U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43662330

Date: AUG. 13, 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 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. An alien may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding that the Petitioner did not establish that the NCE will create at least 10 full-time jobs for qualifying employees. USCIS then dismissed subsequently filed motions to reopen and reconsider. The Petitioner appealed, and we remanded the matter for USCIS 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. In its new decision, USCIS focused on the Petitioner's claim of 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 USCIS' termination of the regional center's designation. They concluded that he is not eligible for those protections because his petition was denied prior to the regional center's termination. We then dismissed a second appeal in this matter, which 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). Upon review, we will dismiss the motions.

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) 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 their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

I. LAW

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 have the potential to change the outcome).

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.

An alien may be classified as an EB-5 immigrant investor if they invest or are actively in the process of investing the requisite amount of qualifying capital in an NCE. The investor must show that their investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying employees. An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. As required by 8 C.F.R. § 204.6(j)(4)(i), the petitioner must establish that the investment of the required amount of capital in an NCE will create the necessary jobs within two years. For purposes of the Form I-526 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.

Per 8 C.F.R. § 204.6(j)(i), to show that an NCE will create 10 full-time positions for qualifying employees within two years, the petition must be accompanied by:

> A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
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> B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

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 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.

II. ANALYSIS

The Petitioner asserts that he invested $500,000 into EB-5 [redacted] an NCE affiliated with [redacted], a then-designated regional center. The NCE proposed to pool $45 million from 90 immigrant investors to invest an equity interest in [redacted], the job-creating entity (JCE), which intended to develop, construct, and operated a luxury hotel in [redacted] Oregon. However, the record shows that the JCE failed to move the project forward, and in December 2023 the NCE initiated dissolution of the partnership and offered investors the option to reinvest their funds into a new NCE.

In March 2024, the NCE requested USCIS to debar the JCE, and in May 2024 the Petitioner reinvested his funds into a different project. USCIS denied the Petitioner's I-526 petition on September 19, 2024, concluding that due to the delayed construction timeline and lack of evidence showing project capitalization, the business plan was not credible and thus did not support the creation of 10 full-time jobs for qualifying employees. USCIS also determined that the transfer of the Petitioner's constituted an impermissible material change to the petition. On [redacted], USCIS terminated the regional center.

As mentioned above, following our remand of this matter back to USCIS, they issued a new decision in which they concluded that because his petition had been denied prior to the termination of the regional center, the Petitioner was not eligible for the good faith investor protections. In our most recent decision, we concluded that USCIS did not err in dismissing the Petitioner's previous motions to reopen and reconsider and agreed that because his petition was denied [redacted] prior to the termination of the regional center, he was not eligible to claim the good faith investor protections at Section 203(b)(5)(M) of the Act.

A. Motion to Reopen

With his motion, the Petitioner submits a copy of USCIS' decision of November 25, 2025 regarding an amendment of Form I-956F, Application for Approval of an Investment in a Commercial Enterprise, for [redacted] The decision approves the amendment to add 52 investors to a project involving development and construction of two multifamily housing projects in [redacted] California, a portion of which is comprised of good faith investors. A request for clarification email from USCIS regarding this I-956 application, dated September 26, 2025, identifies the two NCEs from which these good faith investors will be drawn, one of them being EB5 [redacted] and seeks information regarding the identity and filing information for each of the good faith investors.

Both the RFC and the approval of the amendment were issued more than a year after the petition at issue in this matter was denied. Neither alters or affects our previous decision, and USCIS', that the Petitioner is ineligible for the good faith investor protections under Section 203(b)(5)(M) of the Act because his petition was not pending or approved at the time the regional center was terminated. In addition, footnote 3 of the I-956F decision provides instruction to investors "who *intend* to make a

qualifying investment in the NCE as good faith investors," not those who have already attempted to do so. Therefore, this evidence does not establish the Petitioner's eligibility for the good faith investor provision.

B. Motion to Reconsider

On motion to reconsider, the Petitioner asserts that our prior decision was "arbitrary and capricious" under the Administrative Procedure Act, contradicted the purpose of Section 203(b)(5)(M) of the Act to protect good faith investors from the consequences of regional center failure, and was ultra vires because it imposed an "extra-statutory timing rule."

We disagree. As pointed out above and in our previous decision, even the title of Section 203(b)(5)(M) of the Act specifies that it concerns the actions of a good faith investor "following program noncompliance." 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. Although the Petitioner advances several policy and equity contentions and has submitted documentary evidence to support his claim of eligibility for the protections described in section 203(b)(5)(M)(i)(I) of the Act, the Regional Center was terminated on [redacted] after the petition was denied. 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.

While the Petitioner suggests that he is entitled to the same protections despite USCIS' denial of his petition [redacted] prior to the Regional Center's termination, he has not established a legal basis for eligibility under the plain language of the statute. The statute clearly requires a good faith investor seeking these protections to have a pending "otherwise qualified petition" or an approved petition for such petition to "remain valid" under section 203(b)(M)(i)(I) of the Act, and this requirement is reflected in USCIS' policy guidance. *See generally* 6 *USCIS Policy Manual, supra*, at G.3(E).

III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, he 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 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.