U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38896230

Date: OCT. 1, 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 November 2019, 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 claimed to have invested at least $500,000 of his funds into EB5 [redacted] the NCE, which is sponsored by the EB5 Capital – [redacted] pursuant to the Immigrant Investor Pilot Program.[3] The NCE proposes to make an equity investment in [redacted] the job creating entity (JCE). The JCE would use this equity, along with equity by other investors and construction loans, to develop, construct, and operate a luxury hotel in [redacted] New York.

FOD determined that the Petitioner did not demonstrate the lawful path of funds originating from the Petitioner's bank account to [redacted] to the escrow account for the NCE. We agree.

As relevant here, the Petitioner initially submitted a "Petitioner Memorandum" claiming:

> The Socialist Republic of Vietnam regulates outbound remittances and the exchange of Vietnamese currency for foreign currency. To make his investment in the U.S. enterprise, it was thus necessary for petitioner to enlist the assistance of a third-party money transfer company willing to receive funds from petitioner in Vietnam and remit U.S. currency outside of Vietnam, thereby eliminating the need to perform a currency exchange or outbound remittance within Vietnam.
>
> In order to accomplish her remittance of the funds to the United States, petitioner engaged the service of [redacted], a Singaporean company duly-licensed to conduct international remittance business [ ].

[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 2019 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).

Details and steps of the remittance transaction are confirmed in the signed agreement dated November 4, 2019 between petitioner and [ ] and the statement signed by the Director of [ ].

The payment order and statements of petitioner's [ ] evidence that petitioner transferred VND13,088,350,000 from her to the representative agent of on November 4, 2019.

Letter from dated November 6, 2019 [ ] and the outgoing telegraphic transfer receipt [ ] confirmed that received VND13,088,350,000 from petitioner, and in turn remitted USD555,000 (an equivalent sum of U.S. dollars) to the Partnership's escrow for the benefit of petitioner on November 5, 2019 to effectuate the transfer.

Submitted [ ] are the investment confirmation letter issued by EB5 dated November 5, 2019, and the incoming wire receipts from confirming the receipt of USD550,000 for the benefit of petitioner, thereby completing petitioner's investment into the new commercial enterprise.

The Petitioner provided a November 2019 agreement between the Petitioner and where the Petitioner agreed to transfer VND 13,088,350,000 to "authorized agent in Vietnam . . . ' with account number ending in and agrees to provide foreign exchange services to Client" by transferring the money to account number ending

In addition, the Petitioner submitted a "Statement from " indicating that the Petitioner transferred 13,088,350,000 VND from her account ending in to account ending in Further, the statement claims that " "is a representative agent of in Vietnam who is authorized to collect VND on behalf of " Further, the statement asserts that transferred $550,000 to account ending

Furthermore, the Petitioner offered an account statement ending for the Petitioner from showing a VND 13,399,997,800 balance and a VND 13,088,350,000 transfer to The Petitioner also submitted a payment order reflecting a VND 13,088,350,000 transfer from the Petitioner's account ending to account ending

Here, the agreement does not provide details of what would do with the funds received or whether had a business account in Vietnam that could receive funds. Also, the record lacks evidence of what did with the VND he received from the Petitioner and whether he remitted the funds from his personal bank account to accounts. The Petitioner did not show the path of funds from personal account to account; and therefore, the Petitioner did not demonstrate that the funds from account to the NCE's account derived from her funds.

In response to the request for evidence seeking information on this break in the path of funds, the Petitioner asserted that because this is an informal value transfer, there was no direct transfer of the Petitioner's funds from Vietnam to Singapore. Rather, upon the agent's receipt of the funds in Vietnam, the equivalent value was transferred from its bank in Singapore to the escrow account of the NCE. Again, the Petitioner submitted documents confirming the amount was transferred from her bank account to [redacted] personal bank account, and a few days later, [redacted] wired $550,000 from its bank account to the NCE's bank account.

However, the Petitioner did not provide documents to establish [redacted] is authorized to do business in Vietnam. Rather, the Petitioner provided a letter by [redacted] director stating that the company is a non-bank financial institution regulated and registered in Singapore and permitted to provide international money transfer services to and from Singapore to other countries. He does not state [redacted] is authorized to do business in Vietnam. Further, the Petitioner submitted a letter dated July 2023 from an attorney in Vietnam stating [redacted] can legally authorize its personnel residing in Vietnam to receive money from a Vietnamese citizen within the Vietnamese territory. The letter, however, does not discuss if the agreement is legal under Vietnam's currency exchange, currency export, or banking law. The letter also does not establish that [redacted], as an unauthorized financial entity in Vietnam, could legally rely on an individual to facilitate currency exchanges and remittances within or outside of Vietnam.

Further, the Petitioner did not establish that the money [redacted] remitted on her behalf after the break in path of funds belonged to her. A petitioner must establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are their own. *Matter of Soffici*, 22 I&N Dec. at 165 n.3. Although the Petitioner submitted an "Agent Memorandum of Agreement" between [redacted] and [redacted] the record does not establish the complete path of the Petitioner's funds from [redacted] bank account to [redacted] bank account to the NCE's escrow account. The Petitioner must demonstrate by a preponderance of the evidence that the fundingderived from lawful means. 8 C.F.R. § 204.6(j)(3); *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)"); *Matter of Ho*, 22 I&N Dec. at 210 ("The record must trace the path of the funds back to a lawful source."); *Borushevskyi v. USCIS*, 664 F.Supp. 3d at 129 (finding the plain language of the regulations requires a petitioner to submit evidence tracing the complete path of his capital investment); *Truong v. USCIS*, No. 21-316 (RC), 2023 WL 4234658, at *5 (D.D.C. Jun. 28, 2023). As a result, the Petitioner has not established that the $500,000 she purportedly invested in the NCE, did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e).

Finally, we acknowledge the Petitioner's claims that FOD's decision does not comply with the applicable laws and regulations. However, contrary to the Petitioner's claims, pertinent regulations and precedent decision support FOD's request for evidence regarding the claimed lawful sources of the funds used by the third-party exchanger for the currency exchange. 8 C.F.R. § 204.6(e) (defining "capital"), (j)(3); *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); *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)").

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.