U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40510808

Date: JAN. 16, 2026

Motion on Administrative Appeals Office 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) (2018).[1] 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.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that the record did not establish that the Petitioner had invested or was actively in the process of investing required capital obtained through lawful means. We summarily dismissed a subsequent appeal. The matter is now before us on combined motion 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.

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. The review of a motion is limited to the basis for the prior adverse decision. The regulations at 8 C.F.R. § 103.5(a)(1)(i) generally require that the decision a motion seeks to reopen or reconsider must have taken place within the prior 30 days. So, we follow the regulations as written and limit our review to the prior decision made within 30 days of filing the motion. We evaluate any new facts, arguments or allegations of error in the application of law or service policy in connection with our decision upon which the current motion was filed. We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 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. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition in September 2018, the relevant law then in existence governs this appellate adjudication.

The Petitioner's motion to reopen or reconsider our decision newly reveals with evidence that his timely submission of a brief and additional evidence was impeded by health challenges due to an exacerbation of the symptoms of his chronic obstructive pulmonary disease (COPD) affliction. The Petitioner holds his COPD ailment as the reason why he was unable to provide a brief, basis statement, or additional evidence in a timely fashion.

Whilst we are sympathetic to the not insignificant health challenges posed to the Petitioner, we nevertheless must conclude that the Petitioner's medical concerns do not warrant reopening or reconsideration of our previous decision. In *Matter of Coehlo*, 20 I&N Dec. 464, 473 (BIA 1992), the Board of Immigration Appeals required that new facts and evidence have the potential to change the outcome of the matter.

The Petitioner's motion contains the "initially intended brief and additional evidence" that he would have timely submitted but for the obstruction his COPD malady and symptoms caused him. However, the brief and additional evidence would not have changed the outcome of this matter even if it had been timely submitted.

As observed by FOD, "the majority of Petitioner's EB-5 investment funds" are attributed to [redacted], a business owned by the Petitioner's spouse. The Petitioner's funds derived from personal savings, loans from [redacted] and gifts from his spouse, his son, and his daughter-in-law. For example, a portion of the funds was sourced in his and his spouse's accumulated business earnings from [redacted] maintained in two separate accounts. Another portion was provided as a loan from [redacted] to the Petitioner. Subsequently, his spouse and daughter-in-law also took out loans from [redacted] Essentially, the genesis of funds and the manner of [redacted] organization and business operations are a key consideration for an evaluation of the lawful source of the Petitioner's funds for investment. FOD's request for evidence (RFE) specifically solicited the Petitioner to provide "evidence that establishes the lawful source(s) of the initial capital used by Petitioner's spouse to establish [redacted]" But the contracts, financial statements, bank statements, and invoices the Petitioner submitted did not adequately establish how [redacted] was initially funded so that it could commence business operations.

The Petitioner's new facts supported by evidence on motion, that the Petitioner asserts were delayed during his convalescence from COPD flareup symptoms, do not preponderantly establish the lawful source of funds utilized to establish [redacted] The Petitioner states for the first time that his wife established [redacted] from funds she received as a payout from a personal accident insurance policy after she suffered a serious motor vehicle accident with multiple serious injuries and a period of disability. The Petitioner contends that the passage of two dozen decades hinders his ability to provide additional documents that would support the lawfulness of the funds used to establish [redacted] Whilst we acknowledge the passage of time since the possible creation of certain relevant documents, we find that the record as it is presently constituted does not contain suitably preponderant corroborating evidence addressing if the insurance payout funds were utilized to establish [redacted] *See Matter of Ho*, 22 I&N Dec 206, 210-211 (AAO 1998); *Matter of Izummi*, 22 I&N Dec. 169. 195 (AAO 1998);

see also Mo v. USCIS, 2024 WL 804267, *6 (D.D.C. Feb. 27, 2024) (noting that USCIS did not err in requesting proof of household expenditure from 20 years ago). It is the Petitioner's burden to demonstrate eligibility for the benefit he seeks.

Even if the Petitioner's health had permitted the Petitioner to submit his appeal brief and additional evidence timely, we still would have concluded that he had not established eligibility for the benefit he seeks. The Petitioner's new facts and evidence do not have the potential to reverse the outcome in this matter. So, reopening this matter is unwarranted.

And the Petitioner's prayer for reconsideration is not well taken. The Petitioner's motion does not demonstrate that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The Board of Immigration Appeals generally requires that a motion to reconsider assert an error was made at the time of the previous decision. The very nature of a motion to reconsider is the claim that the original decision was defective in some regard. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006).

The Petitioner references a district court decision holding that the regulation requiring a petitioner to show that invested funds were obtained through lawful means does not require tracing of funds beyond their immediate source. *See Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C 2024). But other district court decisions have found that petitioners must show the complete path of funds. *See Truong v. USCIS*, No. 21-316 (RC), 2023 WL 4234658, at *5 (D.D.C. Jun. 28, 2023); *Nguyen v. USCIS*, 637 F.Supp.3d 822 (C.D. Cal. 2022). In contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

Further, the D.C. Circuit Court has affirmed a district court decision that held USCIS' complete path interpretation of the regulations is its authoritative position as explained in the precedential decisions. *Borushevskyi v. USCIS*, 664 F.Supp.3d 117, 126-29 (D.D.C. 2023), *aff'd*, No. 23-5116, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *see also Nguyen v. USCIS*, 637 F.Supp.3d 822, 835 (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). These decisions require the Petitioner to document the path of funds to establish the lawful source of the funds invested in the NCE.

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. Moreover, 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 that 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)"). So, the Petitioner has not shown proper cause for reconsidering our decision on its previous motion.

The Petitioner should note that the filing of a motion to reopen and/or reconsider does not provide any interim benefits such as staying the execution of any decision or extending a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv). The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision. Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. And 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 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.