U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41978034

Date: JUNE 08, 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 foreign nationals 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.

USCIS denied the petition, concluding that the record did not establish that the Petitioner demonstrated her eligibility for the benefit at the time of filing, had invested or was in the process of investing the required amount of capital, and that the funds for investment derived from a lawful source and through lawful means. 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

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 he or she has invested, or is actively in the process of investing, and any funds used to pay administrative costs and fees associated with his or her investment was obtained from a lawful source through lawful means. Section 203(b)(5)(L)(i) of the Act. To show that the capital invested, or actively in the process of being invested, was obtained from a lawful source and through lawful means, a petitioner must document the path of 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 NCE. *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm. 1998); *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 claims to have invested $800,000 in the NCE, [redacted][1] The NCE is associated with [redacted], a United States Citizenship and Immigration Services (USCIS) designated regional center. According to the business plan submitted by the Petitioner, the NCE proposed to pool funds from immigrant investors and invest in an equity interest in [redacted] the job-creating entity (JCE). The JCE intends to construct a new 39-story mixed-use residential and retail development in [redacted] California.[2]

The Petitioner's Form I-526E, Immigrant Petition for Regional Center Investor, indicated the Petitioner intended to source her funds for investment from income and sale of securities. Specifically, the Petitioner intended for her funds to deploy from her husband's accumulated employment income and the sale of stocks granted to him over the course of his employment. At the time of filing, the Petitioner asserted that her husband had invested $320,000 in the NCE sourced from his 2022 salary, a withdrawal from his pension account with his employer, and a loan from [redacted]. The Petitioner stated that the remaining $480,000 of the investment funds would be forwarded to the NCE after her husband sold an unspecified "portion of his shares" in his employment stock plan.

Capital means cash and all real, personal, or mixed tangible assets owned and controlled by an alien investor. *See* section 203(b)(5)(D)(ii)(I), 8 U.S.C. § 1153(b)(5)(D)(ii)(I). A petitioner must have invested or be actively in the process of investing the required funds as capital in the NCE at the time of filing. *See* 8 C.F.R. § 204.6(j)(2).

Subsequently on September 16, 2024, the Petitioner submitted a supplement containing new source of funds documentation for the remaining $480,000 of her investment. The Petitioner abandoned her intent to source the remainder of her investment funds from sale of her husband's shares in his employer's stock. Instead, she described that the remaining funds for investment would not only be derived from her husband's employment income and bonuses but also from the sale of her husband's real estate property.

A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. S*ee Matter of Izummi*, 22 I&N Dec. at 175-176.

At the time of filing, the Petitioner expressed a vague intention to invest the remaining funds in some aspecific manner via the sale of some unspecified amount of securities housed in her husband's employment stock plan. But this plan was subsequently abandoned in favor of sourcing the remaining $420,000 from her husband's accumulated income and the sale of a heretofore unmentioned property. The Petitioner's abrupt pivot demonstrates that she was never in a position of ownership or control of sufficient funds for investment in the NCE at the time of filing the petition. Consequently, she

[1] The Petitioner's investment incurred a $24,000 administrative fee.
[2] Form I-956F, Application for Approval of an Investment in a Commercial Enterprise (Receipt Number [redacted]) filed on August 25, 2022 by [redacted] was approved on November 30, 2023.

materially changed her source of funds when a different avenue in the form of sufficient employment accumulation and property sale materialized. So, the Petitioner has not demonstrated that she has invested or was in the process of investing the required amount of capital at the time of filing.

III. CONCLUSION

We conclude that the Petitioner has not sufficiently demonstrated that her funds were sufficiently invested or that she was in the process of investing the required amount of capital in the NCE. As this is a dispositive issue to resolve the Petitioner's appeal, we need not reach the question of whether the source and path of the Petitioner's funds was legitimate. *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). The Petitioner has not established by a preponderance of the evidence that she is eligible for the immigrant investor visa classification and we dismiss her appeal.

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 who are 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.