U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38844788

Date: SEP. 26, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526E, Immigrant Petition by Regional Center 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 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 that the record did not establish that the capital invested by the Petitioner was obtained through lawful means. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and additional evidence, maintaining that she has established eligibility for the benefit sought.

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

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. 206, 210 (Assoc. Comm'r 1998). 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. *Id.*

II. ANALYSIS

The Petitioner's supporting evidence indicates that on October 17, 2022, the Petitioner deposited the required minimum investment of $800,000 into the escrow account for [redacted] LP, the new commercial enterprise (NCE). Sponsored by the [redacted] LLC,[1] and pursuant to the Immigrant Investor Pilot Program, this NCE proposed to raise $56 million from 70 immigrant investors to lend to [redacted] LLC, the job-creating entity (JCE), for the development and operation of a vegetable farming facility.

The record indicates that the funds for the Petitioner's investment were derived from funds obtained by her spouse, [redacted], in China.[2] In order to transfer the funds from China to the United States, the Petitioner and [redacted] utilized the assistance of a friend and her friend's son-in-law—[redacted] and [redacted] respectively—and an additional friend—[redacted]—to facilitate the transfer of the capital for her investment from mainland China to the NCE's escrow account in the United States. The transfer involved the informal exchange of [redacted] renminbi for [redacted] U.S. dollars, which were then transferred the Petitioner for her investment. The record documents the movement of the funds as follows;

- February 11, 2022: Petitioner's spouse received RMB 6,416,074.82 into his [redacted] account in mainland China.
- August 26, 2022: [redacted] transferred USD 880,000 from her [redacted] account in the Hong Kong to [redacted] account.
- September 3, 2022: Spouse transferred RMB 5,900,000 from his [redacted] account in mainland China to [redacted] account in mainland China.
- October 13, 2022: [redacted] transferred USD 880,000 from her [redacted] account to the Petitioner's [redacted] account.
- October 17, 2022: Petitioner transferred USD 880,000 from her [redacted] account to the NCE's escrow account.

In response to a request for evidence (RFE), the Petitioner submitted an employment contract and employment certificate showing [redacted] earnings, which totaled approximately $1,000,000 dating back to 2017. Because the record did not include documentation depicting [redacted] receipt of income into her bank account or documentation showing that those specific funds were transferred to the Petitioner to use for her investment—such as bank statements documenting individual deposits and the accumulation of [redacted] earnings—FOD could not identify the origins of the funds transferred from [redacted] to the Petitioner for her investment. FOD determined that the record did not contain evidence sufficient to establish that the funds from [redacted] account in the United States originated from lawful sources, concluding that the Petitioner did not demonstrate by a

[1] [redacted] is a regional center designated by USCIS to participate in the EB-5 program. 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) (defining "regional center").

[2] Although FOD issued a request for evidence concerning the source of funds provided by [redacted] for the Petitioner's investment, neither the denial nor the subsequent motion to reopen and reconsider discuss FOD's conclusions concerning those funds. While not a basis for this dismissal, any outstanding eligibility requirements concerning the source of funds provided by [redacted] should be addressed in any future proceeding.

preponderance of the evidence that her investment funds were obtained through lawful means. FOD denied the petition and dismissed a subsequent motion to reopen and reconsider.

On appeal, the Petitioner asserts in her brief that "USCIS's interpretation of regulations, which led to its determination that there was a break in the path of funds and placed an additional burden on Petitioner to trace and prove the lawfulness of an exchanger's funds, was incorrect and exceeded the requirements set forth in the regulation." The Petitioner provides two recent district court decisions: *Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024) and *Zhou v. Noem*, No. 19-cv-2650 (TJK) (D.D.C. Feb. 6, 2025). Her brief states, "The Petitioner contends that the legal analysis of USCIS's fund tracing protocol in these cases, is directly applicable to her petition, and the court decisions support the approval of her petition." The Petitioner provides the following concerning these decisions:

> In *Battineni*, the court held that a petitioner is not required to trace every penny of EB-5 investment funds beyond the immediate source. The lawful source requirement is satisfied when the petitioner demonstrates that the immediate source of the investment funds was lawful.
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> In *Zhou*, the court reaffirmed *Battineni*. It further held that where a petitioner exchanges funds from one currency to another through a third-party exchanger, 8 C.F.R. § 204.6(j) only requires the petitioner to show that she/he acquired her/his funds through lawful means and does not require the petitioner to prove the third-party exchanger's USD came from a lawful source.

