U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34070041

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) (2017).[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 Petitioner did not sufficiently document the lawful source of the funds she remitted to the NCE as her EB-5 investment. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner submits additional evidence and maintains that she has demonstrated eligibility for the benefit sought.

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. The alien 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) (2017).

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, 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 filed her petition prior to the enactment of the RIA, 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, an 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. at 195.

II. ANALYSIS

The Petitioner asserts that she invested $500,000[3] in [redacted] LLC, the NCE, which is associated with [redacted] LLC, a regional center. The NCE proposes to pool up to $12,000,000 from up to 24 immigrant investors. The funds invested will be used to finance the NCE's ownership, development, and operation of an [redacted]-branded hotel in [redacted] Florida.

The record indicates that on August 2, 2017, the Petitioner received a $550,000 loan from [redacted] LLC, a Florida limited liability company, which she secured with real property located in [redacted] Venezuela. Bank records confirm the loan disbursement was deposited to a [redacted] account owned by the Petitioner and her spouse. On August 4, 2017, the Petitioner transferred $550,000 from this account to the [redacted] bank account designated by the NCE's escrow agent, which issued a letter confirming receipt of the Petitioner's $500,000 EB-5 investment and a $50,000 administrative fee.

FOD, after issuing a notice of intent to deny (NOID) and reviewing the Petitioner's response, denied the petition, concluding she did not meet her burden to demonstrate that the capital she invested was obtained through lawful means. Specifically, FOD determined the Petitioner did not demonstrate: (1) that she was the registered owner of the [redacted] Venezuela property she used to secure her loan from [redacted] LLC, and (2) the lawful source of funds she used to purchase that property.

On appeal, the Petitioner asserts that FOD erred as a matter of fact in concluding that her invested funds were not obtained through lawful means. She submits additional evidence and asserts that she met her burden to establish her eligibility for the EB-5 classification.

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[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 indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2017).

After reviewing the totality of the evidence, including the Petitioner's appeal, we conclude she has demonstrated that she owns the property used to secure her loan from [redacted] LLC in 2017. However, for the reasons provided below, she has not sufficiently documented the source of funds used to purchase that property in 2008. Further, although not addressed in FOD's decision, she has not demonstrated that the loan she received from [redacted] LLC was the sole source of her $500,000 investment in the NCE. As such, she has not established, by a preponderance of the evidence, that the funds she invested in the NCE did not derive, directly or indirectly, from unlawful means.

At the time of filing, the Petitioner provided: a "Source of Funds Report" prepared by a consulting firm; a copy of her loan agreement with [redacted] LLC; evidence that she received the $550,000 loan disbursement and transferred the funds to the NCE's escrow account; and evidence related to [redacted] LLC's acquisition of the funds it loaned to her. The loan agreement indicates "this note is secured by personal property" and states the address of real property located in [redacted] Venezuela. As appendices to the "Source of Funds Report," the Petitioner provided, among other items, her résumé summarizing her employment history in Venezuela, and copies of her Venezuelan individual income tax returns for the years 2012 through 2016. According to her résumé, the Petitioner had been employed as president of [redacted] since March 2004 and previously worked as the president of [redacted] from 1996 until November 2014.[4]

In the NOID, FOD observed that the Petitioner's loan from [redacted] LLC was secured by personal property and emphasized that the record lacked any evidence or information regarding the source of funds the Petitioner used to purchase that property. FOD advised the Petitioner of her burden to demonstrate "the complete source, accumulation, maintenance and . . . path of funds."

The Petitioner's response to the NOID included a document registering the sale of the [redacted] Venezuela condominium property that was filed with a local public registry office in [redacted] Venezuela on February 9, 2009. This document identifies a Venezuelan company [redacted] (represented by its two directors) as the seller, and the Petitioner as the purchaser, and states the property was sold for 1,960,330.00 Venezuelan Bolivares (Bs.). The company directors declared that the seller had received the full amount from the Petitioner under the terms of a purchase contract signed between the parties on November 21, 2008. The Petitioner also provided a letter from a certified public accountant, who stated that she acquired the residential condominium property for Bs.1,960,330 on November 21, 2008. The accountant noted, without further explanation, that "the source of the funds to purchase the property was derived from Petitioner's accumulated earnings."

In its decision, FOD acknowledged the accountant's assertion that the Petitioner purchased the condominium with her accumulated earnings but emphasized that the NOID response did not include evidence of those earnings. Accordingly, FOD concluded the Petitioner did not provide sufficient evidence of the source, accumulation, and maintenance of the funds she used to purchase the property.

In her brief on appeal, the Petitioner mentions her previously identified employment as president of [redacted] but asserts that "throughout her professional career, [she] provided various

[4] On her Form I-526, Immigrant Petition by Alien Entrepreneur, the Petitioner indicated her employment with [redacted] from January 2004 to the present. According to the Petitioner's résumé, her position with this company involved "marketing and sales in funeral services" while her position with her prior employer involved responsibility for "the overall administrative function" of a cemetery.

companies business consulting services." She states that she provided such services to "different Venezuelan companies" in 2008 and used the remuneration she received to purchase the condominium in Caracas.

