U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42471352

Date: JUN. 04, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

Form I-526E, Immigrant Petition by Regional Center 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). 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. Aliens may invest in a project associated with a regional center in the United States, which has been designated by the Secretary of Homeland Security based on a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. *See* section 203(b)(5)(E)(i) of the Act.

USCIS denied the petition on multiple grounds without first issuing a request for evidence (RFE) or notice of intent to deny (NOID), indicating that the decision was made "as a matter of discretion" for "failure to submit the required initial evidence." USCIS concluded that the Petitioner's submission did not include all "Required information" listed at section 203(b)(5)(L)(ii) of the Act and therefore did not comply with the requirements of 8 C.F.R. § 103.2(b)(1) or meet her burden to demonstrate that the funds she invested or was actively in the process of investing in the NCE were obtained from a lawful source and through lawful means. USCIS further determined that the Petitioner, who indicated she was actively in the process of investing the full required amount of $800,000 at the time of filing and would complete her investment no later than May 31, 2023, did not interfile evidence showing that she ultimately invested the required amount of capital in the NCE and provide evidence of the source of funds used. 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

The term "capital" does not include any assets directly or indirectly acquired by unlawful means, including any cash proceeds of indebtedness secured by such assets. Section 203(b)(5)(D)(ii)(III) of

the Act. An alien investor must demonstrate that the required amount of capital they have invested, or are actively in the process of investing, and any funds used to pay administrative costs and fees associated with their investment, were obtained from a lawful source and through lawful means. Section 203(b)(5)(L)(i) of the Act. Section 203(b)(5)(L)(ii) of the Act, "Required information," states the Secretary of Homeland Security shall require than an alien investor's petition under this paragraph contain, as applicable –

(I) business and tax records, or similar records, including –
  (aa) foreign business registration records;
  (bb) corporate or partnership tax returns . . . and personal tax returns, including income, franchise, property, (whether real, personal or intangible), or any other tax returns of any kind filed during the last 7 years . . . with any taxing jurisdiction within or outside the United States by or on behalf of the alien investor; and
  (cc) any other evidence identifying any other source of capital or administrative fees;

(II) evidence related to monetary judgments against the alien investor . . . and evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving possible monetary judgments against the alien investor from any court within or outside the United States.

Gifted or borrowed funds may not be counted toward the minimum capital investment requirement unless such funds were gifted or loaned to the alien investor in good faith and were not gifted or loaned to circumvent any limitations imposed on permissible sources of capital, including proceeds from illegal activity. Section 203(b)(5)(L)(iii)(I) of the Act. If funds invested are gifted to the alien investor, the petition must include the records described at section 203(b)(5)(L)(ii)(I) and (II) for the donor.

II. ANALYSIS

The Petitioner stated that, on November 14, 2022, she transferred $135,000 from her [redacted] account into the escrow account of [redacted] (the NCE), which is sponsored by [redacted].[1] On October 31, 2022, she remitted $65,000 to the NCE as payment for the administrative fee associated with her investment. The Petitioner provided: (1) a letter from the NCE's manager, confirming receipt of these payments and instructing her to "proceed to deposit the balance of $665,000 USD to complete your investment in the Company by no later than May 31, 2023"; and (II) an "Investment Confirmation Self-Certification" confirming her intention to deposit the balance of $665,000 into the NCE's escrow account on or before that date.[2]

[1] According to its business plan, the NCE proposes to raise up to $24.8 million from 31 immigrant investors and will use those funds to make a preferred equity contribution to [redacted], the job-creating entity (JCE). The JCE will develop and operate a [redacted] 200-room hotel in [redacted] California.

[2] The record indicates the NCE will principally be doing business within a targeted employment area. Therefore, the requisite amount of capital was downwardly adjusted from $1,050,000 to $800,000. *See* section 203(b)(5)(C)(ii) of the Act.

The Petitioner indicated that the $865,000 used for her investment and administrative fees would derive solely from a gift from her father. She provided her father's "Affidavit of Gift" declaring that he was freely giving the Petitioner an irrevocable gift of $865,000 to use for her capital investment in the NCE. The Petitioner also submitted a "Source of Funds Declaration" from her father, who provided details about his partial ownership of [redacted], a United Arab Emirates (UAE) company that he established with his brothers in 1975. He explained that as an employee and shareholder of the company, he is entitled to a monthly income of 20,000 UAE dirhams (AED), and "shareholder profit distributions determined by the performance of the business at the time of distribution." The Petitioner's father further stated that the funds he gifted to the Petitioner would be in the form of dividend distributions paid directly to her [redacted] account ending in [redacted] noting that, pursuant to a distribution agreement signed by its shareholders, [redacted] would remit AED 319,725 (approximately $87,060) to this account monthly, for a period of ten months, between June 1, 2022 and March 1, 2023.

