U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20053513

Date: NOV. 21, 2022

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 foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.[1]

The Chief of the Immigrant Investor Program Office denied the petition on two grounds. The Chief concluded that the Petitioner did not show he invested or was actively in the process of investing at least $500,000[2] in [redacted], the new commercial enterprise (NCE);[3] and he did not document the lawful source of the funds he claimed to have invested in the NCE. *See* 8 C.F.R. § 204.6(e) (defining "capital" and "invest"), (j) (2015). We dismissed the subsequent appeal on the two grounds specified in the Chief's decision. In addition, we concluded that the Petitioner did not establish eligibility for the EB-5 classification because he did not satisfy the job creation requirements. *See* 8 C.F.R. § 204.6(j)(4)(i).

The matter is before us on combined motions to reconsider and reopen the proceeding. On motion, the Petitioner submits supporting documents, most of which are already in the record. In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, his eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).[4] Upon review, we will dismiss the combined motions.

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[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022).

[2] In this case, the Petitioner indicated that, at the time he filed the petition in 2015, the NCE was located in a targeted employment area and that the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

[3] In a June 2015 letter, the Petitioner's counsel described the NCE as "a family entertainment company located in [redacted] Michigan."

[4] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, then he or she has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

In addition, as explained in our appellate decision, a foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a new commercial enterprise. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). Under 8 C.F.R. § 204.6(j)(2), to be eligible for the EB-5 immigrant investor classification, an investor must establish that he or she "has invested or is actively in the process of investing the required amount of capital" and must submit "evidence that [he or she] has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk." The regulation explains: "[e]vidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing" and that the petitioner "must show actual commitment of the required amount of capital." *Id.*

Moreover, the regulation provides the following relevant definitions:

> Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of . . . the Act.
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> . . . .
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> Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital . . . .

8 C.F.R. § 204.6(e). As specified in the regulatory definition of "invest," the petitioner must establish that his or her invested capital did not derive, directly or indirectly, from unlawful means. *See id.* Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *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). The record must trace the complete

path of the funds back to a lawful source.[5] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

Furthermore, the regulation requires a petitioner to submit evidence concerning job creation. It provides under 8 C.F.R. § 204.6(j)(4)(i):

> General. To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
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> (A) Documentation consisting of photocopies of relevant tax records, Form I-9 [Employment Eligibility Verification], or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
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> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

Additionally, the regulation defines "full-time employment" to mean "employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week." 8 C.F.R. § 204.6(e). It specifies that "[a] job-sharing arrangement whereby two or more qualifying employees share a full-time position shall count as full-time employment provided the hourly requirement per week is met," but that the regulatory definition "shall not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week." *Id.*

II. ANALYSIS

In 2011, the Petitioner filed an EB-5 petition (2011 petition), in which he claimed to have invested at least $1,000,000 in the NCE. The Chief denied the 2011 petition and we dismissed the subsequent appeal in 2013. In 2015, the Petitioner filed his second EB-5 petition (2015 petition), again based his petition on his purported investment in the NCE. In the 2015 petition, he claimed that he had invested at least $500,000 in the NCE.[6] The Chief denied the 2015 petition, and we dismissed the subsequent appeal in 2021. The matter, as relating to the 2015 petition, is now before us on combined motions to reconsider and reopen the proceeding.

In our 2021 appellate decision, we dismissed the Petitioner's appeal on three grounds. The first ground is the Petitioner failed to establish, by a preponderance of the evidence, that when he filed the 2015 petition, he had invested or was in the process of investing at least $500,000 in the NCE. *See* 8 C.F.R. § 204.6(j); *see also* 8 C.F.R. § 204.6(f)(2); 8 C.F.R. § 103.2(b)(1). We based this conclusion on the

[5] 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).

[6] *See supra* note 2.

following reasons. The Petitioner claimed that in 2010, he issued five checks (totaled approximately $200,000) payable to the NCE as EB-5 investment. The NCE's tax and financial documents, however, did not reflect that the purported cash infusion was the Petitioner's investment in the company. Instead, the NCE's tax and financial documents indicated that in 2010, the Petitioner had loaned money to, not invested funds in, the NCE. Similarly, although the Petitioner alleged that in 2012, he invested additional funds in the NCE by issuing a $73,000 check payable to the NCE, a copy of the check included the notation "loan payment." The evidence did not support a finding that the funds associated with these checks constituted the Petitioner's EB-5 investment in the NCE. *See* 8 C.F.R. 204.6(e) (noting that under the definition of "invest," "[a] contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between [a petitioner] and the [NCE] does not constitute a contribution of capital").

