U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37482100

Date: JUNE 23, 2025

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 aliens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees.

The Petitioner asserted eligibility based on an investment into [redacted] the new commercial enterprise (NCE), which is associated with Related [redacted] in the amount of $500,000. Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish the lawful source of the funds transferred into the NCE's bank account and that those funds were owned by the Petitioner. We dismissed a subsequent appeal. 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 motions.

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 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).

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was their own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3);

see also Matter of Ho, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). To show that the capital was their own, a petitioner must document the path of the 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 new commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210-11; *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

The Petitioner asserted that her funds derive from the sale of two real estate properties in Vietnam and the proceeds from this sale was deposited into her [redacted] Bank account ending in [redacted]. The Petitioner claimed that she withdrew in cash 12.8 billion Vietnamese Dong (VND) from this account and on the same day she transferred this money to a licensed currency exchange company [redacted] based in Australia, but also doing business as [redacted] in Vietnam, to remit $540,025 to the NCE's escrow account in the United States. In responding to FOD's request for evidence (RFE), the Petitioner revealed that [redacted] engaged a Vietnamese company, [redacted] to collect funds from the Petitioner and transfer to Australia. To document how the money was transferred, the Petitioner submitted letters, business registrations, and contracts from these intermediary companies and their representatives, along with an email from an individual named [redacted] who confirmed collection of VND 12.8 billion at the Petitioner's address. In our appellate decision, incorporated herein by reference,[1] we affirmed FOD's conclusion that the Petitioner did not establish the lawful source of funds because there are gaps and inconsistencies in the evidence regarding the paths of funds.

A. Motion to Reopen

On motion to reopen, the Petitioner attempts to explain inconsistencies identified in our prior decision and resubmits evidence already in the record. The Petitioner also provides a flow chart showing the paths of the investment funds as new evidence. We acknowledge that the Petitioner has resolved minor discrepancies. For example, we agree that [redacted] email, though missing the Petitioner's name in the body of the email, matches the Petitioner's cash amount and her address. Other evidence in the record, such as the Petitioner's withdrawal slip of VND 12.8 billion from her [redacted] and [redacted] tax invoices and cash receipts issued to the Petitioner, corroborate the email as well. We also acknowledge that the tax invoices and receipts indicating the Petitioner as the sender (or the originator) of the funds do not contradict the Petitioner's statement that her funds never left Vietnam because these invoices and receipts are all issued by [redacted] and are not from any independent banks handling wire transfers.

However, the Petitioner has not produced any new evidence or facts to demonstrate the paths of the funds showing lawfulness of the intermediary funds. The Petitioner submitted documentation of the transfer of VND 12.8 billion related to the sale of her real estate properties into [redacted] account and her withdrawal of the same amount in cash. The Petitioner also submitted receipts, contracts, and tax invoices issued by the money exchanger, [redacted] However, the Petitioner did not

[1] *See* ID# 29506932 (AAO Dec. 19, 2024).

provide bank statements or other documentary evidence such as wire transfer records from actual bank accounts showing the deposit, maintenance, and transfer of the Petitioner's cash by [redacted] in Vietnam.[2] The Petitioner admits that her money never left Vietnam but has not submitted bank statements or other documentary evidence to demonstrate the source of funds in Australian currency (AUD 718,294.05) in [redacted] possession and later exchanged to U.S. dollars ($540,025) before being remitted to the NCE's escrow account in the United States.

The source of funds is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, No. 21-316, 2023 WL 4234658, at 5 (D.D.C. June 28, 2023). The relevant path includes tracing the funds from their point of origin though *any intermediary accounts*. *See id.* at 6. (emphasis added). As the Petitioner has not provided new evidence or facts to document the complete path of her investment funds, she did not establish eligibility. Below, we will discuss whether our decision correctly applied the relevant law.

B. Motion to Reconsider

On motion to reconsider, the Petitioner contests the correctness of our prior decision and claims that the requirement to demonstrate "complete path" of funds is "rendered obsolete" by *Battineni v. Mayorkas*, 752 F. Supp. 3d 195 (D.D.C. 2024) (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). In addition, the Petitioner claims that U.S. Citizenship and Immigration Services (USCIS) has previously approved several petitions that have used [redacted] money transfer services.

First, we note that district court decisions are not binding precedential authority but serve only as persuasive authority. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). Instead, we are to follow federal circuit court decisions. *See id.* at 719-20 (addressing a federal agency's obligation to follow the law of a circuit court).

The circuit court has affirmed a decision that held USCIS' complete path interpretation of the regulations is its authoritative position as explained in the 1990 precedential decisions. *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *see also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Another circuit court also affirmed USCIS' denial where the petitioner's transfer of funds to a currency exchange "caus[ed] a clear break in the source, custody, and ownership of Plaintiff's funds," and that therefore there was no evidence that the funds invested "were obtained from a lawful source." *Nguyen v. USCIS*, 637 F. Supp. 3d 822, 835 (C.D. Cal. 2022), *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.

[2] Initially, the Petitioner did not disclose any information regarding [redacted] involvement as the intermediary in the transaction. Only upon the issuance of RFE, the Petitioner submitted additional documents regarding the contract created between [redacted]

Secondly, USCIS makes independent case-by-case decisions and is not required to show deference to other prior approvals in which petitioners used the same money exchanger. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

Based on the foregoing, the Petitioner has not shown that our prior decision was incorrect as a matter of law at the time we issued our decision. Here, the Petitioner has clearly indicated that her own money stayed in Vietnam and the money swapped by a contractual agreement came from [redacted] and [redacted] but did not demonstrate the source and path of the swapped funds. Our prior decision correctly abided by the circuit courts' interpretation regarding the paths of funds and therefore, the Petitioner has not established eligibility.

III. CONCLUSION

Based on the foregoing, we conclude that the Petitioner's submission of additional evidence in support of the motion to reopen does not establish her 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.