U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43413746

Date: AUG. 10, 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).[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.

USCIS denied the petition and dismissed a subsequent combined motion to reopen and reconsider, concluding that the Petitioner did not establish that he placed the required amount of capital "at risk" and that the NCE in which he invested would likely create at least 10 full-time positions for qualifying employees for each alien seeking EB-5 classification. We dismissed the Petitioner's appeal and a subsequent combined motion to reopen and reconsider, determining that, while he demonstrated that he placed the required amount of capital at risk, he had not provided a comprehensive business plan demonstrating that the NCE would create at least 10 full-time positions for qualifying employees. The matter is now before us again on 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 motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that our prior decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider, when filed, must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id*. We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec.

[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 his petition in 2019, the relevant law then in existence governs this motion adjudication.

464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4).

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).

II. ANALYSIS

At issue is whether the Petitioner has established that our prior decision to dismiss his combined motion to reopen and reconsider was based on an incorrect application or law or policy and whether he has submitted new facts, supported by documentary evidence, that demonstrate his eligibility for the benefit sought. For the reasons provided below, the Petitioner has not made such a showing. Accordingly, we will dismiss the combined motion.

A. Background

In 2019, the Petitioner invested $500,000 in [redacted] LP, an NCE associated with [redacted] LLC [redacted], a USCIS-designated regional center.[2] The NCE proposed to pool $5 million from 10 immigrant investors and lend the entire amount to a [redacted] LLC, the job-creating entity, to finance construction of a [redacted] hotel in [redacted] Indiana.

We dismissed the Petitioner's prior motion, concluding the record did not demonstrate that the NCE in which he invested will create at least 10 full-time positions for qualifying employees for each investor within two years.[3] *See* 8 C.F.R. §§ 204.6(g), (j)(4)(i)(B). We recognized that some changes in timeline and funding might not affect the overall credibility of a submitted business plan. However, in this case, we concluded the record presented uncertainty regarding the terms reached to settle an eminent domain lawsuit that had been delaying the project's progress, contained unresolved inconsistencies related to the project's costs and funding, and offered insufficient evidence to establish that the project's developers will receive the funding necessary to complete the project. Based on these factors, we concluded the Petitioner had not provided a comprehensive business plan that includes credible cost information, a realistic completion date, and reliable job creation projections. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998)

B. Motion to Reconsider

On motion to reconsider, the Petitioner asserts that we erroneously dismissed his prior motion. However, this general assertion of error does not satisfy the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3). The Petitioner does not state the specific reasons he is seeking reconsideration, expressly claim that our decision was based on an incorrect application of law or

[2] Regional centers pool investor funds for qualifying projects to promote economic growth in a specific geographical area. *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).

[3] This two-year period, described at 8 C.F.R. § 204.5(j)(4)(1)(B) (2019), is deemed to begin six months after adjudication of Form I-526. *See generally* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual.

policy, or cite any authorities in support of his claim that we reached erroneous conclusions in our prior decision. *See* 8 C.F.R. § 103.5(a)(3). Further, he does not articulate a claim that our prior decision was incorrect based on the evidence of record at the time of our decision. *See id.* Rather, the Petitioner claims that, with the additional documentation submitted with this second motion, the record is now sufficient to demonstrate that the NCE's project will satisfy the job creation requirements for this classification. For these reasons, the Petitioner's motion does not meet the requirements for a motion to reconsider.

C. Motion to Reopen

On motion to reopen, the Petitioner submits additional evidence intended to address the issues we raised in our prior decision regarding the project's delays, its current status, and its costs and funding sources. The Petitioner maintains that the newly submitted documentation, when considered with evidence already in the record, demonstrates by a preponderance of the evidence that the project is supported by a credible business plan, that it will be sufficiently funded through its completion, and that it will create at least 10 full-time jobs for qualifying employees for each investor seeking EB-5 classification.

1. Project Delays

In our March 2026 decision, we determined that the Petitioner had not provided a reasonable explanation for the lack of progress on the hotel project as described in its October 2017 business plan. The timeline provided in that business plan projected the hotel's completion by the end of 2019, while the latest updates on the project at the time of the previous motion indicated an estimated completion date of October 2027. The Petitioner did not dispute that the project had not progressed according to its original and amended plans but stated that the delays were justified due to the COVID-19 pandemic and an eminent domain lawsuit filed against the project's property owner, [redacted] LLC ([redacted]).

The Petitioner's evidence on motion addresses our determination that the record did not adequately document pre-pandemic delays in the project timeline attributed to "site development complications." The Petitioner explains that there were "significant, unanticipated delays" in the [redacted] adoption of mixed-use zoning for the area that includes the project site, and that those zoning changes were approved in December 2018. It is unclear why the Petitioner did not provide an updated project timeline at the time of filing in May 2019 rather than relying on the outdated timeline included in the 2017 business plan, which did not account for the possibility of zoning issues and any attendant delays. However, we acknowledge evidence showing that the property owner submitted the master plan for mixed-use development of the project site in January 2019, soon after the [redacted] adopted the zoning updates.

