U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 37017469

Date: JUL. 18, 2025

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) (2021).[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 U.S. economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not demonstrate the lawful source of the $500,000 she invested in [redacted] LLC, an NCE associated with [redacted][2] Citing *Matter of Ho*, 19 I&N Dec. 582-591-92 (BIA 1988), FOD determined that the Petitioner's evidence lacks credibility due to unresolved "material inconsistencies and unsupported assertions" in the record. On appeal, the Petitioner concedes that she initially provided incomplete information regarding the source of the funds that she received as a gift and remitted to the NCE. However, she contends that any inconsistencies that derived from that incomplete explanation were immaterial and that she submitted sufficient independent, objective evidence in response to a request for evidence (RFE) to demonstrate the lawful source of her investment.

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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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[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 Section 203(b)(5) of the Act, 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 her petition in 2021, the relevant law then in existence governs this appellate adjudication.

[2] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (2021).

## 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. 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).

An alien 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, 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, an 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. *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). The record must trace the path of the funds back to a lawful source.[3] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi,* 22 I&N Dec. at 195.

## II. ANALYSIS

The Petitioner asserts that she invested $500,000 into the NCE on June 29, 2021. According to its business plan, the NCE proposes to pool $192.5 million from 385 immigrant investors and will loan the entire amount to [redacted] LLC, the job-creating entity, for the construction and development of an equestrian park located in North Carolina. Bank records document the transfer of $500,000 from the Petitioner's [redacted] account ending in [redacted] to the escrow account designated by the NCE.

On the Form I-526, Immigrant Petition by Alien Entrepreneur, the Petitioner indicated that the source of her investment was a gift. A supporting letter from former counsel explained that the gift came from the Petitioner's common law spouse, who had received the money as a dividend payment from his wholly owned company, [redacted] LLC, in December 2018. The initial evidence included: a letter from [redacted] indicating that the Petitioner's spouse had a balance of $610,602.58 in his savings account ending in [redacted] as of June 28, 2021; a "gift deed" executed by the Petitioner and her spouse; bank records showing that her spouse transferred $600,000 from his [redacted] account ending in [redacted] to her [redacted] account ending in [redacted] on June 28, 2021; [redacted] LLC's Russian business registration records, business license, financial statements and corporate tax returns for the years 2015, 2016 and 2017; a "decision of the sole member of [redacted] LLC" dated December 2018 authorizing a

[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).

40,000,000 Russian ruble (RUB) dividend payment to the Petitioner's spouse; and bank records showing that [redacted] LLC transferred RUB 38,400,000 to her spouse's [redacted] account ending in 0966 on December 21, 2018.[4]

In a request for evidence (RFE), FOD advised the Petitioner the initial evidence was insufficient to show the source of $600,000 transferred from her spouse's [redacted] account ending in [redacted] FOD instructed the Petitioner to provide evidence of her spouse's receipt of the dividend payment in his [redacted] account ending in [redacted] in 2018, and evidence tracing the path of those funds to his [redacted] account.

In response to the RFE, the Petitioner provided documentation addressing FOD's specific request, showing that her spouse deposited funds from the December 2018 dividend payment into his [redacted] account ending in [redacted] on August 27, 2019, as part of a $1,187,000 deposit. The Petitioner explained that the other funds included in this deposit were derived from a RUB 45,000,000 loan her spouse received from [redacted] LLC, which was disbursed in February and December 2018. The response included, in part, evidence documenting the loan agreement, the two loan disbursements, and her spouse's repayment of the loan. The Petitioner also provided a detailed chart, supported by bank records for all referenced accounts, showing the path of the loan proceeds and distributed dividends into her spouse's [redacted] account ending in [redacted].[5] Finally, the Petitioner provided evidence that her spouse received a $600,000 gift from his brother on June 28, 2021, which was also deposited to the [redacted] account ending in [redacted] She submitted dozens of exhibits relating to this gift, as well as a separate chart illustrating how her brother-in-law derived the $600,000 that he ultimately gifted to her spouse.

In the decision denying the petition, FOD observed that "the evidence submitted in response to the RFE indicates Petitioner's capital investment funds appear to have originated only partially from the previously identified dividend distribution," noting the Petitioner "now indicates [her] capital investment also originated from loan proceeds received by Petitioner's spouse and a gift . . . from his brother." FOD emphasized "it does not appear possible that Petitioner's Spouse used the proceeds of the dividend distribution to fund Petitioner's capital investment" as he did not have sufficient funds in his [redacted] account to facilitate the $600,000 gift as claimed until after he received the gift from his brother. The decision states "the new and inconsistent evidence and sets of facts regarding Petitioner's claimed source(s) and path(s) of funds call into question the credibility of the evidence submitted and raise additional evidentiary shortcomings." FOD, citing *Matter of Ho*, concluded that the evidence "lacks credibility and is insufficient to establish that Petitioner's capital investment derived from lawful means."

