U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40987252

Date: FEB. 17, 2026

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Alien Investor

The Petitioner seeks classification as an immigrant investor pursuant to Section 203(b)(5) of the Immigration and Nationality Act (the Act), 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.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not satisfy the job creation requirements. Specifically, FOD determined that the proposed project's construction delays and lack of sufficient financing did not support the finding that the Petitioner had submitted a comprehensive and credible business plan. *See* 8 C.F.R. § 204.6(j)(4)(i)(B) (2021); *see also Matter of Ho*, 22 I&N Dec. 206, 212-13 (Assoc. Comm'r 1998). In addition, FOD concluded that the Petitioner had failed to establish that [redacted], the NCE, or its wholly-owned subsidiaries, would be the employer for the qualifying employees who would fill the anticipated new jobs. *See* 8 C.F.R. § 204.6(e) (defining "commercial enterprise" to include "a holding company and its wholly-owned subsidiaries"); *see generally* 6 *USCIS Policy Manual* G.2(D)(4), www.uscis.gov/policy-manual/volume-6-part-g-chapter-2 (providing that "[f]or a new commercial enterprise not located within a regional center . . . the new commercial enterprise (or its wholly-owned subsidiaries) must itself be the employer of the qualifying employees"). We dismissed the Petitioner's appeal based on the same reasons. 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 combined motions.

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 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 explained in our appellate decision, an alien must establish that his or her investment of the required amount of capital in a NCE will create full-time positions for at least 10 qualifying employees within two years.[2] 8 C.F.R. § 204.6(j). To demonstrate job creation, the alien must submit:

> (A) Documentation consisting of photocopies of relevant tax records, Form 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.

8 C.F.R. § 204.6(j)(4)(i). For an alien investor who claims to have invested in an NCE that is not associated with a regional center, as the Petitioner has done in this case, the record must demonstrate that his or her invested capital created or will likely create the required number of employees, and that these employees are or will be employed directly by the NCE or its wholly-owned subsidiaries. *See* 8 C.F.R. § 204.6(e) (defining "commercial enterprise" to include "a holding company and its wholly-owned subsidiaries"); *see generally* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(4) (providing that "[f]or a new commercial enterprise not located within a regional center, the full-time positions must be created directly by the new commercial enterprise," meaning "the new commercial enterprise (or its wholly-owned subsidiaries) must itself be the employer of the qualifying employees"). Additionally, the regulation defines "employee" as "an individual who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise," and specifies that "[t]his definition shall not include independent contractors." 8 C.F.R. § 204.6(e).

If the alien has not already created the required number of jobs, then his or her petition must include a comprehensive and credible business plan demonstrating the NCE's need for at least 10 qualifying employees within the next two years. 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 212-13. A comprehensive business plan must be sufficiently detailed to permit U.S. Citizenship and Immigration Services (USCIS) to draw reasonable inferences about job-creation potential. *Id.* Mere conclusionary assertions 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.*

In this case, the Petitioner claims to have invested a total of $500,000[3] in the NCE in 2021 and 2022. The record includes documents indicating the NCE's plan to construct a mixed-use development in [redacted], Florida, near [redacted], Florida. The NCE was initially associated with a USCIS designated

[2] USCIS Policy Manual provides that "[t]he 2-year period is deemed to begin 6 months after adjudication of Form I-526." *See generally* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(5). We note that FOD denied the Petitioner's petition on May 1, 2025, and we dismissed her subsequent appeal on September 10, 2025.

[3] 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).

regional center, [redacted] ("the regional center").[4] However, the regional center's designation to participate in the EB-5 Regional Center Program was terminated in January 2025. As relating to the Petitioner, however, page 4 of her petition reveals that her purported investment in the NCE is not and has never been associated with a regional center. Instead, she allegedly invested in the NCE as a standalone immigrant investor. *See generally* 6 *USCIS Policy Manual*, *supra*, at G.2(C)(2) (explaining that "[f]or petitions filed before March 15, 2022, a new commercial enterprise may be used as the basis for the petitions of more than one standalone immigrant investor").

