



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

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

In Re: 24918959

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. 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 that has been obtained through lawful means. Specifically, the Chief indicated that she could not determine that the funds used by the third-party exchanger, [REDACTED] in the currency exchange were derived from 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 sustain 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 6 of her petition that on August 30, 2018, she invested \$500,000¹ in [REDACTED] the new commercial enterprise (NCE), which is associated with EB5 [REDACTED]. According to the Confidential Offering Memorandum (OPM), the NCE will raise up to \$125 million from up to 250 immigrant investors and lend the entire amount to [REDACTED] the job-creating entity (JCE). The business plan of the NCE indicates that the JCE intends to develop and construct a mixed-use residential and commercial community in [REDACTED] California, with three experienced homebuilders.

The Petitioner asserted that she derived her investment funds through a loan of 13,200,000,000 Vietnamese dong (VND) from Military Commercial Joint Stock Bank (MCB) secured by two real properties in Vietnam. The Petitioner further asserted that she entered into a currency exchange agreement with her former attorney, [REDACTED] to assist her in converting and transferring the VND 13,200,000,000 to U.S. dollars for her EB-5 investment.

The record shows that on August 30, 2018, the Petitioner transferred VND 1,167,000,000 and VND 11,670,000,000 from her MCB account ending in [REDACTED] to [REDACTED] Saigon Joint Stock Commercial Bank (SCB) account ending in [REDACTED]. In exchange, on August 30, 2018, [REDACTED] transferred \$175,000, \$185,000, and \$140,000 from his SCB account ending in [REDACTED] to the NCE's Bofl Federal Bank escrow account ending in [REDACTED]. On August 30, 2018, [REDACTED] also transferred \$50,000 from his SCB account ending in [REDACTED] [REDACTED] (the manager of the NCE)'s account ending in [REDACTED].

The Chief indicated that she could not determine that the funds used by [REDACTED] in the currency exchange were derived from lawful means. The Chief stated that although [REDACTED] claimed that the source of funds he used for the exchange and transfer to the NCE's escrow account are those of the Petitioner, there is no evidence in the record to corroborate this claim. On appeal, the Petitioner maintains that she provided sufficient evidence to show that the funds exchanged to U.S. dollars and transferred to the NCE's escrow account by [REDACTED] came from the Petitioner.

The Petitioner submitted an affidavit of [REDACTED] undated. [REDACTED] states that the source of the Petitioner's EB-5 investment funds came from the Petitioner's own money and that he did not provide any funding to the EB-5 investment or used his personal funds to conduct currency exchange with the Petitioner. We conclude that the record contains sufficient corroborating evidence.

The record contains (1) a statement of funds transfer from the Petitioner and [REDACTED] (2) an account statement of the Petitioner for her SCB account ending in [REDACTED] for the period covering from

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 2018 and indicated that the JCE would be principally doing business in a TEA. Therefore, the requisite amount of capital investment was downwardly adjusted from \$1,000,000 to \$500,000. See 8 C.F.R. § 204.6(f)(2) (2015).

August 30, 2018 to August 30, 2018, (3) transaction receipts for the Petitioner from SCB, dated August 30, 2018, (4) an account statement of [] for his SCB account ending in [] for the period covering from August 30, 2018 to August 30, 2018, (5) transaction details for [] dated August 29, 2018, (6) remittance application forms from [] to SCB, dated August 30, 2018, (7) a letter from the president of the NCE, (8) a letter from the general counsel of [] [] (the escrow agent of the NCE), and (9) a letter from the president of the JCE.

The record reflects that on August 30, 2018, the Petitioner withdrew VND 1,167,000,000 and VND 11,670,000,000 from her SCB account ending in [] and transferred VND 1,167,000,000 and VND 11,670,000,000 to [] SCB account ending in []. The record also reflects that on August 30, 2018, [] exchanged VND 4,084,500,000 to \$175,000, VND 4,317,900,000 to \$185,000, VND 1,167,000,000 to \$50,000, and VND 3,267,600,000 to \$140,000. The record further reflects that on August 30, 2018, [] transferred \$175,000, \$185,000, and \$140,000 from his SCB account ending in [] to the NCE's escrow account ending in [] with Bofl Federal Bank. Although the record does not contain complete bank statements of [] prior to August 30, 2018, the account statement of [] for his SCB account ending in [] does not show that the account funds were commingled with funds from other source(s) not shown to derive from lawful means as the account statement does not show any other transactions and as the amounts deposited into this account by the Petitioner were exchanged to U.S. dollars and transferred to the NCE's escrow account by [] on the same day.

III. CONCLUSION

The Chief did not raise issues regarding the legitimacy and claimed lawful business activities of [] [] the purchase of the real property located at [] [] Vietnam, by the Petitioner, and the source of funds used by the Petitioner to purchase this property, or any other eligibility grounds. Since the Chief raised issues only regarding the source of funds used by the third-party exchanger [] in the currency exchange and the record contains sufficient evidence to demonstrate that the funds exchanged to U.S. dollars and transferred to the NCE's escrow account by [] came from the Petitioner, we conclude that the Petitioner has established by a preponderance of the evidence eligibility for the immigrant investor visa classification.

ORDER: The appeal is sustained.