U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38374538

Date: JUL. 16, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien 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) (2019).[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.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, was or is capital obtained through lawful means. FOD dismissed the Petitioner's subsequent motion to reopen and motion to reconsider. 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 immigrant investor if they invest the requisite amount of qualifying capital in an NCE. They 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) (2016).

An immigrant 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.

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas (TEA) and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed her petition in December 2017, the relevant law then in existence governs this appellate adjudication.

§ 204.6(e), that funds invested are [their] own"). In addition, the investor must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e).

To show the lawful source of the funds, the immigrant investor must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 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. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the complete path of the funds back to a lawful source.[2] *See 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 indicated on page 6 of her petition that on November 28, 2017 she invested $517,000 in [redacted] LLC, the new commercial enterprise (NCE), which is sponsored by [redacted] pursuant to the Immigrant Investor Pilot Program.[3] The NCE proposes to pool up to $50 million from 100 immigrant investors and will loan the money to [redacted] LLC, the job-creating entity (JCE). The JCE will use the funds to develop and operate a full-service hotel, including condominium units for sale, leasable retail space, and a restaurant in [redacted] California.

The Petitioner asserts that she derived her investment funds through a mortgage loan from [redacted] secured by two properties she owns jointly with her spouse in Vietnam. She asserts that the two properties were purchased using funds from her and her spouse's accumulated business income from two textile manufacturing and export businesses that they own together, as well as from a gift from her father.

The initial filing included a loan agreement signed November 8, 2017, between [redacted] (lender), and the Petitioner and her spouse (borrowers). The agreement lists a maximum loan amount of 11,830,000,000 Vietnamese Dong (VND). A withdrawal slip for a [redacted] account in the Petitioner's name (ending in [redacted] reflects that the Petitioner withdrew VND 11,830,000,000 in cash on November 9, 2017.

In a personal statement dated December 1, 2017, the Petitioner stated, "On [November 10, 2017], I wire transferred $250,000 and $270,000 to my son['s] [redacted] account [ending in [redacted] ... On [November 27, 2017] the funds in the total amount of $515,000 USD were transferred to an escrow

[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).

[3] The Petitioner filed her petition in 2017 and indicated on the petition 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) (2015).

account in the United States as assigned [to] [redacted]... and completed the investment." The Petitioner submitted wire transfer receipts documenting two transactions on November 10, 2017, to her son's [redacted] account, listing the "ordering customer" as [redacted]

In a request for evidence (RFE), FOD requested additional evidence to demonstrate that the Petitioner's invested capital was obtained through lawful means and to document the path of the investment funds. FOD noted that the Petitioner did not provide evidence that she received the loan proceeds from the bank. FOD also noted that the wire transfer receipts for her son's account do not identify from which account the funds originate or document how the funds were transferred from Vietnam to the United States.

In response to the RFE, the Petitioner submitted additional documentation of her accumulated business income, appraisals of her properties, and evidence of the gift from her father. In a personal statement addressing the path of the investment funds, dated, March 6, 2021, the Petitioner stated:

> My investment funds transfer required the lawful private currency swap for full value transaction, with a third party remitter ... On November 9, 2017, I withdrew VND 11,830,000,00 from [redacted] loan disbursement, account [redacted] and gave the cash in [VND] to a local representative, Mr. [redacted] who is doing business at [redacted]... On November 10, 2017, [redacted] made two full value money swaps to his overseas counterpart, [redacted] of [redacted] Poland for $250,000 and $270,000 respectively .... These transactions were done without my involvement. The investment funds were wire transferred to my son's [redacted] account [redacted]

Although specifically requested in the RFE, the Petitioner did not submit bank statements showing the receipt, maintenance, and transfer of loan proceeds. While the Petitioner listed this evidence among the exhibits submitted with her RFE response, it was not included.

FOD determined that the record appears to reflect that the Petitioner's investment funds derived from a different collection of funds from the exchangers, rather than from the Petitioner's mortgage loan, as she asserts. FOD also determined that the record does not demonstrate that either Mr. [redacted] or [redacted] are "licensed and authorized to operate as third-party money exchanger/money services business, or money service operator in Vietnam." FOD concluded that the Petitioner has not established by a preponderance of the evidence that her investment funds were lawfully obtained.

