U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40310192

Date: NOV. 03, 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) (2017).[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 United States economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that the funds she invested in the NCE were obtained through lawful means. FOD dismissed the Petitioner's subsequent combined motions to reopen and reconsider, and we dismissed her appeal. 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 state the reasons for reconsideration and establish that our prior decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider, when filed, must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id*. We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4).

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).

[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 her petition in 2017, the relevant law then in existence governs this appellate adjudication

II. ANALYSIS

At issue is whether the Petitioner has established that our prior decision to dismiss her appeal was based on an incorrect application or law or policy and that it was incorrect based on the evidence in the record at the time of the decision. For the reasons provided below, the Petitioner has not made such a showing. Accordingly, we will dismiss the motion.

In our decision dismissing the appeal, we concluded that the record did not establish the complete path of the Petitioner's invested funds from Vietnam to the United States or otherwise demonstrate that the funds ultimately received by the NCE were derived through lawful means.

To recap, the Petitioner stated that she invested $500,000 in [redacted] an NCE associated with the [redacted] Bank records document that the Petitioner's son transferred $515,000 from his [redacted] account to the NCE's designated escrow account. The NCE acknowledged this transaction and confirmed that the transferred funds were accepted as the Petitioner's EB-5 investment (plus an administrative fee).

The Petitioner asserted that she derived her investment funds through a mortgage loan from [redacted] that was secured by two properties she owns jointly with her spouse in Vietnam. She documented the lawful source of the funds used to acquire those properties, the terms of the loan agreement, the deposit of the loan proceeds (12,000,000,000 Vietnamese Dong (VND)) in her [redacted] account, and her withdrawal of VND 11,830,000,000 in cash.

To explain the path of these VND-denominated funds to her son's U.S. bank account and ultimately to the NCE, the Petitioner stated that the transfer to her son's U.S. bank account "required the lawful private currency swap for full value transaction with a third-party remitter." Specifically, she claimed that she gave VND 11,830,000,000 in cash to [redacted], who "made two full value money swaps to his overseas counterpart [redacted] [a Polish company] for $250,000 and $270,000 respectively." To document the currency swap transaction, the Petitioner provided evidence of the wire transfers [redacted] sent to the Petitioner's son; a statement from [redacted] and a business registration certificate for [redacted] company; a Polish business registration document for [redacted]; and an advisory opinion letter from a Vietnamese attorney.

In dismissing the appeal, we acknowledged [redacted] statement that he received the Petitioner's VND 11,830,000,000 in cash and "used this money as reciprocal capital for business activities of Poland partner companies instead of transfer[ing] the money abroad." However, we noted that his statement was not corroborated by objective evidence such as a receipt for the Petitioner's claimed cash transaction with [redacted] bank records corroborating his company's receipt and deposit of the Petitioner's VND funds, evidence of [redacted] or his company's handover of the Vietnamese currency he purportedly collected from the Petitioner to the claimed Polish partner companies, or any evidence showing his company's direct involvement in the monetary transactions. We also observed that the record did not document any agreement between the Petitioner and [redacted] or his company and did not sufficiently support the Petitioner's claim that [redacted] company is a legitimate money exchange business. Considering these deficiencies, we concluded the Petitioner did not meet her burden to demonstrate that her EB-5 investment derived from the lawfully sourced cash she claims she remitted to [redacted]

On motion, the Petitioner maintains that we erred by requiring that she document the "complete path" of her invested funds, emphasizing that pursuant to the evidentiary requirements at 8 C.F.R. §§ 204.6(e) and 204.6(j)(3), she is not required to provide an "exhaustive forensic reconstruction of every transaction undertaken by an independent third-party exchanger." Rather, she maintains that she has met her burden by showing the lawful source of her own funds (the proceeds of a loan secured by property she owns) and by showing the lawful transfer of that capital into the investment, regardless of whether an intermediary exchanger obtained its foreign currency through other transactions.

As she did on appeal, the Petitioner asserts that her interpretation is supported by recent district court decisions holding that the regulations do not require tracing of funds beyond their immediate source. *See Battineni v. Mayorkas*, No. 22-1332, 2024 WL 4267522, (D.D.C. Oct. 2, 2024); *Sun v. United States Citizenship & Immigr. Servs.*, No. 21-2162, 2025 WL 947463, (D.D.C. Mar. 28, 2025); *Zhou v. Noem*, No. 19-2650, 2025 WL 416152, (D.D.C. Feb. 6, 2025). We previously addressed these decisions, noting that we are not bound by federal district court decisions. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Nevertheless, the Petitioner maintains that the referenced decisions are persuasive authority as they "correctly interpret the lawful-source requirement to mean that once the petitioner shows the lawful origin and transfer of her own contribution, the inquiry ends." She also maintains that the 1998 precedent decisions cited in our decision, including *Matter of Ho* and *Matter of Izummi*, do not support a "complete path of funds" requirement.

