U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28487421

Date: SEP. 5, 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) (2015).[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 that the record did not establish that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, was or is capital 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) (2015).

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.

[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 December 2015, the relevant law then in existence governs this appellate adjudication.

§ 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).

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. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998).

II. ANALYSIS

The Petitioner indicated on page 2 of his petition that on November 23, 2015 he invested $500,000 in [redacted] the new commercial enterprise (NCE), which is sponsored by [redacted] LLC, pursuant to the Immigrant Investor Pilot Program.[3] The NCE proposes to pool up to $24.5 million from up to 49 immigrant investors and will lend the entire amount to two job-creating entities (JCEs) – [redacted] LLC and [redacted] LLC. The JCEs will use the funds to construct two residential apartment buildings located in [redacted] Colorado.

The Petitioner asserts that his investment funds of 3,600,000 Chinese renminbi (RMB) derive from a loan secured by a property in China that his spouse, [redacted], owns. He asserts that the property was purchased in 2006 using funds from his and [redacted] accumulated income, as well as from a mortgage loan that was repaid in 2011.

With the initial filing, the Petitioner provided his and [redacted] resumes, letters verifying their employment history, income tax statements, and a housing accumulation fund account record in [redacted] name. The Petitioner also provided the purchase and sale agreement for the property in [redacted] the loan agreement for the initial mortgage in 2006, an agreement for cancellation of that mortgage in 2011, a property ownership certificate and the deed for the [redacted] property, and a November 2015 appraisal report listing the property value at RMB 6,014,700.

The Petitioner explained that [redacted] mortgaged the property to [redacted] Bank for a personal loan on November 18, 2015. The initial filing included a personal loan contract and a mortgage contract signed November 18, 2015, between [redacted]

[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 his petition in 2015 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).

[redacted] Bank (mortgagee), and [redacted] (mortgagor). The personal loan contract lists a loan amount of RMB 3,600,000. A loan certificate and bank statement reflect that [redacted] Bank transferred RMB 3,600,000 to the Petitioner's [redacted] Bank account (ending in [redacted] on November 18, 2015.

The Petitioner also explained the path of his investment funds as follows:

> Because in China there is only $50,000 of foreign exchange quotas limit per person per year, I can't immediately exchange USD 550,000. Coincidentally, my friend [redacted] has enough dollar reserves, so we made a swap agreement. On November 20, 2015, I transferred from [redacted] Bank] account [ending in [redacted] USD 550,000 equivalent of RMB 3,508,890 to [redacted] account in [redacted] of China [redacted] Bank account [ending in [redacted] transferred USD 550,000 from the account of [redacted] which [is] wholly owned by him in [redacted] Bank account [ending in [redacted] on November 22, 2015 to the [NCE's escrow account].

The Petitioner's [redacted] Bank statement reflects that he transferred RMB 3,508,890 to [redacted] A "Capital Exchange Declaration" signed by [redacted] on November 22, 2015 states that, following receipt of RMB 3,508,890 from the Petitioner, he transferred $550,000 from "the account of [his] sole owned [redacted] company [redacted] [account ending in [redacted] at [redacted] and [redacted] in [redacted] to [the Petitioner's] investment account." A wire transfer receipt reflects that the NCE's escrow account received $549,975 from [redacted] Bank account (ending in [redacted]) in the Petitioner's name on November 23, 2015.

In a request for evidence (RFE), FOD requested additional evidence to demonstrate that the Petitioner's invested capital was obtained through lawful means and to document the source and path of the investment funds. FOD noted that the record did not sufficiently document the accumulation of income that he asserted was used to purchase the mortgaged property in 2006. FOD specifically requested bank records reflecting the deposit of salaries, as well as additional income certificates and business records for the Petitioner's and [redacted] previous employers.

In addition, FOD noted that the Petitioner did not provide evidence of the source of funds that [redacted] used to assist the Petitioner with the currency exchange, including evidence that [redacted] company, [redacted] conducts lawful business activities, and that the funds in the company's account derived from business revenue.

In response to the RFE, the Petitioner submitted letters from his and [redacted] previous employers stating their annual income, as well as business registration documents for these employers. He also submitted tax payment certificates stating the amount of income tax he and [redacted] paid in each year.

The Petitioner also submitted a personal statement from [redacted] addressing the source of the funds he purportedly used in the currency exchange for the Petitioner's investment funds. [redacted] stated that his company, [redacted] was founded in 2010 and "engages in sales of technological products as a solution partner of [redacted]." He stated that the company's audited financial reports reflect total revenue in 2015 of 92,730,697 [redacted] dollars, and

42,785,675 [redacted] dollars in 2016. The RFE response also includes [redacted] audited financial statements for 2015 and 2016, as well as two sales contracts, one undated and one dated January 2016.

