



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

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

In Re: 13111826

Date: APR. 12, 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. 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. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Chief's decision was erroneous and her reasonings were flawed and prejudiced, that the Chief's decision was incorrect based on the evidence of record at the time of the decision, and that the Chief's decision was an incorrect application of immigration law because the immigration law only requires the lawful source of his own investment funds.

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 his Form I-526 that on November 7, 2016, he invested \$500,000¹ in [REDACTED] the new commercial enterprise (NCE), which is associated with [REDACTED] [REDACTED] pursuant to the Immigrant Investor Program. According to the Confidential Private Placement Memorandum (PPM) of the NCE, the NCE proposed to pool \$125,000,000 from 250 immigrant investors, and the NCE will 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 an entertainment and sports center and a mixed-use commercial and residential building in [REDACTED] California.

The Petitioner asserted that he derived his investment funds through a gift of \$550,000 from his mother, [REDACTED]. The Petitioner further asserted that his mother obtained the gift funds through a loan of 3,750,000 Chinese renminbi (RMB) from China CITIC Bank (CCB) secured by a real property in China. The Petitioner also asserted that his mother entered into a currency exchange agreement with her friend, [REDACTED] to assist her in converting and transferring the RMB 3,750,000 to U.S. dollars for the Petitioner's EB-5 investment.

The record reflects that on November 1, 2016, the Petitioner's mother transferred RMB 3,750,000 from her CCB account ending in [REDACTED] to [REDACTED] China Merchants Bank (CMB) account ending in [REDACTED]. In exchange, on November 4, 2016, [REDACTED] transferred \$550,000 from her The Hongkong and Shanghai Banking Corporation Limited (HSBC) Hong Kong Branch account ending in [REDACTED] to the Petitioner's Bank of America (BOA) account ending in [REDACTED]. On November 7, 2016, the Petitioner transferred \$550,000 from his BOA account ending in [REDACTED] to the NCE's escrow account ending in [REDACTED] with East West Bank.

The Chief issued a request for evidence (RFE) and a notice of intent to deny (NOID), requesting the Petitioner to provide 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 is a shareholder of [REDACTED] and that the \$550,000 from her HSBC account was lawful income, which she received from [REDACTED] dividends. The Petitioner submitted part of 2016 Annual Report of [REDACTED],² which indicates that [REDACTED]

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 2016 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).

² The Petitioner did not submit the entire 2016 Annual Report of [REDACTED] but submitted only pages 2, 87, and 224 of the Annual Report.

was incorporated in Bermuda and its registered office is in Bermuda but the principal place of its business is in Hong Kong and that [] is a company that provides construction, property, and related services. However, the record does not contain incorporation documents, foreign business registration documents, business license, sample contracts, or other sufficient documents to demonstrate the legitimacy and the claimed lawful business activities of []. The 2016 Annual Report also indicates that in 2016, [] owned 1,466,858,789 shares (25.70%) of [] as “interests of controlled corporation” and 2,704,166,666 shares (47.39%) of [] as “interests of spouse.” This 2016 Annual Report does not show that [] received \$550,000 from [] in 2016 as her dividends. The Petitioner also submitted bank statements of [] from HSBC Hong Kong Branch for her account ending in [] for the periods covering from July 2, 2016 to December 2, 2016. These bank statements show that on November 4, 2016, \$550,000 was deposited into [] HSBC Hong Kong account ending in [] and that on November 5, 2016, \$550,000 was withdrawn from this account. However, the bank statements do not provide the source of deposit.

In response to the NOID, the Petitioner submitted a statement from [] which states that she keeps most of her earnings in her investment or timed deposit accounts to earn interest on her savings and that she transferred 4,000,000 Hong Kong dollars (HKD) from her investment account on October 27, 2016 to transfer to the Petitioner’s account. However, the Petitioner did not submit [] earning statements, dividends statements, income tax records, social insurance payments, investment account statements, complete bank statements, or other sufficient to corroborate claims in the record.

The Chief denied the petition, concluding that the Petitioner has not shown by a preponderance of the evidence that the \$550,000 from [] which were the funds transferred to the NCE, were lawfully obtained. The Chief found that the Petitioner has not corroborated [] assertion that the \$550,000 transferred to the NCE derive from dividends she received from []. The Chief also determined that the Petitioner has not sufficiently shown whether [] purchased her equity interest in [] with lawfully obtained funds as she has not submitted evidence regarding the equity purchase in [] as requested in the NOID.

On appeal, the Petitioner contends that the \$550,000 in [] HSBC foreign currency saving account was from [] stock dividends of [] a public company in Hong Kong Stock Exchange. The Petitioner asserts that [] interests in [] was through the interests of [] spouse, [] who is a non-executive director of []. The Petitioner also asserts that [] owns 50% of [], which owns 28.89% of the ordinary shares of []. The Petitioner asserts that in 2015, [] held 1,466,858,789 stocks as the interests of spouse and 4,398,265,830 shares as the interests of controlled corporation, [] and that in 2015, [] received HKD 58,561,246.19 (approximately \$5,800,000) as stock dividends, which was sufficient for the currency exchange.

