U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39170837

Date: SEPT. 15, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner invested $500,000 towards construction of a residential/retail complex and seeks classification under the employment-based, fifth-preference (EB-5) immigrant visa category as an immigrant investor. *See* Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). Aliens may qualify for U.S. permanent residence in this category if they invest requisite capital amounts in new commercial enterprises that would boost the U.S. economy by creating at least 10 full-time jobs per alien investor. *Id.* The Petitioner sought to invest in a project in a U.S. Citizenship and Immigration Services (USCIS)-designated regional center, which pools investor funds for qualifying projects in a geographical area to promote economic growth. *See* Depts of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, § 610, 106 Stat. 1828 (1992), as amended.

Field Operations Directorate (FOD) denied the petition. FOD concluded that, because USCIS terminated the regional center's designation before the Petitioner's investment, he did not invest in a USCIS-approved center as required. FOD also found that he did not demonstrate his ownership of the investment funds or their acquisition through lawful means. On appeal, he contends that, despite the center's termination, recent amendments to the Act protect his EB-5 eligibility as a "good faith investor." He also argues that FOD erred in requiring him to establish the source of a currency exchanger's funds.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has not sufficiently established lawful sources of the investment funds. We will therefore dismiss the appeal.

I. LAW

Congress created the EB-5 immigrant visa category to boost the U.S. economy through foreign capital investment in commercial enterprises that create or preserve U.S. jobs. *See U.S. Sec. & Exch. Comm'n v. Hui Feng*, 935 F.3d 721, 725 (9th Cir. 2019). The Act makes visas available to qualified immigrant investors who will contribute to U.S. economic growth by investing in U.S. businesses and creating

jobs for U.S. workers. *See* section 203(b)(5)(A) of the Act; *see generally* 6 *USCIS Policy Manual* G.1(A), www.uscis.gov/policy-manual.

To qualify as immigrant investors, petitioners must demonstrate eligibility in three main areas:

- Investment of the requisite lawfully sourced capital amounts;
- Establishment of new commercial enterprises; and
- Job creation.

See 8 C.F.R. § 204.6(j)(1), (2), (3), (4).

For petitions filed before March 15, 2022, like this one, the standard required EB-5 investment amount for an alien is $1 million. Section 203(b)(5)(C) of the Act (2021); *Hui Feng*, 935 F.3d at 725. But the Petitioner sought to invest in a targeted employment area (TEA) – a rural or high-unemployment region. *Id.* He therefore needed to invest only $500,000. *Id.*

II. ANALYSIS

In September 2016, the Petitioner sought to invest $500,000 in a regional center project to build a hotel/residential/retail complex in a TEA. Based on the investment, he filed a Form I-526, Immigrant Petition for Alien Entrepreneur, about two months later. The project, however, was never completed. In [redacted] 2019, a federal grand jury indicted project promoters on charges of visa fraud. *See* 18 U.S.C. § 1546(a).[1] Also, the U.S. Securities and Exchange Commission (SEC) found that the center's operator had misused investors' funds. In [redacted] 2019, the SEC announced that it had reached an agreement with the operator to settle the charges. *See* SEC Today [redacted] 2019).

The Petitioner stated that, after the SEC's settlement with the regional center's operator, he believed that his investment funds could soon be transferred to another EB-5 project. So, later in November 2019, he filed this Form I-526 petition based on the same funds as his initial investment, but with a different project in a TEA.[2] The new project involved construction of a residential/retail complex at a different site. But the new project was associated with the same regional center through which he previously invested.

In March 2021, USCIS terminated the regional center's designation, finding that the center "no longer serves the purpose of promoting economic growth." *See* 8 C.F.R. § 204.6(m)(6)(ii)(B). The Petitioner's investment funds had not been transferred to the new project. But, in June 2021, almost two years after filing the new petition, he received a refund of his $500,000 investment and reinvested it in the new project.

In July 2024, FOD sent the Petitioner a notice of intent to deny (NOID) this petition. After reviewing his NOID response, FOD denied the filing in April 2025.

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[1] Government records indicate that one of the promoters pled guilty in 2021, while criminal charges remain pending against the other. *See, e.g.*, U.S. Dep't of Justice, '[redacted] 2025), www.justice.gov/usao-ndca/pr.

