U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-D-

DATE: MAR. 29, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: 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 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 that the Petitioner had not established he placed the required amount of capital at risk in , a new commercial enterprise (NCE) or documented the lawful source of his investment funds. We dismissed the appeal, affirming the Chief's findings.

The Petitioner now files motions to reconsider and reopen the matter. On motion, he submits additional evidence and maintains that he has established his eligibility for the classification.

Upon review, we will deny the motions.[1]

I. LAW

A motion to reconsider must establish that our 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). In addition, a motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services or Department of Homeland Security policy.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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

[1] The Petitioner has not provided a statement regarding whether our prior decision has been or is the subject of any judicial proceedings. *See* 8 C.F.R. § 103.5(a)(1)(iii)(C) (requiring that a motion must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding").

petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Petitioner maintains that he qualifies for the immigrant investor classification based on a $500,708 investment in the NCE, a business that engages in the importation and online sale of women's shoes and apparel.[2] While he claims to own a 30% stake in the NCE, he has not submitted documents, such as the NCE's share certificates or stock ledgers, corroborating his ownership.

In our previous decision, we concluded that the Petitioner did not show his eligibility because he did not place at least $500,000 of his funds at risk in the NCE. We determined that because his remittance to the NCE derived from an unsecured loan, the funds did not qualify as "capital" under 8 C.F.R. § 204.6(e) (defining "capital"). In the alternative, we found that $200,000 of his purported investment remained in the NCE's certificate of deposit (CD) account and thus was not placed at risk.

In addition, we found that the Petitioner did not document the complete path of the funds he remitted to the NCE. He claimed that his father had loaned him capital and that his father obtained the funds after selling real properties and stock investments. The record, however, lacked evidence confirming his father or mother's receipt of proceeds from these transactions. We also observed that both the Petitioner and his mother received large sums of monies from multiple unidentified individuals shortly before he purportedly invested in the NCE. In light of these deficiencies, we concluded that the Petitioner did not establish the lawful source of his funds.

A. Motion to Reconsider

On motion, the Petitioner acknowledges our finding that his investment of loan proceeds did not qualify as a capital investment because his assets did not secure the loan. *See Matter of Soffici*, 22 I&N Dec. 158, 162 (Assoc. Comm'r 1998) (finding that an investment of loan proceeds constitutes an investment of indebtedness that must be sufficiently secured with the foreign national's assets to qualify as "capital" under the regulation); *see also* 8 C.F.R. § 204.6(e) (defining "capital"). He states, contradicting his former contention and without support from evidence in the record, that his father had gifted, not loaned, the funds to him. As discussed in our previous decision, the evidence in the record confirmed that his father had loaned the funds to him, including a joint statement from his parents specifying that they had loaned the capital to him, and that he was to repay the loan principal within 10 years. On motion, the Petitioner has not presented any legal or factual support demonstrating that our finding on this issue was erroneous. *See* 8 C.F.R. § 103.5(a)(3).

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

Instead, on motion, the Petitioner discusses our alternative finding that he did not place at least $500,000 at risk in the NCE because $200,000 of the capital was in the NCE's CD account. *See* 8 C.F.R. § 204.6(j)(2). A "petitioner cannot meet his [or her] at-risk requirement by merely depositing funds into a corporate account." *Matter of Ho*, 22 I&N Dec. 206, 209 (Assoc. Comm'r 1998); *see also Al Humaid v. Roark*, No. 3:09-CV-982-L, 2010 WL 308750, *4 (N. D. Tex. Jan. 26, 2010) (finding that capital contribution that "is sitting idle, kept in a passive reserve account" is not at risk). We concluded, assuming *arguendo* that the Petitioner's remittance qualified as "capital" under 8 C.F.R. § 204.6(e), that he nonetheless would not have established that he placed the $200,000 in the CD account at risk in the NCE. *See* 8 C.F.R. § 204.6(j)(2).

On motion, the Petitioner argues that although the $200,000 was in a CD account, he had placed the funds at risk, because he used the CD account as collateral for a line of credit that the NCE obtained from the [redacted]. The record, however, does not support his statements, as it lacks documents from the [redacted] listing the NCE's CD account as collateral for the line of credit. Moreover, his explanation on motion contradicts claims he made in his initial filing, where he stated that the account was "necessary to show business partners in China that [the NCE] has a secure source of funding and that they can put a lien on this $200,000 as a basis for doing business with [the NCE]." The Petitioner elaborated that he deposited the $200,000 in the CD account "because many manufacturing factory in China will not do customized orders with small or new business without a collateral." The Petitioner presents conflicting information on the purposes of the CD account, i.e., to secure a line of credit from a bank or to serve as collateral for business transactions in China, and must resolve this discrepancy with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). He, however, does not do so.

In addition, we observed in our previous decision, while the Petitioner claimed that the NCE had paid the [redacted] $200,000 to satisfy the loan obtained through the line of credit, he did not document what funds the NCE used to pay off the loan or what happened to the $200,000 in the CD account. On motion, he does not address these issues. In light of the above, the Petitioner has not established that our alternative finding – he did not place the $200,000 in the CD account at risk in the NCE – was based on an incorrect application of law or policy or it was incorrect based on the evidence in the record of proceedings at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3).

Similarly, the Petitioner has not demonstrated that our finding relating to the lawful source of funds was erroneous. *See* 8 C.F.R. § 204.6(j); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). While the Petitioner claimed that his father financed his investment in the NCE by selling two real properties and stock investments, the record lacked evidence confirming his father or mother had received funds from these transactions. In addition, as discussed in our decision, shortly before the Petitioner remitted funds to the NCE, he and his mother received large sums of monies from unidentified individuals. On motion, he does not address either issue. In light of these reasons, he has not shown that we erred in our determination that he did not document the complete path of the funds he remitted to the NCE. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

B. Motion to Reopen

The Petitioner has not shown that we should grant his motion to reopen the matter. *See* 8 C.F.R. § 103.5(a)(2). On motion, he submits a notarial certificate that identifies his parents, a September 2017 letter from a certified public accountant,[3] and other documents that are already in the record. The submission does not establish his eligibility for the classification. Specifically, it does not show that his father had gifted him at least $500,000 to invest in the NCE or that he had placed the $200,000 he deposited in the CD account at risk in the NCE. In addition, the documentation he presents on motion does not illustrate the complete path of the funds he remitted to the NCE. In light of these reasons, he has not stated new facts that are supported by documentary evidence, or established his eligibility for the classification on motion. *See* 8 C.F.R. § 103.5(a)(2).

III. CONCLUSION

The Petitioner has not established that we based our previous decision on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. His motion to reconsider the matter will therefore be denied. In addition, the documentation he presents on motion does not demonstrate his eligibility for the classification. His motion to reopen the proceeding will therefore be denied.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to open is denied.

Cite as *Matter of C-D-*, ID# 983329 (AAO Mar. 29, 2018)

[3] The letter indicates that the accountant had "not reviewed, audited, or otherwise attempted to verify any of the information provided to [him or her] by [the NCE]."