The Petitioner also claimed that he invested in the NCE by purchasing equipment for the NCE in 2010 and 2014. We concluded in our 2021 appellate decision that as relating to the 2010 purchase, the evidence was insufficient to confirm "what was purchased or whether the purchased items were for the NCE." As relating to the 2014 purchase, we observed that the check used for the purchase was drawn from an account belong to [redacted] not the Petitioner. *See Matter of Soffici*, 22 I&N Dec. 158, 164 (Comm'r 1998) (noting that a corporation and an individual are two separate legal entities). Additionally, we explained that "[t]he Petitioner [did] not point[] to other evidence in the record confirming that he had paid for the equipment, or that the NCE now uses or owns the equipment." The Petitioner therefore did not sufficiently demonstrate that the 2010 and 2014 equipment purchases constituted his EB-5 investment in the NCE.

As noted in our 2021 appellate decision, the record included a June 8, 2012, promissory note, which the Petitioner resubmits on motion. According to the 2012 promissory note, the Petitioner promised to pay the NCE $200,000 a year between November 2011 and December 2014 (a total of $800,000). He claimed that his interest in two businesses – [redacted] and [redacted] – secured the promissory note. We concluded in our 2021 appellate decision that the promissory note did not constitute his EB-5 investment in the NCE, because he did not establish the fair market value of the promissory note. *See Matter of Hsiung*, 22 I&N Dec. 201, 204 (Assoc. Comm'r 1998) (noting "[a] petitioner who bases his claim of investment on a promissory note must demonstrate that the promissory note has a fair market value equal to the amount of the investment"); *see also* USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 3-4 (May 30, 2013), https://www.uscis.gov/legal-resources/policy-memoranda.

Additionally, we observed in our 2021 appellate decision that the Petitioner did not take the necessary steps "required in the relevant jurisdiction to make the security interest [his interest in [redacted] and [redacted] effective against third parties or to retain its effectiveness in the event of [his] default [on the 2012 promissory note]." Moreover, the 2012 promissory note indicated that the $800,000 was due between November 2011 and December 2014, a period of over three years. We explained that under *Matter of Izummi*, 22 I&N Dec. at 193-94, to qualify as EB-5 capital, nearly all of the money due under a promissory note must be payable within two years, without provisions for extensions. *See also* USCIS Policy Memorandum PM-602-0083,

supra, at 4. The Petitioner therefore did not sufficiently establish the 2012 promissory note constituted his EB-5 investment in the NCE.[7]

The second ground specified in our 2021 appellate decision dismissing the Petitioner's appeal is that he did not establish, by a preponderance of the evidence, the lawful source of his purported EB-5 capital investment. *See* 8 C.F.R. § 204.6(e), (j)(3); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. As discussed in our decision, the Petitioner submitted some bank records, but they failed to reveal sources of funds that were deposited into his account, which then partially financed his purported EB-5 investment in the NCE. As noted in our 2021 decision, evidence showing deposit of funds, without more, is insufficient to demonstrate the funds' lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Additionally, while the Petitioner claimed to have received proceeds for selling a property in Canada in 2006 and from his business operations, he did not submit sufficient documentation demonstrating how much of his earnings he retained, or that he retained sufficient funds to invest at least 500,000 in the NCE.

Moreover, we noted in our 2021 decision an inconsistency concerning the amount that the Petitioner purportedly received in 2014 for selling 10% of his business, [redacted] The amount he received in his bank account was $101,758.50, but he alleged he had sold his business interest for $100,000. The Petitioner did not resolve this inconsistency. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that "[i]t is incumbent upon [the petitioner] to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice"). The Petitioner therefore did not sufficiently document the lawful source of the funds he purportedly invested in the NCE.

