U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 34411026

Date: MAY 13, 2025

Appeal of Immigrant Investor Program 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) (2018).[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.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not document the lawful source of the $500,000[2] he claimed to have invested in [redacted] LLC, the NCE that is associated with [redacted] On appeal, the Petitioner submits a brief and additional evidence, maintaining that he has established eligibility for the EB-5 classification.

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 he or she invests the requisite amount of qualifying capital in an NCE. An alien may invest the required funds directly in an NCE or through a

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in Section 203(b)(5) of the Act, 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 had filed his petition in April 2018, the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner indicates that the NCE and the job creating entity (JCE) are in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2018).

[3] [redacted] LLC is an entity that U.S. Citizenship and Immigration Services (USCIS) has designated to participate in the EB-5 program. A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (2018).

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).

An alien must demonstrate that he or she has placed his or her 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 his [or her] own"). In addition, the alien must show that his or her invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show the lawful source of the funds, an investor must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 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. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the path of the funds back to a lawful source.[4] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

Moreover, the regulation at 8 C.F.R. § 103.2(b)(1) specifies that a "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication."

## II. ANALYSIS

Page 2 of the appellate brief claims that "[o]n March 15, 2018, [the] Petitioner invested $500,000 as a capital investment" in the NCE. The business plan that the Petitioner initially provided with the petition indicates that the NCE seeks up to $2,000,000 from 4 alien investors to lend to [redacted] LLC, the job creating entity (JCE), to develop, construct, and operate a rehabilitation facility in [redacted] Florida.

The Petitioner filed the petition in April 2018. He claims that at the time he filed the petition, he remitted approximately $250,000 to the NCE as his EB-5 investment. He submitted a March 2018 statement from the manager of the NCE,[5] stating that "on January 15, 2018 and January 20, 2018 two deposits for amounts of $165,050.00 and $84,850.00 were deposited in [the NCE's account] for the benefit of [the Petitioner]" and that the NCE "has lent $249,743.00 to [the JCE]." The NCE's bank statements reveal that in March 2018, not January 2018, the NCE's account received $165,050 and $84,850 from [redacted] and then made a withdrawal of $249,743 a few days later. In an August 2023 letter that the Petitioner filed in response to the Chief's notice of intent to deny (NOID) the petition, the Petitioner, through counsel, alleged that he "has until the end of his two-year conditional residency to invest the full $500,000" and that he "is actively in the process of investing this amount with his initial investment of $249,900.00." The record includes two additional statements from the manager of the NCE, one is undated while the other is dated January 2020. The undated

[4] 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).

[5] Page 6 of the October 2017 Private Placement Memorandum identifies the NCE's manager. The same individual signed the March 2018 statement from the NCE that discusses the $165,050 and $84,850 deposits.

statement claims that after the Petitioner filed the petition in April 2018, the NCE received additional "investment money" from the Petitioner between July 2018 and October 2018, and the January 2020 statement claims that the NCE received additional "investment money" from the Petitioner in November 2019.

The record is insufficient to document the lawful source of the approximately $250,000 the Petitioner claimed to have remitted to the NCE before he filed the petition in April 2018. In an April 2018 letter, the Petitioner, through counsel, stated that he "used the services of [redacted] to "transfer funds from within Iran and exchange Iranian rials [IRR] ultimately to U.S. dollars to be transferred to the NCE at its bank account in the United States." The letter, citing an April 2013 statement from a law firm in [redacted] United Arab Emirates, claims that the [redacted] system operates on the basis of trust and there is not a thorough paper trail of the transfer." The letter further states that the Petitioner's funds moved through [redacted] (identified as [redacted] and two of its affiliates – [redacted] and [redacted] (both identified as [redacted] before the funds reached the NCE's United States account.

An undated statement, jointly executed by the Petitioner and [redacted] – who the Petitioner claims is associated with [redacted] – alleges that between November 2017 and March 2018, the entity exchanged a total of 10,696,060,000 IRR for $251,000 and remitted the U.S. dollars to the NCE on the Petitioner's behalf. In his NOID response, the Petitioner provided an undated letter from [redacted] referenced as [redacted] in other evidence, explaining that in February 2018 "$88,000 . . . plus $78,000 in cash . . . was paid as a partial payment [on behalf of the Petitioner] for the [redacted] project in Florida" and then in March 2018, "$85,000 was paid to the [redacted] project in Florida." The record includes a copy of a check, indicating that in February 2018, the Petitioner issued a check in the amount of 4,000,000,000 IRR (equivalent to approximately $88,000[7]) to [redacted] presumably the entity the Petitioner referred to as [redacted] in the April 2018 letter. An undated letter from the Petitioner's counsel similarly claims that in February 2018, the Petitioner deposited 4,000,000,000 IRR in "an account of the [redacted] which is a subsidiary of the [redacted]

On appeal, the Petitioner acknowledges on page 8 of his appellate brief that because he moved his purported EB-5 funds through [redacted] "there would be no bank records of money being transferred from the [redacted] to the third-party [redacted] exchangers [redacted] and [redacted] that wired [the] Petitioner's funds to the U.S. account, as there was no such formal transfer of funds." He also notes on pages 6 and 7 of his appellate brief that the entities involved in the transaction were not required to obtain an [redacted] general license," and asserts that he need not provide "information about any other [redacted] exchanger that was directly or indirectly involved in the transfer" of his purported EB-5 funds.

