U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38007968

Date: SEP. 24, 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). This fifth preference (EB-5) classification makes immigrant visas available to qualified immigrants 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.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that her invested capital was her own and obtained through lawful means. We dismissed a subsequent 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 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.

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was his or her own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). To show that the capital was his or her own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). 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. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

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.

Matter of Izummi specifies that "a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements" and that USCIS "cannot consider facts that come into being only subsequent to the filing of a petition." *Id.*, 22 I&N Dec. 169, 175-76 (BIA 1998); *see also* 8 C.F.R. § 103.2(b)(1) (stating that a "petitioner must establish that [he or she is] eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication"). In *Kungys v. United States*, the U. S. Supreme Court defined a fact as material "if it has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed." *Id.*, 485 U.S. 759, 770 (1988) (internal quotation marks omitted). USCIS policy explains that "[c]hanges that occur in accordance with a business plan and other supporting documents as filed will generally not be considered material." *See generally* 6 *USCIS Policy Manual* G.3(C)(1), https://www.uscis.gov/policy-manual. The *USCIS Policy Manual* further explains: "In general, if, at the time of adjudication, the investor is asserting eligibility under a materially different set of facts that did not exist when they filed the immigrant petition, the investor must file a new immigrant petition." *Id.*[1]

II. ANALYSIS

The Petitioner asserted eligibility based on an investment into [redacted], the new commercial enterprise (NCE) in the amount of $500,000 on January 11, 2017. The NCE, affiliated with the regional center, [redacted] proposed to pool up to $350,000,000 from 700 immigrant investors to finance the redevelopment of a hotel, theater, and retail/entertainment space in [redacted] New York. The Petitioner initially claimed that her investment funds originated from a mortgage loan secured by a property owned by her father in China. She further asserted that the loan proceeds were deposited to the father's bank account; that her father subsequently sent the funds to his friend (the first exchanger); and that the first exchanger later exchanged the funds into U.S. dollars before transferring them to the Petitioner. In response to a request for evidence, the Petitioner claimed that another third-party (the second exchanger) aided the first exchanger in the currency exchange. FOD subsequently denied the petition, concluding that the record did not contain sufficient evidence to demonstrate the source of funds used by the third-party exchangers and that the Petitioner did not establish her investment funds were derived from lawful means.

On appeal, the Petitioner claimed that there was another exchanger in the paths of funds, Global Trade Holding Pty Ltd (GTHPL). In our appeal decision, we agreed with FOD that the Petitioner had not established that her invested capital was obtained through lawful means. We stated that the Petitioner

[1] As explained in *Doe v. USCIS*, 410 F. Supp. 3d 86, 101 (D.D.C. 2019):

> An approved I-526 petition is given a priority date as of the date the petition is properly filed. 8 C.F.R. § 204.6(d). If petitions did not have to meet the EB-5 requirements at the time of filing and could be changed at will, then petitioners could file incomplete petitions in order to receive a better priority position for obtaining a visa. Allowing later changes to incomplete petitions would be unfair to those petitioners who waited to file their forms until the appropriate time when they had the evidence necessary to establish all EB-5 requirements.

Id.; *see also Wang v. USCIS*, 375 F. Supp. 3d 22, 36-40 (D.D.C. 2019).

had not provided the bank account statements of the second exchanger or GTHPL to demonstrate that the money that originating from the Petitioner's father in China matched the amount converted into U.S. dollars by the two exchangers. In addition, we noted that the record lacks documentation showing how the second exchanger is associated with GTHPL or whether he is independently licensed or registered as a money services business. Although the Petitioner claimed that the invested funds were routed through the exchangers, insufficient evidence was provided to establish the legitimacy of these exchangers and the source of funds in their bank accounts. Furthermore, the Petitioner did not sufficiently demonstrate that her father's funds left mainland China for deposit into the first exchanger's Hong Kong before being transferred to her [redacted] account. Lastly, we declined to address, citing to *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam), the issue of whether the Petitioner's investment funds originated from her father's accumulated employment income. Our prior decision also included a footnote recommending that FOD consider, in any future proceedings, whether the addition of a second exchanger and GTHPL in her cross-border currency exchange at the post-RFE stage of this proceeding constitutes an impermissible material change according to *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998).

