U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38756814

Date: AUGUST 28, 2025

Motion on Administrative Appeals Office 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) (2019).[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.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, was or is capital obtained through lawful means. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

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). Upon review, we will grant the motion to reopen and sustain the appeal.

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, 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) (2018).

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).

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas (TEA) and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition in March 2019, the relevant law then in existence governs this appellate adjudication.

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*, 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. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998).

The Petitioner asserted that in February 2019, he invested $500,000[3] into [redacted] LLC (the NCE), an entity which is associated with the regional center [redacted] The NCE proposed to pool $6,000,000 from 12 immigrant investors and contribute all proceeds to [redacted] LLC, the job-creating entity (JCE) as an equity investment. The JCE intends to develop, construct and operate a new [redacted] and [redacted] mixed-use development in [redacted] Florida.

The Petitioner asserted that the funds invested into the NCE originated from his controlling interest in a Brazilian company [redacted], through which he derived income from salary and profit distributions. The Petitioner asserted that these funds were transferred from several different personal bank accounts and investment accounts in Brazil to his personal bank account in the United States and subsequently wired to the NCE in February 2019.

In a request for evidence (RFE), FOD noted that the Petitioner had not established the origin of his investment funds beyond his own bank accounts in Brazil. In response to the RFE, the Petitioner provided additional evidence of his bank and investment accounts, income and tax statements and corporate documents. FOD noted in part that the record indicated that the Petitioner has ownership interest and earnings from multiple entities, but that records related to the other business entities were not provided. FOD determined that the Petitioner had not demonstrated by a preponderance of the evidence that his investment capital derived from lawful means.

On appeal, the Petitioner submitted additional evidence related to the source of the funds invested into the NCE. He asserted that the income he derived from two other entities in which he has an ownership interest was not material to the lawful source of funds inquiry, as his investment capital was derived solely from his income and salary from [redacted] However, we concluded that the additional evidence was insufficient to establish the lawful source of the Petitioner's investment funds, in part because the English language translation of some bank statements was incomplete.

---

[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] Because the NCE is located in a targeted employment area, the requisite amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2019).

The Petitioner then filed the instant motion to reopen and reconsider. A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits additional evidence of his income from two other businesses, as well as corporate records for these entities demonstrating the lawful business activity. The Petitioner asserts that these new facts establish eligibility, as this demonstrates that the income he accrued and maintained in his personal bank accounts derived from lawful sources. He also notes that the English language translations of his bank account statements were complete.

Upon review, these documents sufficiently establish the claimed lawful source of the income in the bank account which was used by the Petitioner to transfer his EB-5 investment to the NCE. The Petitioner has demonstrated by a preponderance of the evidence that the capital, which he has invested or which he is actively in the process of investing, is capital obtained through lawful means. Additionally, the record establishes that he has met the other requirements of the category. Therefore, the Petitioner has established eligibility for the immigrant investor visa classification.

Because the Petitioner has established eligibility on motion to reopen, we need not address the arguments presented on motion to reconsider. The motion to reconsider is moot.

ORDER: The motion to reopen is granted and the appeal sustained.

FURTHER ORDER: The motion to reconsider is dismissed.