U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40172820

Date: FEB. 17, 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 United States economy and create at least 10 full-time positions for qualifying employees. An alien may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the NCE's business plan was sufficiently credible and the regional center relied on reasonable methodologies to establish the requisite job creation. In addition, FOD determined that the Petitioner did not establish that the funds he invested were obtained through lawful means. 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 EB-5 immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The regulation at 8 C.F.R. § 204.6(j)(2) provides that the alien investor must establish that they have invested or are actively in the process of investing the required amount of capital and must submit evidence verifying that they have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. An immigrant investor may

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) 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. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

invest the required funds directly in an NCE, or through a regional center. For an NCE located within a regional center, as is the Petitioner's case here, the required full-time positions may be created directly and indirectly by the NCE. 8 C.F.R. § 204.6(e); *see also* 6 *USCIS Policy Manual*, G.2(D)(4), https://www.uscis.gov/policy-manual.

An 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, they must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show that the invested funds were obtained through lawful means, a petitioner must produce evidentiary documents listed at 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 and the record must trace the complete path of the funds back to a lawful source.[2] *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).

In addition, an investor seeking EB-5 classification must demonstrate that their investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). An NCE may have multiple investors each seeking EB-5 classification, provided that each investor has invested or is actively in the process of investing the required amount and that each individual investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
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> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

The prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho* held that, to be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation

[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).

potential." 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). "Mere conclusory assertions[, however,] do not enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation." *Id.* The decision concludes: "Most importantly, the business plan must be credible." *Id.*

II. ANALYSIS

The Petitioner asserts that he invested $500,000[3] into the NCE, [redacted], which is associated with [redacted] ("the regional center"). The NCE proposed to pool $2 million from four immigrant investors and lend the entire amount to two job creating entities (JCEs), [redacted] (JCE 1) and [redacted] (JCE2). The JCEs intend to open an automotive center named [redacted] ("the project") in [redacted], New York. The facility (as initially described) will include a full-service auto repair and maintenance center, including towing services; an automated car wash and detailing services; and a café and lounge area.

FOD issued a notice of intent to deny (NOID) which raised several issues where eligibility had not been established. It noted that the initial filing included no documentation regarding the establishment of the NCE and the details of the project. In addition, FOD indicated that because the record included no information regarding the project, and information about the NCE and project could not be independently verified, the business plan included with other petitions related to the project was not *Matter of Ho*-compliant since it was not credible.[4] Because it found the business plan not credible, FOD stated that the economic analysis was also not credible. Further, FOD noted that the Petitioner had not established that the invested funds had been obtained through lawful means, citing banking statements showing large unexplained deposits into the Petitioner's and his spouse's accounts and into the accounts of one of several donors, as well as an incomplete record of the funds deposited into the account from which the Petitioner asserted he transferred the investment funds to the NCE.

After considering the Petitioner's response to the NOID, FOD concluded that he had not established that the NCE's business plan, which remained unchanged from the plan found in the related project filings, was credible or comprehensive, and thus was insufficient to establish the required creation of at least 10 full-time jobs. FOD noted that photographs and other evidence regarding the project did not show that construction was complete or the business operational, which the business plan projected would occur approximately two years earlier. It also determined that the economic analysis which projected the creation of direct and indirect jobs was not reasonable because it relied upon the non-credible business plan.

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[3] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is thus adjusted from $1,000,000 to $500,000. 8 C.F.R. 204.6(f)(2).

[4] FOD's NOID also mentioned the existence of derogatory information contained in public lawsuits and legal actions against various actors associated with or surrounding the NCE or JCEs. But FOD did not note or cite to this derogatory information in its rationale for denying the petition. Moreover, there is no indication these matters have been resolved by the courts. It appears the litigation is ongoing. We do not give substantial weight to arrest reports, criminal complaints, and charging documents that do not lead to a conviction. *Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995).

