U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38289581

Date: NOV. 19, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

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] 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.

Field Operations Directorate (FOD) denied the petition, concluding the record did not establish that the capital, which has been invested by the Petitioner, was obtained through lawful means. 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. 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) (2016).

An immigrant 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, the investor must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e).

[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 (TEA) and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition in September 2016, the relevant law then in existence governs this appellate adjudication.

To show the lawful source of the funds, the immigrant investor must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 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. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the complete path of the funds back to a lawful source.[2] *See 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. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998).

II. ANALYSIS

The Petitioner claims to have invested at least $500,000 of her funds into [redacted], the NCE, which is sponsored by [redacted] (RC), pursuant to the Immigrant Investor Pilot Program.[3] The NCE proposes to lend funds from a pooled investment to [redacted] the job creating entity (JCE). The JCE intends to acquire development rights, lease and renovate facilities, and operate residential care homes and daycare centers in the southern California area.

FOD determined the Petitioner did not demonstrate the lawful source of her invested EB-5 funds, including the path of funds. A de novo review of the record reflects multiple issues with the Petitioner's source and path of fund assertions, discussed below. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (noting that "it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice").

The Petitioner maintains on appeal:

> [The Petitioner's] $500,000 capital investment into the [NCE], derived from a cash gift from her then-fiancé, and now husband, [C-J-]. . . . [C-J-] obtained the funds from a portion of the sales proceeds of his real property. . . . The funds used to purchase the Property (and repay the loans used to finance a portion of the Property), in turn, derived from income [C-J-] earned (i) between 1997 and 2006 while working at [redacted], now known as [redacted] and (ii) between April 2006 to May 2008 while working at [redacted]

The record contains a declaration from C-J- claiming:

---

[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) (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).

[3] The Petitioner filed her petition in 2016 and indicated on the petition that the project is located in a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

I worked at [redacted] Branch from April 15, 1997 to March 19, 2006 and at [redacted] Branch from March 20, 1996 to March 27, 2006. My total after-tax income during this period was about RMB 912,432.65. I worked at [redacted] Head Office from April 2006 to the end of 2006, during which my after-tax income was RMD 242,445.19.

On October 28, 2003, I used my cumulative income to purchase a property . . . at a pre-sale price of RMB 835,563 (including an individual housing loan portfolio of RMB 333,000, which was paid off at the end of 2006). I obtained the Property on June 26, 2004 when the Property was co-owned by me and my ex-wife [Y-Z-].

On December 19, 2015, my ex-wife and I completed the divorce proceedings due to personality clashes. The result of the judgment was that the property was solely owned by me and would be transferred to me on May 16, 2016 . . . .

On July 16, 2016, I sold the Property . . . at a total price of RMB 7,800,000 including a purchase price of RMB 8,880,000 and a compensation for renovation, household appliances and furniture of RMB 920,000. . . . As of August 9, 2016, my [redacted] Account . . . has received the down payment totaling RMB 5,710,000 from the Buyer.

I agree to voluntarily and irrevocably gift RMB 3,800,000 of the said proceeds from the sale of the Property to [the Petitioner] so that she has the full rights to use the said proceeds for her EB-5 visa application, and to voluntarily assist [the Petitioner] in converting RMB into US dollars.

At the outset, the Petitioner asserts that C-J- used his income earnings from [redacted] between 1997 – 2008 to pay for the initial property. However, the record indicates that C-J- claims to have purchased the property in 2003 and paid off the loans in 2006. The Petitioner did not demonstrate the relevance of C-J-'s purported wages in 2007 and 2008 when he purchased the property in 2003 and paid off the loans in 2006.

Regardless, although the Petitioner submitted job letters purportedly from [redacted] indicating C-J-'s yearly earnings, income tax payments, labor handbook, and other employment-related documentation, the Petitioner did not sufficiently document the path of funds from the employers to C-J-. The Petitioner provided bank statements from [redacted] for C-J-'s account ending [redacted] from July 20, 2001, to December 21, 2006. The bank statements do not cover transactions from 1997 to the first half of 2001. While the Petitioner offered a declaration from C-J- claiming that he went to [redacted] and was informed that "[b]ank transaction records from 1997 to 2003 are no longer available due to the passage of time," the Petitioner did not demonstrate the path of funds from [redacted] to C-J-'s [redacted] account. Here, the Petitioner did not establish that C-J- earned sufficient income and accumulated the necessary funding from 1997 to 2006 in order to purchase the property in 2003 and pay off the loans in 2006.

Furthermore, as it pertains to the [redacted] statements, the Petitioner did not show that the transactions resulted from C-J-'s earnings at [redacted] From July 2001 to July 2003, the "Transaction remarks" column indicated either "?uP?," "JJN?," or "OxH*," which the Petitioner did not establish the meaning of these transaction indicators or otherwise demonstrate salary deposits from [redacted] Moreover, C-J-'s [redacted] statements from July 2003 – December 2006 contain some "Transaction remarks" indicating "Wages," but the Petitioner did not show that C-J- actually derived those wages from his employment with [redacted]

