U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38908221

Date: SEP. 26, 2025

Motion on Administrative Appeals Office Decision

Form I-526E, Immigrant Petition by Regional Center 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). This fifth preference (EB-5) classification makes immigrant visas available to qualified immigrants who invest the requisite amount of qualifying capital into 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)(E)(i) of the Act.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that her EB-5 investment funds were derived from lawful sources. FOD then dismissed two combined motions to reopen and reconsider, and we dismissed a subsequent appeal. The matter is now before us on a combined motion 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 combined motion.

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).

We dismissed the Petitioner's appeal because the record did not establish that the funds for her investment were derived from lawful sources, and our dismissal addressed an issue related to the fact that the funds used for the Petitioner's present investment were returned in 2018 from previous EB-5 investments made by the Petitioner and her spouse.[1] We explained that, because the funds were

[1] Our appeal dismissal also addressed an issue not discussed in the RFE or in FOD's decision to deny, which was the fact

transferred through several accounts and comingled with the deposit and withdrawal of numerous large sums of unidentified origin, the fungibility of money would require documentation of the lawful source of all funds within those accounts to establish the lawful origins of the funds ultimately used for the Petitioner's present investment in 2022.

On appeal, the Petitioner asserted that the sources of the comingled funds were immaterial to her petition, referring to an expert opinion letter explaining the application of a lowest intermediate balance rule in tracing balances held in trusts. Although we acknowledged the statement in the expert opinion letter that the lowest intermediate balance rule is not limited to trust matters and is a tracing methodology commonly accepted in courts of law, we pointed out that the Petitioner did not offer any regulations, precedent decisions, or binding policies to establish that the balance rule could be used or was applicable to the EB-5 program to demonstrate compliance with EB-5 law and regulations.[2]

The Petitioner submits this same assertion concerning the lowest intermediate balance methodology on motion to reopen, reiterating that, because the funds in her accounts did not drop below the amount required for her investment, funds within the lowest balances should be the only funds considered in evaluating the lawful source of her investment capital. The Petitioner references a recent district court decision holding 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 Battineni v. Mayorkas*, 752 F.Supp.3d 195 (D.D.C. 2024). However, other district court decisions have found that petitioners must show the complete path of funds. *See Truong v. USCIS*, No. 21-316 (RC), 2023 WL 4234658, at *5 (D.D.C. Jun. 28, 2023); *Nguyen v. USCIS*, 637 F.Supp.3d 822 (C.D. Cal. 2022).

In contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

Further, the D.C. Circuit Court has affirmed a district court decision that held USCIS' complete path interpretation of the regulations is its authoritative position as explained in the precedential decisions. *Borushevskyi v. USCIS*, 664 F.Supp.3d 117, 126-29 (D.D.C. 2023), *aff'd*, No. 23-5116, 2024 WL 2762146 (D.C. Cir. May 30, 2024). 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. 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).").

On motion, the Petitioner does not identify new facts supported by probative evidence to demonstrate that her investment funds—both those used to purchase the properties then mortgaged to obtain the

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that although the record shows the investment funds originated from loans against properties owned by the Petitioner and her spouse, the record did not contain sufficient evidence to identify the origins of the funds used to purchase those properties in order to demonstrate that the funds were from lawful sources. Because the Petitioner is ineligible for the immigrant investor visa classification for the reasons discussed herein, we will reserve this issue. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). Similarly, we need not reach, and therefore reserve, the issue regarding the source of funds for the third-party utilized to exchange the Petitioner's investment funds. *Id.*

[2] *See* section 203(b)(5)(L)(i) of the Act.

initial capital for her investment and those comingled with deposits and withdrawals within various bank accounts—were derived from lawful sources. Because the Petitioner has not submitted new facts that that would warrant reopening of the proceedings, she has not met the requirements for a motion to reopen. 8 C.F.R. § 103.5(a)(2). The motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

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 to reconsider, the Petitioner reiterates her assertion that the methodology of the lowest intermediate balance rule should be applied to in evaluating the lawfulness of the sources of funds used for her investment, and she cites a district court decision to support her assertion. As stated above, in contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in cases arising within the same district.[3] The Petitioner does not provide any other regulations, precedent decisions, or binding policies to establish that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. 8 C.F.R. § 103.5(a)(3). 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.

[3] *See Matter of K-S-*, 20 I&N Dec. 715.