



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

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

In Re: 25365033

Date: MAY 8, 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. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Chief denied the petition on several basis that were not raised in the notice of intent to deny (NOID) so he was not provided with an opportunity to address several factual and legal issues. The Petitioner also contends that the Chief misinterpreted facts contained in the record.

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 his petition that on March 30, 2017, he invested \$500,000¹ into [REDACTED] the new commercial enterprise (NCE), which is associated with [REDACTED] [REDACTED]² pursuant to the Immigrant Investor Program. According to the Confidential Offering Memorandum of the NCE, the NCE proposed to pool \$2,500,000 from five immigrant investors and make the equity investment in [REDACTED] the job-creating entity (JCE). The Offering Memorandum further indicates that the JCE intends to use the proceeds of the equity investment to finance the development and sale of 13 townhouses and one low-rise, 8-unit condominium building in [REDACTED] Texas.

The Petitioner asserted that he derived his investment funds through a gift of 11,400,000,000 Vietnamese dong (VND) from his father, [REDACTED] and mother, [REDACTED]. The Petitioner further asserted that his parents obtained the gift funds through two sources: (1) the sale of a real property in Vietnam for VND 10,200,000,000 and (2) a gift of VND 12,700,000,000 from the Petitioner's mother's sister, [REDACTED]. The Petitioner also asserted that his parents were gifted the real property from his mother's sister and that his mother's sister obtained the gift funds through the sale a real property in Vietnam, which was gifted to her from his mother's other sister, [REDACTED] and her spouse.

On May 4, 1999, the Petitioner's mother's sister, [REDACTED] purchased a house located at [REDACTED] Vietnam (Property 1), for VND 150,000,000. The Petitioner's parents asserted that [REDACTED] and her spouse, [REDACTED] purchased the property using their wedding gifts and accumulated business income from a food-stall business. On March 21, 2005, [REDACTED] and her spouse, [REDACTED] gifted the property to the Petitioner's mother's another sister, [REDACTED]. On November 20, 2017, [REDACTED] sold the property for VND 12,700,000,000. On November 28, 2017, [REDACTED] gifted the sale proceeds of VND 12,700,000,000 to the Petitioner's parents.

On November 20, 2017, the sale proceeds of VND 12,300,000,000 were deposited into [REDACTED] [REDACTED] Asia Commercial Joint Stock Bank (ACB) account ending in [REDACTED]. On November 20, 2017, [REDACTED] withdrew VND 12,300,000,000 from her ACB account ending in [REDACTED] and

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 2018 and indicated that the project is 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).

² On September 29, 2020, [REDACTED] changed the name of the limited liability company to [REDACTED]. On May 23, 2022, [REDACTED] changed the name of the limited liability company to [REDACTED].

deposited that amount into her ACB account ending in [redacted] On November 28, 2017, [redacted] withdrew VND 12,300,102,519 from her ACB account ending in [redacted] deposited VND 12,700,000,000 into her ACB account ending in [redacted] and transferred VND 12,700,000,000 from her ACB account ending in [redacted] to the Petitioner's mother's ACB account ending in [redacted]

On November 28, 2017, the Petitioner's mother transferred VND 12,700,000,000 from her ACB account ending in [redacted] to her ACB account ending in [redacted] On March 1, 2018, the Petitioner's mother withdrew VND 12,875,356,769 from her ACB account ending in [redacted] and deposited VND 1,480,356,769 into her ACB account ending in [redacted] On March 19, 2018, the Petitioner's mother withdrew VND 1,480,575,780 from her ACB account ending in [redacted] deposited VND 1,480,575,780 into her ACB account ending in [redacted] withdrew VND 1,480,575,780 from her ACB account ending in [redacted] and deposited VND 1,480,575,780 into her ACB account ending in [redacted]

The Chief found that the record did not contain sufficient evidence to demonstrate how the transfer of VND 12,300,000,000 from [redacted] ACB account ending in [redacted] was combined with the deposit of VND 400,000,000 in cash to form one single deposit of VND 12,700,000,000 on November 28, 2017.

