



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

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

In Re: 24911966

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). 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.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish that the Petitioner has invested or is actively in the process of investing the required amount of capital. 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. In addition, the Chief determined that the Petitioner has not demonstrate that all invested capital has been derived by lawful means pursuant to 8 C.F.R. § 204.6(g)(1). 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

Applicable statutory and regulatory provisions provide that an immigrant investor must generally invest or be actively in the process of investing at least \$1,000,000 of capital in a new commercial enterprise. 8 U.S.C. §§ 1153(b)(5)(A)(i), (C)(i); 8 C.F.R. §§ 204.6(f)(1), (j)(2). Alternatively, an immigrant investor can invest or be actively in the process of investing a reduced amount (\$500,000) of capital if the new commercial enterprise into which the immigrant investor is investing is principally doing business and creates jobs in a targeted employment area (TEA). 8 U.S.C. §§ 1153(b)(5)(A)(i), (B)(i), (C)(ii); 8 C.F.R. §§ 204.6(f)(2), (j)(2), (j)(6).

To establish eligibility for the reduced minimum investment threshold of \$500,000, the immigrant investor must invest his or her capital in a new commercial enterprise that is principally doing business

and creates jobs in a rural area or an area of high unemployment. 8 U.S.C. § 1153(b)(5)(B)(i)-(ii); 8 C.F.R. § 204.6(j)(6). Applicable statute and regulations define a TEA as, at the time of investment, a rural area or an area that has experienced unemployment of at least 150 percent of the national average rate. 8 U.S.C. § 1153(b)(5)(B)(ii); 8 C.F.R. § 204.6(e). A “rural area” is defined as any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States). 8 U.S.C. § 1153(b)(5)(B)(iii); 8 C.F.R. § 204.6(e). In other words, a rural area must be both outside of a metropolitan statistical area and outside of a city or town having a population of 20,000 or more.

“Capital” means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the immigrant investor, provided that the immigrant investor is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. 8 C.F.R. § 204.6(e). Further, a petitioner must show that he or she has placed his or her own capital at risk, i.e., that he or she was the legal owner of the invested capital. *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm’r 1998); *see also Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm’r 1998) (interpreting 8 C.F.R. § 204.6(e) as requiring that a petitioner establish the funds invested are his or her own).

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. 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. 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.

The regulation at 8 C.F.R. § 204.6(g) provides that a new commercial enterprise may be used as the basis for a Form I-526 even though there are several owners of the enterprise as long as the source(s) of all capital investment is identified, and all invested capital has been derived by lawful means.

II. ANALYSIS

The Petitioner asserted that she invested \$500,000¹ into [REDACTED] the new commercial enterprise (NCE), from September 23, 2016 to 2017. According to the business plan of the NCE, the NCE intends to develop, own, and operate a [REDACTED] franchise restaurant in [REDACTED] California. On page 2 of her petition, the Petitioner indicated that she owns 100% of the NCE.

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 principally doing business within 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).

However, a review of the record of proceeding reveals that the NCE is owned by two individuals: (1) the Petitioner (99%) and (2) [REDACTED] (1%).²

A. Targeted Employment Area

The Petitioner claimed that the NCE would be located within a targeted employment area (TEA) and is thus eligible for a reduced capital investment of \$500,000. The Petitioner stated that the restaurant location has been certified as a TEA by the California Governor's Office of Business and Economic Development in accordance with 8 C.F.R. § 204.6(j)(6) and made a reference to "Exhibit D8." However, the record does not include "Exhibit D8" or any letter from the California Governor's Office of Business and Economic Development. The Chief also stated that the evidence in the record shows that the NCE is located within a TEA.³ However, the record does not contain evidence that the NCE is principally doing business and creates jobs in a rural area or an area of high unemployment to comply with 8 C.F.R. § 204.6(j)(6).

As the evidence in the record does not demonstrate that the NCE is principally doing business and creates jobs in a TEA, the Petitioner is not eligible for a reduced capital investment of \$500,000. She is required to provide evidence of the full investment of \$1,000,000 as the investment will not qualify for the reduced TEA investment amount.

B. Source of Funds

The Petitioner asserted that she derived her investment funds of \$500,000 through the sale proceeds of an apartment in [REDACTED] Iran, which she sold for 18,600,000,000 Iranian rial (IRR) in August 2016. The Petitioner further asserted that she purchased the apartment for IRR 83,320,940 in 2006 using her accumulated employment as a gynecologist since 1999.

