U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40586095

Date: JAN. 13, 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) (2018).[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 on multiple grounds, concluding that the Petitioner did not establish eligibility for EB-5 classification. FOD determined that the Petitioner did not show that he invested or was in the process of investing the required amount of capital of at least $500,000;[2] he did not sufficiently document the lawful source of his purported EB-5 funds and there was a material change regarding this issue; and he did not demonstrate that [redacted], the new commercial enterprise (NCE), would likely create at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(e) (defining "capital," "full-time employment," "invest," and "qualifying employee"), (j).

We dismissed the Petitioner's subsequent appeal, concluding that the Petitioner did not sufficiently document the lawful source of his purported EB-5 funds because, in part, he made an impermissible material change to the petition. *See Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998); *see also Kungys v. United States*, 485 U.S. 759, 770-72 (1988). We then dismissed two subsequent motions. In our most recent motion decision, we also concluded that the Petitioner did not establish that at the time he filed the petition, he invested or was in the process of investing the required amount of capital. *See* 8 C.F.R. § 103.2(b)(1) (providing that a "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication"). The matter is now before us on combined motions to reopen and reconsider the matter, the Petitioner's third motion filing.

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[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 the Petitioner had filed his petition in March 2018, the relevant law then in existence governs this motion adjudication.

[2] The Petitioner indicates that the NCE and [redacted], the job creating entity (JCE), are in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2018).

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.

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 has the potential to change the outcome).

On motion, the Petitioner submits an affidavit, dated September 2025, "to clarify and correct the record regarding the source of funds for [his] EB-5 investment and to provide material facts that support [his] continued eligibility under the EB-5 program." He acknowledges in the affidavit that "in [his] originally filed [Form] I-526 petition, [he] indicated that the source of [EB-5] funds was mistakenly described as a combination of Income, Gift and Tangible assets." He claims in the affidavit, as he did for the first time after FOD informed him of deficiency in the petition, that "[t]he full EB-5 capital investment amount of $500,000 was funded entirely through a lawful monetary gift provided by [his] uncle," and that "[his] personal funds were never used as part of the capital investment . . . ."[3] He explains that "[i]n his desire to be fully transparent and forthcoming about all funds involved in the EB-5 process and with limited knowledge of the [EB-5 program's] technical requirements, [he] incorrectly identified [his] income, savings and property references as part of the [EB-5] investment funds." He reiterates that "this was an honest misunderstanding" and that "there was no intent to misrepresent any aspect of [his] application."

While our most recent motion decision does not reference the Petitioner's September 2025 affidavit, because the affidavit postdates our decision, our decision does address the Petitioner's explanation regarding his changed statements on the source of his purported EB-5 funds. We concluded his filings did not support his explanation. Rather, the evidence confirmed that he had made a material change to his petition "in an effort to make an apparently deficient petition conform to [U.S. Citizenship and Immigration Services (USCIS)] requirements," which is impermissible under *Matter of Izummi*, 22 I&N Dec. at 175. We specifically noted on page 3 of our most recent motion decision that when the Petitioner initially filed the petition, he claimed on his petition that his purported EB-5 funds "derived from 'Income,' 'Gift,' and 'Tangible Assets.'" He submitted evidence that $100,000 of his purported EB-5 funds came from his uncle as a gift. However, when FOD informed him that he did not submit evidence confirming that he invested or was in the process of investing the remaining required amount of capital – $400,000 – in the NCE, and that he did not establish the source of the remaining required amount of capital, "the Petitioner stated – for the first time – that his uncle gave him the entire $500,000 investment amount" and "submitted a December 2017 promissory note stating his uncle's promise to pay the NCE the remaining $400,000 within the following two years."

[3] The Petitioner further maintains in the affidavit that his "personal funds . . . were applied solely to cover costs associated with facilitating the EB-5 process," such as "[U.S. Citizenship and Immigration Services] filing fee, immigration attorney's legal fees, documentation and mailing costs, and other EB-5 related filing and processing expenses . . . [and] Regional Center administrative fee . . . ."

