U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40159145

Date: JAN. 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) (2017).[1] 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 United States economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that Petitioner's funds were obtained from a lawful source or through lawful means and did not follow a lawful path of investment in the NCE. 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 his or her own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. 2016, 210 (Assoc. Comm'r 1998). To show that the capital was his or her 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

[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). The Petitioner filed his petition in April 2017. In February 2024, upon FOD's request, the Petitioner submitted a recreated petition that included a Form I-526E, Immigrant Petitioner by Regional Center Investor, because the Form I-526, Immigrant Petitioner by Alien Entrepreneur, had been retired. The Form I-526E is inapplicable to this matter because the petition was filed prior to enactment of the EB-5 Reform and Integrity Act. Our appellate adjudication today is governed by the relevant law in effect on the date of filing in April 2017.

by merely submitted 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 April 19, 2017. The NCE, affiliated with [redacted] a regional center under Section 203(b)(5)(E) of the Act, proposed to pool $22 million from 44 immigrant investors and lend the entire amount to [redacted] the job creating entity (JCE). The JCE intends to construct the first phase of an 85-acre mixed-use development project located in [redacted] California.

The Petitioner claimed that the source of his investment funds of $500,000 derived from a gift made to him and his spouse by his brother-in-law and the sale of a property he claims to have originally purchased with "14 pieces of gold." FOD concluded that the record did not demonstrate the lawful source of funds purportedly gifted to the Petitioner by his brother-in-law. FOD also concluded that the Petitioner did not document the source of funds or "pieces of gold" used to purchase the property he ultimately sold to procure a portion of the funds he invested in the NCE. And FOD observed the path the Petitioner's funds of indeterminate source traveled was also not lawful. So, FOD denied the petition. Upon de novo review, we conclude that the Petitioner has not satisfactorily documented the lawful path of the funds he invested in the NCE. So, we will reserve our opinion on the lawful source of the Petitioner's gift from his brother-in-law and the "pieces of gold" that acquired the property whose eventual sale funded a portion of the investment funds. *See INS v. Bagamasbad*, 429 U.S. 24,m 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

The Petitioner stated he utilized an "Alternative Remittance Service (ARS)" to transfer funds to the United States because Vietnam's "Banking Law Section 92/2005 QB-NHNN prohibits a Vietnamese national from the transfer of funds of more than $5,000.00." The "ARS" the Petitioner chose to facilitate the transfer of his funds from Vietnam to the United States was [redacted] a "private money transfer service operating in Vietnam."

The Petitioner submitted withdrawal slips dated April 18 and April 19, 2017, to demonstrate he withdrew investment funds from his personal bank account in two separate transactions. He also submitted two receipts dated April 18 and April 19, 2017, to document that he delivered funds matching the amounts described in his withdrawal slips to [redacted]

The Petitioner stated that [redacted] utilized [redacted] service for [redacted] and [redacted] service for [redacted] to transfer the investment funds from Vietnam to his attorney's [redacted] trust account in the United States via [redacted] The record contains two documents titled "message text" demonstrating that [redacted] service for [redacted] and [redacted] service for [redacted]

[redacted] deposited a total of $550,000 into the Petitioner's attorney's [redacted] trust account in the United States. Subsequently [redacted] on behalf of the attorney's office, wired funds in the amount of $550,000 into two separate wires to the NCE's bank account in the United States.

FOD issued a request for evidence (RFE) to the Petitioner seeking, among other things, evidence of the complete path of the funds to the NCE's United States bank account. In response to the RFE, the Petitioner "clarifie[d] that the [investment] funds were not deposited into [redacted] own corporate bank account. Instead [redacted] staff delivered the funds directly to [redacted] service for [redacted] and [redacted] service for [redacted], and the deposits were promptly reflected in their respective company accounts." The Petitioner provided bank statements from [redacted] service for [redacted] and [redacted] service for [redacted] to demonstrate the deposit of funds purportedly provided by the Petitioner to [redacted] Other documentation in the record demonstrates the conversion of the funds into United States dollars, the funds transfer to the Petitioner's attorney's United States based [redacted] trust account, and final wire of the funds into the NCE's United States bank account.

But, as noted by FOD, the notation in the bank account statements simply reflected a deposit of "cash" and did not indicate where the "cash" originated from. The record does not reconcile any relationship between the funds the Petitioner provided to [redacted] and the funds that were deposited into [redacted] service for [redacted] and [redacted] service for [redacted]. Or in other words, the Petitioner has not demonstrated that the "cash" deposits reflected in [redacted] service for [redacted] and [redacted] service for [redacted] were his funds or some different funds of unknown origin which were not the Petitioner's own. So FOD denied the petition because the Petitioner had not documented the complete lawful path of the Petitioner's funds.

The Petitioner asserts FOD's decision is "arbitrary and capricious" because FOD "misapplied the law by introducing an unsupported 'path of funds' requirement." The Petitioner's contends FOD engaged in "regulatory overreach" and cited a District Court decision holding "[n]either [the regulations] nor [the statute] contain any reference to 'path of funds.'" *See Battineni v. Mayorkas*, 752 F. Supp.3d 195, 209 (D.D.C. 2024). The Petitioner submits that he has provided "probative and reliable evidence" as expressed in *Matter of Ho*, supporting approval of the petition.

We 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 request for evidence regarding the claimed lawful sources of the funds used by the third-party exchanger for the currency exchange. 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, 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)").

As stated above, the record reflects a deposit of "cash" into [redacted] service for [redacted] and [redacted] service for [redacted] subsequent to receipt of the funds by [redacted] But there is no evidence or documentation, as described in the statute, the regulations, or precedent in *Matter of Ho*, that the "cash" deposited into [redacted] service for [redacted] and [redacted] service for [redacted] was the Petitioner's own funds. So, there is a break in the path of the Petitioner's claimed investment funds. And because of this break, the record does not support the Petitioner's assertion that he has established the path of funds by a preponderance of the evidence.

As the Petitioner has not shown a complete path of the investment funds, the Petitioner has not established that the investment funds derive from lawful means. In visa petition proceedings, a 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.

III. CONCLUSION

For the reasons we have discussed above, we conclude the Petitioner has not established, by a preponderance of the evidence, his eligibility for the immigrant classification. Specifically, the Petitioner has not demonstrated the lawful source of his investment funds by showing the complete path of the funds. *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.