U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17289365

Date: NOV. 4, 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 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 U.S. economy and create at least 10 full-time positions for qualifying employees. Foreign nationals 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, 1993, 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 funds she purportedly invested in [redacted] (NCE), which is sponsored by [redacted] We dismissed a subsequent appeal. The matter is now before us again on combined motions to reopen and reconsider. On motion, the Petitioner presents a brief and additional evidence and maintains that the record establishes her eligibility for the benefit sought.

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 the Petitioner's appeal. Our analysis for these combined motions is limited to the following: whether we erred in dismissing the Petitioner's appeal, concluding that the Petitioner has not established by a preponderance of the evidence the lawful source of the funds she remitted to the NCE. 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.

A. Motion to Reopen

Initially, we note that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial based on newly discovered evidence. *INS v. Doherty,* 502 U.S. 314, 323, (1992) (citing *INS v. Abudu,* 485 U.S. 94, 108 (1988)); *see also Selimi v. Ashcroft,* 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. *INS v. Abudu,* 485 U.S. at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." *Id.* at 108. Granting motions too freely could permit endless delay when noncitizens continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. *See generally INS v. Abudu,* 485 U.S. at 108. The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho,* 20 I&N Dec. at 473; *see also Maatougui v. Holder,* 738 F.3d 1230, 1239-40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu,* 485 U.S. at 110. With the current motion, the Petitioner has not met this burden.

The Petitioner asserted that the funds she invested in the NCE in 2016 derived from proceeds she received in 2012 when she and her mother, [redacted] sold a real property in [redacted] China. She also asserted that she retained the sale proceeds from 2012 until May and June 2016 when she transferred Chinese renminbi (RMB) to five intermediaries from whom she sought U.S. dollars to invest in the NCE.

First, in our prior decision, we determined the record did not show that the Petitioner's investment funds ever left mainland China or that she invested such funds in the NCE. The Petitioner claimed to have relied on five individuals, including [redacted] as her intermediaries to change and bring the purported sale proceeds of the [redacted] property from mainland China to Hong Kong and then ultimately to the United States. The bank statements for the Petition's and [redacted] accounts in mainland China show that from May 10 to 30, 2016, the Petitioner transferred a total of RMB 2,475,500 from her [redacted] account ending in 2381 to [redacted] account ending in 7027. The bank statements for the Petitioner's and Mr. [redacted] accounts

in Hong Kong indicate that in exchange, from May 11 to 30, 2016, Mr. [redacted] transferred a total of $375,000 from his [redacted] Hong Kong account ending in 5888 to the Petitioner's [redacted] Hong Kong account ending in 0888.

According to the path of funds chart provided by the Petitioner in response to the Chief's request for evidence, Mr. [redacted] sent the RMB received from the Petitioner to [redacted] Hong Kong account ending in 8838, and [redacted] then exchanged the RMB to U.S. dollars and transferred the U.S. dollars to Mr. [redacted] Hong Kong account ending in 5888. However, the bank statements for [redacted] Hong Kong account ending in 8838 did not corroborate this assertion. The Petitioner submitted documentation showing that [redacted] is a private company registered in Hong Kong and that as of December 2017, Mr. [redacted] was the sole owner and director of [redacted] However, we determine that the record did not contain sufficient evidence confirming the lawful source of the $375,000 the Petitioner received from Mr. [redacted] because the Petitioner has not shown that all deposits [redacted] received in its Hong Kong account during the relevant period came from lawful sources.

The Petitioner's motion brief does not address the deficiency regarding the source of the U.S. dollars in [redacted] Hong Kong account. Nor does she offer any evidence to demonstrate the claimed lawful source of the $375,000 in [redacted] Hong Kong account. Because the Petitioner did not address the issue regarding the source of the exchange funds with specificity on motion, we determine the Petitioner has not demonstrated that the $375,000 she received from Mr. [redacted] which she claims to have invested in the NCE, originated from lawful sources. *See* 8 C.F.R. §§ 204.6(e) (defining "capital"), (j)(3); *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998) (stating that a petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the new commercial enterprise and that the record must trace the path of the funds back to a lawful source). *See also Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5-6 (D.D.C. June 28, 2023) (holding that the plain language of 8 C.F.R. §§ 204.6(e) and (j)(3) supports USCIS' requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds, and that the relevant path includes tracing the funds from their point of origin though *any intermediary accounts* (emphasis added)).

Second, we noted in our prior decision that the property documents indicate that the Petitioner and her mother owned the [redacted] property before the 2012 sale, but the Petitioner has not offered evidence confirming that she was entitled to the RMB 5,120,000 in its entirety that she received for the property. The Petitioner now offers a statement from her mother, dated May 2016, stating that she was willing to donate her own proportion of the sale proceeds to the Petitioner. This establishes that the Petitioner was entitled to the sale proceeds of RMB 5,120,000. *See Matter of Ho*, 22 I&N Dec. at 206 (holding that a petitioner must show that they have placed their own capital at risk, i.e., that they were the legal owner of the invested capital); *see also Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (interpreting 8 C.F.R. § 204.6(e) as requiring that a petitioner establish the funds invested are their own).

Third, we found that the Petitioner has provided bank statements for multiple accounts, but none of them sufficiently documented the sources of the funds she transferred to the intermediaries for the currency exchanges in 2016 or trace those funds back to the proceeds she purportedly received from

selling the [redacted] property in 2012. The Petitioner claimed that the sale proceeds of RMB 5,120,000 were deposited into her [redacted] account ending in 3159. She further claimed that she had used the sale proceeds for financial investments and stock investments with her [redacted] account ending in 3229. However, the bank statements for the Petitioner's [redacted] account ending in 3229 did not show that the account received the sale proceeds in November and December 2012. In addition, the bank statements for her [redacted] account ending in 2381 did not show that the account received the sale proceeds from her [redacted] account ending in 3159 in 2012. Furthermore, the bank statements for the Petitioner's [redacted] account ending in 2381 showed that the account received a number of deposits from various sources, but we found that the Petitioner has not sufficiently documented the sources of these deposits.

