



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF O-G-E-

DATE: MAY 31, 2018

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: 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). This fifth preference classification makes immigrant visas available to foreign nationals 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.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish, as required, the lawful source of the Petitioner's invested funds.

On appeal, the Petitioner submits additional evidence and asserts that the record establishes eligibility for the benefit sought.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a NCE. The foreign national must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. An immigrant investor may invest the required funds directly in an NCE or through a regional center,¹ as the Petitioner has done in this case. Regional centers apply for designation as such with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project, taken on either directly by the NCE or by one or more separate entities known as the "job creating entity" (JCE). 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).

The invested capital must not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e) (defining capital). To show the lawful source of the capital, a petitioner must

¹ A regional center is an economic unit involved with the promotion of economic growth through "improved regional productivity, job creation, and increased domestic capital investment." See 8 C.F.R. § 204.6(e).

submit evidence such as foreign business and tax records or documentation identifying any other source(s) of funds. 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds, by themselves, are insufficient. *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). The record must trace the path of the funds back to a lawful source. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.² See also 6 USCIS Policy Manual G.2(A)(2), (4), <https://www.uscis.gov/policymanual>.

II. ANALYSIS

The Petitioner invested \$500,000³ in [REDACTED] the NCE, which is associated with a regional center, [REDACTED] (the Regional Center). The NCE proposes to loan up to \$38,500,000 of EB-5 capital to [REDACTED] the JCE, to develop a residential community.

The Petitioner indicates that his \$500,000 investment derived from the sale of property located in Nigeria. Specifically, the deed of assignment indicates the Petitioner sold the property for 160,000,000 Naira (the equivalent of \$800,802 as of the sale date, March 15, 2015)⁴ and invested \$500,000 of the sales proceeds into the NCE. While the record contains the 2007 deed of assignment showing the Petitioner purchased the property for 50,000,000 Naira (the equivalent of \$376,676 as of the purchase date, April 9, 2007),⁵ it lacks documentation demonstrating the source of funds he used to purchase the property. In response to the Chief's request for evidence (RFE), the Petitioner argued that USCIS should defer to the property deed to establish his investment capital's lawful source because the property was not a "newly purchased asset". The Petitioner also submitted documents indicating he was a director and shareholder for a company incorporated in 2008. The Chief denied the petition, finding that the Petitioner failed to establish the lawful source of funds for the 2007 property purchase.

On appeal, the Petitioner asserts that the Chief analyzed his cash investment into the NCE as a form of indebtedness and therefore incorrectly required "additional security and personal liability referenced in the regulatory definition of capital." The Petitioner further argues that the Chief erred in requiring documentation showing the source of the property purchase funds because he did not acquire the asset recently, as demonstrated by his 2007 deed of assignment. In support of his argument, the Petitioner contends that "in a recent USCIS training manual, it clarifies that if the

² These requirements confirm that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States* 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (holding that a petitioner had not established the lawful source of her funds because she did not designate the nature of all of her employment or submit five years of tax returns).

³ The Petitioner indicates that the NCE is located in a targeted employment area, and that the requisite amount of qualifying capital is downwardly adjusted from \$1,000,000 to \$500,000. See 8 C.F.R. § 204.6(f).

⁴ See OANDA, <https://www.oanda.com/currency/converter/> (last accessed on April 10, 2018, and incorporated into the record).

⁵ *Id.*

assets sold were acquired by the petitioner recently, the USCIS shall ask for evidence of how and when the assets were obtained.” In contrast to the Petitioner’s assertion, the document submitted as “USCIS EB-5 training materials” does not state that the source of funds analysis *only* applies to recently acquired assets. Moreover, the submitted evidence appears to be a print-out from [REDACTED] rather than official USCIS training materials.

Despite the Chief’s RFE, the Petitioner did not provide documentation to show the lawful source of funds used to purchase the property from which his NCE investment derived. On appeal, the Petitioner does not submit an explanation of the source of the purchase funds nor evidence that demonstrates he purchased the property with lawfully obtained funds. Therefore, the Petitioner has not established that his invested capital derived, directly and indirectly, from lawful means. *See* 8 C.F.R. §§ 204.6(e), 204.6(j)(3).

III. CONCLUSION

The Petitioner has not established the lawful source of his investment into the NCE.

ORDER: The appeal is dismissed.

Cite as *Matter of O-G-E-*, ID# 1196212 (AAO May 31, 2018)