



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

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

In Re: 05168118

Date: JAN. 14, 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 he 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 On appeal, the Petitioner submits additional evidence and maintains that he 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). 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, 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 he invested \$500,000 in the NCE.³ According to the February 2018 business plan, the NCE seeks to raise up to \$100,000,000 EB-5 funds from 200 foreign national investors to loan to [REDACTED] the JCE. The JCE plans to use the EB-5 capital and other funds for the construction and operation of [REDACTED] which “will be an ultra-luxury 54-story, 562-unit residential tower” located in the [REDACTED] complex of downtown [REDACTED] Florida.

In this case, the Petitioner alleges that his EB-5 capital derived from a 3,800,000 renminbi (RMB) gift provided by his mother [REDACTED]. The records indicates [REDACTED] obtained the 3,800,000 RMB from a mortgage loan using her own property as collateral. According to a Capital Exchange Statement dated November 2016, [REDACTED] was unable to remit more than \$50,000 per year due to the foreign currency quota policy in China and sought the assistance of her friend [REDACTED] to exchange the full 3,800,000 RMB into \$551,524. On November 1, 2016, [REDACTED] transferred 3,800,000 RMB from her [REDACTED] Bank account ending in 3005 to [REDACTED] s [REDACTED] [REDACTED] Bank account ending in 7651. [REDACTED] then transferred \$551,524 from his [REDACTED] [REDACTED] Bank of China (Asia) account ending in 4080 to the Petitioner’s [REDACTED] Bank (Hong Kong) account ending in 4081. The Petitioner then transferred \$550,100 to the NCE on November 14, 2016.

The Chief issued a request for evidence (RFE) and a notice of intent to deny (NOID) requesting the Petitioner provide evidence the \$551,524 [REDACTED] transferred to the Petitioner derived from lawful sources. The Petitioner responded to the requests with a statement from [REDACTED] indicating he was not willing to provide any financial documentation due to concerns regarding his privacy and security. The Chief then concluded that the Petitioner failed to document the lawful sources of his investment funds. For the reasons we will discuss below, we find that the Petitioner has not established, by a preponderance of the evidence, his eligibility for the classification. Specifically, he has not sufficiently documented the lawful source of the funds provided from [REDACTED] and then invested in the NCE.

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).

On appeal, the Petitioner claims it was unreasonable to request [redacted]'s financial documentation because, at the time of the I-526 filing, USCIS "did not require a third-party exchanger to provide his or her personal banking, business, and financial records, and it was not anticipated by the [Petitioner], his parents, or the [Petitioner's] attorney, that such a requirement was forthcoming." [redacted] also provided a statement detailing her efforts to convince [redacted] to provide his financial documentation but only obtaining statements from [redacted] and his accountant claiming that all of [redacted]'s finances derive from lawful means. Petitioner's claim is not convincing, as at the time of filing his I-526, he was required to show his invested capital did not derive, directly or indirectly, from unlawful sources and that he 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).

The Petitioner only documented the lawful source of [redacted]'s funds that were deposited in [redacted] [redacted]'s [redacted] Bank account ending in 7651 on November 1, 2016. The Petitioner presented only limited documentation regarding the lawful source of the \$551,524 [redacted] then transferred to the Petitioner. Without additional corroborating evidence confirming the source(s) of the funds [redacted] sent to the Petitioner, he has not established that the funds he 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 his burden to demonstrate his eligibility for the EB-5 classification, which includes establishing the lawful source of his 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.

III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not presented sufficient evidence tracing the path of the funds he 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. He has therefore not established by a preponderance of the evidence the lawful source of the funds he 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.