U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39447861

Date: FEB. 13, 2026

Appeal of Field Operations Directorate (FOD) Decision

Form I-526E, Immigrant Petition by Regional Center 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. Foreign nationals 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.

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. FOD dismissed a subsequent combined motion to reopen and motion to reconsider, based on similar evidentiary issues. 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 they have invested, or are actively in the process of investing, and any funds used to pay administrative costs and fees associated with their investment were obtained from a lawful source and 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 the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The 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'r 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 Petitioner asserted that, on January 26, 2023, he deposited $800,000[1] into the escrow account of the NCE, [redacted], which is sponsored by [redacted], a designated regional center.[2] According to the Confidential Private Placement Memorandum, dated 2022, the NCE proposes, in relevant part,[3] to raise up to $88 million from immigrant investors at a minimum investment of $800,000 from each investor, and to lend the entire amount to [redacted] "to develop a project containing a luxury hotel and conference center, condominiums, retail, and rental apartments on 22 acres at the corner of [redacted], Texas."

The record indicates that the Petitioner's company received deposits in the amounts of $515,425.95 and $538,153.58 in a bank account ending in [redacted] on March 31 and April 5, 2022, respectively, for the sale of certain real estate properties. The record also indicates that the bank account ending in [redacted] transferred $800,000 "to [redacted]" on January 24, 2023. The record further indicates that the Petitioner transferred $70,000 from his bank account ending in [redacted] to a bank account ending in [redacted] identified as an "administrative account" on April 6, 2022, as an administrative fee, and that the Petitioner later transferred $800,000 from his bank account ending in [redacted] to the NCE's escrow account on January 26, 2023.

In a request for evidence (RFE), FOD asserted that the Petitioner "did not articulate and submit evidence establishing that the funds you used to pay your administrative fees derived from lawful means." FOD further observed that the Petitioner had not submitted bank statements for the relevant bank accounts in the path of funds and, thus, "the record does not establish that at least USD 800,000 from the sale proceeds were maintained in the account and not replaced by or comingled with other unidentified funds not shown to derive from lawful means before they were transferred to your account [redacted] on January 24, 2023." Therefore, FOD requested the Petitioner to submit "the Company's business bank statements [redacted] from April 2022 until January 2023" and other evidence to establish whether the funds derived from a lawful source.

In response to FOD's RFE, the Petitioner submitted bank statements for bank accounts ending in [redacted] and [redacted] for the period of April 1, 2022, through January 31, 2023. The bank statements establish that, on January 24, 2023, the Petitioner's company's bank account ending in [redacted]

[1] [redacted] asserted that the NCE will principally be doing business within a targeted employment area. Therefore, the requisite amount of capital was downwardly adjusted from $1,050,000 to $800,000. *See* section (b)(5)(C)(ii) of the Act.

[2] *See* section 203(b)(5)(E)(iii) of the Act (explaining the establishment of a regional center).

[3] The Confidential Private Placement Memorandum also contemplates other potential sources of funding related to the development project in separate offerings.

transferred $800,000 "to [redacted]" and that, on the same date, the Petitioner's company's bank account ending in [redacted] transferred $800,000 "to [redacted]." The bank statement for the period of January 1 through January 31, 2023, for the account ending in [redacted] further indicates that it had a beginning balance of $34,166.21 on January 1, 2023, with a total of $1,093,675.03 deposits and $1,109,123.21 withdrawals and other debits during the month before reaching an ending balance of $16,117.11 on January 31, 2023.

FOD determined that the record indicates the $800,000 received by the account ending in [redacted]—the account from which the Petitioner transferred funds to the NCE's escrow account—passed through the account ending in [redacted] from the account ending in [redacted]. FOD noted that "the record contains no evidence establishing the USD 800,000 that the Company transferred from its account [redacted] derived from lawful sources." FOD further observed that "the total balance for both accounts [redacted] and [redacted] [sic] went below USD 800,000 several times during the relevant period," noting in particular that the account ending in [redacted] had a balance as low as $356,218.50 "as of June 30, 2022." Based on those issues, FOD determined that the record did not establish that the funds the Petitioner invested in the NCE on January 26, 2023, and any administrative costs and fees associated with the investment, "derived from the sale proceeds that were deposited into the Company's business account [redacted] in April 2022 [or otherwise] obtained from a lawful source and through lawful means."

The Petitioner submitted a combined motion to reopen and motion to reconsider, in which he asserted he combined personal loans, using his own home as collateral, with his company's business's bank account funds, to finance the investment in the NCE. However, FOD observed that the Petitioner "did not articulate and submit supporting documents to establish how you acquired the funds to purchase your family home" and, thus, the record still had not established that the EB-5 investment funds derived from a lawful source.

On appeal, the Petitioner asserts that FOD "misinterprets and misapplies the 'lawful source of funds' standard under INA 203(b)(5)(L), 8 CFR § 204.6(j)(3) [and U.S. Citizenship and Immigrant Services (USCIS)] Policy Manual at Volume 6 – Immigrants Part G – Investors Chapter 2 – Immigrant Petition Eligibility Requirements." The Petitioner also asserts on appeal that FOD "fails to apply the preponderance of the evidence evidentiary standard set forth under the Policy Manual and *U.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987)" and that, instead, it "seems to impose a legal standard that would go *ad infinitum* requiring the [Petitioner] to continuously trace the source of the source of the source[,] which is arbitrary and capricious in violation of the Administrative Procedures Act." The Petitioner further asserts that FOD "misunderstood facts, ignores material evidence presented, which confirms the lawful source of funds," in addition to basing its decision "on [the Petitioner's] failure to provide evidence that USCIS never previously requested."

