



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

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

In Re: 06820515

Date: MAY 18, 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, finding that the Petitioner did not demonstrate that his investment funds derived from lawful sources. The Petitioner appeals, submitting additional documentation and maintaining that he has established 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, as in this case, or through a regional center.

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.<sup>1</sup> *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 [REDACTED] the NCE<sup>2</sup> which provides various services to the beverage industry and is located in [REDACTED] North Carolina. According to the revised April 2019 business plan, the NCE plans to hire and train employees to provide regulatory compliance, administrative, operational, design, packaging, logistics, marketing, promotional, and managerial services to the beverage industry. For the reasons discussed below, we find the Petitioner has not established, by a preponderance of the evidence, eligibility for the EB-5 classification.

In this case, the Petitioner alleges that his EB-5 capital derived from disbursements he was entitled to receive from the [REDACTED] Trust of which he is a capital and income beneficiary as well as a co-trustee and founder. According to a letter from the financial director at [REDACTED] dated September 26, 2016, the trust had a total value of 38,081,875 South African Rand (R) and the Petitioner was owed R21,189,593 from the trust, payable on call, as of February 28, 2015. The record at the time of filing indicated the Petitioner remitted \$299,973 and \$200,033 from his personal bank account to the NCE on September 8, 2016 and January 23, 2017, respectively. The Petitioner provided his own undated statement claiming the \$500,000 came from the [REDACTED] Trust's funds.

The Chief issued a request for evidence (RFE) noting that the letter from [REDACTED] was "insufficient to establish that the capital has been obtained through lawful means and does not identify the source of the trust funds" and the Petitioner had not submitted evidence of the lawful source of the funds used to establish the trust. The Chief specifically requested the Petitioner provide "[t]rust documentation and other evidence showing who established the trust, the purpose for establishing the trust, beneficiary of the trust, trust account balances and transaction history" as well as "[e]vidence identifying [the] lawful source of capital invested in the NCE." In response, the Petitioner provided, among other documents, a copy of the [REDACTED] Trust, the last will and testament of the Petitioner's mother, and two bank statements from the Petitioner's personal [REDACTED] account dated December 9, 2016, and March 7, 2017.

After reviewing the record in its entirety, the Chief observed that the December 2016, bank statement indicated the Petitioner remitted \$299,973 to the NCE but "did not provide evidence related to the source of these funds." The Chief also found the March 2017 bank statement indicated the Petitioner did not have adequate funds in his account to remit the remaining investment funds to the NCE until receiving a deposit of \$1,980,000, which was notated as coming from "[REDACTED] TEXAS [REDACTED]" and the Petitioner did not "provide any explanation or evidence related

---

<sup>1</sup> 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).

<sup>2</sup> 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(f)(2).

to the source of [these funds.]” The Chief denied the petition, concluding the record lacked sufficient evidence to demonstrate the source of the funds in the Petitioner’s [redacted] bank account and therefore the Petitioner did not establish the lawful source or path of his EB-5 investment.

On appeal, the Petitioner submits additional evidence concerning the lawful source of his funds that he did not present to the Chief. The Petitioner offers, among other documents, the Petitioner’s [redacted] Investment report from 2010 to 2018, the [redacted] Trust annual financial statements, and documentation regarding the source of the [redacted] disbursement. 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.<sup>3</sup> Here, the Petitioner did not claim this evidence was not reasonably available for submission with his RFE response. The record indicates the Petitioner was permitted to take any necessary actions when conducting business with the trust and therefore the evidence documenting the source and path of the trust’s funds were reasonably available to the Petitioner. These documents were specifically requested by the Chief and there is no indication that the evidence submitted on appeal was not reasonably available at the time the Petitioner responded to the RFE. 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 \$500,000 invested in the NCE derived from funds held by the [redacted] Trust to which the Petitioner was entitled. However, the record at the time of the Chief’s decision, does not sufficiently document the path or source of these funds. First, the record does not include sufficient documentation showing the path or source of the funds used to establish the trust. The Petitioner submitted his own personal bank account which does not detail any of the funds held by the trust or account for any funds used to establish the trust. While the Petitioner indicated the trust was established using funds from the estate of his deceased mother, the submitted last will and testament does not provide details regarding any of the assets or funds that would be bequeathed to the Petitioner or used to establish the [redacted] Trust. 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. Second, the Petitioner did not provide sufficient documentation of the path or source of the R38,081,875 in alleged trust assets or the R21,189,593 owed to the Petitioner from the trust. The record at the time of decision did not include any [redacted] trust bank statements or other documentation describing any of the assets held by the trust nor any documentation detailing the assets or terms of the indebtedness owed to the Petitioner. While the Petitioner provided a statement from [redacted] describing the value of assets available in the trust and the Petitioner’s own bank account statements showing various deposits, these are not sufficient to show the lawful source of these funds. 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).

---

<sup>3</sup> *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).

Finally, the Petitioner has not sufficiently documented the lawful source of the funds he remitted from his [redacted] bank account to the NCE. The Petitioner submitted his December 2016 bank statement indicating he remitted \$299,973 to the NCE on September 8, 2016, but did not document the source of these funds. The Petitioner also submitted his March 2017 bank statement indicating he remitted \$200,033 to the NCE on January 23, 2017. However, the 2017 bank statement shows a balance of only \$76,000 until a deposit of \$1,980,000 from [redacted] was credited to the account on January 17, 2017. The record at the time of the Chief's decision did not otherwise explain or document the source of the funds the Petitioner received from [redacted]. As discussed above, bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *See id.*

On appeal, the Petitioner argues USCIS's assertions that the Petitioner did not provide documentary evidence of the [redacted] Trust funds being disbursed to the Petitioner's account or the source of the funds in the Petitioner's bank account was a mistake of law because the Petitioner submitted his own statement and a letter from [redacted] detailing the funds in the trust as well as numerous additional documents on appeal. The Petitioner also argues, in effect, the Chief's conclusions were a mistake of law because she applied a heightened standard of proof. We disagree. Upon *de novo* review, we find that the record before the Chief failed to establish the lawfulness of the source of funds by a preponderance of the evidence.

Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." *Id.* at 376. As discussed above, the record at the time of decision contained insufficient evidence of the source of the trust funds from the time the trust was established to the time the trust funds were disbursed to the Petitioner. For example, the letters from the Petitioner and [redacted] do not identify how the trust assets were lawfully acquired, while the testamentary documents do not identify how the Petitioner's mother lawfully acquired the bequeathed assets to the Petitioner. Additionally, the record before the Chief did not establish the lawfulness of the large deposit from [redacted] that the Petitioner received prior to remitting his investment fund to the NCE. Notwithstanding the Petitioner's statement that he has explained these funds on appeal, it was his burden to demonstrate his eligibility for the EB-5 classification at the time of filing, 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 established, by a preponderance of the evidence, he acquired his alleged investment funds through lawful means. He has therefore not established eligibility for the EB-5 classification.

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.