U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33430721

Date: FEB. 28, 2025

Appeal of Immigrant Investor Program 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). 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.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish that the Petitioner's invested capital was obtained through lawful means, and that the required amount of capital has been invested or is actively in the process of being 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

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, 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). To show that the capital was their own, a petitioner must document the path of the funds. *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 new commercial enterprise. *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 asserted eligibility based on an investment in [redacted] the new commercial enterprise (NCE) in the amount of $500,000 on November 19, 2019.[1] The NCE, affiliated with the regional center, [redacted], proposed to pool up to $134,000,000 from 268 immigrant investors and lend the funds to [redacted] the job creating entity (JCE) to develop a new residential community in [redacted] California.

The Petitioner claimed that her investment funds originate from the following:

- sale of a property located in [redacted] (Property A) which the Petitioner and her husband purchased sometime in 1994 for Vietnamese Dong (VND) 28,578,193 with their accumulated wage earnings and sold for VND 19,392,000,000 in April 2019;

- sale of a property located in [redacted] (Property B) which the Petitioner and her husband purchased on January 9, 1998, for VND 10,000,000 with their accumulated wage earnings and sold for VND 16,900,000,000 in March 2019;

- interest income derived from timed savings accounts that were opened by the Petitioner using a portion of the Property A sales proceeds; and

- a loan for VND 5,000,000,000 obtained by the Petitioner's husband by using the timed savings account as a collateral.

The Petitioner asserted that funds from the above-mentioned property sales were deposited into the following three accounts:

- VND 8,726,000,000 into the Petitioner's [redacted] account ending in 0001 [redacted] 0001);

- VND 4,538,000,000 into the Petitioner's [redacted] account ending in 9003 [redacted] 9003); and

- $128,000 in U.S. dollars into [redacted] account of the Petitioner's daughter who reside in France [redacted] 1008).

The Petitioner claimed that [redacted], a third-party exchanger, assisted her with gathering and remitting the investment funds of $500,000 as well as exchanging or swapping of currency. On November 19, 2019, the Petitioner transferred VND 4,187,700,000 from her [redacted] 0001 into [redacted] account ending in 0979 [redacted] 0979) in Vietnam. [redacted] purportedly exchanged the Petitioner's VND 4,187,700,000 into U.S. dollars and transferred

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 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 had filed his petition on November 20, 2019, the relevant law in existence on that date governs this appellate adjudication. The Petitioner also indicated that the project is located in a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2).

$180,000 from its [redacted] account ending in 6300 in Singapore [redacted] 6300) to the NCE's escrow account. Furthermore, [redacted] collected the remaining funds of $320,000 in its [redacted] 6300 account from the Petitioner in the following ways: 1) the Petitioner exchanged VND 4,538,000,000 to U.S. dollars through her [redacted] 9003 account and transferred the exchanged $192,000 to [redacted] 6300 account; and 2) the Petitioner's daughter remitted $128,000 in her [redacted] 1008 account to [redacted] 6300 account. Then, on November 19, 2019, [redacted] wired $320,000 to the NCE's escrow account.

The Chief issued a request for evidence (RFE) stating that no evidence was provided to demonstrate the source of funds used by [redacted] who assisted the Petitioner with the currency exchange of $180,000. In response, the Petitioner submitted [redacted] business registration and banking transactions from [redacted] 0979 and [redacted] 6300 accounts from August to November 2019. The Petitioner claimed that [redacted] "was able to facilitate the currency exchange by using part of the business earnings" and [redacted] "maintained some of the business earnings at [redacted] 6300] account." The Petitioner highlighted the specific business earnings that [redacted] received as foreign finder payments totaling $94,958.91 on August 23, 2019, and $173,009.25 on September 13, 2019" in [redacted] 6300 as the source of funds to "assist in the exchange." The Chief subsequently denied the petition, concluding that the Petitioner did not sufficiently document the source of the $180,000 received into [redacted] 6300 account on November 19, 2019, or provide sufficient documentation showing the lawful nature and sources of revenue for [redacted] such as corporate records, financial statements, complete banking records, etc.

On appeal, the Petitioner contends that the Director's request to demonstrate the paths of the Petitioner's investment funds is a mistake of law because the path of funds is not an independent evidentiary requirement. The Petitioner states that "there is no statute, regulation or decision that states a 'break in the chain of funds' somehow makes the funds unlawful" and "there is no statute, regulation or case law that says no break in the chain of funds can occur in the context of the EB-5 Petition." The Petitioner cites to the U.S. Citizenship and Immigration Services (USCIS) EB-5 stakeholder meeting minutes and USCIS training materials regarding informal value transfer. The Petitioner further asserts that the path of funds analysis is only necessary to document the ownership of the Petitioner's investment capital which is not in dispute. The Petitioner maintains that as the currency swap occurred under a valid contract between [redacted] and the Petitioner, the lawful source and ownership of the Petitioner's funds is implied (or legitimized by) by the contract. In support, the Petitioner submits an updated corporate statement from [redacted] and invoices for foreign finders' fees, along with previously submitted business registration records and bank statements showing the history of transactions from August to November 2019 in the company's [redacted] 0979 and [redacted] 6300 accounts.