With her motion to reopen and motion to reconsider filed before FOD, the Petitioner asserted that "the currency swap arranged by the third-party exchanger was a legitimate and bona fide transaction and the overseas remitters of the U.S. dollars are registered companies engaged in lawful business practices." She submitted additional evidence, including statements for her [redacted] account ending in [redacted] demonstrating the receipt and withdrawal of the loan proceeds, and evidence that the loan debt was paid back in full. She also submitted a statement from Mr. [redacted] as well as his business registration documents. The Petitioner asserted that Mr. [redacted] business registration documents demonstrate that his business, [redacted] is authorized for the lawful business activity of "foreign currency receipt and payment service."

FOD acknowledged the new evidence submitted on motion but concluded that the Petitioner "failed to provide evidence of the actual exchange and transfer of the VND that Petitioner provided the Exchanger."

On appeal, the Petitioner contends that FOD acted ultra vires in requiring that she document that the funds exchanged with third parties were lawfully obtained. Specifically, the Petitioner states that the regulations at 8 C.F.R. § 204.6(e) and (j)(3) do not require that "an investor trace or document the source of funds used by a currency exchanger or a third-party bank account used to facilitate the transfer." The Petitioner relies on evidence already in the record concerning her investment and asserts that this evidence exceeds the preponderance of the evidence standard. However, upon de novo review, we conclude the record does not establish by a preponderance of the evidence that the Petitioner's investment funds were lawfully obtained for the reasons we will discuss below.

A petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

As noted above, the Petitioner's response to the RFE introduced, for the first time, evidence related to [redacted] and the Petitioner's purported handover of VND 11,830,000,000 to Mr. [redacted] on November 9, 2017. However, the record lacks evidence of what Mr. [redacted] did with the VND 11,830,000,000 in cash he purportedly received from the Petitioner. The Petitioner has not presented objective evidence, such as a receipt issued to her for the transaction, bank records from [redacted] verifying that it received and deposited the Petitioner's funds, or other relevant documentation. Instead, to corroborate her claimed transaction with Mr. [redacted] and [redacted] with the combined motions the Petitioner provided an April 18, 2023 statement from Mr. [redacted] who states that he received VND 11,830,000,000 from the Petitioner and "used this money as reciprocal capital for business activities of Poland partner companies instead of transfer[ing] the money abroad."

The Petitioner does not submit documentary evidence to corroborate Mr. [redacted] statement. The record does not contain documentary evidence demonstrating Mr. [redacted] handover of the VND 11,830,000,000 he purportedly collected from the Petitioner to partner companies in Poland, or any evidence that shows [redacted] direct involvement in the transaction, such as its bank statements or other financial records. While the record includes a business report for [redacted] indicating that it is an operational company established in 2017, the report does not state, nor does the Petitioner submit evidence of, any agreement or contract between [redacted] and [redacted] or Mr. [redacted]

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. *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117 at 129; *see also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

The record contains an advisory opinion from an attorney located in Vietnam, who offers his opinion regarding "the conversion of currency contracts between business establishments with overseas bank accounts and Vietnamese individuals with foreign bank accounts." The opinion describes the following specific scenario as "not prohibited" under Vietnamese law:

> Specifically, both parties agreed to the following agreement: Businesses will transfer US dollar money from their bank accounts in foreign countries to Vietnamese personal accounts in another country and Vietnamese individuals will then transfer money in Vietnam currency to their businesses in Vietnam (or to business's representatives in Vietnam).

This advisory opinion, however, does not overcome the concerns we have raised above based on the record. The Petitioner did not document the agreement she had with [redacted] or [redacted] or that [redacted] had with [redacted] setting forth the terms of the currency swap transaction. Nor does the record corroborate [redacted] receipt of her VND 11,830,000,000 in cash, and [redacted] receipt of the funds she purportedly transferred to [redacted] In fact, as noted above, the Petitioner's initial submission did not identify [redacted] role in the transaction. The record demonstrates that the Petitioner withdrew VND 11,830,000,000 from her [redacted] account, but it does not contain sufficient evidence tracing these funds to the $515,000 transferred from her son's [redacted] account to the NCE's designated escrow account. Further, the scenario described in the advisory opinion involves transfers of U.S. dollars from foreign accounts to Vietnamese personal accounts, and transfers of Vietnam currency to businesses in Vietnam. The Petitioner does not explain how this scenario is relevant to her transfer, which purportedly involved transferring Vietnamese currency to a foreign business in Poland that then transferred U.S. dollars.

