U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35231937

Date: JULY 21, 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).[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 that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees.

FOD denied the petition, concluding the record did not establish: 1) that the Petitioner invested or was in the process of investing the required amount of capital of at least $500,000; 2) the lawful source of funds; and 3) [redacted] the new commercial enterprise (NCE) will create at least 10 full-time positions for qualifying employees. In the denial, FOD declined to defer to the exemplar application associated with the NCE and the favorable determinations related to job creation, concluding that the underlying facts have materially changed. 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. 206, 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). To show the lawful source of the funds, an investor must

[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* 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed the petition on October 3, 2019, the relevant law in existence on that date governs this appellate adjudication.

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. 206, 210 (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. *Id.*

II. ANALYSIS

The Petitioner claimed that he invested $500,000 into the NCE, which is affiliated with [redacted] LLC. The NCE proposed to pool up to $7,200,000 from 14 immigrant investors and lend the entire amount to [redacted] LLC, the job creating entity (JCE). The JCE intends to build and operate a [redacted] hotel in [redacted] Florida.

FOD determined that the Petitioner did not demonstrate that the investment derived from lawful sources. Although the Petitioner claims on appeal that FOD made "multiple misinterpretations of facts," FOD's misstatements did not materially impact the ultimate determination. We conclude, as discussed below, that the Petitioner did not resolve inconsistencies in the source of the purported dividends paid out to the Petitioner from his company or demonstrate that the funds that transferred out of his company's bank account derive from lawful sources.

The Petitioner claimed that the funds invested on September 10, 2019, to the NCE originated from dividends that he received from his company, [redacted], located in Nigeria. The Petitioner indicated that he registered the company in 1999, but [redacted] had no business activities between 2000 to 2005 and generated only a small amount of business activity between 2005 to 2014.[2] The Petitioner states that the business activities started to ramp up in 2014 and the Petitioner left his employment at [redacted] in 2017 to dedicate himself to this company. The company's Articles of Association from 2018 show that the Petitioner and another individual named Mrs. [redacted] are directors, each holding 400,000 and 100,000 shares, respectively.

To demonstrate that the source of funds comes from the dividend payout from [redacted], the Petitioner submitted a letter from [redacted] administrator dated August 26, 2019, entitled "Liquidation of Accumulated Dividends and Bonuses." The letter indicates that 55% of Dividend (2008-2018) or 118,000,000 Naira (NGN) and 100% of Director's Bonus (2008-2018) or 82,200,000 NGN "will be executed as requested [by the Petitioner]" and that "the USD equivalent of the total (200.2 Million NGN) will be paid into the Petitioner's nominated account at the prevailing exchange rate at the point of execution." However, the Petitioner has not submitted sufficient evidence demonstrating that in 2018, prior to the dividend payout, the value of his equity interest in the company was at least 200,000,000 NGN. The Petitioner has only provided [redacted] financial statements from 2015 to 2018[3] and the financial statements ending in December 2018 indicate [redacted] total equity as 91,160,687 NGN, much less than the investment amount of 200,000,000 NGN.

Moreover, the Petitioner has not sufficiently shown the value of company's profits and appraisal over 10 years specified in the administrator's letter, from 2008 to 2018[4] or corroborated his ownership

[2] In the affidavit submitted with the NOID response, the Petitioner stated that [redacted] "was not operational until 2010."
[3] The Petitioner did not provide [redacted] financial statements from 2019.
[4] The Petitioner submitted [redacted] tax certificates, but they only span from 2013 to 2020.

interest accumulated in the company at the time the dividends and bonuses were executed. Given the Petitioner's claim that the company had no or very little business activities from 2008 to 2014, and the fact that financial statements from 2015 to 2018 do not indicate sufficient equity or profits of the company, the evidence does not verify that the Petitioner's equity interest was worth 200,000,000 NGN as claimed or confirm the value of his equity. As such, the Petitioner has not sufficiently demonstrated that the funds deposited to the NCE originate from the company's dividends.

Assuming arguendo that the record shows that the funds originate from the company's dividends, the Petitioner still did not demonstrate the path of funds from [redacted] to the NCE. Although the Petitioner submitted a chart describing the path of funds from [redacted] going directly to the NCE, the chart did not adequately address the intermediary accounts through which the funds moved through, including the third-party exchanger that the Petitioner utilized to exchange the funds in Nigerian currency to U.S. dollars.