However, a review of the record of proceeding reveals that the record does not contain sufficient evidence to demonstrate the claimed lawful source of funds to purchase the apartment in 2006. The record contains the Petitioner's diploma, course completion certificate, medical practice license, private clinic licenses, an employment verification letter, a tax payment certificate, and bank statements for the periods covering several months in 2016 and several months in 2017. The employment verification letter from [REDACTED] states that the Petitioner has been a physician at the hospital since 1999 but does not provide how much income the Petitioner earned at the hospital. The Petitioner also submitted a tax payment certificate from the Ministry of Finance and Economic Affairs, State Taxation Affairs in Iran, which provides income earned by the Petitioner from 2018 to 2020 and taxes paid by the Petitioner from 2018 to 2020. This tax payment certificate does not provide how much income the Petitioner earned prior to 2006 for the purchase of the apartment in 2006.

The sale proceeds of the apartment have not been shown to derive from lawful means because the funds used to purchase the apartment have not been shown to derive from lawful means. As such, the evidence in the record does not sufficiently establish that the capital, which has been invested by the

² See Schedules K-1 (Form 1065, Partner's Share of Income, Deductions, Credits, etc.) issued by the NCE to its partners in 2018, 2019, and 2020.

³ See footnote 2 on page 4 of the Chief's decision, dated July 1, 2022.

Petitioner or which the Petitioner is actively in the process of investing, is capital that has been obtained through lawful means.

C. Path of Funds

The Petitioner asserted that she used the services of hawala brokers to convert her funds from Iranian rials to United Arab Emirates (UAE) dirhams and then to U.S. dollars and transfer the funds from Iran to UAE and then to the NCE's account in the United States.

A transaction receipt from Bank Mellat, dated September 4, 2016, indicates that on September 4, 2016, the Petitioner deposited **IRR 3,615,694,300** into [] account ending in []. The Petitioner submitted a certificate from [], dated December 9, 2015, which states that [] is a colleague of []. However, the record does not contain a valid government-issued identification document for [], an employment contract, payroll documents, business license, or other sufficient evidence to corroborate claims in the record and also to demonstrate that [] is a licensed money service business in Iran or was otherwise authorized to receive funds in Iran on behalf of [] for the currency exchange.

A transaction details, dated September 4, 2016, indicates that on September 4, 2016, [] transferred **\$100,100** from its account ending in [] to The Law Offices of [] account ending in [] with International Bank of Chicago. The Petitioner submitted a certificate from [] which states that after the Petitioner paid IRR 3,600,000,000, on September 4, 2016, [] a subdivision of [], transferred \$100,100 to []. An outgoing wire transfer request from [] and a bank statement of the NCE from U.S. Bank for its account ending in [] show that on September 23, 2016, [] transferred \$100,100 from its account ending in [] to the NCE's account ending in []. However, the record does not contain complete bank statements, tax records, foreign business registration documents, business licenses, or other sufficient evidence to demonstrate claims of the lawful source and claims of the path of how funds arrived in [] account, the claimed transfer of funds from [] account to [] account, claimed accumulation and maintenance of funds in [] account from September 4, 2016 until deployment to the NCE's account on September 23, 2016, the claimed relationship between [] and that [] is a licensed money service business in UAE or was otherwise authorized to transfer the funds in UAE on behalf of [] for the currency exchange.

A deposit receipt from Bank Mellat, dated May 9, 2017, indicates that on May 9, 2017, the Petitioner deposited **IRR 6,050,000,000** into [] account ending in []. However, the record does not contain complete bank statements of [] or other sufficient evidence to demonstrate the claimed transfer of funds from the Petitioner's account to [] account.

A transaction details, undated, and a bank statement of the NCE from U.S. Bank indicate that on May 15, 2017, [] transferred **\$160,000** from its account ending in [] in UAE to the NCE's account ending in []. The Petitioner submitted a certificate from [] which states that after the Petitioner paid IRR 6,050,000,000, on May 9, 2017, [] a subdivision of [] transferred \$160,000 to the NCE. However, the record does not

contain complete bank statements, tax records, foreign business registration documents, business license, or other sufficient evidence to demonstrate claims of the lawful source and claims of the path of how funds arrived in [] account in UAE, the claimed transfer of funds from [] account to the NCE's account, the claimed relationship between [] and that [] is a licensed money service business in UAE or was otherwise authorized to transfer the funds in UAE on behalf of [] for the currency exchange.

A transaction receipt from Bank Mellat, dated November 8, 2017, indicates that on November 8, 2017, the Petitioner deposited **IRR 8,984,000** into [] account ending in []. However, the record does not contain complete bank statements of [] or other sufficient evidence to demonstrate the claimed transfer of funds from the Petitioner's account to [] account.

