U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43490454

Date: AUG. 5, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) 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).[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 United States economy and create at least 10 full-time positions for qualifying employees.

In 2025, USCIS denied the petition, concluding that the Petitioner abandoned her petition. The Petitioner based her petition on a purported investment in [redacted] LLC, the NCE associated with [redacted] LLC, formerly known as [redacted] LLC. *See* 8 C.F.R. § 103.2(b)(13)(i), (15). Specifically, USCIS had issued to the Petitioner a request for evidence (RFE) but did not receive a response. As such, USCIS denied the petition as abandoned. Subsequently, the Petitioner submitted two separate combined motions to reopen and reconsider the matter, claiming in both motion filings that she did not receive the RFE. USCIS dismissed both combined motions. USCIS' latest motion decision, dated February 17, 2026, is now before us on appeal pursuant to 8 C.F.R. § 103.3. *See also* Section 203(b)(5)(P)(i)(III) of the Act (specifying that USCIS "shall provide an opportunity for an administrative appellate review . . . of any determination made" in "a petition by an alien investor for status as an immigrant").

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.

I. LAW

To be eligible for EB-5 immigrant classification, an alien investor must establish that his or her investment of the requisite amount of capital in an NCE has created or will create full-time positions for at least 10 qualifying employees within two years. Section 203(b)(5)(A)(ii) of the Act; 8 C.F.R.

[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 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).

§ 204.6(j)(4)(i) (2018). The regulation at 8 C.F.R. § 204.6(f)(2)(2018) states that if an alien invests in a targeted employment area, then "[t]he amount of capital necessary to make a qualifying investment . . . is [downwardly adjusted to] five hundred thousand United States dollars ($500,000)" from $1,000,000. Additionally, an alien must submit "evidence [showing that he or she] has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise." 8 C.F.R. § 204.6(j). The regulatory definition for "capital" specifies that "[a]ssets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital . . . ." 8 C.F.R. § 204.6(e) (defining "capital") (2018).

The regulation at 8 C.F.R. § 103.2(b)(13)(i) explains that if the alien "fails to respond to a request for evidence . . . by the required date, the benefit request may be summarily denied as abandoned . . . ." If the alien then files a motion to reopen the matter, then he or she must submit evidence showing that the denial based on abandonment was in error because:

> (i) The requested evidence was not material to the issue of eligibility;
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> (ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
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> (iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised [USCIS], in writing, of a change of address or change of representation subsequent to filing and before [USCIS'] request was sent, and the request did not go to the new address.

8 C.F.R. § 103.5(a)(1)(iv)(*2*).

II. ANALYSIS

USCIS issued an RFE in April 2025, requesting the Petitioner to submit additional evidence establishing that her purported investment was made in a targeted employment area and that her claimed EB-5 funds were obtained through lawful means. *See* 8 C.F.R. § 204.6(e) (defining "capital"), (f)(2), (j). These are elements that the Petitioner must establish to demonstrate eligibility for EB-5 classification. The RFE specifies that the deadline for submitting a response was July 8, 2025, if the Petitioner resided in the United States, or July 19, 2025, if she resided outside of the United States. Citing 8 C.F.R. § 103.2(b)(13)(i), the RFE explains that "[i]f you do not respond by the deadline, USCIS may deny your petition as abandoned." On August 8, 2025, USCIS denied the petition as abandoned because it did not receive an RFE response. USCIS then dismissed two combined motions. The Petitioner appeals USCIS' latest motion decision.

On appeal, the Petitioner claims, as she did in her two combined motions, that she did not receive the RFE. She maintains that "she failed to response [*sic*] to the RFE issued by USCIS because [she] DID NOT RECEIVE the alleged RFE." (Emphasis in original). In an October 2025 statement, the Petitioner, through counsel, stated that her "non-receipt of the RFE was likely the result of a mailing or courier error, entirely beyond her control."

In its latest motion decision, as well as the initial motion decision, USCIS referenced the requirements under 8 C.F.R. § 103.5(a)(1)(iv)(*2*)(i)-(iii) that an alien must satisfy when challenging a denial based on abandonment. On appeal, the Petitioner does not address these requirements. Specifically, she does not claim, and the record does not establish, that the evidence requested in the RFE was not material to EB-5 classification eligibility, that the requested evidence had been timely submitted, or that the RFE was sent to an incorrect address.

Indeed, on appeal, the Petitioner presents additional evidence which she alleges was responsive to the RFE. This supports the finding that the requested evidence was material to eligibility. *See* 8 C.F.R. § 204.6(e) (defining "capital"), (f)(2), (j). Additionally, the Petitioner admits that she did not respond to the RFE during the allotted period, maintaining non-receipt of the RFE. Finally, the RFE was properly addressed to the Petitioner's last known address, which was listed on the petition, and to counsel's address listed on the accompanying Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. Significantly, in an October 2025 statement, the Petitioner, through counsel, acknowledged that the address to which the RFE was sent was "valid, functional and capable of receiving notices issued by USCIS." Accordingly, as the Petitioner has not addressed the requirements under 8 C.F.R. § 103.5(a)(1)(iv)(*2*)(i)-(iii), she has not shown that USCIS' denial based on abandonment or its latest motion decision was in error.

III. CONCLUSION

Although the Petitioner maintains that she did not receive the RFE, under 8 C.F.R. § 103.5(a)(1)(iv)(*2*), she must submit evidence showing that USCIS' denial due to abandonment decision was in error. Here, she has not made such a showing.

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.