U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38290096

Date: SEP. 30, 2025

Appeal of Field Operations Directorate 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)(2017).[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 U.S. economy and create at least 10 full-time positions for qualifying employees. Aliens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center.[2]

Field Operations Directorate (FOD) denied the petition, concluding, in part, that the record did not establish that the $500,000 the Petitioner invested in the NCE did not derive, directly or indirectly, from unlawful 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. They may invest the required funds directly in an NCE or through a regional center.

[1] On March 14, 2022, the EB-5 Reform and Integrity Act of 2022 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 his petition in 2017, prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

[2] *See* Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2017).

An immigrant investor must demonstrate that they have placed their 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 [their] own"). In addition, the investor must show that their 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, the immigrant investor must submit, as applicable, 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 complete path of the funds back to a lawful source.[3] *See Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds is USCIS' authoritative position recognized by other relevant precedent decisions); *see also Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998).

II. ANALYSIS

The Petitioner asserts that he invested $500,000 into [redacted] (the NCE), which is affiliated with [redacted] (the regional center), in April 2017. According to its [redacted] the NCE proposes to pool $22 million from 44 immigrant investors and lend the entire amount to [redacted] (the job-creating entity), for the construction of the first phase of a mixed-used real estate development project in [redacted] California.

With respect to the source of funds used for his investment, the Petitioner submitted "Donation Contracts" signed by his mother and father, indicating that they provided gifts to him in the amounts of 1,200,000 Chinese renminbi (RMB) and RMB 2,900,000, respectively. The record contains evidence intended to document how the Petitioner's parents derived the donated funds, as well as evidence intended to trace those funds, which were exchanged in China for U.S. currency in $50,000 increments through various friends and family members, from his parents' bank accounts in China to the Petitioner's [redacted] account in March and April 2017. The record shows that the Petitioner transferred $550,000 from this account to the NCE's designated escrow account on April 14, 2017, and that the receiving bank issued a letter on this date, advising the regional center of its receipt of the Petitioner's $500,000 investment and associated administrative fees.

After issuing a request for evidence (RFE) and receiving the Petitioner's timely response, FOD denied the petition, concluding that he did not demonstrate the lawful source of the invested funds. FOD's

[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).

decision identifies several separate and independent bases for this determination. Specifically, FOD concluded: (1) there were unresolved material inconsistencies in the record with respect to both his mother's and father's employment histories; (2) there was insufficient evidence to demonstrate that the lawful source of the funds his mother, father, and aunt[4] used to invest in their sole proprietorship businesses established in China in 2004, 2012 and 2014, respectively; and (3) there was insufficient evidence to show that the funds the Petitioner's mother used to purchase real property in 2006, and to pay off the mortgage on this property in 2008, did not derive from unlawful means.[5]

In addition, FOD determined that the Petitioner did not comply with the evidentiary requirements at 8 C.F.R. § 204.6(j)(3)(i) and (ii) because he did not provide all requested foreign business registration records for "any and all employers of Mother, Father and Aunt" and any entities that they own; copies of corporate tax returns for any entities owned, in whole or in part, by his parents and aunt; and copies of his mother's, father's and aunt's personal income tax returns to corroborate their claimed employment and income history. Finally, in addition to determining the Petitioner did not demonstrate the lawful source of funds used for his EB-5 investment, FOD, citing 8 C.F.R. § 103.2(b)(14), denied the petition because the Petitioner did not provide all evidence requested in the RFE and because he did not complete Page 2, Part 4 of the Form I-526, Immigrant Petition by Alien Entrepreneur, in compliance with the form's instructions.

On appeal, the Petitioner asserts that FOD's decision contains erroneous conclusions of fact, which stemmed from its failure to carefully review and consider much of the evidence he provided in response to the RFE. He contends that he met his burden to demonstrate that the funds he received from his parents to use as his investment in the NCE were, more likely than not, derived from lawful sources and maintains that FOD arbitrarily applied a higher standard of proof than the preponderance of the evidence and wrongfully penalized him for failing to provide documentation that is not expressly required by the regulations. In support of the appeal, the Petitioner submits additional declarations from his mother, father and aunt which address inconsistencies raised in FOD's decision, as well as a fully completed Form I-526.