The third ground specified in our 2021 appellate decision dismissing his appeal is that the Petitioner did not demonstrate, by a preponderance of the evidence, that he had satisfied the job creation requirements. *See* 8 C.F.R. § 204.6(j)(4)(i). Specifically, while the Petitioner submitted evidence showing that he had hired multiple part-time employees, he did not offer documents confirming "[a] job-sharing arrangement" among these employees. *See* 8 C.F.R. § 204.6(e) (specifying that "full-time employment . . . shall not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week"). As such, the Petitioner did not establish that at the time he filed the 2015 petition, the NCE had already created at least 10 full-time positions for qualifying employees. *See* 8 C.F.R. § 204.6(j)(4)(i)(A). The record also lacked a comprehensive and credible business plan "showing that, due to the nature and projected size of the [NCE], the need for not fewer than ten (10) qualifying employees will result," as required under 8 C.F.R. § 204.6(j)(4)(i)(B). The Petitioner therefore did not satisfy the regulatory job creation requirements.

To summarize, in our 2021 appellate decision, we dismissed the Petitioner's appeal based on three grounds: (1) the Petitioner did not show that at the time he filed the 2015 petition, he invested or was actively in the process of investing at least $500,000 in the NCE; (2) he did not document the lawful

[7] In our previous 2021 appellate decision, we also explained that the record lacked sufficient evidence confirming that the Petitioner had fulfilled his promise under the June 2012 promissory note. He did not demonstrate that he had paid the NCE a total of $800,000 between November 2011 and December 2014, as specified in the promissory note. We further discussed in our 2021 appellate decision the Petitioner's other arguments in support of his contention that the 2012 promissory note qualified as EB-5 investment but concluded that the record failed to support these arguments.

source of the funds he claimed to have invested in the NCE; and (3) he did not satisfy the job creation requirements.

A. Motion to Reconsider

On motion, the Petitioner maintains that we erred in our 2021 decision. The Petitioner compares our 2021 decision concerning the 2015 petition with our 2013 decision concerning the 2011 petition. He claims that we erred in our 2021 decision because while we had accepted a May 8, 2010, invoice as evidence of his EB-5 investment in the NCE in our 2013 decision, we did not accept the same document in our 2021 decision.[8] The record, however, does not support this contention. Initially, we note that the Petitioner has submitted two separate petitions, and he has presented different evidence in support of each petition. In support of his 2015 petition, he did not submit all the evidence he had offered for the 2011 petition. Indeed, we noted on page 4 of our 2021 decision that as relating to his 2015 petition, the Petitioner did not submit the NCE's 2011 Internal Revenue Service (IRS) Form 1120 or the NCE's unaudited financial statements, including "Statement of Asset, Liability and Equity as of December 31, 2010." He, however, had submitted these materials in support of his 2011 petition. The Petitioner has not demonstrated that he had submitted the May 8, 2010, invoice in support of the 2015 petition.

Regardless, as discussed in our 2013 decision, the May 8, 2010, invoice, which the Petitioner now claims on motion that we overlooked in our 2021 decision, relates to his purported purchase of equipment from [redacted] with a purchasing price of over $80,000. In his initial filing in support of the 2015 petition, however, the Petitioner did not claim that the over $80,000 equipment purchase was part of his EB-5 investment in the NCE. Specifically, pages 3 and 4 of counsel's June 2015 letter, which the Petitioner submitted in support of his 2015 petition, claimed that "[t]here were one smaller investment made on May 8, 2010, of $8,000" and that the Petitioner "made a down payment of $1,000 to [redacted] to purchase games for the [NCE]." Neither the June 2015 letter nor other evidence the Petitioner submitted in support of the 2015 petition confirms, or even alleges, that the over $80,000 equipment purchase, referenced in the May 8, 2010, invoice, was part of the Petitioner's EB-5 investment in the NCE.[9] The Petitioner therefore has not demonstrated that the May 8, 2010, invoice that he submitted in support of the 2011 petition was relevant in our adjudication of the 2015 petition, or that we erred in not considering it in our 2021 appellate decision.

On motion, the Petitioner asserts that we erred in our analysis of the 2012 promissory note, in which we concluded that at the time he filed the 2015 petition, he did not invest or was not actively in the process of investing at least $500,000 in the NCE. As relating to the 2012 promissory note, which he resubmits on motion, the Petitioner maintains on page 10 of his motion brief that "the $800,000 loan is not counted toward his [EB-5] investment but rather the payments that he made thereafter are his investment." He alleges that we erred in our 2021 decision because we did not consider his purported

[8] On pages 7 and 8 of his motion brief, the Petitioner claims that we erred in our 2013 decision because we concluded that there were insufficient evidence establishing the ownership of a credit card account. The 2013 decision, however, is not the basis of the instant combined motions, and we will therefore not address the purported errors in the 2013 decision. *See* 8 C.F.R. § 103.5(a)(1)(i) (noting that by regulation, the scope of a motion is limited to "the prior decision").

