



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

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

In Re: 05447164

Date: FEB. 20, 2020

Appeal of Immigrant Investor Program Office 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). This fifth preference (EB-5) 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 Petitioner did not establish eligibility for the EB-5 classification. Specifically, the Chief determined that the Petitioner did not document the lawful source of the funds she remitted to [redacted] [redacted] the NCE, which is affiliated with [redacted] (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.¹ The Chief also determined the Petitioner had not resolved inconsistencies identified in the record and had made impermissible material changes to her petition. On appeal, the Petitioner submits additional evidence and maintains that she has shown eligibility for the EB-5 classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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. 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).

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).

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).

In addition, a petitioner must show that his or her 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, an investor 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. 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.² *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner indicates she invested \$500,000 in the NCE.³ According to the May 2015 business plan, the NCE seeks to raise up to \$150,000,000 EB-5 funds from 300 foreign national investors to loan to [REDACTED] the JCE. The JCE plans to use the EB-5 capital and other funds for the development, construction, and operations of the new twelve story tower, luxury [REDACTED] Hotel.

A. Lawful Source and Path of Funds

In this case, the Petitioner alleges that her EB-5 capital derived from a 3,800,000 renminbi (RMB) gift from her parents, [REDACTED] and [REDACTED]. The record indicates the Petitioner's parents obtained the gift funds from the proceeds of a mortgage loan secured by real property owned by [REDACTED]. The mortgage loan proceeds were deposited in [REDACTED]'s [REDACTED] China Bank account ending in 3617 on October 10, 2016, who then remitted the funds to the Petitioner's [REDACTED] Bank account ending in 5523. According to the Declaration on Capital Exchange dated October 25, 2016, the Petitioner learned that [REDACTED] had a USD deposit account at [REDACTED] Bank and was willing to exchange the Petitioner's gift funds into USD. The initial record at the time of filing indicates the Petitioner transferred 3,800,000 RMB to [REDACTED]'s [REDACTED] Bank of China account ending in 7705 on October 11, 2016, and, in return, [REDACTED] remitted \$554,910 from her [REDACTED] Bank account ending in 3681 to the Petitioner's [REDACTED] Bank account ending in 3922 on October 24, 2016.

The Chief issued a request for evidence (RFE) specifically noting that "[b]ecause [the] Petitioner's funds were routed through a third party exchanger, and there is insufficient documentation to demonstrate the legitimacy of the exchanger and the funds in [REDACTED] Bank (HK), [the] Petitioner bears the burden of demonstrating that the funds transferred by [REDACTED] to [the] Petitioner for onward transfer to the NCE were obtained through lawful means." In her RFE response, the

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

³ The Petitioner indicates that the NCE is located in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from \$1,000,000 to \$500,000. See 8 C.F.R. § 204.6(t)(2).

Petitioner offered a Statement on Capital Sources signed by [redacted] on June 29, 2018, whereby [redacted] stated she knew a friend (not identified at the time) who needed RMB in mainland China for business turnover. [redacted] claimed she remitted 3,800,000 RMB from her [redacted] Bank of China account ending in 7705 to her friend who, in turn, transferred \$554,902.05 from the corporate account of [redacted] to [redacted]'s [redacted] Bank account ending in 3681 on October 12, 2016. The Petitioner also provided documentation of [redacted]'s incorporation and a bank statement showing [redacted] received the USD from [redacted]

The Chief then issued a notice of intent to deny (NOID) noting the record was not sufficient to demonstrate the complete path of the EB-5 investment funds to the NCE or the lawful source of the exchanged funds and requested the Petitioner provide a detailed explanation of the path and source of funds as well as documentary evidence of to support the Petitioner's claims of the path and source of the funds. The Chief specifically requested the following documentation from the Petitioner:

- All bank accounts referenced by the Petitioner as being used in the claimed path of funds;
- Evidence showing the path and source of the funds remitted to and from [redacted]
- Evidence that [redacted] accrued or maintained funds in its accounts prior to remitting USD to [redacted]; and
- Evidence demonstrating [redacted] or her friend were or are employees of [redacted] and whether they were authorized to participate in the currency exchanges and fund transfers on behalf of [redacted]

In response, the Petitioner provided a statement from [redacted] who claimed she had asked her friend, [redacted] to assist with the currency exchange and mistakenly believed that [redacted] owned [redacted]. The Petitioner also provided a declaration from [redacted] dated August 15, 2018, as well as an untranslated copy of an ID card. [redacted] stated the [redacted] had arranged for the currency exchange and was legally licensed to conduct currency exchanges in Hong Kong. [redacted] claimed the RMB remitted from [redacted] was deposited in an account designated by [redacted] and then, on October 12, 2016, [redacted] arranged for [redacted] to transfer the USD to [redacted]'s [redacted] Bank account ending in 3681.

