U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39426841

Date: FEB. 12, 2026

Appeal of Field Operations Directorate (FOD) 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).[1] This fifth preference (EB-5) classification makes immigrant visas available to aliens 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. Aliens may invest in a project associated with a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. *See* section 203(b)(5)(E)(i) of the Act.

The Field Operations Directorate (FOD) issued a notice of intent to deny (NOID) the Form I-526, Immigrant Petition by Alien Entrepreneur (petition) alleging the record did not establish that the capital the Petitioner invested, or was actively in the process of investing, was obtained through lawful means. Even though the Petitioner timely responded to the NOID, FOD denied the petition for a lack of a response. The Petitioner then filed a motion to reopen and reconsider the FOD ultimately dismissed. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) 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 a petitioner cannot demonstrate were acquired directly or indirectly by lawful means will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of

[1] On March 15, 2022, the EB-5 Reform and Integrity Act was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in INA 203(b)(5), and adding significant new integrity provisions.
https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221006 EB5ReformAndIntegrityAct.pdf.
As the Petitioner filed this petition in September of 2016, the relevant law in existence on that date governs this appellate adjudication.

the evidence that the capital was their 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 invested, or actively in the process of being invested, was obtained from a lawful source and through lawful means, a petitioner must document the path of the funds. *See generally* 6 *USCIS Policy Manual* G.2(A)(2), https://www.uscis.gov/policymanual (citing *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.

II. ANALYSIS

We begin noting that the vast majority of the Petitioner's evidence relating to the lawful source of their funds was in a foreign language. Both the initial petition filing and the NOID response included a single document from one organization reflecting that company certified all of the translations of the foreign language material. These two documents serve as blanket certifications of the translations into English. "Petitioners and applicants for immigration benefits are required by regulation to provide certified English translations of any foreign language documents they submit." *Matter of Nevarez*, 15 I&N Dec. 550, 551 (BIA 1976) (citing 8 C.F.R. § 103.2(b), now promulgated at 8 C.F.R. § 103.2(b)(3)) which states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

The language utilized within the regulation implicitly precludes a single certification that validates several translated forms of evidence unless the certification specifically lists the translated documents. Without a single translator's certification for each foreign language form of evidence, or a translator's certification specifically listing the documents it is validating, the certification cannot be regarded to be certifying any specific form of evidence. The final determination of whether evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS).

As noted above, the regulation does not contain any provision that allows for such a blanket translation certificate. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies, does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Consequently, any foreign language document containing deficiencies in translation or based on a blanket certification of translation is not probative evidence. This means that any material in the record that is in a foreign language does not meet the requirements for that type of material, the translations are not probative, and they will not serve to corroborate the Petitioner's claims. This shortcoming serves as a sufficient basis to prevent the petition's approval as the Petitioner cannot demonstrate the lawful source of their funds.

The original petition denial included two distinct shortcomings—the lawful source of the funds that the Petitioner's mother gave to her as a gift to make the investment, and the Petitioner's failure to

sufficiently document the path of her funds she transferred to the United States. The motion dismissal discussed the mother's involvement again, while also deciding the filing did not meet the regulatory requirements for a motion to reopen or a motion to reconsider. We agree with FOD that the motion filing did not meet the requirements for a motion to reconsider.

Turning to the motion to reopen, FOD and the Petitioner appear to be in disagreement as to whether the NOID response was submitted timely. FOD's NOID notice was dated October 15, 2024, but listed a deadline to respond of December 30, 2024. USCIS systems appear to reflect the NOID was actually issued on November 27, 2024, which would have afforded the Petitioner with 33 days in line with regulatory requirements. When FOD denied the petition on January 21, 2025, they indicated that as of the date of the denial, USCIS did not have a record of a response to the NOID. In the decision on the motions, FOD stated, "the evidence in the record fails to demonstrate that the denial due to abandonment was erroneous." But in both the motion filing and the appeal, the Petitioner claims they timely responded to the NOID. And the shipping evidence attached to the NOID response bears out that she timely responded to the notice on December 27, 2024.

