U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39648127

Date: OCT. 24, 2025

Appeal of Field Operations Directorate 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).[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 U.S. economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the Petitioner's investment in the NCE will create at least 10 full-time jobs for qualifying employees and that the Petitioner's investment funds come 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

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was his or her own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). To show that the capital was his or her own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). To show the lawful source of the funds, an 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;

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in section 203(b)(5) of the Act, and adding significant new integrity provisions. *See* 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed the petition on October 3, 2019, the relevant law in existence on that date governs this appellate adjudication.

Matter of Izummi, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source. *Id.*

II. ANALYSIS

The Petitioner asserted her eligibility based on her investment of $500,000 in [redacted] LP, the NCE, on December 12, 2017. The NCE, affiliated with [redacted], proposed to pool $11 million from 22 immigrant investors and lend the entire amount to [redacted], LLC, the job creating entity (JCE). The JCE intends to develop, construct, and sell and lease a 71-unit townhome and condominium complex located in [redacted], California.

The Petitioner claimed that her investment funds derive from loans secured by two properties that she purchased using her accumulated income from her employment as a general manager of [redacted]). The Petitioner asserted that she "received total pre-tax incomes of about RMB 2,313,000" from August 2007 to December 2013 and in August 2014, she purchased the first property (Property A) for Chinese Renminbi (RMB) 1,244,247 and the second property (Property B) for RMB 1,852,506.[2]

On December 5, 2017, the Petitioner obtained a 5-year individual loan of RMB 3,690,000 from [redacted] using these two properties as collateral and sought help from 12 friends and relatives in China to convert this loan amount into U.S. dollars (USD). Between December 5, 2017, to December 8, 2017, the Petitioner transferred the loan amount in piecemeal from her [redacted] to the exchangers' bank accounts in China. Each exchanger then deposited USD amount of approximately $43,000 into four different bank accounts in [redacted], belonging to the Petitioner, her husband, and two other individuals named [redacted] and [redacted].[3] By December 11, 2017, the Petitioner claimed that she had collected a total of $555,586.65 in her [redacted] account and on December 12, 2017, she transferred the funds from [redacted] account in [redacted] to the NCE's bank account.

FOD denied the petition on the issue of job creation and the source of funds. Upon review, we agree with FOD that the Petitioner did not establish by a preponderance of evidence that she had accumulated and maintained sufficient income to purchase Property A and Property B in August 2014, which are the basis of her investment funds, and did not adequately show the lawful source and path of funds. The record lacks bank statements showing deposits from the employer and sufficient evidence of her accumulated income after necessary deductions, tax payments, and other expenditures. As this issue is dispositive of the appeal, we reserve our opinion and decline to address the Petitioner's appellate arguments regarding the prospective job creation. *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).

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[2] For Property A, the Petitioner paid RMB 624,247 as the first installment and applied for a bank loan to pay the outstanding amount of RMB 620,000 to the seller. For Property B, the Petitioner paid RMB 932,506 as the first installment and applied for a bank loan to pay the outstanding amount of RMB 920,000 to the seller.

[3] Specifically, the Petitioner showed that her [redacted] with the account number ending in [redacted] collected $168,640 from four individuals; her husband's [redacted] account ending in [redacted] collected $129,035 from three individuals; [redacted] bank account ending in [redacted] collected $129,050 from three individuals; and [redacted] bank account ending in [redacted] collected $129,020 from three individuals.