Upon review, we will withdraw FOD's decision and remand the matter for further review and entry of a new decision consistent with the discussion below.

An officer's written decision must explain the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See e.g., Matter of M-P-* 20 I&N Dec 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Here, we agree with the Petitioner's contention that FOD did not adequately discuss the evidence he submitted in response to the RFE. FOD's decision acknowledges that the Petitioner submitted approximately 60 evidentiary exhibits with his RFE response but fails to discuss most of that evidence

[4] The Petitioner submitted evidence that his maternal aunt was the owner of [redacted] from May 2012 until January 2014. Evidence in the record indicates the Petitioner's father worked for this business during that period and then re-registered the business as its sole owner in January 2014.

[5] The Petitioner's mother indicates in her April 2017 sworn declaration that the RMB 1,200,000 she donated to him were derived solely from the sale of this property.

or explain why it was deemed insufficient to satisfy his burden of proof. Further, as noted by the Petitioner, FOD's decision includes factual errors with respect to some of the evidence that was addressed; the record supports his claims that certain relevant evidence was misinterpreted or overlooked.[6]

In addition, FOD denied the petition, in part, based on a finding that the Petitioner did not comply with the regulations at 8 C.F.R. § 204.6(j)(3)(i) and (ii). However, these regulatory provisions require a petitioning alien investor to submit this evidence "as applicable" to demonstrate the lawful source of funds used in their investment. FOD's denial of the petition based on the Petitioner's failure to provide the evidence described at 8 C.F.R. § 204.6(j)(3)(i) and (ii) for his parents and aunt was misplaced; instead, FOD should have weighed all evidence the Petitioner provided to establish the direct and indirect sources of the funds used for his investment to determine whether he met his burden to show, by a preponderance of the evidence, that the funds did not derive from an unlawful source. As noted, the decision does not reflect that FOD fully reviewed and weighed the evidence submitted in response to the RFE.[7]

Finally, in our de novo review, we identified issues, discussed below, that were not raised in the instant denial. Upon remand, FOD should consider the record in its entirety and determine if an RFE or notice of intent to deny (NOID) should be issued, prior to issuing a new decision.

A. Gift from Mother

As noted, the Petitioner indicates that the funds he invested in the NCE were derived, in part, from a gift from his mother in the amount of RMB 1,200,000. In a sworn declaration executed in April 2017, the Petitioner's mother stated that these funds were derived from her sale of real property to a buyer [redacted] in February 2017, for RMB 1,200,000. The Petitioner provided evidence to document his mother's purchase of the property in 2006 for RMB 539,805, evidence that her RMB 430,000 mortgage was paid in full in 2008, and evidence documenting her sale of the property, and the transfer of ownership, to [redacted]

The Petitioner provided a copy of his mother's [redacted] statement for her account ending in [redacted] for the period January 1, 2016 to April 12, 2017, which shows that [redacted] made five transfers to this account for a total of RMB 1,201,500. However, the bank statement does not show

[6] For example, FOD determined that his mother's income certificate from her sole proprietorship business, [redacted] lacked probative value because the record did not establish that his aunt, who signed the certificate in her capacity as "accountant" was "legally recognized as a fully certified accountant" at the time she signed the document in 2017. However, the Petitioner's RFE Response included his aunt's "Certificate of Accounting Profession" issued by the [redacted], on October 1, 1995. In determining that the record did not establish that the Petitioner's aunt was a qualified accountant in 2017, FOD evidently overlooked the certificate's date of initial issuance and only looked at the later renewal entries provided on the same document.

[7] While the Petitioner did not submit the requested tax returns for his father's business, [redacted] he provided information about the business obtained from [redacted] audited financial statements for the years 2012 through 2016, and monthly tax payment certificates dated between 2014 and 2017 that showed payments made by the company in the tax category "individual income tax." FOD did not address this evidence, instead concluding the Petitioner "failed to provide any evidence" to corroborate that the company had paid income tax as claimed.

that the Petitioner's mother retained these funds in her account and used these funds as the sole source of her gift to the Petitioner as claimed.

