U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37464433

Date: SEP. 25, 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 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.

FOD denied the petition, concluding the Petitioner did not establish that his investment derived from lawfully sourced funds. 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. The regulatory definition of "capital" provides that the immigrant investor's invested capital cannot derive, directly or indirectly, from unlawful means, such as criminal activity. 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. 206, 210 (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 [their] own").

To show that the capital was their own, a petitioner must document the path of the funds. *Matter of*

[1] On March 15, 2022, the EB-5 Reform and Integrity Act (RIA) 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). Because the Petitioner filed his petition on March 4, 2022, prior to enactment of the RIA, the relevant law then in existence governs this appellate adjudication.

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.[2] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. To demonstrate the lawful source of the funds, the petitioner 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. at 195.

II. ANALYSIS

The Petitioner indicated that on March 2, 2022, he invested $500,000[3] in [redacted] the NCE. According to the NCE's November 2021 business plan, the NCE sought to solicit one million dollars from up to two immigrant investors in exchange for class B membership interests in the NCE. The NCE intended to use the funds to finance the startup costs of [redacted] a full-service restaurant and bar in the seaport area of [redacted] Massachusetts. As discussed below, we find that the Petitioner has not established, by a preponderance of the evidence,[4] his eligibility for the classification. Specifically, he has not documented the lawful source of his funds.

The Petitioner claims that the source of his $500,000 investment was from work he did as an independent contractor for [redacted] In his statement, he explains that in April and October 2015, [redacted] paid him for his work by making three deposits totaling $787,706 to a bank account for [redacted] company wholly owned by the Petitioner. Account records confirm [redacted] deposits totaling $787,706 to [redacted] account in 2015.

The Petitioner claims that the $787,706 remained in [redacted] account until August 2021, when funds were transferred to his personal account. In March 2022, he asserts the funds were then remitted from his personal account to the NCE for the $500,000 EB-5 investment. Account statements show that in August 2021, $978,476 was transferred from [redacted] account to the Petitioner's account and that on March 2, 2022, the Petitioner remitted $550,000 to the NCE's account. A letter from the NCE's escrow agent confirms receipt of the Petitioner's $500,000 investment (and a $50,000 administrative fee) on this date.

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[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 her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

[3] The RIA made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See s*ection 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner indicated the project is located in a TEA. The Petitioner filed his petition prior to enactment of the RIA and, 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).

[4] If a petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. at 376; *see generally* 6 *USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual.

The record, however, is insufficient to document the path of the Petitioner's claimed EB-5 investment, tracing the path of funds back to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. It is the Petitioner's burden to establish that the funds he invested in the NCE were acquired through lawful means. To meet this burden, he must provide sufficient evidence to demonstrate the direct and indirect source of his investment. Here, while the Petitioner established that the direct source of the funds deposited in the NCE's escrow account was from his personal bank account, he does not demonstrate the lawful source of those funds.

The Petitioner claims the investment funds originated from his work brokering a contract on behalf of [redacted] He, however, did not submit sufficient evidence corroborating his assertions that payments from [redacted] were for his work on behalf of [redacted] To evidence his work for [redacted] the Petitioner submitted his statements; informational documents relating to [redacted] and its parent company, [redacted] a power of attorney provided to him to act on behalf of [redacted]; and a contract between [redacted] The contract, however, is not dated or signed, and it indicates that [redacted] was represented by someone other than the Petitioner. The contract does not mention the Petitioner or his work for [redacted] Moreover, while the power of attorney provided the Petitioner power to act on behalf of [redacted] the validity of his power was limited from December 9, 1993, to December 9, 1998, more than 17 years prior to the claimed work he performed for [redacted] in 2015 and 2016. Beyond the Petitioner's assertions, the record lacks documentation that the funds from [redacted] were payment to the Petitioner for his work brokering a contract on behalf of [redacted]

As mentioned above, the Petitioner claims the funds were remitted to his personal account through [redacted] a company he wholly owns. To demonstrate his ownership of [redacted] the record includes a share certificate indicating he held 100,000 fully paid shares at $1.00 par value in [redacted] as of March 31, 2014. In addition, he submitted a letter from [redacted] accountant indicating that based on information provided by the Petitioner, he was the sole shareholder of [redacted] The letter, however, does not detail when the Petitioner was the sole shareholder. Without further evidence, the Petitioner has not established he was [redacted] sole shareholder from April 2015 to August 2021, the time he claims the investment funds were in [redacted] account.

