U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 35037947

Date: MAY 30, 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) (2014).[1] 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 (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 in May 2022, concluding that the Petitioner did not document the lawful source of the $500,000[2] she claimed to have invested in [redacted] LP, the NCE, which is associated with [redacted] LLC, the regional center.[3] 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 combined motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). A motion to reconsider must establish that our prior decision was based on an incorrect

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[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition in November 2014, the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2014).

[3] [redacted] LLC, is an entity that U.S. Citizenship and Immigration Services (USCIS) has designated to participate in the EB-5 program. 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) (2014).

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.

In his combined motions, the Petitioner submits for the first time a September 2014 bank statement from [redacted] Sub-branch of [redacted] in account name of [redacted], Ltd., and explains this document's previous unavailability. And the Petitioner re-submits bank statements, business invoices and agreements, brochures, and a certificate of incorporation he had submitted earlier in the proceedings below when responding to the Chief's request for evidence (RFE), which we have considered and addressed in our previous dismissal of the Petitioner' appeal. The Petitioner asserts that [redacted] Ltd.'s bank statement evidences new facts to establish eligibility, as the bank statement demonstrates the source of the funds originating from [redacted] Ltd. Specifically, the Petitioner asserts the bank statement describes "actually receiving commissions for its promotion service, and paying sub-commission to the intermediary agencies in mainland China." Whilst the new fact supported by evidence in the form of the September 2014 bank statement describes the occurrence of a level of [redacted] Ltd.'s business activity, it does not sufficiently demonstrate how its funds do not derive, directly or indirectly, from unlawful means. Or, in other words, the bank statement does not adequately establish the nature of the entities it is earning money from, like [redacted], such that we can evaluate if those funds directly or indirectly derive from unlawful means. And the statement does not confirm that the funds [redacted], Ltd. received as commission or other income did not commingle with other funds of unspecified sources in the same account, such as the deposits in the amounts of $296,000 and $237,000 from "illegible" account names for counter parties. Moreover, the new availability of the September 2014 bank statement, even in combination with previously submitted evidence and assertions, does not confirm the funds in U.S dollars transferred to the job creating enterprise (JCE) derived from the Petitioner's spouse's funds in RMB remitted to [redacted] The record still does not contain material, relevant, or probative evidence to demonstrate the Petitioner's spouse's funds ever left China in order to be exchanged into U.S. dollars and turned over to the JCE.

As stated above, a motion to reconsider must state the reasons for reconsideration and that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The Board of Immigration Appeals generally requires that a motion to reconsider assert an error was made at the time of the previous decision. The very nature of a motion to reconsider is the claim that the original decision was defective in some regard. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006). The Petitioner asserts no legal error in our prior dismissal of his appeal. And she has not established that the decision was incorrect based on the evidence in the record at the time of the decision. The Petitioner's motion essentially expresses her disagreement with our conclusions. But merely disagreeing with our conclusions without showing that we erred as a matter of law is not a ground to reconsider our decision. *See O-S-G-*, 24 I&N Dec. at 58.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established 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.