U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41158216

Date: FEB. 12, 2026

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Standalone Investor

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). 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.

Field Operations Directorate (FOD) denied the petition on multiple independent grounds, concluding, in part, that the record did not establish that the funds the Petitioner invested in [redacted] (the NCE) were obtained from a lawful source and through lawful means. We dismissed a subsequent appeal on the same ground.[1] The matter is now before us on combined motions to reopen and reconsider.

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). Upon review, we will dismiss the motion.

I. LAW

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 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). 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). We may grant motions that satisfy these requirements and demonstrate eligibility

[1] Because our unfavorable determination on this issue was dispositive of the Petitioner's appeal, we reserved and did not address FOD's other grounds for denial, namely whether (1) the NCE has created or will create at least 10 full-time positions for qualifying employees; (2) the NCE is principally doing business and creating jobs in a targeted employment area, and (3) the Petitioner had invested the required minimum amount of capital. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

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).

II. ANALYSIS

At issue on motion is whether the Petitioner has submitted new facts, supported by documentary evidence, to warrant reopening this matter, and whether he has demonstrated that our prior decision, was based on an incorrect application of law or policy. For the reasons provided below, we conclude he has not shown proper grounds for reopening or reconsideration.

The term "capital" does not include any assets directly or indirectly acquired by unlawful means, including any cash proceeds of indebtedness secured by such assets. Section 203(b)(5)(D)(ii)(III) of the Act. Therefore, an alien investor seeking EB-5 classification must demonstrate that the funds they have invested in an NCE, and any funds used to pay administrative costs and fees associated with their investment, were obtained from a lawful source and through lawful means. *See* section 203(b)(5)(L)(i) of the Act. To show that the capital invested was obtained from a lawful source and through lawful means, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The 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. 206, 210-11 (Assoc. Comm. 1998); *Matter of Izummi*, 22 I&N Dec. at 195.

The record shows that the Petitioner transferred $800,000[2] from his [redacted] account to the NCE's designated checking account on July 20, 2022. The Petitioner initially claimed that his investment was solely derived from lawfully earned salaries and commissions paid to him by two foreign companies between 2017 and 2022. He provided a chart, supported by bank records and other evidence, showing that he transferred a total of $803,094 in accrued earnings from four foreign bank accounts to his [redacted] checking and savings accounts between May 2017 and July 19, 2022.[3]

We dismissed the appeal, in part, based on a conclusion that the Petitioner did not provide sufficient evidence to show the lawful source of funds for his claimed salaries and commissions earned from one of his foreign employers ([redacted]). We observed that the record did not sufficiently establish the nature of the company's services or include invoices, receipts or other documentation reflecting that the company was active during the years in question. On motion, the Petitioner has provided sufficient explanation and new evidence, including copies of invoices, receipts and evidence of payments from clients, to demonstrate that [redacted] was registered, active and engaged in legitimate business activities. As such, he has established that his employment income from this company was derived from a lawful source and through lawful means.

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[2] The Petitioner asserted that the NCE is principally doing business within a high unemployment area. *See* section (b)(5)(B)(ii)(I) of the Act. Therefore, the requisite amount of capital was downwardly adjusted from $1,050,000 to $800,000. *See* section (b)(5)(C)(ii) of the Act.

[3] On appeal, in response to FOD's observation that the [redacted] account contained additional deposits from an unidentified [redacted] account, he explained that those funds (a total of $79,650 deposited in July 2021 and June 2022) were derived from consulting services he provided in his individual capacity to a Bahraini business client. He provided evidence to document his ownership of the [redacted] account, his contract with the client, and the client's transfers to his [redacted] account.

In our de novo review of the record on appeal, we also observed that the Petitioner's bank statements for both his foreign and U.S. bank accounts contained redactions and large deposits and withdrawals that were not accompanied by corresponding explanations. With respect to the Petitioner's [redacted] account, we identified three deposits that did not derive from any of his known foreign bank accounts. These funds included a $55,000 deposit made in December 2017, a $24,000 deposit made in January 2019, and a $66,850 deposit made in February 2020.

