U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 38048968

Date: AUGUST 11, 2025

Motion on Administrative Appeals Office (AAO) Decision

Form I-526, Immigrant Petition by Standalone Investor

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] These provisions provide for the immigrant classification of aliens who invest $1,000,000 in a new commercial enterprise (NCE) which will benefit the United States economy and create at least 10 full-time jobs for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the Petitioner invested the required amount of capital in the NCE, that all funds invested in the NCE derived from lawful sources, and that the NCE would create 10 full-time jobs. We dismissed the Petitioner's subsequent appeal. The matter is now before us on combined motions 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). Here that burden has not been met and upon review, we will dismiss the motions.

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 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. 8 C.F.R. § 103.5(a)(3). 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.

In our prior decision on appeal, we determined the Petitioner did not establish that she had invested the requisite amount of capital, $1,000,000 in the NCE and reserved consideration of the other grounds for denial of her petition. As the Petitioner has not overcome this ground for dismissal, we again

[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). As the Petitioner filed her petition in November 2019, the relevant law then in existence governs this appellate adjudication.

reserve consideration of the remaining grounds for the initial denial of her petition. *See INS v. Bagamasbad,* 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

The Petitioner claims to have invested over $1,000,000 in the NCE, [redacted] doing business as [redacted] Utah. The Petitioner states $515,000 of her investment derived from an initial gift from her aunt. At issue is an additional $500,000 that the Petitioner claims to have invested in the NCE through a Security Agreement and Promissory Note between the Petitioner and the NCE. The Security Agreement provides that the NCE will loan $500,000 to the Petitioner in exchange for the Promissory Note dated September 1, 2019, in which the Petitioner promises to pay the NCE $500,000 with interest by July 1, 2021. The Security Agreement states that the collateral for the loan is the Petitioner's Membership Interest Certificate in the NCE worth $500,000 as of October 15, 2018.

On appeal, we determined the Security Agreement and Promissory Note did not constitute capital invested in the NCE because the definition of capital at 8 C.F.R. §204.6(e) prohibits indebtedness where the assets of the NCE are used to secure the indebtedness. On motion, the Petitioner asserts no assets of the NCE were used to secure the Petitioner's indebtedness because the security was the Petitioner's Membership Interest Certificate, which is an asset of the Petitioner, not the NCE. However, the funds the Petitioner initially contributed to the NCE to purchase her Membership Interest Certificate are an asset of the NCE. As this asset of the NCE was the basis for the collateral of the Petitioner's indebtedness in the Security Agreement, the Agreement and Promissory Note do not constitute capital as defined at 8 C.F.R. §204.6(e).

In addition, under the definition of capital, all capital shall be valued at fair market value. 8 C.F.R. § 204.6(e). *See also Matter of Hsiung*, 22 I&N Dec. 201, 204 (Assoc. Comm'r 1998) (stating 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"). The fair market value of a promissory note depends on its present value. *Matter of Izummi*, 22 I&N Dec. 169, 193 (Assoc. Comm'r 1998). On appeal, we determined the Petitioner did not establish the fair market value of her promissory note was $500,000. We explained that the record indicated the price of membership in the NCE was based on the valuation of the NCE at $5,740,000 in an appraisal report. However, the appraisal report stated this valuation of the NCE was projected in 2 years' time, and the value of the NCE at the time of the 2018 appraisal report was only $200,000.

On motion, the Petitioner asserts the appraisal of the NCE at $5,700,000 was done with a standard method by a reputable valuation firm and reflects the fair market value of the NCE. The Petitioner does not acknowledge that the valuation of the NCE at $5,700,000 was a projected sum, not the value of the NCE at the time of the appraisal. The Petitioner also submits a second appraisal valuing the company at $8,970,000. This second appraisal of the NCE is dated in 2022. The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). As this petition was filed in 2019, the 2022 appraisal cannot be relied upon to establish the fair market value of the Petitioner's promissory note. The appraisal report initially submitted with the petition states the value of the NCE was $200,000 at the time of the report and the value of membership based on the projected value of the NCE in the future does not reflect the then present and fair market value of the promissory note.

On appeal, we further determined the Petitioner did not invest and was not in the process of investing the additional $500,000 in the NCE because the record showed she did not pay back her debt by the due date of the promissory note, July 1, 2021. On appeal, the Petitioner stated she paid $528,005.44 to the NCE in July 2023 with an additional gift from her aunt who transferred the funds to the NCE on her behalf. As we explained on appeal, the 2023 payment does not establish the Petitioner's eligibility because to qualify as capital, nearly all the money due under a promissory note must be payable within two years, without provisions for extensions. *Matter of Izummi*, 22 I&N Dec. at 193-94.

On motion, the Petitioner submits an agreement between her and the NCE to extend the repayment period of the promissory note and evidence of the NCE's receipt of the $528,005 payment. The Petitioner asserts that the two-year period referenced in *Matter of Izummi* is the period of conditional residency, which is inapplicable because the Petitioner's Form I-526 has not been approved and her period of conditional residency has not yet begun. The Petitioner cites a section of *Matter of Izummi* that discusses when a promissory note may constitute evidence that a petitioner is in the process of investing the requisite capital. However, *Matter of Izummi* explains:

> The schedule of payments on a promissory note, whether the note is used as capital or as evidence of a commitment to invest, is relevant to the issue of whether a petitioner has, in good faith, committed the requisite amount of his personal funds. . . . Therefore, at a minimum, nearly all of the money due under a promissory note must be payable within two years, without provisions for extensions.

22 I&N Dec. at 193-94. The agreement to extend the repayment period of the promissory note and the Petitioner's repayment of the promissory note two years after it was originally due do not comply with these requirements. Consequently, the record does not establish that the Petitioner's promissory note constitutes $500,000 of capital.

In sum, the evidence and claims on motion are insufficient to establish that the Petitioner invested $1,000,000 of capital in the NCE, as required for EB-5 classification. On appeal, we also noted that the record did not establish the lawful source of funds for the Petitioner's aunt's second gift used to repay the promissory note. As the issues previously discussed are dispositive of the Petitioner's motions, we do not reach and reserve further consideration of this issue. *See INS v. Bagamasbad,* 429 U.S. at 25.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy. Therefore, the motions 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:** 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.