U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40973823

Date: FEB. 5, 2026

Motion on Administrative Appeals Office 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) (2021).[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.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that the NCE would create at least 10 direct full-time positions for qualifying employees. In addition, FOD determined that the NCE's business plan was not in compliance with *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998), as repeated construction delays and a lack of sufficient funding affected the credibility of the business plan. 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 motions.

The Petitioner invested $900,000[2] in [redacted] the NCE, on April 28, 2020. The NCE planned to construct a mixed-use real estate development near [redacted] Florida. The NCE was initially associated with a regional center, [redacted] ("the regional center"). However, the regional center was terminated in January 2025. The Petitioner here is one of a small group of immigrant investors who invested in the NCE through pooled standalone petitions.

As required by 8 C.F.R. § 204.6(j)(4)(i), the petition must establish that the investment of the required amount of capital in a NCE will create full-time positions for at least 10 qualifying employees within

[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 2021, the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is thus adjusted from $1,000,000 to $500,000. 8 C.F.R. § 204.6(f)(2) (2021).

two years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii). In order to meet the job creation requirement, a standalone investor must submit evidence that at least 10 qualifying jobs have already or will be created. For a standalone investment, the NCE, or its wholly owned subsidiaries, must itself be the employer of the qualifying employees. *See* 6 *USCIS Policy Manual* G.2(D)(4), www.usicis.gov/policy-manual. Where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 qualifying employees within the next two years. A comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Mere conclusionary assertions, however, do not enable USCIS to determine whether the job-creation projections are any more reliable than hopeful speculation. *Id.* Most importantly, the business plan must be credible. *Id.*

With the initial filing, the Petitioner asserted that the NCE would create over 10,000 direct jobs. The record does not include evidence that at least 10 qualifying jobs have already been created, such as relevant tax records, employment eligibility verification, or other similar documents for 10 qualifying employees. *See generally* 6 *USCIS Policy Manual* G.2(D)(5), *supra*. In support of the claimed job creation, the Petitioner relied on an economic impact analysis dated June 1, 2020. The economic impact analysis states that the job creation figures derive from the Regional Input-Output Modeling System (RIMS II) methodology, which it asserts qualifies as a "reasonable methodology" per 8 C.F.R. § 204.6(m)(7)(ii).

In our appellate decision, we noted that the creation of indirect jobs supported by reasonable methodologies is only considered where an investment is associated with an approved regional center. Here, the Petitioner indicated on Form I-526 that her investment was not associated with a regional center, and the record does not include evidence to show otherwise. She cannot therefore rely upon the jobs calculated using the RIMS II methodology in the economic impact assessment to meet the job creation requirement.

In considering the NCE's business plan, we concluded that the plan's projections for job creation are not credible because the plan relies upon an economic analysis report that uses RIMS II methodology to project job creation figures, including an undifferentiated combination of direct and indirect jobs. While such a combination is allowable where an investor is associated with a regional center, this is not the case for standalone petitions, which the Petitioner here has filed.

A. Motion to Reopen

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).

On motion, the Petitioner submits a brief, a letter from the NCE's Chief Executive Officer, and evidence of correspondence between the NCE and additional potential investors. In the brief, counsel for the Petitioner references an "enclosed, updated comprehensive [NCE] Business Plan." However,

no business plan was submitted with the combined motions. The Petitioner asserts that new facts, including additional financing and claimed progress on the project's development, establish eligibility, as it supports the credibility of the business plan.

As noted above, the record does not include independent, objective evidence demonstrating that the NCE had already created any direct jobs. On motion, the Petitioner again references the RIMS II direct and indirect job figures from the economic impact analysis. As noted above, and in our appellate decision, the use of reasonable methodologies in calculating job creation is only permissible when immigrant investors are associated with a regional center, which is not the case here.

On motion, the Petitioner also references a construction contract with [redacted] and development work completed by [redacted]. In our appellate decision we noted that the record did not include any evidence of a relationship between the NCE and [redacted] We further noted that the contract with [redacted] demonstrated that that company, and not the NCE, would be the actual employer of any employees assigned to the construction project. The Petitioner does not address these issues or provide any additional evidence related to [redacted] or the construction contract on motion.

Although the Petitioner has submitted additional evidence in support of her motion to reopen, the new facts and evidence she has presented on motion are insufficient to warrant reopening in this matter. Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

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.

On motion, the Petitioner contests the correctness of our prior decision. The Petitioner contends that the new facts warrant reconsideration and that our prior decision is erroneous and "misconstrues the totality of the evidence." The Petitioner does not identify what evidence in the record was misconstrued or overlooked. Nor does she cite laws, regulations, precedent decisions, or binding policies to support that we erred in dismissing her appeal. The Petitioner does not explain how we misapplied the law or policy in dismissing her appeal.

The Petitioner has not shown that our prior decision contains errors of law or policy or that the decision was incorrect based on the record at the time of that decision. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, we determine that the instant motion does not meet the requirements of a motion to reconsider.

C. Conclusion

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 at the time we issued our decision. On motion, the Petitioner repeats the same claims regarding job creation, largely copying her appeal and other statements in the record. She continues to refer to the RIMS II direct and indirect job figures from the economic impact analysis, as well as the construction contract. She does not directly respond to the determination regarding the NCE's employment of construction workers, and at no point does the Petitioner refer to evidence in the record which complies with the requirements at 8 C.F.R. § 204.6(j)(4)(i) regarding direct, permanent employment of at least 10 workers. 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: 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.