U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9029417

Date: DEC. 8, 2020

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner[1] 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 (EB-5) classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

The Chief of the Immigrant Investor Program Office denied the petition on multiple grounds. Subsequently, we dismissed the appeal on the ground that the record did not establish, at the time the Petitioner filed the petition in April 2017, he had invested or was actively in the process of investing, or had actually committed at least $500,000[2] of his own funds in [redacted] the NCE, whose general partner is [redacted] Regional Center (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.[3] *See* 8 C.F.R. § 204.6(g)(1), (j)(2) (2017); *Matter of Soffici*, 22 I&N Dec. 158, 164-65 n.3 (Assoc. Comm'r 1998).[4]

The Petitioner now files combined motions to reconsider and reopen the proceeding. In support of the motions, the Petitioner submits a brief but does not present additional evidence. Upon review, we will dismiss the combined motions.

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[1] As noted in our December 2019 letter to the Petitioner and [redacted] the attorney who assisted him in filing the instant combined motions, the record lacks a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. As such, we consider the Petitioner to be self-represented for this motion filing.

[2] The Petitioner states that the NCE is located in a targeted employment area and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2017).

[3] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (2017).

[4] In our prior decision dismissing the appeal, we did not address the Chief's other grounds for denial, which related to the sources of the Petitioner's purported investment funds, inconsistencies concerning his employment history, impermissible material changes to the petition, and lack of English translations of foreign language documents that met regulatory requirements under 8 C.F.R. § 103.2(b)(3). Should the need arise, we will review the Chief's additional grounds for denial.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

In addition, the regulation specifies motion filing requirements, providing that a petitioner must submit "a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed."

Moreover, to show eligibility for the EB-5 classification, a petitioner must establish, by a preponderance of the evidence,[5] among other requirements, that at the time he or she filed the petition he or she "ha[d] invested or [was] actively in the process of investing the required amount of capital" and "ha[d] placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk." 8 C.F.R. § 204.6(j)(2) (providing that a petitioner "must show actual commitment of the required amount of capital"); *see also* 8 C.F.R. § 103.2(b)(1) (providing that a petitioner "must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication"); *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Soffici*, 22 I&N Dec. at 164-65 n.3 (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are his [or her] own").

II. ANALYSIS

The Petitioner filed the petition on April 19, 2017. He claimed on pages 4 through 6 of the petition that he invested $500,000 in the NCE. He stated on page 6 that his investment funds derived from a 3,500,000 Renminbi (RMB) loan he obtained using his property as collateral. According to pages 6 through 9 of the November 2016 business plan, the NCE sought to raise up to $15,000,000 EB-5 funds from 30 foreign national investors to loan to [redacted] the job creating entity (JCE). The JCE planned to use the EB-5 capital and other funds for "the development, construction and subsequent operations of [redacted] The project was known as the [redacted]

We will dismiss the Petitioner's combined motions because they do not include "a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." *See* 8 C.F.R. § 103.5(a)(1)(iii)(C), (a)(4). In the alternative, we will dismiss the motions for the reasons set forth below.

[5] If a petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also* 6 *USCIS Policy Manual* G.2(E), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2.

A. Motion to Reopen

As noted, a motion to reopen "must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2). On motion, the Petitioner does not present any additional evidence. Instead, he alleges that we erred in our evaluation of the evidence already in the record. We will dismiss his motion to reopen because the motion filing does not state new facts or include affidavits or other documentary evidence in support of the new facts, as required under 8 C.F.R. § 103.5(a)(2).

B. Motion to Reconsider

Similarly, we will dismiss the Petitioner's motion to reconsider the matter. For the reasons we discuss below, we find that our previous decision is not based on an incorrect application of USCIS or Department of Homeland Security (DHS) law or policy, and that the Petitioner's motion filing has not demonstrated that our prior decision is incorrect based on the evidence before us when we issued the decision. *See* 8 C.F.R. § 103.5(a)(3).