We note that these decisions were not published as precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). We acknowledge the Petitioner's claims that FOD's decision does not comply with the applicable laws and regulations. However, contrary to the Petitioner's claims, pertinent regulations and a precedent decision support FOD's request for evidence regarding the claimed lawful sources of the funds used by the third-party exchanger for the currency exchange. 8 C.F.R. § 204.6(e) (defining "capital"), (j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998).

The Petitioner references recent district court decisions holding that the regulation requiring a petitioner to show that invested funds were obtained through lawful means does not require tracing of funds beyond their immediate source. However, other district court decisions have found that petitioners must show the complete path of funds. *See Truong v. USCIS*, No. 21-316 (RC), 2023 WL 4234658, at *5 (D.D.C. Jun. 28, 2023); *Nguyen v. USCIS*, 637 F.Supp.3d 822 (C.D. Cal. 2022). In contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Further, the D.C. Circuit Court has affirmed a district court decision that held USCIS' complete path interpretation of the regulations is its authoritative position as explained in the precedential decisions. *Borushevskyi v. USCIS*, 664 F.Supp.3d 117, 126-29 (D.D.C. 2023), *aff'd*, No. 23-5116, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *see also Nguyen v. USCIS*, 637 F.Supp.3d 822, 835 (C.D. Cal. 2022) (affirming USCIS's denial of the petition where the petitioner's transfer of funds to a currency

exchange "caus[ed] a clear break in the source, custody, and ownership of [the petitioner's] funds" and therefore there was insufficient evidence that the funds invested "were obtained from a lawful source"), *aff'd*, No. 22-56068, 2023 WL 8251320 (9th Cir. Nov. 29, 2023). These decisions require the Petitioner to document the path of funds to establish the lawful source of the funds invested in the NCE.

In the present case, there are breaks in the paths of the Petitioner's claimed investment funds. The plain language of 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) supports FOD's requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, 2023 WL 4234658, at *5. The relevant path includes tracing the funds from their point of origin though any intermediary accounts. *See id.* at *6. Moreover, 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. 169, 195 (Assoc. Comm'r 1998); *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating documentation of the source of funds "is relevant to the question of whether the funds have been lawfully obtained, which is a requirement under 8 C.F.R. § 204.6(j)(3)").

The Petitioner explains on appeal that she "made good-faith efforts to comply with USCIS's overreaching requests" and emphasizes the "additional burden on the petitioner to trace and prove the lawfulness of the exchanger's funds," according to *Zhou*. However, in the scenario of a broken path of funds in which the source of the exchanger's funds is not represented, demonstrating the lawful source of a petitioner's investment funds, alone, does not exempt EB-5 investors from eligibility requirements. It is the Petitioner's burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of her purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

Further, the plain language of 8 C.F.R. §§ 204.6(e) (defining "capital") and (j)(3) (describing evidence of lawfully sourced capital) 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.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding 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). *See 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* (emphasis added). *Id.* at 6.

Upon review of the record, the evidence does not sufficiently demonstrate that the funds ultimately invested in the NCE were derived from lawful means. Although the record shows that funds for the Petitioner's investment were received into the NCE's escrow account from the Petitioner's account in the United States, the record does not reflect that the Petitioner's capital for her investment left mainland China. Because the record does not establish the complete path of the Petitioner's funds from mainland China to the United States, the Petitioner must demonstrate by a preponderance of the evidence that the funds occurring after the break in the path derived from lawful means. *See* 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. The record does not sufficiently demonstrate that the funds indirectly exchanged in China for the Petitioner's investment originated from lawful sources.

Accordingly, we conclude the record remains insufficient to establish by a preponderance of the evidence the claimed lawful source of the funds invested by the Petitioner in the NCE.

III. CONCLUSION

The Petitioner has not adequately documented the claimed lawful source and the path of the investment funds. *See* 8 C.F.R. §§ 204.6(e), (j)(3); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Specifically, the Petitioner has not provided sufficient evidence showing the lawful origins of the funds in the exchanger's bank account in China used for the Petitioner's investment. As the record does not sufficiently show that the funds invested by the Petitioner have been obtained through lawful means, the Petitioner has not established by a preponderance of the evidence eligibility for the immigrant investor visa classification.

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.