



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

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

In Re: 24914196

Date: APR. 11, 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 (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 Petitioner has not established 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. On appeal, the Petitioner contends that she needs only to show that the funds did not come from an unlawful source, which she did. The Petitioner also contends that the Chief disregarded her arguments that funds flowing through the U.S. banking systems, and in conjunction with a loan from the Small Business Administration (SBA), have a presumption of lawful origin.

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

The regulation at 8 C.F.R. § 204.6(g)(1) 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.

8 C.F.R. § 204.6 states:

(g) Multiple investors – (1) General. The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur by more than one investor, provided each petitioning investor has invested or is actively in the

process of investing the required amount for the area in which the new commercial enterprise is principally doing business, and provided each individual investment results in the creation of at least ten full-time positions for qualifying employees. The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur even though there are several owners of the enterprise, including persons who are not seeking classification under section 203(b)(5) of the Act and non-natural persons, both foreign and domestic, provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means.

(j) Initial evidence to accompany petition. A petition submitted for classification as an alien entrepreneur must be accompanied by evidence that the alien has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise in the United States, which will create full-time positions for not fewer than 10 qualifying employees.

(3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

II. ANALYSIS

The Petitioner indicated on page 6 of her petition that she has invested \$500,000¹ in [REDACTED] the new commercial enterprise (NCE), since November 21, 2018. The Petitioner also indicated on pages 6 and 7 of her petition that the NCE is owned by the Petitioner (13.07%) and 16 other individuals. According to the business plan of the NCE, the NCE intends to own and operate a new [REDACTED] Suites hotel located at [REDACTED] Pennsylvania. The business plan of the NCE indicates that the total cost to acquire, equip, and operate the hotel is estimated at \$10.9 million and that the project will be funded by (1) bank loans of \$7,215,000, (2) developers equity of \$3,190,044, and (3) EB-5 equity of \$500,000.

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 2019 and indicated that the NCE is located 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).

The Chief issued a request for evidence (RFE) and a notice of intent to deny (NOID), requesting the Petitioner to provide evidence to establish the lawful sources of investment capital from all investors, including non-EB-5 investors.

In response to the RFE, the Petitioner submitted a chart demonstrating investment dates of all capital invested into the NCE, which indicates that from March 1, 2018 to November 26, 2019, the Petitioner, 13 other individuals, and two entities invested a total of \$2,482,000 in the NCE. The Petitioner also submitted copies of government-issued identification documents for 19 individuals; Certificate of Amendment to the Articles of Organization of [redacted] Articles of Organization of [redacted] Certificate of Verification for [redacted] [redacted] and Articles of Organization of [redacted]

In response to the NOID, the Petitioner submitted affidavits of 19 individuals in which each affiant states that his or her investment made to the NCE has been obtained through lawful means and is not acquired directly or indirectly by unlawful means, such as criminal activity. The Petitioner also submitted bank statements of these individuals, which show outgoing wire transfers or cancelled checks for various amounts from their accounts.

The Chief found that none of the affidavits of the co-owners give any insight into the actual sources of funds and that the affidavits are not corroborated by evidence to establish the lawful sources of funds. The Chief also founds that none of the bank statements of the co-owners demonstrate the lawful sources of deposited amounts. The Chief concluded that the Petitioner has not demonstrated the co-owners' investments derived from lawful means.

On appeal, the Petitioner contends that 8 C.F.R. § 204.6(g)(1) merely requires that the funds of non-EB-5 investors derived from a lawful source or that they did not derive from an unlawful source. The Petitioner further contends that the object of 8 C.F.R. § 204.6(j)(3) is the petitioner and the petitioner's investment of capital and nowhere does it mention non-EB-5 investors and, therefore, 8 C.F.R. § 204.6(g)(1) cannot be read as requiring the petitioner to trace back to the ultimate source funds that are not the petitioner's invested capital.

The regulation at 8 C.F.R. § 204.6(j)(3) provides a list of the initial evidence that a petitioner must submit to demonstrate the lawful source of the petitioner's investment funds, such as foreign business registration records, tax returns, certified copies of any judgment or evidence of all pending civil or criminal actions or administrative proceedings against the Petitioner, or evidence identifying any other sources of capital. Here, the relevant regulation is set forth in 8 C.F.R. § 204.6(g)(1), which 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. 8 C.F.R. § 204.6(g)(1) applies to new commercial enterprises in both standalone and regional center cases but does not apply to job-creating entities.

While 8 C.F.R. §204.6(g)(1) requires the affirmative identification of non-petitioner capital at the NCE, the provision does not expressly require the affirmative submission of evidence to establish the lawful sources of the capital the same as for the petitioner's capital under 8 C.F.R. § 204.6(j)(3). The regulations suggests that the petitioner must identify all sources of capital but do not suggest that the

petitioner is required to make any specific demonstration or submit specific evidence to establish that all capital has been derived by lawful means. The evidentiary requirements for lawful source of funds at 8 C.F.R. § 204.6(j)(3) only applies to the petitioner's investment funds. The Chief must specifically address this requirement in all Form I-526 adjudications but may determine that 8 C.F.R. § 204.6(g)(1) has been met through the totality of evidence identifying all sources of capital invested in the NCE, including any information obtained through open sources in a case where such evidence does not indicate that the capital was unlawfully derived. While the evidence listed at 8 C.F.R. § 204.6(j)(3) may provide a useful guide to petitioners, we will consider all relevant evidence submitted to determine by a preponderance of the evidence if the record establishes the sources and lawfulness of the investments in the NCE.

The record reflects that the Petitioner has submitted sufficient evidence to identify all capital invested in the NCE by submitting a chart demonstrating investment dates of all capital invested into the NCE, affidavits of non-EB-5 investors, government-issued identification documents for non-EB-5 investors, bank statements of non-EB-5 investors, and company formation documents relating to two entities that are also non-EB-5 investors. The non-EB-5 investors provided affidavits, stating that their investments made to the NCE have been obtained through lawful means. We acknowledge the Chief's concerns that the affidavits of the co-owners of the NCE are not corroborated by evidence to establish the lawful sources of funds and that none of the bank statements of the co-owners demonstrate the lawful sources of deposited amounts. However, since 8 C.F.R. §204.6(g)(1) does not expressly require the affirmative submission of evidence to establish the lawful sources of investment funds of non-EB-5 investors the same as for the petitioner's investment funds under 8 C.F.R. § 204.6(j)(3) and since the record does not contain any derogatory information to indicate that the funds invested by the non-EB-investors were unlawfully derived, we determine that the affidavits of the non-EB-5 investors are sufficient evidence to demonstrate the lawful sources of the non-EB-5 investors' investment funds under the preponderance of the evidence standard. Again, we note that there is no specifically required evidence to make that demonstration, unlike 8 C.F.R. § 204.6(j)(3).

III. CONCLUSION

Although there are several owners of the NCE, the Petitioner has established by a preponderance of the evidence that the investment into the NCE may be used as the basis for the immigrant investor visa classification. Since the Chief did not raise issues regarding other eligibility grounds, the Petitioner has established eligibility for the immigrant investor visa classification.

ORDER: The appeal is sustained.