On a separate ground, FOD concluded that the new evidence submitted in response to the NOID still did not establish the accumulation and savings of the Petitioner's and his spouse's income which was attributed to large deposits of funds into their [redacted] account ending in [redacted]. Similarly, it determined that the bank statements for the [redacted] account ending in [redacted] did not sufficiently document the accumulation of savings by two donors, L-P- and B-P-, or the source of a large deposit of funds into that account. Accordingly, FOD concluded that the Petitioner had not established that the funds which it asserts were transferred to the NCE derived from a lawful source.

With its appeal, the Petitioner submits a brief along with new evidence including a new business plan and project documents, including new photographs of the project site. Per the analysis below, we conclude that the Petitioner has not established eligibility as an immigrant investor and will dismiss the appeal.

A. Job Creation and Economic Methodology

The business plan submitted in response to FOD's NOID, which was dated November 2019, projected that operations at the facility would begin in October 2020, and that by the end of that year would have created 44 direct jobs. Those jobs included 13 positions related to towing services, 11 attributed to auto repair and maintenance, 10 for car wash services, and 10 for the café. The economic analysis, also submitted with NOID response and dated November 2019, projected a total of 77 direct and indirect jobs for the project by the end of year 3, which included 20 indirect construction jobs and 1 auto leasing position.

With his appeal, the Petitioner submits a new business plan for the project dated September 2025. This plan now describes the NCE as funding the first of three phases of the project, with additional phases funded by [redacted] (NCE2) and [redacted] (NCE3). Phase II includes the addition of state inspection station capabilities and windshield repair services, while phase III adds an additional $5.6 million in EB5 investor funding for an expanded café, increased vehicle lift capacity, electric vehicle charging stations, and other items. Unlike the initial business plan, the new plan makes no mention of automotive towing or leasing services.

In addition to the significant changes to the scope and scale of the project, including the addition of two new NCEs that will provide funding to the JCEs, the second business plan also references a new economic impact analysis, which it states was created in August 2025 in support of the third phase of the project. The plan indicates that the new projection for job creation shows 142 direct and indirect positions for all three phases of the project. However, this projection does not present job creation data pertaining only to [redacted] and thus does not show that the funds that the Petitioner asserts he invested with this NCE will create at least 10 jobs for qualifying employees. We also note that in a different section discussing the project's staffing requirements, the plan states that a total of 46 employees will be needed at "initial stable operations," but again does not state which of these positions are attributable to the first phase of the project and thus to the NCE to which the Petitioner asserts he sent his funds.

Further, the changes to the scope, scale, and funding of the project represented in the new business plan undermine the credibility of the older plan, specifically its income and job creation projections.

Notably, the towing and leasing services positions specified in the first business plan for this NCE are absent from any of the job creation projections included in the second. While the Petitioner briefly mentioned "the normal variances of business and a greater knowledge of business needs" in its NOID response when referring to a new list of proposed positions for the project which did not include the towing and leasing positions, these changes were not reflected in the November 2019 business plan which was also submitted with the NOID. Accordingly, the job creation and income projections from the first economic impact analysis and business plan which relied on the NCE's provision of these services are not credible, and the plan is therefore not compliant with *Matter of Ho*.

Per the foregoing discussion, the record does not establish that the funds which the Petitioner asserts he invested with the NCE will create at least 10 qualifying full-time jobs per the requirement at 8 C.F.R. § 204.6(j)(4). Because the Petitioner is ineligible for classification as an EB-5 immigrant investor, we need not reach, and therefore reserve, the issue of whether the economic methodology used by the NCE in its job creation projections was reasonable. *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).

B. Funds Obtained Through Lawful Means

As noted above, FOD also determined that the Petitioner had not established that the funds which he asserted were invested with the NCE were obtained through lawful means, noting the lack of documentation regarding large amounts in the Petitioner's account and that of one of the donors who he asserts gifted him funds for investment. On appeal, the Petitioner contends that the previously submitted evidence is sufficient to establish that the funds deposited into his joint [redacted] account ending in [redacted] were obtained through lawful means. He refers to three specific transactions reflected in the statements for his joint [redacted] account ending in [redacted] which show withdrawals totaling $174,000 to "[redacted]." Two of these transactions are also reflected in statements for the Petitioner's [redacted] account ending in [redacted], which also reflect the purchase of two certificates of deposit (CDs) totaling $174,000. This evidence is sufficient to show by a preponderance of the evidence that the source of the funds used to purchase these CDs, which were later redeemed and used as a portion of the Petitioner's investment funds, was the Petitioner's [redacted] account.

