U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39658287

Date: DEC. 16, 2025

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner sought to invest $500,000 towards construction of an apartment/hotel/restaurant complex and seeks classification under the employment-based, fifth-preference (EB-5) immigrant visa category as an immigrant investor. *See* Immigration and Nationality Act (the Act) section 203(b)(5)(A), 8 U.S.C. 1153(b)(5)(A) (2021).[1] This category makes immigrant visas available to aliens who invest requisite amounts of qualifying capital in new commercial enterprises that would benefit the U.S. economy by creating at least 10 full-time positions per alien investor. *Id.*

Field Operations Directorate (FOD) denied the petition, and we dismissed the Petitioner's following appeal and combined motions to reopen and reconsider. *See In Re: 39658287* (AAO May 30, 2025). We affirmed FOD's conclusion that, contrary to regulations, the Petitioner did not demonstrate lawful sources of his investment funds.

The matter returns to us on the Petitioner's motion to reconsider. Citing U.S. district court decisions, he contends that we erred in requiring him to document sources of funds he received from third parties. The Petitioner also argues that the evidence shows that his investment funds derived from lawful sources.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that the cited court decisions do not bind us in this matter and that he has not sufficiently established the complete paths and lawful sources of his investment funds. We will therefore dismiss the motion.

I. LAW

A motion to reconsider must demonstrate that our prior decision misapplied law or policy based on the evidence at the time of the decision's issuance. 8 C.F.R. § 103.5(a)(3). On motion, our scope of

[1] U.S. Citizenship and Immigration Services (USCIS) does not generally apply section 203(b)(5) of the current Act to petitions filed before March 15, 2022. *See generally* 6 *USCIS Policy Manual* G.1(A), www.uscis.gov/policy-manual (distinguishing between immigrant investor petitions filed before and after enactment of Congress' 2022 amendments to the Act).

review is limited to our prior decision. 8 C.F.R. § 103.5(a)(1)(i), (ii) (restricting review to "the decision that the motion seeks to reconsider" and "the latest decision in the proceeding"). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

Immigrant investors must demonstrate that they invested "capital obtained through lawful means." 8 C.F.R. § 204.6(j)(3); *see also* 8 C.F.R. § 204.6(e) ("Assets acquired, directly or indirectly, by unlawful means ... shall not be considered capital.") To show that the Petitioner lawfully obtained his investment funds, he must document their paths and sources. *See Nguyen v. USCIS*, No. 22-56068, 2023 WL 8251320, at *1 (9th Cir. Nov. 29, 2023) ("USCIS regulations allow an inquiry into the legality of an investor's source *and* path of funds.") (emphasis in original); *Matter of Soffici*, 22 I&N Dec. 158, 164-65 (Assoc. Comm'r 1998) (holding that evidence of funding sources "is relevant to the question of whether the funds have been lawfully obtained"); *Matter of Izummi*, 22 I&N Dec. 169, 195 (BIA 1998) (holding that a petitioner did not demonstrate the source of his investment funds where he did not "document[] the path of the funds").

Our prior decisions in this matter affirmed FOD's conclusion that the Petitioner provided insufficient evidence to demonstrate the complete paths and lawful sources of the Petitioner's investment funds. First, we found insufficient documentation of the source of about $162,000 of his $500,000 cash investment. The record shows that a property promotion company registered in the British Virgin Islands (BVI) and doing business in China, transferred the $162,000 in U.S. dollars to a friend of its finance manager in China. The finance manager's friend then sent the funds to a currency exchanger in China.[2] The exchanger then transferred the funds to the Petitioner's [redacted] account. We found insufficient evidence that the company earned the initial funds from commissions, as claimed, or from other lawful sources.

We also found insufficient documentation regarding the paths and sources of the Petitioner's remaining investment funds. The record indicates that his spouse transferred $338,000 worth of funds in Chinese currency to the finance manager's friend. The Petitioner states that the finance manager's friend then forwarded the funds to the finance manager. Ultimately, the BVI company doing business in China purportedly converted the funds into U.S. dollars, and the funds were sent to the Petitioner's [redacted] account, and then to the NCE. We found insufficient evidence of how the funds were converted from Chinese currency to U.S. dollars and that their path from the finance manager to the Petitioner were not fully documented.

A. The Court Decisions Cited by the Petitioner Do Not Bind Us in This Matter

On motion, the Petitioner cites U.S. district court decisions that he says show our error in requiring him to document the sources of funds he obtained from third parties, including the BVI company and the currency exchanger. *See Zhou v. Noem*, No. 19-2650 (TJK), 2025 WL 416152, (D.D.C. Feb. 6, 2025); *Battineni v. Mayorkas*, 752 F. Supp. 3d 195, 214 (D.D.C. 2024).

[2] The Petitioner initially described the currency exchanger as a friend. Because we have referred to him as a currency exchanger in prior decisions, we will continue to do so. But there is no evidence that this person exchanges currency for a living or has Chinese government authorization to exchange currency.