The Petitioner has not submitted bank statements showing deposits of salaries, bonuses, and allowances from [redacted] during the claimed period, from 2007 to 2013, and how they were accumulated and maintained in the Petitioner's bank accounts, illustrating the source of the money used to purchase the properties. The Petitioner submitted "Certificate of Working Experience and Income" signed by [redacted] financial manager[4] and this certificate provides a chart of the Petitioner's purported earnings "before tax" from August 2007 to November 2017. Although the income certificate indicates that the total income is calculated after deducting social insurance contribution or personal income tax withheld by the employer, the record does not include independent and objective evidence, such as monthly or annual pay slips detailing earnings and deductions or income tax statements showing salary and tax amounts. Hence, the Petitioner has not corroborated her assertion regarding the amount of retained accumulated earnings or to show that such earnings were sufficient to purchase the real estate properties in August 2014. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Additionally, the Petitioner submitted her husband's "Certificate of Working Experience and Income" signed by the same financial manager of [redacted] This certificate, similar to the Petitioner's income certificate, provides a chart of the husband's pre-tax income earnings from [redacted] from October 2015 until November 2017, totaling RMB 481,000. However, the Petitioner has not claimed that the funds used to purchase the two properties are also sourced from the husband's accumulated income and did not submit the husband's official pay slips or tax statements.

On appeal, the Petitioner contends that FOD erred by requiring the Petitioner to trace the source of funds beyond her immediate source of funds, citing district court decisions such as *Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024) and *Zhou v. Noem*, No. CV 19-2650 (TJK), 2025 WL 416152 (D.D.C. 2025). The Petitioner claims that the loan secured by two properties "is the immediate and legally sufficient source of capital" and there is no requirement that the Petitioner prove her income accumulation prior to the property purchases in August 2014.

Other district court decisions, however, 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 U.S. circuit court, we are not bound to follow the published decision of a U. S. 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*, No. 23-5116, 2024 WL 2762146; *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.

[4] The financial manager, [redacted] bears the same name as one of the two individuals who collected a portion of the exchanged USD amount in her [redacted] bank account.

Moreover, the issue presented in *Borushevskyi*, whether the petitioner had sufficiently documented the source of his funds to USCIS, is the very focus of the present case. The circuit court in *Borushevskyi* affirmed the district court's conclusion that the record lacked evidence corroborating the line of credit drawn by the petitioner such as the petitioner's "bank account statements showing the accumulation of his earnings over the prior five years and showing a withdrawal or withdrawals" that "would have linked his lawful income to the returned funds." *Borushevskyi*, 664 F.Supp.3d at 134-35. Similarly, the Petitioner here did not provide proof of her income accumulation, such as her bank statements showing salary deposits from the employer and tax documents with her initial filing.

The Petitioner also contends on appeal that FOD improperly denied the petition without raising the issue of lawful source of funds in the request for evidence (RFE), thereby depriving the Petitioner "a meaningful opportunity to respond." However, the Petitioner's claim is not persuasive. The regulation at 8 C.F.R. § 103.2(b)(8)(iii) provides that if all required initial evidence has been submitted, but the evidence submitted does not establish eligibility, USCIS may deny a benefit request for ineligibility, issue an RFE, or issue a notice of intent to deny (NOID). FOD's authority to deny a petition without first issuing an RFE or NOID is likewise stated in current USCIS policy guidance. *See generally* 1 USCIS Policy Manual E.6(F), https://www.uscis.gov/policy-manual (stating that "USCIS has the discretion to deny a benefit request without issuing an RFE or NOID").

Although the Petitioner has the opportunity on appeal to respond to the deficiencies in the lawful source of funds, she offers only her affidavit stating that she did not retain the bank statements from 2007 to 2014 to show her accumulated earnings. In addition, the Petitioner claims that she "was employed full-time at a legally registered company" but as the company no longer exists or "has since been legally dissolved," she is unable to obtain any formal tax records, pay slips or other income verification. However, in visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). Here, the Petitioner has not met the burden.

Absent evidence of accumulated savings from the Petitioner's wages from August 2007 to continuing up to 2013, the Petitioner has not shown the lawful source of funds for the collateralized loan from the two real estate properties. The Petitioner's submission of her income certificate alone, without additional corroborating evidence indicating that she had deposits from her employer and accumulated savings minus all deductions, living costs, tax payments, and other expenditures, is insufficient to establish the lawful source of funds. Therefore, the Petitioner has not shown that her investment was derived, directly or indirectly, from lawful means as required. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

III. CONCLUSION

As the Petitioner has not submitted sufficient evidence to establish that her investment funds derive from lawful means, we conclude that the Petitioner has not established by a preponderance of the evidence eligibility 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.