A transaction details, dated November 8, 2017, indicates that on November 8, 2017, [] transferred **\$240,100** from its account ending in [] account ending in []. The Petitioner submitted a certificate from [] which states that after the Petitioner paid IRR 8,984,000,000, on November 8, 2017, [] a subsidiary company of [], transferred \$240,100 to [] account. However, the record does not contain complete bank statements, tax records, foreign business registration documents, business licenses, or other sufficient evidence to demonstrate claims of the lawful source and claims of the path of how funds arrived in [] account, the claimed transfer of funds from [] account to [] account, the claimed relationship [] and that [] is a licensed money service business in UAE or was otherwise authorized to transfer the funds in UAE on behalf of [] for the currency exchange.

The Petitioner's attorney claimed that on November 24, 2017, his office received \$240,075 from a hawala broker, [] and that as directed by the Petitioner, his office distributed \$240,075 to the NCE's account from May 31, 2019 to March 15, 2021. To support this claim, the Petitioner submitted an excel spreadsheet and bank statements of the NCE from U.S. Bank for its account ending in []. The excel spreadsheet listed several alleged wire transfers to the NCE. However, as noted by the Chief, the spreadsheet does not identify who prepared it and does not provide dates of the claimed disbursements from [] to the NCE's account. Moreover, the record does not contain the source document(s) relied upon by the preparer to draft this spreadsheet. As such, we find this excel spreadsheet neither credible nor probative. The NCE's bank statements show that a total of **\$260,574.08** was deposited into the NCE's account ending in [] from May 20, 2019 to March 26, 2021. The bank statements identified these deposits as "customer deposits," indicating that these deposits were made by the customer, i.e., the NCE, except for a deposit of \$18,186.38 on February 16, 2020, which the bank statement identified this deposit as "a branch telephone transfer" by an unidentified individual. The bank statements do not show that the Petitioner's attorney or his office transferred a total of \$240,075 to the NCE's account from May 31, 2019 to March 15, 2021 as claimed. The record does not contain complete bank statements or other sufficient evidence to demonstrate claims of the lawful source and claims of the path of how funds arrived in the NCE's account from May 20, 2019 to March 26, 2021.

The Chief determined that the Petitioner has not submitted sufficient evidence to demonstrate that (1) the funds flowed from [] and ultimately invested into the NCE's account, (2) the funds flowed from [] and ultimately invested into

the NCE's account, and (3) the funds flowed from [redacted] and ultimately invested into the NCE's account were obtained through lawful means. The Chief stated that because the Petitioner's funds were routed through third-party exchangers [redacted] and there is insufficient documentation to demonstrate the legitimacy of the exchangers and the funds in their accounts, the Petitioner bears the burden of demonstrating that the funds transferred by the third-party exchangers were obtained through lawful means, but the Petitioner has failed to meet this burden. The record supports the Chief's determination.

In response to the notice of intent to deny, the Petitioner asserted that she used the services of [redacted] to effectuate all her money transfers and that [redacted] had a valid exchanger license. To support this claim, the Petitioner submitted a printout from the Iranian Central Bank website, which shows that [redacted] is an exchanger licensed by the Iranian Central Bank, that [redacted] registered with the bank on June 16, 2017, and that [redacted] exchange license was valid from April 14, 2016 to April 14, 2021. Regarding the claimed subsidiaries through which [redacted] allegedly corresponded to transfer equivalent amount of U.S. dollars to the NCE, the Petitioner stated that she did not have any relationships with these entities, that she was not provided with information regarding corresponding transfer entities, and there is virtually no way for her to demonstrate the source of funds used in the money exchange networks.

On appeal, the Petitioner contends that since she used only the services of [redacted] a licensed money exchanger, to effectuate all her money transfers and paid [redacted] an exchanger fee, the transfer of her funds should be considered lawful and permissible for EB-5 purposes under the preponderance of the evidence standard. The Petitioner further contends that as EB-5 petitioners are provided little information regarding the exchangers through whom a chosen money exchanger will use, a mandate that EB-5 petitioners demonstrate the source of funds used by corresponding money exchangers would essentially eliminate the ability of foreign nationals from any countries subject to capital controls from participating in the EB-5 program.

We acknowledge the Petitioner's difficulties in obtaining financial and other relevant documents from third-party exchangers. However, as stated by the Chief, because the Petitioner's funds were routed through third-party exchangers [redacted] and there is insufficient documentation to demonstrate the legitimacy of the exchangers and the funds in their accounts, the Petitioner bears the burden of demonstrating that the funds transferred by the third-party exchangers were obtained through 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.

