U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35357201

Date: OCT. 08, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant alien investor pursuant to the Immigration and Nationality Act (the Act) Section 203(b)(5), 8 U.S.C. § 1153(b)(5) (2018).[1] This employment-based 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 U. S. 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 funds the Petitioner invested were obtained from lawful sources. 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 he or she invests the requisite amount of qualifying capital in an NCE. 8 C.F.R. § 204.6(e) (defining "commercial enterprise"). An alien may invest the required funds directly in an NCE or through a regional center. Regional centers apply for designation as such with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project, taken on either directly by the NCE or by one or more separate entities known as the "job creating entity" (JCE). Regional centers can pool alien (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii). An alien investor seeking EB-5 classification must show that his or her investment will benefit the U. S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). An NCE may be relied upon by multiple alien investors each seeking EB-5

[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 had filed this petition in February 2018, the relevant law then in existence governs this appellate adjudication.

classification, provided that each alien investor has invested or is actively in the process of investing the required amount, and that each individual investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

An alien must demonstrate that he or she has placed his or her 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 [his or her] own"). In addition, the alien must show that his or her invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show the lawful source of the funds, an alien 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 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 Petitioner filed the instant petition based upon his investment of $500,000[3] into [redacted], LLC, a new commercial enterprise (NCE) operating under the auspices of U.S. [redacted], LLC (Regional Center). The NCE proposed to pool up to $350,000,000 from 700 immigrant investors. The Petitioner's investment in the NCE would be loaned to [redacted] LLC (the job creating entity, or JCE) to construct and redevelop hotel space, add retail and restaurant space and signage, and renovate the [redacted] in [redacted], New York.

The Petitioner states the funds he invested in the NCE came from mortgage loan proceeds secured by a property in [redacted], China, that he initially purchased on August 30, 2003, with funds he accumulated over the course of his employment with [redacted] Ltd. from May 2000 to April 2003. The initial petition contained an "Employment Separation Certificate," a copy of his business card, business license, property purchase and mortgage documentation, and documentation describing the transferral, conversion and deposit of funds for investment from China to the United States to support the lawful source of the Petitioner's funds to purchase the [redacted] property. FOD issued a request for evidence (RFE) to the Petitioner, seeking evidence to establish the invested funds were obtained by the Petitioner through a lawful source.

In response to FOD's RFE, the Petitioner submitted a personal statement with English translation, copy of a household register with English translation, a ledger from the [redacted] for the period October 8, 2022 to July 30, 2003 with English translation, China Tax State Tax Administration website copies describing Measures for Self-Declaration of Individual Income Tax

[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] Because the NCE is located in a State of New York designated targeted employment area, the requisite amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2018).

(for Trial Implementation) with English translation, frequently asked questions from baidu.com[4] describing when the People's Republic of China made social security payment compulsory with English translation, and police clearance certificate to ostensibly testify to his character and credibility. The Petitioner stated that he could only provide incomplete records because of the passage of time and the lack of computerized infrastructure to maintain such records in China at the time. He expressed that the documents he provided demonstrated that he was paid in cash, that he paid his own social security, and that he had accumulated the income he used to purchase the property securing the mortgage loan that ultimately funded his investment in the NCE.

FOD denied the petition, finding that the Petitioner did not establish the lawful source of the funds used for the investment. FOD specifically concluded the evidence and explanation the Petitioner provided in response to the RFE did not comprise "sufficiently probative evidence to corroborate" the Petitioner's statements and the lawful source of his funds. On appeal, the Petitioner contends he preponderantly established his employment with [redacted] Ltd and therefore demonstrated that he had more likely than not accumulated the funds he claimed to have earned and accumulated prior to purchasing the property he eventually sold to fund his investment. The Petitioner asserts FOD erred by applying an evidentiary standard in excess of preponderance when it requested evidence to demonstrate the lawful source of the funds and otherwise largely renewed the assertions he advanced in his response to the RFE.

The Petitioner's response to the RFE and his appeal heavily emphasize his contention that he was employed with [redacted] Ltd during the time in question. But, even if the evidence the Petitioner submitted demonstrates that it is more likely than not that he was employed in the capacity for the time he specifies, the evidence does not demonstrate more likely than not that the funds that he says were accumulated over that time period and deposited into his bank accounts came from his employment with [redacted] Ltd. The Petitioner asserts he was paid in cash and deposited the cash minus the amounts he withheld for his expenses into his [redacted] account. But the evidence does not convincingly demonstrate the cash the Petitioner procured stemmed from his employment. Or in other words, the origins of the cash the Petitioner deposited are unknown and the evidence does not adequately establish the likely origins of the cash funds. The Petitioner states the Chinese authorities did not require employers to pay social insurance during the time the Petitioner was employed with [redacted] Ltd. and that he was therefore required to make the payments himself. But paying the social insurance payments himself in the amounts he disclosed does not persuasively demonstrate the Petitioner earned and accumulated the funds he represents he did during the period in question to purchase the property securing the mortgage loan funding his investment in the NCE.

Based on the reasons we have discussed, the Petitioner has not sufficiently established that the funds he claimed to have invested in the NCE did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e). The record, including evidence he offers on appeal, does not sufficiently document the complete path of his purported EB-5 investment and trace it 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. Whilst we acknowledge the passage of time since the possible creation of certain relevant documents, we find that without additional corroborating evidence, the record lacks sufficient evidence confirming that

[4] Baidu.com is the dominant search engine in China, akin to google.com, bing.com, or yahoo.com in the United States.

his purported EB-5 investment was entirely financed by funds he procured after sale of a property he originally bought with funds accumulated during his employment with [redacted] Ltd. *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*, 2024 WL 804267, *6 (D.D.C. Feb. 27, 2024) (noting that USCIS did not err in requesting proof of household expenditure from 20 years ago).

III. CONCLUSION

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. at 375-76. Here, he has not demonstrated that his investment derived from lawfully sourced funds. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. He therefore has not established eligibility for the classification sought.

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.