U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36765716

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). 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.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the capital invested or actively in the process of investing by the Petitioner has been obtained through lawful means. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. The Petitioner asserts that the denial did not fully analyze the supporting documents in the record regarding the source and path of funds.

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 their 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 their own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the new commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. 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.

II. ANALYSIS

The Petitioner asserted eligibility based on an investment into [redacted] the new commercial enterprise (NCE) in the amount of $500,000 on December 14, 2017.[1] The NCE, affiliated with [redacted] LLC, proposed to pool $50 million from 100 immigrant investors and lend the entire amount to [redacted] LLC, the job creating entity (JCE). JCE intends to redevelop the section of the [redacted] (known as [redacted] into a new commercial and industrial center in [redacted] New York.

The Petitioner claimed that the source of his investment funds of $500,000 derives from purchasing gold taels using his employment income from 1993 to 2004 and subsequent purchase and sale of real estate properties in Vietnam.[2] FOD determined that the record did not corroborate the Petitioner's claims regarding the purchase of gold and sale of real properties, and the Petitioner did not establish the source of his investment funds. As we conclude, as discussed below, that the Petitioner has not sufficiently documented the path of funds he invested in the NCE, we will reserve our opinion on the lawful source of the Petitioner's acquisition of gold and profits from sale of real properties 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).

In his "Statement on the Process of Transferring Funds," the Petitioner explains that on December 11, 2017, the sale proceeds of his land in the amount of Vietnamese Dong (VND) 13,000,000,000 was deposited into [redacted] bank under his name with account number ending in [redacted] On the following day, the Petitioner made cash withdrawal from this [redacted] account in the amount of VND 12,585,144,000. The Petitioner claims that he handed the cash to [redacted] a representative in [redacted] from [redacted] under the watch of [redacted] a [redacted] employee,[3] and other bank employees. Although the Petitioner claims to have misplaced this cash transaction's receipt "due to negligence," he submitted a receipt from [redacted] representative which states that the Petitioner's funds were "collected" by and "transferred" through [redacted] The record indicates that [redacted] utilized its [redacted] account ending in [redacted] in Singapore to transfer the investment funds to the NCE on behalf of the Petitioner.

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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 INA 203(b)(5), 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 his petition on December 21, 2017, the relevant law in existence on that date governs this appellate adjudication. The Petitioner also indicated 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) (2017).

[2] The Petitioner claimed that he sold 20 taels of gold for VND 165,000,000 in January 2005 and used a portion of this money to purchase a land lot in the amount of VND 130,417,875. Subsequently in October 2007, the Petitioner sold this land for VND 1,050,000,000 and used the funds to purchase additional 66 taels of gold. Then in August 2008, the Petitioner purchased another land lot, for VND 2,560,000,000 with funds from selling 125 taels of gold from his gold savings. The Petitioner claims that in November 2017, he sold this land lot for VND 13,000,000,000 and used this money for his investment.

[3] The Petitioner explained that [redacted] is "a company that supports and counsels on legal matters in addition to introducing investment projects" and submitted his contract with [redacted]

FOD determined that the Petitioner did not sufficiently document the path of funds of the claimed investment, especially how the funds transferred through [redacted], a third-party entity based in Singapore. On appeal, the Petitioner provides the same documents previously submitted with his response to the NOID and contends that FOD did not fully analyze the record. The Petitioner also claims that this type of "informal cash swap" is "entirely lawful under Vietnamese law."

Upon de novo review of the record, we agree with FOD's determination in denying the petition. Here, the record does not demonstrate the complete path of funds as required by the regulations and court decisions. The plain language of 8 C.F.R. § 204.6(e) and (j)(3), as well as precedent court decisions, require petitioners to identify the source of funds and document the complete path of funds. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. 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. The relevant path includes tracing the funds from their point of origin though any intermediary accounts. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5-6 (D.D.C. June 28, 2023). 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). "These are hypertechnical requirements to serve a valid government interest; i.e., to confirm that the funds utilized in the program are not of suspect origin." *Spencer Enters., Inc., v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001).

The record lacks copies of bank statements showing the path of funds from Vietnam to Singapore, then to the NCE's account in the United States. The Petitioner did not provide complete bank statements of [redacted] account which purportedly held the proceeds from his land's sale. The Petitioner also did not explain how his cash given in person to [redacted] representatives moved from Vietnam to [redacted] bank account in Singapore. The record does not contain complete bank statements of [redacted] account that purportedly exchanged the Petitioner's funds into U.S. dollars and deposited to the NCE. The Petitioner provided two pages of bank statements from [redacted] account,[4] but all transactions on these pages are completely redacted except for the single line item on December 14, 2017, showing a transfer of $550,025 to the NCE's escrow bank and a total balance of $676,800.96. Without complete bank statements, the Petitioner has not shown that the money in this intermediary bank account derives from lawful sources. Therefore, FOD correctly concluded that there are breaks in the path of the Petitioner's funds moving from Vietnam to Singapore, then to the United States.

On appeal, the Petitioner contends that the Petitioner's money stayed in Vietnam and this "informal cash swap" was done "entirely in Singapore" through [redacted] Specifically, the Petitioner states [redacted] had "sufficient funds in it[s] Singapore account to transfer the same amount of VND from Petitioner, in USD, to transfer from their [redacted] Singapore account to the NCE." By this, the Petitioner acknowledges breaks in the path of the Petitioner's funds moving from Vietnam to Singapore. The Petitioner also asserts that this type of currency swap is lawful under the Vietnamese laws and refers to the legal opinion letter from an attorney in Vietnam, explaining that [redacted] a Singapore-based

[4] The Petitioner previously asserted that [redacted] is "no longer in operation" and "any documents relating to [redacted] . . . are not available to Petitioner, despite their due diligence to obtain such records." However, on appeal, the Petitioner does not raise this claim or explain how he was able to secure redacted bank statements from [redacted] account in Singapore.

company, does not need to have proper registration to do business in Vietnam. However, the issue here is whether the record demonstrates that the funds received by the NCE derive from lawful sources.

As the Petitioner has not shown a complete path of the funds, including the intermediary bank account through which currency exchange occurred, the Petitioner has not established that the investment funds derive from lawful means. 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.

III. CONCLUSION

For the reasons we have discussed above, we conclude that the Petitioner has not established, by a preponderance of the evidence, his eligibility for the classification. Specifically, the Petitioner has not demonstrated the lawful source of his purported EB-5 investment by showing the complete path of the funds. *See* 8 C.F.R. § 204.6(j)(3), (e); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

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.