U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39929228

Date: NOV. 24, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Standalone 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.

Field Operations Directorate (FOD) denied the petition, concluding the Petitioner did not establish (1) 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 his investment were obtained from a lawful source and through lawful means and (2) that the NCE has created or will create at least 10 full-time positions for qualifying employees. 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 indicate that from February to December 2023, the Petitioner deposited a total of $804,000[1] into the bank account of [redacted] LLC (NCE). According to the business plan of the NCE, dated 2023, the NCE intends to construct and operate a convenience market and grocery store in [redacted] Texas.

The Petitioner asserted that he derived his investment funds from the sale of three parcels of land in India that he purchased using loans from his business partner and family members. The Petitioner initially asserted that after receiving the sale proceeds of the land, he repaid the loans he used to purchase the land, made investments in companies he worked with, and made loans to his family and friends using the sale proceeds and that he used loan repayments from his family and friends and equity proceeds from the companies to invest in the NCE. In response to FOD's request for evidence (RFE), the Petitioner asserted that after receiving the sale proceeds of the land, he repaid the loans he used to purchase the land, invested a portion of the sale proceeds into fixed deposit accounts and a brokerage account, and made loans to his family, friends, and their businesses using the sale proceeds and that he used loan repayments from his family, friends, and their businesses and his investment income from the brokerage firm to invest in the NCE.

Here, the sources of the Petitioner's investment funds changed in response to the RFE because the Petitioner claimed that he partly used his investment income from the brokerage firm to invest in the NCE instead of his equity proceeds from the companies he worked with. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *Matter of Izummi*, 22 I&N Dec. at 175; *see also* 8 C.F.R. § 103.2(b)(1).

FOD found that the Petitioner did not articulate or submit sufficient evidence to demonstrate that the funds loaned to him for the property purchases derived from lawful means. FOD also found that the

[1] The Petitioner asserted that the project is located in a high unemployment area, and, therefore, the requisite amount of capital was downwardly adjusted from $1,050,000 to $800,000. *See* section 203(b)(5)(B)(ii) of the Act (explaining designation of high unemployment area); section 203(b)(5)(C)(ii) of the Act (providing adjustment of the amount of capital required for targeted employment areas and infrastructure projects).

Petitioner did not articulate or submit sufficient evidence to demonstrate the lawful sources of the funds various individuals and companies used to repay the loans to the Petitioner.

The Petitioner contends that FOD imposed an impermissibly heightened evidentiary requirement by demanding exhaustive trace-every-penny documentation for third-party lenders contrary to 8 C.F.R. § 204.6(g)(1) and controlling precedent, including *Matter of Zhang*, 27 I&N Dec. 569 (AAO 2019), *Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024); and *Zhou v. Noem*, No. 19-2650, 2025 WL 416152 (D.D.C. Feb. 6, 2025). The Petitioner argues that sworn declarations, tax returns, CPA certifications, and bank statements trace the capital from the lawful sale of land, through documented loans and remittances, to the NCE's account.

A petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality of the evidence, including its relevance, probative value, and credibility. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, we have reviewed each piece of evidence, both individually and within the context of the totality of the evidence, and conclude that the Petitioner has not established by a preponderance of the evidence that his investment funds were obtained from a lawful source and through lawful mean.[2]

While the Petitioner claims that FOD imposed a heightened evidentiary requirement by demanding exhaustive trace-every-penny documentation for third-party lenders, pertinent law and regulations and precedent decision support FOD's requirement that the Petitioner demonstrates the claimed lawful sources of funds used by third-party lenders to make loans to the Petitioner for the land purchases. *See* section 203(b)(5)(D)(ii) of the Act (defining "capital"); section 203(b)(5)(L)(iii)(II) of the Act (providing the requirement for borrowed funds); *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 of funds beyond their immediate source. *See Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024); *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"

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

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. 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. 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)").

In this case, the record supports FOD's determination that the Petitioner did not provide sufficient evidence to demonstrate that the funds loaned to him for the land purchases derived from lawful means. The Petitioner provided bank statements of various individuals and companies, statements from various individuals regarding their loan agreements with the Petitioner, identification documents, business registration certificates, and income tax returns. The bank statements of the Petitioner and his business partner, [redacted], substantiate the Petitioner's claims that he purchased two parcels of land in 2014 and 2018 using loans he obtained from Mr. [redacted] Mr. [redacted] income tax returns reflect that he earned income and paid income taxes for the submitted years. However, the bank statements and income tax returns do not sufficiently establish the claimed lawful source of funds deposited into Mr. [redacted] bank account prior to the transfers of funds to the Petitioner's account in 2014 and 2018.[3]

Similarly, the bank statements of the Petitioner and his spouse and parents show that the Petitioner's spouse and parents transferred a total of 1,350,000 Indian rupees (INR) from their bank accounts to the Petitioner's bank account on September 19, 2018 and that the Petitioner used the funds to purchase a parcel of land in 2018. The spouse's and father's income tax returns show that they earned income and paid income taxes for the submitted years. However, the bank statements and income tax returns do not sufficiently demonstrate the claimed lawful source of funds deposited into the spouse's and parents' bank accounts prior to the transfers of funds to the Petitioner's account in 2018.[4] As such, the record lacks sufficient evidence to establish the claimed lawful source of funds used by the third-party lenders to make loans to the Petitioner. *See* section 203(b)(5)(L)(iii)(II) of the Act. Therefore, the sale proceeds of the land have not been shown to derive from lawful means because the funds used to purchase the land have not been shown to derive from lawful means. *See* section 203(b)(5)(L)(i) of the Act.

