



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-B-

DATE: JULY 22, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner seeks EB-5 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 and a subsequent motion to reopen, concluding that the record did not establish, as required, that the Petitioner's investment derived from lawfully sourced funds.

On appeal, the Petitioner submits additional evidence and asserts that he is eligible for the classification sought.

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

I. LAW

A foreign national may be classified under section 203(b)(5)(A) of the Act as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. The NCE can be any lawful business that engages in for-profit activities. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j). 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 the United States Citizenship and Immigration Services (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).

¹ 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).

In addition, the petitioner's invested capital must not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e), (j). The record must trace the path of the funds back to a lawful source.² *Matter of Ho*, 22 I&N Dec. 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 195 (Assoc. Comm'r 1998). To show the lawful source of the funds, an investor must submit, as applicable, foreign business and tax records or documentation identifying any other sources of funds. 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 169, 195.

II. ANALYSIS

The Petitioner filed the instant petition based upon his July 2016 investment into [REDACTED] [REDACTED] an NCE associated with [REDACTED] Regional Center. Following a series of actions³ the Chief denied his petition and subsequently filed motion to reopen, concluding that the Petitioner had not established that his investment derived from lawfully sourced funds, as required. *See* 8 C.F.R. § 204.6(e); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. For the reasons discussed below, we agree with the Chief's findings.

The record establishes that the Petitioner transferred \$534,920 (including his \$500,000 investment⁴ and an administrative fee) from his Latvian [REDACTED] bank account to the NCE's escrow account in July 2016. The Petitioner, who works as an importer of tableware, explains and submits evidence that the funds in this [REDACTED] account were deposited by [REDACTED] and were a refund from a canceled sales contract for dishes costing 5,438,293,33 Ukrainian Hryvnia (UAH).⁵ At issue is whether the record establishes that the funds used to pay for these dishes were derived from lawful sources, as required. *See* 8 C.F.R. § 204.6(e),(j).

The Petitioner states that he paid for the above-mentioned sales contract using earnings accumulated by himself and his spouse and a \$70,000 advance drawn on his [REDACTED] Bank line of credit.⁶ However,

² These requirements confirm that the funds utilized are not of suspect origin. *See 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 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).

³ In January 2018 the Chief issued a request for evidence (RFE) concerning the lawful source of funds used in the Petitioner's investment. Finding that that the Petitioner's timely response did not overcome her concerns, she issued a notice of intent to deny (NOID) on the same grounds in April 2018.

⁴ Because the NCE is located in a targeted employment area, the requisite amount of qualifying capital is downwardly adjusted from \$1,000,000 to \$500,000. *See* 8 C.F.R. § 204.6(f)(2).

⁵ The record contains a sales contract between the Petitioner and [REDACTED], dated February 4, 2014, for this amount. This contract stated that this was the equivalent of \$680,382 USD "by official rate of National Bank of Ukraine on the date [sic] of signed this contract." The record also includes a document canceling this contract and stipulating that [REDACTED] [REDACTED] repay the \$680,382 in US dollars, as well as bank statements from the Petitioner's [REDACTED] account showing deposits totaling this amount from [REDACTED]. These bank statements also show the outflow of funds from [REDACTED] to the NCE's escrow account.

⁶ We note that the Petitioner has alternately asserted that the source of funds used in his investment derived from accumulated earnings and the \$70,000 proceeds from sale of a home gifted to him by his mother. However, within the document titled "Memorandum on Investor's Lawful Source of Funds," he stated that in order to make the payments for this contract he "used his accumulated earned income and a revolving line of credit at [REDACTED] Bank."

the Petitioner has not provided adequate documentation to corroborate his assertions. First, we note that the record does not trace the full path of the Petitioner's funds, as required. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. The record establishes that he entered into a sales contract with [redacted] for the purchase of dishes on February 4, 2014, and that as of February 14, 2014, this company had received the full amount of the contracted purchase price.⁷ However, it lacks documentation of the Petitioner's payment to [redacted] such as bank statements showing a withdrawal or transfer of funds belonging to him, or otherwise illustrating the source of the money provided to that company.

