U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41415455

Date: APR. 06, 2026

Appeal of Field Operations Directorate (FOD) 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) (2019).[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.

Field Operations Directorate (FOD) denied the Form I-526, Immigrant Petition by Alien Entrepreneur, concluding the record did not establish that the NCE in which the Petitioner invested, which was associated with [redacted] (the regional center), would create at least 10 full-time positions for qualifying employees. The Petitioner then filed and FOD subsequently dismissed motions to reopen and reconsider. The Petitioner appealed from the dismissal of his motions to reopen and reconsider and we remanded the matter to FOD to review the record, supplement the record with any missing materials or issue a request for evidence (RFE) if appropriate, and enter a new decision containing a sufficiently detailed and substantive analysis. On remand, FOD concentrated on the Petitioner's claimed eligibility under the "good faith investor" provisions at section 203(b)(5)(M) of the Act, 8 U.S.C. § 1153(b)(5)(M) to make a qualifying investment in another NCE based on U.S. Citizenship and Immigration Services' (USCIS) termination of the regional center's designation and concluded that he is not eligible for those protections because FOD denied his petition prior to the regional center's termination. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 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 her petition in 2019, the relevant law then in existence governs this adjudication.

I. LAW

An alien may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. 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). An alien may invest the requisite amount of qualifying capital directly in an NCE or through a regional center, as the Petitioner did in this case.[2] Regional centers apply for designation to participate in the EB-5 program with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project, taken on either directly by the NCE or by one or more separate "job creating entities" (JCEs).

For purposes of the Form I-526 petition adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the petition. Investors in a regional center project are subject to the same program requirements but may rely on indirect job creation demonstrated through reasonable economic methodologies. *See* 8 C.F.R. §§ 204.6(e), (j)(4)(iii), (m)(7)(ii). If the NCE has not already created the jobs, the petition must include a comprehensive business plan demonstrating the need for at least 10 qualifying employees within the next two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). *Matter of Ho* explained that a comprehensive business plan must be credible and contain sufficient detail to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998).

Where a regional center, NCE, or JCE is the subject of termination or debarment from the EB-5 program, investors with a pending or approved petition may retain eligibility. *See* section 203(b)(5)(M) of the Act; *see generally* 6 *USCIS Policy Manual* G.3(E), https://www.uscis.gov/policy-manual. This includes petitions filed prior to the 2022 enactment of the EB-5 Reform and Integrity Act. Specifically, an amendment entitled "Treatment of good faith investors following program noncompliance" allows "an otherwise qualified petition," under specified circumstances, to remain valid even if "based on an investment in a terminated regional center." Section 203(b)(5)(M)(i)(I) of the Act.

II. DEROGATORY INFORMATION AND GOOD FAITH INVESTOR PROTECTIONS

A. Procedural History

In July 2019, the Petitioner made a $500,000 investment into [redacted], an NCE affiliated with [redacted], a then-designated regional center, and filed his Form I-526 petition. The NCE proposed to pool $45 million from 90 immigrant investors to invest an equity interest in [redacted] (the JCE), which intended to develop, construct and operate a luxury hotel in [redacted] Oregon.

[2] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2019).

FOD denied the petition on September 19, 2024, after issuing a request for evidence (RFE) and reviewing the Petitioner's response. FOD cited to the Petitioner's disclosure regarding the dissolution of the NCE in his response to the RFE and its failure to demonstrate it would create at least 10 full-time jobs for each immigrant investor. FOD also referenced "publicly available information" from the [redacted] regarding the status of required permits for construction as well as a dearth of evidence describing a senior construction loan and other project financing mentioned in the accompanying business plan. And FOD acknowledged that the Petitioner had reinvested his funds in a different project but concluded that this constituted a material change from the business plan he had submitted with the petition.

As noted, the Petitioner filed motions to reopen and reconsider the denial. In his motion, the Petitioner asserted that the protections for good faith investors following program noncompliance described in section 203(b)(5)(M) of the Act clearly applied to him. And he resubmitted supporting documentation describing the reinvestment of his funds.

But FOD dismissed the motion to reopen because it did not present any new facts supported by evidence. And FOD did not address the motion to reconsider. Moreover, FOD based its dismissal of the Petitioner's motion on unidentified "public sources" not present in the record of proceeding. So, we withdrew the dismissal of the Petitioner's motions and requested FOD review the record, supplement it with any missing materials or issue a request for evidence (RFE) if appropriate, and enter a new decision containing a sufficiently detailed and substantive analysis.

On remand, FOD again dismissed the Petitioner's motions. In its second dismissal of the Petitioner's motions, FOD focused on the Petitioner's claimed eligibility under the "good faith investor" provisions at section 203(b)(5)(M) of the Act to make a qualifying investment in another NCE based on U.S. Citizenship and Immigration Services' (USCIS) termination of the regional center's designation. FOD acknowledged the Petitioner's contentions but emphasized that section 203(b)(5)(M) of the Act only applies "upon termination or debarment," as applicable, of a regional center, NCE, or JCE. Service records reflect the Regional Center was terminated on October 28, 2024. But the underlying petition was denied on September 19, 2024. So, FOD concluded that the Petitioner is not eligible for the protections contained at section 203(b)(5)(M) of the Act because FOD denied his petition prior to the regional center's termination.