With that issue resolved, we move to the motion contents. The motion brief only provided "Page 1 of 2" of the motion brief, and within that single page it solely discussed the basis for a motion to reopen. That single page was adequate to meet the motion to reopen requirements as the filing showed she timely responded to the NOID and it provided the material that comprised the NOID response. As we noted above, even though FOD decided the motion to reopen requirements were not satisfied, it still provided analysis of some of the evidence pertaining to the Petitioner's mother and her gift that comprised the intended investment.

On appeal, the Petitioner raises two issues. First, she claims and provides evidence to show that she submitted her NOID response timely, despite FOD's indications otherwise. And we already agreed with that above. Her second allegation of error relates to the FOD motion dismissal in which the Petitioner claims USCIS did not consider all of the evidence associated with the lawful source of her funds, and she lists one mistake in the motion dismissal pertaining to a previous employer. But recall we already determined the record contains evidentiary shortcomings associated with the foreign language material and its translations into English relating to her lawful source of funds documentation.

Even if that fatal evidentiary flaw was not present, the petition would remain denied because the record still does not adequately establish the lawful source of her funds. FOD's NOID included two distinct issues, and we agree that both hinder this petition's approval. First, FOD noted the Petitioner did not fully document the path of her funds and sought a diagram or chart explaining the path of her funds in addition to "all transactions with bank account numbers, names of individual/corporate bank account holders, and dates, or other sufficient evidence. In addition, please submit all reference bank accounts . . . to demonstrate the tracing of the funds from Petitioner's overseas account(s) to the NCE's bank account." And second, FOD was concerned with the lawful source of the gifted funds from the Petitioner's mother to make the investment.

Relating to the first issue, (documenting the path of her funds), the Petitioner's NOID response did not address any aspect of this material, nor did she offer evidence in response to the NOID. Even though FOD stated an incorrect reason to support their abandonment determination (as of the due date

USCIS did not receive her response), it remains that she did not provide other requested material necessary to the processing and approval of her case (i.e., documents relating to the path of her funds). This is an alternative basis the FOD could have used to deny the petition for abandonment.

Even within the appeal, the Petitioner has not offered evidence relating to this requirement. When the Petitioner failed to respond to the NOID for this topic, they abandoned the issue. She once more abandoned the issue when she did not sufficiently address it in the appeal. Any argument a filing party does not contest after being placed on notice is deemed waived. *Matter of G-C-I-*, 29 I&N Dec. 176, 182 n.4 (BIA 2025); *see also Stanley v. City of Sanford, Fla.*, 145 S. Ct. 2058, 2071 (2025) (concluding arguments the filing party does not raise on appeal will not be addressed).

And the Petitioner cannot revive that issue within these proceedings; not even in a motion to reopen filed on this appellate decision. In general, motions are not the proper venue for a foreign national to raise an issue for the first time that could have been presented earlier. *Cardona-Franco v. Garland*, 35 F.4th 359, 363 (5th Cir. 2022). A filing party cannot cure their failure to preserve an argument in a previous stage of the same proceedings by amending their brief, nor through a post-adjudicative motion. *Philipp v. Stiftung Preussischer Kulturbesitz*, 77 F.4th 707, 709–10 (D.C. Cir. 2023). *See also Mungongo v. Gonzales*, 479 F.3d 531, 534–35 (7th Cir. 2007) (concluding where a filing party fails to contest that they complied with the requirements for a motion to reopen or a motion to reconsider, a ruling in their favor is not warranted as they have effectively waived those issues).

Because the above bases for the petition's denial is dispositive of this appeal, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also M-C-C-*, 29 I&N Dec. 401, 405–06 (BIA 2026) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

For the reasons we discuss above, we conclude that the Petitioner has not preponderantly established eligibility for this classification. Specifically, even though they may have responded to the NOID, they did not meet the requirements of a motion to reconsider in the most recent decision, nor did they address all the mandatory requirements contained within the NOID.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.