The Petitioner's initial evidence included a copy of the "Agreement on Distribution" signed by the shareholders of [redacted] on June 1, 2022, detailing the payments to be made to the Petitioner's account, and stating that these distributions were being granted to her father "based on his capacity as a shareholder." The Petitioner also provided, among other evidence, a 2021 amendment to [redacted] memorandum of association, its financial statements for 2020 and 2017, its business licenses, evidence of its business activities, and bank statements, including statements for its [redacted] account ending in [redacted], which was used to make transfers to the Petitioner. Bank records show that the company made five AED 200,000 transfers to the Petitioner's [redacted] account between June 17, 2022, and November 10, 2022, and that she used these funds to make her $65,000 and $135,000 remittances to the NCE.

USCIS denied the petition on several grounds, in part concluding that the Petitioner's January 31, 2023 filing did not include the "required information" specified at Section 203(b)(5)(L)(ii) of the Act, specifically, seven years of tax returns for herself and her father, business registration records for all companies that employed her or her father, and evidence related to any monetary judgments against them.[3] Accordingly, USCIS concluded that the Petitioner did not demonstrate that the funds she invested, or was actively in the process of investing, were obtained from a lawful source and through lawful means, and separately determined that Petitioner did not comply with the regulation at 8 C.F.R. § 103.2(b)(1) (stating that a petitioner must establish eligibility at the time of filing and that each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions).

USCIS further concluded the Petitioner did not demonstrate that she invested the required amount of capital in the NCE because the record at the time of the denial did "not include any correspondence or interfiling . . . evidencing the completion of Petitioner's investment in the NCE."

On appeal, the Petitioner asserts that she submitted extensive evidence showing the lawful source of the funds she used to pay her $65,000 administrative fee and the initial $135,000 towards her

[3] USCIS further noted that since the money the Petitioner's father gifted to her originated with [redacted] she was required to demonstrate the source of funds used by each shareholder to establish the company in 1975, including, as applicable, seven years of tax returns for her father and each of his brothers for the years preceding the company's formation.

investment, and that the record demonstrated that certain "required information" listed under section 203(b)(5)(L)(ii) of the Act was not applicable based on the facts of her case. She contends that the previously submitted evidence demonstrated that the same lawful sources would be used to pay the remaining balance of $665,000 due after the date of filing, and that she was actively in the process of investing those funds as of January 2023.

The Petitioner further asserts that she fulfilled her obligation to wire the remaining $665,000 to the NCE, and that USCIS' denial of the petition without first issuing an RFE was not in accordance with the law. She also objects to USCIS' determination that she had an affirmative duty to interfile evidence of the completion of her investment, arguing that "no such procedure is outlined by USCIS." Nevertheless, the Petitioner emphasizes that, contrary to USCIS' determination, she did in fact provide supplemental evidence documenting that she remitted a final payment of $665,000 to the NCE in May 2023 and submits a copy of this documentation on appeal.[4]

The Petitioner's appeal also includes: additional evidence and explanation addressing the "required information" at section 203(b)(5)(L)(i)(I) and (II) of the Act; a statement from her father addressing the source of funds he used to establish [redacted] in 1975; and evidence intended to show that the $665,000 she remitted to the NCE after the date of filing was derived from a lawful source and through lawful means.

We agree with the Petitioner that USCIS' denial of the petition "as a matter of discretion" for failure to submit required initial evidence of eligibility was not warranted based on the facts of this case. The other grounds for denial stemmed from USCIS' conclusion that the record lacked required initial evidence and therefore did not establish her eligibility at the time of filing. Accordingly, we will withdraw USCIS's decision and remand the matter for entry of a new decision.

In its decision, USCIS cited to 8 C.F.R. § 103.2(b)(8)(ii), which states that if all required initial evidence is not submitted with a benefit request or does not establish eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility, or request that the missing initial evidence be submitted within a specified time period determined by USCIS.