On appeal, the Petitioner contends that the purchase price was paid partly in cash (VND 400,000,000) and the balance (VND 12,300,000,000) was transferred to [redacted] ACB account ending in [redacted] on November 20, 2017.

In response to the NOID, the Petitioner submitted statements from [redacted] (the seller of Property 1) and [redacted] (the purchaser of Property 1), which state that on November 20, 2017, [redacted] paid VND 400,000,000 in cash to [redacted] and transferred VND 12,300,000,000 to [redacted] ACB account ending in [redacted] [redacted] stated that on November 28, 2017, she deposited VND 400,000,000 in cash and VND 12,300,000,000, which was withdrawn from her ACB account ending in [redacted] into her ACB account ending in [redacted] The bank statements of [redacted] for her ACB accounts ending in [redacted] and [redacted] corroborate claims in the record. We find that the record contains sufficient evidence to demonstrate the claimed source and path of the VND 12,700,000,000 deposited into [redacted] ACB account ending in [redacted] on November 28, 2017.

The Chief noted that at the time of filing his petition, the Petitioner indicated that on November 28, 2017, [redacted] transferred VND 12,700,000,000 from her ACB account ending in [redacted] to the Petitioner's mother's ACB account ending in [redacted] and then his mother transferred the VND 12,700,000,000 from her ACB account ending in [redacted] to her ACB account ending in [redacted] The Chief found that the NOID response was inconsistent because the Petitioner submitted a diagram of the path of his mother's funds, which indicates that [redacted] transferred VND 12,700,000,000 from her ACB account ending in [redacted] to the Petitioner's mother's ACB account ending in [redacted] without passing through the Petitioner's mother's ACB account ending in [redacted]

On appeal, the Petitioner contends that the diagram only indicates that the gift funds of VND 12,700,000,000 were deposited into his mother's ACB account ending in [redacted] on November 28, 2017 and does not indicate this transfer came directly from a specific account held by [redacted]

The record contains a bank statement of [] for her ACB account ending in [] and bank statements of the Petitioner's mother for her ACB accounts ending in []. These bank statements reflect that on November 28, 2017, [] transferred VND 12,700,000,000 from her ACB account ending in [] to the Petitioner's mother's ACB account ending in [] and then the Petitioner's mother transferred VND 12,700,000,000 from her ACB account ending in [] to her ACB account ending in []. The record contains sufficient evidence to demonstrate the claimed path of the VND 12,700,000,000 deposited into the Petitioner's mother's ACB account ending in [] on November 28, 2017. We find that the Petitioner has resolved the claimed inconsistency in the record by providing a reasonable explanation regarding the diagram.

The Chief found that a balance sheet and renewal information for the Petitioner's mother's ACB account ending in [] dated November 28, 2017, and a savings withdrawal slip from ACB, dated March 1, 2018, do not show the maintenance of VND 12,700,000,000 in the Petitioner's mother's ACB account ending in [] from November 28, 2017 to March 1, 2018.

On appeal, the Petitioner contends that the bank of statement of his mother's ACB account ending in [] for the period covering from November 28, 2017 to March 1, 2018 shows a deposit of VND 12,700,000,000 into the ACB account on November 28, 2017 and maintenance of the funds in the account until they were withdrawn on March 1, 2018.

In response to the NOID, the Petitioner submitted a bank statement of his mother for her ACB account ending in [] for the period covering from November 28, 2017 to March 1, 2018. This bank statement reflects that the Petitioner's mother deposited VND 12,700,000,000 into her ACB account ending in [] on November 28, 2017 and the funds were maintained in this account until VND 12,875,356,769 was withdrawn from this account on March 1, 2018. The record contains sufficient evidence to demonstrate the claimed accrual and maintenance of the gift funds of VND 12,700,000,000 in the Petitioner's mother's ACB account ending in [] from November 28, 2017 to March 1, 2018.