Moreover, the share certificate indicates the shares were fully paid, but he submitted evidence that he did not pay for his 100,000 shares in [redacted] A letter from a [redacted] attorney indicates that the language in a transfer agreement and on the share certificate indicating the shares were fully paid is not accurate, but instead is boilerplate language used when incorporating a company in [redacted] Without further evidence, such as a shareholder or board resolution relating to the issuance of the shares, the Petitioner has not adequately explained the inconsistencies in the record.

The Petitioner's claims that the invested funds were not only derived from lawful means but that they were also accumulated and maintained without being comingled with funds not shown to derive from lawful means have not been established 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. The Petitioner submitted account statements for [redacted] indicating that as of April 1, 2015, a few days prior to the first deposit from [redacted] account, [redacted] account balance was $358,166.84. The Petitioner did not provide evidence about the source of the funds on balance. Moreover, [redacted] account statements show that from April 2015 to August 2021, various amounts were deposited into [redacted] account

from unknown sources and various amounts were withdrawn from the account prior to the transfer of $978,476 to the Petitioner's personal account on August 11, 2021.

For example, [redacted] statements indicate wire deposits of $407,054.10 on March 21, 2016; $278,832.60 on August 5, 2016; $650,000 on August 24, 2016; $136,461.80 and $308,268.35 on September 20, 2016; $234.602.50 on May 25, 2017; $200,000 on June 14, 2017; and $352,081.40 on August 8, 2017. In the Petitioner's request for evidence reply, he provided a letter from [redacted] accountant indicating no funds were transferred during the period 2016 and 2017, but the "portfolio balances increased due to a reduction unrealized loss over the two year period . . . ." While we acknowledge the accountant's letter, the account statements specify the deposits were wire transfers, with some transactions having [redacted] notations. Moreover, on appeal, the Petitioner submitted additional evidence, including his statement and a forensic accounting report acknowledging additional deposits to [redacted] account in 2016 and 2017. The report indicates that in addition to the three payments totaling $787,607 from [redacted] the Petitioner received $2,412,834 from [redacted] for subsequent independent contractor work. Other than his assertions about the source of these deposits, the Petitioner did not submit further evidence to corroborate his claims.

The forensic accounting report submitted on appeal acknowledges that [redacted] also received $650,000 on August 24, 2016, indicating the funds were from [redacted] bank account at [redacted] in Switzerland. The Petitioner's statement explains that the funds were used as a loan to his son with $600,000 being remitted to his son from the [redacted] account on the same day. He also maintains that the remaining $50,000 was used to pay living expenses. The forensic accounting report states that the Petitioner requested but has not received account statements from [redacted] The Petitioner, however, did not provide an explanation or evidence of the lawful source of the funds from the [redacted] account.

In addition, [redacted] December 2015 account statement indicates a wire deposit of $143,875 from [redacted] The Petitioner claims this deposit was also payment to him for his work for [redacted] and these funds were part of the $978,476 remittance from [redacted] account to the Petitioner's personal account. As discussed above, the Petitioner did not provide evidence supporting his claims about his work for [redacted] Without further evidence, the Petitioner has not demonstrated these deposits were from lawful sources.

Based on the above, 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* 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The record does not demonstrate that the original funds of $787,706 remitted from [redacted] to [redacted] were part of the $500,000 transfer from the Petitioner's personal account to the NCE, especially when the funds were comingled with sums from other sources. He claims the original funds of $787,706 were remitted from [redacted] account, where it remained for six years, and that $978,476 was remitted from [redacted] account to the Petitioner's personal account. The Petitioner indicates that the additional $190,770 transferred from [redacted] to his personal account was from a lawful source. Specifically, he claims that in December 2016, [redacted] remitted an additional $143,876 to [redacted] account to pay him for his independent contractor work for [redacted] In addition, he claims his [redacted] "account value increased by $159,212.73 during these years because

of a reduction of unrealized losses in the account. This allowed my account to gain value 'on paper'." We acknowledge the Petitioner's explanation, however, he did not provide sufficient evidence corroborating his claims. Moreover, the record also lacks an explanation or evidence that [redacted] payment of $978,476 to the Petitioner's personal account in August 2021 was authorized as a lawful corporate action.