In support of this claim the Petitioner submits a self-prepared "income report" for the period November 1, 2008, through December 31, 2008. The report includes a "Detail of Income" chart identifying the source of the funds she purportedly used to purchase the condominium from [redacted] She indicates that she issued invoices to five clients in October and November and received total payments, by check, in the amount of Bs. 1,960,330, between November 21 and December 19, 2008. The Petitioner explains that "the above-detailed checks for the collection of the invoiced fees were issued and deposited to the name of the company [redacted]" for the purchase of the condominium property." She further states that "the total amount of Bs. 1,960,330.00 (USD 380,298.85) comes from legitimate activities and verifiable lawful professional practice." The Petitioner's income report is accompanied by an "Independent Public Accountant's Assurance Report" from a Venezuelan public accountant.

In addition, the Petitioner provides the following documents: "customer copies" of five handwritten invoices for "professional fees" which identify the Petitioner as the issuing service provider;[5] copies of five deposit slips indicating that checks with numbers corresponding to those identified on the Petitioner's "income statement" were deposited into a [redacted] account owned by [redacted][6] statements from three of the five clients named in the invoices, confirming their payment of the invoiced fees by check; and "proofs of deposit" issued by [redacted] in May 2024, confirming that the five referenced check deposits were made to the account owned by [redacted] in November and December 2008.

Finally, the Petitioner submits copies of her Venezuelan Statements of Accumulated Tax Withholdings for the years 2005, 2006 and 2007, which contain information regarding her monthly salary payments and taxes withheld. In each year, the "withholding agent" is identified as [redacted]

Notwithstanding the Petitioner's new claims and evidence on appeal, the record is insufficient to document the source of funds she used to purchase the property that secured her $550,000 loan. It is the Petitioner's burden to show that her investment did not derive, directly or indirectly through unlawful means by tracing the path of funds back to a lawful source. *See* 8 C.F.R. § 204.6(e); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

As noted, prior to the denial of the petition, FOD provided the Petitioner an opportunity to explain and document the source of the Bs. 1,960,330 she used to purchase the condominium property that later secured her 2017 loan from [redacted] LLC. Her response with respect to this specific issue consisted solely of a statement from an accountant who indicated "the source of the funds to purchase the property was derived from Petitioner's accumulated earnings." The record contained no evidence of the Petitioner's accumulation and maintenance of earnings leading up to the 2008 condominium

[5] The address the Petitioner provided on these invoices is the same address provided elsewhere in the record for [redacted]

[6] The deposit slips include the signature and Venezuelan identity number of the depositor and show that some of the checks were deposited by the Petitioner and the others by her spouse.

purchase and therefore FOD correctly determined that the Petitioner did not meet her burden to demonstrate the lawful source of the funds she used for this property purchase.

On appeal, rather than providing additional evidence in support of her previous claim that she used "accumulated earnings" to purchase the condominium in 2008, the Petitioner asserts for the first time that she paid for the property with check payments she received from five business consulting clients and then signed over to the property seller. The newly submitted claims and evidence are not sufficient to satisfy the Petitioner's burden for several reasons.

First, the Petitioner has not explained why she previously claimed that she purchased the condominium property with "accumulated earnings" if she did in fact obtain the funds through the means described on appeal. Given her indication that she was employed as the president of two separate entities between 2004 and 2008, evidence of accumulated earnings would reasonably include supporting documentation demonstrating her receipt of salary payments from these companies and evidence that such earnings were deposited, accumulated and maintained in the Petitioner's bank account in the period leading up to the property purchase in late 2008.

Second, the Petitioner's claim that she has been carrying out a "verifiable lawful professional practice" as a business consultant "throughout her career" is not supported by the previously submitted evidence and constitutes a material change to her claimed employment history. A petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. at 175 (Assoc. Comm'r 1998).

As noted, the Petitioner indicated on the Form I-526 that she had been employed as the president of [redacted] from 2004 through the date of filing the petition in 2017, and states in her résumé that she was previously employed as the president of another Venezuelan company [redacted] between 1996 and 2014. The Petitioner has provided tax withholding documentation indicating that she earned salary income from [redacted] between 2005 through 2007. Similarly, the Petitioner's Venezuelan individual income tax returns for the years 2012 through 2016 indicate that her income was derived from salaries and wages.[7] Neither the Petitioner's own prior statements nor the supporting evidence reflect that she had any other source of income.

