U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38173883

Date: OCT. 7, 2025

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Standalone Investor

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).[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 U.S. economy and create at least 10 full-time positions for qualifying employees. Aliens may invest in a project associated with a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. *See* section 203(b)(5)(E)(i) of the Act.

The Field Operations Directorate (FOD) initially approved then revoked the petition's approval on multiple bases, including that the Petitioner made a material change to the facts underlying the petition and that the record did not establish the lawful source of the Petitioner's funds. We subsequently dismissed the Petitioner's appeal concluding the FOD properly revoked the petition's approval.

The matter is now before us on combined motions to reopen and reconsider. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) 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. LEGAL FRAMEWORK

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

[1] On March 15, 2022, the EB-5 Reform and Integrity Act was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in INA 203(b)(5), and adding significant new integrity provisions. https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221006EB5ReformAndIntegrityAct.pdf. As the Petitioner filed this petition in March of 2017, the relevant law in existence on that date governs this appellate adjudication.

I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that our prior decision was based on an incorrect application of law or policy, and (3) establish that our prior decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60. A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

Within the motion filing, the Petitioner does not assert any new facts, nor does he support any new facts with evidence. In fact, the motion brief does not make any reference to a motion to reopen and its main heading only reflects it is a motion to reconsider. As a result, even though the Petitioner checked the box on the appellate form indicating this filing was, in part a motion to reopen, his failure to meet the minimum requirements for a motion to reopen undermines this as that type of filing.

Within the motion to reconsider, the Petitioner contests the correctness of our prior decision arguing against our appellate determinations relating to material changes, lawful source of his funds, and job creation.

A. Material Change Claims

To begin, the Petitioner explains COVID-19 brought on a situation that was outside of his control and that USCIS should consider that as a mitigating factor to determine he did not make a material change to his petition. As the Petitioner indicates in the motion brief, he already presented that argument in the response to the FOD's notice of intent to revoke the petition's approval and on appeal. In other words, this is an issue that was previously raised and addressed.

The Petitioner does not offer any new legal arguments or resources to demonstrate our prior determination in the appeal was incorrect. As a result, the Petitioner's reliance on unforeseen circumstances created by the pandemic is not a proper basis to support the motion to reconsider and we will not address it further here.

Next, he contends the case law relating to a material change is distinguishable and inapplicable to his case. He argues that because the underlying facts in those cases do not directly align with his scenario, that USCIS improperly relied on that case law. But no two cases will be identical in every factual detail, and the principle of precedent has no such requirement. The salient question is whether the situations are sufficiently similar to warrant the application of the precedent to the current case. But even so, the Petitioner presented this same legal argument in the appeal brief and we explained why

that claim was unpersuasive. For instance, in the appeal brief he argued that because the petition was approvable when he filed it, any later changes could not have been in an effort to make a deficient petition conform to regulatory requirements as contemplated in *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). In response we stated:

> The Petitioner's argument would require us to conclude that, if a petition appears approvable as initially filed, no later change in circumstance would render that petition not approvable. This claim is not supported by regulation or USCIS policy. A petitioner must be eligible for the benefit requested not only at the time of filing but must also maintain eligibility through adjudication. 8 C.F.R. § 103.2(b)(1). Additionally, if material changes occur after the approval of a petition, but before the investor has obtained conditional resident status, such changes generally constitute good and sufficient cause to revoke the approval of a petition, if not overcome. *See generally* 6 *USCIS Policy Manual* G.3(C)(1), https://www.uscis.gov/policy-manual.

As this legal argument was raised and addressed in the appellate proceeding, and he has not presented any new legal arguments or resources to demonstrate our prior determination in the appeal was incorrect, it is not a proper basis in which to ground this motion to reconsider and we will not address it further here. *See Matter of O-S-G-*, 24 I&N Dec. at 60.

B. Lawful Source of Funds Claims

Embedded within the Petitioner's lawful source of funds argument in the motion to reconsider, he addresses the involvement of third-party exchangers, and the path he elected to utilize to transfer his funds from outside the United States to the NCE, [redacted]

Ultimately, the Petitioner used multiple third-party exchangers to move his funds from Iran to the NCE and in doing so deviated from only using the licensed exchanger [redacted]. During his funds' travels to the NCE, because it passed through multiple unlicensed accounts, the FOD determined he could not demonstrate that he was the owner of the funds eventually transferred to the NCE. We upheld those findings in our decision on the appeal. Now, the Petitioner argues that the path of his funds, and any handling of it by third-party exchangers, is not relevant to whether the funds that wound up in the NCE belonged to him. But we do not agree with the Petitioner here.

Contrary to the Petitioner's claims, the lawful source of a petitioner's invested funds—to include demonstrating the full path the funds journey into the new commercial enterprise—is governed by regulatory provisions as well as precedential decisions. The regulation at 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.

In *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998), the Board of Immigration Appeals (the Board) discussed how the alien's funds made their way to the custody account in the United States but determined the petitioner did not establish he satisfied 8 C.F.R. § 204.6(j)(3)(i)–(iv) because the record did not reveal from where these funds originated (i.e., the full path of the funds into the appropriate account). The Board specifically stated that because "the petitioner has not documented the path of the funds, such as by wire-transfer records, the petitioner has failed to meet his burden of

establishing that the" invested funds were his own). Alien investors must demonstrate invested capital is their own. *See* 8 C.F.R. § 204.6(e) under the definition of capital requiring any assets—to include cash—are "owned by the alien investor." The Petitioner does not persuasively address this aspect within *Izummi* and explain why we should ignore the Board's discussion of the path of the funds.