[2] USCIS records show that the Agency denied the Petitioner's first Form I-526 petition in April 2023.

A. Lawful Sources of the Petitioner's Investment Funds

Alien investors must demonstrate that they invested "capital obtained through lawful means." 8 C.F.R. § 204.6(j)(3); *see also* 8 C.F.R. § 204.6(e) ("Assets acquired, directly or indirectly, by unlawful means ... shall not be considered capital.") To show that the Petitioner lawfully obtained his investment funds, he must document their sources. *See Matter of Soffici*, 22 I&N Dec. 158, 164-65 (Assoc. Comm'r 1998) (holding that evidence of funding sources "is relevant to the question of whether the funds have been lawfully obtained").

The Petitioner contends that his $500,000 investment was a gift from his aunt and uncle. He submitted documentation indicating that, in 2016, they obtained a loan worth more than $600,000 using property that they owned in China as collateral. They gave $500,000 worth of the loan's proceeds to the Petitioner. The record shows that, on September 21, 2016, his aunt transferred the funds in Chinese currency from her Chinese bank account to the Petitioner's Chinese bank account.

China has a $50,000 annual limit on the amount of Chinese currency that residents can convert to U.S. dollars and take from the country. *See, e.g., Zhou v. Noem*, No. 19-2650 (TJK), 2025 WL 416152, at *1 (D.D.C. Feb. 6, 2025). To avoid this restriction, the Petitioner stated that, on September 21, 2016, he transferred the investment funds in Chinese currency from his Chinese bank account to the Chinese bank account of an "old friend" of his father's. The record shows that, on September 26 and 27, 2016, the father's friend then transferred the equivalent amount in U.S. dollars from his separate Hong Kong bank account to the original NCE in the United States. And, as previously indicated, in 2021, the SEC refunded the investment to the Petitioner, and he reinvested the funds in the new project's NCE.

The record does not identify the friend of the Petitioner's father as an authorized currency exchanger. And FOD's NOID noted that evidence did not explain how the father's friend obtained the U.S. funds in his Hong Kong bank account. The record contains a statement from him describing his Chinese account's receipt of the investment funds and the U.S. funds' transfer in September 2016 from his Hong Kong account. But it does not discuss from where he obtained the U.S. funds in his Hong Kong bank account.

The Petitioner's NOID response included copies of the biographical passport page of his father's friend and a "Representative Sampling" of the friend's Hong Kong bank account statements. The sampling, however, contained copies of only two monthly bank account statements: September 2017, a year after the transfer, showing a closing balance of $933,533.62; and July 2024, showing a closing balance of $203.40.

The Petitioner's evidence does not establish lawful sources of the Hong Kong bank account funds. Contrary to the NOID's request, neither of the monthly bank statements submitted predates the September 2016 transfer of the investment funds from the account to the original NCE. *See* 8 C.F.R. § 103.2(b)(14) ("Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request.") The Petitioner did not provide documentary evidence explaining how his father's friend obtained the Hong Kong bank account funds that were ultimately transferred to the NCE. *See Matter of Soffici*, 22 I&N Dec. at 165 ("Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.")

On appeal, the Petitioner contends that FOD unfairly sought financial records from 2016 or earlier. He states: "It is unreasonable for USCIS to request financial documents that are more than 8 years old." He states that U.S. banks need not keep account statements for longer than five years.

We acknowledge the difficulties of obtaining old financial records. But, when the Petitioner filed this second Form I-526 petition in 2019, he knew that he had to document lawful sources of the investment funds. *See* 8 C.F.R. § 204.6(j)(3) (listing types of evidence required "[t]o show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means"). At that time, bank records from 2016 or earlier should have been available. The transaction's date therefore does not excuse the absence of earlier financial records.

The Petitioner also argues that the investment funds derive from the gift of his aunt and uncle, not from the funds of his father's friend. The Petitioner states: "[T]he Exchanger's funds were not directly or indirectly the source of [the Petitioner's] investment and therefore should not determine [his] eligibility for the benefit sought."