The Petitioner now presents a report of her source of funds prepared by [redacted] and additional evidence, which includes the account statements for the Petitioner's [redacted] investment account and for her [redacted] investment account. The source of funds report asserts that the sale proceeds of RMB 5,120,000 were deposited into the Petitioner's [redacted] account ending in 3159 from October to December 2012, that the Petitioner transferred RMB 3,200,000 to her [redacted] account from November to December 2012 and the funds appreciated from November 2012 to February 2016, that in March 2016, the Petitioner changed the stock trading company to [redacted] and that the Petitioner transferred RMB 3,521,534 to her [redacted] account ending in 2381 from which she remitted RMB to the intermediaries in May and June 2016.

While the account statements for the Petitioner's [redacted] show that a total of RMB 3,200,000 was deposited into the account from November to December 2012, the record does not establish the deposited funds were maintained in the Petitioner's [redacted] account without comingling with funds from other sources not shown to derive from lawful means until 2016 when the Petitioner allegedly changed the stock trading company to [redacted] For example, on January 25, 2013, RMB 1,002,480 was withdrawn from this account. On May 13, 2013, RMB 2,010,000 was withdrawn from this account. On February 11, 2014, RMB 150,036 was deposited into this account from an unknown source. On July 24, 2014, RMB 128,700 was deposited into this account from an unknown source. The Petitioner has not sufficiently explained or documented the sources of various deposits into this account.

In addition, the record does not show that the claimed appreciated sale proceeds of RMB 3,200,000 were accumulated and maintained in the Petitioner's [redacted] account from March to May and June 2016 when the Petitioner transferred the funds to the intermediaries for the currency exchanges. For example, on February 29, 2016, various amounts were deposited into the Petitioner's [redacted] account, but the Petitioner has not sufficiently explained or documented the sources of these deposits. Moreover, while the source of funds report claims that the Petitioner transferred a total of RMB 3,521,534 from her [redacted] account ending in 3229 to her [redacted] account ending in 2381, the report does not identify dates of the alleged transfers, and the bank statements for the Petitioner's [redacted] account ending in 3229 do not show the alleged transfers.

The bank statements for the Petitioner's [redacted] account ending in 2381 show that various amounts were deposited into this account on various dates from the Petitioner's account ending in 3229. However, the bank statements reflect that the funds transferred from the Petitioner's account ending in 3229

were comingled with funds from other sources not shown to derive from lawful means as they also show withdrawals of various amounts from and deposits of various amounts on various dates into the Petitioner's account ending in 2381. For example, on May 4, 2016, the Petitioner deposited RMB 1,800,000 into her [redacted] account ending in 2381. She has not sufficiently explained or documented the sources of various deposits into this account.

As we have discussed above, the additional evidence submitted on motion does not sufficiently document the sources of funds the Petitioner transferred to the intermediaries or trace those funds back to the sale proceeds of the [redacted] property. *See* 8 C.F.R. § 204.6(j)(3). *See also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195 (stating that a petitioner must demonstrate by a preponderance of the evidence that the capital was obtained through lawful means and that the record must trace the path of the funds back to a lawful source). As such, the Petitioner's motion filing does not demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. at 473 (requiring that new evidence have the potential to change the outcome).

Based on these findings, in our prior decision, we declined to address the Chief's determination that the Petitioner did not show that in 2004, she used lawfully obtained funds to purchase the [redacted] property, which she claimed to have sold in 2012 to finance her investment in the NCE.[1] The Petitioner now offers evidence in an effort to demonstrate the claimed lawful source of funds used by her parents to purchase the [redacted] property in 2004, such as statements from her parents' former colleagues and a mortgage registration application. Because the identified basis for denial is dispositive of the Petitioner's motion, we again decline to address the Petitioner's motion argument regarding the claimed lawful source of funds used by the Petitioner's parents to purchase the [redacted] property.[2]

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) (finding 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).

The Petitioner contends that our prior decision did not address her legal arguments regarding the burden of proof under the caselaw cited by the Chief and by us in support of our prior decision. In our prior decision, we stated that in immigration proceedings, it is the petitioner's burden to establish by a preponderance of the evidence eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. at 375-76. We further provided that if the petitioner submits

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).
[2] *See id.*

relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, the petitioner has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76. In our prior decision, we thoroughly discussed the evidence submitted and explained in detail why we concluded the Petitioner has not established by a preponderance of the evidence the lawful source of the funds she remitted to the NCE. The record does not support the Petitioner's contention that we did not address her legal arguments regarding the burden of proof in these proceedings.

The Petitioner also argues that the Chief required her to submit evidence far in excess of what is required to establish that it is probably true that her investment funds were derived from a lawful source. However, she does not provide the reasons why she believes our prior decision dismissing her appeal was based on an incorrect application of law or policy. Nor does she cite laws, regulations, precedent decisions, or binding policies to support that we erred in dismissing her appeal. Likewise, the Petitioner's brief in support of the current motion lacks any cogent argument as to how we misapplied the law or policy in dismissing her appeal.

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. Therefore, we determine that the instant motion does not meet the requirements of a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3).

III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility for the immigrant investor visa classification. 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. 8 C.F.R. § 103.5(a)(4). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.