U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42890731

Date: AUG. 17, 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 U.S. economy and create at least 10 full-time positions for qualifying employees. Aliens may invest in a project associated with a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. *See* section 203(b)(5)(E)(i) of the Act.

The Field Operations Directorate (FOD) issued a notice of intent to deny (NOID) the Form I-526, Immigrant Petition by Alien Entrepreneur (petition) alleging the record did not establish that the capital the Petitioner invested, or was actively in the process of investing, was obtained through lawful means. Even though the Petitioner timely responded to the NOID, FOD denied the petition for a lack of a response. The Petitioner then filed a motion to reopen and reconsider which FOD ultimately dismissed. And we dismissed a 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). 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 have the potential to change the outcome).

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[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 INA 203(b)(5), and adding significant new integrity provisions.
https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221006 EB5ReformAndIntegrityAct.pdf.
As the Petitioner filed this petition in September of 2016, the relevant law in existence on that date governs this appellate adjudication.

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.

We begin observing that the Petitioner abandoned the issue of properly documenting the path of her funds in her appeal. In our decision dismissing the appeal, we informed the Petitioner that this was an independent basis to dismiss that filing, and cited to case law indicating that abandoned or waived issues cannot be reinstated through motions.

On that same issue—documenting the path of her funds—that she abandoned and waived or forfeited on appeal, the present motions reflect that she addressed that issue in response to a request for evidence (RFE) before FOD. But as we noted when we dismissed the appeal, FOD's NOID informed the Petitioner that the evidence she provided in that RFE response did not demonstrate her eligibility, which is why FOD sought additional information and evidence.

Next, the Petitioner states:

> Administrative adjudication requires that petitioners be given a fair opportunity to address concerns identified by the adjudicator. See *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998). Where the agency determines that submitted evidence is insufficient, the appropriate course is to identify the deficiency and allow the petitioner to respond, rather than deny the petition based on concerns raised for the first time on appeal.

First, we find no similar supporting line of reasoning in *Matter of Ho* that the Petitioner conveys here. "The fundamental requisite of due process of law is the opportunity to be heard." *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). The opportunity to be heard in these proceedings involves U.S. Citizenship and Immigration Services (USCIS) informing the filing party of what the law requires accompanied by a sufficient explanation of why the material in the record falls short of those conditions. Here, the statute, regulations, and FOD informed the Petitioner what was required of her, but for some of the requirements she declined to offer information or evidence, even after its absence was included in a notice to her. She was therefore afforded a fair opportunity to address certain shortcomings, but she failed to do so.

In these motions, "the Petitioner now provides additional supporting documentation regarding the path of funds, including . . . further clarifying materials." Again, if the Petitioner wishes for this material to be considered, she should achieve that end through filing a new petition. The Board of Immigration Appeals addressed a similar scenario in which they indicated:

> Where, however, the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal [or any subsequent motion] for any purpose. Rather, we will adjudicate the appeal based on the record of proceedings before

> the . . . director. [citation omitted] In such a case, if the petitioner desires further consideration, he or she must file a new visa petition.

Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988).

But that was not the only reason precluding a favorable determination on the Petitioner's appeal, as an evidentiary shortcoming remains in the record. That issue relates to the foreign language documents that were not translated in accordance with the regulation. Those deficient translations were an independent basis that precluded any favorable decision not only on appeal, but also before FOD. While the Petitioner argues that we should not have addressed this issue in our decision on the appeal, we have de novo "review of all issues of fact, law, policy, and discretion. This means that, on appeal, the [Administrative Appeals Office] looks at the record anew and its decision may address new issues that were not raised or resolved in the prior decision." *See generally AAO Practice Manual*, Ch 3.4, https://www.uscis.gov/aao-practice-manual.

And the Petitioner is incorrect that "[t]his approach contravenes the fundamental procedural safeguards governing USCIS adjudications" under 8 C.F.R. § 103.2(b)(16)(i). That regulation states:

> ***Derogatory information unknown to petitioner or applicant.*** If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered . . . .

The Petitioner is under the mistaken impression that USCIS is precluded from including in an adverse decision, any issue that was "previously unidentified." Reviewing 8 C.F.R. § 103.2(b)(16)(i), it only requires that USCIS provide prior notice under the following fact pattern:

1. The decision will be adverse;
2. The decision will be based on derogatory information; and
3. The filing party has no knowledge of the information USCIS will consider in its decision.

The regulation does not contain a provision that the agency must provide the filing party with an opportunity to rebut any form of adverse information that the party is aware of but they do not know will be included in a decision. The intent behind this regulatory provision is to ensure that USCIS does not introduce adverse information as a basis for a denial, to which the filing party has no way of knowing. *Cf. Matter of S-M-H-*, 29 I&N Dec. 412, 414 (BIA 2026) (finding that the government is not required to provide a filing party with any particular notice that the government will hold against them the information they provided in an immigration filing; their knowledge of the information is sufficient). So, it was not unfair to the Petitioner that we identified a significant evidentiary flaw with their translated evidence as one of multiple independent bases to dismiss the appeal. The Petitioner has not shown that this office's approach in the appeal contravenes the fundamental procedural safeguards governing USCIS adjudications.

Even though the Petitioner has not clearly delineated what parts of her combined motions relates to reopening being comprised of new facts that are supported by documentary evidence, and what portion

pertains to a reconsideration demonstrating the appeal decision was based on an incorrect application of law or policy, we have addressed her primary arguments in this filing. For motions to reopen, the standard the filing party must meet to warrant reopening the case is a showing of a "reasonable likelihood" that they will prevail in the related appeal, and USCIS will approve their benefit request. *Matter of M-K-*, 29 I&N Dec. 556, 562, 568 (BIA 2026) (citing *Matter of L-O-G-*, 21 I&N Dec. 413, 419 (BIA 1996)). Because the Petitioner has not made such a showing here, it is unnecessary that we directly address the evidence she offers with this motion.

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.