



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

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

In Re: 06386582

Date: SEPT. 24, 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] the NCE, which is affiliated with [REDACTED] (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.<sup>1</sup> 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).

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<sup>1</sup> 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.<sup>2</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 the NCE.<sup>3</sup> According to the August 2016 business plan, the NCE seeks to raise up to \$32,500,000 EB-5 funds from 65 foreign national investors to purchase a 50% equity interest in [REDACTED] the JCE. The JCE plans to use the EB-5 capital and other funds for the renovation of the [REDACTED] building in [REDACTED] Missouri. As we will explain below, we find that the Petitioner has not established, by a preponderance of the evidence<sup>4</sup> his eligibility for the classification. Specifically, he has not documented the lawful source of his funds.

In this case, the Petitioner alleges that his EB-5 capital derived from the 13,000,000,000 Vietnamese Dong (VND) in sale proceeds from selling real property owned by the Petitioner and his spouse. The record indicates the sale proceeds were deposited in the Petitioner's [REDACTED] Bank account ending in x6868 on August 24, 2016. The Petitioner claims that, due to the currency exchange restrictions in Vietnam, he sought the assistance of [REDACTED] to exchange his VND into USD and transfer the funds to the NCE on his behalf. A letter dated August 30, 2016, from [REDACTED] Deputy Director of [REDACTED] indicates [REDACTED] ostensibly a representative of the company in [REDACTED] Vietnam, collected 12,301,868,250 VND from the Petitioner on August 30, 2016. [REDACTED] also claimed [REDACTED] then remitted the Petitioner's \$550,025 investment fund from its [REDACTED] bank account in [REDACTED] to the NCE, however the transfer remittance form submitted in the record indicated [REDACTED] was the owner of the [REDACTED] account.<sup>5</sup>

The Chief issued a request for evidence (RFE) noting that "[t]he record does not contain sufficient evidence to demonstrate the source and path of funds used by [REDACTED] and [REDACTED] to

<sup>2</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>3</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(t)(2).

<sup>4</sup> If a petitioner submits relevant probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also* 6 USCIS Policy Manual G.2(E), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

<sup>5</sup> Throughout the record, the Petitioner and [REDACTED] claim [REDACTED] is a business registered in [REDACTED] that does business as [REDACTED] which is simply an unofficial brand or trade name.

assist [the] Petitioner with the currency exchange.” The Chief specifically requested the Petitioner provide evidence of the source and path of funds used by [redacted] and [redacted] in the currency exchange. In response, the Petitioner provided a declaration from [redacted] dated October 30, 2018, stating [redacted] is a company based in [redacted] that draws revenue from the import and export of tractors and agrimotors. She explained that after the company’s representative in Vietnam collected the VND from the Petitioner, [redacted] trading as [redacted] [redacted] remitted \$550,025 from its bank account in [redacted] to the NCE. The Petitioner also provided a Business Registration Certificate for [redacted] a company located in [redacted], Vietnam, as well as sales contracts and invoices signed by [redacted] indicating [redacted] had adequate USD funds from its business activities to use in the currency exchange.

The Chief then issued a notice of intent to deny (NOID) noting that the record was still not sufficient to demonstrate the complete path of the EB-5 investment funds to the NCE or the lawful source of the exchanged funds. More specifically, the Chief determined the Petitioner had not sufficiently documented that [redacted] was authorized to do business as [redacted] in Vietnam or that [redacted] had any relation to [redacted]. The Chief also indicated derogatory information regarding [redacted] was uncovered after USCIS conducted an open source search in Vietnam’s online business registration database.<sup>6</sup> A search using [redacted]’s business code located on the provided business registration certificate revealed the code was actually associated with [redacted] [redacted] which had information inconsistent with the [redacted] certificate such as the name of the company and legal representative as well as the address of the company headquarters. The Chief requested the Petitioner provide independent objective evidence to resolve these inconsistencies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (“it is incumbent upon the [P]etitioner to resolve the inconsistencies by independent objective evidence”).

In his attempt to resolve the above inconsistencies, the Petitioner submitted records provided by [redacted] [redacted] including her new declaration dated January 2, 2019, which purported to provide clarification regarding the [redacted] brand name.” [redacted] claimed [redacted] [redacted] was established on December 31, 2008, by her father and was authorized to conduct financial activities such as pawn service as well as receiving payment in foreign currency. She stated [redacted] was also founded by her father but is now owned by her husband and while these family businesses usually make agreements orally, only [redacted] is involved in the money transfer process. [redacted] further claimed [redacted] is a close family friend entrusted with receiving money from customers seeking to transfer money under the EB-5 program before [redacted] then transfers money available in [redacted]’s bank account to the NCE. In order to comply with the laws in Vietnam, [redacted] claimed “the VND received from the investor in Vietnam will be used for our personal legal purposes in Vietnam and not be transferred out of Vietnam unless it complies with Vietnamese law” and “the currency exchange happens wholly overseas in [redacted] where it’s lawful due to our import/export business.” [redacted] also explained that her family put her in charge of the service for receipt and payment in foreign currency and, in order to develop this service, she built the brand name of [redacted] to be used “in all transactions.” She claimed

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<sup>6</sup> *See* Vietnamese Ministry of Planning and Investment’s Business Registration Database, available at: <https://dangkykinhdoanh.gov.vn/>

[redacted] is separate from [redacted] and not involved in their business in Vietnam. She further stated that [redacted] and “all of its associated variations including [redacted] are just informal trade/business names, similar to a nickname or doing business as trade name used by a company” and “[t]hus, [redacted] [redacted] is... not an actual company itself and we apologize for any confusion.”

