



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

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

In Re: 23396475

Date: APR. 3, 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 (EB-5) 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.

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 that has been 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 she invested \$500,000¹ in [REDACTED] the new commercial enterprise (NCE), on September 21, 2016. According to the business plan of the NCE, the NCE intends to develop, construct, and operate [REDACTED] a Mexican restaurant, in [REDACTED], North Carolina.

The Petitioner asserted that she derived her investment funds through a loan of 3,200,000 Chinese renminbi (RMB) from China CITIC Bank secured by a real property. The Petitioner also asserted that she entered into a currency exchange agreement with her former colleague, [REDACTED] to assist her in converting and transferring the RMB 3,200,000 to U.S. dollars for her EB-5 investment. The record reflects that on June 11, 2015, the Petitioner transferred RMB 3,200,000 from her China CITIC Bank account ending in [REDACTED] China Construction Bank (CCB) account ending in [REDACTED]. In exchange, on July 8, 2015, [REDACTED] transferred \$502,000 from her Bank of China (BOC) [REDACTED] Branch account ending in [REDACTED] to the Petitioner's BOC [REDACTED] account ending in [REDACTED]. On September 20, 2016, the Petitioner transferred \$500,100 from her BOC [REDACTED] account ending in [REDACTED] to the NCE's PNC Bank account ending in [REDACTED].

The Chief issued a request for evidence (RFE) and a notice of intent to deny (NOID), requesting the Petitioner to provide additional evidence demonstrating the lawful source of the exchanger's funds provided to the Petitioner during the currency exchange.

In response to the RFE, the Petitioner submitted a statement from [REDACTED] which states that she obtained the \$502,000 through commissions she received from several companies, including [REDACTED]

[REDACTED], for promoting their products and businesses. [REDACTED] also stated that she has engaged in domestic and foreign trading since 2012. The Petitioner also submitted savings deposit slips, which show deposits of various amount by [REDACTED] on June 12, 2015 and deposits of various amounts by [REDACTED] on June 15, 2015 into [REDACTED] BOC [REDACTED] account ending in [REDACTED]. However, these deposit slips do not provide the sources of deposits. The Petitioner also submitted Business Registration Certificates of [REDACTED] which show that these companies are registered with the Government of [REDACTED] Special Administrative Region.

In response to the NOID, the Petitioner submitted a bank statement of [REDACTED] for her BOC [REDACTED] account ending in [REDACTED] for the period covering from May 18, 2015 to July 8, 2015. The Petitioner also submitted an exchange memo from BOC [REDACTED] Branch, which shows that on July 8, 2015, [REDACTED] exchanged 3,895,118.40 Hong Kong dollar (HKD) to \$502,000 prior to the transfer of \$502,000 to the Petitioner's BOC [REDACTED] account ending in [REDACTED]. In addition, the Petitioner submitted

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 her petition in 2016 and indicated that the NCE would be 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).

Employment Certificate of [] from [] which indicates that [] worked for the printing company in mainland China from 2009 to 2016 earning RMB 130,000 per year.

The Chief denied the petition, concluding that the Petitioner did not demonstrate by a preponderance of the evidence that the funds provided to the Petitioner by the exchanger were lawfully derived. Specifically, the Chief found that the Petitioner did not provide sufficient evidence demonstrating the exchanger's income assertions. The Chief noted that the record did not contain sufficient documentation corroborating the exchanger's claimed employment, contracts, or commission-based work arrangements with the companies, tax payments on commissions, social insurance payments, and bank statements showing consistent receipts and accumulation of commissions. The Chief also noted that the Petitioner has not sufficiently explain how the exchanger worked in mainland China for the printing company while at the same time purportedly working for multiple other companies in [] on a commission basis.

On appeal, the Petitioner contends that the EB-5 regulations only require petitioners to provide evidence to demonstrate that their invested EB-5 capital was obtained through lawful source, and not the means in which the EB-5 capital was converted into U.S. dollars. The Petitioner further contends that the requirement for examination of the exchanger's lawful source of funds is beyond what is required in the statute and regulations, is arbitrary and capricious, and constitutes a legislative rule in violation of the Administrative Procedure Act. The Petitioner submits duplicate copies of the previously submitted Business Registration Certificates, savings deposit slips, a bank statement, and Employment Certificate from the printing company in mainland China.

The record supports the Chief's adverse finding that the Petitioner has not sufficiently established the source of [] U.S. dollars. While [] claims that she obtained the funds in her BOC [] account through commissions she received from various companies for promoting their products and businesses, the record does not contain employment contracts, commission agreements, any other contracts with these companies, commission invoices and receipts, income tax payments, social insurance payments, or other sufficient evidence to support this claim. As noted above, the savings deposit slips do not identify the sources of deposits. The Petitioner submitted Business Registration certificates of various companies, which indicate that these companies are registered with the Government of [] Special Administrative Region. However, the record does not contain sample contracts or invoices, financial statements, bank statements, income tax returns, valid government-issued identification documents, or other sufficient evidence to demonstrate the claimed lawful business activities of these companies and individuals who deposited various amounts into [] [] BOC [] account from June 12 to 15, 2015.

As the Chief stated in her decision, because the Petitioner's funds were routed through a third-party exchanger [] and there is insufficient documentation to demonstrate the legitimacy of the third-party exchanger and the funds in [] BOC [] account ending in [] that were sent to the Petitioner's BOC [] account and ultimately to the NCE's account, Petitioner bears the burden of demonstrating that the funds transferred by [] to the Petitioner's account were obtained through lawful means. *See* 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. Here, Petitioner has failed to meet this burden. Based on these deficiencies in the record, the

Petitioner has not sufficiently documented the complete path of her investment funds, tracing them back to a lawful source. *See* 8 C.F.R. § 204.6(e) (defining “capital”); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

In light of our discussion on the Petitioner’s failure to sufficiently document the lawful source of funds she purportedly remitted to the NCE as EB-5 capital, we need not consider any other eligibility grounds. We will reserve other eligibility issues for future consideration should the need arise.²

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence eligibility for the immigrant investor visa classification because she has not sufficiently documented the lawful source of funds she purportedly remitted to the NCE.

ORDER: The appeal is dismissed.

² *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).