U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35893762

Date: MAY. 06, 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).[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 record did not establish that the Petitioner's investment funds were obtained through lawful means. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.[2]

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

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2018).

[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 their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

[2] While the Petitioner consistently refers to this filing as a motion to reopen and reconsider FOD's decision in her brief, she indicated in Part 2 of Form I-290B that she was filing an appeal. As the office that issued the unfavorable decision has already reviewed the I-290B, determined that favorable action is not warranted, and forwarded it to our office for review per 8 C.F.R. § 103.3(a)(2), we will treat this filing as an appeal.

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, an immigrant investor 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.[3] *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 that she invested $500,000[4] into [redacted] (the NCE), which is associated with [redacted] (Regional Center). The NCE proposed to raise $206 million from 412 immigrant investors to fund the development of the [redacted] project. The NCE would lend this amount to [redacted] LLC, the job-creating entity, which would use the funds to build an [redacted] New York.

To raise her investment funds, the Petitioner asserts that she combined funds from three different sources:

- Assets from the sale of her apartment in [redacted] which she purchased in 2003 and sold in 2016 for RMB 3,450,000;
- A gift from her daughter and son-in-law of RMB 250,000; and
- Compensation from the donation of her father's artworks to [redacted] which totaled RMB 600,000.

The Petitioner further asserts that to transfer the majority of her investment funds, she transferred RMB 2,949,000 from her [redacted] account ending in [redacted] to H-L-'s ("Exchanger's") [redacted] account ending in [redacted] on October 28, 2016. According to the Petitioner, as part of a currency swap transaction, H-L- then transferred a total of $438,000 from her [redacted] account ending in [redacted] to the Petitioner's [redacted] account ending in [redacted] on November 8, 2016. The final leg of this claimed transfer occurred when the Petitioner combined the funds in her

[3] 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).

[4] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is thus adjusted from $1,000,000 to $500,000. 8 C.F.R. 204.6(f)(2).

account ending in [redacted] and remitted $548,000 to the NCE's escrow account in four separate payments from September 26, 2016, to November 9, 2016.[5]

In its decision, FOD primarily focused on the Petitioner's failure to show by a preponderance of the evidence that her investment funds derived from lawful means. The denial notice specifically noted that the Petitioner had not traced the path of the U.S. dollars which were transferred from H-L-'s [redacted] account ending in [redacted] which she was required to do because of the break in the path of the funds and H-L-'s status as an unlicensed currency exchanger. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210; *see also Borushevskyi v. USCIS*, 664 F.Supp. 3d at 129. The relevant path includes tracing the funds from their point of origin through any intermediary accounts. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658 at 5 (D.D.C. June 28, 2023). FOD explained that despite the specific request for bank statements from account [redacted] for the three months preceding the transfer of funds to the Petitioner's account in its request for evidence (RFE), the Petitioner had not submitted such evidence, or other evidence such as wire documentation and deposit receipts and had therefore not established the lawful source of those funds.

We note that the record includes a single "integrated account portfolio summary" for H-L-'s account [redacted] for the period from September 16, 2016, to November 14, 2016. This statement shows a debit of $438,500 on November 8, and this transaction is further documented by a wire transfer statement showing the transfer of these funds to the Petitioner's account [redacted] This statement also shows that on October 31, eight deposits of $100,000 or less were made, totaling $438,499. Each of these deposits was made by a different business entity, all with names ending in "LTD" or "L". The beginning balance shown on the statement is $972.56 on September 16, and the ending balance after the transfer and "charges" was $947.32. While this statement, combined with the wire transfer document, shows the transfer of funds from H-L-'s account to the Petitioner's, the record includes no documentation of the lawful source of the U.S. dollar funds in H-L-'s bank account [redacted] Other than the names of the business entities which transferred the funds into this account, there is no information about these businesses, how they acquired the funds which were transferred, or why the funds were deposited into H-L-'s account.

On appeal, the Petitioner largely repeats her description of the transactions which took place to exchange and transfer her RMB funds, but also introduces a new party, Mr. Z-, whom she describes as an "intermediary." She states that Mr. Z- exchanged her RMB funds at the rate set by the [redacted] and that because she was unable to contact H-L- to provide further evidence, she now submits a report regarding one of Mr. Z-'s businesses and his securities account. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record). We note that Mr. Z- was not mentioned in any of the documentation initially submitted or provided in response to the

[5] We note that the wire transfer statements showing these four transactions are at odds with a signed statement from the escrow agent stating that the full amount was received in a single transaction on November 9, 2016.

