U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29325486

Date: JAN. 29, 2025

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition by Standalone 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).[1] This fifth preference (EB-5) classification makes immigrant visas available to noncitizens 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. A noncitizen 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.

The Chief of the Immigrant Investor Program Office (the Chief) denied the petition, concluding that the record did not establish, by a preponderance of the evidence, that the funds the Petitioner asserted to have invested were obtained through lawful means.[2] The Chief also determined that, based upon breaks in the path of the funds the Petitioner allegedly transferred from China to the NCE's escrow account in the United States, the evidence did not demonstrate that the funds ultimately received by the NCE were the Petitioner's. 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.

---

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act (RIA), which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *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.

[2] The petition was initially denied on April 27, 2016, due to the termination of [redacted] participation as a regional center, and we dismissed a subsequent appeal. On April 9, 2020, we reopened the appeal and remanded the matter to the Chief. The Chief initially denied the petition due to abandonment, but subsequently reopened the petition prior to issuing the decision that is the basis for this appeal.

I. LAW

A noncitizen may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. A noncitizen may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2018).

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.[3] *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).

II. ANALYSIS

The Petitioner asserts that he invested $500,000[4] into [redacted] (the NCE), which is associated with [redacted] (Regional Center). The NCE proposes to pool $75.5 million from 151 immigrant investors, which it would then lend to [redacted], the job-creating entity (JCE), for the construction and development of a mixed-use tower in downtown [redacted].

In her decision, the Chief noted several deficiencies in the evidence regarding the lawful source of the funds that the Petitioner alleges were transferred out of China through a number of individuals both known and unknown to him. She also noted that several of the transactions through which the Petitioner asserts these funds were transferred to the NCE were not sufficiently documented, leaving breaks in the path of these funds. As discussed below, we conclude that the Petitioner has not established that the funds did not derive from unlawful means, and that the funds ultimately deposited in the NCE's escrow account were his own.

A. Lawful Source of Funds

According to the Petitioner, the funds which he transferred to the NCE's escrow account through several individuals were derived from a loan of RMB 3.6 million he received from the [redacted]

[3] 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).

[4] 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).

in October 2014. The evidence shows that this loan was secured by two real estate properties in China the Petitioner owned: [redacted] (No. 102) and [redacted] (No. 304). As noted above, the Chief noted several deficiencies in the evidence supporting the Petitioner's purchase of these properties in 2001 and 2011, respectively. Specifically, the Chief highlighted the lack of evidence of the transfer of funds from an account held by the Petitioner to the sellers of these properties, and also the lack of sufficient documentation of the Petitioner's accumulation of the funds used to purchase these properties.

Regarding the former issue, the Petitioner asserts on appeal that receipts, sales contracts, and invoices in the record for both No. 102 and No. 304 show that he paid for them and owned them. This evidence, which identifies the Petitioner as the buyer and the remitter of funds, is sufficient to show, by a preponderance of the evidence, that he provided the funds used to purchase both properties and was their sole owner.

The latter issue of whether the funds used by the Petitioner to purchase the properties were obtained through lawful means, however, has not been established. As noted above, an investor must document the complete path of the funds invested back to a lawful source. *Borushevskyi v. USCIS*, 664 F. Supp. 3d at 129; *see also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Here, the Petitioner asserts that he used the accumulated earnings from several employers over the course of more than 20 years to purchase the properties used for collateral on the loan, the proceeds of which he claims were transferred to the NCE. Specifically, he states that he earned approximately RMB 150,000 in four years with [redacted] approximately RMB 600,000 in 5 years and 5 months with [redacted] and had an annual salary of RMB 450,000 in his initial position with [redacted] from January 2003 to August 2007. The Petitioner did not state his annual salary for [redacted] in two positions he held from 2007 to the filing of his petition in 2014.

But the Petitioner submitted insufficient evidence to document these claimed earnings and the accumulation of funds necessary to purchase the properties. This evidence consists of a certificate from [redacted] confirming his employment and salary as stated, and another from [redacted] stating that the Petitioner worked as a deputy director since January 2010, earning an annual salary of approximately RMB 1.2 million. In addition to the large gaps in his employment history in comparison with his statement, the record lacks evidence documenting the claimed accumulation of savings, such as bank statements showing the retention of funds over the course of his employment. The record is therefore insufficient to trace the complete path of the funds claimed to have been invested and does not show that they derived from a lawful source.

On appeal, the Petitioner asserts that "the scrutiny level should not be the same" for evidence at this level of the path of funds, which he refers to as the "Third Generation of SOF." But he offers no citation to relevant statute, regulation, or caselaw to support this assertion. As noted above, the Petitioner bears the burden of establishing, by a preponderance of the evidence, his eligibility for the requested immigration benefit. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner also asserts that he has submitted some of the types of evidence listed in the *USCIS Policy Manual* as proof of the source of his investment funds, including his loan agreement, official

correspondence from prior employers, and evidence of property ownership and purchase documentation, and that he is not required to submit all of the listed evidence in order to meet this requirement. 6 *USCIS Policy Manual* G.2(A)(4). While we (and the Chief before us) have acknowledged and considered this evidence in the record above, the *USCIS Policy Manual*, as well as the relevant regulations, require that investors submit evidence identifying any source of capital. Here, the submitted evidence presents an incomplete and insufficient picture of the source and accumulation of the funds used by the Petitioner to purchase the properties, and thus an incomplete path of the investment funds. We note in particular the lack of income tax returns, required in the regulation at 8 C.F.R. § 204.6(j)(3)(ii) in effect at the time of filing, and the gaps in the evidence documenting the Petitioner's salary history.