In support, the Petitioner provided, among other documentation, a remittance application form showing [redacted] remitted the 3,800,000 RMB from her [redacted] Bank of China account ending in 7705 to [redacted]'s [redacted] Bank of China account ending in 8717 on October 12, 2016, as well as a Foreign Currency Exchange Memo from the [redacted] indicating [redacted] exchanged 3,799,999.76 RMB into \$554,902.05 and remitted the USD to [redacted]'s [redacted] Bank account ending in 3681 on the same day. The Petitioner also submitted a business registration and money services license for [redacted] but did not identify [redacted] or explain that individual's role in the above transactions.

After reviewing the record in its entirety, the Chief observed that "[t]here is insufficient evidence... to establish any connection between [redacted] and [redacted] or to establish the authorized nature of business activity(ies) of [redacted], the entity [the] Petitioner claims [redacted] directed or authorized to transfer USD funds to [redacted] in Hong Kong for onward transfer to [the] Petitioner and the NCE escrow account." The Chief also

noted that “[t]he foreign exchange transfer form... does not indicate any account number(s) or financial institution(s) associated with [redacted] and/or [redacted] from which the USD funds were transferred to [redacted] as claimed.” The Chief denied the petitioner, concluding the record lacked sufficient evidence identifying the ownership structure and business purpose of [redacted] the business relationship between [redacted] and [redacted], or the identity of [redacted] and his/her role in the above transactions and therefore the Petitioner did not establish the lawful source or path of her EB-5 investment.

On appeal, the Petitioner submits additional evidence concerning the lawful source of her funds that she did not present to the Chief. The Petitioner offers, among other documents, [redacted]’s letter of explanation and national identification card, a letter from [redacted] and the [redacted] [redacted]’s RMB deposit appointment form and entrustment certificate.

The Petitioner, however, had already been put on notice of the required evidence, was given a reasonable opportunity to provide the evidence, and the evidence was reasonably available to the affected party at the time it was supposed to have been submitted.⁴ The Petitioner claimed that [redacted] [redacted] had closed leaving limited business documentation. [redacted] provided a statement indicating her [redacted] Bank account was cancelled and since the bank statement is related to her privacy she cannot provide the bank statement. However, [redacted] also claimed she was a staff member of [redacted] who entrusted her with the account to accept the RMB used in the exchange. The Petitioner did not claim that [redacted] was unable to provide the requested bank statements that, presumably, would be available to [redacted]’s employer. These documents were specifically requested by the Chief and the Petitioner did not indicate that the evidence submitted on appeal was not reasonably available at the time of the RFE and NOID. We will therefore review the record without considering the evidence submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose”).

As discussed above, the Petitioner indicated the \$554,902.05 deposited into the NCE derived from a currency swap of funds provided by [redacted], [redacted] and [redacted]. While the Petitioner claims that [redacted] facilitated the currency swap using [redacted]’s personal bank account in China and [redacted]’s USD in Hong Kong, the record at the time of decision does not sufficiently document the path or the source of the funds remitted to [redacted] [redacted]’s personal account or the funds sent from [redacted]’s account in Hong Kong to [redacted].

First, the Petitioner did not provide adequate documentation of the identities of [redacted] or Ms. [redacted]. The record includes an untranslated ID card purporting to be that of [redacted]. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

⁴ 13 *See Oyeniran v. Holder*, 672 F.3d 800, 808–09 (9th Cir. 2012) (“It is not sufficient that the evidence physically existed in the world at large; rather, the evidence must have been reasonably available to the petitioner.”). *See also INS v. Doherty*, 502 U.S. 314, 324 (1992) (the Attorney General did not abuse his discretion by denying motion to reopen to apply for asylum and withholding based on lack of new material evidence).

Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims regarding [redacted]. The lack of identity documents from [redacted] brings into question the validity of her statements made in the record as well as the lawful source of funds she handled in her bank accounts in China and Hong Kong. To show the lawful source of the funds, an investor 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). Here, the Petitioner has not sufficiently documented the source of the capital sent from [redacted] to [redacted] and the Petitioner as she has not submitted sufficient documentation of [redacted]'s identity.

Second, the record at the time of decision also did not include any documents confirming [redacted]'s identity or any bank statements from [redacted]'s [redacted] Bank of China account ending in 8717. While the Petitioner provided a transfer form showing [redacted] remitted the RMB to [redacted] this is not sufficient to show the path or lawful source of the funds in [redacted]'s account. 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. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The lack of documentation of the [redacted] Bank of China account brings into question whether the funds remained in the account or were put to use in the currency exchange conducted by [redacted]. Here, the Petitioner has not submitted sufficient documentation showing the path or source of funds into the [redacted] Bank of China account ending in 8717 or the source of funds in the account as she has not identified the account holder or provided any documentation of the funds in the bank account.

