U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42228823

Date: JUNE 10, 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 funds for investment derived from a lawful source and through lawful means. USCIS also dismissed a subsequent motion to reopen. 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 has not demonstrated, by a preponderance of the evidence, that he invested or was actively in the process of investing at least $800,000 in the NCE at the time he filed the petition on June 20, 2023. *See* section 203(b)(5)(A)(i), 8 U.S.C. § 1153(b)(5)(A)(i).

Upon our de novo review we observe the initial petition contained a promissory note, executed on May 30, 2023, indicating that the Petitioner would pay a sum of $700,000 to the NCE on or before the earlier of one year from filing the Form I-526E or two weeks from approval of the Form I-526E. The record contains two agreements signed by the Petitioner's father [redacted] and his mother [redacted] respectively that secure the NCE's rights under the promissory note to two certificates of deposit owned by each of them valued at RMB 2,000,000 and held at [redacted].

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). The record does not indicate that the certificates of deposit securing the promissory notes are the Petitioner's assets. The record indicates the certificates of deposit are owned by the Petitioner's parents. So, the promissory note in the record is not representative of capital owned or controlled by the Petitioner at the time of filing for investment in the NCE. Since the Petitioner was relying on the promissory note to make up $700,000 of the total $800,000 required for investment in the NCE, the Petitioner did not have sufficient funds that he had invested or was actively in the process of investing at the time of filing his petition.

III. CONCLUSION

So, the evidence in the record does not support the Petitioner's claim that he invested or was actively in the process of investing the statutory amount of required capital in the NCE at the time of filing. Therefore, the Petitioner has not established by a preponderance of the evidence that he is eligible for the immigrant investor visa classification, and we dismiss his 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.