On October 9, 1998, the Petitioner's mother's sister, [] and her spouse, [] purchased a house located at [] Vietnam (Property 2), for VND 250,000,000. [] asserted that she and her spouse purchased the property using their wedding gifts and accumulated business income from a small business in food and beverage owned by her and her sister, []. On August 2, 2001 [] and her spouse gifted the property to the Petitioner's parents. On March 2, 2018, the Petitioner's parents sold the property for VND 10,200,000,000.

From March 8, 2018 to March 19, 2018, the sale proceeds of VND 10,200,000,000 were deposited into the Petitioner's mother's ACB account ending in []. On March 19, 2018, the Petitioner's mother withdrew VND 10,200,000,000 from her ACB account ending in [] and deposited VND 10,200,000,000 into her ACB account ending in []. On March 19, 2018, the Petitioner's mother withdrew VND 2,280,000,000, VND 4,560,000,000, and VND 456,000,000 from her ACB account ending in [] exchanged VND 2,280,000,000 to \$100,000, exchanged VND 4,560,000,000 to \$200,000, exchanged VND 4,560,000,000 to \$200,000, and transferred \$100,000, \$200,000, and

\$200,000 to the Petitioner's mother's brother, [REDACTED] Bank of America (BOA) account ending in [REDACTED]. On March 20, 2018, [REDACTED] transferred \$500,000 from his BOA account ending in [REDACTED] to the NCE's escrow account ending in [REDACTED].

The Chief determined that the Petitioner has not demonstrated compliance with 8 C.F.R. § 204.6(j)(3) because he did not submit foreign business registration records for the food-stall business owned by [REDACTED] and the small business in food and beverage owned by [REDACTED].

On appeal, the Petitioner contends that given the small amount of money (\$20,000) used to purchase each property and the passage of time during which his family complied with all ownership requirements in Vietnam, it is more likely than not that his family members acquired these properties lawfully and held title to these properties without interruption from the Vietnamese government for almost 20 years.

In the NOID, the Chief did not question the claimed sources of funds used by [REDACTED] to purchase Property 1 on May 4, 1999 or the claimed sources of funds used by [REDACTED] and her spouse, [REDACTED] to purchase Property 2 on October 9, 1998. The Chief did not request for foreign registration documents for the claimed food-stall business owned by [REDACTED] or for the claimed small business in food and beverage owned by [REDACTED]. The Petitioner on appeal does not submit the foreign business registration documents for the claimed businesses. However, based on the statements provided by the Petitioner's parents and [REDACTED] we find that the funds used by [REDACTED] to purchase Property 1 and the funds used by [REDACTED] Tran to purchase Property 2 have been shown to derive from lawful means by a preponderance of the evidence.

The Chief also determined that the Petitioner has not demonstrate compliance with 8 C.F.R. § 204.6(j)(3) because he did not submit tax returns filed within five years by the Petitioner or on behalf of the Petitioner.

Since the Petitioner claimed that he derived his investment funds through a gift of VND 11,400,000,000 from his parents, we determine that the failure of the Petitioner to provide his tax returns is not material to the instant petition. In addition, on page 3 of his petition, the Petitioner was asked to provide his employment history for the last five years but did not provide any information regarding his employment history. It appears that he was not employed and had no income for the last five years prior to filing his petition.

Lastly, the Chief determined that the Petitioner has not demonstrate compliance with 8 C.F.R. § 204.6(j)(3) because he did not submit certified copies of any judgments or evidence of all civil or criminal actions or governmental administrative proceedings.

On appeal, the Petitioner asserts that there are no civil judgments, criminal actions, or administrative proceedings reportable by him. As such, we determine that the Petitioner has demonstrated compliance with 8 C.F.R. § 204.6(j)(3).

III. CONCLUSION

The record contains sufficient evidence to demonstrate 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. Therefore, the Petitioner has established by a preponderance of the evidence his eligibility for the immigrant investor visa classification.

ORDER: The appeal is sustained.