U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39047922

Date: SEP. 22, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Standalone Investor

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). 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.

FOD denied the petition, concluding that the record did not establish (1) that the NCE has created or will create at least 10 full-time positions for qualifying employees, (2) that the NCE is principally doing business and creating jobs in a targeted employment area, (3) that the Petitioner has invested or, is actively in the process of investing, the required minimum amount of $800,000 or $1,050,000 in the NCE, and (4) that the required amount of capital the Petitioner has invested, or is actively in the process of investing was obtained from a lawful source and 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

The term "capital" does not include any assets directly or indirectly acquired by unlawful means, including any cash proceeds of indebtedness secured by such assets. Section 203(b)(5)(D)(ii)(III) of the Act. An alien investor must demonstrate that the required amount of capital they have invested, or are actively in the process of investing, and any funds used to pay administrative costs and fees associated with their investment were obtained from a lawful source and through lawful means. Section 203(b)(5)(L)(i) of the Act. To show that the capital invested, or actively in the process of being invested, was obtained from a lawful source and through lawful means, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the NCE. *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm. 1998); *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 on July 20, 2022, he invested a total of $800,000[1] in [redacted] (NCE). According to the undated business plan, the NCE initially intended to develop and operate a mental health and substance abuse clinic on the fourth floor of the [redacted] building in [redacted] New Jersey. The Petitioner explained that the NCE's services would include counseling, treatment, boarding, cleaning, and therapy. However, on appeal, the Petitioner submitted a letter authored by his business partner indicating that the NCE's purpose had instead shifted to a mental health counseling clinic and drug and alcohol detox center. The business plan was modified to show that the NCE would use suites 2B and 2F on the second floor, rather than on the fourth floor of the [redacted] building. The Petitioner's business partner states that a "new configuration" of the business was required due to state licensing delays. The business partner also explains that the revised project would still create more than 10 full-time qualifying positions and that the EB-5 funds would be used exclusively for start-up operations and staff salaries.

The Petitioner claims that he derived his investment funds through his personal savings from salaries and commissions accumulated over many years of employment and from his own consulting company. The Petitioner explained that he received his salaries, bonuses, and commissions in several foreign bank accounts and then transferred the money into his personal [redacted] checking and savings accounts and later to the NCE's [redacted] account. To support this claim, the Petitioner submitted documentation including bank statements, charts, and credit card statements.

FOD denied the petition on multiple grounds, including the Petitioner's failure to establish that his investment funds originated from a lawful source and through lawful means. Specifically, FOD found that the Petitioner did not provide sufficient documentation to demonstrate that the funds he used to start his consulting company, [redacted] derived from a lawful source. Additionally, FOD determined that the Petitioner did not sufficiently explain the lawful source of several deposits made into his U.S. bank accounts.

On appeal, the Petitioner contends that FOD "misapplied the laws and regulations." In support, the Petitioner submits additional documentation, including bank statements, articles of association and registration certificate for [redacted] payroll report, and an employment letter. The Petitioner argues that he acted in "good faith to obtain and submit all reasonably available records and has demonstrated by a preponderance of the evidence the lawful source of the funds in question." The Petitioner further declares that "the documentation now on record sufficiently addresses the government's concerns and establishes, by a preponderance of the evidence, the lawful origin of income associated with [redacted] Similarly, the Petitioner contends he has provided "ample, credible evidence tracing both the funds in question and the remainder of the investment to lawful sources."

[1] The Petitioner asserted that the NCE is principally doing business within a high unemployment area. *See* section (b)(5)(B)(ii)(I) of the Act. Therefore, the requisite amount of capital was downwardly adjusted from $1,050,000 to $800,000. *See* section (b)(5)(C)(ii) of the Act.

A petitioner in administrative immigration proceedings must prove by a preponderance of evidence that they are eligible for the benefit sought. *Matter of Chawathe*, 25 I& N Dec. at 375. The "preponderance of the evidence" standard requires that the evidence demonstrate that the petitioner's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Id.* at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.* In this case, we conclude that the record does not establish by a preponderance of the evidence that the Petitioner's investment funds were obtained from a lawful source and through lawful means for the following reasons.

