U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38266240

Date: SEP. 10, 2025

Appeal of Field Operations Directorate Decision

Form I-526, Immigrant Petition 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 United States economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish eligibility for the classification. 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. 8 C.F.R. § 204.6(e) (defining "commercial enterprise"). An investor seeking EB-5 classification must show that their investment will benefit the United States 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 classification, provided that each 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).

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

The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

> (A) Documentation consisting of photocopies of relevant tax records, Form I-9 [Employment Eligibility Verification], or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.[2]

Prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998), explains that "[a] comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives" and that "[i]t should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions." *Matter of Ho* specifies that a business plan "must be sufficiently detailed to permit [U.S. Citizenship and Immigration Services (USCIS)] to draw reasonable inferences about the job-creation potential" and "[m]ere conclusory assertions do not enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation." *Id.* The decision concludes: "Most importantly, the business plan must be credible." *Id.*

In addition, 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 their own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. To show that the capital was their own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the new commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210-11; *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.

II. ANALYSIS

The Petitioner asserted that he invested $500,000 into the NCE, identified as [redacted] on April 21, 2017.[3] The NCE proposed to pool $1,000,000 from two immigrant investors and operate a moving company in [redacted] Minnesota. The Petitioner asserted that the NCE is principally doing business in a targeted employment area (TEA) and submitted a letter dated August 20, 2015, from Minnesota's Department of Employment and Economic Development.

[2] The two-year job creation period described in 8 C.F.R. § 204.6(j)(4)(i)(B) commences six months after the adjudication of the petition. *See generally* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual.

[3] *See* Form I-526, Immigrant Petition for Alien Entrepreneur, Part 3, Item 2 (Name of NCE) and Item 11 (Date of Your Initial Investment), filed by the Petitioner in June 2017.

FOD denied the petition on four different grounds. First, FOD concluded that the Petitioner has not established that the NCE meets the regulatory definition as he has not explained the relationship between two separate companies designated as the NCE, [redacted] a Delaware company, and [redacted] a Minnesota company. Second, the FOD determined that the NCE is not principally doing business within TEA as the address for [redacted] has changed, and the new address does not fall within the census tracts designated in the 2015 TEA letter. Third, FOD found that the Petitioner has not committed his investment funds as the record is deficient in showing that his funds were deposited into the NCE's escrow account as claimed. Finally, FOD determined that the NCE is not likely to create the required number of jobs as the business plan submitted in the record is not credible.

At the outset, we note the inconsistencies in the record regarding various corporate entities that are identified as the NCE. The business plan refers to [redacted] a Minnesota corporation, that is "20 years old." However, "Limited Liability Company Agreement" signed by the Petitioner is with [redacted] a Delaware limited liability company. On the other hand, the April 20, 2017 "Investment Agreement," in which the Petitioner agrees to deposit $500,000 in the NCE's escrow account, indicates that [redacted] is a Minnesota limited liability company.

Although FOD requested that the Petitioner resolve these discrepancies, the Petitioner did not sufficiently explain the relationships of these entities in his response to the notice of intent to deny (NOID). Instead, the Petitioner submits first time on appeal corporate filings of various companies, including [redacted] established in 1993 in Minnesota, [redacted] established in 2015 in Delaware, and [redacted] established in 2022 in Minnesota, along with "Assignment Agreement" court document dated September 9, 2022. The assignment agreement explains that the other investor [redacted] purchased [redacted] out of bankruptcy proceedings and as the new owner of [redacted] was assigned "any shares or membership interests . . . in corporations and limited liability companies, including without limitation, [redacted], a Delaware limited liability company, [redacted], a Minnesota corporation, dba [redacted] a Delaware limited liability company, and [redacted] a Delaware limited liability company." The Petitioner claims on appeal that various companies named in the assignment agreement "collectively make up the NCE as they are all incorporated after November 19, 1990" but without specifically showing the corporate structure and organizational relationships among the named entities.