B. Derogatory Information.

The Petitioner avers that FOD did not follow our instructions and issued a dismissal of its motions to reopen and reconsider on remand "without providing the derogatory evidence cited in [the petition denial]." The Petitioner promoted that "[a]t a minimum, the case should be remanded again so that USCIS can re-open the case, provide its cited, outside the record evidence, and thereafter re-evaluate the case once the Petitioner has had the opportunity to respond." We do not agree.

The party filing an appeal is required to identify an erroneous conclusion of law or statement of fact within the most recent decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v), 103.3(a)(2)(i)–(iv). This applies to appeals of adverse conclusions on petitions and applications or appeals of adverse decisions on motions.

Under that framework, the Petitioner is not appealing the September 19, 2024, petition denial itself. Rather, the Petitioner is appealing FOD's dismissal of his motions to reopen and reconsider on remand dated September 15, 2025.

Therefore, a question before us on appeal is whether FOD erred in dismissing the motions to reopen reconsider because FOD did not provide the public source or other materials it relied upon in the prior November 2024 decision to dismiss the Petitioner's motions. A motion to reopen must state new facts demonstrating eligibility for the benefit and be supported by documentary evidence. 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.

In its September 2025 decision, FOD did not simply affirm the prior denial of the petition or the prior dismissal of the motions to reopen and reconsider by citing public source or other material not contained in the record. Instead FOD reviewed the entire record, including the Petitioner's first appeals brief and additional evidence submitted in the first appeal, and issued a new decision as we instructed on remand properly based on evidence contained in the record. The public source and other materials FOD relied upon in the November 2024 motions dismissal are not material or relevant to FOD's conclusions in the September 2025 motions dismissal before us today. So, we conclude that reopening and reconsideration is not warranted.

C. Good Faith Investor Protections

The other issue presented on appeal is whether the Petitioner, who did not have a pending or approved Form I-526 petition at the time USCIS terminated the designation of the regional center through which she made her EB-5 investment, may nevertheless establish eligibility for EB-5 classification by making a qualifying investment in another new commercial enterprise under the good faith investor provisions at section 203(b)(5)(M) of the Act.[3] Upon de novo review, we conclude that he cannot.

As stated above, where a regional center, NCE, or JCE is the subject of termination or debarment from the EB-5 program, investors with a pending or approved petition, including those petitions filed prior to the 2022 enactment of the EB-5 Reform and Integrity Act, may retain eligibility. *See* section 203(b)(5)(M) of the Act; *see generally* 6 *USCIS Policy Manual* G.3(E), https://www.uscis.gov/policy-manual. Specifically, an amendment entitled "Treatment of good faith investors following program noncompliance" allows "an otherwise qualified petition," under specified circumstances, to remain valid even if "based on an investment in a terminated regional center." Section 203(b)(5)(M)(i)(I) of the Act.

The Petitioner advances several policy and equity contentions to support his claim of eligibility for the protections described in section 203(b)(5)(M)(i)(I) of the Act. He has submitted letters from the Regional Center demonstrating its requests for termination prior to the denial of the underlying petition. He has also submitted evidence describing the posture and status of other investors in the same defunct NCE and stated that those investors have been successful in claiming the investor

[3] The Petitioner does not contest FOD's determination that the record did not establish the NCE would create at least 10 full-time positions for qualifying employees, which was the sole ground for denial of the petition.

protections described in section 203(b)(5)(M)(i)(I) of the Act. The Petitioner further postulates about different fact-based scenarios which could have solidified his claim to the investor protections described in section 203(b)(5)(M)(i)(I) of the Act but for the timing of specific occurrences, like the termination of the Regional Center and the denial of the petition, that were disadvantageous to him.

The Regional Center was terminated on [redacted] 2024. And the petition had already been in a denied state for 39 days on that date. Section 203(b)(5)(M) extends good faith investor protections only to those investors with a pending or approved petition at the time of the Regional Center's termination or debarment. The Petitioner does not fall within that category of individuals and is therefore ineligible to claim the good faith investor protections.

III. CONCLUSION

It is the Petitioner's burden to demonstrate his eligibility for the EB-5 classification. *Matter of Chawathe*, 25 I&N Dec. at 375-76. For the reasons discussed above the Petitioner has not established, by a preponderance of the evidence, his eligibility for this classification. Specifically, the Petitioner has not demonstrated that he is eligible to file an amended petition under the good faith investor provisions at section 203(b)(5)(M) of the Act. Accordingly, we will dismiss the appeal.

ORDER: The appeal 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.