[9] Additionally, as discussed on pages 8 and 9 of our 2013 decision concerning the 2011 petition, the record of the 2011 petition did not support the Petitioner's contention that he had paid over $80,000 to purchase equipment for the NCE or that the amount constituted his EB-5 investment in the NCE.

payments under the 2012 promissory note as his EB-5 investment. At the time the Petitioner filed the petition in 2015, however, neither the petition nor counsel's June 2015 letter alleged that the Petitioner had paid any annual payments to the NCE, as specified under the 2012 promissory note. The evidence also failed to confirm the Petitioner's annual payments pursuant to the terms of the 2012 promissory note.

The Petitioner maintains on motion that he "has made and continues to make the payments and [the NCE] has benefitted from payments." At issue is whether at the time the Petitioner filed the petition in 2015, he had invested or was in the process of investing at least 500,000 in the NCE. The Petitioner's assertions that he invested or was actively in the process of investing after filing of the petition in 2015 do not demonstrate his eligibility for the EB-5 classification at the time he filed the petition. *See* 8 C.F.R. § 103.2(b) (specifying 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").

Additionally, the Petitioner provides an incorrect recitation of the terms of the 2012 promissory note on motion. He claims that under the 2012 promissory note, he "promised to pay [the NCE] $200,000 beginning on the 15th day of December 2014 for four years." This, however, is inaccurate. According to the promissory note, the Petitioner promised to pay the NCE "annual payments of . . . $200,000 beginning on the fifteenth day of November 2011 and continuing each year thereafter with the last payment due on or before the fifteenth day of December 2014." Had the Petitioner fulfilled his obligations to pay the NCE under the 2012 promissory note, he would have paid the NCE a total of $800,000 by December 15, 2014, before he filed the petition in 2015. When we issued our 2021 appellate decision, the record lacked evidence confirming he had fulfilled his obligations under the 2012 promissory note, i.e., that he had make annual payments of $200,000 to the NCE or that he had paid the NCE a total of $800,000.

On page 12 of the Petitioner's motion brief, the Petitioner claims that he "satisfied the Promissory Note by paying the bank loan." The Petitioner does not specify on motion the bank loan that he had purportedly paid off. It appears that he is referring to the NCE's PNC mortgage that we discussed on page 8 of our 2021 decision. We explained in the decision that neither the 2012 promissory note nor the NCE's PNC mortgage qualified as the Petitioner's EB-5 investment in the NCE. In addition, we specified: "while page 1 of the Petitioner's appellate brief asserts that he paid off the PNC Mortgage, the record shows that in fact the NCE [not the Petitioner had] paid off the PNC Mortgage in March 2017." The Petitioner therefore has not demonstrated that we erred in concluding that he did not invest EB-5 funds in the NCE through his execution of, or actions associated with, the 2012 promissory note.

Next, the Petitioner claims on motion that we erred in pointing out inconsistencies in the record. We noted on page 3 of our 2021 appellate decision that the record contained an inconsistency regarding the amount the Petitioner claimed to have invested in the NCE at the time he filed the 2015 petition. He alleged on page 2 of his 2015 petition that his "total capital investment in the [NCE] to date was $492,055.20."[10] Similarly, pages 3 and 4 of counsel's June 2015 letter claimed that the Petitioner's "Total of Cash Investment" was $492,055.20. The letter specified that the Petitioner's purported

[10] According to page 4 of the Petitioner's counsel's June 2015 letter, the Petitioner categorized his purported purchases of items for NCE as part of his "Total of Cash Investment" in the NCE.