However, for the purpose of this adjudication, we need not determine which of the named corporate entities is the NCE, as our decision hinges on other issues independent of this matter, as discussed below. Upon review, we agree with FOD that the Petitioner has not presented a comprehensive and credible business plan and conclude that the Petitioner has not met the job creation eligibility requirement. Furthermore, beyond FOD's decision, we conclude that the Petitioner has not demonstrated the lawful source of his investment funds. As these issues are dispositive of this appeal, we reserve our opinion and decline to address the Petitioner's appellate arguments regarding the remaining grounds of denial. *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).

A. Job Creation

The Petitioner has not shown that the NCE has already created or will create 10 new direct jobs for each alien investor seeking EB-5 classification. On appeal, the Petitioner resubmits the NCE's 2016 business plan and explains that the business plan was to "increase [redacted] job total by 10 or allow Petitioner to use [redacted] existing infrastructure to create and manage a franchise." As the Petitioner does not claim that the NCE has created the requisite number of jobs or submit relevant evidence of job creation such as I-9s, invoices, or other proof of employee documents, the Petitioner must show that the business plan is *Matter of Ho* compliant. 8 C.F.R. § 204.6(j)(4).

However, the Petitioner has not provided a comprehensive and credible business plan. The record contains two business plans that are almost identical: '[redacted] Franchise Business Plan" submitted with his NOID's response and '[redacted] Executive Summary" submitted with the initial filing. Although these business plans describe the company's objectives, marketing strategies, and the business organizational chart, they do not include any staffing requirements, timetable for hiring, job descriptions of the staff, projection of sales, costs and income, as required by *Matter of Ho*.

The original business plan includes one-page appendix listing the positions to be hired as "7 Movers, 2 Moving supervisors, 2 Warehouse mechanic, 1 Diesel mechanic," but the appendix does not include justifications for these positions, each position's salaries and description of duties, costs and projected timeline for hiring. The subsequent business plan, resubmitted on appeal replaces the last appendix page with discussion of "Development Plans" and "Patented Technology" adding jobs of "management, Moving Consultants, and a significant amount of labors, Drivers and Team Leaders." But once again, this plan does not provide specific and credible information regarding the jobs that the NCE plans to create, only generally address expansion and growth of the business.

Furthermore, the business plan does not explain the relationship between [redacted] and [redacted] and elaborate how these two companies, separately incorporated in Minnesota and Delaware respectively, are planning to conduct business principally in Minnesota. The Petitioner submitted a letter from [redacted] the other EB-5 investor and the current owner of [redacted] stating: "[a]t the time of the agreement, the plan was to establish a [redacted] franchise for [the Petitioner] to operate, organized as a subsidiary. However, upon [the Petitioner's] approval of an EB-5 green card, we may simply work with him to expand our existing business." Despite such a statement, the business plan does not show any subsidiary relationship between the [redacted] and [redacted] or addresses specific business activities or plans for expanding the existing business,[4] such as purchase of equipment, bank records, required permits and licenses, or development of the business premises.

Accordingly, the Petitioner has not credibly demonstrated that either [redacted] has created or will likely create at least 10 jobs for each alien investor as proposed. *See* 8 C.F.R. § 204.6(g)(1), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

[4] The Petitioner also does not assert that the existing business is a troubled business.

B. Lawful Source of Funds

Even if the Petitioner had shown that the NCE created or will create the required number of jobs, he would nonetheless not be eligible for the EB-5 classification as we conclude, beyond FOD's denial, that the Petitioner has not demonstrated the lawful source of his investment funds. 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. at 210; *see also Matter of Soffici*, 22 I&N Dec. at 165 n.3 (interpreting 8 C.F.R. § 204.6(e) as requiring that a petitioner establish the funds invested are his or her own).

The Petitioner submitted affidavits from nine different individuals in China who claim to have assisted him in making the investment for the EB-5 visa program. Each individual claims that he or she will receive the Petitioner's money in Chinese RMB, either from the Petitioner's bank, the [redacted] account number ending in [redacted] or his wife's banks,[5] the [redacted] account number ending in [redacted] and [redacted] account number ending in [redacted] Then the individuals promise to convert the Petitioner's (or Petitioner's wife's) money into U.S. dollars and transfer to his daughter, [redacted] account number ending in [redacted]

Although the Petitioner declares in his own statement that he "invested $500,000 in [redacted] in Minnesota, USA," and nine different individuals in their affidavits promise to assist the Petitioner with transferring his funds out of China and convert to U.S. dollars for the purpose of EB-5 investment, the Petitioner has not provided sufficient documentary evidence of lawful sources and the path of funds, such as transaction receipts or complete bank statements, to support his assertion. The Petitioner cannot establish the claimed fact with unsupported testimonial evidence alone. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972) (stating that simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings).

