U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42507967

Date: MAR. 02, 2026

Motion on Administrative Appeals Office 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 (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. An alien may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that the funds she invested in the NCE were obtained through lawful means, and that the required amount of capital had been invested or was actively in the process of being invested. We dismissed a subsequent appeal and combined motions to reopen and reconsider. The matter is now before us on motion to reopen.

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). Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) 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 filed her petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

An immigrant investor must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are [their] own"). In addition, they must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show that the invested funds were obtained through lawful means, a petitioner must produce evidentiary documents listed at 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 and the record must trace the complete path of the funds back to a lawful source.[2] *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds is USCIS' authoritative position recognized by other relevant precedent decisions); *see also Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998).

II. ANALYSIS

The Petitioner asserts eligibility as an immigrant investor based on a $500,000 investment in [redacted] (NCE) made on November 19, 2019. The NCE, which is affiliated with the [redacted] regional center, proposed to pool up to $134 million from 268 immigrant investors and lend the funds to [redacted], the job creating entity (JCE) to develop a new residential community in [redacted], California.

The Petitioner states that she obtained the $500,000 used for her investment from the sales proceeds of two properties in [redacted], interest income derived from those proceeds, and a secured loan. She also asserts that she entered a currency swap arrangement with a third-party exchanger, [redacted], to assist her with exchanging a portion of her funds from Vietnamese dong (VND) to U.S. dollars and transferring her funds to the NCE. As one part of a series of transactions intended to accomplish this, the record shows that on November 19, 2019, the Petitioner transferred VND 4,187,700,000 from her [redacted] account ending in [redacted] to [redacted] account ending in [redacted]. On the same day, a report from [redacted] (Singapore) account ending in [redacted] shows receipts of $192,000 and $128,000 from the Petitioner and her daughter, respectively, as well as debits in the amounts of $320,000 and $180,000 which were ultimately transferred to the NCE's escrow account.

In our appeal decision, we noted FOD's concerns over the lawful source of the $180,000 transferred from [redacted] account to the NCE and agreed with FOD that there was a break in the path of the Petitioner's funds between the VND 4,187,700,000 withdrawn from her [redacted] account and the $180,000 withdrawn from [redacted] account. We concluded that the record was insufficient to establish the lawful source of the Petitioner's investment funds and that she had therefore not established her eligibility as an immigrant investor.[3]

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[2] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program are not of suspect origin." *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001) (holding that a petitioner had not established the lawful source of her funds because, in part, she did not designate the nature of all of her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

[3] Because this conclusion was dispositive of the Petitioner's appeal, we reserved discussion of FOD's conclusions that the

With her prior motion to reopen, the Petitioner provided additional evidence intended to show the lawful source of certain deposits made to [redacted] account during the period prior to [redacted] transfer of $180,000 to the NCE's escrow account on November 19, 2019. In our prior decision, we acknowledged that the new evidence, when considered with previously submitted documents, provided context for some of the transactions shown in [redacted] account statements. However, we observed that a significant portion of the funds in this account were unaccounted for, such as a deposit of $1,110,720 made to the account on September 3, 2019. We noted that while some funds were traceable to [redacted] client contract and invoices, those same funds were commingled with substantial funds from unknown sources. In addition, we emphasized that the record did not include [redacted] November 2019 statement for its [redacted] account ending in [redacted]

We also acknowledged a legal opinion letter from an attorney in Vietnam, noting that it focused on the contractual aspects of the currency swap transaction between the Petitioner and [redacted],[4] but offered no opinion on the legality of the swap arrangement under the foreign currency exchange laws of either Vietnam or Singapore, the origin of the U.S. dollar funds, or the lawful source of the funds [redacted] transferred to the NCE. Accordingly, we concluded that the new facts and evidence provided on motion did not show the lawful source of the funds used for the Petitioner's investment.

In support of the instant motion to reopen, the Petitioner provides the following previously unsubmitted evidence:

- Sub-Agent Agreement with [redacted] dated August 30, 2018, wherein [redacted], as "Finder," appointed [redacted] as its sub-agent in Vietnam; and
- November 2019 bank statement for [redacted] account ending in [redacted]

The Petitioner maintains that these documents, when considered with evidence already in the record, "establish a transparent and traceable financial trail, confirming that the exact source of funds used in the currency exchange was derived from legitimate business activities."

We disagree. The newly submitted "Sub-Agent Agreement" establishes the source of three deposits ($221,000 in total) that [redacted] made to [redacted] account on November 4 and November 7, 2019. However, these payments were not the sole source of the funds [redacted] remitted to the NCE on the Petitioner's behalf on November 19, 2019. On November 15, 2019, [redacted] received a $38,118.80 deposit from [redacted] that was commingled with the funds already in the account and therefore became part of the funds used for the Petitioner's investment. The Petitioner did not identify and document the lawful source of this deposit.

Further, as noted in our prior decision, [redacted] account had an opening balance of over $512,000 on November 1, 2019, which included funds carried over from prior months that are not accounted for

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Petitioner did not show the lawful source of the investment funds originating from the sale of the two properties, and that the required amount of capital had not been invested. *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).

[4] We observe that the legal opinion letter refers to a "direct contract" that was executed by the Petitioner and [redacted] on November 18, 2019, and note there are other references to this contract or agreement in the record. However, to date, the Petitioner has not provided a copy of this agreement, despite her acknowledgment that it is material to demonstrating her ownership of the $180,000 that [redacted] transferred to the NCE's escrow account on November 19, 2019.

by the company's contracts and invoices. These funds included a $1.1 million deposit made on September 3, 2019, and four October 2019 deposits, totaling $905,059.00, for which no supporting explanation or documentation has been provided. The new evidence submitted on motion does not address these deposits or show that they were obtained from a lawful source. Because money is fungible and the funds which are traceable to the client contract and invoices were commingled with these funds from unknown sources, this new evidence submitted on motion does not establish that the funds [redacted] transferred to the NCE from this account derived from a lawful source.

We also note that [redacted] newly submitted November 2019 bank statement shows that the two U.S. dollar deposits the Petitioner and her daughter remitted to this account on November 19, 2019 ($320,000 in total) were annotated as payments for "service fees" in connection with invoices "[redacted]" This annotation appears to be inconsistent with the stated purpose of these deposits, and it is unclear why they were recorded as payments for invoiced service fees. As noted, the record does not contain a copy of the contractual agreement between the Petitioner and [redacted] or copies of any invoices [redacted] issued in relation to the agreement, and therefore the exact terms of the arrangement between the two parties are not sufficiently documented in the record.

Finally, although the Petitioner re-submits the above-referenced legal opinion letter from a Vietnamese attorney in support of this motion, she does not address our prior observation that the attorney offered no opinion on the legality of the swap arrangement under the foreign currency exchange laws of either Vietnam or Singapore,[5] the origin of the U.S. dollar funds, or the lawful source of the funds [redacted] transferred to the NCE.

The plain language of 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) supports our requirement 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. (emphasis added). 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).").

Although the Petitioner has submitted additional evidence on motion, she has not established that the $180,000 transferred from [redacted] account to the NCE's escrow account can be traced back to a lawful source and therefore has not established her eligibility for the immigrant investor classification. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

NOTICE: 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

[5] The record does not contain, for example, a copy of [redacted] business license stating the nature of its authorized activities in Vietnam.

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.