U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41405272

Date: FEB. 23, 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) (2019). This fifth preference (EB-5) classification makes immigrant visas available to noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.[1]

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not adequately support his assertions of eligibility for immigrant classification in the EB-5 visa category. FOD then dismissed the Petitioner's subsequent combined motion to reopen and reconsider and the Petitioner filed an appeal, seeking to address FOD's dismissal of the motion to reopen.[2] We dismissed the appeal, concluding that FOD did not err in dismissing the motion to reopen. The matter is now before us on a motion to 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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the motion as untimely filed.

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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. 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).

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[1] The EB-5 Reform and Integrity Act of March 15, 2022, 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 had filed his petition on October 18, 2019, the relevant law in existence on that date governs this appellate adjudication.

[2] The Petitioner specified that he sought to address "his Motion to Reopen and not [ ] his Motion to Reconsider."

Furthermore, under 8 C.F.R. § 103.5(a)(1) and 8 C.F.R. § 103.8(b), in general, motions must be filed within 33 days of the adverse decision. The regulation at 8 C.F.R. § 103.2(a)(7)(i) explains that the filing date is "the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format." In addition, 8 C.F.R. § 103.5(a)(1)(iii)(B) specifies that a motion filing must include a fee payment of the correct amount.

Our latest decision was issued on October 1, 2025 and the Petitioner attempted to file his motion to reopen later that month. However, the record contains a copy of Form I-797C, Notice of Action, notifying the Petitioner that his motion was being rejected because he did not provide the appropriate fee. The regulation at 8 C.F.R. § 103.2(a)(7)(ii) makes clear that, "A benefit request which is rejected will not retain a filing date. A benefit request will be rejected if it is not: . . . (D) Submitted with the correct fee(s). Every form, benefit request, or other document that requires a fee payment must be submitted with the correct fee(s)."

Although the Petitioner subsequently resubmitted the motion with the proper fee, the motion was received on November 14, 2025, or 45 days after we issued our decision. Therefore, the Petitioner did not file the motion within the allowed 33-day filing period and the motion is deemed as untimely filed. Neither the Act nor the pertinent regulations grant us authority to extend the 33-day time limit for filing a motion to reconsider.

Accordingly, because the Petitioner's motion to reconsider will be dismissed as untimely filed, his appeal remains dismissed and his underlying petition remains denied.

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.