U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43626642

Date: AUG. 04, 2026

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) (2019).[1] This employment-based 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. Aliens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Depts. of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

USCIS denied the Form I-526, Immigrant Petition by Alien Entrepreneur, concluding the record did not establish that the NCE in which the Petitioner invested will create at least 10 full-time positions for qualifying employees. We dismissed the Petitioner's appeal after previously remanding the matter to USCIS for issuance of a new decision. The matter is now before us on motion to reopen.

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.

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 has the potential to change the outcome).

On motion, the Petitioner re-submits the same documentary evidence he provided on appeal and states he met his burden to demonstrate that the NCE will create at least 10 jobs for each immigrant investor seeking EB-5 classification within two years. However, as we already considered this evidence in our

[1] On March 15, 2022, the EB-5 Reform and Integrity Act was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in section 203(b)(5) of the Act, 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 this petition in 2019, the relevant law then in existence governs this appellate adjudication.

prior decision dismissing the Petitioner's appeal, it does not present any "new facts" that have the potential to change the outcome of the proceeding, and we will not address it here.

Likewise, much of the Petitioner's brief on motion is substantially similar, or even identical, to the brief he provided on appeal. The Petitioner generally claims that we erroneously dismissed his appeal, but such claims do not satisfy the requirements of a motion to reopen, which is based on new facts.[2] *Compare* 8 C.F.R. § 103.5(a)(2) (requiring motions to reopen to state new facts and be supported by documentary evidence of those new facts) *with* 8 C.F.R. § 103.5(a)(3) (requiring motions to reconsider to establish the preceding decision was incorrect, based on evidence already in the record at the time of that decision).

To the limited extent that the Petitioner states new facts in support of his motion, his statements are not supported by documentary evidence. In our prior decision, we addressed significant delays and changes to the project timeline, one of which was related to receipt of "final plat approval" from the [redacted] for the NCE's residential construction project.[3] We noted that the project's 2015 business plan indicated that construction would begin in 2016. In March 2024, in response to a notice of intent to deny, the Petitioner's counsel claimed the project was awaiting "final plat approval" before it could begin work on pre-construction site improvements, and that such approval was anticipated by the end of the year. When the Petitioner filed his appellate brief in December 2025, the record showed that the project had not yet received this approval and no timeline for the expected issuance was provided. On motion, the Petitioner now claims that "the Final Plat is about to be approved," and "construction will be underway this year" but he does not submit evidence to corroborate this latest update to the construction timeline.

The Petitioner's submission on motion to reopen, because it mainly relies on previously submitted claims and evidence, does not substantively address the fundamental evidentiary issues we discussed in our prior decision. Those issues included, but were not limited to, a lack of evidence relating to the project's delays and timeline; uncertainty regarding the project's current scope; inconsistent claims regarding the sources of financing; material changes made to its anticipated financing structure; and a lack of evidence to demonstrate that sufficient funding has been or would be secured for the project.

These evidentiary issues preclude a determination that the project would more likely than not create at least 10 direct jobs for each alien investor within two years, and this issue is dispositive. *See* 8 C.F.R. § 204.6(g), (j)(4)(i)(B). Because the Petitioner does not state new facts, supported by documentary evidence, that overcome these dispositive evidentiary issues, he has not shown proper cause for us to reopen the prior decision. Accordingly, we will dismiss the motion to reopen. 8 C.F.R. § 103.5(a)(2), (4).

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[2] Even if the Petitioner had indicated on the Form I-290B, Notice of Appeal or Motion, that he was filing a combined motion to reopen and motion to reconsider, which he did not, his contentions on motion merely reargue facts and issues we have already considered in our previous decision. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

[3] The Petitioner invested $500,000 in [redacted] (the NCE), which proposes to raise $9 million from 18 immigrant investors to fund the acquisition and development of a real estate parcel in [redacted] Arizona. The project's 2015 business plan states that the NCE intends to develop and construct a total of 53 luxury homes located within two adjacent residential communities.

ORDER: The motion to reopen 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.