U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19633713

Date: MAY 20, 2024

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 noncitizens 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. Noncitizens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not demonstrate the lawful source of the funds she remitted to [redacted] the new commercial enterprise (NCE). We dismissed a subsequent appeal and a subsequent motion to reopen. The matter is now before us again 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 affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(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).

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). Our review on motion is limited to reviewing our

latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A review of any motion is narrowed to the basis for the prior adverse decision. Accordingly, we will examine any new facts and arguments to the extent that they pertain to our most recent decision, the dismissal of a motion to reopen. As such, our analysis for these combined motions is limited to the following: whether we erred in dismissing the Petitioner's prior motion to reopen, concluding that the documentation presented on the prior motion did not demonstrate her eligibility for the immigrant investor visa classification. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion. While we may not address each piece of evidence individually, we have reviewed and considered each one.

A. Motion to Reopen

The Chief denied the petition, concluding that the Petitioner did not demonstrate the lawful source of the funds she remitted to the NCE. We dismissed a subsequent appeal, determining that the Petitioner has not shown that a third-party exchanger, [redacted][1] had lawfully acquired the U.S. dollars it purportedly remitted to the Petitioner. In a subsequent motion to reopen, the Petitioner presented as new evidence ordinances, decrees, and laws regarding foreign exchange in Vietnam and argued that these laws allow banks in Vietnam to lawfully conduct currency exchange. The Petitioner claimed that [redacted] was an import and export company and had to purchase foreign currency from HD Bank, which complied with the relevant laws in Vietnam. We dismissed the prior motion to reopen, finding that the ordinances, decrees, and laws submitted on the prior motion did not indicate that a non-bank entity, like [redacted] was authorized by Vietnamese law to exchange and export currency.

On the instant motion, the Petitioner offers as new evidence information regarding HD Bank's outward remittance service and enterprise details on [redacted] and contends that her source of funds is legal and that the path of her funds is through a third party, [redacted] The Petitioner also submits duplicate copies of two documents previously submitted to USCIS: (1) a letter from [redacted] dated August 2018, which states that he transferred VND 12,398,760,000 to [redacted] and had [redacted] transfer $550,000 to the Petitioner's bank account in the United States for her EB-5 investment and that the $550,000 came from legitimate source and (2) and a receipt from [redacted] dated September 2016, which indicates the receipt of VND 12,398,760,000 by another individual, [redacted] on behalf of [redacted] from [redacted] on behalf of the Petitioner.

As stated above, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Here, the new evidence offered by the Petitioner does not address the issues raised

[1] The Petitioner and some documents in the record refer to [redacted] as [redacted]

in our prior motion decision and does not establish eligibility for the visa classification sought for the reasons we will discuss below.

In support of the current motion, the Petitioner states: "My path of fund is through the third party which was the only way I could do at that time. However, all explanation letters and receipts from related people clearly provided that the money which [redacted] received was from me. . . . [redacted] and [redacted] did not conduct foreign exchange, the full amount was in VND. Then [redacted] bought USD and wired my EB5 fund through a totally legal system - [redacted]

It appears that the Petitioner is stating that she exchanged her funds from Vietnamese dong to U.S. dollars through a third-party exchanger, [redacted] The Petitioner then states that [redacted] and [redacted] did not conduct foreign exchanges and that [redacted] bought U.S. dollars and wired her funds through [redacted] It is unclear whether the Petitioner is claiming that she exchanged her investment funds from Vietnamese dong to U.S. dollars through [redacted] or whether [redacted] exchanged the Petitioner's funds from Vietnamese dong to U.S. Dollars by itself or through another individual or entity.

The Petitioner asserts that HD Bank had the responsibility to verify the legal process of transferring her funds from [redacted] to the United States and presents a printout from the HD Bank website, which provides information regarding HD Bank's outward remittance service. It shows that HD Bank advertises its remittance services on its website, indicating that it serves the needs of customers to buy, transfer, and bring foreign currencies overseas for several purposes and that money can be transferred to any overseas bank.

However, in our prior motion decision, we stated that the record did not indicate that HD Bank conducted a currency exchange. We further stated that the record showed [redacted] [redacted] simply withdrew Vietnamese dong in cash and gave the sum to [redacted], which then remitted the U.S. dollars from its purported bank account to the Petitioner's account in the United States. The information regarding HD Bank's outward remittance service does not establish that the U.S. dollars allegedly transferred by [redacted] from its account ending in 0138[2] to the Petitioner's Wells Fargo account on September 26, 2015 derived from a lawful source. *See* 8 C.F.R. § 204.6(e) (providing that any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital); *see also* 8 C.F.R. § 204.6(j)(3); *Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998) (stating that a petitioner must demonstrate by a preponderance of the evidence that the capital was their own and was obtained through lawful means).

The Petitioner also claims that [redacted] is currently terminated and it is impossible for her to ask the company for details happened in 2016. To support this claim, the Petitioner provides enterprise details on [redacted] from the Vietnamese national business registration portal, which indicates that the company was founded in 2015, but it has been terminated. While we acknowledge the Petitioner's claims on motion, in visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966).

[2] The record does not include complete bank statements of [redacted] or other sufficient evidence to indicate the name of the bank where [redacted] allegedly owned this account ending in 0138 at the time of the transaction.

Likewise, the enterprise details on [redacted] does not establish that the U.S. dollars allegedly transferred by [redacted] from its account to the Petitioner's Wells Fargo account derived from a lawful source. *See* 8 C.F.R. §§ 204.6(e),(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210.

On motion, the Petitioner does not present new facts supported by affidavits or other documentary evidence to establish that we erred in dismissing her prior motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). Therefore, we conclude that the Petitioner has not shown proper cause for reopening the proceeding.

B. Motion to Reconsider

As indicated above, to have established merit for reconsideration of our latest decision, a petitioner must both state the reasons why they believe the most recent decision was based on an incorrect application of law or policy and specifically cite laws, regulations, precedent decisions, or binding policies that the petitioner believes we misapplied in that prior decision. Thus, to prevail in her motion to reconsider, the Petitioner cannot merely disagree with our conclusions but rather must demonstrate how we erred as a matter of law or policy in that immediate prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (holding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

On motion, the Petitioner does not provide the reasons why she believes our prior decision dismissing her prior motion to reopen was based on an incorrect application of law or policy. Nor does she cite laws, regulations, precedent decisions, or binding policies. Likewise, the Petitioner's statement in support of the current motions lacks any cogent argument as to how we misapplied the law or policy in dismissing her prior motion to reopen.

The Petitioner has not shown that our prior decision contains errors of law or policy or that the decision was incorrect based on the record at the time of that decision. *See* 8 C.F.R. § 103.5(a)(3). Therefore, we determine that the instant motion does not meet the requirements of a motion to reconsider.

III. CONCLUSION

On motion to reopen, the Petitioner has not provided new facts supported by affidavits or other documentary evidence to establish that we erred in dismissing her prior motion to reopen. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. 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 prior decision. Therefore, the motions will be dismissed. *See* 8 C.F.R. § 103.5(a)(4). We will not re-adjudicate the petition anew, and the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.