U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12712834

Date: JUN. 23, 2021

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). 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.

The Chief of the Immigrant Investor Program Office denied the petition, concluding the Petitioner did not sufficiently document the lawful source of her funds invested in [redacted] the NCE. We dismissed the subsequent appeal.

The Petitioner now files a motion to reopen the matter. On motion, she submits additional evidence and maintains that she has established eligibility for the classification.

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). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board of Immigration Appeals' (the Board) definition of "new" at 8 C.F.R. § 1003.2(c)(1) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

II. ANALYSIS

The Petitioner maintains that she qualifies for the EB-5 classification based on a $500,000[1] investment in the NCE, a business that is associated with a United States Citizenship and Immigration Services (USCIS)-designated regional center,[2] [redacted] *See* 8 C.F.R. § 204.6(j)(4)(iii). She indicates that the NCE intended to pool up to $17,000,000 in EB-5 capital, from 34 foreign national investors, and additional non-EB-5 funds to renovate and operate the [redacted] California.

We will dismiss the motion for the reasons set forth below.

On motion, the Petitioner submits documents, some of which had previously been presented on appeal and in her I-526 petition such as previously submitted bank statements and other financial records. The Petitioner now offers, as new evidence, copies of ordinances, decrees, and laws regarding foreign exchange in Vietnam and argues these laws allow banks in Vietnam to lawfully conduct currency exchange. The Petitioner claims the [redacted] company was an import export company and had to purchase foreign currency from the [redacted] Bank which complied with the relevant laws in Vietnam.

Contrary to the Petitioner's assertions, the evidence in the record does not indicate that [redacted] Bank conducted a currency exchange. Rather, as mentioned in our previous decision, the record indicates the [redacted] Company, which is permitted to engage in foreign currency exchange, simply withdrew VND cash and gave the sum to the [redacted] Corporation which then remitted USD from its bank account to the Petitioner as part of her investment fund.

The new evidence submitted on appeal does not overcome the concerns noted in our previous decision as the record does not indicate that the Petitioner used banking or financial institutions to conduct foreign currency exchange. When relying on foreign law to establish eligibility, the application of foreign law is a question of fact which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). The ordinances, decrees, and laws submitted on motion do not indicate that a non-bank entity, like the [redacted] company, was authorized by Vietnamese law to exchange and export currency. Our prior decision noted that the letters from attorneys in Vietnam provided on appeal did not demonstrate that the companies in this case could act as a currency exchanger and transmitter by taking Vietnamese Dong (VND) from an individual in Vietnam, then transferring USD to the Petitioner in the United States. The ordinances and laws provided on motion are not relevant to this case as there is no indication that the Petitioner used a bank or other financial institution to conduct a foreign currency exchange in Vietnam.

We also found that the Petitioner did not show, by a preponderance of the evidence, that the proceeds of a third-party currency exchange used as her EB-5 investment fund derived from lawful sources. In this case, the Petitioner provided inconsistent evidence regarding how much money the Petitioner remitted for currency exchange purposes and also failed to show that the companies involved in the

[1] The Petitioner indicates that she has made an investment in a targeted employment area, and that the requisite amount of qualifying capital is therefore downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2).

[2] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e).

currency exchange could lawfully engage in currency exchange and transmission. The supplemental laws and ordinances provided by the Petitioner on motion do little to overcome these deficiencies in the record.

For the reasons we discussed above, we find that the Petitioner has not stated new facts demonstrating her eligibility for the classification or supported the new facts with documentary evidence. We will therefore dismiss her motion to reopen the matter. *See* 8 C.F.R. § 103.5(a)(2).

III. CONCLUSION

We will dismiss the Petitioner's motion to reopen the proceeding because the documentation she presents on motion does not demonstrate her eligibility for the classification.

ORDER: The motion to reopen is dismissed.