



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

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

In Re: 16863311

Date: AUG. 1, 2023

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) (2017). This fifth preference classification makes immigrant visas available to noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Noncitizens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital obtained through lawful means. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was his or her own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). To show that the capital was his or her own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the new commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

## II. ANALYSIS

The Petitioner indicated on page 2 of her petition that on November 20, 2013, she invested \$500,000<sup>1</sup> in [redacted] the new commercial enterprise (NCE), which is associated with the [redacted] Corporation pursuant to the Immigrant Investor Pilot Program. According to the business plan of the NCE, the NCE proposed to pool \$60,000,000 from 120 immigrant investors and lend the entire amount to [redacted] the job-creating entity (JCE), to fund the construction of four product tankers (Hull Numbers 21, 22, 23, and 24) in [redacted] [redacted] Pennsylvania, in connection with a purchase agreement with [redacted]

### A. Source of Funds

The Petitioner asserted that she derived her investment funds through the sale of a real property owned by her spouse [redacted] in China for 5,180,000 Chinese renminbi (RMB) in 2013.<sup>2</sup> In August 2000, [redacted] a former spouse of the Petitioner's spouse, purchased the property for RMB 1,126,287. According to their divorce agreement, dated May 2006, the Petitioner's spouse was granted the ownership of the property. The Petitioner asserted that her spouse made a down payment of RMB 346,287 using his accumulated employment income and obtained a loan of RMB 780,000 from Bank of China, [redacted] to purchase the property.<sup>3</sup> The Petitioner also asserted that his spouse repaid the loan in May 2007 using his accumulated employment income.<sup>4</sup> In September 2013, the Petitioner's spouse sold the property for RMB 5,180,000.

To support claims regarding her spouse's accumulated employment income, the Petitioner submitted a certificate of employment and income for her spouse from [redacted]. The certificate of employment and income states that the Petitioner's spouse worked for [redacted] [redacted] as a project manager from September 1993 to June 2002 and earned a total of RMB 1,350,000. The certificate also states that the Petitioner's spouse worked for [redacted] as the manager of business department from June 2002 to August 2006 and earned a total of RMB 1,400,000. The Petitioner also submitted a certificate of employment and income for her spouse from [redacted] dated August 2013, which states that the Petitioner's spouse has worked for the company since August 2006 and that his average annual income is RMB 500,000. These certificates of employment and income demonstrate the Petitioner's spouse's employment and income from September 1993 to August 2013. However, they do not support the assertions that the Petitioner's spouse accrued and maintained his

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<sup>1</sup> On March 15, 2022, President Joe Biden signed the EB-5 Reform and Integrity Act of 2022, which made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed his petition in 2016 and indicated that the project is located in a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from \$1,000,000 to \$500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

<sup>2</sup> *See* Lawful Source of Funds Overview prepared by [redacted] undated.

<sup>3</sup> *See* Lawful Source of Funds Overview prepared by [redacted] undated; *see also* a statement from [redacted] dated November 5, 2013.

<sup>4</sup> *See id.*

employment income in his account(s) to make the down payment in 2000 and repay the loan in 2007 to purchase the property.

The Petitioner also submitted individual income tax payment certificates for her spouse from [ ] [ ] for the tax periods covering from 2008 to 2013. While these tax payment certificates show income taxes paid by the Petitioner's spouse from 2008 to 2013, these tax payment certificates do not indicate how much income the Petitioner's spouse earned prior to 2008 to make the down payment in 2000 and repay the loan in 2007 to purchase the property.

In response to a request for evidence (RFE), the Petitioner submitted a letter from her spouse's former colleague, [ ] dated March 2017, which states that the Petitioner's spouse worked for [ ] as a project manager from September 1993 to June 2002 and earned a total of RMB 1,350,000. The Petitioner also submitted a list of her spouse's monthly salary from [ ] from September 1993 to June 2002. While helpful, this salary list is insufficient to demonstrate claims of accumulation and maintenance of funds from lawful sources because the salary list shows claimed earnings and amount deducted each month but does not evidence retention of after-tax income over periods of time.

A petitioner must demonstrate by a preponderance of the evidence that the capital invested or actively in the process of being invested in the new commercial enterprise was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210-11. 8 C.F.R. § 204.6(j)(3) sets forth types of documentation that a petitioner must provide with the petition to demonstrate that the capital was obtained through lawful means. Through this documentation, the petitioner provides evidence of the source of the capital.

In this case, since the Petitioner claimed that she derived her investment funds through the sale of a real property owned by her spouse, the Petitioner is required to demonstrate that the funds used by the former spouse of her spouse to purchase the property were obtained through lawful means. The Petitioner has not submitted sufficient evidence to establish by a preponderance of the evidence that her spouse accrued and maintained the funds from lawful source(s) in his account(s) to purchase the property. As such, the record lacks sufficient evidence to show that the Petitioner's investment funds were lawfully sourced.

