U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39301142

Date: NOVEMBER 6, 2025

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) (2021).[1]

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish the lawful source of the Petitioner's investment funds and the Petitioner's engagement in the new commercial enterprise (NCE). 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

Alien investors are eligible for immigrant classification if they invest or are actively in the process of investing the requisite amount of capital in an NCE which will benefit the United States economy and create full-time employment for at least 10 U.S. citizens, lawful permanent residents, or other immigrants authorized to work in the United States. Section 203(b)(5)(A) of the Act (2021); 8 C.F.R. § 204.6(j). An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. A regional center is an economic unit involved with the promotion of economic growth. 8 C.F.R. § 204.6(e). For NCEs located in a targeted employment area (TEA), aliens must invest at least $500,000 of capital. Section 203(b)(5)(C)(ii) of the Act (2021).

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6I. A petitioner must demonstrate by a preponderance of the evidence that the capital was their own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). To show that the capital was

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed his petition in June 2021, the relevant law then in existence governs this appellate adjudication.

their own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the new commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source.[2] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The record shows the Petitioner invested $900,050 in the NCE, [redacted], limited liability company (LLC) on June 23, 2021, through the [redacted] According to the business plan, the NCE will raise capital from up to 18 EB-5 investors to loan to [redacted] LLC, the job creating entity (JCE). The JCE will use the proceeds of the loan to develop a mixed use commercial and residential rental building in [redacted], New York located in a TEA.

A. Lawful Source of Funds

The Petitioner states his EB-5 investment funds derived from a gift of $499,990 from his aunt and a gift of $400,060 from his mother. He explains that his aunt and his mother obtained these funds by redeeming their EB-5 investments in [redacted], LLC after they no longer needed EB-5 classification and withdrew their EB-5 petitions. The Petitioner submitted Gift Statements from his aunt and his mother who both state that the funds "shall be directly transferred from . . . [the Petitioner's father's] [redacted] account to EB-5 project account." The Petitioner also submitted: [redacted] statements to the Petitioner's father confirming $499,990 was twice credited to his father's account from [redacted] LLC on June 10, 2021, and June 11, 2021; a June 23, 2021 [redacted] of $900,050 to the NCE from the Petitioner's father; and a June 24, 2021 letter from the NCE confirming its receipt of the Petitioner's $900,050.

FOD determined the Petitioner did not establish the lawful source and path of his EB-5 investment funds because he did not submit evidence of the sources of his aunt's and his mother's gift funds and did not document the full path of his funds from his aunt and his mother to his father's account. On appeal, the Petitioner asserts FOD erred by not deferring to U.S. Citizenship and Immigration Services' (USCIS') prior approvals of his aunt's and his mother's EB-5 petitions, which show USCIS determined their investments derived from lawful sources. USCIS generally defers to certain, prior EB-5 determinations on regional center filings absent material change, fraud, willful misrepresentation, or legal deficiency. *See generally* 6 *USCIS Policy Manual* G.3(A)(2) (explaining this deference policy). However, this policy applies to initial adjudications and does not apply to appellate proceedings where we exercise de novo review.

[2] 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), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The Petitioner has not established the lawful source and path of his EB-5 investment funds. The Petitioner did not submit evidence of the source of his aunt's and his mother's EB-5 investment funds, which were redeemed to make gifts to the Petitioner. The Petitioner also did not submit statements of his father's [redacted] account to show the redemption funds were not comingled with other funds prior to the transfer of the Petitioner's EB-5 investment from his father's [redacted] account to the NCE. Consequently, the Petitioner has not shown that his EB-5 investment came solely from his aunt's and his mother's gifts.

On appeal, the Petitioner asserts he need not submit evidence of the source of his aunt's and his mother's EB-5 investment funds which they redeemed and gifted to him. The Petitioner states that in *Battineni v. Mayorkas*, No. 22-1332, 2024 WL 4267522, (D.D.C. Oct 2, 2024), the court held that USCIS' path of funds requirement is unsupported by the regulations, which do not require a petitioner to trace every part of their EB-5 investment beyond their immediate source of funds. 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). In addition, 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 (D.D.C. Jun. 28, 2023); *Nguyen v. USCIS*, 637 F.Supp.3d 822 (C.D. Cal. 2022). The D.C. Circuit Court has also affirmed a district court decision that held USCIS' complete path interpretation of the regulations is its authoritative position as explained in precedential decisions. *Borushevskyi v. USCIS*, 664 F.Supp.3d 117, 126-29 (D.D.C. 2023), *aff'd*, No. 23-5116, 2024 WL 2762146 (D.C. Cir. May 30, 2024). These decisions require the Petitioner to document the complete path of funds to establish the lawful source of the funds invested in the NCE.

Here, the Petitioner has not documented the source and path of funds from his aunt's and his mother's EB-5 investments through their redemptions. The Petitioner also has not shown that his aunt's and mother's redemption funds were not comingled with other funds in his father's [redacted] account before the Petitioner's EB-5 investment funds were wired to the NCE. Consequently, the Petitioner has not documented the lawful source of his funds as required by the regulation at 8 C.F.R. §§ 204.6(e) and 204.6(j)(3)(iii).

B. Remaining Ground for Denial

FOD also denied the petition for failure to establish the Petitioner's engagement in the NCE through managerial control or policy formulation, as 8 C.F.R. § 204.6(j)(5) requires. As the ground discussed above is dispositive of this appeal, we do not address and hereby reserve determination on the Petitioner's engagement in the NCE. *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").

III. CONCLUSION

The Petitioner has not established the lawful source of funds for his investment in the NCE, as required by the definition of capital at 8 C.F.R. § 204.6(e) and through evidence identifying all sources of the capital as required by 8 C.F.R. § 204.6(j)(iii). The Petitioner is consequently ineligible for classification as an immigrant investor.

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.