On motion, the Petitioner submits a statement and new evidence related to these deposits. He states that both the $66,850 he received in February 2020 and the $55,000 he received in December 2017 were personal loans from a friend, [redacted]. The Petitioner states he repaid the 2020 loan using cash withdrawn from his [redacted] bank account and provides copies of the relevant bank statement. He explains that he repaid the earlier loan in cash withdrawn from an [redacted] bank account that he can no longer access. The new evidence on motion also includes two statements from [redacted] confirming that he loaned the funds and that the Petitioner repaid them in cash in August 2019 and June 2020, respectively. Finally, the Petitioner explains that the $24,000 deposit made to his [redacted] account in January 2019 was repayment of a personal loan he had made to [redacted] in January 2018, using cash withdrawn from his [redacted] bank account. He provides a letter from [redacted] and the relevant foreign bank statement in support of his statement.

The Petitioner asserts that this new evidence, when considered collectively and under the preponderance of the evidence standard, "conclusively establish[es] that the deposits originated from lawful sources and were properly accounted for." We disagree.

Under section 203(b)(5)(L)(iii)(I) of the Act, borrowed funds may not be counted toward the minimum capital investment requirement unless the funds were loaned to the alien investor in good faith, and were not loaned to circumvent any limitations imposed on permissible sources of capital. Investors relying on borrowed funds must demonstrate the lawful source of those funds by submitting the evidence described at section 203(b)(5)(L)(ii)(I) and (II) of the Act for the lender, including, as applicable, business and tax records and any other evidence identifying the source of the capital. *See* section 203(b)(5)(L)(iii)(II) of the Act.

Here, the record on motion does not include evidence demonstrating that the funds [redacted] loaned to the Petitioner (a total of $121,850) were obtained from a lawful source and through lawful means. Although the Petitioner indicates he repaid this amount in cash using funds withdrawn from his other accounts, the loaned funds were maintained in his [redacted] account where they were commingled with funds from other sources and became part of his $800,000 investment in the NCE. Because his investment included borrowed funds, it is the Petitioner's burden to submit the evidence required by section 203(b)(5)(L)(iii)(II) for the lender. He has not met this burden.

The Petitioner further claims on motion that we misapplied the preponderance of the evidence standard by focusing on the three deposits referenced above, noting "[t]hese transactions represent a small fraction of the Petitioner's total investment capital." He maintains that neither the statute's lawful source of funds requirement nor relevant precedent decisions require "absolute accounting perfection." The Petitioner also asserts that we erred by "discounting substantial documentation demonstrating that the Petitioner's aggregate lawful earnings and savings far exceeded the total amount invested."

The Petitioner's assertions are not persuasive. Bank records show that the Petitioner transferred approximately $803,000 in employment earnings to his [redacted] account between 2017 and July 2022, but his bank statements also show several large withdrawals during this period.[4] Therefore, the record did not support his initial claim that all funds included in his investment in the NCE were derived solely from his employment earnings. While the Petitioner emphasizes that his "aggregate lawful earnings and savings far exceeded the total amount invested," our evaluation of whether he met this eligibility requirement focuses only on the specific funds that were included in his remittance to the NCE, and whether the record contains evidence that those funds were derived from a lawful source and through lawful means. Any "aggregated lawful earnings and savings" he may have maintained in other accounts are immaterial to his eligibility because they were not used for his investment in the NCE.

The three deposits we identified in our prior decision amounted to over $145,000 and cannot be considered a "small fraction" of the investment funds the Petitioner deposited, maintained and ultimately withdrew from [redacted] bank account. Further, because money is fungible, the Petitioner must document the lawful source of *all* the funds in his [redacted] bank accounts before his July 2022 remittance to the NCE. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The Petitioner bears the burden of demonstrating by a preponderance of the evidence that the full amount invested was derived from lawful sources. He has now identified the immediate source of the deposits in question, but has also introduced evidence that his employment earnings were commingled with borrowed funds. As discussed, he has not demonstrated that the lender obtained those funds from lawful sources and through lawful means as required by section 203(b)(5)(L)(iii)(II) of the Act.

After considering the Petitioner's new evidence and legal arguments on motion, we conclude he has not demonstrated, by a preponderance of the evidence, that the funds he remitted to the NCE as his EB-5 investment were obtained from a lawful source and through lawful means. Accordingly, he remains ineligible for the immigrant investor visa classification.

III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: 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

[4] For example, the record shows the Petitioner transferred $48,000 to a [redacted] account in January 2019, made a $53,837.99 withdrawal in December 2021, paid over $14,000 to [redacted] in January 2022, and used his [redacted] account for day-to-day personal spending that amounted to at least $25,000 in the months leading up to his investment in the NCE in July 2022.

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.