U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41540462

Date: FEB. 25, 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 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 establish that she had invested the required amount of funds, that the funds were obtained by lawful means, and that the new commercial enterprise (NCE) will create at least 10 full-time positions for qualifying employees. We dismissed a subsequent appeal, and then a motion to reopen. The matter is now before us on motion to reopen for the second time.

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).

A motion to reopen an unfavorable decision must be filed within 33 calendar days of the date we mailed the decision, unless a petitioner demonstrates that any delay in filing was reasonable and beyond their control. 8 C.F.R. §§ 103.5(a)(1), 103.8(b). In our most recent decision dismissing the Petitioner's first motion to reopen, we noted that the Petitioner did not properly file the Form I-290B, Notice of Appeal or Motion, until 56 days after our unfavorable appeal decision, and we concluded as

[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).

a matter of discretion that the Petitioner had not shown that the delay was reasonable and beyond her control.

On motion, the Petitioner resubmits the evidence included with her previous motion relating to the grounds for dismissal of her immigrant investor petition and subsequent appeal. The Petitioner asserts that this evidence establishes eligibility, since it addresses whether she invested the required amount of funds, whether her investment funds were obtained through lawful means, and whether her investment in the NCE will create at least 10 full-time qualifying jobs. But as noted above, the scope of a motion is limited to the prior decision, and we review only that most recent decision in these proceedings. Our most recent decision solely concerned whether the Petitioner's delay in filing the motion was reasonable and within her control, and we determined that she had not so demonstrated such that an exercise of our discretion to excuse that delay was warranted. Because the resubmitted evidence is not material to that issue, the Petitioner has not provided new facts supported by documentary evidence with her motion, and it thus does not meet the requirements for a motion to reopen.

We note that the Petitioner makes many of the same assertions regarding the untimely filing of her prior motion that she did previously, such as noting that her motion was received by our office within the required 33-day period. She also asserts that the instructions for filing a motion which were included in our appeal decision differ from other decisions issued by USCIS, making it reasonable for her to assume that the address in our letterhead was the correct mailing address for her motion. But as we stated in our previous decision, the initial submission to our office did not constitute a proper filing, and the instructions in our appeal decision stated in bold type that motions should not be sent directly to our office. The Petitioner has not shown that it was reasonable or beyond her control to disregard those instructions and rely on instructions concerning other matters. And the Petitioner has not provided new facts supported by affidavits or documentary evidence showing that her delay in filing her previous motion was reasonable and beyond her control.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen 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.