The Petitioner contends that the source of [] funds was generated and accumulated mainly in 2015 and submits 2015 Interim Report of []. The 2015 Interim Report indicates that in 2015, [] revenue was HKD 7,979,747,000, its gross profit was HKD 308,107,000, its net profit was HKD 2,078,533,000, and dividends were HKD 108,433,000. However, the Interim Report does not indicate how much dividends [] received from [] in 2015. The Petitioner also submits an announcement from the Stock Exchange of Hong Kong Limited regarding [] which indicates that trading in [] securities has been suspended since [] 2017

and that the listing of [] shares was cancelled in [] 2019 under Rule 6.01A. But the Petitioner did not provide the Rule 6.01A or other sufficient evidence. Therefore, the record is unclear why the listing of [] shares was cancelled by the Stock Exchange of Hong Kong Limited, why trading in [] securities was suspended, or it was lawful for [] to conduct its business and for [] to pay dividends to [] as claimed.

While the Petitioner claims that the \$550,000 in [] HSBC foreign currency saving account was from [] stock dividends of [] the record does not contain resolutions of the shareholders or other sufficient evidence to demonstrate the claimed dividends payment of HKD 58,561,246.19 to [] in 2015 has been authorized as a lawful corporate action. The record also does not contain sufficient evidence to demonstrate that the claimed dividends payment of HKD 58,561,246.19 to [] in 2015 is allowed per company rules. In addition, the record does not contain audited financial statements or other sufficient evidence to demonstrate claims regarding the financial status of []. The record does not contain income tax returns of [] or other sufficient evidence to corroborate claims in the record. Furthermore, the record does not contain complete bank statements or other sufficient evidence to demonstrate the claimed monetary funds of []

Moreover, the record does not contain income tax payment records of [] or other sufficient evidence to show that commensurate taxes were paid by [] on the claimed dividends income of HKD 58,561,246.19 in 2015. The record also does not contain complete bank statements or other sufficient evidence to demonstrate the claimed dividends payments of HKD 58,561,246.19 from [] to [] in 2015 and the claimed maintenance of these funds in [] HSBC Hong Kong account ending in [] until deployment to the Petitioner's account in November 2016.

Additionally, the Petitioner has not submitted sufficient evidence to demonstrate that [] ownership interests in [] her spouse's ownership interests in [] ownership interests in [] ownership interests in [] were derived from lawful means. The record also does not contain foreign business registration documents, business license, sample contracts, or other sufficient evidence to demonstrate the legitimacy and the claimed lawful business activities of []. The record does not demonstrate by a preponderance of the evidence that the claimed dividends payment of HKD 58,561,246.19 from [] in 2015 derived from lawful means because the Petitioner has not demonstrated by a preponderance of the evidence that the funds used to obtain ownership interests in [] derived from lawful means.

On appeal, the Petitioner also submits a document titled "Payment Enquiry for Property Rental," which shows [] taxpayer identification number, property address for several real properties in mainland China, invoice numbers, the type of real property, the amount of tax payments, tax periods, and dates of tax payments. The Petitioner does not explain why this document was submitted or how it relates to the source of the funds [] transferred to the Petitioner's account. We also note this document is not dated and does not identify the preparer; therefore, the credibility and probative value of this document is minimal.

Upon de novo review, we agree with the Chief that the Petitioner has not sufficiently established the lawful source of [] U.S. dollars in her HSBC Hong Kong account ending in []. As noted

above, [] bank statements for her HSBC Hong Kong account ending in [] shows a deposit of \$550,000 into this account on November 4, 2016 – a day before the transfer of \$550,000 from [] HSBC Hong Kong account to the Petitioner's BOA account on November 5, 2016. However, the bank statements do not identify the source of deposit. While [] claims that she obtained the \$550,000 through her dividends from [] in 2015 and that she deposited most of her earnings in her investment or timed deposits accounts to earn interest on her savings, the Petitioner has not submitted sufficient evidence to corroborate these claims for the reasons we have discussed above.

On appeal, the Petitioner contends that the Chief's decision was an incorrect application of immigration law because the immigration law only requires the lawful source of his own investment funds. However, 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 [] HSBC Hong Kong account ending in [] that were sent to the Petitioner's BOA account and then ultimately to the NCE's escrow account, Petitioner bears the burden of demonstrating that the funds transferred by [] to the Petitioner's account 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. In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). Here, the Petitioner has not met this burden.

Based on the evidence of record, the loan proceeds of RMB 3,750,000 sent by the Petitioner's mother from her CCB account ending in [] to [] CMB account ending in [] have never left mainland China. The source of funds in [] HSBC Hong Kong account ending in [] has not been sufficiently demonstrated. Based on these deficiencies in the record, the Petitioner has not sufficiently documented the complete path of his 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. Therefore, we conclude that the Petitioner has not demonstrated by a preponderance of the evidence 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.

III. CONCLUSION

As the Petitioner has not sufficiently documented the lawful source of funds he purportedly remitted to the NCE's escrow account, he has not established by a preponderance of the evidence eligibility for the immigrant investor visa classification.

ORDER: The appeal is dismissed.