



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

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

In Re: 24764181

Date: MAY 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). 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 Petitioner has made a qualifying investment within a designated regional center in the United States. The Chief also concluded that the capital, which the Petitioner has invested 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. On appeal, the Petitioner contends that the Chief's decision is invalid for going beyond the scope of the request for evidence (RFE).

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 asserted that on December 4, 2018, he invested \$500,000¹ into [REDACTED] the new commercial enterprise (NCE), which is associated with [REDACTED] pursuant to the Immigrant Investor Program. According to the Confidential Private Placement Memorandum (PPM) of the NCE, the NCE proposed to pool up to \$49,500,000 from 99 immigrant investors and lend the entire amount to [REDACTED] (the Borrower). The PPM further indicates that the Borrower will distribute the loan proceeds to [REDACTED] which in turn will contribute the loan proceeds to [REDACTED] the job-creating entity (JCE). The PPM also indicates that the JCE will use the loan proceeds to develop [REDACTED] a mixed-use residential, retail, and office high rise development in [REDACTED] Washington.

A. Regional Center Association

The Chief determined that the record did not establish that the Petitioner has made a qualifying investment within a designated regional center in the United States because he did not submit the required project documents in response to the RFE. In the RFE, the Chief requested the Petitioner to submit the Operating Agreement of the NCE, dated January 14, 2016, and Private Placement Memorandum of the NCE, dated January 15, 2016. In response to the RFE, the Petitioner did not submit the requested project documents nor provided any explanation regarding the requested project documents.

On appeal, the Petitioner contends that even if he did not submit the requested Operating Agreement and Private Placement Memorandum, he submitted other project documents, which indicate that he has invested in an NCE associated with a regional center.

The record contains that (1) Amended and Restated Operating Agreement of the NCE, dated December 7, 2016; (2) Confidential Private Placement Memorandum (PPM) of the NCE, dated January 23, 2017; (3) First Supplement to the PPM of the NCE, dated June 6, 2018; and (4) Second Supplement to the PPM, dated September 13, 2018. Although the Petitioner did not submit the requested project documents nor provided any explanation regarding his failure to provide the requested project documents, we find that the record contains sufficient evidence, which establishes that the Petitioner has invested in an NCE associated with a USCIS designated regional center pursuant to the Immigrant Investor Program. Therefore, we will withdraw the Chief's determination that the Petitioner has not established that he has made a qualifying investment within a designated regional center in the United States.

B. Source of Investment Funds

¹ 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 2018 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).

The Petitioner asserted that he derived his investment funds of \$500,000 through (1) the sale of stocks he was awarded from his employer, [REDACTED] and (2) the sale of a house in [REDACTED] Washington. The Petitioner further asserted that he purchased the house in April 2014 for \$285,000 partly using a gift of \$20,000 from his father, [REDACTED]

In the RFE, the Chief noted that the Petitioner has not established the lawful source of the \$20,000 gift from his father and requested the Petitioner to provide evidence that overcomes the deficiencies noted in the RFE. In response to the RFE, the Petitioner did not submit income tax returns, earning records, bank statements, or other sufficient to establish the claimed lawful source of the gift funds. The Chief determined that the Petitioner has not demonstrate by a preponderance of the evidence that the gift proceeds derived from lawful means.

On appeal, the Petitioner contends that the Chief cannot request specific documents, received them, and then deny the petition for different and unknown grounds.

In the RFE, the Chief specifically asked for, among other things, evidence of the lawful source of the gift funds. In response to the RFE, the Petitioner did not submit the requested evidence nor provided any explanation regarding his failure to provide the requested evidence. In her decision, the Chief explained that she was denying the petition because 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 that has been obtained through lawful means. The Chief further explained that the Petitioner did not provide sufficient evidence to demonstrate the lawful source of his father's \$20,000; therefore, he has not demonstrated by a preponderance of the evidence that the gift proceeds derived from lawful means. We find that the Chief properly notified the Petitioner of the deficiencies in the record and that the Petitioner was provided with a reasonable opportunity to overcome the deficiencies noted in the RFE and establish his eligibility for the immigrant investor visa classification.

On appeal, the Petitioner argues that there is no evidence in the record that supports the Chief's contention that his father's \$20,000 gift formed part of the assets that were invested in the NCE. The Petitioner also contends that the Chief's rationale cannot be sustained because it has no limiting principle. The Petitioner asserts that if the Chief can require proof of the source of his father's gift, she can then question the source of funds paid to his father; for example, if his father earned money from work, the Chief could ask how his father's employer derived its funds; if the Petitioner satisfies that inquiry, the Chief could continue to see the historic source of funds ad infinitum. The Petitioner contends that where there is no limiting principle, there can no rule because it provides no guidance to the regulated community.

As the Chief stated, the Petitioner was requested to provide evidence of the lawful source of the gift funds because he allegedly purchased the house in [REDACTED] Washington, partly using the gift of \$20,000 from his father. The Petitioner asserted that he derived part of his investment funds through the sale of the house. Because the Petitioner has used the sale proceeds of the house to invest in the NCE, the Petitioner was required to demonstrate that the sale proceeds of the house derived from lawful means. The sale proceeds of the house have not been shown to derive from lawful means because the funds used by the Petitioner to purchase the house, including the \$20,000 gift from his father, have not been shown to derive from lawful means. 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.

III. CONCLUSION

We withdraw the Chief's determination that the Petitioner has not established that he has made a qualifying investment within a designated regional center in the United States. However, the record remains insufficient to 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. Therefore, we conclude that the Petitioner has not established by a preponderance of the evidence his eligibility for the immigrant investor visa classification.

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

ORDER: The appeal is dismissed.