Further, in *Matter of Ho*, 22 I&N Dec. 206, 210–11 (BIA 1998) the Board discussed that alien's process of transferring funds to the United States and decided he failed to comply with 8 C.F.R. § 204.6(j)(3)(i)–(iv). The Board supported that determination stating "the wire-transfer receipt does not reveal from what bank account(s) the funds originated." Again, the Petitioner offers no persuasive arguments explaining why the Board's direct discussion of the path of the funds should be ignored. Because the Petitioner has not documented the complete transfer of funds from their overseas accounts to the United States, the financial trail goes cold along their journey.

Federal courts also subscribe to this position while offering a salient analysis to support their conclusion. For example, they have concluded that a petitioner must document the complete path of the funds to show that they belong to the alien as was explained in the Board's precedential decisions. *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023). That court's appellate body affirmed the district court's order concluding "the plain language of the regulations at issue confirmed the agency's interpretation of those regulations [that require petitioners] to submit evidence tracing *the complete path of his capital investment*," and "that substantial evidence supported the agency's decision that the evidence submitted by appellant did not trace the complete path of his capital investment." *Borushevskyi v. USCIS*, No. 23-5116, 2024 WL 2762146, at *1 (D.C. Cir. May 30, 2024) (emphasis added).[2]

And this is a long-standing interpretation from federal courts as noted in *Spencer Enters., Inc., v. United States*, 229 F. Supp. 2d 1025, 1039–1040 (E.D. Cal. 2001) (finding a petitioner must present clear documentary evidence that the funds are their own and agreeing with this office that a petitioner's documents that do not show the full path of the funds—i.e., from what account number the funds were withdrawn—to prove they are from the petitioner do not meet the regulation's requirements), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The district court further reasoned "[t]hese are hypertechnical requirements to serve a valid government interest; i.e., to confirm that the funds utilized in the program are not of suspect origin." *Id.* at 1040.

In summary, 8 C.F.R. § 204.6(e) and (j), as well as long-standing caselaw require not only that funds be lawfully obtained, but also that the manner of their transfer reflect lawful means. Ignoring whether

[2] Several other federal courts have concluded similarly. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5–6 (D.D.C. June 28, 2023) (finding that identifying the source of funds is demonstrated through evidence reflecting the complete path of the funds, and petitioners must trace the fund's path "from 'their point of origin though *any intermediary accounts*'") (alteration in original). *See also Nguyen v. USCIS*, 637 F.Supp.3d 822 (C.D. Cal. 2022) (affirming USCIS's denial of the petition where the petitioner's transfer of funds to a currency exchange "caus[ed] a clear break in the source, custody, and ownership of [the petitioner's] funds" and therefore there was insufficient evidence that the funds invested "were obtained from a lawful source"), *aff'd*, No. 22-56068, 2023 WL 8251320 (9th Cir. Nov. 29, 2023); *Le v. USCIS*, No. 21-CV-501 (JMC), 2025 WL 1743942, at *9 (D.D.C. June 24, 2025);; *Zhang v. Nielsen*, No. CV 18-9799, 2019 WL 5303276, at *7–8 (C.D. Cal. Oct. 17, 2019); *Sadeghzadeh v. USCIS*, 322 F. Supp. 3d 12, 17–18 (D.D.C. 2018). These opinions require the Petitioner to document the path of funds to establish the lawful source of the funds invested in the NCE.

funds were lawfully moved from abroad to the United States risks undermining the integrity of the EB-5 program. Funds lawfully sourced but suspiciously transferred may still disqualify an investment.

In this case, there are breaks in the paths of the Petitioner's claimed investment funds. The plain language of 8 C.F.R. § 204.6(e) and 204.6(j)(3) supports FOD's requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, 2023 WL 4234658, at *5. The relevant path includes tracing the funds from their point of origin though any intermediary accounts. *See id.* at *6. Further, the record must trace the path of the funds back to a lawful source. *Matter of Ho*, 22 I&N Dec. at 210–11; *Matter of Izummi*, 22 I&N Dec. at 195; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating documentation of the source of funds "is relevant to the question of whether the funds have been lawfully obtained, which is a requirement under 8 C.F.R. § 204.6(j)(3)").

The Petitioner also argues that *United States v. Banki*, 685 F.3d 99 (2d Cir. 2012), *as amended* (Feb. 22, 2012) favors his petition filing, but that case is readily distinguished. *Banki* was not about an immigrant transferring money from Iran to the United States to invest in an NCE, but instead focused on whether the funds originated from a business or a family member for the purpose of buying an apartment in the United States. Our attention here is the full path of the funds with a mandatory focus on whether a petitioner owns the funds that are eventually invested in an NCE, as opposed to the *Banki* case where the court was focused on who the funds originated from, which was key to the charges of false statements and sanctions violations. The cited case is not sufficiently relevant to the EB-5 program or its attendant requirements.

And our above analysis relating to the importance of documenting the full path of funds refutes the Petitioner's implication that he can qualify for this immigrant program without documenting each move the funds made along its journey.

C. Job Creation and the Impact of COVID-19

And as a final matter, the Petitioner notes that within our appellate decision we did not provide a full analysis relating to job creation. But we note that we were not required to do so as the two bases we decided adversely against the Petitioner were dispositive of the appeal and those issues demonstrated the revocation was appropriate. Where a case warrants a denial regardless of other eligibility considerations, it is unnecessary that we address those other deliberations. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)). Since the identified basis for the motion to reconsider is dispositive of the Petitioner's filing here, we decline to reach and hereby reserve the Petitioner's motion arguments regarding job creation.

III. CONCLUSION

The Petitioner has not offered new facts supported with evidence and they have not established eligibility for the motion to reopen. And relating to the motion to reconsider, he 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.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or 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.