U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40756398

Date: JAN. 21, 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, concluding the record did not establish that the funds the Petitioner has invested, as well as any funds used to pay administrative costs and fees associated with his investment, were obtained from a lawful source and through lawful means and that the NCE has created or will create at least 10 full-time positions for qualifying employees. We dismissed a subsequent appeal, concluding that the Petitioner did not demonstrate that his investment derived from lawfully sourced funds.[1] The matter is now before us on motion to reopen.

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). 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 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).

[1] As this adverse determination rendered the Petitioner ineligible for the immigrant investor visa classification, we reserved discussion of FOD's other ground for denial, relating to this classification's job creation eligibility requirements. *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). We did not determine, as the Petitioner claims on motion, that "all other issues were satisfied."

On motion, the Petitioner submits documentation intended to resolve a discrepancy involving an $800,000 remittance to the NCE's [redacted], made on the Petitioner's behalf by a third-party exchanger [redacted]. In our decision dismissing the Petitioner's appeal, we observed that [redacted] previously submitted affidavit stated that she transferred the funds to the NCE's account ending in [redacted], while the evidence the Petitioner submitted to demonstrate the NCE's receipt of those funds was for a different [redacted] account, ending in [redacted].

The newly submitted evidence resolves this factual inconsistency and shows that [redacted] transferred $800,000 from her [redacted] bank account ending in [redacted] to the NCE's [redacted] account ending in [redacted] on November 3, 2022. However, for the reasons provided below, the new facts presented on motion do not establish, by a preponderance of the evidence, that the funds the Petitioner invested in the NCE were obtained from a lawful source and through lawful means.

An alien investor must demonstrate that the required amount of capital he or she has invested, or is actively in the process of investing, and any funds used to pay administrative costs and fees associated with his or her investment was obtained from a lawful source and through lawful means. Section 203(b)(5)(L)(i) of the Act. 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 funds. *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. 206, 210-11 (Assoc. Comm. 1998); *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.

As discussed in our prior decision, the record demonstrates that the Petitioner transferred 5,852,560 Chinese renminbi (RMB) from his China [redacted] account to [redacted] China [redacted] Account, and that he obtained those funds through a lawful source and through lawful means. The record did not show, and the Petitioner did not claim, that the RMB currency he transferred to [redacted] ever left mainland China or that such funds were directly exchanged for U.S. currency, such that we could conclude that the lawfully sourced funds he transferred to [redacted] are the same funds that were ultimately transferred to the NCE's bank account. Rather, he explained that [redacted] in exchange for her receipt of the RMB 5,852,560 in her Chinese bank account, transferred an equivalent amount of U.S. currency to the NCE from funds that she already held in bank accounts in [redacted] in a private currency swap transaction.[2]

Because there is a break in the path of funds, and the Petitioner's funds were routed through a third-party exchanger that is not a bank or a licensed and registered money services business, he bears the burden of demonstrating that the funds the exchanger transferred to the NCE's bank account on his behalf were obtained from a lawful source.

Here, the Petitioner stated that [redacted] "settled her shares in her [redacted] account in USD and remitted US$800,000" to the NCE. On appeal, the Petitioner claimed that [redacted] lawfully obtained the monies and/or securities maintained in her [redacted]

[2] The Petitioner stated this type of transaction was required because "there is foreign exchange control and the limitation of remitting money to foreign countries outside China."

account through her employment and provided an affidavit from [redacted] indicating that she worked for that company between 2002 and 2017 and earned an average annual salary of RMB 600,000. Although the Petitioner provided an affidavit from [redacted] confirming that she assisted him with converting RMB into USD and remitting it to the NCE's account, she did not address the source of funds used for the $800,000 remittance beyond stating that she "settled the shares" in her [redacted] account.

We noted in our prior decision that the record lacks additional evidence to demonstrate [redacted] accumulation of funds in the [redacted] account and further observed that her claimed employment earnings would not account for all other sources of funds present in the account, based on the activity described in the submitted daily statements. We also note the record does not indicate when she opened the [redacted] account and therefore does not demonstrate the account existed during her claimed period of employment with [redacted] which ended five years prior to the financial transactions in question. On motion, the Petitioner has not submitted any additional evidence to support his claim that [redacted] accumulated and maintained sufficient lawful employment earnings to fully fund the $800,000 remittance to the NCE's account. Nor does he otherwise address the observed evidentiary deficiencies related to the lawful source of the $869,993.59 she withdrew from her [redacted] account on November 1, 2022.

In addition, the record shows that those funds were deposited to [redacted] foreign currency savings account, and that the funds remitted to the NCE were withdrawn from that account on November 3, 2022. At the time she made the $869,993.59 deposit to her [redacted] account, [redacted] already had a balance of over $497,220 in the account. As such, this money was commingled with the monies deposited from the [redacted] account, and the lawful source of these funds, which became part of the Petitioner's claimed investment in the NCE, must likewise be established. The record contains no explanation or documentation addressing the source of funds maintained in [redacted] account.

Despite the Petitioner's submission of additional evidence in support of the motion to reopen, he has not established eligibility. Based on the foregoing discussion, we conclude that the record does not establish, by a preponderance of the evidence, that the funds invested in the NCE were obtained from a lawful source and through lawful means. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen 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.