Although the Petitioner submitted copies of the [redacted] bank statements and sample consultation services agreements, the Petitioner has not demonstrated the precise nature of his consulting services. In particular, the Petitioner provided copies of consultation services agreements dated 2020, 2021, and 2023. However, the Petitioner failed to provide invoices, receipts, or other documentation to show that services were actually rendered. Moreover, the Petitioner did not submit service agreements or other documentation for 2018 and 2019, despite the consulting company commencing operation in 2017 and generating a total of 663,312 United Arab Emirates dirham revenue in 2019. Without additional corroborating evidence, the Petitioner has not established the lawful source of funds for his claimed salaries and commissions earned from [redacted]

Similarly, while the Petitioner submitted bank statements both for his foreign and U.S. bank accounts, some contained redactions, and others reflected large deposits and withdrawals without corresponding explanations. For example, the Petitioner's [redacted] checking account ending in [redacted] reflects deposits of $55,000 on December 1, 2017, $24,000 on January 7, 2019, and $66,850 on February 27, 2020. However, the Petitioner's bank statements do not sufficiently identify the source of these deposits to demonstrate that these transactions derived from lawful income.

On appeal, the Petitioner contends that the unexplained deposits identified by FOD "represent a small fraction" of the total investment funds and that their small portion demonstrates "their limited materiality in the overall source of funds analysis." However, as money is fungible, the Petitioner must document the lawful source of *all* the funds in his [redacted] bank accounts before his July 2022 remittance to the NCE. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The Petitioner bears the burden of demonstrating by a preponderance of the evidence that the full amount invested was derived entirely from lawful sources. Here, the Petitioner has not established that his investment funds were maintained without being commingled with funds not shown to derive from lawful means. By failing to sufficiently document and reconcile the sources of the entire investment funds, the Petitioner has not demonstrated that he has met his burden.

Although we acknowledge the Petitioner's submissions on appeal including bank statements, consulting services agreements, and payroll reports, these documents are insufficient to demonstrate that the entire investment funds were derived from lawful sources and were not commingled with money from unlawful sources. Without additional corroborating evidence, the Petitioner has not demonstrated that his EB-5 investment funds entirely derived from lawful means. Section 203(b)(5)(L)(i) of the Act.

As previously noted, to show the lawful source of the investment funds and administrative fees, a petitioner must submit foreign business registration records, tax returns, and any other evidence identifying any other source of capital or administrative fees. Section 203(b)(5)(L)(ii) of the Act. Here, the Petitioner has not provided sufficient documentation to show that the U.S. dollars in his [redacted] bank accounts derived from lawful sources. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195 (holding that a petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the NCE and that the record must trace the path of the funds back to a lawful source). *See also 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' 1998 precedential decisions require the petitioner to establish the source of the funds, which can be demonstrated by documenting the complete path of the funds, to demonstrate that the funds were obtained through lawful means). As such, the Petitioner has not sufficiently documented the lawful source of the funds he claims to have invested in the NCE.

Because the Petitioner is ineligible for the immigrant investor visa classification for the reasons we have discussed above, we need not address, and therefore reserve, FOD's other grounds for denial, i.e., the required amount of capital investment and job creation requirements, and other eligibility issues identified during our de novo review, including the Petitioner's failure to establish eligibility for the reduced minimum investment threshold of $800,000. *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).

III. CONCLUSION

The Petitioner has not adequately documented the claimed lawful source of his investment funds. *See* section 203(b)(5)(L) of the Act; *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Specifically, the Petitioner has not established by a preponderance of the evidence the lawful source of his investment funds. *See* section 203(b)(5)(L)(ii) of the Act. Moreover, the claims that the invested funds were not only derived from lawful means, but that they were also accumulated and maintained without being commingled with funds not shown to derive from lawful means have not been shown by a preponderance of the evidence. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. As the record does not sufficiently show that the Petitioner's investment funds have been obtained from a lawful source and through lawful means, the Petitioner has not established that he is eligible for the immigrant investor visa classification. Accordingly, the appeal will be dismissed for the above stated reasons.

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.