



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

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

In Re: 15775587

Date: JUNE 26, 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 applied a burden of proof that is far more stringent than the preponderance of evidence standard, misinterpreted the documentary evidence submitted, and relied on erroneous interpretations of the evidence in concluding that there exist material inconsistencies 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 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 asserted that on September 16, 2016, she invested \$500,000<sup>1</sup> in [REDACTED] the new commercial enterprise (NCE), which is associated with [REDACTED] pursuant to the Immigrant Investor Pilot Program. According to the Confidential Private Placement Memorandum of the NCE, the NCE proposed to pool \$50,000,000 from 100 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 two [REDACTED] hotels, which comprise of (1) a [REDACTED] Place, a 238-room guestrooms select-service, transient-oriented hotel, and (2) a [REDACTED] House, a 144-guestroom upscale, extended-stay hotel, in [REDACTED] Washington.

### A. Sources of Funds

The Petitioner asserted that she derived her investment funds through a gift of \$500,000 from her father, [REDACTED] and mother, [REDACTED]. The Chief determined that the Petitioner submitted probative evidence of her parents' income and assets over time, including evidence accounting for funds in accounts used for the transfer of the Petitioner's investment funds. However, upon de novo review, we conclude that the Petitioner has not established by a preponderance of the evidence the claimed lawful sources and the path of her investment funds for the reasons we will discuss below.

The Petitioner has made inconsistent claims regarding the source of her investment funds, submitting different explanations in response to the Chief's inquiries. At the time of filing her petition, the Petitioner initially claimed that her parents obtained the gift funds through (1) her father's salaries from [REDACTED] (BHS), (2) a dividend of 1,889,142 Chinese renminbi (RMB) received by her father from BHS, (3) her father's savings of RMB 812,000, and (4) her mother's salaries from [REDACTED] [REDACTED] now renamed as [REDACTED]<sup>2</sup>

In response to a request for evidence (RFE), the Petitioner stopped claiming her father's savings were used and began asserting the funds came from her father's investment profits. The Petitioner claimed that her parents obtained the gift funds through (1) her father's salaries from BHS, (2) a dividend of RMB 1,889,142 received by her father from BHS, (3) her father's investment profits from his [REDACTED] [REDACTED] trading account (a new source of the gift funds at the RFE response), and (4) her mother's salaries from [REDACTED]<sup>3</sup>

<sup>1</sup> 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 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).

<sup>2</sup> See Exhibit 19a: A statement from the Petitioner, undated.

<sup>3</sup> See Exhibit 1: A statement from the Petitioner's father, dated December 6, 2018.

In response to a notice of intent to deny (NOID), the Petitioner added a new source of the funds, i.e., the sale proceeds of her father's equity interest in a company. The Petitioner claimed that her parents obtained the gift funds through (1) her father's salaries, (2) a dividend of RMB 1,889,142 received by her father from BHS, (3) the sale proceeds of RMB 3,600,000 for the sale of her father's 4.5% equity interest in [redacted] (TXM) (a new source of the gift funds at the NOID response), (4) her father's investment profits from his [redacted] trading account, and (5) her mother's salaries from [redacted]<sup>4</sup>

The sources of the gift funds continued to change at the initial filing, at the RFE response, and at the NOID response. On appeal, the Petitioner does not submit independent objective evidence to resolve these inconsistencies. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

(a) The Petitioner's parents' salaries

To support claims regarding the Petitioner's parents' accumulated employment income, the Petitioner submitted a certificate of employment and income for her father from [redacted] a supervisor at BHS. This certificate of employment and income states that in 2016, the Petitioner's father's monthly salary from BHS was RMB 26,000 and that his income tax was withheld by the company. The Petitioner also submitted certificates of employment and income for her mother from [redacted] a human resources manager of [redacted] which state that the Petitioner's mother's monthly salary in 2016 was RMB 5,650 and that her income tax was withheld by the group. These certificates of employment and income demonstrate the Petitioner's parents' employment and income in 2016 but do not indicate that their salaries were deposited, accumulated, and maintained in their bank account(s) until the claimed amount was gifted to the Petitioner in 2016.