With her initial filing, the Petitioner submitted multiple economic impact analyses that discuss job creation projections. Page 6 of the October 2014 economic impact analysis indicates that the project "will generate a total of 4,320 new full-time permanent direct, indirect, and induced jobs as a result of its initial capital expenditures on development and construction and subsequent operations of [the NCE]." Page 4 of the June 2020 economic impact analysis states that the project, including "the design, development, construction, and year four revenues . . . will create a total of 19,876 new permanent jobs in the [redacted] Combined Statistical Area." As discussed in our appellate decision the Petitioner claimed in her March 2025 response to FOD's notice of intent to deny (NOID) the petition that the NCE had "direct job creation of 10,000 jobs," that an economic impact report "showed a total number of direct jobs . . . for construction of 1,532," and that the "construction jobs are to be paid directly by [the NCE]."

We concluded in our appellate decision that the record did not support the Petitioner's assertion on the NCE's direct job creation. Specifically, we explained that the Petitioner submitted documents noting [redacted], the project property owner, had entered into agreements with [redacted] for the project construction. The record, however, included no evidence that [redacted] or [redacted] was a wholly-owned subsidiary of the NCE. The record also lacked evidence confirming that the construction workers had received or would receive wages or other remuneration directly from the NCE or any of its wholly-owned subsidiaries. *See* 8 C.F.R. § 204.6(e) (defining "commercial enterprise" and "employee"). As such, the record did not sufficiently support the finding that the Petitioner could rely on any alleged construction jobs associated with these two agreements to satisfy the job creation requirements. *See* 8 C.F.R. § 204.6(e); *see generally* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(4). Additionally, we explained that the Petitioner could not rely on job creation projections discussed in the multiple economic analyses in the record because they included indirect job creation projections, i.e., jobs held by employees of companies that were not the NCE or its wholly-owned subsidiaries. The Petitioner, as a standalone investor, however, could only rely on jobs created directly by the NCE or its wholly-owned subsidiaries, i.e., jobs held by NCE's employees or its wholly-owned subsidiaries' employees, to meet her job creation requirements. *See generally* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(4).

Moreover, we discussed on pages 4 and 5 of our appellate decision that the project had faced construction delays and that the "evidence in the record [did] not substantiate the construction timeline." Additionally, we concluded that "[a]lthough the Petitioner continue[d] to assert that the

[4] The regulation defines "regional center" as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (defining "regional center").

project [had] the necessary funding and construction [would] proceed, that assertion [was] not supported by documentary evidence in the record." In short, we determined that the Petitioner did not satisfy the job creation requirements, because the project's construction delays and lack of sufficient financing did not support the finding that she had submitted the required comprehensive and credible business plan. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *see also Matter of Ho*, 22 I&N Dec. at 212-13.

Finally, in the appellate decision, we discussed USCIS' deference policy, which provides "[w]hen USCIS has previously concluded that an economic methodology is reasonable to project future job creation as applied to the facts of a particular project, USCIS defers to this determination for all related adjudications directly linked to the specific project for which the economic methodology was previously approved." *See generally* 6 *USCIS Policy Manual*, *supra*, at G.3(A)(2). We, however, explained that the previously approved "petitions [involved investments] associated with a regional center," the Petitioner's alleged investment was not associated with a regional center. As such, we declined to afford deference to the previously approved economic methodology that projected job creation because the underlying facts upon which the favorable decision was made are materially different from the facts of the Petitioner's case.