On motion, the Petitioner alleges, as he did on appeal, that at the time he filed the petition in April 2017 he had already invested $500,000 in the NCE. As we discussed in our previous decision, the record does not support this assertion. The record, including bank statements, shows the following transactions and events:

	Date	Amount	Transactions/Events
1	March 20, 2017	3,500,000 RMB	The *Petitioner* received loan proceeds from a lender.
2	March 23,2017	3,500,000 RMB	The *Petitioner* remitted funds to [redacted] whom the Petitioner had referred to as "an agent," "an exchanger," and "a friend."
3	March 24, 2017	3,500,000 RMB	[redacted] remitted funds to [redacted] *Real Estate Co., Ltd.*
4	April 4, 2017	$340,000	[redacted] *Holding LLC* remitted funds to [redacted]
5	April 4, 2017	$160,000	[redacted] *Group Corp.* remitted funds to [redacted]
6	April 11, 2017	$4,850,000	[redacted] *Real Estate Co., Ltd.*[6] remitted funds (equivalent to 33,547,935 RMB according to bank records) to [redacted] *International LLC.*
7	April 14, 2017	$500,000	[redacted] remitted funds to the *Regional Center*, noting "EB5 Investment Fund for [the Petitioner]."
8	April 16, 2017	$500,000	The *Regional Center* issued a check payable to the *NCE*, noting on the memo line: "Capital Contribution to LP – [the Petitioner]."
9	April 19, 2017	The Petitioner filed the instant petition.	

[6] According to an organizational chart entitled "[redacted] International LLC," which the Petitioner offered on appeal, [redacted] International LLC is a wholly owned subsidiary of [redacted] Real Estate Co., Ltd.

	Date	Amount	Transactions/Events
10	July 26, 2017	$160,000	[redacted] *International LLC* issued a check, payable to [redacted] *Group Corp.*, without indicating that the transaction is associated with the Petitioner.
11	August 27, 2017	$340,000	[redacted] *International LLC* issued a check, payable to [redacted] *Holding LLC*, noting on the memo line: "eb-5 Repayment for [the Petitioner]."

The record shows that at the time the Petitioner filed the petition his funds were with [redacted] International LLC. *See* Events #1-#3, and #6 listed in the chart above. The funds – $500,000 – he claimed to have invested in the NCE on April 16, 2017, were derived from [redacted] Holding LLC and [redacted] Group Corp. *See* Events #4 and #5 listed in the chart above. As noted in our previous decision, [redacted] Holding LLC owns the JCE.[7] Additionally, according to organizational charts the Petitioner submitted on appeal, the parent company of [redacted] Group Corp. is owned by the same individuals who own the parent company of [redacted] Real Estate Co., Ltd., and [redacted] International LLC. The record does not demonstrate that [redacted] s transfer of U.S. dollars that had originated from [redacted] Group Corp. and [redacted] Holding LLC (a company that owns the JCE) constituted the Petitioner's investment in the NCE, when his funds remained with another company – [redacted] International LLC. The evidence thus does not support a finding that at the time he filed the petition, he had actually committed the required amount of capital in the NCE. *See* 8 C.F.R. § 204.6(j)(2); *see also* 8 C.F.R. § 103.2(b)(1). As such, he has not established his eligibility for the EB-5 classification.

On motion, as well as on appeal, the Petitioner claims that [redacted] Group Corp. and [redacted] Holding LLC had "advanced" funds to him to invest in the NCE. *See* Events #4 and #5 listed in the chart above. The Petitioner, however, has not pointed to any legal authority that supports his claim that a remittance of advanced funds, which he did not own, satisfies the requirements that he had actually committed at least $500,000 of his own funds in the NCE. *See* 8 C.F.R. § 204.6(j)(2); *see also* 8 C.F.R. § 103.2(b)(1); *Ho*, 22 I&N Dec. at 210-11; *Soffici*, 22 I&N Dec. at 164-65 n.3 (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are his [or her] own").

In addition, in our previous decision, we raised additional concerns surrounding the Petitioner and [redacted] s purported currency swap. For example, the Petitioner has not sufficiently demonstrated that the $4,850,000 [redacted] Real Estate Co., Ltd., sent to [redacted] International LLC in April 2017 included the 3,500,000 RMB he had transferred to [redacted] in March 2017. *See* Events #2, #3 and #6 listed in the chart above. We noted in our prior decision that [redacted] Real Estate Co., Ltd.'s bank documents indicated that funds from the Petitioner, through [redacted] had commingled with sums from many other sources, and thus do not adequately confirm that the Petitioner's funds, in their entirety, were part of [redacted] Real Estate Co., Ltd.'s $4,850,000 remittance to [redacted] International LLC.