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[3] For example, a total of INR 2,500,000 was deposited into Mr. [redacted] account with [redacted] by three individuals and an entity on October 22, 2014 immediately prior to the transfer of INR 750,000 to the Petitioner on the same day. But the record does not sufficiently identify the source of these deposits.

[4] For example, INR 49,000 and INR 50,000 were deposited into the spouse's account with [redacted] on September 5 and 18, 2018 prior to the transfer of INR 650,000 to the Petitioner on September 19, 2018, but the record does not sufficiently identify the source of these deposits. As another example, INR 49,000 and INR 566,205 were deposited into the father's account with [redacted] on September 5 and 18, 2018 prior to the transfer of INR 650,000 to the Petitioner on September 19, 2018, but the record does not sufficiently identify the source of these deposits. INR 49,000 was deposited into the mother's account with [redacted] on September 5, 2018 prior to the transfer of INR 50,000 to the Petitioner's account on September 19, 2018, but the record does not sufficiently identify the source of this deposit.

On appeal, the Petitioner presents additional evidence and claims that this evidence establishes the lawful source of his investment funds by a preponderance of the evidence. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we generally do not consider new evidence submitted for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record). Nevertheless, we considered the new evidence submitted on appeal and determine that this evidence does not overcome the derogatory information provided in the FOD's decision.

The Petitioner now offers letters from a chartered accountant on behalf of various individuals and companies providing the sources of funds for their loan repayments to the Petitioner, bank statements of the Petitioner and various individuals and companies, property sales agreements, and income tax returns. The bank statements show transfers of funds between the Petitioner and various individuals or companies to support the initial loans made by the Petitioner to various individuals and companies and subsequent loan repayments by the individuals and companies to the Petitioner. While the letters from the accountant provide the sources of the individuals' or companies' loan repayments to the Petitioner, the record lacks sufficient evidence to substantiate the accountant's claims or to establish the claimed lawful sources of funds used by the individuals and companies to repay the loans to the Petitioner. The Petitioner has not established the claimed facts with unsupported testimonial evidence alone. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190, 194 (Reg'l Comm'r 1972)).

For example, the accountant states that the source of funds used by [redacted] to repay a loan of INR 14,000,000 to the Petitioner was his capital withdrawal of INR 15,000,000 from his partnership firm, [redacted]. While the bank statements show the deposit and withdrawal of these amounts, the record does not include sufficient evidence to support that the INR 15,000,000 deposited into Mr. [redacted] account by [redacted] on January 2, 2023 was his capital withdrawal from the firm. In addition, the record lacks sufficient evidence to demonstrate that Mr. [redacted] ownership interest in the firm and income, distributions, or dividends from the firm derived from lawful means.

As another example, the accountant states that the source of funds used by [redacted] to repay a loan of INR 4,000,000 to the Petitioner was [redacted] partial repayment of Mr. [redacted] loan of INR 7,500,000 to [redacted] The accountant further states that Mr. [redacted] used the sale proceeds of a real property to make the loan to [redacted] and the Petitioner provided a land sales agreement. The bank statements show transfers of funds between the Petitioner and Mr. [redacted] and between Mr. [redacted] and [redacted] The land sales agreement shows that the Petitioner and Mr. [redacted] sold a parcel of land for INR 42,019,300 in 2019. However, the record does not contain sufficient evidence to support the claimed loan agreement between Mr. [redacted] and [redacted] and to demonstrate the claimed lawful source of funds used by Mr. [redacted] to purchase the land.

For another example, the accountant states that the source of funds used by [redacted]

[redacted] to repay a loan of INR 4,500,000 to the Petitioner was a loan of INR 4,500,000 from [redacted] The accountant further states that Ms. [redacted] repaid the loan of INR 4,500,000 to [redacted] using her son's remittance from the United States. While the bank statements show transfers of funds between the Petitioner and Ms. [redacted] and between Ms. [redacted] and [redacted], the Petitioner did not provide sufficient evidence of the claimed loan agreement between Ms. [redacted] and Ms. [redacted] the claimed lawful source of funds used by [redacted] to lend to Ms. [redacted], or the claimed lawful source of funds used by Ms. [redacted] son to repay the loan to [redacted].

Moreover, the claims that the invested funds were not only derived from lawful means but also that they were accumulated and maintained without being comingled with funds not shown to derive from lawful means have not been shown by a preponderance of the evidence. The Petitioner asserted that he enlisted the assistance of his brother, spouse, and child to exchange his INR currency into U.S. dollars and remit the funds to his bank account in the United States. The Petitioner's bank statements for his saving account with [redacted] indicate that his investment income from the brokerage firm and loan repayments from various individuals and companies were comingled with funds from other sources not shown to derive from lawful means. For example, after [redacted] deposited INR 4,000,000 into the Petitioner's bank account on October 12, 2022 as a loan repayment for [redacted] LLP and [redacted], a total of INR 353,155 was withdrawn from the Petitioner's account from October 22 to 25, 2022 and INR 500,000 was deposited by an individual into the Petitioner's account on October 27, 2022 prior to the transfer of INR 1,753,771 from the Petitioner's account to his brother's account on January 5, 2023 for the currency exchange. The Petitioner has not traced the path of his investment funds 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 agree with FOD that the Petitioner has not shown by a preponderance of the evidence that his investments funds were obtained from a lawful source and through lawful means. *See* section 203(b)(5)(L)(i) of the Act.

Because the Petitioner is ineligible for the benefit sought for failure to sufficiently document the claimed lawful sources of his investment funds, we need not reach, and therefore reserve, FOD's other ground for denial regarding the job creation requirements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

As the record does not sufficiently show that the Petitioner's investment funds were obtained from a lawful source and through lawful means, the Petitioner has not established 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.