The cited decisions limited USCIS' source-of-funds inquiries in those matters to only the alien investors' "immediate" funding sources. For example, in *Battineni*, alien investors did not demonstrate sources of funds in an individual lender's bank account from where the aliens received portions of their EB-5 investments. *Battineni*, 752 F. Supp. 3d at 208-09. The court found that the investors need not document sources "beyond their initial acquisition" of funds and that 8 C.F.R. § 204.6(j)(3) does not require "evidence of where" other "person[s] or entit[ies] obtained their funds." *Id.* at 214.

The cited district court decisions, however, do not bind us in this matter. *See Trump v. CASA, Inc.*, 145 S.Ct. 2540, 2560 n.17 (2025) (stating that "district court opinions lack precedential force even vis-à-vis other judges in the same judicial district"). Also, other U.S. district courts have upheld USCIS' method of determining lawful funding sources. *See Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 128 (D.D.C. 2023), *aff'd*, No. 23-5116, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *Truong v. USCIS*, No. CV 21-316 (RC), 2023 WL 4234658 at *5 (D.D.C. June 28, 2023); *Sadeghzadeh v. USCIS*, 322 F. Supp. 3d 12, 17-18 (D.D.C. 2018).

In *Borushevskyi*, for example, an alien investor stated that his EB-5 investment funds derived from income from his foreign business. *Borushevskyi*, 664 F. Supp. 3d at 123, 124. USCIS found insufficient evidence that his business generated lawful profits or revenue. *Id.* The court affirmed "the requirement that the alien identify the source of the [business's] funds, which is demonstrated through documentation evidencing *the complete path of the funds*." *Id.* at 128 (emphasis added).

Moreover, when establishing the EB-5 program, Congress indicated that it would not tolerate investment of unlawful funds. If the U.S. government learned that an alien invested money obtained through unlawful means, Congress intended that the "processing of an individual visa not continue." S. Rep. No. 101-55, at 21 (1989); *see also* 8 C.F.R. § 204.6(j)(3) (requiring evidence "[t]o show that the petitioner has invested, or is actively in the process of investing, *capital obtained through lawful means*") (emphasis added).

Thus, we decline to follow the U.S. district court decisions cited by the Petitioner.

B. The Evidence Does Not Sufficiently Demonstrate Lawful Sources of the Petitioner's Funds

The Petitioner also contends that, even if he must document the source of third-party funds, our prior decision erred in finding insufficient evidence of those funds' lawful sources. He asserts that we misunderstood the funds' paths to him and undervalued evidence of the BVI company's receipt of lawful business income.

The Petitioner contends that our latest decision misstated that, to convert her Chinese currency into U.S. dollars, his spouse had to leave China. Our decision states: "The record still does not contain material, relevant, or probative evidence to demonstrate the Petitioner's spouse's funds ever left China in order to be exchanged into U.S. dollars." The Petitioner states that the BVI company converted her Chinese funds into U.S. currency without the funds' leaving China.

If the BVI company converted the funds from the Petitioner's spouse into U.S. currency within China, the Petitioner has not documented that conversion or how he ultimately received the U.S. currency.

Even if we erred in indicating that his spouse's funds had to leave China, without evidence of the funds' conversion into U.S. currency and the U.S. currency's path to the Petitioner, he has not established that the error would have changed our decision. Thus, the error was, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

The Petitioner also points to evidence of the BVI company's purported lawful business activities. He submitted a copy of the company's September 2014 bank account statement showing receipt of $232,974.21 from a Dubai property development firm and a $45,246.45 "sub-commission" payment to an intermediate agency in China. The evidence also includes a March 2014 agreement with the Dubai firm, two April 2014 commercial invoices between the BVI company and the Dubai firm, brochures of products promoted by the BVI company, and the company's incorporation certificate.

Despite the Petitioner's evidence, the record still does not sufficiently establish the lawfulness of the BVI company's income. The company's September 2014 bank statement has limited evidentiary value because it covers only one month: the month in which it purportedly sent funds to a friend of its finance manager. Bank statements covering a longer time period before the claimed currency exchange would have better shown the nature of the company's income. Similarly, much of the other evidence is from only two additional months: March and April of 2014. Further, as previously indicated, the record does not document how the funds made their way to the Petitioner.

The Petitioner has not demonstrated lawful sources of his investment funds or completely documented their paths to him. We will therefore affirm the petition's denial.

III. CONCLUSION

The Petitioner's motion does not establish our prior decision's misapplication of law or policy. The motion also does not demonstrate his eligibility for the requested benefit.

ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are unlawfully present, or who are otherwise inadmissible or deportable, may receive Forms I-862, Notices to Appear, placing them in removal proceedings. *See* section 240 of the Act, 8 U.S.C. § 1229a. Removal proceedings may result in an alien's removal from the United States and ineligibility for future U.S. visas or other immigration benefits.