maintained by [redacted] LLC at [redacted] reflecting a balance of $800,100. The Petitioner asserts that he derived his investment funds from receipt of a dividend in the amount of RMB 12,000,000 from [redacted], an entity the Petitioner stated is a wholly owned subsidiary of [redacted]

The record also contains a "bank receipt" and transaction detail statement with English translation describing the Petitioner's receipt of RMB 12,000,000 from [redacted] account ending in [redacted] to the Petitioner's Bank of Communication account ending in [redacted] on August 28, 2017. The Petitioner further submitted an affidavit with English translation from [redacted] an individual who claims to have "assisted [the Petitioner] in converting RMB into USD and remitting it to the account of the U.S. company [redacted] LLC at [redacted] (account number: [redacted]" accompanied by [redacted] online banking transfer receipts with translation documenting the receipt of RMB 5,852,560 by [redacted] into her account ending in [redacted] from the Petitioner's bank account ending in [redacted].

Upon our de novo review, we observe the Petitioner has submitted sufficient material, relevant, and probative evidence in the record to describe the business operations of [redacted] The Petitioner's father's affidavit indicates that he along with his wife [redacted] (the Petitioner's mother) "started a business together in a small street shop" in 1985 which by 2000 had grown into [redacted] The Petitioner's father and mother remained sole shareholders until 2009 when [redacted] became the shareholder of [redacted] was established by the Petitioner with RMB 5,000,000 gifted to him by his father from a dividend his father received from [redacted] in 2009. The Petitioner asserts

[1] The Petitioner asserted that the NCE is located within a rural area, and therefore, the requisite amount of capital was downwardly adjusted from $1,050,000 to $800.000. *See* section 203(b)(5)(C)(ii) of the Act.

[redacted] and [redacted] are the same entity because [redacted] is the Tibetan word for the [redacted] And evidence in the record translated into English preponderantly supports the Petitioner's assertion. The record also contains a charter amendment dated June 20, 2017, demonstrating the Petitioner's ownership of [redacted] So the representations contained in the "resolution of shareholders meeting" from [redacted] indicating "It is agreed that [redacted] profit distribution of 12 million CNY will be directly distributed to [redacted] shareholder [redacted] [the Petitioner]" and a "executive director decision" with English translation from [redacted] stating its "executive director [the Petitioner's father] decided to distribute a cash dividend of 12 million CNY…to the parent company [redacted]" with the intention for the cash dividend to be "directly distributed to [redacted] shareholder [redacted] [the petitioner] with the consent of all shareholders of the parent company" are supported by the Petitioner's evidence and explanation in response to the RFE. Or in other words, the record preponderantly demonstrates the source of the funds earmarked for investment in the NCE.

But this does not resolve the question of the lawful source and lawful means of the Petitioner's investment in the NCE. We are still confronted with serious concerns about the path the investment funds have taken and, in fact, if they have even been invested with the NCE. The Petitioner submitted an affidavit with English translation from [redacted] an individual who claims to have "assisted [the Petitioner] in converting RMB into USD and remitting it to the account of the U.S. company [redacted] LLC at [redacted] (account number: [redacted])" accompanied by [redacted] online banking transfer receipts with translation documenting the receipt of RMB 5,852,560 by [redacted] into her account ending in [redacted] from the Petitioner's bank account ending in [redacted] But, after receipt of the funds into [redacted] bank account ending in [redacted] maintained in [redacted] the further journey of those funds is unclear. The Petitioner submitted daily statements from [redacted] an "Exchange Participant of The Stock Exchange of Hong Kong Limited." The Petitioner submitted the daily statements to demonstrate [redacted] "settled her shares in her [redacted] account in USD, and remitted US$800,000…to [redacted] LLC. The total US$800,000 is from Ms. [redacted] shares in [redacted]" The Petitioner asserts this was required because "there is foreign exchange control and the limitation of remitting money to foreign countries outside China." [redacted] "[a]s a Hong Kong resident…helped [the Petitioner] to transfer the investment fund" to the United States.

But the record does not demonstrate the Petitioner transferred the funds heretofore present in [redacted] account ending in [redacted] into her [redacted] account. Whilst the Petitioner's response to the RFE did not contain evidence or description of the lawful source of funds in [redacted] account, the Petitioner submits an affidavit from [redacted] employer on appeal to "certify that from February 2002 to September 2017, she served as a senior insurance broker" in [redacted] at an annual income of RMD 600,000. But the record does not contain additional evidence to demonstrate [redacted] accumulation of funds in the [redacted] account. Nor does it account for all the other sources [redacted] funds present in the [redacted] account based on the account activity described in the daily statements. The record as it currently is composed demonstrates a transfer of funds after sale

of shares from [redacted] to [redacted] LLC. Or in other words, there is no material, reliable, or probative evidence to support the assertion that the Petitioner's funds left China, traversed through Hong Kong and were ultimately invested with the NCE.

Moreover, the [redacted] statement summary was for a bank account ending in [redacted] and not [redacted] So, the statement summary the Petitioner submitted to demonstrate receipt of the investment funds by the NCE was for a different bank account than the one into which [redacted] indicated she deposited funds. And the record does not establish the source of the funds. So, it is not preponderantly evident if the funds described in the NCE's bank account statement are owned by the Petitioner or by [redacted], or what the source or means of the funds is and whether it is lawful.

The omissions, discrepancies, and incongruent facts and descriptions provided by the Petitioner collectively are unsuccessful to assist the Petitioner to demonstrate it is more likely than not that the funds he claims to have invested in the NCE stemmed from lawful sources obtained through lawful means. Doubt cast on any aspect of a petitioner's proof may lead to doubts about the reliability and sufficiency of the remaining evidence in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Because the Petitioner is ineligible for the immigrant investor visa classification for the reasons we have discussed above, we need not address, and therefore reserve, FOD's other grounds for denial relating to the credibility of the submitted business plan, its compliance under *Matter of Ho*, and its consequent inability to support the Petitioner's job creation claims. *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).

III. CONCLUSION

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 375-76. Here, he has not demonstrated that his investment derived from lawfully sourced funds. *See* section 203(b)(5)(L) of the Act; *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm. 1998); *Matter of Izummi*, 22 I&N Dec. at 195. He therefore has not established eligibility for the classification sought.

ORDER: The appeal is dismissed.