In addition, the Petitioner did not demonstrate that C-J- used his purported wages from [redacted] to purchase the property, and that C-J- accumulated those funds from his [redacted] employment. The Petitioner's initial cover letter claimed that the "1st Payment of RMB 255,563 was paid by 10/28/2003" and the "2nd Payment of RMB 250,000 was paid by 11/27/2003." According to C-J-'s [redacted] statements, from July 20, 2001 to October 20, 2003, C-J- never maintained a balance of more than RMB 10,153.10. In fact, on October 20, 2003, the last transaction prior to the purported first payment, C-J-'s balance was only RMB 9,083.00. Furthermore, on November 25, 2003, C-J- made two deposits of RMB 200,000 and RMB 40,000 with the "Transaction remarks" indicated as "Continue deposit." Then, a "Withdraw" transaction occurred on November 27, 2003, leaving a balance of RMD 1.60. The [redacted] statements do not support the Petitioner's assertions of two payments of RMB 255,563 and RMB 250,000, respectively, and the record does not reflect that C-J- possessed the necessary funds to make the two payments from his [redacted] account.

The Petitioner also did not establish that C-J- paid off his mortgage loan from his wages at [redacted] and [redacted] through his [redacted] account. According to the [redacted] statements, there are numerous transactions listed as "Personal loan" and "Individual loan" from December 2003 – March 2006, and some of those transactions correspond with transactions in the "Personal Housing Provident Fund Loan Repayments Details" and "Certificate of Clearance of Personal Loan" documents. However, other transactions do not. For example, according to the provident fund document, on April 27, 2004, C-J- made a significant principal payment of RMB 89,459.13 and an interest payment of RMB 10.87. According to C-J-'s [redacted] statement, no debit transactions even close to that amount occurred around that date. In fact, between April 20, 2004, and April 26, 2004, C-J- made one credit transaction of RMB 9,328.51; five debit transactions between RMB 5,900.00, 328.31, 686.52, 941.01, and 1,503.00; and maintained balances of RMB 9,370.48, 3,470.48, 3,142.17, 2,455.65, 1,514.64, and 11.64, respectively. The next transaction occurred on May 20, 2004. Thus, C-J- did not have the funds available in his [redacted] account to make an RMB 89,470 provident fund payment.

Likewise, according to the personal loan document, C-J- made two substantial loan repayments – RMB 83,190 on April 21, 2005, and RMB 38,720 on April 20, 2006. Neither transaction is reflected on C-J-'s [redacted] statements. In fact, the [redacted] statements show no transactions in April 2005 and only one credit transaction in April 2006. Moreover, C-J-'s balances during April 2005 and April 2006, as well as the preceding and following months, do not indicate sufficient funds to cover those repayment transactions.

While we acknowledge the passage of time since the possible creation of certain relevant documents, we find that without additional corroborating evidence, considered together with inconsistent documentation, it is insufficient to establish how much C-J- earned and then retained or saved. In addition, such evidence is insufficient to document the lawful source of the funds C-J- used to purchase

the property and repay the loans, which he later sold, utilizing some of the proceeds to gift the Petitioner for her EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195; *see also Mo v. USCIS*, 719 F. Supp. 3d 21, 31 (D.D.C. 2024) (concluding that USCIS did not err in finding that the record was insufficient to establish that the petitioner and his wife saved enough income to purchase properties).

On appeal, the Petitioner submits a "Source of Funds Expert Report of [redacted] who opined that "[C-J-] used a portion of the proceeds from the sale of his real property . . . to make the gift to the [the Petitioner]." The report also indicates that "[t]he conclusions reached in report are based on information provided by [the Petitioner] and her representatives" and "[u]nless otherwise stated, [the report] has not independently confirmed the accuracy and completeness of the information provided." While the report restates the Petitioner's claims and references the submitted documentation, the report does not demonstrate the path of funds from C-J-'s employers to his [redacted] account from 1997 to 2006, the derivation of wage transactions listed on C-J-'s bank statements, the corresponding loan transactions between C-J-'s loan repayment documents and his [redacted] statements, and the sufficiency of available funds in C-J-'s [redacted] account to make his two property purchase payments and multiple loan payments.

Finally, we acknowledge the Petitioner's claims that FOD's decision does not comply with the applicable laws and regulations. The Petitioner references recent district court decisions 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; *Nguyen v. USCIS*, 637 F. Supp. 3d 822 (C.D. Cal. 2022), *aff'd*, No. 22-56068, 2023 WL 8251320 (9th Cir. Nov. 29, 2023). 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, *aff'd*, 2024 WL 2762146; *see also Nguyen v. USCIS*, 637 F. Supp. 3d at 835 (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*, 2023 WL 8251320. 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 breaks in the paths 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*, No. 21-316 (RC), 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.

at 165 (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)").

Here, the record does not establish the lawful source and complete path of funds. The Petitioner must demonstrate by a preponderance of the evidence that the funds occurring after the breaks in the paths derived from lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210; *see also Borushevskyi v. USCIS*, 664 F. Supp. 3d at 129. The record does not sufficiently demonstrate that the funds ultimately received by the NCE derived from lawful sources as explained above. Therefore, the record remains insufficient to establish by a preponderance of the evidence the claimed lawful sources of the funds invested by the Petitioner in the NCE.

III. CONCLUSION

It is the Petitioner's burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of her purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Because the record did not establish by a preponderance of the evidence that the funds invested by the Petitioner in the NCE were lawfully obtained, we conclude the Petitioner is ineligible for the immigrant investor visa classification.

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.