A. Lawful Means

As noted above, in our prior decision, we agreed with FOD that the Petitioner had not established that her invested capital was her own and obtained through lawful means. In support of the motion, the Petitioner asserts that "[w]ithout warning, in early 2017 USCIS suddenly changed its policy and practice to require third-party individual to disclose the fund source and abruptly applied this changed practice retroactively to the cases filed prior to said change in total violation of the fundamental legal principle of non-retroactivity." The Petitioner's assertion lacks merit and is unpersuasive; notably, she does not provide any authority for her contention that USCIS "suddenly changed its policy and practice" and that we applied it retroactively. Furthermore, although the Petitioner asserts she consulted "many successful petitioners" who carried out the same currency exchange process she followed, her statement lacks any corroboration and carries little evidentiary weight. *See Nguyen v. USCIS*, 637 F. Supp. 3d 822, 831 (C.D. Cal. Oct. 27, 2022), *aff'd*, No. 22-56068, 2023 WL 8251320 (9th Cir. Nov. 29, 2023) (finding that USCIS's practice of inquiring into the legality of an investor's source and paths of funds "ensures their legality" and "confirms that they belong to the petitioner" and that the agency's practice of "scrutinizing currency swaps" is not new). Furthermore, 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). The plain language of 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) requires petitioners to identify the source of funds and document the complete path of funds. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5 (D.D.C. June 28, 2023). The relevant path includes tracing the funds from their point of origin though any intermediary accounts. *See id.* at 6. Moreover, a petitioner is required to establish the complete path of funds to demonstrate that the funds were obtained through lawful means. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. USCIS' "complete path" interpretation of the regulations is its authoritative position as acknowledged in *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024).

On motion, the Petitioner further asserts that our prior decision misunderstands the "mechanism of the cross-border money transfer services provided by the money service providers in Hong Kong, Singapore, New Zealand and Australia." The Petitioner explains that GTHPL is a registered and regulated money transfer service company actively operating in Australia. Moreover, the Petitioner describes the process of transferring money over the Chinese border as follows:

> In general, the Chinese client first signed a contract with the money service provider where said Chinese client agrees to wire [renminbi] RMB funds to the account of the individual designated by the money service provider. Said designated individual can be the agent or the employee of the money service provider. Said designated individual holds the RMB funds of said Chinese client in China on behalf of and for the money service provider. The money service provider treats the RMB funds of said Chinese client that said designated individual holds for them as the account receivable.
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> In the meantime, the money service provider has the local client to have the need of the RMB funds in China. Said local client provides the USD funds to the money service provider. The money service provider treats the USD funds provided as the working capital. Then, the money service provider wired USD fund, equivalent to RMB funds provided, to the account of said Chinese client out of said working capital. From time to time, the money service provider offsets the USD funds of the local clients against the RMB funds of the Chinese clients. Under the mechanism of this cross-border money transfer service, the RMB funds of the Chinese client remain in China to be offset against the USD funds of the local clients.

As this process relates to her, the Petitioner asserts that after her father gave the first exchanger the capital she used to invest in the NCE, the first exchanger "signed [a] foreign exchange record" with GTHPL, under which the first exchanger wired 3,969,599 RMB to the Chinese bank account of the second exchanger and in return GTHPL wired USD to the first exchanger's [redacted] account in Hong Kong. According to the Petitioner, this transaction was legally authorized and completed the cross-border currency exchange in satisfaction of 8 C.F.R. § 204.6(e).

The Petitioner further asserts that the second exchanger is an employee of GTHPL and submits a document (titled "Employment Agreement for Full-Time Employees") between GTHPL and the second exchanger. According to the document, GTHPL employed the second exchanger as a "Marketing Specialist" and "[t]he employee's duties and responsibilities in this position include all the duties and responsibilities that would normally be attached to that type of position. The employer may change these duties and responsibilities during the course of the employee's employment after consultation with the employee." In a separate provision, the document states "[t]he Employee has authority to Receive and Send funds then support clients to make currency exchange under accepted rules in worldwide." The Petitioner asserts this document establishes the second exchanger was authorized to perform the currency swap from RMB to U.S. dollars (USD) in furtherance of her capital investment; however, the document is insufficient for the following reasons.

The record indicates that GTHPL is regulated and registered in Australia. The Petitioner has submitted no evidence on motion to establish that GTHPL is registered and authorized to transact financial transactions in China. Further, the Petitioner has submitted no credible evidence demonstrating that

the second exchanger could lawfully act as GTHPL's agent in China to facilitate currency exchanges and remittances within or outside of China. Notably, the submitted "Employment Agreement for Full-Time Employees" contains several unresolved inconsistencies. First, the document appears to have been altered to include the duty to "Receive" and "Send" funds. While all the document's provisions under "Engagement" are in the form of bullet points, and each bullet point has a line separating each, the provision relating to sending and receiving funds does not have a separate line, and thus does not conform with the remainder of the document. Second, the actual sentence lacks punctuation and contains awkward phrasing ("under accepted rules in worldwide"), which does not conform to the language and format of the remainder of this English language document.[2] Third, whereas most of the provisions are numbered (starting at 3.1), the "Receive" and "Send" provision is not numbered, which again, does not conform to the format of the remainder of the document. Finally, the date of the document, found on its first and last pages, is different (in font and bold type). There is no apparent explanation in the record for these discrepancies and thus, it appears the document was altered to support the Petitioner's contention that the second exchanger was authorized to engage in cross-border money transfers in China on behalf of GTHPL.[3] *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (standing for the proposition that a petitioner must resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice.)

