



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

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

In Re: 21946855

Date: MAR. 15, 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 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.

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 Chief also determined that the record did not establish that [REDACTED] the new commercial enterprise (NCE), will create at least 10 full-time positions for qualifying employees. 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 based on an incomplete review of extensive documentary evidence submitted.

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 NCE. *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.

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.

As required by 8 C.F.R. § 204.6(j)(4)(i), the petition must establish that the investment of the required amount of capital in a new commercial enterprise will create full-time positions for at least 10 qualifying employees within two years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii). For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a new commercial enterprise will create full-time positions for at least 10 qualifying employees within two years, the petition must be accompanied by:

- (A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for 10 qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
- (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the NCE, the need for at least 10 qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

For a new commercial enterprise that is not associated with a regional center, the full-time positions must be created directly by the new commercial enterprise to be counted. 8 C.F.R. § 204.6(e). This means that the new commercial enterprise (or its wholly-owned subsidiaries) must itself be the employer of the qualifying employees who fill the new full-time positions. *Id.*

A petition is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the commercial enterprise. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 employees within the next two years. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit U.S. Citizenship and Immigration Services (USCIS) to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. at 213. Additionally, *Matter of Ho* held that a “comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives.” *Id.*

II. ANALYSIS

The Petitioner indicated on page 5 of his petition that he has invested \$500,000¹ in the NCE. According to the business plan of the NCE, the NCE plans to operate a wholesale granite, tile, and quartz stone importing business in [redacted] Illinois.

The Chief determined that the Petitioner has not demonstrated by a preponderance of the evidence that the capital, which has been invested by the Petitioner in the NCE, was his own and was obtained through lawful means.

At the time of filing his petition, the Petitioner initially claimed that he derived his investment funds through two sources: (1) bonuses of \$200,000 from [redacted] and (2) a loan of \$300,000 from [redacted].

The Petitioner initially submitted an undated letter from an unidentified individual at [redacted] which states that the Petitioner currently works for the company as a business manager. The letter further states that the company has accumulated bonuses of over \$200,000 payable to the Petitioner and that these bonuses were remitted to [redacted] upon the Petitioner's request. The Petitioner also submitted a promissory note between the Petitioner (the borrower) and [redacted] (the lender), which states that the loan of \$300,000 was secured by a lien on personal assets of the Petitioner and that the lender will transfer funds to [redacted] Company, an escrow agent. However, the promissory note does not identify the Petitioner's claimed personal assets.

In response to the request for evidence (RFE), the Petitioner claimed that he derived his investment funds through five sources: (1) salaries and incentives of \$175,000 from [redacted], (2) a gratuity of \$50,000 from [redacted] (3) a commission of \$20,000 from [redacted], (4) salaries and commissions of \$75,000 from [redacted] and (5) a loan of \$300,000 from [redacted].

In response to the RFE, the Petitioner asserted that he owns land, building, and all fixtures of a granite manufacturing company, that the value of these properties and his ancestral homestead land, and home is in excess of \$300,000, and that a market appraisal is being currently obtained. To support this claim, the Petitioner submitted a letter from an accountant, which states that a parcel of land located in [redacted] India, belongs to [redacted]. The Petitioner also submitted a lease deed, which indicates that [redacted] agreed to pay the landowner for the use of a parcel of land to construct a manufacturing company. Although the lease deed listed the Petitioner as the authorized signatory of [redacted] the letter and lease deed do not support claims regarding the

¹ On March 15, 2022, President Joe Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas 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 asserted that the NCE would be principally doing business within a targeted employment area. 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).

ownership of properties by the Petitioner as the land is owned by [REDACTED] which is a separate entity from the Petitioner.

In addition, the Petitioner submitted an affidavit of [REDACTED] which states that the Petitioner agreed to allow him to place a lien on the Petitioner's real estate assets located at several different places in India. However, the affidavit does not identify the Petitioner's claimed real properties in India.

The Petitioner also submitted a letter from the general manager of [REDACTED] which states that the Petitioner has worked for the company as a marketing manager since February 2017 and his basic salary is 20,000 Saudi riyal (SAR). A final settlement statement from [REDACTED] indicates that the Petitioner worked for the company from 2008 to 2016 as a marketing manager and received SAR 181,875 from the company on December 31, 2016 as the final settlement of his employment dues. The Petitioner also submitted bank statements of [REDACTED] which demonstrate the claimed business activities of the company. While the letter and settlement statement support the claimed earnings of the Petitioner from [REDACTED] since 2017 and the amount of a final settlement received by the Petitioner from [REDACTED] at the time of his resignation from [REDACTED] on December 31, 2016, the record does not contain foreign business registrations, business licenses, sample contracts, or other sufficient evidence to corroborate claims in the record and also to demonstrate the claimed lawful business activities of [REDACTED]

The Petitioner also submitted bank statements of the NCE from JPMorgan Chase Bank (Chase) for its account ending in [REDACTED] for the periods covering from July 10, 2018 to April 30, 2019. The bank statements show that a total of \$599,956 was deposited into the NCE's account from July 20, 2018 to February 14, 2019 by two entities [REDACTED]
[REDACTED] In the promissory note between the Petitioner and [REDACTED] was identified as an escrow agent who will receive the loan proceeds of \$300,000 on behalf of the Petitioner. But the record does not contain an escrow agreement or other sufficient evidence to establish that the Petitioner's funds were sent to the NCE through the claimed escrow agent. The record also does not contain complete bank statements or other sufficient evidence to demonstrate that the funds deposited into the NCE's account by two entities came from the Petitioner's account or belong to the Petitioner.

In response to the notice of intends to deny (NOID), the Petitioner claimed that he derived his investment funds through four sources: (1) savings of \$176,400 from salaries and a severance bonus from [REDACTED] from 2008 to 2016, (2) a gratuity of \$48,451 from [REDACTED] (3) a commission of \$20,500 from [REDACTED], and (4) a loan of \$300,000 from [REDACTED]

In response to the NOID, the Petitioner submitted a letter from general manager of [REDACTED] which states that the Petitioner deposited \$225,000 from his salaries and a bonus from [REDACTED] into the [REDACTED] bank account and [REDACTED] transferred this fund to the escrow agent for the Petitioner's EB-5 investment because of the restrictions imposed on non-Saudi nationals living and working in Saudi Arabia on sending large amounts of money in a single transaction. However, the record does not contain the Saudi Arabian foreign exchange controls law or other sufficient evidence to demonstrate that it was lawful for the Petitioner to route his investment funds through [REDACTED]

and also to corroborate claims in the record. In general, the requirements and workings of foreign law are a question of fact, which must be proved by the petitioner. *See Matter of Hsiung*, 22 I&N Dec. 201, 203-04 (Assoc. Comm'r 1998) ("The petitioner here has not presented any evidence as to Taiwanese law regarding the seizure of assets."). Moreover, the record does not contain complete bank statements of the Petitioner and [redacted] earning records of the Petitioner from [redacted] income tax returns of the Petitioner, or other sufficient evidence to corroborate claims in the record.

The Petitioner also submitted a letter from the general manager of [redacted] [redacted] which states that the Petitioner is involved in the company's business of natural stone and works as the authorized representative and that the company pays him a commission of 1.5% of the sales value. The letter further states that the company remitted \$20,050 to [redacted] [redacted] at the request of the Petitioner. However, the record does not contain foreign business registration documents, business license, sample contracts, sales invoices, complete bank statements of [redacted] or other sufficient evidence to corroborate claims in the record and also to demonstrate the claimed lawful business activities of [redacted]

The Chief found that the Petitioner has not submitted sufficient evidence to demonstrate the claimed accumulation and maintenance of the Petitioner's salaries and bonuses from [redacted] from 2008 to 2016 in his account(s), the claimed deposits of the funds into [redacted] bank account in 2017 and maintenance of these funds in [redacted] bank account from 2017 to 2018, and the complete path of the Petitioner's investment funds from their original sources to the account of the NCE.

On appeal, the Petitioner contends that the documents to establish the claimed salaries and bonuses from [redacted] were already provided with the petition and in response to the RFE. At the time of filing his petition, the Petitioner submitted only a letter from [redacted] and the promissory note. In response to the RFE, the Petitioner submitted a final settlement statement from [redacted] undated and unsigned by the issuer of the settlement statement. As noted above, this settlement statement indicates that on December 31, 2016, the Petitioner received SAR 171,875 from [redacted] as a final settlement of his employment dues but does not indicate how much salaries and bonuses he earned during his employment with [redacted] from 2008 to 2016. The record does not contain earning statements, bank statements, income tax returns, or other sufficient evidence to demonstrate the claimed savings of \$176,400 from salaries and a severance bonus from [redacted] from 2008 to 2016.

The Petitioner also contends that the documents to establish deposits of the accumulated funds of \$225,000 into the account of [redacted] from 2017 to 2018 were already provided with the petition and in response to the RFE. At the time of filing his petition, the Petitioner submitted a letter from [redacted] This letter states that bonuses of \$200,000 from [redacted] to the Petitioner was remitted to [redacted] at the request of the Petitioner. However, the record does not contain complete bank statements, earning records, income tax returns, or other sufficient evidence to corroborate this claim. In response to the NOID, the Petitioner submitted bank statements from [redacted] for an account ending in 8002. It is unclear if these bank statements are original statements issued by the bank or an English translation of the original bank statements. These bank statements do not contain a full English translation of the account holder and transaction descriptions as required by 8 C.F.R. § 103.2(b)(3); therefore, we are unable to determine the owner of this account. The Petitioner also submitted various transaction receipts from [redacted] which

show transfers of various amounts from this [] account to [] or the NCE from July 2018 to February 2019. However, the bank statements from [] do not show the claimed deposits of the Petitioner's funds into the [] account. The record does not contain complete bank statements of the Petitioner and [] or other sufficient evidence to corroborate claims in the record.

Regarding evidence of accumulation and maintenance of salaries, bonuses, and commissions from his former and current employers from 2008 to 2016, the Petitioner states that there is no evidence available to show these savings and that he has provided his affidavits to attest that his salaries were earned, saved, and sent to the NCE's account in 2018. In response to the NOID, the Petitioner submitted an affidavit, which states that he saved a total of \$224,851 as his salaries and end of service benefits or a gratuity from [] from 2008 to 2016. The Petitioner also states that he earned \$20,000 as a commission from [] for selling the company's product. However, the record does not contain earning records, income tax returns, complete bank statements, or other sufficient evidence to corroborate these claims. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

With respect to the loan proceeds of \$300,000 from [], the Chief found that the Petitioner has not submitted sufficient evidence to demonstrate the ownership of the Petitioner's real and personal properties, which were used as collateral for the loan; the lawful source of funds he used to acquire these properties; [] placement of a lien on the assets owned by the Petitioner as a result of the promissory note; and the fair market value of the assets owned by the Petitioner, which were used as collateral for the loan. The Chief acknowledged the *Zhang* decision and cited part of the decision, which states: "In assessing large loans taken out by foreign investors, security arrangements might help confirm that the loans are legitimate. . . . And in all cases, the bona fides of a loan tend to show that that its proceeds were lawfully acquired – an independent requirement for any asset to qualify as capital. 8 C.F.R. § 204.6(e)"²

On appeal, the Petitioner contends that the entire evidentiary requirement sought by the Chief as it pertains to the ownership of the assets owned by the Petitioner, which were used as collateral for the loan, is moot since the court ruled in favor of the petitioner, Mr. Zhang, whose position is same as the Petitioner. In *Zhang v. USCIS*, the district court concluded that loan proceeds qualify as cash, not indebtedness, under the EB-5 visa program.³ The circuit court held that the term "cash" as used in 8 C.F.R. § 204.6(e) includes the proceeds of third-party loans and affirmed the district court's decision affording relief to a class of immigrant investors denied visas under an interpretation adopted and announced by USCIS in 2015.⁴ Based on the *Zhang* ruling, we agree with the Petitioner that he is not required to provide additional evidence regarding the ownership of the properties, which were

² *Zhang v. USCIS*, 978 F.3d 1314, 13 (D.C. Cir. 2020)

³ *See id.*

⁴ *See id.*

allegedly used as collateral for the loan, the fair market value of these properties, and a lien placed on these properties as a result of the promissory note.

However, the Petitioner is still required to show that the loan proceeds of \$300,000 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. Here, the Petitioner asserts that [redacted] provided ample evidence of the source of his funds in response to the RFE. In response to the RFE, the Petitioner submitted an account valuation report for [redacted] from Charles Schwab, which indicates that as of April 30, 2019, he had \$3,635,081.81 in his investment accounts with Charles Schwab. The Petitioner also submitted company information about [redacted] from the Inc. Magazine website, which lists [redacted] as a leader of the group that provides information technology services in [redacted] Illinois. The Petitioner also submitted profile of [redacted] from the LinkedIn website, which shows resume of [redacted]. The Petitioner also submitted a newsletter from the Illinois Department of Financial and Professional Regulation Division of Banking, which states that the [redacted] was issued a charter in 2007 and the Board of Director is comprised of eight individuals, including [redacted]. While we acknowledge [redacted] credentials and financial success, the record does not contain earning records, income tax returns, bank statements, or other sufficient evidence to demonstrate the claimed lawful source of \$300,000, which was loaned to the Petitioner for his EB-5 investment.

On appeal, the Petitioner submits new evidence regarding [redacted] Articles of Association of [redacted] dated January 5, 2022, states that [redacted] [redacted] was converted into a limited liability company and that the company is owned by four partners, including the Petitioner. The Petitioner also submits Company Registration Certificate of [redacted] which is valid from February 1, 2022 to February 1, 2025, and Trading Investment License of [redacted] which was valid from February 30, 2021 to December 18, 2022. While these documents demonstrate the legitimacy of [redacted] [redacted] beginning in 2022, these documents do not overcome the deficiencies noted in the Chief's decision. The Petitioner has not submitted sufficient evidence to demonstrate that the capital, which has been invested in the NCE, was his 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.

Furthermore, the Petitioner has not submitted complete bank statements or other sufficient evidence to demonstrate the tracing of the funds from their original sources to the NCE's bank account. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. As stated above, the bank statements of the NCE for its Chase account ending in [redacted] show that a total of \$599,956 was deposited into the NCE's account from July 20, 2018 to February 14, 2019 by two entities [redacted] [redacted]. While the Petitioner claims that [redacted] is an escrow agent for his EB-5 investment and that his salaries, a bonus, a gratuity, and a commission were sent to the [redacted] bank account for his EB-5 investment, the record does not contain sufficient corroborating evidence, such as an escrow agreement, complete bank statements, or other sufficient evidence.

Lastly, the Chief determined that the Petitioner has not submitted sufficient evidence to demonstrate the actual and original sources of his funds despite being given ample opportunity to explain the inconsistencies among the initial filing of the petition, the RFE response, and the NOID response.

At the time of filing his petition, the Petitioner initially claimed that he derived his investment funds through (1) bonuses of \$200,000 from [redacted] and (2) a loan of \$300,000 from [redacted]. In response to the RFE, the Petitioner claimed that he derived his investment funds through (1) salaries and incentives of \$175,000 from [redacted] (2) a gratuity of \$50,000 from [redacted] (3) a commission of \$20,000 from [redacted] (4) salaries and commissions of \$75,000 from [redacted] and (5) a loan of \$300,000 from [redacted]. In response to NOID, the Petitioner claimed that he derived his investment funds through (1) savings of \$176,400 from salaries and a severance bonus from [redacted] from 2008 to 2016, (2) a gratuity of \$48,451 from [redacted] (3) a commission of \$20,500 from [redacted], and (4) a loan of \$300,000 from [redacted].

The sources of the Petitioner's investment funds continued to change at the initial filing, at the RFE response, and at the NOID response. For example, the Petitioner initially claimed that he obtained part of his investment funds in the amount of \$200,000 through bonuses from [redacted]. At the RFE response, the Petitioner claimed that he obtained the \$200,000 through salaries, incentives, a gratuity, and commissions from three different companies [redacted]. At the NOID response, the Petitioner claimed that he obtained the \$200,000 through salaries, a bonus, a gratuity, and a commission from two different companies [redacted]. For another example, the Petitioner initially claimed that he obtained the \$200,000 through bonuses from [redacted]. At the RFE response, the Petitioner claimed that he obtained \$75,000, not \$200,000, through salaries and commissions from [redacted]. At the NOID response, the Petitioner claimed that he did not obtain any funds from [redacted] but his funds were routed through [redacted] bank account due to the restrictions imposed on non-Saudi nationals living and working in Saudi Arabia on sending large amounts of money in a single transaction. 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.

While we are sympathetic to the Petitioner's circumstances, the record supports the Chief's determination that the Petitioner has not demonstrated by a preponderance of the evidence that the capital, which has been invested by the Petitioner in the NCE, was his own and was obtained through lawful means for the reasons we have discussed above.

In light of our discussion on the Petitioner's failure to document the lawful source of funds he purportedly remitted to the NCE as EB-5 capital, we need not consider the other eligibility grounds for denial, that is, the Petitioner's failure to satisfy the job creation requirements⁵ and failure to

⁵ As required by 8 C.F.R. § 204.6(j)(4)(i), the petition must establish that the investment of the required amount of capital

demonstrate that all investment in the NCE derived from lawful means pursuant to 8 C.F.R. § 204.6(g)(1). We will reserve these and other eligibility issues, including the Petitioner's failure to demonstrate that he has placed his own capital at risk,⁶ for future consideration should the need arise.

III. CONCLUSION

As the evidence in the record does not sufficiently demonstrate the lawful source of funds invested in the NCE, we conclude that the Petitioner has not demonstrated by a preponderance of the evidence eligibility for the immigrant investor visa classification.

ORDER: The appeal is dismissed.

in a new commercial enterprise will create full-time positions for at least 10 qualifying employees within two years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii).

⁶ A petitioner must show that he or she has placed his or her own capital at risk, i.e., that he or she was the legal owner of the invested capital. *Matter of Ho*, 22 I&N Dec. 206; *see also Matter of Soffici*, 22 I&N Dec. at 165 n.3 (interpreting 8 C.F.R. § 204.6(e) as requiring that a petitioner establish the funds invested are his or her own).