U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39488406

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) denied the Form I-526, Immigrant Petition by Alien Entrepreneur (petition), concluding that the record did not establish that the capital invested or that the Petitioner was actively in the process of investing had been obtained through lawful means. FOD dismissed a subsequent motion to reopen and reconsider. 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 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).

[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.

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.

Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).[2] Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." A motion to reconsider must establish that our 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). Motions that do not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

FOD denied the petition based on their determination that the Petitioner provided inconsistent claims relating to where he obtained the funds to transfer to the escrow account. They noted he initially claimed his funds came from his business, a rental income, and from personal funds, but in response to FOD's request for evidence, his claims changed to originating from an access bond, a home equity line of credit, or another loan. Regarding these inconsistencies, FOD informed the Petitioner that he should have resolved that contradiction with independent and objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988). FOD also denied the petition because a break in the path of his funds existed between their point of origin and eventual transfer into the escrow account.

Subsequently, they dismissed the Petitioner's motions concluding that he failed to provide new information or sufficient evidence to warrant granting either type of motion. And a review of the motion filing reveals that even though the brief identified the regulatory provisions that govern motions, it fell short of expressing what his new facts were, nor did it support his allegations of error with any of the required authorities. We note his "reminder" to FOD that the standard of proof was the preponderance of the evidence was inadequate to satisfy the motion to reconsider requirements.

Accompanying the motion, the Petitioner provided a personal statement in which he claimed he never stated the funds he invested in the NCE were traceable to a combination of income from some of his businesses and rental income from rental homes he owns. However, a review of page 11 of the cover letter he submitted with the petition reveals that he offered that exact claim.

[2] We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

We begin any appeal ensuring the filing party identifies an erroneous conclusion of law or statement of fact within the most recent decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v), 103.3(a)(2)(i)–(iv). This applies to appeals of adverse conclusions on petitions and applications, or on adverse motion decisions. Under that framework, we look to whether FOD met their responsibilities for that particular type of decision (e.g., petition denials or revocations versus motion dismissals). We emphasize that the Petitioner has not appealed the December 2022 petition denial itself, but rather FOD's subsequent dismissal of his combined motion to reopen and reconsider dated April 11, 2025. In the April 2025 decision, FOD did not primarily focus on their prior denial for the petition. Instead, they briefly touched on their findings in the denial but ultimately concluded that the motions did not meet the applicable requirements. Therefore, the question before us on appeal is whether FOD erred in dismissing the combined motions.

When it comes to motions, we evaluate the following:

1. For a motion to reopen at 8 C.F.R. § 103.5(a)(2) we consider whether the Petitioner stated new facts and supported those facts with documentary evidence; and
2. For a motion to reconsider at 8 C.F.R. § 103.5(a)(3) we consider whether the Petitioner established FOD's prior decision was based on an incorrect application of law or policy, and whether the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

As a result, we consider whether the Petitioner has demonstrated that FOD improperly dismissed the motion to reopen and reconsider. But here, the Petitioner's appeal brief opens addressing the merits of the original petition denial and it is unnecessary that we evaluate those claims unless he demonstrates an adequate error in the motion dismissal.

With regard to the motions dismissal, the Petitioner asserts that FOD's "motion denial conflates evidentiary sufficiency with format preferences. It is not a legal requirement that a petitioner match every deposit and withdrawal with documentary receipts. Rather, users must determine whether the explanation and evidence provided make it more likely than not that the invested funds were lawfully sourced and traceable." The only legal authority the Petitioner cites to support this statement is a single non-binding district court opinion.

First, the Petitioner does not expound on what "format preferences" he is alleging, and we will not discuss that issue further. Second, we agree that the regulation does not specifically state "that a petitioner [must] match every deposit and withdrawal with documentary receipts." Instead, contrary to the Petitioner's claims, the lawful source of a petitioner's invested funds—to include demonstrating the full path the funds journey into the escrow account—is governed by regulatory provisions as well as precedential decisions. The regulation at 8 C.F.R. § 204.6(e) and (j)(3) supports USCIS' requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds.

The Petitioner relies on *Battineni v. Mayorkas*, 752 F. Supp. 3d 195, 211 (D.D.C. 2024), in which the court stated the *Izummi* case "was about the petitioner's ownership of the funds–not the lawfulness of the source of funds." That determination is belied by the analysis in *Izummi* in which they cited to 8 C.F.R. § 204.6(j)(3)(i)–(iv) under the heading: "Source of funds." That regulatory provision clearly

relates to the lawfulness of funds and provides in pertinent part: "To show that the petitioner has invested, or is actively in the process of investing, capital obtained *through lawful means*, the petition must be accompanied, as applicable, by . . . ." As we noted above, the Board in *Izummi* directly ruled on the path of the funds. Further, in contrast to the broad precedential authority of the case law of U.S. circuit courts, we are not bound to follow the published decision of a U.S. district court in matters arising even within the same district. *Matter of Duarte-Gonzalez*, 28 I&N Dec. 688, 690 n.2 (BIA 2023) (citing *K-S-*, 20 I&N Dec. 715, 719–20 (BIA 1993)). Although we find a district judge's reasoning useful for consideration in our analysis, we are not required to follow it as a matter of law. *Id.*