Next, the Petitioner has not sufficiently documented the path of the funds used in the currency exchange conducted by [redacted] and [redacted]. The submitted foreign exchange transfer form indicates [redacted] exchanged 3,799,999.76 RMB into \$554,902.05 for [redacted] on October 12, 2016. However, the Petitioner did not submit sufficient documentation showing the path of the RMB funds that, presumably, were sent from [redacted] to [redacted] or the USD funds that were transferred to [redacted] as part of the currency exchange. 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. Here, the Petitioner has not traced the RMB or USD funds back to a lawful source of the funds as she has not adequately documented the bank accounts used in the currency exchange.

Finally, the Petitioner has not sufficiently documented the lawful source of the funds used in the currency exchange. The record at the time of decision included a statement from [redacted] explaining [redacted] arranged for the currency exchange and was licensed to conduct currency exchanges in Hong Kong. The Petitioner also submitted a license for operating money service which indicated [redacted] trading as [redacted] was permitted to operate money services in Hong Kong. However, the record did not sufficiently document any of the business arrangements made with [redacted] or [redacted]. The Petitioner did not sufficiently document the lawful source of the RMB or USD funds used in the exchange as she did not document the path of the RMB funds into a [redacted] or [redacted] bank account prior to the exchange or document the [redacted] account where the USD funds were deposited. While the [redacted] has a license to conduct money services transactions in Hong Kong, it is not clear from the record that the currency exchange was a valid exchange as the Petitioner did

not sufficiently identify [redacted]'s role in the acceptance of RMB in a bank account in mainland China that were later exchanged in Hong Kong. A petitioner must show that his or her invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). Based on the above reasons, the Petitioner has not made such a showing.

On appeal, the Petitioner argues USCIS's request for third party documentation is not feasible or practical as they are under no obligation to submit documentation to USCIS, and EB-5 investors from China must use a network of third parties to complete their investment because China requires financial institutions to report the transfer of 200,000 RMB made by individuals to overseas accounts. The Petitioner's argument is not convincing, as at the time of filing her I-526, she was required to show her invested capital did not derive, directly or indirectly, from unlawful sources and that she must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(e) and 8 C.F.R. § 204.6(j)(3). Additionally, the Petitioner's argument that China's reporting requirement necessitates the usage of third party networks is not convincing. Rather than an outright ban on transfers to overseas accounts, the Petitioner claims China requires financial institutions to report transactions of 200,000 RMB. The Petitioner does not explain why it would be necessary for her to circumvent these reporting requirements or if doing so would be lawful.

The Petitioner also argues requesting evidence of the path of funds from a third party is a mistake of law because it violates the Administrative Procedures Act (APA), similar cases have been approved in the past, and applies an incorrect, heightened standard of proof. These arguments are also not persuasive as the Petitioner did not provide sufficient documentary evidence showing the path of funds into [redacted]'s account in China or the USD remitted from [redacted] to the NCE. While the Petitioner documented the source of her gift proceeds, the documentation of the path of these funds stopped when they were deposited in [redacted]'s [redacted] Bank of China account ending in 7705 on October 11, 2016. When USCIS requested the Petitioner provide additional evidence due to this break in the path of funds, the Petitioner provided evidence that [redacted] enlisted the assistance of a company to conduct a currency exchange, but did not sufficiently document the path or source of funds remitted to the exchange company or the USD funds remitted from the exchange company. Without additional corroborating evidence confirming the source(s) of the funds [redacted] sent to the Petitioner, she has not established that the funds she received were derived by lawful means. *See* 8 C.F.R. § 204.6(i)(3). Notwithstanding the Petitioner's statements claiming it is unreasonable to request third party financial documentation, it remains her burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of her investment with documents that trace the path of the funds back to a lawful source. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Here, for the reasons discussed, the Petitioner has not made such a showing.

B. Other Issues

In the decision denying the petition, the Chief also concluded that the Petitioner had made impermissible material changes to her petition and failed to reconcile various inconsistencies. In light of our discussion and reasons above in support of our dismissal of the Petitioner's appeal, we will not address these additional grounds of denial.

III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not presented sufficient evidence tracing the path of the funds she received from [redacted] to a lawful source. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. She has therefore not established by a preponderance of the evidence the lawful source of the funds she claims to have invested in the NCE.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, 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, that burden has not been met.

ORDER: The appeal is dismissed.