U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39482859

Date: NOV. 3, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien 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. In addition, FOD determined that the Petitioner had not established her ownership of the invested funds, and thus that she had placed the required amount of capital at risk. FOD dismissed a subsequently filed motion to reopen.[2] 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 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

[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 asserts on appeal that the motion she filed was a combined motion to reopen and reconsider. However, the record shows that she clearly marked box 2.a in part 2 of Form I-290B, Notice of Appeal or Motion, indicating that she was filing a motion to reopen, not a combined motion to reopen and reconsider at box 2.c. In addition, the Petitioner's brief submitted with her motion consistently refers to a motion to reopen and never mentions a motion to reconsider.

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, 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.[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

As a preliminary matter, we emphasize that this appeal relates to FOD's dismissal of the Petitioner's motion to reopen, not the denial of the underlying petition. Therefore, the question before us is whether FOD erred in dismissing the motion.

With her motion, the Petitioner submitted only a brief. As FOD explained in its decision, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the Petitioner did not submit new facts or documentary evidence, FOD concluded her filing did not meet the requirements of a motion to reopen and dismissed it on that ground. *See* 8 C.F.R. § 103.5(a)(4).

On appeal, the Petitioner does not challenge FOD's dismissal of her motion to reopen but instead focuses on FOD's initial decision to deny her petition. Because the appeal does not specifically identify any erroneous conclusion of law or statement of fact in FOD's decision dismissing the motion, we must summarily dismiss the appeal. 8 C.F.R. § 103.3(a)(1)(v).

Although we must dismiss the appeal, we nevertheless wish to note the following for the Petitioner's benefit.

As noted above, the Petitioner must document the lawful source of the funds she claims to have invested in the NCE. FOD identified several reasons for its determination that the Petitioner had not sufficiently documented the lawful source of the funds in her father's investment account which he gifted to her. First, the documentation of her parent's earnings ends more than 12 years prior to their initial investment transactions involving the pharmaceutical company shares which formed the basis

[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).

of her father's gift. Second, there were unresolved inconsistencies between the evidence of her father's employment and statements he had made on Form DS-160 when applying for a nonimmigrant visa. Third, the Petitioner did not submit evidence of the accumulation and savings of her father's earnings from those employers. Fourth, the statements from her father's [redacted] investment account showed several other large transactions occurring during the same period as the transaction involving the shares of the pharmaceutical company. Finally, the proceeds from the final sale of the pharmaceutical shares in 2018 could not be linked to the exchange of approximately CNY 6.2 million to the $960,000 ultimately wired to the Petitioner in April 2021. For all these reasons, FOD concluded that the Petitioner's parents' earnings, or the capital gains from these specific transactions, could not be traced to the investment funds.

In addition to the above, there are several instances in which the funds identified as comprising the basis of the Petitioner's investment funds were commingled with other funds from an unknown source. The first of these occurred when the Petitioner's father transferred the proceeds of the sale of the shares in the pharmaceutical company into his [redacted] savings account, which already had a balance of more than HKD 3.3 million. Later, when the Petitioner's father exchanged CNY 6.2 million held in the same account to the $960,000 ultimately transferred to the NCE, that account had an existing balance of more than CNY 25.6 million. Because money is fungible, the commingling of the funds at all stages with other funds of unknown origin in the relevant accounts is an additional ground for our conclusion that the Petitioner has not established that her investment funds derived from lawful means.

We also note that the Petitioner's appellate brief references a recent district court decision holding that the regulation requiring a petitioner to show that invested funds were obtained through lawful means does not require tracing of funds beyond their immediate source. *See Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024); *Sun v. USCIS*, No. 21-1612 (CKK), 2025 WL 947463 (D.D.C. Mar. 28, 2025); *Zhou v. Noem*, No. 19-2650, 2025 WL 416152 (D.D.C. Feb. 6, 2025). Other district court decisions have found that petitioners must show the complete path of funds. *See Truong v. USCIS*, No. 21-316 (RC), 2023 WL 4234658, at *5 (D.D.C. Jun. 28, 2023); *Nguyen v. USCIS*, 637 F.Supp.3d 822 (C.D. Cal. 2022). In contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Further, the D.C. Circuit Court has affirmed a district court decision that held USCIS' complete path interpretation of the regulations is its authoritative position as explained in the precedential decisions. *Borushevskyi v. USCIS*, 664 F.Supp.3d at 126-29; *see also Nguyen v. USCIS*, 637 F.Supp.3d 822, 835 (C.D. Cal. 2022) (affirming USCIS's denial of the petition where the petitioner's transfer of funds to a currency exchange "caus[ed] a clear break in the source, custody, and ownership of [the petitioner's] funds" and therefore there was insufficient evidence that the funds invested "were obtained from a lawful source"), *aff'd*, No. 22-56068, 2023 WL 8251320 (9th Cir. Nov. 29, 2023). These decisions require the Petitioner to document the path of funds to establish the lawful source of the funds invested in the NCE.

In the present case, there are multiple breaks of several years in the path of the Petitioner's claimed investment funds. The plain language of 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) supports FOD's requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, 2023 WL 4234658, at *5. The relevant path includes tracing the funds from their point of origin though any intermediary

accounts. *See id.* at *6. 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; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating 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)").

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that FOD dismissed her motion in error or otherwise overcomes the basis for the prior decision. Accordingly, the petition remains denied.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). 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 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.