On appeal, the Petitioner argues that he demonstrated by a preponderance of the evidence that his investment funds derived from lawful means. He submits additional evidence with his appeal, including the forensic accountant report which indicates his $500,000 EB-5 investment funds can be traced to the $787,706 he received for his work with [redacted] Based on the qualifications and experience of the forensic accountant, the Petitioner argues the accountant should be considered an expert whose opinion tracing the funds to his work for [redacted] is independent evidence demonstrating the investment funds are directly traceable to the Petitioner's work with [redacted] The report acknowledges that the $787,706 was maintained in accounts that included other funds, but using a lowest intermediate balance methodology explains, "[d]uring the entire period analyzed, the [redacted] funds remained in the account and there were sufficient funds from other sources to fund all disbursements." By applying this tracing analysis, the report to finds, "the source of the [EB-5] investment was derived from the [redacted] funds]."

Citing *Battineni v. Mayorkas*, No. 22-1332, 2024 WL 4267522, (D.D.C. Oct 2, 2024), the Petitioner argues that he is not required to trace the origin of every penny of his EB-5 investment. Instead, he contends that the regulation only requires that he show the invested funds were obtained through lawful means, not requiring tracing of funds beyond and through points of time earlier than their immediate source. He maintains that he has demonstrated, by a preponderance of the evidence, that the funds were derived from lawful sources. However, we are not bound by federal district court decisions. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Further, the circuit court has affirmed a decision that held USCIS' complete path interpretation of the regulations is its authoritative position recognized by relevant precedent decisions. *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *see also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec at 195.

Because money is fungible, the Petitioner must document the lawful source of all the funds in [redacted] account before it remitted the funds to the Petitioner's personal account for investment in the NCE. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Without further corroborating evidence, the Petitioner has not established that the $500,000 he purportedly invested in the NCE, which included funds that originated from [redacted] account, did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e).

The record reflects that the Petitioner received the investment funds to his personal account in August 2021. He claims the funds originated from work he performed for [redacted] in 2015, and funds were remitted from [redacted] a company he wholly owns, for such work. The record, however, lacks sufficient evidence that the Petitioner performed work for [redacted] and that the funds originated from his work with [redacted] He further claims the funds remained in the [redacted] account until 2021, when funds were transferred to his personal account. The record lacks sufficient evidence that the Petitioner was the sole owner of [redacted] from 2015 to 2021 and that [redacted] authorized the payment of funds to the Petitioner. 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. *See 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. *See id.* at 6. Here, the Petitioner has not traced the path of his investment funds to a lawful source.

Because the record did not establish the lawful source and complete paths of the Petitioner's funds from [redacted] to his personal account, the Petitioner has not demonstrated by a preponderance of the evidence that the funds derived from lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210*; see also Borushevskyi v. USCIS*, 664 F. Supp. 3d 117 at 129. The record does not sufficiently demonstrate that the funds ultimately received to the Petitioner's personal account derived from lawful sources as explained above. Therefore, the record remains insufficient to establish by a preponderance of the evidence that the claimed lawful sources of the funds invested by the Petitioner in the NCE.

III. CONCLUSION

It is the Petitioner's burden to demonstrate his eligibility for the EB-5 classification. *Matter of Chawathe*, 25 I&N Dec. at 375-76. For the reasons discussed above, the Petitioner has not established, by a preponderance of the evidence, his eligibility for this classification. Specifically, the Petitioner has not demonstrated that the funds he invested were derived from lawfully sourced funds. Accordingly, we will dismiss the appeal.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any remaining arguments concerning his eligibility. *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).

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.