FOD acknowledged the Petitioner's evidence and explanation for the source of his investment funds, but determined that this was not corroborated by independent, objective evidence. Specifically, FOD noted that the employer letters and tax payment certificates indicate the amount the Petitioner and [redacted] earned, "but without additional information such as bank statements or transfer records which show the path of funds from the employment income to the payment for the property, the record does not contain sufficient evidence that employment income was actually the source of funds used to purchase the property" from which the loan was derived. FOD also noted that [redacted] housing accumulation fund account does not identify the source of any deposits to demonstrate that the funds from this account used to pay off the mortgage on the property in 2011 were derived from a lawful source. FOD concluded that the Petitioner had not established by a preponderance of the evidence that his investment funds were lawfully obtained.

On appeal, the Petitioner contends that FOD imposed "an ultra vires affirmative burden of proof" that is not supported by statute. He asserts that he has met his "primary burden" of proof, in that "USCIS has recognized that the transfer was lawfully done, that the mortgage was a valid source of funds, and that Petitioner legally owned the property that was mortgaged." He asserts that FOD has imposed a "secondary level, asking the Petitioner for additional proof that the property that he owns and mortgaged was lawfully acquired." He further asserts that FOD did not properly consider evidence concerning the housing accumulation fund account. The Petitioner submits a legal opinion, foreign law, and an article explaining the housing fund. The Petitioner otherwise relies on evidence already in the record concerning his investment. However, upon de novo review, we conclude the record does not establish by a preponderance of the evidence that the Petitioner's investment funds were lawfully obtained for the reasons we will discuss below.

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 (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

A petitioner must show that his or her invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). The record in this case does not demonstrate, by a preponderance of the evidence, that the Petitioner and his spouse used lawfully obtained funds to purchase the real property that was later used to fund the Petitioner's EB-5 investment. The Petitioner stated in the initial filing that the mortgaged property was purchased using his and [redacted] "savings derived from their after-tax salaries." However, the record does not include evidence of the Petitioner's or his spouse's savings. The tax payment certificates reflect tax amounts paid, but do not reflect actual income or demonstrate any earnings saved. The employment letters state annual salary amounts, but as FOD noted, the record lacks evidence that the Petitioner and his spouse accumulated and maintained their employment income. The record does not include bank statements, deposit slips

or other evidence demonstrating that the earned income was saved and used for the down payment or to make payments on the initial mortgage loan.[4]

The Petitioner asserts on appeal that he need only show that the mortgage loan proceeds used for his EB-5 investment were lawfully obtained. We disagree. "In establishing that the capital was acquired through lawful means, the immigrant investor must provide evidence demonstrating the direct and indirect source of his or her investment capital." 6 *USCIS Policy Manual* G.2(A)(4), https://www.uscis.gov/policymanual. 8 C.F.R. § 204.6(e), (j)(3). The Petitioner here has not submitted sufficient evidence to establish the claimed lawful sources of the funds he invested in the NCE and the appeal is dismissed on this basis.

Although not addressed by FOD in the decision, we also conclude that the Petitioner did not establish the lawful source of funds of the currency exchange used to complete the Petitioner's EB-5 investment.

As noted above, the Petitioner stated that he made a currency swap agreement with his friend [redacted] sole owner of [redacted] company [redacted] stated that he received RMB 3,508,890 that the Petitioner transferred to his [redacted] Bank account (ending in [redacted]), and in exchange, he transferred $550,000 from [redacted] account to the NCE.

As FOD noted in the RFE, the record appears to reflect that the Petitioner's investment funds derived from a different collection of funds from [redacted] account, and not from the loan proceeds. In the present case, the record reflects that the gifted loan funds sent from the Petitioner's [redacted] Bank account (ending in [redacted] to [redacted] China [redacted] Bank account (ending in [redacted] have never left mainland China. [redacted] statement, [redacted] business registration, financial statements, and two sales contracts are insufficient to demonstrate that the collection of funds in [redacted] account derive from lawful sources. The record does not include bank statements, deposit slips, or other evidence demonstrating that the agreed-upon funds in the contracts were paid to [redacted] and deposited in the [redacted] account used to wire the EB-5 investment funds to the NCE. Nor does the record include evidence that the funds were available for this currency swap or that [redacted] board of directors agreed to the arrangement.

To show that the invested funds were obtained through lawful means, a petitioner must produce evidentiary documents listed at 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 and the record must trace the complete path of the funds back to a lawful source. *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117 at 129; *see also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

[4] Even if we accept the explanation in the legal opinion submitted on appeal, that [redacted] housing accumulation fund account derived from direct contributions from her income and employer, the total funds from that account used to repay the mortgage were RMB 212,596, which is less than the RMB 1,290,000 total mortgage.

The plain language of 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) supports the requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. Here, the Petitioner has not done so, and there are breaks in the path of the Petitioner's investment funds.

As we have explained above, the Petitioner has not sufficiently documented the complete path of the investment funds, from the original purchase of the property used to secure the mortgage loan, to the loan disbursement the Petitioner received in China, to the funds [redacted] forwarded to the NCE's escrow account on the Petitioner's behalf.

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 exchange funds used by the third-party exchanger for the currency exchange. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210.

As noted above, 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.

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. 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; s*ee also Matter of Soffici*, 22 I. & N. Dec. at 165 (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 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.