The Petitioner submitted statements from [redacted] bank account ending in [redacted] in [redacted] showing various transfers and deposits from January 2019 to September 2019 in Nigerian currency. The Petitioner claimed that [redacted] made "4 outgoing transfers of 50M NGN" from [redacted] on August 28, 2019 and August 29, 2019 to exchange Nigerian Nairas to US dollars (as opposed to using the bank for this service). The Petitioner also submitted statements from [redacted] bank account ending in [redacted] showing "200M NGN coming back" to [redacted] between August 29, 2019 to September 6, 2019 in U.S. dollars, in the amount of $550,000. On September 6, 2019, [redacted] wired $550,000 to the Petitioner's [redacted] account ending in [redacted] in California. This amount was subsequently deposited to the NCE on September 10, 2019.

However, FOD issued a notice of intent to deny (NOID) because the Petitioner's initial filing did not demonstrate the source of funds in [redacted] account and the bank statements show separate deposits into [redacted] from several unspecified companies that make up the investment amount of $550,000 between August 29, 2019 to September 6, 2019. FOD requested information regarding any and all third-party exchangers the Petitioner used to exchange the funds in Naira into U.S. dollars, including the entities that the Petitioner and exchangers own or have business dealings. In response to the NOID, the Petitioner revealed that he used a company named [redacted] for currency exchange and provided an invoice from [redacted] dated August 23, 2019, in the amount of 200,000,000 NGN. The Petitioner claimed that despite his request to obtain information on the companies that [redacted] used to exchange the funds into U.S. dollars, he could not obtain any information from [redacted] as these are privately held companies.

The plain language of 8 C.F.R. § 204.6(e) and (j)(3) supports that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5 (D.D.C. June 28, 2023). 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. 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)."). USCIS' complete path interpretation of the regulations is its authoritative position as explained in *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024). *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.

The Petitioner has not produced sufficient documentation to demonstrate the lawful source of funds purportedly exchanged by [redacted]. The Petitioner claimed that the funds in [redacted] bank account in Nigeria were released to various companies and returned as U.S. dollars and aggregated in [redacted] bank account, which were later transferred to the Petitioner's bank in California to make up the total investment amount. However, the Petitioner has not adequately documented the lawful source of the exchange funds by a preponderance of the evidence standard. As noted by FOD, the funds that returned in U.S. dollars in [redacted] bank account were acquired through various unspecified companies (such as [redacted] and the Petitioner has not documented the sources of these various deposits. Also, the Petitioner provided another set of [redacted] bank statements with a different account number ending in [redacted] but it is unclear whether the investment funds also passed through this bank account. The Petitioner must resolve these inconsistencies with independent. objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner has not done so.

On appeal, the Petitioner focuses on [redacted] legitimacy as a money exchanger. The Petitioner contends that there is no evidence of foul play by [redacted] as implied by USCIS and the reason for [redacted] loss of license stems from the regulatory changes by the Central Bank of Nigeria "as it relates to the operations of BDCs [Bureau De Change]." However, the Petitioner has not provided sufficient information to explain the deficiencies and inconsistencies noted by FOD regarding the path of funds. The Petitioner further contends that FOD made "an incredible error" in interpreting [redacted] invoice, as FOD misstated that "530,000 NGN was exchanged for $200,000 USD," when in fact, 200,000,000 NGN was exchanged for $530,000 USD. We acknowledge that FOD misread the figures and withdraw this statement. However, this error is not material to the decision at hand as the issue is not about how much money was exchanged but whether the Petitioner has sufficiently demonstrated the sources of the exchanged money that make up the investment.

Therefore, we agree with FOD's conclusion that the Petitioner did not establish that his investment funds came from a lawful source. In visa petition proceedings, the 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.

FOD further determined that the Petitioner has not sufficiently demonstrated that the Petitioner invested the required amount of capital and that the NCE is likely to create at least 10 full-time positions for qualifying employees. However, in light of our discussion on the lawful source of funds, we will reserve our opinion on the remaining eligibility issues for future consideration should the need arise. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

As the evidence in the record does not sufficiently demonstrate the lawful source of funds, we conclude that the Petitioner has not established by a preponderance of the evidence that he is eligible 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.