In response to the NOID, the Petitioner submitted bank statements of [redacted] belonging to him and his wife, reflecting various deposits and withdrawals. However, the record does not contain the remaining [redacted] bank account involved in the path of funds. In addition, there are no bank statements from these nine individuals who purportedly converted the Petitioner's money into U.S. dollars and deposited the exchanged U.S. dollars into his daughter's [redacted] account. The Petitioner also does not provide the bank statements from [redacted] account in the United States, showing that the exchanged amounts have been deposited as indicated by the affidavits. Instead, the record only includes [redacted] account ending in [redacted] which is not associated with the paths of funds.

On appeal, the Petitioner reiterates that his daughter "transferred the required amount of capital on April 24, 2017 in a bank account owned by [redacted] and resubmits a printed slip

[5] The Petitioner provided bank account statements of [redacted] and claims that she is his wife; however, he has not submitted any documentation, such as a marriage certificate, to substantiate this claim.
[6] Although the Petitioner asserts that [redacted] is his daughter, he did not submit any documentation to support his claim.

showing that the amount of $500,000 was sent on April 26, 2017 from [redacted] account ending in [redacted], listing "Beneficiary" as [redacted] and "Originator to Beneficiary Info" as [redacted] However, it is unclear whether the fund of $500,000 purportedly sent to [redacted] belonged to the Petitioner. A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. at 210-211. Without documentation of the path of the funds, the petitioner cannot meet the burden of establishing that the funds are his own funds. *Matter of Izummi*, 22 I&N Dec. at 195.

Here, the record does not establish the complete paths of the Petitioner's funds from his or his wife's banks in China to the United States by the nine individuals who submitted affidavits. Moreover, the record does not reflect the lawful source of funds from the nine affiants to the Petitioner's daughter who claims to have transferred the funds to the NCE. The plain language of 8 C.F.R. §§ 204.6(e) (defining "capital") and (j)(3) supports the requirement of USCIS that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Borushevskyi v. USCIS*, 664 F.Supp.3d 117, 128-29 (D.C.C. 2023), aff'd, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (providing that USCIS' complete path interpretation of the regulations is its authoritative position as explained in the 1998 precedential decisions and that these decisions require the petitioner to establish the complete path of funds to demonstrate that the funds were obtained through lawful means); s*ee also Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5 (D.D.C. June 28, 2023). The relevant path includes tracing the funds from their point of origin though any *intermediary* accounts. *Id.* at 6 (emphasis added).

As the evidence does not sufficiently establish that how funds in his or his wife's bank accounts in China moved through the nine individuals to his daughter's U.S. bank account, the Petitioner has not identified the lawful sources of $500,000 purportedly remitted to the NCE.[7] *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

III. CONCLUSION

We conclude that the Petitioner has not presented a comprehensive and credible business plan showing that the NCE will create the required amount of jobs for each investor seeking EB-5 classification. In addition, the Petitioner has not demonstrated that he committed his own funds to the NCE and that the source of his investment funds is from lawful means. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not made such a showing.

ORDER: The appeal is dismissed.

[7] We also note that the sole evidence demonstrating that the investment funds were remitted to the NCE consists of a letter from [redacted]. In the letter, [redacted] attests that "the $500,000 investment was transferred to [the Petitioner's] daughter, [redacted] and that [redacted] received the money on April 26, 2017, through [redacted] account." However, the Petitioner has not provided bank statements from NCE's [redacted] showing the deposit of $500,000 and on appeal, he claims that the bank that received the investment funds no longer exists as it merged with another bank in 2024. In addition, the record provides conflicting dates of his investment as the Petitioner initially indicated the date of investment as April 21, 2017, but subsequently changed to other dates, April 24, 2017, or April 26, 2017. The Petitioner would need to address this issue in any future proceedings.

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.