We do not find the Petitioner's claims persuasive. The plain language of 8 C.F.R. § 204.6(e) and (j)(3) supports that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5 (D.D.C. June 28, 2023). 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. at 195; *see also Matter of Soffici*, 22 I. & N. Dec. at 165 (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)."). USCIS' complete path interpretation of the regulations is its authoritative position as explained in *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024). *Nguyen v. United States Citizenship & Immigr. Servs.*, 637 F. Supp. 3d 822, 835 (C.D. Cal. 2022) (affirming USCIS's denial of petitioner application where the petitioner's transfer of funds to a currency exchange "caus[ed] a clear break in the source, custody, and ownership of Plaintiff's funds," and that there therefore was no 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.

The Petitioner has not demonstrated that she is excepted from the path of funds requirements delineated in the regulations and precedent decisions when she entered into an arrangement to move her funds in a manner that makes demonstrating the requirements difficult. The Petitioner contends that she has documented the lawful source and ownership of her purported EB-5 investment in the NCE because the Petitioner and [redacted] had a currency exchange agreement. But the Petitioner has not cited to any pertinent regulations and precedent decisions to support her claim that terms of her arrangement with [redacted] override the legal requirements to demonstrate the paths of funds.

The Petitioner references the February 3, 2016 meeting minutes from USCIS' EB-5 Stakeholder Engagement and claims that USCIS has accepted "private currency exchange" and necessary documentation evidencing lawful source of funds mentioned in the USCIS training materials are already submitted in the record. But USCIS also indicated, in the same meeting minutes referenced by the Petitioner, that in private currency exchange cases, "we may require evidence from the petitioner to validate the lawful source of third-party funds involved in the transaction" and "the path of funds must be clearly documented and demonstrate."[2] Again, 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. Here, the Petitioner has not made such a showing. In fact, the Petitioner acknowledges through her appellate brief that there was a break in the paths of funds, or that [redacted] did not physically transfer USD funds between [redacted] account [ending in 0979] in Vietnam and [redacted] account [ending in 6300] in Singapore."

Additionally, the record does not establish the lawfulness of the funds of the third-party exchanger. Although the Petitioner submitted [redacted] partial bank statements, invoices, and business earnings in its [redacted] 6300 account, the record does not provide details regarding the company's business, financial statements, tax returns, and complete bank statements in Singapore to show that the funds received as part of invoices and business earnings are from lawful source. Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Here, the Petitioner has not sufficiently documented the business earnings in [redacted] 6300 account in Singapore to establish the lawful source of funds used in the currency exchange.[3]

[2] *See* Exhibit 12 of the Petitioner's Appeal Brief: USCIS Stakeholder's Minutes.

[3] While the Petitioner claims that [redacted] is registered in Vietnam under the name of [redacted] the record does not demonstrate that the business is similarly regulated or registered in Singapore, or whether it is authorized to conduct financial transactions of this nature in Singapore where the company purportedly held the bank account from which the investment funds of $180,000 originated.

The Petitioner reiterates that the terms of the currency exchange agreement legitimize the Petitioner's ownership of the swapped funds but once again, the Petitioner has not cited to pertinent regulations or precedent decisions demonstrating that contract terms override regulatory and legal requirements. In fact, the Petitioner's acknowledgement that the funds of $180,000 are sourced in [redacted] business earnings raises unresolved questions about the Petitioner's ownership of such funds. A petitioner must show that he or she has placed his or her own capital at risk, i.e., that he or she was the legal owner of the invested capital. *Matter of Ho*, 22 I&N Dec. 206; *see also Matter of Soffici*, 22 I&N Dec. at 165 n.3 (interpreting 8 C.F.R. § 204.6(e) as requiring that a petitioner establish the funds invested are his or her own).

The Petitioner has claimed throughout the proceedings that the investment funds of $180,000 were routed through the third-party exchanger but has not produced sufficient documentation to demonstrate her ownership or the lawful source of funds in the exchanger's bank account. The record does not establish that the Petitioner's original funds were deposited into and maintained in [redacted] account in Singapore to establish the claimed lawful sources of the exchange funds by a preponderance of the evidence standard. The sources of funds in [redacted] 6300 account claimed as business earnings of the company have not been sufficiently documented. Therefore, we agree with the Chief's conclusion that the Petitioner did not establish that her investment funds came from a lawful source. In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). Here, the Petitioner has not met the burden.

In light of our conclusion that the Petitioner has not sufficiently documented the paths of funds she purportedly invested in the NCE, we need not consider other eligibility issues, including the Chief's determination that the Petitioner did not establish the lawful source of investment funds originating from property sale transactions or that the required amount of capital has been invested, as it would not change the outcome of the appeal. *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).

III. CONCLUSION

As the evidence in the record does not sufficiently demonstrate the lawful source of funds, we conclude that the Petitioner has not established by a preponderance of the evidence that she is eligible for the immigrant investor visa classification.

ORDER: The appeal is dismissed.