U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41058314

Date: FEB. 24, 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. The Petitioner claimed that she invested $500,000 into the NCE, [redacted] and the investment funds derive from a shareholder's loan from a company in [redacted] owned 100% by her husband.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the Petitioner's invested funds derive from lawful sources. The Petitioner subsequently filed a combined motion to reopen and reconsider FOD's denial, but the U.S. Citizenship and Immigration Services (USCIS) lockbox rejected the motion stating that the Form I-290B, Notice of Appeal or Motion, was not properly signed. The Petitioner resubmitted the motion filing with the corrected signature, but FOD dismissed the motion for being untimely. We dismissed a subsequent appeal. The matter is now before us on a combined motion 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 grant the motion and remand the matter for further proceedings.

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). A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope

[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 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 the Petitioner had filed his petition prior to the implementation of the RIA, the relevant law then in existence governs this appellate adjudication.

[2] The NCE, affiliated with [redacted] dba [redacted] proposed to pool $139 million from 278 immigrant investors and lend the entire amount to [redacted] the job-creating entity, to develop and construct residential homes and related infrastructure in [redacted] California.

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.

The Petitioner relies on 8 C.F.R. § 103.5(a)(1)(iii)(A), claiming that FOD improperly rejected her motion filing when there was a valid signature on the Form I-290B. Upon review, we agree with the Petitioner that the Form I-290B was properly signed by the attorney of record. Therefore, we remand the case so that FOD can adjudicate on merits, specifically on the issue of lawful source of funds. On remand, FOD should review the Petitioner's motion brief and evidence previously submitted (including more recent tax returns of the Petitioner and her spouse, and bank statements of her spouse's company in [redacted] evaluate whether the documents on motion sufficiently explain the deficiencies raised in the initial denial, and issue a new decision.

ORDER: The combined motion is granted and the matter is remanded for entry of a new decision consistent with the foregoing analysis.