However, the record does not sufficiently establish the source of the funds in the Petitioner's [redacted] account which were transferred to the [redacted] investment account to purchase the CDs. The Petitioner asserts on appeal that the [redacted] account was used by him and his spouse for savings and accumulation of their earnings, and that they would make "counter deposits" via check from their [redacted] account ending in [redacted]. He asserts that these include three deposits to that account made on May 28, 2019 ($10,000), April 25, 2019 ($5,000), and April 1, 2019 ($7000). While the $10,000 deposit is confirmed in the statements for both accounts, the other two deposits are reflected in the statements for the [redacted] account as mobile transfers from an account ending in 0855. The statements from the [redacted] account show checks in those amounts written by the Petitioner to himself or his spouse, but the dates vary by several weeks from the mobile deposits shown in the [redacted] account statements, so it is not apparent the funds from those two checks were deposited in that account and later used to purchase the CDs. More importantly, the record does not include evidence regarding the owner of the account ending in [redacted] from which this $12,000 was transferred.

In addition, the statements from the [redacted] account in the record begin in May 2018 with a starting balance of approximately $81,000 and show counter deposits totaling $37,700 through November 2018. But since the record contains statements from the [redacted] account beginning only in December 2018, these deposits cannot be traced to the [redacted] account or any other bank account owned by the Petitioner. Despite the Petitioner's assertion that he and his spouse used the [redacted] account for accumulation and savings of their earnings, the record shows the complete path of only the May 28, 2019 deposit of $10,000 from the [redacted] account discussed above. This is only a fraction of the $174,000 that was withdrawn from this account to purchase the two CDs mentioned above which were later redeemed and comprised a substantial portion of the Petitioner's asserted investment in the NCE.

Further, while we acknowledge the evidence of the Petitioner's and his spouse's earnings from 2014 through 2018, we agree with FOD's conclusion that the record does not sufficiently document the accumulation and savings of those earnings, and thus does not show the complete path of the Petitioner's investment funds.

We also acknowledge the Petitioner's claims that FOD's decision does not comply with the applicable laws and regulations. However, contrary to the Petitioner's claims, pertinent regulations and precedent decision support FOD's NOID regarding the claimed lawful sources of the funds from the Petitioner and his spouse as well as from his friends who gifted him tens of thousands of dollars. 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).

The Petitioner references recent district court decisions holding that the regulation requiring a petitioner to show that invested funds were obtained through lawful means does not require tracing of funds beyond their immediate source. *See Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024); *Sun v. USCIS*, No. 21-1612 (CKK), 2025 WL 947463 (D.D.C. Mar. 28, 2025); *Zhou v. Noem*, No. 19-2650, 2025 WL 416152 (D.D.C. Feb. 6, 2025). 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). In contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States 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 exchange "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.

In the present case, as discussed above 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 204.6(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)").

For all of the reasons discussed above, the Petitioner has not established that the funds he claims to have invested in the NCE did not derive, directly or indirectly, from unlawful means. The record, including evidence he offers on appeal, does not sufficiently document the complete path of his purported EB-5 investment funds, tracing it back to a lawful source. *Borushevskyi v. USCIS*, 664 F. Supp. 3d at 129; *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

III. CONCLUSION

The Petitioner has not established that the NCE had hired at least 10 qualifying employees at the time he filed his petition, nor has he submitted a credible and comprehensive business plan showing that the NCE will create at least 10 qualifying positions within the required period. In addition, the Petitioner has not established that his investment funds did not derive from unlawful means, as the evidence does not trace the complete path of the funds to lawful sources. Accordingly, we conclude that he has not established eligibility as an immigrant investor under the EB-5 immigrant 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.