Regarding the eminent domain litigation, we acknowledged the Petitioner's previous submission of a court order and local news article indicating that the parties had settled the lawsuit in [redacted] 2025, and his claim that the project could continue unencumbered by legal proceedings. However, we observed that the court order and news article referred to a settlement agreement between the parties that was not provided for the record. Without this evidence, we concluded there was uncertainty regarding the terms of settlement reached to resolve the litigation.

With the current motion, the Petitioner submits a copy of the [redacted] 2025 settlement agreement. The parties agreed the eminent domain lawsuit would be dismissed without prejudice and that the [redacted] would cooperate with [redacted] to identify and apply for Tax Increment Financing (TIF) funding, Indiana redevelopment tax credit and other public/private funding opportunities that may be available to support the property's development, while acknowledging that none of these possible funding sources would be guaranteed.

The settlement also indicates that [redacted] entered into a development agreement with [redacted] LLC ([redacted]) under which the project property would be redeveloped in phases. The Petitioner's motion includes two letters from [redacted] (1) a July 2025 letter summarizing the terms of the development agreement and the scope of its responsibility and authority; and (2) a February 2026 letter which states that "coordinated redevelopment planning resumed without legal impediment" and the project has moved out of a "conceptual or speculative planning stage" and into a "pre-construction development" phase. [redacted] 2026 letter further states the project is "positioned to advance towards construction commencement in Q4 2026," with an estimated construction duration of approximately 30 months.

The new evidence documents the terms of the settlement agreement and therefore addresses one source of uncertainty regarding the project's status. However, the record on motion does not include evidence demonstrating that the project has advanced beyond the planning phase in the eight months immediately following the lawsuit's settlement. In fact, [redacted] description of its responsibilities under the 2025 development agreement suggests that a significant overhaul of the project would need to be undertaken, with [redacted] responsible for creating a new master plan and implementation strategies, determining conceptual budgeting, identifying public infrastructure, defining project phasing, selecting a new consulting team of architects, engineers, accountants, attorneys and other professionals, coordinating financing and acquisition of incentive funding, coordinating conceptual and preliminary designs for the construction phase, selecting a general contractor, developing contract documents to submit for permits, and other preliminary design, planning and pre-construction steps.

The project activities briefly described in [redacted] February 2026 letter are stated in general terms and not accompanied by supporting evidence of progress that has occurred following the settlement of the lawsuit and its assumption of the project developer role. Further, the record lacks any update to the project's business plan to substantiate the new, post-litigation timeline, the projected start of construction in the last quarter of 2026, and the project's updated financial structure, which we discuss further below. While the project is no longer subject to litigation-related obstacles, it remains significantly delayed and has not yet reached the construction stage, which is now expected to require 30 months rather than 18 months as previously claimed.

The new project timeline set forth in [redacted] February 2026 letter also calls into question whether the property owner continues to have a valid franchise agreement to operate a [redacted] branded hotel. The Petitioner previously provided evidence that [redacted] extended the franchise agreement in July 2024 and established a new construction start deadline of October 1, 2025, and a completion deadline of October 1, 2027. The evidence submitted on motion indicates that it is not feasible for the owner to meet these deadlines; however, the record does not include evidence that [redacted], which initially signed an [redacted] Franchise Agreement with [redacted] in 2018, requested or received approval of any additional extension requests from the franchisor. [redacted]

February 2026 letter only refers to the 2024 extension of the franchise agreement and generally states that "brand-level coordination continues." If [redacted] has not granted an extension, and alternative franchise arrangements must be negotiated and approved, it is reasonable to believe that additional project delays may ensue.

Overall, while the new evidence confirms that the settlement agreement resolved the legal issues that delayed the project since 2023, it does not overcome our concerns regarding this project's significant delays. In its letter, the regional center asserts that although project timelines have been revised, those revisions reflect "the realities of complex, adaptive reuse development," and do not indicate an abandonment or material change to the project. Nevertheless, the estimated completion date of the hotel project in which the Petitioner invested has been delayed by nearly 10 years, and there is insufficient evidence of post-ligation progress and commitment of financing to suggest that construction will begin in 2026 and create the requisite number of jobs for EB-5 investors within the required two year timeframe. These project delays, along with the funding issues discussed further below, continue to affect the credibility of the business plan.

2. Project Costs and Funding

In dismissing the Petitioner's prior motion, we determined there were unresolved inconsistencies in the record regarding the project's estimated costs, financial plan and sources of funding, and insufficient evidence that the hotel project had obtained or was likely to obtain the funding needed for completion.