However, in our prior decision, we emphasized that the D.C. circuit court has affirmed a decision that held USCIS' complete path interpretation of the regulations is its authoritative position as explained and supported by the 1998 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. 206, 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195. Another circuit court also affirmed USCIS' denial where the petitioner's transfer of funds to a currency exchanger "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. 2023). These decisions require petitioners to document the path of funds to establish both the lawful source of the funds invested in the NCE and their ownership of those funds.

We also emphasized that other federal district courts have found that petitioners must show the complete path of funds. *See Truong v. USCIS*, No. 21-316, 2023 WL 4234658, at 5 D.D.C. June 28, 2023). The Petitioner contends that the facts in *Truong* are "factually distinguishable" and do not support our interpretation of the path of funds requirement, noting that "*Truong* involved unexplained gaps in the petitioner's own account activity, which created genuine breaks in the evidentiary trail from the petitioner's assets to the invested funds." The Petitioner claims that she, by contrast, "has documented her lawful acquisition of VND via bank loan proceeds, the transfer of the VND capital to the exchanger, and the receipt of corresponding U.S. dollars into her son's bank account, then to the NCE's escrow account" and as such there is "no gap in her own chain of custody." Rather, she contends that "the alleged 'break' exists only because USCIS seeks to extend the inquiry into the exchanger's separate financial dealings."

However, the Petitioner mischaracterizes the facts presented in *Truong*, which, contrary to her claims, are nearly identical to those presented here. The petitioner in *Truong* documented the withdrawal of cash from her bank account and stated that she transferred her Vietnamese currency to a money exchange service business. However, she did not provide sufficient objective evidence to demonstrate that the money exchanger received and deposited that cash, thus creating a break in the path of funds. The district court found that USCIS did not venture outside its usual practice when it questioned whether the petitioner was able to demonstrate the path of her funds from her withdrawal from her bank account in Vietnam to the deposit of funds into the NCE escrow account, noting that "the agency has consistently considered its 'path of funds' requirement to include documenting how third parties involved in the movement of funds received those funds from the EB-5 petitioner." *See Truong v. USCIS*, 2023 WL 4234658, at 14. The court ultimately upheld USCIS' decision because the petitioner did not provide the necessary documentation tracing the path of the funds used in her currency exchange, emphasizing that this deficiency alone provided grounds for denial of the petition, and was separate from an examination of the lawfulness of the third-party exchanger's funds. *Id.* at 16-17.

While the Petitioner claims on motion that she documented the transfer of her Vietnamese currency to [redacted] to perform the currency swap transaction, our prior decision explained why the evidence related to this claimed transaction, was insufficient. Specifically, we explained that the evidence, which consisted solely of statements from the Petitioner and [redacted] did not show, by a preponderance of the evidence, that the parties had agreed to participate in a currency swap transaction and that her funds were received by [redacted] business, deposited to his company's account, or otherwise involved in the currency swap [redacted] claims he executed.[2] On motion, the Petitioner does not address our reasoning but simply contends that previously provided evidence was sufficient to show [redacted] receipt of her Vietnamese currency. Further, while she maintains that a written agreement between the parties "is not legally required for this type of arrangement" the record lacks adequate support for this claim.

The omission of evidence showing the transfer of the cash the Petitioner withdrew from her account to [redacted] created a break in the path of the Petitioner's funds which is separate from any inquiry into "the exchanger's separate financial dealings." Absent evidence that the Petitioner deposited the funds with [redacted] company for the purpose of executing a currency swap, she lacks a credible claim to ownership of the U.S. dollar funds that were ultimately transferred to her son and deposited with the NCE. An immigrant investor must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are [their] own").

The Petitioner further maintains that we erroneously discounted the probative value of an advisory opinion letter from a Vietnamese attorney who addressed "the conversion of currency contracts between business establishments with overseas bank accounts and Vietnamese individuals with foreign bank accounts." We considered the advisory opinion, noting that it did not overcome our concerns regarding the evidentiary deficiencies in the Petitioner's record, such as the lack of evidence

[2] As we observed in our prior decision, the Petitioner did not claim at the time of filing that she had used the services of [redacted] or any other third party to facilitate the exchange of her Vietnamese currency for U.S. dollar funds, but rather stated in her December 1, 2017 declaration: "On 11/10/2017, I wire transferred $250,000 and $270,000 to my son . . .."

of any agreement between the parties involved in the claimed currency swap transaction, the lack of evidence corroborating [redacted] receipt of the Petitioner's VND 11,830,000,000 in cash, and his company's receipt of the funds she purportedly transferred to [redacted] Further, we noted that the currency exchange scenario described in the opinion did not match the facts presented here.

