U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41250395

Date: MAR. 20, 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) (2019).[1] 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 that the record did not establish that the Petitioner had placed the required amount of capital at risk and did not document the lawful source of the funds he invested in the NCE. We dismissed a subsequent appeal.[2] The matter is now before us on motion to 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.

I. LAW

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.

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[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 Section 203(b)(5) of the Act, 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 February 2019, the relevant law then in existence governs this adjudication.

[2] We concluded the Petitioner did not demonstrate that he had placed the required amount of capital at risk and found him ineligible for classification as an immigrant investor on this basis. Accordingly, we reserved, and did not address, the Petitioner's appellate arguments regarding the lawful source of funds he remitted to the NCE. *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).

To establish eligibility for EB-5 classification, an alien must demonstrate that he or she "has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise[.]" 8 C.F.R. § 204.6(j). The regulation defines "invest" to mean "to contribute capital," but explicitly excludes from the definition "[a] contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien investor and the new commercial enterprise . . .." 8 C.F.R. § 204.6(e). The regulation further provides that an alien must present "evidence that [he or she] has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk." 8 C.F.R. § 204.6(j)(2).

In *Matter of Izummi*, 22 I&N Dec. 169, 186 (Assoc. Comm'r 1998), we held that offering documents containing redemption clauses are generally impermissible, explaining: "[f]or the alien's money truly to be at risk, the alien cannot enter into a partnership knowing that he already has a willing buyer in a certain number of years, nor can he be assured that he will receive a certain price. Otherwise, the arrangement is nothing more than a loan, albeit an unsecured one."

II. ANALYSIS

The issue before us is whether the Petitioner has established that our prior decision was based on an incorrect application of law or policy and demonstrated his eligibility for the immigrant investor classification. For the reasons provided below, the Petitioner has not met this burden.

In our decision dismissing the Petitioner's appeal, we agreed with FOD's determination that he did not place the required amount of capital at risk in an NCE. We emphasized that the record contains a limited partnership agreement and private placement memorandum with mandatory redemption provisions that guarantee the Petitioner a full return of his investment if his Form I-829 is denied. Therefore, relying on *Matter of Izummi*, we concluded that these and other documents in the record discussing a guaranteed return of the purported investment in the NCE turned the arrangement into a loan, not a capital investment. In addition, we addressed the Petitioner's submission of a loan agreement that identifies him as a "loan provider" and guarantees that the $500,000 he remitted to the NCE would be repaid to him, with interest, in five years from the date of signing, or sooner, if the Form I-829 is denied. We emphasized that a loan from the immigrant investor to the new commercial enterprise does not count as a contribution of capital. *See generally* 6 *USCIS Policy Manual* G.2(A)(2), https://www.uscis.gov/policy-manual.

On motion, the Petitioner contests the correctness of our prior decision. He asserts that we erred in determining that the redemption conditions stated in the submitted limited partnership agreement and private placement memorandum involve a guaranteed return of his claimed investment. The Petitioner questions our reliance on *Matter of Izummi*, stating that we applied an overly broad interpretation by suggesting that *any* redemption agreement constitutes a prohibited debt arrangement.

In *Matter of Izummi*, 22 I&N Dec. at 185, the alien investor argued that his funds were placed at risk, notwithstanding the existence of a redemption agreement, because "[t]he payment of [his] sell-option price was dependent upon the [NCE's] ability and willingness to pay" and "[t]hus, substantial risk existed in that the [NCE] might be unable or unwilling to pay [him]." We rejected these arguments, holding that we "do[] not recognize this type of 'risk' as the kind of risk contemplated by 8 C.F.R. § 204.6(j)(2)." Although the Petitioner attempts to distinguish the facts of his case from those

presented in *Matter of Izummi*, he nevertheless makes the same argument that we rejected in that decision by claiming that the risk of loss exists because the NCE may not succeed or even exist in the future, and may not have the financial ability to repay him in full upon the denial of the Form I-829. The Petitioner's claim that our decision was based on an incorrect application of *Matter of Izummi* is therefore not persuasive.

The Petitioner also relies on *Mirror Lake Village, LLC v. Wolf*, 971 F.3d 373 (D.C. Cir. 2020), as support for his argument that the funds he remitted to the NCE are at risk despite the existence of a mandatory redemption provision in the limited partnership agreement. He asserts the decision "provides clear guidance" on the proper application of *Matter of Izummi* and is "on point" with respect to his case.

Two circuit court judges decided *Mirror Lake Village, LLC*, and while both agreed that "USCIS failed to explain adequately its denial of the [investors'] visa petitions," they disagreed on the issue of whether "the only risk an investor must show is that the business may not succeed or not be profitable enough." *Id.* at 378-79 (Henderson, K., concurring). The concurring circuit judge explained that "to ensure that a sufficient risk exists that does not simultaneously defeat the purpose of the EB-5 program, the risk threshold – i.e., the requisite success of the business – should plainly be something more demanding than simply not going bankrupt." *Id.* at 379. *Mirror Lake Village, LLC*, thus, does not support the Petitioner's proposition that the possibility that the project might not be completed or that the NCE might experience business failure is sufficient to support a finding that his $500,000 was placed at risk.

