U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39211736

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) (2019).[1]

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish the lawful source of funds invested. 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 a new commercial enterprise (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 (2019); 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 (2019).

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). 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);

[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 May 2019, the relevant law then in existence governs this appellate adjudication.

see also Matter of Ho, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). To show that the capital was 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 that the Petitioner invested $500,050 in the NCE, [redacted] through the [redacted] According to the Confidential Private Offering Memorandum, the NCE will loan funds to [redacted], a limited liability company, for the development, construction, ownership, and operation of a scrap metal recycling and steel production facility in [redacted] Arkansas, which is located in a rural TEA. The NCE sought to raise $200,000,000 from up to 99 EB-5 investors.

The Petitioner claims he derived his investment funds from his and his wife's income from [redacted] a company of which he and his wife were partners. FOD denied the petition concluding the Petitioner had not established the lawful source of his funds from [redacted] In its decision, FOD questioned the legality of [redacted] business activity in the United States. On appeal, the Petitioner asserts he did not derive his investment funds from [redacted] because that is a different company which was established in 2018 and did not commence operations until 2020 after the Petitioner made his EB-5 investment on May 8, 2019. The Petitioner explains FOD's discussion of [redacted] business activity in the United States may arise from information regarding another company he formed, [redacted] limited liability company (LLC), which does business in the United States. However, the Petitioner states this company was formed in [redacted] 2019 after he made his EB-5 investment. The Petitioner maintains that he derived his EB-5 investment from his and his wife's savings from their earnings from [redacted]

As supplemented on appeal, the record shows that [redacted] did not begin operating until after the Petitioner made his EB-5 investment. The record also establishes that [redacted] was formed after the Petitioner made his EB-5 investment. To the extent FOD's decision relied on information relating to [redacted] and [redacted] those portions of FOD's decision are withdrawn.

A. Lawful Source of Funds

In his affidavit submitted on appeal and on diagrams of the source and path of funds submitted below, the Petitioner states his investment funds derived from his and his wife's income from [redacted] saved and invested in term deposits at their banks in India and in the Petitioner's investment account.

[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 submitted statements of his savings account statements at [redacted] and [redacted] in India from 2013 through 2019. He also submitted his wife's savings account statements from [redacted] from 2018 through 2019. These statements, the Petitioner's pay slips from [redacted] and his tax returns from 2012 to 2019 show his and his wife's earnings from [redacted] substantially exceeded his investment amount.

The Petitioner states he opened a [redacted] checking account in [redacted] New York to facilitate his investment. On March 26, 2019, the Petitioner states he liquidated fixed deposits in his [redacted] account and transferred $239,500 to his [redacted] account. On April 9, 2019, the Petitioner states he liquidated additional fixed deposits and transferred $250,000 to his [redacted] account. In her affidavit submitted on appeal, the Petitioner's wife states that on April 30, 2019, she liquidated fixed deposits in her [redacted] account and transferred $25,000 to her [redacted] account in the United States. On May 7, 2019, the Petitioner's wife states she transferred the $25,000 to the Petitioner's [redacted] account as a donation to his EB-5 investment. The Petitioner states that on May 8, 2019, he wired $500,050 to the NCE's escrow account. The record contains bank statements and letters from the Regional Center and the NCE documenting all of these transactions.

FOD determined the Petitioner did not establish that his earnings were the actual source of his investment funds. On appeal, the Petitioner asserts his and his wife's bank statements and his salary slips establish the credible path and source of his EB-5 investment funds. The Petitioner has not established, however, that his and his wife's salaries are the sole source of his EB-5 investment funds as his and his wife's bank statements reflect substantial deposits from other sources. For example, the Petitioner's [redacted] statements reflect deposits of 1,000,000 Indian Rupees (INR) identified as "DEB" on April 10, 2013, May 10, 2013, July 9, 2013, March 14, 2014, and October 14, 2014. In addition, the Petitioner's [redacted] statements for his account ending in [redacted] show the following deposits: on December 5, 2017, a 9,144,072.22 INR deposit of [redacted]; on December 7, 2017, a 5,000,000 INR deposit of [redacted]; on April 19, 2017, a 5,000,000 INR deposit of [redacted] on November 16, 2017, a 6,310,145.84 INR deposit of [redacted] on November 30, 2017, a 9,764,066.41 INR deposit of [redacted]; and on March 13, 2018, a 15,000,000 INR deposit of [redacted] The Petitioner's wife's [redacted] statements also reflect substantial deposits from sources other than [redacted] Specifically, on April 9, 2018, a 11,061,113.78 INR deposit "from [redacted] and on April 25, 2019, a 1,741,000 INR deposit of [redacted]

The Petitioner did not submit evidence of the sources of these additional deposits. As money is fungible, the Petitioner has not established that his EB-5 investment funds derived solely from his and his wife's accumulated earnings from [redacted] and not also from these other sources. In addition, the Petitioner did not submit his wife's [redacted] account statements to show that the $25,000 transferred from her [redacted] account was not commingled with other funds before being transferred to the Petitioner's [redacted] Consequently, the record is insufficient to document the complete path of the Petitioner's EB-5 investment, tracing the path of the funds back to lawful sources. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. *See also 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 required to show funds were obtained through lawful means, as recognized by precedent decisions).

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). 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.