Finally, we note the earnings the Petitioner now claims she received as a business consultant in 2008, without additional corroboration, are disproportionately high in comparison to the salary earnings that are recorded in her personal tax documentation. For example, the Petitioner submits an invoice on appeal which indicates she billed a single client Bs. 1,133,000 (over $214,000) in professional fees for the preparation of a "feasibility study for the development of a new service sales program." The Petitioner's Statement of Accumulated Tax Withholdings indicates that she received an annual salary of Bs. 99,500 from [redacted] in 2007. Based on this evidence, the Petitioner now claims that the fee she charged for a single consulting project in 2008 was 11 times higher than the annual salary she received as a company president in the prior year. In addition, we note the Petitioner's gross salary earnings from all sources in the years 2012 through 2015, as reported in her individual income tax returns, were Bs. 447,790, Bs. 445,232, Bs. 526,666, and Bs. 653,400, respectively. All

[7] The Petitioner's tax returns do not identify her employer(s) during this period.

of these annual earnings figures are significantly lower than the amount the Petitioner purportedly charged one client for a single consulting project in 2008.

Considering these documented salary figures, the Petitioner's assertion that she received Bs. 1,960,330 from her previously undisclosed independent consulting practice, and specifically from five client projects completed over the course of several weeks in 2008, lacks credibility. Further, as noted, we cannot overlook her previous claim that she was employed as the president of two different companies at this time in the years leading up to the property purchase, and her prior indication to USCIS that she obtained the Bs 1,960,330 through "accumulated earnings."

For all the reasons discussed, the evidence submitted on appeal is insufficient to demonstrate that the Petitioner lawfully obtained the funds she used to purchase the condominium in 2008. The Petitioner must resolve inconsistencies and incongruities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We acknowledge the Petitioner's submission of an accountant's report that expresses "limited assurance" about the income report detailing her collection of consulting fees and deposit of those fees into the accountant held by [redacted] in 2008. However, the accountant notes that the Petitioner herself was responsible for the preparation and presentation of the amount of her income, "including the completeness, legality and veracity of the documents provided," and responsible for "the assertion that each and all items of income detailed in the list comes from legitimate activities and demonstrably lawful professional practice." Further the accountant's report does not identify with specificity what documents she reviewed to conduct her limited assurance activities as she references only "bank account statements, among other inherent documents." We note that bank account statements are not among the documents the Petitioner has submitted in support of her appeal. For these reasons, the accountant's report has limited probative value with respect to demonstrating the lawful source of funds the Petitioner used to purchase the condominium property in 2008.

The record does not contain the Petitioner's 2008 tax returns or other tax documentation indicating that she reported her claimed income as a business consultant to the Venezuelan government, or any other financial documentation from this period, such as financial statements for her claimed consulting business, bank records, or other proof of her business activities as a professional consultant. As noted, the evidence of record does not show that she reported consulting income to Venezuelan tax authorities in the years preceding or following the property purchase, notwithstanding her new claim that she has provided such services to business clients "throughout her career." In addition, the evidence submitted on appeal to document the individual client transactions, which the Petitioner claims wholly financed the purchase of her condominium in 2008, is incomplete. The evidence shows the amounts allegedly billed and deposits made to the property seller but does not contain, for example, copies of the checks the Petitioner claims she received as payment and deposited to the seller's account.

For all these reasons, the evidence provided on appeal does not overcome FOD's adverse determination. The evidence does not establish the lawful source of the funds the Petitioner used to purchase the condominium property in 2008.

In addition, although not raised in FOD's decision, the record contains an additional deficiency related to the lawful source of the funds the Petitioner remitted to the NCE's escrow account. Specifically,

while the record confirms that she received the $550,000 loan disbursement from [redacted] LLC in her [redacted] account, and that the lender had obtained those funds through lawful sources, the record lacks sufficient evidence demonstrating the lawful source of other funds held in the same account at the time the Petitioner remitted funds to the NCE's account.

The record includes a partial transaction history for the [redacted] account belonging to the Petitioner and her spouse for the period from July 10, 2017, through August 4, 2017. This document shows that the account had an opening balance of $109,997.88 and a balance of $111,555.04 when [redacted] LLC transferred the loan disbursement of $550,000. Therefore, the record does not demonstrate that the Petitioner's EB-5 investment was entirely financed by the loan proceeds she received on August 2, 2017, as the amount loaned to the Petitioner was commingled with the funds already present in her bank account.

The record does not include any previous bank statements for the Petitioner's [redacted] account or explain and document the source of the $111,555.04 maintained in the account at the time of the loan disbursement. We acknowledge the Petitioner's submission of Venezuelan tax returns as evidence of her and her spouse's salary earnings for the years 2012 through 2016. The tax returns establish that the family had a source of income during this period but are insufficient to demonstrate that the Petitioner and/or her spouse deposited, accumulated and maintained their salary earnings in their U.S.-based [redacted] account ending in [redacted]

Without corroborating evidence of the source of the $111,555.04 held in this account, the Petitioner has not sufficiently established that the funds she claimed to have invested in the NCE did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e). The record, including evidence she offers on appeal, does not sufficiently document the complete path of her purported EB-5 investment and trace it back to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

III. CONCLUSION

For the reasons we have discussed above, we conclude the Petitioner has not established, by a preponderance of the evidence, her eligibility for this classification. 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. Here, the Petitioner has not made such a showing.

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.