In addition, the Petitioner asserts that the passage of time since his employment with [redacted] and purchase of No. 102 meant that he no longer had bank records to support his assertions at the time of filing. While we acknowledge the passage of time since the possible creation of certain relevant documents, we find that without additional corroborating evidence, the record lacks sufficient evidence confirming that his purchase of the properties which secured his loan was entirely financed by his earnings. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195; *see also Mo v. USCIS*, 2024 WL 804267, *6 (D.D.C. Feb. 27, 2024) (noting that USCIS did not err in requesting proof of household expenditure from 20 years ago).

For all the reasons discussed above, the Petitioner has not established that the funds he claims to have invested derived from lawful means.

B. Ownership of the Investment Funds

As noted in the Chief's decision, the record shows that the Petitioner's account ending in 3676 at the [redacted] received the proceeds from the loan referenced above, RMB 3.6 million, on October 24, 2014. To transfer these funds out of China, the Petitioner asserts that he sent RMB 320,000 from this account to each of his friends J-H- and C-D-, whom he asserts exchanged most of these funds for $50,000 and then sent the same $50,000 to the Petitioner's [redacted] account ending in 5594. In the case of J-H-, the document titled "Debit Confirmation of Outward Remittance" on [redacted] letterhead appears to show that RMB were exchanged to USD by the [redacted] as part of the transaction to transfer funds to the Petitioner's [redacted] account. However, the same evidence regarding the transfer of funds from C-D-'s [redacted] account does not show a currency exchange but only a transfer of $50,000 that was already in their account. As noted in the Director's decision, the source of the $50,000 in C-D-'s [redacted] account ending in 4012 cannot be traced back to the Petitioner, because the document titled "Application for Settlement Business" on [redacted] letterhead shows only that the Petitioner requested a transfer of RMB 320,000 from his account ending in 3676 to C-D-'s account. The evidence does not therefore demonstrate that the $50,000 that was transferred from C-D-'s account to the Petitioner's [redacted] account, and ultimately transferred to the NCE's bank account, was owned by the Petitioner.

On appeal, the Petitioner asserts that the evidence shows that C-D- "used RMBs lawfully gained from [the Petitioner] to exchange and transfer the said $50,000." But, contrary to these assertions, the evidence does not show that C-D- received RMB 320,000 from the Petitioner, nor does it show that

C-D- exchanged any amount of RMB to USD and deposited the resulting funds in their account to be transferred to the Petitioner's [redacted] account.

As for the remaining funds deposited into the NCE's account, we note that the Petitioner initially stated that he transferred more than RMB 2.8 million to the [redacted] account of a third friend, C-J-, and that she then transferred $463,300 from her [redacted] bank account ending in 8833 to his [redacted] account ending in 5594. Neither his initial statement nor the evidence initially submitted indicated how, where, or when the funds had been exchanged, or how such a large sum of money had been transferred out of China in light of its currency transfer restrictions.

When responding to the Director's request for evidence (RFE), the Petitioner stated that at the time he transferred his funds to C-J-, he did not know the source of her U.S. dollars. He also asserted that he didn't realize, until receiving the RFE and contacting C-J-, that the source of the $463,300 was his own funds, and that C-J- forwarded his more than RMB 2.8 million to 10 individuals to exchange and transfer to her account. Notwithstanding the credibility of these statements, the Chief concluded that the evidence provided was insufficient to show not only that each of the 10 exchangers received the funds C-J- transferred, but also that 6 of the exchangers transferred the exchanged funds to C-J-'s account.

On appeal, the Petitioner resubmits evidence provided in response to the RFE and asserts that it is sufficient, by a preponderance of the evidence, to show both that the exchangers received funds from C-J- and that all of them transferred the exchanged funds to her [redacted] account. While we acknowledge that C-J-'s account statement from [redacted] shows the name of each of the 10 exchangers in the transfer transactions listed, we agree that the record is insufficient to establish that the 6 exchangers named sent exchanged USD funds to C-J-'s [redacted] account. For example, the bank account statement for Y-X- reflects the receipt of RMB 290,000 from C-J-, but the following line states "Sale of Foreign Exchange" and shows a debit of RMB 289,778. There is no indication of the amount or type of currency for the foreign currency exchange, nor is there an indication that funds were transferred. While the statements for the other 5 exchangers named by the Chief do show the currency exchange and transfer of USD funds, they do not identify the banking institution, account number or account holder of the destination bank account.

Per the above discussion, we agree that the Petitioner has not established that the funds deposited in the NCE's bank account were his own, and thus that he put his own funds at risk. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

ORDER: The appeal is dismissed.