The Petitioner has also asserted that [redacted] is a legitimate business that is authorized to provide "money intermediation as a service." With her combined motions before FOD, the Petitioner submitted a "Business Registration Certificate For Limited Company With Two Members And More," for [redacted] issued by the [redacted] Business Registration Division. This document indicates that two of the company's registered lines of business fall under the industry code "6419 – Other monetary intermediation activities (Detail: Pawn service)," and "6492 - Other credit activities (Detail: Foreign currency receipt and payment service)."

In the RFE, FOD provided the Petitioner an opportunity to submit the relevant foreign law demonstrating that Mr. [redacted] and [redacted] can lawfully operate in Vietnam as money exchange businesses. Beyond the business registration certificate for [redacted] submitted with the Petitioner's combined motions, the Petitioner has not submitted evidence to demonstrate that the Vietnamese government defines "other monetary intermediation" or "other credit" activities as currency exchange. Rather, the description on the business registration certificate tends to indicate that [redacted] is authorized to operate as a pawnbroker and to receive foreign currency. Here, the Petitioner does not claim that her transaction with [redacted] involved a pawn service. Further, in the transaction that the Petitioner describes, [redacted] did not receive foreign currency, but received her Vietnam currency and purportedly transferred it abroad.

The Petitioner claims on appeal that USCIS has allowed intermediaries to assist investors in bringing funds to the United States for investment purposes and provides articles that discuss "informal value

transfers" and private currency exchanges in EB-5 investments. However, the issues in this case are not limited to the Petitioner's alleged reliance on intermediaries, such as Mr. [redacted] and [redacted] to assist her in exchanging VND to USD and in remitting funds from Vietnam to the United States. Rather, as we have explained above, at issue is that the Petitioner has not sufficiently documented the complete path of the investment funds, from the loan disbursement she received in Vietnam to the funds [redacted] purportedly sent to her son's [redacted] account that were forwarded to the NCE's escrow account on her behalf.

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 exchange funds used by the third-party exchanger for the currency exchange. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210.

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*, No. 22-1332, 2024 WL 4267522, (D.D.C. Oct 2, 2024); *Sun v. United States Citizenship & Immigr. Servs.,* No. 21-1612, 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 courts have found that petitioners must show the complete path of funds. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5 (D.D.C. June 28, 2023). However, we are not bound by federal district court decisions. *See Matter of K-S-,* 20 I&N Dec. 715 (BIA 1993). Further, as noted above, the D.C. circuit court has affirmed a decision that held USCIS' complete path interpretation of the regulations is its authoritative position as explained in the 1990 precedential decisions. *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *see also 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.

In the present case, there are breaks in the paths of the Petitioner's 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 4232658, at 5. The relevant path includes tracing the funds from their point of origin though *any intermediary accounts*. *See id.* at *6.* (emphasis added). 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; s*ee 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).").

Because the record did not establish the lawful source and complete path of the Petitioner's funds from Vietnam to the United States, the Petitioner must demonstrate by a preponderance of the evidence that the funds occurring after the breaks in the paths derived from lawful means. 8 C.F.R. § 204.6(j)(3);

see also Matter of Ho, 22 I&N Dec. at 210; *see also Borushevskyi v. USCIS*, 664 F. Supp. 3d 117 at 129. The record does not sufficiently demonstrate that the funds ultimately received by the NCE derived from lawful sources as explained above. Therefore, the record remains insufficient to establish by a preponderance of the evidence the claimed lawful sources of the funds invested by the Petitioner in the NCE.

III. CONCLUSION

It is the Petitioner's burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of her purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Because the record did not establish by a preponderance of the evidence that the funds invested by the Petitioner in the NCE were lawfully obtained, we conclude the Petitioner is ineligible for the immigrant investor 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 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.