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[4] The record includes evidence that [redacted] paid RUB 5,200,000 in taxes on the dividend payment and transferred the balance of the RUB 40,000,000 to the Petitioner's spouse.

[5] While the bank documentation for this [redacted] savings account ending in [redacted] documents the deposit of $1,187,000 on August 27, 2019, this evidence indicates that the Petitioner's spouse placed those funds into three interest-bearing term deposit accounts on August 28, 2019, and shows the monthly interest on these accounts posted to his primary [redacted] savings account. The record shows the $1,187,000 was transferred back into the spouse's savings account at the end of a one-year term on August 28, 2020. On September 2, 2020, the Petitioner's spouse transferred the funds to new term deposit accounts and continued to earn interest on these deposits. A letter from [redacted] submitted at the time of filing, states the Petitioner's spouse had $610,602.58 in his saving account ending in [redacted] and a total of $1,187,000 in his three term deposit accounts as of June 2021 when he transferred $600,000 to the Petitioner's account.

On appeal, the Petitioner contends that she has consistently identified the source of her investment as a gift from her spouse and that none of the evidence she submitted contradicts this claim. She alleges that "the only perceived inconsistency was that the cover letter in the initial filing did not disclose the source of all commingled funds" in her spouse's bank account. She concedes that the initial petition may have inaccurately implied that the gifted funds were solely derived from a dividend payment her spouse received from [redacted] LLC. However, she emphasizes that the evidence submitted in response to the RFE establishes that the funds in her spouse's [redacted] account ending in [redacted] were commingled and derived from three lawful sources: a dividend distribution, loan disbursements, and a gift from her brother-in-law. As such, she asserts there was no material inconsistency regarding the source of funds, but rather, the initial filing presented an "incomplete assertion" that "was subsequently clarified and remedied in the RFE response."

The Petitioner further contends that FOD identified "no discrepancies between the documents" and that the initial evidence, while incomplete, included relevant and accurate documentation material to the lawful source of her spouse's gift. She maintains that all funds she invested in the NCE "are traceable to their lawful origins by objective evidence," as required by *Matter of Ho*, and that FOD erred by failing to properly evaluate the submitted documentation. In support of the appeal, the Petitioner submits additional evidence, including statements executed by her and her spouse providing additional clarification regarding the incomplete initial evidence relating to the source of funds.

Upon de novo review, we will withdraw FOD's decision and remand the matter for further review and entry of a new decision.

FOD raised a valid concern regarding the accuracy of the Petitioner's initial claim that the source of the $600,000 gift from the Petitioner's spouse was a dividend payment from [redacted] LLC, as it was implied that the dividend payment was the sole source of the gift. The record shows, and the Petitioner concedes, that the dividend payment was not the sole or primary source of that gift.[6] FOD also correctly observed that it is the Petitioner's burden to resolve any inconsistencies in the record by providing independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. at 591-92.

However, the record supports the Petitioner's claim that she provided objective evidence in response to the RFE that was intended to demonstrate the lawful source of *all* funds held in her spouse's [redacted] savings account at the time he transferred $600,000 to her for investment in the NCE. FOD's decision acknowledges the Petitioner's submission of 84 exhibits in response to the RFE. FOD generally points to "evidentiary deficiencies" and "unsupported assertions" in the record, but does not elaborate. As a result FOD did not provide a sufficient basis for concluding that all evidence provided in response to the RFE lacked credibility. Because FOD disregarded that evidence based on credibility concerns, the decision did not evaluate whether the evidence supported the Petitioner's claim that all funds included in her spouse's gift were obtained from a lawful source.

[6] The record appears to show that the Petitioner's spouse received the dividend payment, subsequently exchanged these funds for U.S. currency, and deposited them into his [redacted] account ending in [redacted] in August 2019. Those funds, at the time he transferred $600,000 to the Petitioner's account, were in her spouse's [redacted] time deposit accounts. Nevertheless, it appears the interest earned on those time deposit accounts accrued in her spouse's [redacted] savings account and was thus commingled with the gift provided by the Petitioner's brother-in-law in June 2021.

Under 8 C.F.R. §§ 103.3(a)(1)(i), (iii), USCIS must fully explain the specific reasons for a denial so that the affected party has a fair opportunity to contest the decision and the AAO has an opportunity to conduct a meaningful appellate review. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). Here, FOD's decision did not adequately explain the specific reasons for denial or advise the Petitioner why her evidence was determined to be insufficient to overcome any inconsistency regarding the source of funds included in her spouse's gift to her, or why it was insufficient to demonstrate, by a preponderance of the evidence, the lawful source of the funds she invested in the NCE.

We are also remanding the matter because the Petitioner has offered additional clarifications and evidence on appeal that FOD did not have an opportunity to review. On remand, FOD should consider the additional documentation, and the previously submitted evidence, and determine if the Petitioner has established eligibility to be classified as an EB-5 immigrant investor, including whether she has presented sufficient documentation documenting the lawful source of the funds she invested in the NCE.

**ORDER:** The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.