#### B. Path of Funds

The bank statement of the Petitioner's spouse for his Bank of China (BOC) account ending in [ ] for the period covering from October 21, 2013 to November 14, 2013 shows that the sale proceeds of RMB 5,080,000 were comingled with from other source(s) not shown to derive from lawful means. After the sale proceeds of RMB 5,080,000 were deposited into the spouse's BOC account ending in [ ] on October 21, 2013, various amounts were withdrawn from this account and funds not shown to derive from lawful means were deposited into this account prior to the transfer of RMB 3,350,000 from the spouse's BOC account to the Petitioner's BOC account on November 13, 2013. For example, on October 30, 2013, RMB 8,725.37 and RMB 365,532 were deposited into the spouse's BOC account ending in [ ]. On November 11, 2013, RMB 320,000, RMB 305,165, RMB 1,270,000, RMB 260, RMB 80, and RMB 50,000 were withdrawn from the spouse's CMB account ending in [ ].

The claims that the Petitioner's invested funds were not only derived from lawful means but also accumulated and maintained without being comingled with funds not shown to derive from lawful means have not been shown by a preponderance of the evidence.

### C. Informal Value Transfer

The Petitioner asserted that she exchanged her investment funds from renminbi to U.S. dollars through her friend, [REDACTED].<sup>5</sup> On November 13, 2013, the Petitioner transferred RMB 3,350,000 from her BOC account ending in [REDACTED] to a third-party exchanger, [REDACTED] BOC account ending in [REDACTED]. In exchange, on November 18, 2013, [REDACTED] transferred \$549,984.60 from his BOC Hong Kong Branch account ending in [REDACTED] to the Petitioner's BOC Hong Kong Branch account ending in [REDACTED].

The Chief found that no other evidence aside from [REDACTED] own assertions and company records, which reflect his association with two companies, credibly established that he had sufficient lawful lifetime retained earnings to fund the Petitioner's investment. Therefore, the Chief concluded that the Petitioner has not established by a preponderance of the evidence that her investment funds were lawfully obtained.

On appeal, the Petitioner contends that in removal proceedings, credible testimony on its own satisfies the clear and convincing standard of proof, that [REDACTED] credible testimony on its own was sufficient to verify his earnings from employment, and that she submitted other documents corroborating [REDACTED] employment and earnings with various companies.

In response to a notice of intent to deny (NOID), the Petitioner submitted a statement from [REDACTED] dated January 3, 2018, which states that the \$549,984.60 he exchanged with the Petitioner was from many years of income accumulated through legal means and provides the following employment history:

- From August 1982 to September 1987, [REDACTED] worked at [REDACTED] University and earned a total of RMB 20,000.
- From October 1987 to October 1992, [REDACTED] worked at [REDACTED] and earned a total of 900,000 Hong Kong dollars (HKD).
- From November 1992 to January 2006, [REDACTED] worked at [REDACTED] and earned a total of HKD 7,020,000.
- After his retirement in 2007, [REDACTED] occasionally provided consulting services to some companies and earned income and also made profits from managing his own assets.

In addition, the Petitioner submitted a certificate of incorporation of [REDACTED] acceptance of appointment as a director of the company, the company registration status, and 2017 annual return of the company. The Petitioner also submitted a certificate of incorporation of [REDACTED] the company registration status, [REDACTED] acceptance of appointment as a director of the company, and an application for deregistration of the company.

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<sup>5</sup> See a statement from the Petitioner and [REDACTED] dated November 20, 2013.

While the Petitioner submitted formation and registration documents relating to [ ] two former employers, these documents do not support claims of the lawful sources and claims of the path of how funds arrived in [ ] BOC Hong Kong account ending in [ ]. While we acknowledge that [ ] statement must be given due consideration, the Petitioner has not established the claimed facts regarding [ ] employment history and accumulated income with unsupported testimonial evidence alone. Statements made without supporting documentation are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, the formation and registration documents do not indicate how much income [ ] earned from the companies.

The Petitioner also contends that an immigrant investor is only required to document the lawful source of his or her capital invested into the new commercial enterprise and that he or she is not required to document the lawful source of capital used for other purposes.

As the Chief stated in the NOID, because 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 the exchanger's BOC Hong Kong account ending in [ ] the Petitioner bears the burden of demonstrating that the funds transferred to the Petitioner's BOC Hong Kong account ending in [ ] were obtained through lawful means. Here, the Petitioner has failed to meet this burden. Based on the evidence in the record, it appears that the Petitioner's funds sent to [ ] BOC account ending in [ ] have never left mainland China. While [ ] claimed that he obtained the exchange funds through his accumulated income through legal means and provided his employment history and total income earned from each former employer, the record does not contain sufficient evidence to support these claims. The source of funds in [ ] BOC Hong Kong account ending in [ ] has not been sufficiently demonstrated.