(b) A dividend of RMB 1,889,142 from BHS

With respect to the dividend of RMB 1,889,142 paid by BHS to the Petitioner's father on May 4, 2016, the Petitioner submitted business license of BHS, shareholders resolution, unaudited financial statements of BHS from 2014 to 2016, the Articles of Association of BHS, and a bank statement of the Petitioner's father from Agricultural Bank of China (ABC) account ending in [redacted]. Regarding the claimed lawful source of funds used by the Petitioner's father to acquire ownership interests in BHS, the Petitioner asserted that her father co-founded the company in 1994 and recapitalized the company in 2015 with a fresh investment of his own capital.<sup>5</sup> The Articles of Association of BHS, dated June 30, 2015, states that on June 30, 2015, the Petitioner's father made a capital contribution of RMB 10,440,000 in the company. The Petitioner also submitted two capital increase vouchers from BHS, which indicate that on January 4, 2015 and on July 27, 2015, the Petitioner's father made capital

<sup>4</sup> See Exhibit 8: A statement from the Petitioner's father, dated January 10, 2020.

<sup>5</sup> See Memorandum in Response to Request for Evidence, on page 2, dated December 31, 2018.

contributions of RMB 5,000,000 in the company. The Articles of Association and capital increase vouchers support the Petitioner's father's ownership interests in the company and show that he made the total capital contributions of RMB 20,440,000 in 2015.

While the Petitioner submitted corporate documents related to the formation of the company, including the initial and additional paid-in capital in 2015, no sufficient evidence was submitted explaining the origin of that capital or its lawful sources. *See* 8 C.F.R. § 204.6(e) (providing definition of "capital"). The Petitioner did not submit sufficient evidence to demonstrate that her father's ownership interests in BHS were derived from lawful means. Therefore, the Petitioner has not demonstrated by a preponderance of the evidence that her father's ownership interests in BHS and dividends from the company derived from lawful means.

(c) The sale proceeds of the Petitioner's father's equity interest in TXM

With regard to the sale of the Petitioner's father's 4.5% equity interest in TXM for RMB 3,600,000, the Petitioner submitted Equity Transfer Agreement, dated February 27, 2012, which indicates that on February 27, 2012, the Petitioner's father agreed to transfer his 4.5% equity interest in TXM to a transferee for RMB 3,600,000. The Petitioner also submitted a tax payment certificate, which shows income tax paid on the equity transfer. While these documents indicate that in 2012, the Petitioner's father sold his equity interest in TXM for RMB 3,600,000, they do not show that the claimed accumulation and maintenance of the sale proceeds in the Petitioner's father's account(s) from 2012 until funds were gifted to the Petitioner in 2016.

Furthermore, the Petitioner did not submit sufficient evidence to show that her father's ownership interests in TXM were derived from lawful means. While the Petitioner submitted an agreement to transfer or sell her father's equity interest in the company, no sufficient evidence was submitted explaining the origin of funds used by her father to obtain equity interest in the company or its lawful sources. *See* 8 C.F.R. § 204.6(e) (providing definition of "capital"). The sale proceeds of the Petitioner's father's equity interest in TXM have not been shown to derive from lawful means because the funds used by her father to obtain equity interest in the company have not been shown to derive from lawful means.

(d) Investment profits from the Petitioner's father's Orient Securities trading account

Regarding the Petitioner's father's investment profits from his [redacted] trading account, the Petitioner submitted two investment account statements of her father from [redacted] and a bank statement of her father from ABC. These statements show transfers of RMB 5,000,000 and RMB 2,150,000 from her father's [redacted] account to her father's ABC account ending in [redacted] on January 4, 2015 and on August 26, 2016. The Petitioner's father claimed that all funds in his [redacted] trading account were from his ABC account ending in [redacted] and that the funds in his ABC account ending in [redacted] were from (1) his monthly salaries, (2) dividends from a company, (3) investment profits from his [redacted] trading account, and (4) profits, including dividends and gain from equity transfer, obtained through his investments in other enterprises.<sup>6</sup>

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<sup>6</sup> *See* Exhibit 8: A statement of the Petitioner's father, dated January 10, 2020.

While the Petitioner submitted investment account statements of her father showing how much money he had in his investment accounts with [ ] on January 4, 2015 and on August 26, 2016, no sufficient evidence was submitted explaining the origin of funds used by her father to invest with the company or its lawful sources. *See* 8 C.F.R. § 204.6(e) (providing definition of “capital”). The Petitioner has not shown by a preponderance of the evidence that the purchase of stocks and other financial instruments in her father’s investment accounts occurred with funds derived from lawful means. Accordingly, the Petitioner has not demonstrated by a preponderance of the evidence that the claimed investment profits made by her father from these stocks and other financial instruments derived from lawful means.