The regional center's newly submitted letter generally addresses this determination by noting that "[t]he project financing structure has evolved in the ordinary course of development as the project has moved from conceptual planning to more advanced development and financing stages." The regional center further states:

> As the project advanced, the development team secured firm financing commitments supporting the development of the [redacted] project. The current financing structure supporting the project includes $17,000,000 in committed financing, consisting of a $5,000,0000 development commitment from [redacted] and a $12,000,000 senior financing commitment from [redacted]. These commitments replace earlier exploratory lending discussions and reflect the progression of the project toward a more fully developed financing structure.

The evidence provided on motion does not sufficiently corroborate the regional center's assertion that the project has secured $17 million in "firm financing commitments." The February 2026 letter from [redacted] states that the company "has committed development resources and capital participation consistent with its role as development manager," and "agreed to participate in providing $5,000,000 in capital." However, the record lacks corroborating documentation of the referenced agreement and its terms.

A new February 2026 letter from [redacted] is presented as a "non-binding letter of intent" regarding a "potential equity investment" in the project. The letter sets forth the parties' "understanding of the primary business terms and conditions under which [redacted] LLC

. . . would consider an equity investment in the project." The proposal indicates that [redacted] would invest up to $12 million in the hotel project if at least nine conditions are met, and that it agrees to negotiate in good faith to close the transaction. The letter of intent specifies that the stated terms do not constitute a binding offer or commitment to invest but are a basis for negotiating an agreement and shall remain valid until December 30, 2026.

The Petitioner has not established that a conditional agreement to negotiate a potential equity investment is equivalent to a "firm financing commitment," particularly as the conditions stated in this "letter of intent" are extensive and specifically require other project financing to be in place.

The regional center also states that the hotel project "is supported by ongoing economic development work and municipal coordination" and engaged in efforts "focused on evaluating, structuring and advancing available public financing tools, economic incentives and grant opportunities in support of the project." However, the record does not include any supporting documentation related to these efforts or demonstrate that the project has secured any funding, financing or other financial incentives from public sources to date.

In its April 2026 letter, the regional center also confirms that the NCE continues to pursue additional EB-5 investment as part of its overall capitalization strategy. Specifically, it states that it filed a Form I-956F, Application for Approval of an Investment in a Commercial Enterprise, seeking USCIS approval for the NCE to raise funds from immigrant investors under the EB-5 Reform and Integrity Act of 2022 (RIA).[4] The new evidence submitted on motion includes an October 2025 economic analysis report prepared in support of the Form I-956F.

When the Petitioner filed his prior motion in October 2025, he stated that the $20 million cost estimate and financial details outlined in a previously submitted business plan remained accurate.[5] However, the October 2025 economic analysis indicates "[t]he Project will require a total investment of $36,296,621 and an EB-5 investment of $10,000,000 from 14 EB-5 investors" with the following sources of funding:[6]

$18,100,000	Senior Debt
$10,000,000	Tax Credit/Bridge Loan (EB-5)
$4,099,140	Owner Equity Contribution
$2,630,558	Land & Buildings
$1,466,923	[redacted] Proceeds

Even if the record supported the regional center's claim that the project has secured a "firm financing commitment" for $17 million through [redacted] and [redacted], the evidence is nevertheless insufficient to document the availability of the remaining funds for a project with costs now expected

[4] Government records indicate that USCIS denied this application, identified as [redacted], on June 15, 2026.
[5] The referenced business plan was undated and submitted in response to USCIS' request for evidence in November 2023. Based on dates referenced in the included project timeline, the business plan was likely created in 2021.
[6] Based on the $10 million figure provided, it appears that the 14 EB-5 investors would include the four petitioners who previously filed Forms I-526 based on their $500,000 investments in the NCE in 2018 and 2019, and up to 10 post-RIA investors who would each invest $800,000.

to exceed $36 million. The record on motion does not address the availability of $1.46 million in "[redacted] proceeds" or include evidence related to the "owner equity contribution" of $4.1 million.

Further, the NCE's ability to raise a total of $10 million in EB-5 investment was contingent upon USCIS' approval of the regional center's Form I-956F, and that application has been denied. As noted in our prior decision, the record includes evidence showing that the project received $2 million in EB-5 investments in 2018 and 2019, but it is unclear how the NCE's project intends to compensate for an $8 million shortfall in anticipated EB-5 funding. For all these reasons, the Petitioner's claim that the record "now contains sufficient supporting documentation to establish that the project will be adequately financed through completion" is not persuasive.

While we acknowledge the regional center's explanation that the project financing structure has evolved over time, it is the Petitioner's burden to demonstrate that the project will more likely than not be able to obtain sufficient funding to cover the project's costs and ensure its completion. The record lacks an updated business plan and evidence supporting the project's latest financial plan, and therefore we cannot determine that the economic methodologies, upon which job creation projections are based, are reasonable.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, he has not established his eligibility for the classification sought. For the reasons discussed, the new evidence does not overcome our concerns regarding the project's delays and financing structure. As such, the Petitioner has not established, by a preponderance of the evidence, that the business plan is comprehensive and credible and that the NCE will create at least ten full-time positions for qualifying employees. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

Further, on motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. 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.