[7] According to pages 18-19 of the NCE's November 2016 business plan, the JCE "is owned by [redacted] Holding LLC" and that [redacted] Holding LLC "is owned 99% by [redacted] Holdings LP and 1% by [redacted] In addition, the Petitioner states on page 4 of his appellate brief, that [redacted] who manages and owns [redacted] Holding LLC, "is also the Principal of the Regional Center."

Moreover, we noted that according to a May 2017 Certificate of Overseas Investment of Enterprise, [redacted] Real Estate Co., Ltd., remitted the large sum to [redacted] International LLC to engage in overseas investment. On motion, the Petitioner points to a December 2018 letter from an attorney in China, claiming that [redacted] Real Estate Co., Ltd.'s $4,850,000 remittance was "to assist EB-5 investors" and "in full compliance with the relevant Chinese laws and rules." These statements, however, are inconsistent with the Certificate of Overseas Investment of Enterprise, which specifies that the company must use the funds "to engage in the overseas investment," and inconsistent with the company's 2017 business license, which states that the business scope is "real estate development; property management; real estate information consulting services." *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (noting that "it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice"). The Petitioner has not sufficiently demonstrated that [redacted] Real Estate Co., Ltd., may act as a currency exchanger to facilitate his personal investment in the NCE.

In our previous decision, we noted additional concerns over the path of the Petitioner's purported investment funds. *See Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). We explained that even if we were to accept [redacted] Group Corp. and [redacted] Holding LLC's advanced funds qualified as the Petitioner's EB-5 capital, which we did not, the Petitioner had not presented sufficient documentation verifying how the companies acquired the funds for the advancement. As noted in our prior decision, [redacted] Holding LLC's documentation, including its tax documents, did not show it had enough lawfully acquired cash to make the $340,000 advancement in April 2017. Similarly, [redacted] Group Corp. documents did not confirm that it had sufficient lawfully obtained cash to make the $160,000 advancement in April 2017.

On motion, the Petitioner points to the NCE's business plan as supporting evidence. The business plan, however, does not establish how [redacted] Holding LLC acquired the $340,000 or how [redacted] Group Corp. acquired the $160,000 that the businesses remitted to [redacted].[8] *See* Events #4 and #5 listed in the chart above.

The Petitioner also argues on motion that our prior decision violated the Administrative Procedure Act (APA) by "request[ing evidence] of a third-party's source of funds" and we erred in applying an incorrect, heightened standard of proof. The record does not support this contention. In our previous decision, we required the Petitioner to document the lawful source and path of the funds he claimed to have invested in the NCE in April 2017. Such requirements are specified in the regulation at 8 C.F.R. § 204.6(e) and (j)(2). *See also* 8 C.F.R. § 103.2(b)(1); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195; 8 C.F.R. § 204.6(g) (providing that "the source(s) of all capital invested [in the NCE must be] identified and [a petitioner must establish] all invested capital has been derived by lawful means"). For the reasons we have discussed in this decision dismissing the combined motions, as well as in our decision dismissing the appeal, we conclude that the Petitioner has not satisfied the regulatory requirements or established, by a preponderance of the evidence, his eligibility for the EB-5 classification. Specifically, he has not demonstrated that, at the time he filed the petition, he, more

[8] USCIS record shows that [redacted] Holding LLC had "advanced" cash to multiple foreign nationals who were seeking EB-5 classification.

likely than not, had actually committed to the NCE at least $500,000 of his own funds. *See* 8 C.F.R. § 204.6(j)(2).

III. CONCLUSION

We will dismiss the Petitioner's combined motions under 8 C.F.R. § 103.5(a)(1)(iii)(C), (a)(4). In the alternative, we will dismiss his motion to reopen the proceeding because his filing does not state new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. In addition, we will dismiss his motion to reconsider the matter because he has not established that we based our prior decision on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record at the time of the decision.

ORDER: The motion to open is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.