The funds of the friend of the Petitioner's father, however, were part of the investment funds' path. Indeed, they were the actual funds transferred to the original NCE. In establishing the EB-5 program, Congress indicated that it would not tolerate investment of unlawful funds. If the government learns that an alien invested money obtained through unlawful means, Congress intended that the "processing of an individual visa not continue." S. Rep. No. 101-55, at 21 (1989). Thus, FOD properly sought evidence of the lawfulness of the Hong Kong bank account funds. *See also* 8 C.F.R. § 204.6(j)(3) (requiring evidence "[t]o show that the petitioner has invested, or is actively in the process of investing, *capital obtained through lawful means*") (emphasis added).

Further contending that he need not demonstrate the source(s) of the Hong Kong bank account funds, the Petitioner cites U.S. district court cases. *See Battineni v. Mayorkas*, 752 F. Supp. 3d 195, 214 (D.D.C. 2024); *Zhou*, 2025 WL 416152, at ** 5-7 (D.D.C. Feb. 6, 2025). He argues that these decisions "foreclose USCIS' inquiry into the source of a third party's funds."

The cited decisions limited USCIS' source-of-funds inquiries in those matters to only the alien investors' "immediate" funding sources. For example, in *Battineni*, alien investors did not demonstrate sources of funds in an individual lender's bank account from where the aliens received portions of their investments. *Battineni*, 752 F. Supp. 3d at 208-09. The court found that the investors need not document sources "beyond their initial acquisition" of funds and that 8 C.F.R. § 204.6(j)(3) does not require "evidence of where" other "person[s] or entit[ies] obtained their funds." *Id.* at 214.

The cited district court decisions, however, do not bind us in this matter. *See Trump v. CASA, Inc.*, 145 S.Ct. 2540, 2560 n.17 (2025) (explaining that U.S. district court decisions lack precedential value in other matters). Moreover, other U.S. district courts have upheld USCIS' method of determining lawful funding sources. *See Truong v. USCIS*, No. CV 21-316 (RC), 2023 WL 4234658 at *5 (D.D.C. June 28, 2023); *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 128 (D.D.C. 2023), *aff'd*, No. 23-5116, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *Sadeghzadeh v. USCIS*, 322 F. Supp. 3d 12, 17-18 (D.D.C. 2018).

In *Borushevskyi*, for example, an alien investor stated that his investment funds derived from income from his foreign business. *Borushevskyi*, 664 F. Supp. 3d at 123, 124. But he did not submit documentary evidence that his business generated profits or revenue. *Id.* The court affirmed "the requirement that the alien identify the source of the funds, which is demonstrated through documentation evidencing *the complete path of the funds*." *Id.* at 128 (emphasis added). Thus, contrary to the Petitioner's argument, the cited U.S. district court decisions do not prevent USCIS' inquiry into how his father's friend obtained the Hong Kong bank account funds.

The Petitioner has not demonstrated lawful sources of the investment funds. We will therefore affirm the petition's denial on this ground.

B. The Good Faith Investor Provisions

A regional center investor must demonstrate that they made a qualifying investment within a USCIS-approved regional center. 8 C.F.R. § 204.6(m)(7). The Petitioner reinvested his $500,000 in June 2021, about three months after USCIS terminated the regional center's designation. Because the center's termination preceded the Petitioner's reinvestment, FOD concluded that he did not invest in a USCIS-approved center.

On appeal, the Petitioner argues that, despite his reinvestment after the termination of the regional center's designation, the 2022 amendments to the Act preserve his EB-5 eligibility. *See* EB-5 Reform and Integrity Act of 2022 (RIA), Pub. L. 117-103, 136 Stat. 49 (Mar. 15, 2022). Specifically, an amendment entitled "Treatment of good faith investors following program noncompliance" allows "an otherwise qualified petition," under specified circumstances, to remain valid even if "based on an investment in a terminated regional center." Section 203(b)(5)(M)(i)(I) of the Act.