We first note that, despite asserting that FOD "misinterprets and misapplies the 'lawful source of funds' standard," the Petitioner does not articulate on appeal what FOD misinterprets or misapplies from the relevant law and policy. Rather, the Petitioner reiterates that FOD should conclude that the record establishes the source of the funds the Petitioner's EB-5 funds derived from a lawful source. Similarly, the Petitioner notes that the USCIS Policy Manual cites *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring) to describe the preponderance of evidence standard. 1 *USCIS Policy Manual* E.4(B) at n.2, https://www.uscis.gov/policy-manual. The Petitioner further asserts, "Only if [FOD] can articulate a

material doubt is it appropriate for [FOD] to either request additional evidence or—if that doubt leads [FOD] to believe that the claim is probably not 50% true—deny the application or petition." However, the Petitioner does not elaborate on appeal how FOD's adverse conclusion, based on the evidentiary issues articulated in the decisions, is not supported by the record. That FOD reached a determination unfavorable to the Petitioner based on the evidence the Petitioner presented does not, by itself, indicate that, consequently, FOD misinterpreted or misapplied any law or policy.

In turn, although the Petitioner suggests on appeal that FOD imposes a burden for him to produce "the source of the source of the source . . . *ad infinitum*," the prevailing issue in this case appears to be that the real estate transactions that the Petitioner initially stated were the sources of his EB-5 investment were not the entire sources of the funds in question, and he did not produce sufficient documentary evidence to establish the entire sources of those funds upon FOD's request for him to do so. Thus, the Petitioner's pattern of withholding material information and partially responding to FOD's request creates the appearance of a burden for him to produce "the source of the source of the source . . . *ad infinitum*."

Next, as noted above, the Petitioner asserts on appeal that FOD based its decision "on [the Petitioner's] failure to provide evidence that USCIS never previously requested." In the RFE, FOD informed the Petitioner that the record does not establish that the funds and related administrative fees transferred from the bank account ending in [redacted] were from a lawful source. Also in the RFE, FOD requested the Petitioner to submit certain documents and "[a]ny other evidence identifying any other source of capital or administrative fees." FOD based its request on the Petitioner's assertions at the time he filed the Form I-526E, Immigrant Petition by Regional Center Investor, that "the flow of funds into the business bank account [ending in [redacted]] from the sale of completed project properties" and then from the "business account ending in [redacted] to the [Petitioner's] personal account ending on [redacted] which then were transferred to the Regional Center" was the full path of funds in question.

FOD's request for the Petitioner to submit "[a]ny other evidence identifying any other source of capital or administrative fees" reasonably informed the Petitioner that any particular type of documentary evidence not specifically enumerated, but which may establish eligibility for the requested benefit, was nevertheless requested. Moreover, a likely reason why FOD did not previously request certain documents, the omission of which supported the unfavorable decision, seems to be because the Petitioner misinformed FOD about the entire sources of the funds in question. For example, FOD likely did not initially request the Petitioner to submit evidence of the "funds used to purchase your family home," as later addressed in the decision on the Petitioner's combined motion, because the Petitioner did not assert at the time he filed the Form I-526E that the source(s) of the EB-5 funds included personal loans using his family home as collateral, in addition to the proceeds of the real estate transactions. As noted above, the Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Therefore, FOD does not bear the burden of anticipating what types of evidence may satisfy the Petitioner's burden to establish whether material information the Petitioner is withholding may be true.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition

in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The Petitioner did not assert at the time he filed the Form I-526E that the source(s) of his EB-5 funds included personal loans using his family home as collateral. The source(s) of the Petitioner's EB-5 funds is material because an EB-5 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. Therefore, the Petitioner's assertion in support of his combined motion—after FOD adjudicated the Form I-526E petition—that the source of his EB-5 funds includes personal loans using his family home as collateral presents a new set of material facts that cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49. Because the Petitioner's personal loans using his family home as collateral cannot establish eligibility as a source of the EB-5 funds, as it presents a new set of material facts, we need not determine whether the source of funds used to purchase the home used as collateral for those loans was lawful. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Moreover, because the Petitioner now admits that the March 31 and April 5, 2022, real estate transactions were not the entire sources of the EB-5 funds, contrary to his assertions at the time he submitted the Form I-526E, the Petitioner in effect admits that the extent of the record that may establish eligibility does not trace the path of the EB-5 funds back to a lawful source, as required, as FOD determined. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Therefore, we will dismiss the appeal.

III. CONCLUSION

The Petitioner has not adequately documented the claimed lawful source of his investment funds and administrative fees. *See* section 203(b)(5)(L)(i) of the Act; *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. *See* section 203(b)(5)(L)(ii) of the Act. As the record does not sufficiently show that the Petitioner's investment funds and administrative fees have been obtained from a lawful source and through lawful means, the Petitioner has not established eligibility for the requested 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.