After reviewing the record in its entirety, the Chief denied the petition after determining the [redacted] [redacted] business registration contained false information that revealed numerous inconsistencies in the record that were unresolved. Specifically, the Chief found the Petitioner had not provided sufficient evidence to resolve the concerns regarding whether [redacted] [redacted], and its affiliates were allowed to operate under unofficial trade names in Vietnam or whether [redacted] was permitted to engage in currency exchanges when only registered as a business engaging in general wholesale trade including general importers and exporters. The Chief also determined the Petitioner had not, by a preponderance of the evidence, shown his investment fund derived from lawful sources because the [redacted] business certificate had created numerous inconsistencies which cast doubt on the veracity of the rest of the evidence submitted by the Petitioner.

On appeal, the Petitioner argues he and his counsel were unaware the [redacted] business certificate was a false document and, even if it is false, the document is not relevant to the currency exchange. We disagree. Doubt cast on any aspect of the Petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As noted, the false document was provided by [redacted] the individual whose testimony regarding the transfer of funds plays a key role in establishing the path of the Petitioner's funds. [redacted] did not dispute the Chief's finding that the document contained false information and her statement did not address why the business certificate contained inconsistent information or why the certificate was submitted in response to the Chief's RFE. Providing a false document to the Petitioner, and subsequently failing to refute or explain her actions calls into question the veracity of [redacted]'s other testimony and the validity of other documents she has submitted, particularly as it relates to the manner and methods by which the various companies under her control ostensibly exchanged the Petitioner's funds.

We find the Petitioner has not demonstrated, by a preponderance of the evidence, the path of the funds used in the currency exchange or the lawful source of the funds submitted by [redacted] to the NCE on behalf of the Petitioner. The statements provided by [redacted] claim the Petitioner provided the 12,301,868,250 VND in cash to her representative in Vietnam and the funds would remain in Vietnam to be used by [redacted]. In support, the Petitioner has provided his bank account statement showing he withdrew the VND funds and a receipt, signed by [redacted] stating [redacted] received the VND funds on August 30, 2016. However, the Petitioner did not provide any documents such as bank statements to confirm [redacted] actually received the VND funds in its business accounts in Vietnam. Furthermore, the Petitioner did not provide any documents confirming [redacted] [redacted] was employed by [redacted] or authorized to receive funds on the company's behalf, or explaining what he did with the Petitioner's funds. 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 made such a showing.

Next, the record includes inconsistent evidence relating to the companies involved in the currency exchange. First, the Petitioner and [redacted] have stated throughout the record that [redacted] is a company in [redacted] that does business as [redacted] and assists EB-5 investors in Vietnam invest in the NCE by having a representative receive funds in Vietnam and then transfer company obtained USD funds to the NCE on their behalf. However, the Petitioner provided a false [redacted] business certificate which contained a business code that was linked to [redacted] a company owned by [redacted]'s father. This is inconsistent with [redacted]'s statements that [redacted] does business as [redacted] [redacted] to receive VND funds in Vietnam as part of a currency exchange. Additionally, [redacted]'s own statements call into question what companies were actually involved in the financial transfer since she initially claimed [redacted] had remitted the Petitioner's investment fund to the NCE while the actual remittance form indicates the originating account was owned by [redacted]. When the record includes inconsistent evidence, "it is incumbent upon the [P]etitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." See *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

The Petitioner has attempted to resolve these inconsistencies by submitting legal opinions that claim the arrangement between the Petitioner and [redacted] to conduct a foreign currency exchange would be lawful under the laws of Vietnam. However, the submitted legal opinion relied on the documents submitted by [redacted] being credible as well as assumptions that [redacted] acted as a representative of [redacted] when receiving the Petitioner's VND funds in Vietnam without any formal agreement. At issue here are the inconsistencies regarding how [redacted] exchanged the Petitioner's funds and the doubt cast on [redacted]'s evidence due to the unexplained submission of a business document with false information. These assertions from the Petitioner's counsel and counsel in Vietnam do not constitute "competent objective evidence pointing to where the truth, in fact, lies" as they claim, in general, this sort of currency exchange may be lawful in Vietnam but do little to explain or reconcile the inconsistent evidence in the record. See *Ho*, 19 I&N Dc. At 591-92.

