U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38657823

Date: SEP. 18, 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 United States economy and create at least 10 full-time positions for qualifying employees. An alien may invest in a project associated with a United States 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.

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2018).

An 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"). In addition, they must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show that the invested funds were obtained through lawful means, a petitioner must produce evidentiary documents listed at 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source and the record must trace the complete path of the funds back to a lawful source.[2] *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) 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. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

[2] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program are not of suspect origin." *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001) (holding that a petitioner had not established the lawful source of her funds because, in part, she did not designate the nature of all of her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

is USCIS' authoritative position recognized by other relevant precedent decisions); *see also 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).

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that the Petitioner's invested capital was obtained through lawful means, and that the required amount of capital had been invested or is actively in the process of being invested. 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 motions.

The Petitioner asserts eligibility as an immigrant investor based on investment in [redacted] the new commercial enterprise (NCE) in the amount of $500,000 on November 19, 2019. The NCE, which is affiliated with the [redacted] regional center, proposed to pool up to $134 million from 268 immigrant investors and lend the funds to [redacted] the job creating entity (JCE) to develop a new residential community in [redacted] California.

To raise her investment funds, the Petitioner states that she and her husband sold two properties in [redacted] Vietnam in 2019, directly investing some of the proceeds and using interest income and a loan secured by another portion of the proceeds for the remainder of the investment. She also asserts that she entered into a currency swap arrangement with [redacted], a Vietnamese migration consultancy, to assist her with exchanging and transferring her funds to the NCE. As one part of a complex array of transactions intended to accomplish this, the record shows that on November 19, 2019, the Petitioner transferred VND 4,187,700,000 from her [redacted] account ending in [redacted] to [redacted] account ending in [redacted] On the same day, a report from [redacted] (Singapore) account ending in [redacted] shows receipts of $192,000 and $128,000 from the Petitioner and her daughter, respectively, as well as debits in the amounts of $320,000 and $180,000 which were ultimately transferred to the NCE's escrow account.

In our appeal decision, we noted FOD's concerns over the lawful source of the $180,000 transferred from [redacted] account and agreed with FOD that there was a break in the path of the Petitioner's funds between the VND 4,187,700,000 withdrawn from her [redacted] and the $180,000 withdrawn from [redacted] We concluded that the record was insufficient to establish the lawful source of the Petitioner's investment funds, and that she had therefore not established her eligibility as an immigrant investor.[3]

[3] Because this conclusion was dispositive of the Petitioner's appeal, we reserved the issues of FOD's conclusions that the Petitioner had not established the lawful source of the investment funds originating from the sale of the two properties, and that the required amount of capital had not been invested.

I. MOTION TO REOPEN

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).

On motion, the Petitioner provides previously unsubmitted evidence, including:

- Signed statement from an officer of [redacted]
- "Legal Advice Letter" regarding currency swap transaction
- [redacted] client agreement
- [redacted] 2019 balance sheet and income statement
- Copy of a recent federal district court decision

The statement from [redacted] dated March 27, 2025, includes a number of assertions regarding the company and its transaction with the Petitioner. It reiterates the details of the currency swap with the Petitioner as described above, and asserts that the client agreement, in combination with the previously submitted bank statements and invoices, document the lawful source of the $180,000 that was transferred from [redacted][4] [redacted] also asserts that it provided complete bank statements from this account for "the full 3 months that involved the transactions with [the Petitioner]."

However, the bank statements in the record from this account cover the full months of August, September, and October 2019, and not November 2019, the month in which the remainder ($320,000) of the Petitioner's investment funds were received into the account and the full $500,000 investment was transferred to the NCE's escrow account. The Petitioner submitted the previously mentioned report showing this activity in [redacted] account for November 19 only, which does not reflect the lawful source of the opening balance of $183,701 from which the $180,000 transferred to the NCE on this date was drawn. It also does not show the activity in this account from the end of October, at which point the balance stood at more than $574,000.