The Petitioner notes that the good faith investor provisions require USCIS to notify an alien investor with an "otherwise qualified petition" of the termination of their associated regional center. *See* section 203(b)(5)(M)(i)(II) of the Act. USCIS must terminate such a petition 180 days after notifying the petitioner, "(but not sooner than 180 days after March 15, 2022)," the date of the provisions' enactment. Section 203(b)(5)(M)(ii) of the Act. Such a petition would not be terminated, however, if, within the 180-day period, the NCE in which the petitioner invested associates with a new regional center or the alien investor makes a qualifying investment in another NCE. *Id.*

The Petitioner argues that the provision's parenthetical phrase "but not sooner than 180 days after March 15, 2022" indicates the measure's retroactive application to petitions filed before the provisions' enactment date. He states:

> If 8 U.S.C. § 1153(b)(5)(M) did not explicitly apply to regional center terminations prior to the effective date of the statute, there would be no possibility of an investor needing to affiliate with a new regional center or NCE sooner than 180 days of the date of enactment. The issue would simply never arise.

The Petitioner also notes that USCIS policy indicates application of the good faith investor provisions to petitions filed before March 15, 2022. The manual states: "In general, these investors may continue to rely on direct and indirect job creation despite termination of their associated regional center."

6 *USCIS Policy Manual* G.3(E). Thus, the Petitioner contends that the good faith investor provisions retroactively apply to his petition and that its denial, without notice of the regional center's termination and a following 180-day period, is "an unlawful act."

Unless Congress expressly states a statute's retroactive reach, there is a presumption against it. *Landgraf v USI Film Prods.*, 511 U.S. 244, 280 (1994). The presumption against retroactivity is invoked if a statute "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Id.*

Here, Congress did not expressly prescribe the temporal reach of the good faith investor provisions. But the best reading of the provisions indicates that they have no retroactive application. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024) ("In the business of statutory interpretation, if it is not the best, it is not permissible."). The provisions state that "upon the termination or debarment...of a regional center ... the Secretary of Homeland Security shall notify the alien beneficiaries of such petitions of such termination or debarment." Section 203(b)(5)(M)(i) of the Act. The Petitioner contends that USCIS had to notify him of the termination of his associated regional center in March 2021, about a year before enactment of the good faith investor provisions. But the provisions' plain language does not support a retroactive application. The provisions require USCIS to notify a petitioner "upon" a regional center's termination. In this context, upon is used "when mentioning an event that is followed immediately by another event." *Upon*, Collins Dictionary, www.collinsdictionary.com/us/dictionary/english/upon. Thus, the provisions' plain language directs USCIS to notify alien investors "immediately" after terminations of their associated regional centers. Contrary to the statute's plain language, notice to alien investors whose associated regional centers were terminated before the provisions' enactment would not be immediate. Thus, the provisions' plain language indicates Congress' intent to apply the notice requirement prospectively to alien investors whose associated regional centers terminated after the provisions' enactment.

Retroactive application of the good faith investor provisions would also impose new duties on the Petitioner. To maintain eligibility as an immigrant investor, the provisions require that he show USCIS that the NCE in which he invested associated with an approved regional center or make a qualifying investment in another NCE, all within 180 days of the termination notice. Thus, the imposition of these new duties to pre-enactment terminations have an impermissible retroactive effect, triggering the traditional presumption against retroactive laws.

But even assuming that the good faith investor provisions have retroactive reach and the Petitioner meets all other good faith investor requirements, the provisions would not apply to him. He has not demonstrated that this filing is "an otherwise qualified petition." *See* section 203(b)(5)(M)(i)(I) of the Act. Specifically, as discussed above in Part A, he has not established that his investment funds derived from lawful sources. Thus, the good faith investor provisions, even if retroactive, would not apply to him.

C. The Petitioner's Ownership of the Investment Funds

Our finding that the Petitioner has not sufficiently established lawful sources of the investment funds resolves this appeal. We therefore need not review FOD's finding of insufficient evidence that the Petitioner owned the funds. *See Matter of Soffici*, 22 I&N Dec. at 165 (finding that a petitioner's

claimed investment funds did not constitute capital "because they are not his"). Thus, we will reserve consideration of this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

III. CONCLUSION

The Petitioner has not demonstrated that the investment funds derived from lawful sources. Thus, thee good faith investor provisions, even if retroactive, would not apply to him because his petition is not "otherwise qualified." We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the decision's effect. 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.