Additionally, these unresolved inconsistencies make us question the reliability and sufficiency of the submitted evidence regarding the lawful source of funds [redacted] remitted to the NCE on behalf of the Petitioner. The Petitioner provided [redacted] sales contracts and invoices to demonstrate the company had adequate funds in its bank account to remit the Petitioner's investment funds to the NCE. However, these contracts and invoices were all signed by [redacted] and were submitted in response to the Chief's RFE along with the false [redacted] business certificate. Due to the unresolved inconsistencies in the record, as well as the fact an unexplained false document was submitted as evidence, we find that the sales invoices and receipts are not reliable and therefore not sufficient to demonstrate the funds remitted from [redacted] to the NCE derived from a lawful source. The [redacted] bank statements that show an account balance with adequate funds are not sufficient to demonstrate the lawful source of these funds. See *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) (Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate

their lawful source.) Here, the Petitioner has not submitted sufficient documentation to demonstrate the currency exchange and related transactions were lawful.

On appeal, the Petitioner argues requesting evidence of the path and source of funds from a third party is a mistake of law because it applies an incorrect, heightened standard of proof. First, the Petitioner argues he has submitted sufficient evidence of a lawful currency exchange but the Chief improperly relied on “repeated speculation” regarding the false business registration while ignoring other credible evidence. In support of his argument, the Petitioner offers a declaration from the director of the [redacted] [redacted], the agency in Vietnam that assisted the Petitioner with his I-526 petition and introduced him to [redacted]. The director explains that they spent extensive time and resources performing due diligence on [redacted] and while [redacted] initially cooperated with [redacted] with obtaining documentation for the RFE and NOID responses, [redacted] was no longer willing to cooperate because they felt they have already gone out of their way to provide sufficient documentation. We disagree with the contention that USCIS has applied an incorrect, heightened standard of proof by requesting evidence from a third party. 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. Additionally, the Petitioner must show that the funds are his own and that they were obtained through lawful means. *See Matter of Soffici*, 22 I&N Dec. 158 at 164-65 n.3 (Assoc. Comm’r 1998). In this case, the Petitioner’s ability to show the lawful source and ownership of the funds invested in the NCE relies on [redacted]’s testimony and the evidence she provided to the Petitioner to detail the alleged currency exchange. The Petitioner did not submit any formal agreements to conduct a currency exchange with [redacted] but relies on [redacted]’s statements to claim the currency exchange was conducted in a lawful manner. However, as detailed above, [redacted]’s testimony is not credible due to numerous unresolved inconsistencies as well as the submission of a false business record. The rest of the evidence in the record does not establish the lawful source and path of the Petitioner’s investment fund as there is no documentation showing the individual in Vietnam who received the Petitioner’s VND funds was a representative of [redacted] or that the individual transferred the funds to [redacted]. Here, the Petitioner is not excepted from the path of funds requirements simply because they entered into an arrangement to move their funds in a manner that makes demonstrating the requirements difficult.

The Petitioner also argues that the Chief mistakenly requested the Petitioner show the currency exchange was lawful under foreign law because USCIS has no basis for questioning these transactions and that such transactions are lawful under Vietnamese law. In support of his argument, the Petitioner offers a legal opinion from the [redacted] Law Firm based in Vietnam which cites laws indicating a foreign company engaging in this sort of currency exchange “does not need to have an office in Vietnam as a registered business in Vietnam.” We find that USCIS does have a basis for questioning informal currency exchanges that take place abroad as a petitioner must show that his or her invested capital did not derive, directly or indirectly, from unlawful means. *See* INA 203(b)(5). *See also* 8 C.F.R. § 204.6(e). When relying on foreign law to establish eligibility, the application of foreign law is a question of fact which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)). In this case, the record does not demonstrate any relation between the money given to [redacted] in Vietnam and the transfer of funds from [redacted]. The only evidence the Petitioner provided that would indicate [redacted] is a representative of [redacted] is [redacted]’s compromised testimony. Here, the Petitioner has not

shown, by a preponderance of the evidence, that [REDACTED] was conducting a lawful currency exchange in Vietnam through the use of a company representative.

Lastly, the Petitioner 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 accounts in Vietnam or the USD remitted from its bank account in [REDACTED] to the NCE. While the Petitioner documented the source of his sale proceeds, the documentation of the path of these funds stopped when they were withdrawn from his bank account on August 30, 2016. When USCIS requested the Petitioner provide additional evidence due to this break in the path of funds, the Petitioner provided evidence that [REDACTED] was a valid import/export company in [REDACTED] but did not sufficiently document the path or source of funds remitted to the exchange company or resolve the inconsistencies related to the submitted false business registration document. Without additional corroborating evidence confirming the source(s) of the funds [REDACTED] sent to the Petitioner or the lawfulness of the conducted currency exchange, he has not established that the funds invested in the NCE on his behalf 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.

Based on the reasons stated above, we conclude that the Petitioner has not documented the lawful source of his EB-5 capital. *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. Specifically, he has not demonstrated, by a preponderance of the evidence, the lawful source of the funds remitted to the NCE or that the currency exchange and related transactions were lawful.

### III. CONCLUSION

The Petitioner has not documented the lawful source of the capital he remitted to 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.