$492,055.20 investment was made between June 2010 and December 2014. The claimed investment amount, however, was inconsistent with a document from a certified public accountant, stating that the Petitioner's "Capital Contributed to [the NCE]" was $437,392.11, and the NCE's "Statement of Asset, Liability & Equity . . . as of December 31, 2014," listing the Petitioner's "Excess Capital" as $437,392.11.[11]

On motion, the Petitioner attempts to explain the inconsistency in the alleged investment amount, stating that he had invested additional funds after "a sale of a house in [redacted]." This explanation, however, does not resolve the inconsistency because the EB-5 amount specified in counsel's June 2015 letter purportedly included all of the Petitioner's EB-5 investment from 2010 through the end of 2014. The NCE's "Statement of Asset, Liability & Equity . . . as of December 31, 2014" purportedly also included the total amount of the Petitioner's investment as of the end of 2014. The investment figures should be the same in these documents; and yet, they are different. Additionally, the record shows that the Petitioner sold a property on [redacted] Street, in [redacted] Michigan in 2017, after 2014. This property sale does not resolve the discrepancy discussed in our 2021 appellate decision relating to the Petitioner's claimed EB-5 investment as of the end of 2014. The Petitioner has not shown that we erred in our 2021 appellate decision, in which we pointed out an inconsistency regarding his claimed EB-5 investment amount at the time he filed the 2015 petition. While the Petitioner appeared to have invested or was in the process of investing some EB-5 funds in the NCE when he filed the petition in 2015, the record was insufficient to confirm that the purported EB-5 investment was at least $500,000. *See* 8 C.F.R. § 204.6(j); *see also* 8 C.F.R. § 204.6(f)(2); 8 C.F.R. § 103.2(b)(1).

On motion, the Petitioner also attempts to explain another inconsistency in the record, specifically, as relating to evidence concerning the lawful source of his purported EB-5 funds. As noted on page 9 of our 2021 appellate decision, the Petitioner claimed that his $100,000 December 2014 investment in the NCE derived from the $100,000 proceeds he received for selling 10% of his business, [redacted], in December 2014. We noted in the decision that his bank statement, however, showed that he did not receive $100,000; rather, he received $101,758.50 in December 2014. The Petitioner claims on motion that "[t]here is a simple obvious answer. [The] Petitioner deposited more than one check." The Petitioner, however, does not point to any evidence in the record that supported his explanation of the discrepancy. When there is an inconsistency in the record, "[i]t is incumbent upon [the Petitioner] to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *See Matter of Ho*, 19 I&N Dec. at 591-92. Unsubstantiated statements from the Petitioner, through his counsel, are insufficient to resolve or reconcile the inconsistency concerning the lawful source of his purported EB-5 funds.

As relating to the issue of lawful source of funds, the Petitioner claims on motion that we had "an objection to the source of the payments made by [the P]etitioner" and that we "appear[ed] to be saying that the money is of no value to the [NCE] because it is derived from [the P]etitioner's income that is earned by him from the [NCE]." This is an inaccurate reading of the lawful source of funds discussion in our 2021 appellate decision. As explained on pages 8 and 9 of our 2021 decision, the Petitioner provided evidence of his earnings from business operations and property sales. The issue was that he

[11] The NCE's "Statement of Asset, Liability & Equity . . . as of December 31, 2014" listed the Petitioner's "Common Stock" as $6,000.

did not submit sufficient evidence "demonstrat[ing] how much of his income he retained" to invest to the NCE. The Petitioner claimed that his cash in bank accounts financed a substantial part of his EB-5 investment in the NCE. We observed, however, in the Petitioner's bank statements that there were deposits of funds of unspecified sources and that bank balances increased without evidence of the sources of the cash infusions.

In addition, the Petitioner claims that we erred in not considering documentation he submitted in 2017 in response to the Chief's notice of intent to deny (NOID) the petition. On pages 5 and 9 of our 2021 appellate decision, we specifically referenced the Petitioner's NOID response in our discussion of his failure to establish he invested or was actively in the process of investing at least $500,000 in the NCE, and his failure to document the lawful source of the funds he claimed to have invested in the NCE. We also referenced specific evidence he submitted in his NOID response in our 2021 appellate decision, including checks he issued to the NCE in 2010, the Petitioner's bank statements, the NCE's bank statements, the 2012 promissory note, and the NCE's loan repayments to PNC Bank.

