U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37434401

Date: SEP. 18, 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).[1] This fifth preference (EB-5) classification makes immigrant visas available to qualified immigrants 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 Petitioner did not establish that the amount she invested in the NCE was obtained from a lawful source. The Petitioner later filed a motion to reopen and reconsider; FOD concluded that the motions could not be approved and affirmed the prior denial. On appeal, the Petitioner submits a brief as well as additional evidence and maintains that she has demonstrated eligibility for the EB-5 classification.

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 sustain 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. An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case.[2] Regional centers can pool immigrant (and

[1] On March 15, 2022, the EB-5 Reform and Integrity Act 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* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed her petition in 2019, the relevant law then in existence governs this appellate adjudication.

[2] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (2019).

other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2019).

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 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.[3] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner claims to have invested at least $500,000 in the [redacted] The NCE is associated with [redacted] a United States Citizenship and Immigration Services (USCIS) designated regional center. According to the November 2017 business plan submitted by the Petitioner, the NCE sought to solicit funds from alien investors to facilitate the development and operation of a hotel under the [redacted] hotel brand in [redacted]

The Petitioner explained in a petition support letter that she received the investment money as a gift from her parents. The Petitioner stated that he mother and father gifted her a total of 730,000,000 South Korean Won (KRW) deriving from several sources. The Petitioner indicated that the amount her father gifted her, KRW 180,000,000, was from the proceeds of insurance premiums he purchased using his income as a construction and architect executive. Further, the Petitioner stated that her mother gifted her KRW 600,000,000 deriving from an apartment her mother purchased in 2009 (the "Property") using her husband's income and her income as a schoolteacher. The Petitioner explained that her mother contracted to lease the Property in exchange for KRW 700,000,000, emphasizing that this transaction was documented in the Property's title history. The Petitioner indicated that KRW 645,393,468 was exchanged to $550,220 when transferred from her parents and that she wired the required investment amount to the escrow account of the NCE in October 2019.

In denying the petition, FOD determined that the Petitioner did not establish that her invested capital was obtained by lawful means. FOD reasoned that the money the Petitioner's mother received pursuant to the lease agreement, which they referred to as a "security deposit," was to be returned to the lessee at the conclusion of the lease term. Therefore, FOD concluded that this money was not fully owned by the Petitioner's mother when gifted. FOD later affirmed their decision on motion using the same reasoning.

[3] 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).

On appeal, the Petitioner submits a foreign legal opinion from a South Korean attorney further discussing a common lease arrangement in that country called Jeonse.[4] The attorney asserts that under South Korean law, this agreement allows a lessor to access credit more easily and at better rates using their property as a secured interest. He points to South Korean regulations and caselaw he indicates demonstrate that Jeonse contracts are treated as lender-borrower agreements, allowing the Petitioner's mother to gift this money to the Petitioner. The Petitioner also emphasizes the provided real estate registration for the Property reflecting that the lessee registered a security interest guaranteeing the repayment of the KRW 700,000,000 gifted to the Petitioner. The Petitioner asserts that FOD erred in not distinguishing the Jeonse transaction from a typical U.S. lease agreement. The Petitioner contends the provided evidence demonstrates that the amount gifted by the Petitioner's mother was effectively a loan, and in turn, cash legally transferred to the NCE.

Upon review, the Petitioner has sufficiently established that the money gifted by the Petitioner's mother represented the proceeds of a secured loan and that it was cash legally transferred to the NCE. As discussed, FOD treated the lump sum amount paid to the Petitioner's mother in the lease transaction as a typical security deposit under U.S. common law, reasoning that she was required to return this money to the lessee at the conclusion of the lease term and not free to legally gift it to the Petitioner. However, we conclude that FOD did not properly consider foreign law in this matter. When relying on foreign law to establish eligibility, the application of foreign law is a question of fact which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973).

The Petitioner submitted substantial evidence to substantiate that Jeonse transactions are common and legally binding in South Korea. The Petitioner sufficiently supported this assertion with relevant and credible documentary evidence, including the lease agreement, a title record reflecting the Property as a secured interest, law journal articles, legal opinions, and South Korean caselaw and statues discussing Jeonse. Therefore, we conclude that the Petitioner has established that the transaction between her mother and a lessee in South Korea was more likely than not a Jeonse transaction whereby the Petitioner's mother was paid a lump sum rental payment at the beginning of the lease that she was obligated to pay back at the end of the lease term, much like a secured loan. Consistent with South Korean law, the Petitioner's mother could legally gift this lump sum payment to the Petitioner.

The Petitioner sufficiently established that the funds she invested in the NCE were obtained from a lawful source and that she is eligible for the benefit sought. Accordingly, the appeal is sustained, and the petition is approved.

ORDER: The appeal is sustained.

[4] We note that this South Korean lease transaction is alternatively referred to on the record as [redacted] the former when discussing this lease transaction and the latter a lump sum rent payment. Here, we have used the spelling provided by the Petitioner on appeal when referring to this asserted South Korean lease transaction.