U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39938276

Date: JAN. 28, 2026

Appeal of Field Operations Directorate (FOD) Decision

Form I-526E, Immigrant Petition by Regional Center 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 foreign nationals 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 required amount of capital the Petitioner has invested, or is actively in the process of investing, as well as any funds used to pay administrative costs and fees associated with her investment were obtained from a lawful source and through lawful means. FOD also dismissed the Petitioner's subsequent motion to reconsider. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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). 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

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. 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 through lawful means. Section 203(b)(5)(L)(i) of the Act. Information required to demonstrate the lawful source of capital can include business and tax records like foreign business registration records, foreign and domestic tax returns filed during the past seven years, evidence related to any applicable monetary judgments against the alien investor, and any other evidence identifying any other source of capital or administrative fees. Section 203(b)(5)(L)(ii) 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.

II. ANALYSIS

A. Background

The Petitioner filed the instant petition on September 29, 2022. The Petitioner claims to have invested $800,000 into [redacted] a new commercial enterprise (NCE) under the auspices of [redacted] (regional center), a regional center under section 203(b)(5)(e) of the Act, 8 U.S.C 1153(b)(5)(e).[1] The NCE proposed to pool $12,800,000 from 16 immigrant investors. The pooled funds would subsequently be lent by the NCE to [redacted] in North Carolina, the job creating entity (JCE). The JCE intends to utilize the invested funds for the construction and operation of a [redacted] North Carolina.

The Petitioner stated she worked at various companies in China and [redacted] between October 1992 and December 2008. She avers she earned approximately RMB 11,920,000 during this time. The Petitioner stated that she invested roughly RMB 5,270,000 of these funds into securities contained in the [redacted] – [redacted] to apply for [redacted] permanent resident status through the [redacted]. In year six of the investment, the Petitioner sold her securities contained in the [redacted] and purchased shares of [redacted] to maintain her eligibility in the [redacted] After completion of the scheme's seven-year duration of stay, concomitant investment requirement, and eventual acquisition of [redacted] permanent residence, the Petitioner states she sold these securities contained in the [redacted] to finance a previous EB-5 investment. The Petitioner withdrew a previously filed Form I-526, Immigrant Petition for Alien Entrepreneur. Following the withdrawal of the earlier filed petition, the Petitioner received a refund of $500,000 (comprising the investment funds less administrative fees) from the JCE. The Petitioner reinvested the $500,000 of the refunded funds into the NCE to support the instant petition.

The remaining investment funds were the proceeds of a time deposit account the Petitioner maintained in her [redacted]. The Petitioner stated the funds in her time deposit account also came from her "accumulated work income over the years." The sum of the funds received from the sale of investment securities in [redacted] (initially invested in a prior EB-5 project and subsequently recovered for reinvestment in the instant EB-5 project) and the proceeds of her time deposit account in [redacted] provided the $800,000 for investment and $80,000 in administrative fees.

[1] FOD approved the regional center's Form I-956F, Application for Approval of an Investment in a Commercial Enterprise on January 11, 2024.

The Petitioner's initial petition was accompanied by a declaration concerning her source of funds, business profiles describing two of the Petitioner's previous employers from whom she was unable to get income certificates due to the passage of time, and a declaration from the Petitioner describing her employment history. The Petitioner also submitted an income certificate from the employer she was working with from February 2004 to December 2008 concomitantly with documentation describing participation in the [redacted] and associated purchase, sale, and transfer of investments and proceeds into [redacted] The record also contains account statements from [redacted] bank account describing a time deposit account and its proceeds.

FOD issued a request for evidence (RFE) soliciting additional documentation to support the lawful source and path of the investment funds. The Petitioner's response to FOD's RFE contained a revised declaration providing additional information of her previous employment, statements from co-workers at previous employers, pictures of the Petitioner participating in a professional meeting and dinner, an updated income certificate from [redacted] scattered [redacted] account statements, a certificate of no criminal records, and a certificate issued by a lawyer in China stating the Petitioner did not have a civil judgment against her.

FOD denied the petition. FOD concluded the record did not demonstrate that the required amount of capital the Petitioner has invested, or is actively in the process of investing, as well as any funds used to pay administrative costs and fees associated with her investment were obtained from a lawful source and through lawful means. FOD further noted the Petitioner's work history as described in the petition conflicted with work history she had provided in previous nonimmigrant visa applications.

The Petitioner filed a motion to reconsider, contending that FOD's denial of the petition was arbitrary and capricious because the record demonstrated the lawful source and path of her funds by a preponderance of the evidence. FOD dismissed the motion because it did not establish that FOD's denial of the petition was based on an incorrect application of law or service policy. FOD also concluded the Petitioner did not establish that its decision was incorrect based on the evidence in the record at the time of the initial decision.

The Petitioner's appeal from FOD's dismissal of her motion to reconsider claims FOD applied a standard of proof in excess of the preponderance when it denied her petition. The Petitioner contends that her funds for investment are "fully traceable to two lawful sources: the proceeds of her 2009 investment under [redacted] and long-maintained savings derived from her employment income." In support, she submits on appeal an independent forensic accounting report and an expert opinion and declaration addressing apparent inconsistencies in her work history.[2]

[2] We conclude the evidence in the record satisfactorily resolves discrepancies in the expression of her work history. However, contrary to the Petitioner's assertion, FOD stated it did not wholly rely upon the work history discrepancies it identified in its decision. As stated by FOD in its dismissal of the Petitioner motion and further explained herein, the record does not carry her burden to preponderantly demonstrate her eligibility for permanent immigrant classification in the EB-5 category.