In addition, to support claims of the path of her investment funds, the Petitioner submitted a bank statement of her father from ABC for his account ending in [ ] for the period covering from January 1, 2015, to December 31, 2016. However, the record does not contain a full English language translation of this account statement. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). Because the Petitioner did not provide a full English language translation of this account statement, we cannot meaningfully determine details of transactions, the sources of deposits, or whether the partially translated material supports the Petitioner’s claims.

Due to the evidentiary insufficiencies and unexplained inconsistencies regarding the sources of gift funds that have not been overcome with independent objective evidence, we conclude that the Petitioner has not demonstrated by a preponderance of the evidence that the claimed investment funds derived from lawful means.

#### B. Path of Funds

The Petitioner submitted bank statements and transaction receipts showing the following transactions:

- On May 19, 2015, the Petitioner’s father withdrew RMB 310,945 from his ABC account ending in [ ] exchanged RMB 310,945 to \$50,000, and transferred \$50,000 to the Petitioner’s mother’s Wells Fargo Bank account ending in [ ]
- On May 21, 2015, the Petitioner’s father transferred RMB 311,100 from his ABC account ending in [ ] ABC account ending in [ ] On May 21, 2015, [ ] exchanged RMB 310,730 to \$50,000 and transferred \$50,000 from his or her ABC account ending in [ ] to the Petitioner’s JPMorgan Chase Bank (Chase) account ending in [ ]
- On January 28, 2016, the Petitioner’s father transferred RMB 305,000 from his ABC account ending in [ ] ABC account ending in [ ] On January 28, 2016, [ ] exchanged RMB 303,008.90 to \$46,000 and transferred \$46,000 from his or her ABC account ending in [ ] to the Petitioner’s Chase account ending in [ ]
- On September 26, 2016, the Petitioner transferred \$545,000 from her Chase account ending in [ ] to the account of [ ] (the general partner of the NCE).

The documents submitted do not sufficiently demonstrate the claimed accumulation and maintenance of funds from lawful sources in the Petitioner’s father’s ABC account ending in [ ] until transfers to the intermediaries’ accounts as the Petitioner did not submit sufficient evidence to identify how funds arrived in her father’s ABC account ending in [ ]

Moreover, the documents submitted do not sufficiently demonstrate that the funds deposited by the intermediaries into the Petitioner's Chase account ending in [ ] from May 19, 2015 to January 28, 2016 were maintained in the Petitioner's Chase account until deployment to the NCE's designated account on September 26, 2016. The record is unclear as to whether the funds in the Petitioner's Chase account ending in [ ] were comingled with funds from other source(s) not shown to derive from lawful means.

### C. Informal Value Transfer

The Petitioner asserted that she exchanged part of her investment funds from Chinese renminbi to U.S. dollars through a third-party exchanger. On August 30, 2016, the Petitioner's father transferred RMB 2,410,000 from his ABC account ending in [ ] to a third-party exchanger, [ ] China Merchants Bank (CMB) account ending in [ ]. In exchange, on September 2 and 8, 2016, [ ] transferred \$198,000 and \$162,000 from his CMB [ ] Branch account ending in [ ] to the Petitioner's Chase account ending in [ ].

The Chief found that the evidence submitted to address the lawful source and path of funds provided by a third-party exchanger, [ ] failed to address the deficiencies noted in the NOID. Specifically, the Chief determined that the Petitioner has not demonstrated by a preponderance of the evidence the lawful source, path, and ownership of the funds transferred to the Petitioner from the exchanger's CMB [ ] account.

On appeal, the Petitioner contends that she demonstrated that her parents sent funds to [ ] pursuant to a currency exchange arrangement, and [ ] then transferred the same amount in U.S. dollars to the Petitioner's account; and that the Petitioner's funds were derived from a lawful source, a gift from her parents. The Petitioner further contends that she provided far more documentation than necessary to demonstrate the lawful source of her funds by a preponderance of the evidence.

While we acknowledge that the Petitioner derived her investment funds through a gift from her parents, upon de novo review, we conclude that the sources of funds in [ ] CMB [ ] account ending in [ ] have not been sufficiently demonstrated for the reasons we will discuss below.