On motion, the Petitioner emphasizes that the advisory opinion letter, while it addresses a different factual scenario, was intended to provide "expert confirmation" that "Vietnamese law does not prohibit cross-border currency conversion transactions in which Vietnamese currency is exchanged domestically for equivalent foreign currency abroad." She maintains the attorney's letter confirms "the structure of the transaction described does not violate Vietnamese law." However, even if we had determined that the advisory opinion has probative value with respect to the legality of cross-border currency exchanges in Vietnam, this would not have changed the outcome of the Petitioner's appeal due to the evidentiary deficiencies already addressed above.

In our prior decision, we also determined that even if the Petitioner had sufficiently documented [redacted] company's role in the currency swap transaction, the record did not demonstrate that the company can lawfully operate in Vietnam as a money exchange business. On motion, the Petitioner asserts that the plain language on the company's business registration certificate and "logical inferences to be drawn from it" show that the company "is authorized to conduct cross-border exchange services, including the receipt of domestic currency and facilitating transfer of funds" and that it was unreasonable to require any additional evidence. While the business registration for the company indicates that it is registered to engage in "[f]oreign currency receipt and payment services," we disagree with the Petitioner's suggestion that [redacted] business has blanket authorization to engage in other types of cross-border exchange transactions, including "the receipt of domestic currency," or "facilitating transfer of funds." Further, in immigration proceedings, the law of a foreign country is a question of fact which must be proven if a petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). Therefore, the Petitioner has not shown that we erred by concluding that the business registration documentation alone is insufficient to show that [redacted] company is legally authorized to conduct the type of currency swap transaction described in the record.

The Petitioner also asserts that we erred by failing to apply USCIS policy guidance which requires deference to prior favorable determinations "absent a finding of material change, fraud, misrepresentation or legal deficiency." She claims that her case "presents identical facts as numerous other cases previously submitted to and positively adjudicated by USCIS for this Regional Center alone," and that "USCIS continues to approve cases with indistinguishable fact patterns involving the same currency swap transaction." Related to this claim, the Petitioner contends that our appellate decision constitutes new rulemaking in violation of the Administrative Procedures Act (APA) because the decision misinterpreted the relevant statute and regulations regarding the definition of "capital." Specifically, she maintains that our decision violates the APA by imposing an "Exchange Party Test" in which USCIS demands petitioners trace their funds through every intermediary party in a currency exchange. The Petitioner states that the standard did not exist previously, is a clear break from established practice, and places an unreasonable burden on immigrant investors.

The Petitioner's argument reflects a misunderstanding of USCIS policy guidance on deference to previous determinations in the EB-5 context. USCIS will generally defer to prior determinations on

regional center filings and does not reexamine determinations made earlier in the EB-5 process. For example, when USCIS has previously concluded that an economic methodology is reasonable to project future job creation as applied to the facts of a particular project, USCIS defers to this determination for all related adjudications linked to the same specific project. *See generally*, 6 *USCIS Policy Manual* G.3(A)(2), https://www.uscis.gov/policy-manual. However, USCIS still conducts a de novo review of each prospective immigrant investor's lawful source of funds and other individualized eligibility criteria. *Id.* We are not required to approve 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).

While we acknowledge the Petitioner's claims that USCIS has approved other EB-5 petitions involving similar currency swap transactions, the issues in this case are not limited to the Petitioner's alleged use of intermediaries to assist her in exchanging Vietnamese for U.S. currency. Rather, our decision was based, in significant part, on her provision of insufficient documentation related to the claimed currency swap transaction, including a lack of objective evidence that the third-party exchanger received the Vietnamese currency she withdrew from her bank account.

Likewise, the Petitioner's contention that our decision violated the APA by requiring that she demonstrate the complete path of funds, including the movement of those funds through intermediary accounts, is unpersuasive. As discussed, this interpretation of the regulations at 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) is supported by relevant precedent decisions and other case law. *See Borushevskyi v. USCIS*, 664 F. Supp. 3d at 129; *see also Matter of Ho*, 22 I&N Dec. at 213; *Matter of Izummi*, 22 I&N Dec. at 195.

Based on the foregoing, 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, that therefore we will dismiss the motion to reconsider. 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.