U.S. Citizenship and Immigration Services

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

In Re: 37742352

Date: AUG. 27, 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 the Petitioner did not sufficiently document the lawful source of the funds he claimed to have invested. 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 he or she invests the requisite amount of qualifying capital in a new commercial enterprise (NCE). An alien may invest the required funds directly in an NCE or through a regional center, 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).

An alien must demonstrate that he or she has placed his or her 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.

[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 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 his petition in April 2017, prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

§ 204.6(e), that funds invested are his [or her] own"). In addition, the investor must show that his or her 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, an 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 path 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 claims to have invested $500,000 in [redacted] LLC, the NCE affiliated with [redacted].[3] According to page 1 of the business plan, the NCE's purpose is to provide up to $115 million in loans to fund the development, construction and operation of a [redacted] in [redacted], California. Page 2 of the business plan explains that the NCE is selling "units of [its] interests . . . to investors," with each investor paying $500,000 for a unit of interest and $50,000 in administrative fee.

An April 2017 letter from the NCE's escrow agent indicates that the Petitioner remitted $550,050 to the NCE's escrow account, [redacted] as his EB-5 funds and the associated administrative fee. According to the Petitioner, his EB-5 funds derived from proceeds of his accumulated income savings as the Chief Research Officer, Investment Director, and Deputy General Manager for [redacted] Ltd. In his personal statement, submitted in response to FOD's request for evidence (RFE), the Petitioner explained that his younger brother assisted him with converting his Chinese Yuan (RMD) into U.S. Dollars (USD). He further explained that "some of [the currency conversion] was completed through a legal annual exchange quota of 50,000 US dollars per person in the country" and that the "other part was completed through some friends' US dollar salary income." Further in the personal statement, the Petitioner stated that his brother "completed a partial exchange of US dollars through our mutual friends" and "due to the passage of time and reasons such as privacy protection, relocation overseas, resignation, or cancellation to bank accounts by friends," the relevant materials (i.e. bank documents) cannot be fully obtained.

The bank records show the following transactions: (1) between June 2013 to March 2017, the Petitioner received deposits from his employer into his accounts with the [redacted] and [redacted]; (2) on April 13, 2017, the Petitioner transferred RMD 3,900,000 to his brother's [redacted] account; and (3) on April 26, 2017, his brother wired $550,050 from his [redacted] – [redacted] account to the NCE's escrow account, listing on the

[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] [redacted] is a regional center that U.S. Citizenship and Immigration Services (USCIS) designated 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).

Remittance Application Form, under "Details of Payment," that this is for the Petitioner's "Investment Fund for [redacted] LLC."

FOD concluded the Petitioner did not establish, by a preponderance of the evidence, that his investment funds were lawfully obtained. Specifically, FOD determined there is insufficient evidence to show the source and path of the Petitioner's funds from his bank account in China to his brother's [redacted] Bank account in mainland China and then to the brother's [redacted] Bank account in [redacted], noting the record contains insufficient documentation relating to the currency exchange and transfer transactions purportedly completed by the Petitioner's "friends."

On appeal, the Petitioner contends he used a third-party exchanger, which happens to be his brother, to assist him in gathering and remitting the investment funds of $550,050 as well as exchanging or swapping of currency. He further contends per 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*" and asserts "that never happened here." (Emphasis in original). Moreover, the Petitioner claims USCIS abruptly changed its view of the "third-party exchangers" approach without following the Administrative Procedure Act. He cites to a recent court decision, *Zhou v. Noem*, No. 19-2650, 2025 WL 416152 (D.D.C. Feb. 6, 2025), in support of his claim that the regulations requiring EB-5 petitioners to show their invested funds were obtained through lawful means do not require tracing of those funds beyond their immediate source.[4]

While we acknowledge the Petitioner's claims, pertinent regulations and precedent decision support FOD's request for evidence regarding the claimed lawful sources of the funds used by the third-party exchanger for the currency exchange. 8 C.F.R. § 204.6(e) (defining "capital"), (j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998). Further, other district court decisions 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).

Regarding the Petitioner's reliance on *Zhou v. Noem* and *Battineni v. Mayorkas,* we note that in contrast to the precedential authority of the case law of a U.S. circuit court, we are not bound to follow the published decision of a U.S. 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 117, 126-29 (D.D.C. 2023), *aff'd*, No. 23-5116, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *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 exchanger "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 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.

[4] In response to FOD's RFE, the Petitioner also referenced *Battineni v. Mayorkas*, No. 22-1332, 2024 WL 4267522, (D.D.C. Oct 2, 2024).

In the present case, there are breaks in the paths of the Petitioner's claimed investment funds. The plain language of 8 C.F.R. § 204.6(e) and (j)(3) supports FOD's requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, 2023 WL 4234658, at *5. The relevant path includes tracing the funds from their point of origin though any intermediary accounts. *See id.* at *6. 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. 169, 195 (Assoc. Comm'r 1998); *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating 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)").

As noted above, the Petitioner explained that he used his brother's assistance to complete the currency exchange transactions and transfers via friends but that "due to the passage of time and reasons such as privacy protection, relocation overseas, resignation, or cancellation of bank accounts by friends, the relevant materials cannot be fully obtained." While we acknowledge the Petitioner's explanation for not providing evidence about these exchanges, 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

Here, there are evidentiary deficiencies in the record and breaks in the path of funds the Petitioner claims his brother and friends exchanged for him. He has not shown, by a preponderance of the evidence, that all the funds the exchangers ultimately deposited in his brother's [redacted] Bank account in [redacted] were derived from his own lawfully sourced funds as claimed, nor has he otherwise shown the lawful source of all funds he ultimately remitted to the NCE's bank account.

## III. CONCLUSION

For the reasons discussed, the record does not establish, by a preponderance of the evidence, that the funds the Petitioner invested in the NCE were lawfully obtained. Accordingly, the Petitioner has not demonstrated his 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.