In the RFE, the Chief requested for evidence of the claimed lawful source and path of funds used by the third-party exchanger, [ ] in the currency exchange. In response to the RFE, the Petitioner submitted a statement from [ ] in which he states that he has worked at BMA [ ] (BMA) since August 2012 earning about 720,000 to 800,000 [ ] dollars [ ] per year and that he made financial investments for profits. To support this claim, the Petitioner submitted a certificate of employment and income for [ ] from [ ] a human resources manager of BMA, which states that [ ] has worked at BMA since August 2012 and that his annual salary in 2018 was about [ ] 800,000. This certificate of employment and income demonstrates the exchanger's employment and income since August 2012 but does not support claims of the lawful sources and claims of the path of how funds arrived in the exchanger's CMB [ ] account ending in [ ].

In response to the NOID, the Petitioner submitted a statement from her father in which he states that his brother, [REDACTED] earned a salary from BMA and used his salary to make financial investments in [REDACTED] for additional income. The Petitioner also submitted account summary of [REDACTED] from CMB [REDACTED] Branch for his account ending in [REDACTED] which show that [REDACTED] 1,264,296.89 and \$185,656.12 on August 31, 2016 and had [REDACTED] 84,852.49 and \$1,911.58 on September 30, 2016. The account summary shows how much money [REDACTED] had in his CMB [REDACTED] account ending in [REDACTED] on August 31, 2016 and on September 30, 2016 but does not support claims of the lawful sources and claims of the path of how funds arrived in his CMB [REDACTED] account. The account summary does not show that [REDACTED] salaries from BMA and investment income were deposited, accumulated, and maintained in his CMB [REDACTED] account ending in [REDACTED] until transfers to the Petitioner's Chase account in September 2016.

As the Chief stated in the RFE, because the Petitioner's funds were routed through a third-party exchanger [REDACTED] and there is insufficient documentation to demonstrate the legitimacy of the exchanger<sup>7</sup> and the funds in the exchange's CMB [REDACTED] account ending in [REDACTED] the Petitioner bears the burden of demonstrating that the funds transferred to the Petitioner's Chase account were obtained by the exchanger through lawful means. Here, the Petitioner has failed to meet this burden. Based on the evidence in the record, it appears that the Petitioner's gift proceeds sent to the exchanger's CMB account ending in [REDACTED] have never left mainland China. While the exchanger claimed that he obtained the exchange funds through his accumulated employment from BMA and investment income, the certificate of employment and income from BMA and his account summary from CMB [REDACTED] Branch do not sufficiently demonstrate that his salaries and investment income were deposited, accumulated, and maintained in his CMB [REDACTED] account ending in [REDACTED] as claimed. Accordingly, we determine that the sources of funds in [REDACTED] CMB [REDACTED] account ending in [REDACTED] have not been sufficiently demonstrated.

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. 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. USCIS' complete path interpretation of the regulations is its authoritative position as explained in the 1998 precedential decisions. *See Borushevskyi v. USCIS*, No. 19-3034, 2023 WL 2663006, at 19-20 (D.D.C. Mar. 27, 2023). These decisions require the petitioner to establish the complete path of funds to demonstrate that the funds were obtained through lawful means. *See id.* at 20.

In the present case, the record reflects that the Petitioner's gift proceeds sent to the exchanger's bank account in mainland China have never left mainland China. The exchanger transferred U.S. dollars from his bank account in [REDACTED] to the Petitioner's bank account in the United States. There is a break in the paths of the Petitioner's funds. Since the Petitioner is unable to establish the complete path of her funds from mainland China to [REDACTED] and then to the United States, the Petitioner must demonstrate by a preponderance of the evidence that the funds occurring after the break in the

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<sup>7</sup> The Petitioner did not claim that the exchanger is a licensed or registered money service business but claimed that the exchanger is her uncle who helped her with the currency exchange for her EB-5 investment.

path derived from lawful means. As explained above, the sources of funds in the exchanger's bank account in [ ] have not been sufficiently demonstrated.

For the reasons we have discussed above, the Petitioner has not established 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.

In light of our discussion on the Petitioner's failure to sufficiently document the lawful sources and the path of funds she purportedly invested in the NCE, we need not consider other eligibility issues, including the Petitioner's failure to satisfy the job-creation requirements. We will reserve this and other eligibility issues for future consideration should the need arise.<sup>8</sup>

### III. CONCLUSION

As the record does not sufficiently 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, the Petitioner has not shown by a preponderance of the evidence that she is eligible 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.

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<sup>8</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).