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 an October 2025 letter from the NCE's chief executive officer (CEO), claiming that the NCE has continued to seek financing and anticipates that it will receive funding to continue construction of the project. The letter claims that the project "will create a total of 19,876 new permanent jobs . . . with at least 10,681.58 direct jobs" and employees for "the construction jobs and retail leasing and real estate jobs will be employed directly by [the NCE]." The Petitioner also provides an October 2025 letter and August 2025 email correspondence from an individual at [redacted], discussing his efforts in securing funding for the project, as well as email correspondence relating to the project seeking the necessary permits from the City of [redacted]

The materials that the Petitioner offers on motion do not overcome the ground upon which we dismissed the appeal, i.e., the Petitioner did not satisfy the job creation requirements under 8 C.F.R. § 204.6(j)(4). Thus, the motion evidence does not establish the Petitioner's eligibility to be classified as an EB-5 immigrant investor. Specifically, the motion evidence does not support the finding that any of the projected jobs or jobs that have been allegedly created will be or are employees of the NCE or any of its wholly-owned subsidiaries. *See* 8 C.F.R. § 204.6(e); *see generally* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(4). While the Petitioner claims on motion that the project had created jobs, the Petitioner has not submitted sufficient evidence showing that these jobs were filled by employees of the NCE or any of its wholly-owned subsidiaries. For example, the October 20205 letter from the NCE's CEO claims that "Roadway and Infrastructure Construction has been completed presently and

foundation work for the parking garages has been completed." The motion submission, however, does not include any evidence showing that any of the construction workers were directly employed by the NCE or any of its wholly-owned subsidiaries, such that these workers "receive[d] wages or other remuneration directly from the [NCE]" or any of its wholly-owned subsidiaries. 8 C.F.R. § 204.6(e) (defining "employee"); *see generally* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(4).

On pages 5 through 6 of her motion brief, the Petitioner again references a construction contract with [redacted] and development work completed by [redacted]. As discussed, in our appellate decision we explained that the record did not include any evidence of [redacted] or [redacted] being a wholly-owned subsidiary of the NCE. 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 evidence relevant to these issues on motion. In short, the motion evidence does not demonstrate that the Petitioner can rely on any of the claimed job creation or the projected job creation associated with the project, because she has not sufficiently shown that the individuals filling these jobs are or will be NCE's employees or employees of any of the NCE's wholly-owned subsidiaries.

Moreover, while the evidence on motion indicates that the NCE has made attempts to move the project forward, including attempts to get the necessary permits from the City of [redacted] and attempts to secure necessary financing, the motion evidence is insufficient to show that construction has resumed or that the NCE has actually secured the necessary funding. The motion evidence is insufficient to overcome our conclusion that the proposed project's construction delays and lack of sufficient financing did not support the finding that the Petitioner had submitted a comprehensive and credible business plan. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *see also Matter of Ho*, 22 I&N Dec. at 212-13.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, she has not established eligibility. We will therefore dismiss her motion to reopen the matter. *See* 8 C.F.R. § 103.5(a)(2); *see Matter of Coelho*, 20 I&N Dec. at 473.

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 appellate decision, alleging that the "totality of the evidence submitted shows that the business plan from [the NCE] is a comprehensive business plan" and that her petition "is entitled to deference based on numerous approvals for prior [petitions] by investors in [the NCE]." She does not point to any evidence that we had either misconstrued or overlooked, or specifically address the reasons upon which we had concluded that she did not meet her job creation requirements in our appellate decision. She also does not cite laws, regulations, precedent decisions, or binding policies to support her position that we erred in dismissing her appeal.

The Petitioner does not explain if or how we had misapplied any law or policy in our appellate decision.

Although the Petitioner disagrees with the analysis in our appellate decision, disagreeing with our conclusion generally is not a ground for us to reconsider our decision. *See e.g.*, *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). On motion, the Petitioner has not established that we erred in our appellate decision. *See* 8 C.F.R. § 103.5(a)(3). We will therefore dismiss her motion to reconsider our previous decision.

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. Therefore, the combined motions will be dismissed.[5] 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.

[5] Although not discussed in our appellate decision, the record is insufficient to demonstrate that at the time the Petitioner filed the petition in November 2021, she had invested or was in the process of investing at least $500,000 in the NCE. *See* 8 C.F.R. § 204.6(j)(2); 8 C.F.R. § 103.2(b)(1). Specifically, she acknowledged in a September 2021 statement that "[her] current investment [was] $200,000" and that she "[would] pay the balance of $300,000 by April 30, 2022." We will reserve this eligibility issue for future consideration if the need arises.