Finally, our interpretation of the mandatory redemption provision presented in this case is supported by USCIS policy guidance stating that agreements that provide an investor with a contractual right to repayment create an impermissible debt arrangement that does not constitute a qualifying contribution of capital. *See generally* 6 *USCIS Policy Manual*, *supra*, at G.2(A)(2). Contrary to the Petitioner's arguments, the impermissibility of such an arrangement cannot be remedied with the addition of other requirements or contingencies, such as conditioning the repurchase of securities on the availability of funds or the delay of the repurchase until a date in the future (including after the adjudication of the investor's Form I-829); repayment does not need to be guaranteed in order to be impermissible. *See generally id.*

The Petitioner's brief on motion also addresses the "Loan Agreement of EB-5 Investment Immigration" discussed in our decision. He asserts that the terms of the agreement indicate "no prohibited debt arrangements between him and the [NCE]." Specifically, he explains that "[t]his agreement provides no guarantees of refunding [his] investment from [the NCE], which is designated as a loan beneficiary without any financial obligations or debts to [the Petitioner], the lender." Rather, he states that the regional center, as guarantor, "assumed responsibility for the safety of the investment funds" and contends that "the existence of a loan agreement with a third party does not eliminate the risk of loss."

The Petitioner also characterizes the "Loan Agreement of EB-5 Investment Immigration" as a "supplemental" or "third party agreement" that is "not directly involved in the EB-5 process" and does not serve as "protection against the risk of loss due to the normal business activities of the [NCE]." However, the agreement plainly states "the applicant of EB-5 investment immigration [i.e., the

Petitioner] decides to invest in the [NCE's project] developed by [redacted] by providing [a] loan." As noted, a loan from the immigrant investor to the new commercial enterprise does not count as a contribution of capital. *See generally* 6 *USCIS Policy Manual*, *supra* at G.2(A)(2).

Here, the loan agreement guarantees full repayment of the $500,000 the Petitioner remitted to the NCE within 60 days of the expiration of the five-year term, with interest calculated from the transfer date of the funds into the NCE's account. It also provides that "both parties agree to repay in advance when the application of I-829 permanent green card is denied." While the Petitioner emphasizes that the NCE is the "loan beneficiary" and suggests that the regional center, as guarantor, is the only party responsible for repaying the loan, the terms of agreement do not clearly release the NCE (named as "loan beneficiary") from any financial obligations. Further, despite the Petitioner's claim that this is an "ancillary" or "supplemental agreement" that is inexplicably "not involved in the EB-5 process" the fact remains that it guarantees the Petitioner a full return of the $500,000 he remitted to the NCE, with interest, regardless of the outcome of the EB-5 project. Based on this loan agreement, the record does not establish that any part of the Petitioner's claimed investment is at risk.

For the reasons discussed above, the Petitioner has not demonstrated on motion that our prior decision was based on an incorrect application of the applicable law or USCIS policy. The statute, regulations, relevant precedent decisions, and USCIS policy support our previous determination that the limited partnership agreement and private placement memorandum obligate the NCE to refund the Petitioner's investment upon the occurrence of a specified event, an unfavorable outcome in the filing of the EB-5 investor's Form I-829. *See generally 6 USCIS Policy Manual*, *supra* at G.2(A)(2). The submitted loan agreement frames the Petitioner's investment as a loan in which he is guaranteed a return of the loan amount, plus interest, within a five-year term. The definition of "invest" at 8 C.F.R. § 204.6(e) provides that a contribution of capital in exchange for a note, bond, convertible debt, obligation or any other debt arrangement between the alien entrepreneur and the NCE does not constitute a contribution of capital. Accordingly, we affirm our previous determination that the Petitioner did not show that he made a qualifying investment or placed the required amount of capital at risk.

Finally, although not addressed in our prior decision, there are unexplained inconsistencies in the record regarding the intended recipient of the Petitioner's claimed EB-5 investment. The Petitioner stated on his petition that he invested $500,000 into [redacted] and provided bank records showing that he remitted funds to a bank account owned by this entity on February 19, 2019.

However, the Petitioner provided a business plan, economic analysis, certificate of limited partnership, limited partnership agreement, private placement memorandum, subscription agreement, various supplemental agreements, and other supporting documentation for a different new commercial enterprise, [redacted] These documents consistently identify this NCE, rather than [redacted] as the target for the Petitioner's claimed investment. Further, the record contains no business plan, economic analysis, limited partnership agreement, offering documents or other evidence required by 8 C.F.R. § 204.6(j) relating to the Petitioner's claimed investment in [redacted]

The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the Petitioner

cannot establish his eligibility for classification as an EB-5 immigrant investor with these material inconsistencies unresolved, he will need to address these issues if he pursues this matter further.

III. CONCLUSION

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 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.