U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41846612

Date: MAY 27, 2026

Appeal of Field Operations Directorate (FOD) 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 aliens 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. Aliens may invest in a project associated with a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. *See* section 203(b)(5)(E)(i) of the Act.

FOD denied the petition on multiple grounds without first issuing a request for evidence (RFE) or notice of intent to deny (NOID), indicating that the decision was made "as a matter of discretion" for "failure to submit the required initial evidence." FOD concluded that the Petitioner's submission did not include all "Required information" listed at section 203(b)(5)(L)(ii) of the Act and therefore did not comply with the requirements of 8 C.F.R. § 103.2(b)(1) or meet his burden to demonstrate that the funds he invested or was actively in the process of investing in the NCE were obtained from a lawful source and through lawful means. FOD further determined that the Petitioner, who indicated he was actively in the process of investing the full required amount of $800,000 at the time of filing and would complete his investment no later than May 31, 2023, did not interfile evidence showing that he ultimately invested the required amount of capital in the NCE and provide evidence of the source of funds used.[1] 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

[1] FOD also determined that the Petitioner did not comply with the regulation at 8 C.F.R § 103.2(a)(1) because several of his responses stated on Form I-526E were not consistent with the form's filing instructions and because his declaration that he had submitted the required initial evidence with the filing was "materially incorrect."

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 they have invested, or are actively in the process of investing, and any funds used to pay administrative costs and fees associated with their investment were obtained from a lawful source and through lawful means. Section 203(b)(5)(L)(i) of the Act. Section 203(b)(5)(L)(ii) of the Act, "Required information," states the Secretary of Homeland Security shall require than an alien investor's petition under this paragraph contain, as applicable –

(I) business and tax records, or similar records, including –
  (aa) foreign business registration records;
  (bb) corporate or partnership tax returns . . . and personal tax returns, including income, franchise, property, (whether real, personal or intangible), or any other tax returns of any kind filed during the last 7 years . . . with any taxing jurisdiction within or outside the United States by or on behalf of the alien investor; and
  (cc) any other evidence identifying any other source of capital or administrative fees;

(II) evidence related to monetary judgments against the alien investor . . . and evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving possible monetary judgments against the alien investor from any court within or outside the United States.

Gifted or borrowed funds may not be counted toward the minimum capital investment requirement unless such funds were gifted or loaned to the alien investor in good faith and were not gifted or loaned to circumvent any limitations imposed on permissible sources of capital, including proceeds from illegal activity. Section 203(b)(5)(L)(iii)(I) of the Act. If funds invested are gifted to the alien investor, the petition must include the records described at section 203(b)(5)(L)(ii)(I) and (II) for the donor.

II. ANALYSIS

The Petitioner stated that, on October 20, 2022, his father deposited $130,000 on his behalf into the escrow account of [redacted] (the NCE), which is sponsored by [redacted].[2] On that date, his father also remitted $70,000 to the NCE as payment on his behalf for the administrative fee associated with his investment. The Petitioner provided: (1) a letter from the NCE's manager, confirming receipt of these payments and instructing him to "proceed to deposit the balance of $670,000 USD to complete your investment in the Company by no later than May 31, 2023"; and (II) an "Investment Confirmation Self-Certification" confirming his intention to deposit the balance of $670,000 into the NCE's escrow account on or before that date.[3]

[2] According to its business plan, the NCE proposes to raise up to $24.8 million from 31 immigrant investors and will use those funds to make a preferred equity contribution to [redacted], the job-creating entity (JCE). The JCE will develop and operate a [redacted] 200-room hotel in [redacted], California.

[3] The record indicates the NCE will principally be doing business within a targeted employment area. Therefore, the

The Petitioner indicated that his $800,000 investment in the NCE would derive solely from a gift from his father. His father provided an "Affidavit of Gift" declaring that he was freely giving the Petitioner an irrevocable gift of $870,000 to use for his capital investment in the NCE and that he would be paying the funds directly by bank transfer to the designated bank account. The Petitioner also provided a "Source of Funds Declaration" from his father who provided details about his employment history, his annual salary and compensation earned for the period 2018 through 2022, his participation in an employee stock option plan, and the financial transactions he made to remit the initial $200,000 to the NCE on the Petitioner's behalf. The Petitioner's father stated that the funds provided to date were derived from his salary savings and proceeds from selling shares of [redacted] and that the balance of the funds would be remitted using funds derived from selling additional shares.[4] The Petitioner's initial evidence included approximately 20 exhibits intended to establish the lawful source of the funds gifted by his father.

FOD denied the petition on several grounds, in part concluding that the Petitioner's December 2022 filing did not include the "required information" specified at Section 203(b)(5)(L)(ii) of the Act, specifically, seven years of tax records for himself and his father, business registration records, and statements regarding monetary judgments. Accordingly, FOD concluded that the Petitioner did not demonstrate that the funds he invested, or was actively in the process of investing, were obtained from a lawful source and through lawful means, and separately determined that Petitioner did not comply with the regulation at 8 C.F.R. § 103.2(b)(1) (stating that a petitioner must establish eligibility at the time of filing and that each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions).

FOD further concluded the Petitioner did not demonstrate that he invested the required amount of capital in the NCE because the record at the time of the denial "does not include any correspondence or interfiling . . . evidencing the completion of Petitioner's investment in the NCE."