We acknowledge that the finder's fee agreement submitted on motion, together with the previously submitted invoices, provides context for some of the transactions shown in [redacted] account statements for August through October 2019. But contrary to the Petitioner's assertion, these documents do not show "the exact source of funds used by [redacted] in its currency swap transaction with the Petitioner. A significant portion of the funds in this account are not accounted for in the evidence, particularly a deposit of $1,110,720 on September 3, 2019. And although [redacted] balance sheet and income statement show that the business was active in 2019 and turned a profit, the record does not include evidence which traces this deposit and others reflected in the monthly

[4] It also states that the source of the $180,000 "were 100% the VND amount that the Investor swapped with us in Vietnam," which is contrary to the claims in the same document that these funds were sourced from its finders fees and that the Petitioner's VND funds never left Vietnam.

statements to a lawful source. Because money is fungible and the funds which are traceable to the client contract and invoices were commingled with a substantial amount of funds from unknown sources, this new evidence submitted on motion does not establish that the funds transferred to the NCE from this account derived from a lawful source.

The Petitioner also asserts that the legal opinion letter from an attorney in Vietnam confirms the lawful nature of the currency swap transaction between the Petitioner and [redacted] The attorney opines that under the provisions of the Vietnamese Civil Code, specifically Article 455 pertaining to "property exchange contracts," the transaction was lawful and that the $180,000 transferred by [redacted] to the NCE belonged to the Petitioner.[5] But this letter focusing on the contractual aspects of the swap arrangement offers no opinion on the legality of the swap arrangement under the foreign currency exchange laws of either Vietnam or Singapore, the origin of the U.S. dollar funds. It also does not resolve the issue of the lawful source of these funds as described above, which is separate from the issue of the ownership of the investment funds.

The new facts and evidence provided on motion do not show the lawful source of the Petitioner's investment funds and thus do not establish her eligibility as an immigrant investor.

II. MOTION TO RECONSIDER

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). 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.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on *Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024), asserting that the path of funds analysis is only applicable to the issue of whether an investor owns the funds they have invested, and that an investor is not required to trace funds beyond their immediate source to show that they derive from lawful means. However, contrary to the Petitioner's claims, pertinent regulations and precedent decision support our previous conclusion regarding the claimed lawful source of the exchange funds used by [redacted] for the currency exchange. 8 C.F.R. § 204.6(e) (defining "capital"),(j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998).

We acknowledge that recent district court decisions, including *Battineni*, have held that the regulation requiring a petitioner to show that invested funds were obtained through lawful means does not require tracing of funds beyond their immediate source. *See Sun v. United States Citizenship & Immigr. Servs.,* No. 21-1612, 2025 WL 947463, (D.D.C. Mar. 28, 2025); *Zhou v. Noem,* No. 19-2650, 2025 WL 416152, (D.D.C. Feb. 6, 2025). But other district courts have found that petitioners must show the complete path of funds. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5 (D.D.C. June

[5] While we stated in our previous decision that the Petitioner had not established her ownership of the funds transferred from [redacted] account to the NCE's escrow account, we did not rely on this issue as a ground for our dismissal.

28, 2023). Regardless, we are not bound by federal district court decisions. *See Matter of K-S-,* 20 I&N Dec. 715 (BIA 1993). Further, as we noted in our previous decision, the D.C. circuit court has affirmed a decision that held USCIS' complete path interpretation of the regulations is its authoritative position as explained in 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 Nguyen v. United States Citizenship & Immigr. Servs*., 637 F. Supp. 3d 822, 835 (C.D. Cal. 2022) (affirming USCIS's denial of petitioner application where the petitioner's transfer of funds to a currency exchange "caus[ed] a clear break in the source, custody, and ownership of Plaintiff's funds," and therefore, there was no evidence that the funds invested "were obtained from a lawful source"), *aff'd*, No. 22-56068, 2023 WL 8251320 (9th Cir. Nov. 29, 2023). These decisions require the Petitioner to document the path of funds to establish the lawful source of the funds invested in the NCE.

In the present case, there are breaks in the paths of the Petitioner's investment funds. The plain language of 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) supports our 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 4232658, at 5. The relevant path includes tracing the funds from their point of origin though *any intermediary accounts*. *See id*. at 6. (emphasis added). Moreover, 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; s*ee also Matter of Soffici*, 22 I. & N. Dec. at 165 (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)."). As we concluded above, the Petitioner has not established that the $180,000 transferred from [redacted] account to the NCE's escrow account can be traced back to a lawful source.

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.

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.