In *Matter of Izummi*, 22 I&N Dec. at 195, the Board of Immigration Appeals (the Board) discussed how the alien's funds made their way to the custody account in the United States but determined the petitioner did not establish he satisfied 8 C.F.R. § 204.6(j)(3)(i)–(iv) because the record did not reveal from where these funds originated (i.e., the full path of the funds into the appropriate account). The Board specifically stated that because "the petitioner has not documented the path of the funds, such as by wire-transfer records, the petitioner has failed to meet his burden of establishing that the" invested funds were his own). *Matter of Izummi*, 22 I&N Dec. at 195. Alien investors must demonstrate invested capital is their own. *See* 8 C.F.R. § 204.6(e) under the definition of capital requiring any assets—to include cash—are "owned by the alien investor." The Petitioner does not persuasively address this aspect within *Izummi* and explain why we should ignore the Board's discussion of the path of the funds.

Further, in *Matter of Ho*, 22 I&N Dec. at 210–11 the Board discussed that alien's process of transferring funds to the United States and decided he failed to comply with 8 C.F.R. § 204.6(j)(3)(i)–(iv). The Board supported that determination stating "the wire-transfer receipt does not reveal from what bank account(s) the funds originated." Again, the Petitioner offers no persuasive arguments explaining why the Board's direct discussion of the path of the funds should be ignored. Because the Petitioner has not documented the complete transfer of funds from their overseas accounts to the United States, the financial trail goes cold along their journey.

Federal courts also subscribe to this position while offering a salient analysis to support their conclusion. They have concluded that a petitioner must document the complete path of the funds to show that they belong to the alien as was explained in the Board's precedential decisions. *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023). That court's appellate body affirmed the district court's order concluding "the plain language of the regulations at issue confirmed the agency's interpretation of those regulations [that require petitioners] to submit evidence tracing *the complete path of his capital investment*," and "that substantial evidence supported the agency's decision that the evidence submitted by appellant did not trace the complete path of his capital investment." *Borushevskyi v. USCIS*, No. 23-5116, 2024 WL 2762146, at *1 (D.C. Cir. May 30, 2024) (emphasis added).

Several other federal courts have concluded similarly. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5–6 (D.D.C. June 28, 2023) (finding that identifying the source of funds is demonstrated through evidence reflecting the complete path of the funds, and petitioners must trace the fund's path "from 'their point of origin though *any intermediary accounts*'") (alteration in original). *See also Nguyen v. USCIS*, 637 F.Supp.3d 822 (C.D. Cal. 2022) (affirming USCIS's denial of the petition

where the petitioner's transfer of funds to a currency exchange "caus[ed] a clear break in the source, custody, and ownership of [the petitioner's] funds" and therefore there was insufficient evidence that the funds invested "were obtained from a lawful source"), *aff'd*, No. 22-56068, 2023 WL 8251320 (9th Cir. Nov. 29, 2023); *Le v. USCIS*, No. 21-CV-501 (JMC), 2025 WL 1743942, at *9 (D.D.C. June 24, 2025);; *Zhang v. Nielsen*, No. CV 18-9799, 2019 WL 5303276, at *7–8 (C.D. Cal. Oct. 17, 2019); *Sadeghzadeh v. USCIS*, 322 F. Supp. 3d 12, 17–18 (D.D.C. 2018). These opinions require the Petitioner to document the path of funds to establish the lawful source of the funds invested in the NCE.

And this is a long-standing interpretation from federal courts as noted in *Spencer Enters., Inc., v. United States*, 229 F. Supp. 2d 1025, 1039–1040 (E.D. Cal. 2001) (finding a petitioner must present clear documentary evidence that the funds are their own and agreeing with this office that a petitioner's documents that do not show the full path of the funds—i.e., from what account number the funds were withdrawn—to prove they are from the petitioner do not meet the regulation's requirements), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The district court further reasoned "[t]hese are hypertechnical requirements to serve a valid government interest; i.e., to confirm that the funds utilized in the program are not of suspect origin." *Id.* at 1040.

In summary, 8 C.F.R. § 204.6(e) and (j), as well as long-standing Board precedent require not only that funds be lawfully obtained, but also that the manner of their transfer reflect lawful means. Ignoring whether funds were lawfully moved from abroad to the United States risks undermining the integrity of the EB-5 program. Funds lawfully sourced but suspiciously transferred may still disqualify an investment.

The plain language of 8 C.F.R. § 204.6(e) and 204.6(j)(3) supports FOD's requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, 2023 WL 4234658, at *5. The relevant path includes tracing the funds from their point of origin through any intermediary accounts. *See id.* at *6. Further, 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; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating documentation of the source of funds "is relevant to the question of whether the funds have been lawfully obtained, which is a requirement under 8 C.F.R. § 204.6(j)(3)").

III. CONCLUSION

Not only has the Petitioner failed to identify an adequate error in FOD's decision on his motions, but he also did not orient the appeal brief to address the propriety of that motion decision. The failure to do so means his appeal does not overcome the most recent decision from FOD. It also means this appeal warrants a summary dismissal according to the regulation at 8 C.F.R. § 103.3(a)(1)(v).

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.