A petitioner must demonstrate by a preponderance of the evidence that the capital was his or her own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. To show that the capital was his or her own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. USCIS' complete path interpretation of the regulations is its authoritative position as explained in the 1998 precedential decisions. *See Borushevsky v. USCIS*, No. 19-3034, 2023 WL 2663006, at 19-20 (D.D.C. Mar. 27, 2023). These decisions require the petitioner to establish the complete path of funds to demonstrate that the funds were obtained through lawful means. *See id.* at 20. The plain language of 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) supports USCIS' requirement that the petitioner identify the source of funds, which is demonstrated through documentation evidencing the complete path of funds. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5 (D.D.C. June 28, 2023). USCIS' path of funds requirement involves a substantive component and an evidentiary showing - what petitioners must prove and how they must prove it. *See id.* at 6. The relevant path includes tracing the funds from their point of origin through any intermediary accounts. *See id.*

In the present case, the record reflects that the Petitioner's funds sent to [ ] bank account in mainland China have never left mainland China. On November 13, 2013, the Petitioner transferred RMB 3,350,000 from her bank account in mainland China to [ ] bank account in mainland

China. In exchange, on November 18, 2013, [ ] transferred \$549,984.60 from his bank account in Hong Kong to the Petitioner's bank account in Hong Kong. There is a break in the path of the Petitioner's funds. Since the Petitioner is unable to establish the complete path of her funds from mainland China to Hong Kong and then to the United States, the Petitioner must demonstrate by a preponderance of the evidence that the funds occurring after the break in the path derived from lawful means. While the Petitioner claimed that [ ] obtained the exchange funds through his accumulated income from lawful means and provided formation and registration documents for [ ] two former employers, these documents do not sufficiently demonstrate that the funds in [ ] BOC Hong Kong account ending in [ ] derived from lawful means as claimed.

Additionally, the Petitioner contends that USCIS favorably adjudicated numerous Forms I-526, using identical currency swap transactions without requesting independent evidence of the source of the U.S. dollars acquired via the currency swap. The Petitioner further contends that, therefore, USCIS is required to defer to its prior approvals and approve her petition without independent evidence of the source of the U.S. dollars acquired in the currency swap. To support this claim, the Petitioner submits an affidavit of [ ], a partner at [ ]

While we acknowledge the Petitioner's claims, the Petitioner does not present documentary evidence that USCIS has not examined the source of funds used by third-party exchangers in the currency exchange or has approved other petitions without making an inquiry into the claimed source of funds used by third-party exchangers. Furthermore, petitions are not required to be approved where the petitioner has not demonstrated eligibility because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). USCIS or any agency need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Lastly, the Petitioner claims that the Chief did not request evidence relative to the currency swap transaction in the first RFE or the second RFE and that the Chief's failure to follow USCIS' RFE policy resulted in unnecessary cost and prejudice to the Petitioner. The Petitioner states that [ ] had suffered from pancreatic cancer and passed away on August 8, 2018. To support this claim, the Petitioner submits a medical record and a certificate of cremation of [ ]

While we are sympathetic to the unfortunate circumstances of [ ] and acknowledge the Petitioner's claims on appeal, in visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). We also acknowledge that the Chief did not request for evidence of the claimed lawful sources of funds used by the exchanger in the currency exchange in the first RFE or the second RFE. However, on December 14, 2017, the Chief issued a NOID notifying the Petitioner that she did not provide any evidence of the origin or source of the exchanger's U.S. dollars in his bank account in Hong Kong – prior to the exchanger's unfortunate death in August 2018. The Petitioner was provided with a reasonable opportunity to establish the source of the funds in the exchanger's bank account in Hong Kong. In response to the NOID, the Petitioner submitted a statement from [ ] and formation and registration documents relating to [ ] two former employers. However, as explained above, these documents are insufficient to demonstrate the claimed lawful sources of funds in [ ] bank account in Hong Kong. On appeal, the Petitioner does not present new evidence to overcome the deficiencies noted in the Chief's decision.

For the reasons we have discussed above, the record remains insufficient to establish by a preponderance of the evidence that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital obtained through lawful means.

### III. CONCLUSION

As the record does not sufficiently demonstrate that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital obtained through lawful means, the Petitioner has not shown by a preponderance of the evidence that she is eligible for the immigrant investor visa classification.

The appeal will be dismissed for the reasons stated above, with each considered as an independent and alternate basis for the decision.

**ORDER:**      The appeal is dismissed.