U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39208543

Date: NOV. 20, 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). This fifth preference (EB-5) classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Foreign nationals may invest in a project associated with a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. *See* section 203(b)(5)(E)(i) of the Act.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that the required amount of capital the Petitioner has invested, or is actively in the process of investing, as well as any funds used to pay administrative costs and fees associated with her investment were obtained from a lawful source and 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

The term "capital" does not include any assets directly or indirectly acquired by unlawful means, including any cash proceeds of indebtedness secured by such assets. Section 203(b)(5)(D)(ii)(III) of the Act. An alien investor must demonstrate that the required amount of capital they have invested, or are actively in the process of investing, and any funds used to pay administrative costs and fees associated with their investment were obtained from a lawful source and through lawful means. Section 203(b)(5)(L)(i) of the Act.

To show that the capital invested, or actively in the process of being invested, was obtained from a

lawful source and through lawful means, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the NCE. *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm. 1998); *Matter of Izummi*, 22 I&N Dec. at 195. 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.

Borrowed funds may not be counted toward the minimum capital investment requirement unless such funds were loaned to the alien investor in good faith and were not loaned to circumvent any limitations imposed on permissible sources of capital, including proceeds from illegal activity. Section 203(b)(5)(L)(iii)(I) of the Act. If funds invested are loaned to the alien investor, the alien investor's petition must include business and tax records, any other evidence identifying any other source of capital or administrative fees, and evidence relating to money judgments from the lender, if other than a bank. Section 203(b)(5)(L)(iii)(II) of the Act.

II. ANALYSIS

The Petitioner's supporting documents show that on May 19, 2023, she transferred $880,000[1] from her [redacted] account to the escrow account of [redacted] (NCE), which is sponsored by [redacted] (the Regional Center).[2] According to the Confidential Private Placement Memorandum, dated 2023, the NCE proposes to raise $40,000,000 from 50 immigrant investors and lend the entire amount to [redacted] the job-creating entity (JCE). The business plan of [redacted] project, dated 2023, provides that the JCE intends to construct and operate a 250,000 square foot industrial building and related infrastructure for phase II of the [redacted] project in [redacted], Nevada.

The Petitioner asserted that she derived her investment funds from the sale of her spouse's two real properties in China. The Petitioner also asserted that she and her spouse used the sale proceeds of the properties to invest in fixed deposit accounts and redeemed the fixed deposit accounts for her investment in the NCE.

FOD determined that the record did not sufficiently establish that the funds invested into the NCE in May 2023 derived solely from the sale proceeds of the properties, which were received by the Petitioner's spouse in January 2021 – two years prior to the Petitioner's investment in the NCE. Specifically, FOD found that the funds in the Petitioner's and her spouse's bank accounts in the United States from which the Petitioner transferred funds to the NCE for her investment were commingled with U.S. dollars from unidentified sources that could not be traced back to the Petitioner's and her spouse's redemptions of fixed deposit accounts.

We agree with FOD that the sale proceeds of the real properties were commingled with funds from other sources not shown to derive from lawful means, as shown by the bank statements of the Petitioner

[1] In November 2024, U.S. Citizenship and Immigration Services (USCIS) approved the Regional Center's assertion that [redacted] the job-creating entity, is principally doing business within a rural area. *See* section 203(b)(5)(B)(i)(I) of the Act. Therefore, the requisite amount of capital was downwardly adjusted from $1,050,000 to $800,000. *See* section 203(b)(5)(C)(ii) of the Act.

[2] *See* section 203(b)(5)(E)(iii) of the Act (explaining the establishment of a regional center).

and her spouse.[3] For example, regarding the $1,399,980 deposited into the Petitioner's spouse's [redacted] account on March 23, 2023, the Petitioner claimed that she and her spouse provided a loan of RMB 9,000,000 to their friends, [redacted] in 2021 and that [redacted] repaid the loan in U.S. dollars in 2023. The record supports FOD's determination that the Petitioner did not provide sufficient evidence to demonstrate that the funds used by [redacted] to repay the loan derived from lawful means. *See* section 203(b)(5)(L)(iii)(II) of the Act.

On appeal, the Petitioner claims that FOD did not raise any issue with regard to the funds that the Petitioner gave to the third-party currency exchangers and that FOD did not contest the source of her funds. The Petitioner does not address or challenge FOD's determination that the record did not sufficiently establish that her investment funds derived solely from the sale of the properties. When dismissing an appeal, we generally do not address issues that were not raised with specificity on appeal. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Because the Petitioner did not address with specificity the issue regarding the source of her investment funds or commingling of the sale proceeds of the real properties or redemption proceeds of fixed deposit accounts with funds from other sources not shown to derive from lawful means, we deem the issue waived and conclude that the Petitioner has not shown by a preponderance of the evidence that her invested funds and administrative costs and fees were obtained from a lawful source and through lawful means. *See* section 203(b)(5)(L)(i) of the Act.

The Petitioner contends that FOD's determination that her invested capital was not obtained through lawful means was erroneous as a matter of law because in reviewing the information and documentation pertaining to her and her spouse's five bank accounts, FOD erred in conducting its path of funds analysis. The Petitioner argues that FOD's requirement that the Petitioner demonstrate the source of the funds of her third-party currency exchangers was improper and was contrary to the *Battineni* Court's holding because petitioners participating in the EB-5 program are not required to demonstrate a currency exchanger's source of funds.

We adopt and affirm FOD's decision regarding the Petitioner's failure to establish the lawfulness of the U.S. dollars transferred by third-party currency exchangers used by the Petitioner to exchange her funds from Chinese yuan renminbi to U.S. dollars and transfer the funds from mainland China to Hong Kong and then to the United States. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below "is not only common practice but universally accepted").

Contrary to the Petitioner's claims that FOD's decision was erroneous as a matter of law, pertinent regulations and precedent decision support FOD's requirement that the Petitioner demonstrates the claimed lawful sources of the funds used by the third-party exchangers for the currency exchanges. *See* section 203(b)(5)(D)(ii) of the Act (defining "capital"); *see also Matter of Ho*, 22 I&N Dec. at 210-11. 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

[3] While we may not address each piece of evidence individually, we have reviewed and considered each one.

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 117, 126-29 (D.D.C. 2023), *aff'd*, No. 23-5116, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *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 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*, 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 (emphasis added). 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 that 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)").

Because the record does not demonstrate the complete paths of the Petitioner's funds from mainland China to Hong Kong and then to the United States, the Petitioner must demonstrate that the funds occurring after the breaks in the paths derived from lawful means. We agree with FOD that the record lacks sufficient evidence to establish the lawfulness of the U.S. dollars transferred by the third-party currency exchangers to the Petitioner's or her spouse's bank accounts in the United States. The Petitioner has not traced the path of her investment funds and administrative costs and fees back to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Accordingly, we conclude that the Petitioner has not demonstrated by a preponderance of the evidence that her investment funds and administrative costs and fees were obtained from a lawful source and through lawful means. *See* section 203(b)(5)(L)(i) of the Act.

III. CONCLUSION

As the record does not sufficiently show that the Petitioner's investment funds and administrate costs and fees were obtained from a lawful source and through lawful means, the Petitioner has not established her eligibility for the immigrant investor visa classification. The appeal will be dismissed

for the above-stated reasons, with each considered as an independent and alternate basis for the decision.

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.