On appeal, the Petitioner asserts that he submitted extensive evidence showing the lawful source of the funds he used to pay his $70,000 administrative fee and the initial $130,000 towards his investment, and that the record demonstrated that certain "required information" listed under section 203(b)(5)(L)(ii) of the Act was not applicable based on the facts of his case. He contends that the previously submitted evidence demonstrated that the same lawful sources would be used to pay the $670,000 balance of his $800,000 investment within approximately five months of the date of filing, and that he was actively in the process of investing those funds.

The Petitioner further asserts that he fulfilled his obligation to wire the remaining $670,000 to the NCE on March 31, 2023, and that FOD's denial of the petition without first issuing an RFE was not in accordance with the law. He also objects to FOD's determination that he had an affirmative duty to interfile evidence of the completion of his investment, noting that "USCIS has no public instructions

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requisite amount of capital was downwardly adjusted from $1,050,000 to $800,000. *See* section 203(b)(5)(C)(ii) of the Act.

[4] The Petitioner provided evidence that his father has been the CEO of [redacted] (a UAE-based subsidiary of [redacted]) since April 2018 and previously worked in India for the parent company from 1992 until 2018. The record includes a February 2022 [redacted] account statement showing the Petitioner's father held [redacted] shares with a market value of 272,284,262 Indian rupees (approximately $3.5 million).

for 'interfiling' evidence for an I-526E Petition, nor has USCIS ever publicly stated that an 'interfiling' is required."

The Petitioner's appeal includes: additional evidence and explanation addressing the "required information" at section 203(b)(5)(L)(i)(I) and (II) of the Act; evidence demonstrating that the NCE received the balance of his $800,000 investment as of March 31, 2023; and evidence intended to show the $670,000 remitted to the NCE at that time was derived from a lawful source and through lawful means.

We agree with the Petitioner that FOD's denial of the petition "as a matter of discretion" for failure to submit required initial evidence of eligibility was not warranted based on the facts of this case. The other grounds for denial stemmed from FOD's conclusion that the record lacked required initial evidence and therefore did not show eligibility at the time of filing. Accordingly, we will withdraw FOD's decision and remand the matter for entry of a new decision.

In its decision, FOD cited to 8 C.F.R. § 103.2(b)(8)(ii), which states that if all required initial evidence is not submitted with a benefit request or does not establish eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility, or request that the missing initial evidence be submitted within a specified time period determined by USCIS.

USCIS has implemented policy guidance related to the issuance of requests for evidence and identified instances in which it is appropriate for a USCIS officer to deny a petition based on a petitioner's failure to submit required initial evidence. Specifically, USCIS has advised officers that if a petitioner has not submitted all of the required initial evidence, or if the evidence in the record does not establish eligibility for the benefit sought, "the officer should issue an RFE or NOID requesting such evidence unless the officer determines there is no legal basis for the benefit request and no possibility that additional information or explanation will establish a legal basis for approval." *See* 1 *USCIS Policy Manual* E.6(F)(2), https://www.uscis.gov/policy-manual. Here, FOD's decision to deny the petition without first issuing an RFE or NOID was contrary to this guidance.

While the statute identifies certain "required information" that should accompany an immigrant investor petition under section 203(b)(5)(L)(ii)(I) of the Act, it also states that the listed information is required "as applicable," and notes, with respect to "business and tax records," that a petitioner's evidence may alternatively include "similar records." The statutory language does not impose a rigid requirement that every immigrant investor petition be accompanied by each type of business or tax record specifically listed in this provision, even when not applicable to an individual petitioner's claim of eligibility.

Here, the Petitioner is an Indian national who resided in [redacted] in the years preceding his admission to the United States in 2022. While he worked in the United States in 2022, the record shows he had no prior tax filing obligations in India or UAE and was not required to file a U.S. income tax return until 2023 (after he filed the petition). Further, he did not claim that his investment in the NCE derived in any part from his own accrued income. It was therefore neither feasible nor necessary for him to submit tax returns for a seven-year period under section 203(b)(5)(L)(ii)(I)(bb) of the Act. The Petitioner did, however, provide copies of his father's tax returns for the period he deemed relevant to showing the source of the funds included in his father's gift to him. On appeal, he explains that he did

not provide business registration records for his father's employer because he believed that requirement applied to individuals whose investment funds are derived through ownership of a company. As noted, the Petitioner provided other employment and financial records for his father that are material to his claim that his father gave him a gift of $870,000 and that his father obtained those funds through a lawful source and through lawful means. FOD did not fully address this evidence in its decision.

Likewise, section 203(b)(5)(L)(ii)(II) of the Act does not expressly require a petitioner to submit evidence or a statement to demonstrate that they do *not* have monetary judgments against them or pending proceedings with possible monetary judgments. Therefore, the Petitioner's failure to provide such statements for himself and his father did not provide a sufficient basis for the denial of the petition.

Finally, we agree with the Petitioner's assertion that USCIS does not have an established or publicized policy requiring immigrant investors to interfile evidence of eligibility in support of a pending Form I-526E as that evidence becomes available. Accordingly, FOD's determination that the Petitioner did not invest the minimum amount of capital in the NCE, which was based on a finding that he did not interfile evidence showing that he had remitted $670,000 to the NCE by May 2023, is withdrawn.

For the reasons discussed, we are remanding the matter to FOD for entry of a new decision. On remand, FOD should consider all the evidence in the record, including the additional documentation submitted on appeal, and determine whether the Petitioner established, by a preponderance of the evidence that (1) he invested the required amount of $800,000 into the NCE, (2) the funds he invested were obtained from a lawful source and through lawful means, and (3) he is otherwise eligible for classification as an immigrant investor under section 203(b)(5) of the Act.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.