The Petitioner's mother had an account balance of RMB 3,992.31 on February 7, 2017. She received a transfer deposit of RMB 100,000 from [redacted] on February 8, 2017, but on that same date her account was debited RMB 93,992.31 for "automobile financing," leaving an account balance of RMB 10,000. On February 16, 2017, she received a RMB 500,000 deposit from [redacted] and made three cash deposits to her account totaling RMB 30,000. On the same date, there was a RMB 530,000 debit from the account for "automobile financing," leaving an account balance of RMB 10,000. Therefore, the evidence indicates that the Petitioner's mother withdrew half of the funds from the property sale and used them for purposes other than giving them to the Petitioner towards his investment.

The bank statement shows that the Petitioner's mother received the remaining RMB 601,500 from [redacted] on February 17, 2017, but it also shows that RMB 973,892.85 was deposited into her account on that date. This deposit transaction was annotated as a "real time redemption." On March 20, 2017, when his mother withdrew a total of RMB 1,033,231 to be exchanged for U.S. currency and transferred to the Petitioner, her account balance was RMB 1,583,116,85. As detailed here, well over half of this money came from the February 17, 2017 "real time redemption" deposit and not from the proceeds of the property sale, and therefore the money included in that deposit became part of the funds included in the gift to the Petitioner. This issue was not raised by FOD in its RFE or decision. Accordingly, on remand, FOD should review evidence related to the funds donated to him by his mother and determine if a new RFE or NOID should be issued.

B. Gift from Father

The Petitioner asserts that he obtained the remaining funds used for his investment in the NCE from his father, who gave him a gift in the amount of RMB 2,900,000. In his sworn declaration dated April 2017, the Petitioner's father stated that he received net income of RMB 3,230,000 from salary and bonuses paid by [redacted] between May 2012 and March 2017, that he deposited and kept part of his earnings in his [redacted] account ending in [redacted] during that period, and that he withdrew the funds he gave to the Petitioner from this account, which had accumulated a balance of RMB 6,040,457.20 as of March 27, 2017.

The Petitioner provided a bank statement for his father's [redacted] debit card account ending in [redacted] for January 1, 2015, through April 7, 2017. The account had a balance of RMB 1,679,058 as of January 1, 2015, and as noted in his father's declaration, a balance of RMB 6,040,457 in March 2017, when his father withdrew funds to exchange and transfer to the Petitioner as part of the RMB 2,900,000 gift. The Petitioner's father does not claim, and the record does not show, that he earned RMB 4,361,399 from his claimed employment during this period, nor does it otherwise explain or document the source of other funds held in this bank account. Even if USCIS determined that the Petitioner submitted sufficient evidence to demonstrate that his father earned RMB 3,230,000 based on salary and bonus income from [redacted] between 2012 and 2017, as claimed,[8] additional

[8] The Petitioner's father's [redacted] statement shows monthly "e-transfer" payments for RMB 30,000 which, according to the submitted income certificate, is the amount he received in net monthly salary from [redacted] during

evidence is needed to demonstrate the lawful source of other funds commingled with those earnings in this bank account. As money is fungible, the Petitioner has not established which amounts he received from his father were sourced from his claimed income from [redacted] and which were derived from other sources that have not yet been explained. On remand, FOD should also review the new sworn declaration from the Petitioner's father, submitted on appeal, which addresses FOD's determination that the record contained material inconsistencies regarding his employment history.

III. CONCLUSION

For the reasons discussed, we will withdraw FOD's decision and remand this matter for further review and entry of a new decision which, if unfavorable, should comply with the requirements of 8 C.F.R. § 103.3(a)(1)(i). FOD should review the record in its entirety, including the Petitioner's brief and evidence on appeal, and determine if a new RFE or NOID should be issued, prior to issuing the new decision. It remains the Petitioner's burden to demonstrate his eligibility for the immigrant investor classification, which includes establishing the lawful source of the funds used for his purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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this period. However, the bank statement does not identify the source of the RMB 30,000 deposits, nor does it indicate deposits for RMB 330,000 and RMB 380,000, his claimed annual bonus payments for the years 2015 and 2016, respectively.