The record shows that [redacted] was a licensed exchanger in Iran from April 2016 to April 2021. However, the record does not contain sufficient evidence to demonstrate that [redacted] [redacted] are legitimate or licensed and registered money service businesses allowed to conduct currency exchange and cross-border money transfers as claimed for the Petitioner's funds in all jurisdictions through which the Petitioner's funds moved, including in Iran where the Petitioner's funds were collected by [redacted] and [redacted] in UAE where the Petitioner's funds were sent by [redacted] account, in UAE where the Petitioner's funds were sent by [redacted] to the NCE's account, and in UAE where the

Petitioner's funds were sent by [] account. As noted above, there are multiple breaks in the path of the Petitioner's funds. However, the Petitioner has not provided sufficient evidence to demonstrate that the funds occurring after each break in the path derived from lawful means. First, the source of funds in [] account ending in [] have not been sufficiently demonstrated. Second, the source of funds in [] account ending in [] have not been sufficiently demonstrated. Third, the source of funds in [] account ending in [] have not been sufficiently demonstrated. Fourth, the source of funds in [] account ending in [] have not been sufficiently demonstrated. It appears that the funds in [] account were comingled with funds from other sources not shown to derive from lawful means. Lastly, the source of funds in NCE's account ending in [] have not been sufficiently demonstrated.

Due to the evidentiary insufficiencies discussed above, the Petitioner has not demonstrated by a preponderance of the evidence that the funds invested in the NCE derived, both directly and indirectly, from lawful means.

D. Required Amount of Capital Investment

The Chief determined that because multiple third-party exchangers [] [] transferred the Petitioner's funds through several accounts owned by the exchangers and because a portion of the Petitioner's funds were transferred into the account owned by [], the Petitioner has not demonstrated by a preponderance of the evidence that she was the legal owner of the capital invested into the NCE.

On appeal, the Petitioner contends that she has placed her own capital at risk, i.e., that she was the legal owner of the invested capital because the entire amount of her required capital had been deposited into the NCE's bank account and stayed there and because the whole amount of \$500,000 has been used for job creation purposes. The Petitioner further contends that since she is not a signatory to the NCE's bank account, she cannot withdraw or remove assets from the NCE's bank.

The bank statements of the NCE from U.S. Bank for its account ending in [] reflect that a total of \$520,557.08 was deposited into the NCE's account from September 23, 2016 to March 26, 2021. These deposits consist of (1) a deposit of \$100,030 made by [] on September 23, 2016, (2) a deposit of \$159,953 made by [] on May 15, 2017, (3) a total deposit of \$242,387.77 made by the NCE from May 20, 2019 to March 26, 2021, and (4) a deposit of \$18,186.38 made by an unidentified individual via a branch telephone transfer on February 16, 2020. As noted above, the source of funds in NCE's account ending in [] have not been sufficiently demonstrated. The record does not contain complete bank statements or other sufficient evidence to establish that the \$242,387.77 deposited by the NCE to its own account from May 2019 to March 2021 and the \$18,186.38 deposited by an unidentified individual via a branch telephone transfer on February 16, 2020 came from the Petitioner's accounts or that the Petitioner was the legal owner of these funds. Accordingly, the Petitioner has not sufficiently shown that she has placed her own capital at risk, i.e., that she was the legal owner of the invested capital.

Furthermore, as stated above, the evidence in the record does not establish that the NCE is principally doing business and creates jobs in a TEA. Therefore, the Petitioner is not eligible for a reduced capital investment of \$500,000, and she is required to provide evidence of the full investment of \$1,000,000.

The bank statements of the NCE from U.S. Bank for its account ending in [] reflect that a total of \$520,557.08, not \$1,000,000, was deposited into the NCE's account from September 23, 2016 to March 26, 2021. The record contains the Petitioner's declaration of funding, which states that on August 8, 2016, she committed herself to transfer to and make available in the bank account to be opened for her business in the United States the funds required for establishing a unit of [] franchise in the amount of \$500,000, not \$1,000,000. As such, the evidence in the record does not establish that the Petitioner has invested or is actively in the process of investing the required amount of capital (\$1,000,000) in the NCE.

III. CONCLUSION

The evidence in the record does not establish that the NCE is principally doing business and creates jobs in a TEA. In addition, the Petitioner has not shown 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 record fails to trace the path of the funds back to a lawful source. Furthermore, the Petitioner has not submitted sufficient evidence to establish that she has placed her own capital at risk, i.e., that she was the legal owner of the invested capital. Moreover, the evidence in the record does not establish that the Petitioner has invested or is actively in the process of investing the required amount of capital in the NCE. Therefore, we conclude that the Petitioner has not established by a preponderance of the evidence 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.