B. Appeal Relates to the Most Recent Decision In A Proceeding.

The party filing an appeal is required to identify 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 appeals of adverse decisions on motions. 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 April 2, 2025, petition denial itself, but rather FOD's subsequent dismissal of his motion to reconsider dated June 13, 2025. In the June 2025 decision, FOD did not simply affirm the prior denial. Instead, FOD concluded that the Petitioner did not show proper cause for reconsidering the decision on the petition. Therefore, the question before us on appeal is whether FOD erred in dismissing the motion to reconsider. 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.

So, we consider here whether the Petitioner has demonstrated that FOD improperly dismissed the motion to reconsider. We will dismiss the Petitioner's appeal for the reasons specified below.

C. Analysis

The Petitioner claims she utilized her accumulated employment income to fund her 2009 investment under [redacted] and her time-deposit savings account. On appeal, the Petitioner insists that the evidence she submitted in the record preponderantly demonstrates the lawful source and path of the funds she invested in the NCE. The Petitioner submits an independent, third-party accounting report as well as partial banking records, partial income statements, and documentation demonstrating her participation in the [redacted] in support of her assertion. But she avers, notwithstanding, that this partial evidence and incomplete record demonstrates her eligibility for the benefit she seeks by a preponderance of the evidence. And she states *Battineni v. Mayorkas*, 752 F. Supp. 3d 195 (D.D.C. 2024) forecloses FOD from evaluating the originating source of the Petitioner's funds for investment.

Battineni does not support the Petitioner's contention that the denial was based on an incorrect application of law or policy. *Battineni* examined a statute that has since been repealed and replaced by the EB-5 Reform and Integrity Act of 2022.[3] The current Section 203(b)(5)(L)(i) of the Act requires a petitioner to demonstrate that the funds for her investment were obtained from a lawful source through lawful means and further provide information to demonstrate the lawful source of funds such as business and tax records like foreign business registration records, foreign and domestic tax returns filed during the past seven years, evidence related to any applicable monetary judgments against the alien investor, and any other evidence identifying any other source of capital or administrative fees. Section 203(b)(5)(L)(ii) of the Act. .

[3] And USCIS' authoritative position on its interpretation of the requirements of the former statute and regulation as explained in our precedential decisions has been upheld in *Borushevski v. USCIS*, 664 F. Supp.3d 117, 129 (D.D.C. 2023), *aff'd* No. 23-5116, 2024 WL 2762146; *see also Matter of Ho*, 22 I&N Dec. 206 (AAO 1998); *Matter of Izummi*, 22 I&N Dec. 169 (AAO 1998).

So, it is incumbent upon the Petitioner to not only demonstrate the funds flowed through the [redacted] and time deposit account lawfully but also demonstrate that how she came upon the funds in the first place. The Petitioner's funds for investment, namely her investment in the [redacted] and her time-deposit account are not the immediate source from which the Petitioner's funds for investment flowed. Those are merely investment vehicles that housed and grew funds for investment and other purposes. Or in other words, the immediate source of the funds is the source that provided the money for investment and other purposes, namely the funds the Petitioner stated she accumulated and maintained from her employment.

Upon de novo review we, like FOD, conclude the income certificates, affidavits from co-workers, and self-declarations the Petitioner submitted into the record were not sufficient to establish that the Petitioner accumulated and maintained sufficient income to make an investment in the [redacted] and put money in her time-deposit account. As stated above, the Petitioner submits an independent, third-party forensic accounting report to support the lawful source of the employment income she earned, accumulated, and maintained to fund her investment. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). But an advisory statement is not presumptive evidence. *See also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA, 2008). And less weight is given to an advisory opinion where there is cause to question or doubt the opinion or if it is not in accord with other information in the record. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795. The author of the independent third-party forensic accounting report evaluated three declarations and an affidavit prepared and submitted by the Petitioner. The appendices also contained partial financial records as previously submitted with the underlying petition. Whilst the third-party accounting report summarizes the Petitioner's assertions or contentions and concludes the source of the Petitioner's funds is lawful, it is based on the same incomplete evidence FOD concluded did not adequately preponderantly demonstrate the lawful source of the Petitioner's funds. Moreover, the third-party forensic accounting report does not discuss how it is able to make its conclusions with partial records. And there is no indication that the third-party forensic accounting report the Petitioner submitted was aware of or took into consideration the requirements of Section 203(b)(5)(L)(ii) of the Act. So, its conclusion supporting the Petitioner's eligibility is not in accord with evidence in the record FOD has previously evaluated and concluded is insufficient.

The independent third-party forensic accounting report, essentially summarizing the previously considered evidence present in the record, made conclusions of eligibility that were divorced from the FOD's conclusions without adequately explaining how and why. And FOD correctly applied law and USCIS policy to make the correct decision based on the evidence in the record of proceedings at the time of the decision.

III. CONCLUSION

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. at 375-76. Here, she has not demonstrated that her investment derived from lawfully sourced funds. *See* section 203(b)(5)(L) of the Act; *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. She therefore has not established eligibility for the classification sought.

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.