[6] On page 9 of his appellate brief, the Petitioner, through counsel, identifies [redacted] as [redacted]

[7] The undated letter from [redacted] claims that 4,000,000,000 IRR is "equivalent to $88,000."

Additionally, citing a federal criminal matter *United States v. Banki*, 685 F.3d 99 (2d Cir. 2012), the Petitioner argues on appeal that the regulation does not "mandate[] the Petitioner to disclose or reveal information about the bank account, income, or any details concerning third parties facilitating the investment transfer from the originating country to the NCE" and alleges that the [redacted] transactions coming from Iran to the U.S. complied with the rules and regulations set by [redacted] which allowed for certain transactions related to family remittances." The *Banki* case, however, deals with a criminal matter, and it does not address whether an alien investor has documented the lawfulness of his or her purported invested funds, which is at issue in this case. For the following reasons, we conclude that the Petitioner in this case has not sufficiently documented the lawful source of the approximately $250,000 he claimed to have invested in the NCE before he filed his petition in April 2018. *See* 8 C.F.R. § 204.6(e), (j)(3).

As noted, the NCE's bank statements specify that in March 2018, the NCE received $165,050 and $84,850 from [redacted] presumably this is the entity the Petitioner referred to as [redacted] in the April 2018 letter. Similarly, the record includes documents from [redacted] memorializing that the entity remitted $165,150 and $84,850 to the NCE. The record, however, does not include evidence confirming that [redacted] or [redacted] remitted any of the Petitioner's funds to [redacted] before its March 2018 remittances to the NCE's account. Additionally, the record lacks sufficient corroborating evidence establishing that [redacted] or [redacted] is affiliated with [redacted] such that funds received by one entity could be considered funds received by the other entities. In short, the record is insufficient to demonstrate that the approximately $250,000 the NCE received from [redacted] in March 2018 originated from the Petitioner, or that the funds qualify as his EB-5 investment in the NCE.

Moreover, as discussed on page 7 of the Chief's decision, the Petitioner has not offered sufficient evidence establishing "the legitimacy of the exchanger[s] and [their] funds (such as licensing and registration documents [as currency exchange and remittance services].)" On appeal, the Petitioner acknowledges that he "has not been able to locate the business registration documents for entities involved" or "copies of bank statements for the third-party exchangers."

While we acknowledge the Petitioner's assertion regarding barriers he faced moving funds from Iran to the United States through normal banking channels, we note that it remains his burden to document the lawful source of his purported EB-5 funds and that he must offer sufficient documents tracing the path of the funds back to him. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Based on the above discussed reasons, we find that without additional corroborating evidence, the record lacks sufficient evidence confirming that the approximately $250,000 the NCE received from [redacted] in March 2018 or that his purported EB-5 investment did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e). The record, including documentation the Petitioner offers on appeal, does not sufficiently document the complete path of his purported EB-5 investment, tracing it back to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

Alternatively, although not discussed in the Chief's decision, the Petitioner has not shown that at the time he filed the petition in April 2018, he had invested or was in the process of investing at least $500,000 in the NCE. *See* 8 C.F.R. § 204.6(j). The regulation specifies that "[e]vidence of mere intent

to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing" and that the "alien must show actual commitment of the required amount of capital." 8 C.F.R. § 204.6(j)(2); *see also* 8 C.F.R. § 103.2(b)(1) (providing that a "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request").

In this case, the Petitioner claims to have remitted approximately $250,000 to the NCE before he filed the petition. As noted on page 13 of the appellate brief, in his March 2018 statement, the Petitioner indicated that he "undertake[s] to transfer and deposit balance of [his] total investment equal to $250,000 to the project's U.S. bank account within the next six month from the date of this letter." He offers documents he claims show that he remitted additional funds to the NCE after he filed the petition. However, the record fails to establish that in April 2018, at the time he filed the petition, he had already invested or was in the process of investing at least $500,000 in the NCE. His March 2018 statement concerning his plan to invest additional funds, at most, constitutes evidence of mere intent to invest without present commitment, which does not satisfy the requirements under 8 C.F.R. § 204.6(j)(2). Accordingly, the Petitioner has not demonstrated that at the time he filed the petition, he had invested or was in the process of investing at least $500,000 in the NCE. *See* 8 C.F.R. § 204.6(j).

## III. CONCLUSION

For the reasons we have discussed above, we conclude that the Petitioner has not established, by a preponderance of the evidence, his eligibility for the EB-5 classification. Specifically, he has not demonstrated the lawful source of his purported EB-5 investment. *See* 8 C.F.R. § 204.6(j)(3), (e); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Alternatively, the Petitioner has not shown that at the time he filed the petition, he had invested or was in the process of investing at least $500,000 in the NCE. *See* 8 C.F.R. § 204.6(j); *see also* 8 C.F.R. § 103.2(b)(1).

As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining issues concerning his eligibility.[8] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

It is the Petitioner's burden to demonstrate his eligibility for the EB-5 classification, which includes establishing the lawful source of his purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Here, the Petitioner has not made such a showing.

**ORDER:** The appeal is dismissed.

[8] In the denial of the petition, the Chief questioned the source of funds the Petitioner used to purchase properties in Iran, which he claimed to have sold to finance his purported EB-5 investment, as well as the credibility of the JCE's job creation projections. We will not address these and any other eligibility issues in this decision. Instead, we will reserve any eligibility issues not discussed in this decision for future consideration if the need arises.