USCIS has implemented policy guidance related to the issuance of requests for evidence and identified instances in which it is appropriate for a USCIS officer to deny a petition based on a petitioner's failure to submit required initial evidence. Specifically, USCIS has advised officers that if a petitioner has not submitted all of the required initial evidence, or if the evidence in the record does not establish eligibility for the benefit sought, "the officer should issue an RFE or NOID requesting such evidence unless the officer determines there is no legal basis for the benefit request and no possibility that additional information or explanation will establish a legal basis for approval." *See* 1 *USCIS Policy Manual* E.6(F)(2), https://www.uscis.gov/policy-manual. Here, USCIS' decision to deny the petition without first issuing an RFE or NOID was contrary to this guidance.

While the statute identifies certain "required information" that should accompany an immigrant investor petition under section 203(b)(5)(L)(ii)(I) of the Act, it also states that the listed information

[4] The record shows that USCIS physically received the interfiled evidence on December 17, 2025; it was likely not incorporated into the record prior to the issuance of the decision on December 22, 2025.

is required "as applicable," and notes, with respect to "business and tax records," that a petitioner's evidence may alternatively include "similar records." The statutory language does not impose a rigid requirement that every immigrant investor petition be accompanied by each type of business or tax record specifically listed in this provision, even when not applicable to an individual petitioner's claim of eligibility.

Here, the Petitioner indicated on the Form I-526E that she has solely been employed in UAE and demonstrated that she is not required to file individual income tax returns on this employment income in any jurisdiction. Further, she indicated that the sole source of her investment in the NCE was a gift from her father. It was therefore neither feasible nor necessary for her to submit tax returns for a seven-year period under section 203(b)(5)(L)(ii)(I)(bb) of the Act.[5] As noted, the Petitioner provided evidence that she deemed material to her claim that her father gave her a gift of $865,000 and that he obtained those funds through a lawful source and through lawful means. USCIS did not fully address this evidence in its decision and instead based the decision on a finding that the initial filing did not contain all "required information" listed at section 203(b)(5)(L)(ii)(I) of the Act.

Likewise, section 203(b)(5)(L)(ii)(II) of the Act does not expressly require a petitioner to submit evidence or a statement to demonstrate that they do *not* have monetary judgments against them or pending proceedings with possible monetary judgments. Therefore, the Petitioner's failure to provide such statements for herself and her father did not provide a sufficient basis for the denial of the petition.

Finally, the Petitioner's correctly observes that USCIS does not have an established or publicized policy requiring immigrant investors to interfile evidence of eligibility in support of a pending Form I-526E as that evidence becomes available. Accordingly, USCIS' determination that the Petitioner did not invest the minimum amount of capital in the NCE, which was based on a finding that she did not interfile evidence showing that she had remitted $665,000 to the NCE by the agreed deadline for doing so, is withdrawn. As noted, the Petitioner did in fact interfile this evidence and it appears that USCIS did not have an opportunity to review it prior to issuing its decision.

For the reasons discussed, we are remanding the matter to USCIS for entry of a new decision. On remand, USCIS should consider all the evidence in the record, including the additional documentation submitted on appeal. If USCIS determines that there are deficiencies that may be cured through additional evidence or explanation, they may issue a new RFE or NOID prior to rendering a new decision. The record lacks, for example, copies of [redacted] financial statements for the years 2021, 2022 and 2023 in support of the Petitioner's claim that her father was entitled to $870,000 in profit distributions based on the company's performance. The company's bank statements for its [redacted] account ending in [redacted] also show two uncharacteristically large deposits that immediately preceded the two final payments made to the Petitioner and may require additional explanation.[6] Specifically, on April 27, 2023 and May 5, 2023, the account received credits of AED 600,000 and AED 597,250, respectively, both annotated as [redacted] The company then made transfers to the Petitioner in the amounts of AED 600,000 and AED 597,250 on April 27, 2023, and

[5] We also agree with the Petitioner that she did not, as suggested by USCIS, have a burden to provide copies of tax returns for her father's brothers for the seven-year period pre-dating the founding of [redacted] in 1975. Section 203(b)(5)(L) of the Act identifies "required information" for the immigrant investor, donors, and non-bank lenders, as applicable.

[6] Most of the deposits made to this bank account are annotated as cash deposits of AED 40,000 or less.

May 10, 2023. USCIS may inquire about the source of these larger credits that ultimately became part of the Petitioner's investment.

After reviewing all relevant evidence, USCIS must determine whether the Petitioner established, by a preponderance of the evidence that (1) she invested the required amount of $800,000 into the NCE, (2) the funds she invested were obtained from a lawful source and through lawful means, and (3) she is otherwise eligible for classification as an immigrant investor under section 203(b)(5) of the Act.

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