U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36124624

Date: MAY 30, 2025

Appeal of Field Office Directorate (FOD) Decision

Form I-526, Immigrant Petition by Standalone 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).[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. Specifically, FOD concluded that the record was insufficient to show the accumulation of earnings by the Petitioner's father, which he used to purchase a property that was mortgaged to serve as the basis for his donation of the investment funds. In addition, FOD determined that there was insufficient evidence of the source of the U.S. dollar funds which he ultimately transferred to the NCE's escrow account. 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.

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[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] The Petitioner consistently refers to this matter as a combined motion to reopen and reconsider, but we note that he indicated in Part 2 of Form I-290B that he was filing an appeal to the AAO. 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.

I. LAW

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. They 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).

An 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 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 he invested $500,000[4] into [redacted] LLC (the NCE), which is associated with [redacted] LLC (Regional Center). The NCE proposes to pool up to $350,000,000 from 700 immigrant investors to loan to [redacted] LLC, the job-creating entity (JCE), which will construct and redevelop hotel space in [redacted], New York.

The Petitioner asserts that the entirety of his investment funds derives from a gift from his father, who obtained the funds by mortgaging a property he owns in [redacted], China for RMB 3,850,000. The record indicates that the Petitioner's father purchased this property in 2003 for approximately RMB 650,000, money which he asserts came from his earnings beginning in 1999. To exchange these funds to U.S. dollars and transfer them to the Petitioner, and ultimately the NCE's escrow account, the Petitioner asserts that his father conducted a value transfer exchange with a friend, W-X-.

Specifically, the record shows that the Petitioner's father signed a personal loan, using the [redacted] property as collateral, and RMB 3,850,000 was deposited to his [redacted] account [redacted] on [redacted] 2016. On the same day, the record shows that he transferred these funds to the [redacted] account [redacted] of W-X-. Statements from the Petitioner's father and W-X- assert that W-X- then transferred $557,992 from her [redacted]

[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).

[redacted] account [redacted] to the Petitioner's [redacted] account [redacted] on [redacted] 2016. Transaction statements from both of these accounts confirm these transactions.

However, the record does not show that the RMB funds were exchanged and transferred between X-W-'s [redacted] account and her [redacted] account in [redacted]. Because the record does not establish the complete path of the Petitioner's funds from mainland China to [redacted] and then to the United States, the Petitioner must demonstrate by a preponderance of the evidence that the funds occurring after the break in the path derived from lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. FOD sought such evidence in its request for evidence (RFE), specifically seeking evidence of the source of the U.S. dollar funds in X-W-'s [redacted] account [redacted], to include at least three months of complete bank statements for this account. In response, the Petitioner's father submitted a new written statement in which he described the transaction between he and X-W-, but also indicated that she was unwilling to provide the requested documentation due to privacy concerns. FOD determined that due to the break in the path of the Petitioner's funds, and because the record did not show that X-W- is licensed to conduct foreign currency exchanges, the Petitioner had not established that his investment funds derived from lawful means. We agree.

On appeal, the Petitioner asserts that the relevant section of the USCIS Policy Manual states only that an immigrant investor must document the lawful source of their investment funds and does not require them to establish the lawful source of a third-party exchanger's funds. But we have long indicated that under the requirements at 8 C.F.R. § 204.6(e) and (j)(3), an immigrant investor must show that their invested capital did not derive from unlawful means and they must trace the path of those funds to a lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195; *see 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"). And as previously noted, requiring documentation of the complete path of funds is USCIS's authoritative position. *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). In this case, we agree that the record is insufficient to establish the lawful source of the U.S. dollar funds which the Petitioner deposited to the NCE's escrow account.

Here, the transaction statement which the Petitioner submitted in support of his assertion that X-W- transferred $557,992 from her [redacted] account [redacted] to his [redacted] account [redacted] shows a withdrawal of $557,992 on August 10, 2016. But the only other transactions the statement shows are three separate deposits on August 3, 2016, which total $557,992.90 and were made by two businesses. This statement is also missing the account number information, and the only identifier included is X-W-'s name. Even assuming that this statement reflects activity in X-W- 's [redacted] account [redacted] the record includes no further evidence regarding the businesses which deposited the U.S. dollar funds, the purpose of the transactions, or the lawful source of the funds deposited, which the Petitioner asserts were then transferred to his [redacted] account [redacted] and ultimately to the NCE. For these reasons, we conclude that the Petitioner has not established that his investment funds derived from lawful sources.

The Petitioner also asserts in his brief that FOD's requests for evidence of the source of X-W-'s U.S. dollar funds "is unauthorized by the law, violates privacy rights, and is irrelevant." But he does not specify any privacy laws which were violated, and as discussed above, the requested information is

highly relevant to the issue of whether the funds invested by the Petitioner derived from a lawful source.

III. CONCLUSION

Per the preceding discussion, the Petitioner has not sufficiently established that the funds he claims 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 does not sufficiently document the complete path of his purported EB-5 investment and trace it back to a lawful source. *Borushevskyi v. USCIS*, 664 F. Supp. 3d at 129; *see 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's father to purchase his property in 2003. *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.