RFE, including a written statement from B-W- who states that he introduced the Petitioner to H-L- to facilitate the exchange and transfer of her funds.

More importantly, even if we were to consider this new evidence, it would not aid in establishing that the Petitioner's funds did not derive from an unlawful source. The role of Mr. Z- in the asserted exchange and transfer of the Petitioner's investment funds is not explained in any detail, let alone documented. He is not mentioned in the flowchart representing the purported path of the Petitioner's funds which was submitted in response to FOD's RFE. While the report concerning a Chinese company lists a C-Z- as one of its main personnel, this company is not one of those listed in H-L-'s bank statement for account [redacted] as a depositor. Further, the Petitioner asserts that we should find Mr. Z-'s testimony credible because he is an "investor with legitimate income in [redacted]," but the record lacks any testimony from Mr. Z-, and his wealth is immaterial as he has not been identified as the source of the U.S. dollars in H-L-'s bank account.

In addition, while not mentioned in FOD's decision, we note that there are also deficiencies in the evidence regarding the remainder of the Petitioner's investment funds which she claims were exchanged and transferred by her family members. For example, the Petitioner submitted a contract signed in [redacted] 2013 by which she and other family members donated her father's artworks to [redacted] in exchange for RMB 600,000. A written statement dated [redacted] 2016, from the Petitioner and her family members indicates that the full proceeds of this "award" were given to the Petitioner, and that RMB 600,000 were deposited into her account on December 6, 2013.[6] In addition, a statement from the Petitioner's [redacted] account ending in [redacted] confirms the deposit of RMB 600,000 on December 6, 2013. But four days later, the statement shows that the same amount was withdrawn from this account, leaving no money left in the account until an interest payment days later. Also, numerous deposits and withdrawals are shown on this statement until November 8, 2014, when a note added by the Petitioner indicates that RMB 70,000 was transferred to the account ending in [redacted] with the same bank. It is this amount that the Petitioner asserts, in the flowchart she submitted with her RFE response and again on appeal, was exchanged for $11,000 and transferred to her [redacted] account, ultimately forming part of her asserted investment funds. However, the withdrawal of the initial RMB 600,000 four days after its deposit and the numerous transactions in the ensuing 11 months prevents the tracing of these funds back to the funds from the donation of art to [redacted] or to any other lawful source. Also, the Petitioner's flowchart indicates that RMB 70,000 from the proceeds of that donation was initially transferred to the account ending in [redacted] on September 1, 2016, in direct conflict with the date of November 8, 2014 noted above. While an account statement shows that this amount was received in account [redacted] on that date, there is no indication of the source of those funds on the statement, and the incongruity with the information in the statement from account [redacted] does not support the Petitioner's assertions regarding the source of these funds.

The Petitioner asserts that she has met the preponderance of the evidence in showing the path of her funds back to a lawful source, especially considering the amount of time that took place between her initial filing and FOD's RFE and denial decision. But as detailed above, the source of the U. S. dollars in H-L-'s account [redacted] has not been explained or documented, leaving a considerable gap in the path of the Petitioner's investment funds. While we acknowledge the passage of time since the possible

[6] The English translation of this statement indicates that the date of deposit was October 6, 2013, but this appears to be a translation error.

creation of certain relevant documents, without additional corroborating evidence, the record lacks sufficient evidence regarding the source of the U.S. dollars ultimately transferred to the NCE's escrow account. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195; *see also Mo v. USCIS*, 2024 WL 804267, *6 (D.D.C. Feb. 27, 2024) (noting that USCIS did not err in requesting proof of household expenditure from 20 years ago).

III. CONCLUSION

Based on the reasons we have discussed, the Petitioner has not sufficiently established that the funds she claimed to have invested in the NCE did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e). The record, including evidence she offers on appeal, does not sufficiently document the complete path of her purported EB-5 investment and trace it back to a lawful source. *Borushevskyi v. USCIS*, 664 F. Supp. 3d at 129; s*ee also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Because the Petitioner is therefore ineligible for classification as an immigrant investor, we need not reach, and therefore reserve, the issue of the origin of the funds used by the Petitioner to purchase her apartment in 2003, the sale proceeds of which she asserts constituted the bulk of her investment funds. *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).

ORDER: The appeal is dismissed.