We acknowledged that the Petitioner's NOID evidence included materials concerning his sale of a property on [redacted] Street, in [redacted] Michigan in 2017, and that we did not discuss these materials in our 2021 appellate decision. The Petitioner, however, has not explained on motion how these materials are relevant to the grounds upon which we dismissed his appeal. Specifically, as discussed, the Petitioner claimed to have invested nearly $500,000 in the NCE at the time he filed the petition in 2015. He has not explained how a 2017 sale of a property is relevant to the issue of whether at the time he filed the petition, he invested or was in the process of investing at least $500,000 in the NCE or the issue of whether the funds he claimed to have already invested in the NCE derived from lawful sources when he filed the petition in 2015.

On motion, the Petitioner also argues that we erred in concluding that he did not satisfy the job creation requirements. He claims on motion that we had "mischaracterized the full time positions and failed to recognize that some of these positions were job sharing arrangements as identified by other documentation provided." He asserts that he had "provided quarterly wage reports, W-2s for employees, chart showing hours worked, chart showing full time positions, chart showing part time positions, and I-9s for all employees." He maintains that we "should have [] recognized that the party host positions are shared positions as indicated in the [NCE's] full time positions chart."

As discussed on page 10 of our 2021 appellate decision, the Petitioner submitted evidence showing the NCE hired employees, but most of them worked less than 35 hours per week. *See* 8 C.F.R. § 204.6(e) (defining "full-time employment"). The regulation specifies that "full-time employment . . . shall not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week." *Id.* On motion, the Petitioner does not point to evidence in the record at the time we issued the 2021 decision, such as job-sharing agreements, that demonstrated the NCE and its employees had job-sharing arrangements. The record included documents entitled "[the NCE] Employees List/Hours Worked 2014," "[the NCE], Full Time Positions," "[the NCE], Part Time Positions," and other employee-related documents. Neither these documents nor other materials in the record referenced job-sharing arrangements. Additionally, according to "[the NCE] Employees List/Hours Worked 2014," individuals who the Petitioner now claims shared full-time positions as cashiers, party hosts, or redemption counter employees received different hourly wages. The Petitioner has not established that the varying hourly wages for the alleged shared jobs supported a

finding that the NCE and these individuals had job-sharing arrangements. As noted, the regulation specifies that to demonstrate full-time employment creation, the Petitioner may not rely on the creation of multiple part-time positions, even if these positions, when combined, satisfy the weekly work hour requirements. *See id.*

For the reasons we have discussed above, we will dismiss the Petitioner's motion to reconsider the matter because he has not shown that our 2021 appellate decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, or that our decision was incorrect based on the evidence then before us. *See* 8 C.F.R. § 103.5(a)(3).

B. Motion to Reopen

Similarly, we will dismiss the Petitioner's motion to reopen the proceeding, because the materials he offers on motion do not establish his eligibility to be classified as an EB-5 investor. In addition to resubmitting documents that are already in the record, the Petitioner presents other materials, including: (1) the NCE's tax and financial documents that postdate the filing of his petition in 2015; (2) a partial copy of the Petitioner's 2017 [redacted] credit card statement for an account ending in 7675; (3) the Petitioner's August 2021 statement, claiming he is "the sole owner of [redacted] and that "all purchases made through [redacted] benefitted [the NCE] and not [redacted] (4) shareholder's certificate indicating that the Petitioner owned 60,000 share of [redacted] in 2022; and (5) a document entitled "Detailed Payroll History, [the NCE], From 10-1 to 12-31" that relates to an unspecified year.

The documents the Petitioner offers on motion do not overcome the grounds upon which we dismissed his appeal in our 2021 decision and do not demonstrate his eligibility for the EB-5 classification. On page 5 of his motion brief, the Petitioner points to the NCE's 2021 financial documents, and claims they list his EB-5 investment as "excess [the Petitioner] $542,266.65." These financial documents as well as the NCE's tax and other financial documents that postdate the filing of the 2015 petition do not establish the Petitioner's eligibility for the EB-5 classification at the time he filed the petition. *See* 8 C.F.R. § 103.2(b) (specifying 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"). As such, they do not demonstrate his eligibility for the EB-5 classification as relating to his 2015 petition.

Other documents the Petitioner offers on motion similarly do not demonstrate his eligibility for the EB-5 classification. The Petitioner appears to have submitted the 2017 [redacted] credit card statement to show that he owns the account. We discussed the account ending in 7675 on page 5 of our 2021 appellate decision, and we accepted that he owned the account. We, however, concluded that the evidence failed to support his claim that the $5,000 charge incurred on the account in 2010 constituted his EB-5 investment in the NCE, because the evidence did "not show[] what was purchased or whether the purchased items were for the NCE."

