U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39396922

Date: FEB. 12, 2026

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).[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.

Field Operations Directorate (FOD) denied the Form I-526, Immigrant Petition by Alien Entrepreneur (petition), concluding the record did not establish that the capital the Petitioner invested, or was actively in the process of investing, was obtained through lawful means nor did it demonstrate that his investment would create at least 10 full-time jobs for qualifying employees. 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). As initial evidence, the regulation at 8 C.F.R. § 204.6(j)(3) provides:

[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/20221006EB5ReformAnd Integrity Act.pdf. As the Petitioner filed this petition in October of 2021, the relevant law in existence on that date governs this appellate adjudication.

To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital;

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

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 claimed that by September 4, 2019, he invested at least $500,000 into [redacted] (the NCE). The NCE proposed to pool $100 million from 200 immigrant investors. The NCE was organized to develop the [redacted] project located in [redacted] Florida. According to the business plan, the NCE would principally be doing business within a targeted employment area (TEA). The regulation provides for a reduced investment amount of $500,000 for investments made within TEAs. 8 C.F.R. § 204.6(f)(2).

Alien investors must demonstrate invested capital is their own. *See* 8 C.F.R. § 204.6(e) under the definition of capital requiring any assets—to include cash—are "owned by the alien investor." Regarding his ownership of the funds, the Petitioner provided wire transfer documents, but no evidence showing he holds a bank account with a financial institution, what funds were resting in any of his bank accounts, or any deposits or withdrawals relating to an account belonging to him. Instead, he simply provided the material showing he moved funds from a financial institution in his home country to the NCE's account in the United States. The wire transfer showed who initiated the movement of the funds or who was listed as the sending party. That wire transfer document only related to possession of the funds, or the individual authorized to move the funds either for themself

or another person, but not necessarily ownership. This falls far short of demonstrating the Petitioner owned the funds that he wired to the NCE's account.

And FOD raised this issue in the notice of intent to deny (NOID) when they put him on notice that the record was deficient because it lacked bank account statements showing he possessed the funds that were eventually transferred. But the Petitioner neglected to provide that material in his NOID response and instead provided additional wire transfer materials. No evidence rests within the record establishing the originating bank accounts that held the transferred funds were his accounts and belonged to him. "The immigrant investor must establish that they are the legal owner of the capital invested." *See generally* 6 *USCIS Policy Manual*, *supra*, at G.2(A)(1); 8 C.F.R. § 204.6(e) under the definition of capital; *Matter of Izummi*, 22 I&N Dec. at 195 (concluding a petitioner must establish funds transferred for investment are their own funds and citing *Matter of Soffici*, 22 I&N Dec. 158, 164–65 n.3 (BIA 1998)).

Even now on appeal, he does not provide this mandatory evidence. Instead, he points back to his written statement in which he discusses a business consulting firm he asserts he owns in his home country and the resulting monthly dividend distributions from that entity. FOD found his claims to be insufficient to meet his burden of proof, and we note unsupported assertions are not facts or evidence and will normally not aid a filing party in establishing eligibility. *Matter of G-C-I-*, 29 I&N Dec. 176, 178 (BIA 2025).

We therefore conclude that he has abandoned or waived his claims on the issue of whether he owned the funds that he transferred to the NCE's account. *Matter of Dobrotvorskii*, 29 I&N Dec. 211, 212 n.3 (BIA 2025) (finding any issue a filing party does not raise on appeal is deemed waived). And because the petition cannot be approved absent a showing that the Petitioner owns the funds he transferred to the NCE, that shortcoming is dispositive of this appeal and it is unnecessary that we evaluate the remaining requirements in the appeal as doing so would serve no purpose. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 n.8 (BIA 2025) (declining to address other issues when one determination is dispositive of a benefit request).

But even if the above dispositive issue was not present, it remains that the Petitioner has not demonstrated eligibility under other lawful source of funds requirements. As it relates to showing his funds were obtained lawfully, the Petitioner claims he accumulated the funds to invest through monthly dividend distributions from a business consulting firm in which he claims he owns 100 percent of the stocks.

He provided his tax returns between the years 2015 and 2021 and while FOD acknowledged his tax documents reflected he earned income from the consulting firm, they also noted a lack of the types of evidence the regulation requires to show he has invested, or is actively in the process of investing, capital obtained through lawful means such as copies of foreign business registration records, corporate or partnership or any other business entity annual reports, audited financial statements, or other sufficient evidence to corroborate the claimed dividend payments from the business consulting firm. These requirements derive from the initial evidentiary requirements in the regulation at 8 C.F.R. § 204.6(j)(3) and are further explained in agency policy. *See generally* 6 *USCIS Policy Manual*, *supra*, G.2(A)(4).

Accompanying the appeal, the Petitioner provides a 2017 federal police department criminal background certificate reflecting their systems do not contain a "record of any held court sentence" for him. Also with the appeal, the Petitioner offers his resume and two letters from an accountant in his home country.

The 2017 police certificate does not demonstrate the consulting business of which he claims that he owns 100 percent, conducts lawful business. And his resume is not probative evidence showing the lawful activities of the business consulting firm. Finally, the 2017 and 2023 letters from the accounting firm listed the annual net business income of the consulting firm as well as the Petitioner's net annual personal income. But these documents do not establish that this business consulting firm generates his monthly dividends by conducting lawful business. We also note neither of the letters align with the claimed 100 percent ownership as both of them reflected that he does not own all of the business. The Petitioner introduced this inconsistency in the record without resolving it through sufficiently probative evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988).

FOD's concern was the evidence in the record did not sufficiently establish the business consulting firm's finances derived from lawful activities. *See generally* 6 *USCIS Policy Manual*, *supra*, G.2(A)(4) (listing the types of evidence showing the lawful source of funds from other sources). Not only did the Petitioner fail to remedy this evidentiary shortfall in the NOID response, but also for a second time in this appeal. As he was placed on notice of this requirement and did not provide the relevant evidence, he has forfeited the opportunity to remedy it in these proceedings. *Matter of Dobrotvorskii*, 29 I&N Dec. 211, 212 n.3. This serves as a second basis in which the Petitioner has not demonstrated the lawful source of the funds he wired to the NCE's account.

In summary, the Petitioner lacked sufficient due diligence to demonstrate the funds he transferred to the NCE were both his own funds, and that they derived from lawful conduct.

III. CONCLUSION

For the reasons we discuss above, we conclude that the Petitioner has not preponderantly established eligibility for this classification. Specifically, they have not demonstrated the lawful source of their 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.