In addition, regarding the Petitioner's assertion that accumulated earnings constituted a source of the funds used, the record does not establish that he retained sufficient funds from his and his wife's earnings as of the February 2014 sales contract date to cover 4,878,495.36 UAH⁸ of the purchase price, as claimed. With respect to their joint earnings, the record contains tax statements establishing that the Petitioner and his wife cumulatively earned 6,105,894 UAH⁹ in income from 2009 to 2014, as well as profit and loss statements from the Petitioner's business corroborating his earnings. While the record also contains bank statements from 2009 to 2014 for an account held by the Petitioner, which he provided as evidence of "income from sale of tableware,"¹⁰ these materials do not show a meaningful accumulation of funds over time. The bank statement for January 2014 shows an opening balance of 11,705.00 UAH carried over from 2013. The February 2014 bank statement does not demonstrate adequate additional incoming funds for use in fulfilling part of the sales contract, nor does it document any withdrawals or transfers consistent with the account having been used as the source of the funds for this payment. Further, the Petitioner has not submitted bank statements from other accounts held by himself or his wife, or provided any other documentation to corroborate his assertion regarding the amount of their retained accumulated earnings or to show that such earnings were used to make the contracted payment for the purchase of the dishes.

The record similarly lacks documentation regarding the asserted additional \$70,000 used to pay for the sales contract. As we note above, 8 C.F.R. § 204.6(j)(3) provides that in order to show the lawful source of funds, the Petitioner must submit, as applicable, foreign business and tax records or documentation identifying any other sources of funds. Here he does not do so. The Petitioner states that he used a line of credit held with [redacted] Bank to make this payment but does not provide documentation, such as bank records or other materials, showing that this line of credit was the source of funds. He explains that he regularly used this line of credit for inventory purchases, and he would make payments on it "in cash to a bank teller for which [he] would receive cash receipts." He noted that his "normal procedure was to keep the payment receipts until [he] saw [his] payment reflected in the line of credit balance." The Petitioner further states that he requested line of credit statements from

⁷ The record contains a document dated Feb. 14, 2014 translated as "Act of acceptance and transfer of funds" stating that [the Petitioner] "have transfer to Company the funds for cover future invoices" an amount totaling 5,438,293.33 UAH.

⁸ According to the sales contract, the exchange rate on the date of the contract was 7.997 UAH/1 USD (5,438,293.33 UAH/\$680,032). The Petitioner therefore would need to demonstrate that he retained sufficient earnings to make a payment totaling 4,878,495.36 UAH or \$610,032. This amount is \$680,032 less the \$70,000 that the Petitioner asserts was paid using his line of credit at [redacted] Bank.

⁹ The Chief stated that the cumulative earnings totaled 4,130,658 UAH. As noted by the Petitioner on appeal, this figure omits his wife's earnings.

¹⁰ The Petitioner provided these in support of his motion to reopen which the Chief subsequently denied.

[redacted] Bank but was told they “do not issue statements for lines of credit.” The record contains a Letter of Credit from [redacted] Bank corroborating the Petitioner’s assertion that it does not issue statements on such accounts, and confirming that his account is closed. However, the record lacks other documentation corroborating the Petitioner’s assertion that he drew \$70,000 in funds on this account for use as attested. He therefore has not shown the source of these additional funds.

For the reasons discussed above, the Petitioner has not established that the funds used to acquire the dishes were lawfully sourced. He therefore has not shown that his investment was derived, directly or indirectly, from lawful means as required at 8 C.F.R. § 204.6(e), (j).¹¹

III. CONCLUSION

It is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here he has not demonstrated that his investment derived from lawfully sourced funds. He therefore has not established eligibility for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of A-B-*, ID# 3587580 (AAO July 22, 2019)

¹¹ Although not discussed by the Chief, we also note that [redacted] – the bank in Latvia used by the Petitioner to receive funds in U.S. dollars from the [redacted] company [redacted] and transfer those funds to the NCE – has been named by the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) as an institution of primary money laundering concern. Financial Crimes Enforcement Network, *FinCEN Names [redacted] Bank of Latvia an Institution of Primary Money Laundering Concern and Proposes Section 311 Special Measure* ([redacted] 2018), [https://www.fincen.gov/news/news-releases/fincen-names-\[redacted\]-bank-latvia-institution-primary-money-laundering-concern-and](https://www.fincen.gov/news/news-releases/fincen-names-[redacted]-bank-latvia-institution-primary-money-laundering-concern-and) (accessed on July 11, 2019 and incorporated into the record of proceedings). Because the Petitioner has not otherwise submitted documentation tracing the investment funds back to a lawful source, we need not reach the issue of whether the transfers to and from [redacted] in this case present money laundering concerns. However, this issue may be addressed in any future proceedings.