The Petitioner appears to have submitted his August 2021 statement in response to page 5 of our 2021 appellate decision, in which we discussed a $36,480.90 check, dated December 29, 2014, that the Petitioner claimed to be his investment in the NCE. We observed that the check was drawn from [redacted] and payable to [redacted] Company. We further noted that the record

contained an invoice, stating that the purchased equipment was shipped to [redacted] On page 3 of his response to the Chief's NOID, the Petitioner stated: "[t]he amount of $36,480.90 was paid into [the NCE] from [redacted] The Petitioner's August 2021 unsubstantiated claims that he is the sole owner of [redacted] and that all purchases [redacted] made benefitted the NCE are insufficient to support a finding that the $36,480.90 [redacted] paid to [redacted] Company constituted the Petitioner's EB-5 investment in the NCE. As discussed in our 2021 appellate decision, a corporation and an individual are two separate legal entities. *See Matter of Soffici*, 22 I&N Dec. 158, 162 (Comm'r 1998). This is true even if the individual is the sole shareholder of the business. *See id.* at 161-63. Therefore, a contribution of capital, even if it comes from a business wholly-owned by the Petitioner, as he claims in his August 2021 statement, does not qualify as his EB-5 investment. Moreover, other than the Petitioner's unsubstantiated August 2021 statement, the record lacks evidence confirming that he had paid $36,480.90 for the equipment, or that the NCE now uses or owns the equipment.

The Petitioner appears to have submitted the [redacted] shareholder certificate in response to pages 6 and 7 of our 2021 appellate decision, in which we discussed the evidence failed to confirm that his ownership interests in [redacted] and [redacted] adequately secured the 2012 promissory note. The shareholder certificate submitted on motion, however, does not confirm the fair market value of the Petitioner's interest in [redacted] It therefore does not overcome the concerns we raised in our 2021 decision. Additionally, on page 10 of his motion brief, the Petitioner indicates that "the $800,000 loan [promissory note] is not counted toward his [EB-5] investment but rather the payments that he made thereafter are his investment." As the Petitioner claims on motion that the 2012 promissory note (a form of indebtedness) itself does not constitute his EB-5 investment in the NCE, we need not consider whether the promissory note was adequately secured by his personal assets: his interest in [redacted] and the fair market value of his interest. *See Matter of Hsiung*, 22 I&N Dec. at 202 (explaining that capital can include an investor's promise to pay, i.e., a promissory note, if the investor shows he or she is personally and primarily liable for the promissory note debt and his or her assets adequately secure the note); *see also* USCIS Policy Memorandum PM-602-0083, *supra*, at 3.

In support of his motion, the Petitioner also offers a document entitled "Detailed Payroll History, [the NCE], From 10-1 to 12-31" that relates to an unspecified year as well as resubmitting other documents concerning the NCE's hiring of employees. These materials indicate that the NCE has hired mostly employees who do not work at least 35 hours a week. *See* 8 C.F.R. § 204.6(e) (defining "full-time employment"). The Petitioner has not demonstrated through his motion evidence or documentation already in the record that the NCE and its employees had job-sharing arrangements. *See id.* (specifying "full-time employment . . . shall not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week." The motion evidence therefore does not demonstrate that the Petitioner has satisfied the job creation requirements under 8 C.F.R. § 204.6(j)(4)(i).[12]

[12] The Petitioner has not presented a comprehensive and credible business plan "showing that, due to the nature and projected size of the [NCE], the need for not fewer than ten (10) qualifying employees will result." *See* 8 C.F.R. § 204.6(j)(4)(i)(B).

We will dismiss the Petitioner's motion to reopen the proceeding because the materials he offers on motion do not overcome the grounds upon which we dismissed his appeal in 2021, and do not demonstrate his eligibility for the EB-5 classification.

III. CONCLUSION

We will dismiss the Petitioner's motion to reconsider the matter because his motion filing does not establish that we erred in our 2021 appellate decision. *See* 8 C.F.R. § 103.5(a)(3). In addition, we will dismiss his motion to reopen the proceeding because he has not provided documentary evidence of new facts establishing his eligibility to be classified as an EB-5 investor. *See* 8 C.F.R. § 103.5(a)(2).

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.