Our prior decision determined that the Petitioner had not sufficiently demonstrated that the funds transferred by her father to the first exchanger left mainland China. On motion, the Petitioner asserts that there is a "huge misunderstanding in the mechanism of the cross-border money transfer services provided" and concedes that under the "mechanism of this cross-border money transfer service, the RMB funds of the Chinese client remain in China to be offset against the USD funds of the local clients." With this concession, the Petitioner appears to agree with our prior determination that there is no evidence to establish the funds she invested in the NCE are the same funds her father gave the first exchanger because those funds never left China. Moreover, the Petitioner submits documentation to establish the Australian government has a robust anti-money laundering and anti-terrorist funding program. However, as previously stated, no evidence was submitted to establish GTHPL is a registered money exchanger in China, and the document provided to establish the second exchanger is GTHPL's authorized agent in China is not credible for the above stated reasons.

The Petitioner offers a letter dated December 2023 from a New Zealand company engaged in cross-border money transfer services as a "legal opinion." This document relates to another petitioner in a separate EB-5 matter and does not appear to have been written by a legal authority in China (where the Petitioner is from) or Australia (where GTHPL operates). Furthermore, the letter does not establish that GTHPL is authorized to accept funds in China through the second exchanger used in the transfer of the Petitioner's funds. As such, the letter is irrelevant to this case and insufficient to demonstrate the legality of the cross-border currency exchange transaction.

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[2] We note that no corresponding foreign language original of the "Employment Agreement" was submitted. As such, the Petitioner is representing this as the original contract between GTHPL and the second exchanger.

[3] We note that a finding of fraud or willful misrepresentation in a visa petition may be considered in any future proceeding to determine that the petitioner is inadmissible to the United States. *See* Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i); and *see generally* 8 *USCIS Policy Manual* J.2, https://www.uscis.gov/policy-manual.

B. Material Change

Our prior decision addressed whether the addition of a second exchanger and GTHPL in her cross-border currency exchange at the post-RFE stage of this proceeding constitutes an impermissible material change according to *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998). On motion, the Petitioner disputes any material change and asserts the facts of her currency exchange have never changed but that she did not know she had to disclose the involvement of the second exchanger and GTHPL at the time of filing her petition. For the reasons discussed below, we conclude that the Petitioner materially changed her petition.

In her initial filing, the Petitioner explained that her father transferred a sum of money equivalent to $552,100 to the first exchanger, and that the first exchanger transferred that sum to his own Hong Kong-based bank account and then transferred that money to the Petitioner's U.S.-based bank account for her to invest in the NCE. Under these facts, the Petitioner did not establish the lawful source of her investment funds and FOD issued her a RFE. In response to the RFE, the Petitioner explained that the first exchanger "enlisted the aid of [the second exchanger] who then swapped the currency and remitted it back to [the first exchanger]." On motion, the Petitioner claims our prior decision unfairly blamed her for "not informing USCIS that [the first exchanger] acquired his USD funds through the cross-border money transfer service provided by [the Australian company] GTHPL." Notwithstanding the Petitioner's assertions on motion, her failure to initially disclose the involvement of a second exchanger and GTHPL constitutes a material change because the disclosure potentially altered her eligibility for the benefit. *See Matter of Izummi*, 22 I&N Dec. at 175-76. Furthermore, the Petitioner's assertion that she did not know she had to disclose these additional entities is unpersuasive and contrary to the evidence since she did disclose the first exchanger and provided bank statements and other evidence to establish her source of funds and the lawful path of funds. We note as well that the instructions to Form I-526, Immigrant Petition by Alien Entrepreneur, state the petition must be accompanied by evidence that the "capital is obtained through lawful means."[4] As such, the Petitioner's assertions are unpersuasive.

For the foregoing reasons, 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 to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

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 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.

[4] Every form, benefit request, or other document must be executed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(1). Further discussion of the filing requirements for these documents is found at 8 C.F.R. § 103.2(b)(1), which provides that "[e]ach benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions."