U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38892081

Date: AUG. 12, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant investor under section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5).[1] This fifth preference (EB-5) classification makes immigrant visas available to qualified immigrants who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Alien investors may invest in a project associated with a U.S. Citizenship and Immigration Services designated regional center. See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102 395, § 610, 106 Stat. 1828 (1992), as amended.

FOD denied the petition, concluding that the Petitioner did not document the lawful source of the funds transferred to the NCE. FOD concluded that the Petitioner had not established an unbroken path to show that the funds the Petitioner transferred to a third party exchanger were the same funds that the exchanger transferred to the NCE.

The Petitioner filed a combined motion to reopen and reconsider. FOD dismissed the motion, concluding that it did not meet the regulatory requirements of either type of motion. The Petitioner has appealed the dismissal of the motion. The matter is now before us on appeal under 8 C.F.R. § 103.3. On appeal, the Petitioner submits additional evidence and maintains that he has shown eligibility for the EB-5 classification.

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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

[1] The EB-5 Reform and Integrity Act of 2022 (RIA), enacted March 15, 2022, revised general eligibility requirements, substantially reformed and codified the Regional Center Program in Section 203(b)(5) of the Act, and added significant new integrity provisions. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). Because the Petitioner filed the petition in June 2021, the relevant law then in existence governs this appellate adjudication.

A petitioner must show that the invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show the lawful source of the funds, an investor must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). 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.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The matter before us is the dismissal of the Petitioner's motion, rather than the previous denial of the underlying petition.

FOD dismissed the Petitioner's motion to reopen because the evidence submitted on motion did not provide new facts. Instead, most of the documents submitted on motion are duplicates of documents that the Petitioner had previously submitted in response to a request for evidence, with the exception of a bank letter containing general information about currency transfers. We agree with FOD that these materials do not establish new facts that would have changed the outcome of the petition. Therefore, we affirm the dismissal of the motion to reopen.

But in dismissing the Petitioner's motion to *reconsider*, FOD quoted the regulations and stated: "The motion to reconsider fails to establish a reason for reconsideration." FOD did not provide any details to explain this summary conclusion. As a result, the Petitioner was not able to address any specific deficiencies on appeal.

The official having jurisdiction over a motion is the official who made the latest decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(ii). In this case, the Petitioner filed a motion on a decision by FOD. Therefore, we do not have jurisdiction over the motion itself, and the proper course of action is to remand the matter to FOD.

FOD must issue a new decision, addressing the specific claims and arguments in the Petitioner's motion to reconsider. If FOD determines that the evidence and assertions are deficient with regard to the requirements of a motion to reconsider, then FOD must specifically identify those deficiencies and explain why the Petitioner's motion does not meet the requirements of a motion to reconsider.

ORDER: FOD's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.