The Petitioner's September 2025 affidavit that he submits in support of the instant motion does not overcome our conclusion that he made an impermissible change to his petition. Specifically, the evidence that the Petitioner initially presented in support of his petition did not indicate that his uncle gifted him the entire required amount of capital of $500,000. Rather, he made this claim for the first time, and submitted the 2017 promissory note, only after he was made aware of the deficiency in this petition concerning his purported EB-5 funds. As we have concluded previously, the information stated in the petition, the Petitioner's initial evidence, as well as the sequence of events did not corroborate claims he makes in his September 2025 affidavit. Instead, the record supports a finding that after filing his petition, the Petitioner materially changed his petition "in an effort to make an apparently deficient petition conform to [USCIS] requirements." *Matter of Izummi*, 22 I&N Dec. at 175; *see also* 8 C.F.R. § 103.2(b)(1). As such, we again conclude that the Petitioner may not rely on his uncle's 2017 promissory note to establish the lawful source of the remaining required amount of capital – $400,000 – that he claims to have invested in the NCE. *See Matter of Soffici*, 22 I&N Dec. 158, 164-65 (Assoc. Comm'r 1998) (stating that when the source of funds has not been adequately documented, an investor has not established that the funds have lawfully been obtained).

Additionally, the Petitioner's September 2025 affidavit does not overcome our alternative ground for dismissal. Specifically, even if we did not find that he had made an impermissible material change to his petition, his uncle's 2017 promissory note would not establish that at the time he filed the petition, he invested or was in the process of investing the required amount of capital in the NCE. *See* 8 C.F.R. § 103.2(b)(1). As relating to his uncle's purported gift, the Petitioner maintains in his September 2025 affidavit that "[his] uncle transferred $100,000 initial investment amount to the NCE; but due to some administrative delay in transferring the funds to the NCE, [his] uncle issued a promissory note to the NCE assuring the transfer of the remaining $400,000 investment amount." This statement does not address issues we raised in our most recent motion decision about the promissory note.

We explained on page 4 of our most recent motion decision:

> The promissory note from the Petitioner's uncle for the remaining $400,000 in investment funds does not meet the regulatory definition of "capital." Capital can include "indebtedness," like promissory notes. *See* 8 C.F.R. § 204.6(e), (j)(2)(v). But that indebtedness must be "secured by assets owned by the alien investor, provided that the alien investor is personally and primarily liable." 8 C.F.R. § 204.6(e); *see also Matter of Hsiung*, 22 I&N Dec. 201, 202 (Assoc. Comm'r 1998) ("A promissory note can constitute 'capital' under 8 C.F.R. § 204.6(e) if the note is secured by assets owned by the petitioner.") The promissory note of the Petitioner's uncle does not meet the definition of capital because the Petitioner's assets do not secure the indebtedness, nor is the Petitioner personally and primarily liable [for the indebtedness]. Thus, for EB-5 purposes, the note does not constitute capital.

In his September 2025 affidavit, the Petitioner again claims that his purported EB-5 investment in the NCE included his uncle's 2017 promissory note issued to the NCE. This promissory does not meet the regulatory definition of "capital," because the indebtedness is not "secured by assets owned by the alien investor [the Petitioner], provided that the alien investor is personally and primarily liable," as required under 8 C.F.R. § 204.6(e).

Based on these reasons, the Petitioner's instant motion to reopen the matter does not state new facts and is not supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). The Petitioner thus remains ineligible for the EB-5 classification based on two separate and independent grounds – he did not sufficiently document the lawful source of his purported EB-5 funds, and he did not show that he invested or was in the process of investing the required amount of capital at the time he filed the petition.[4]

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 certain aspects of our most recent motion decision. As relating to the issue of lawful source of funds, the Petitioner's motion brief reiterates claims the Petitioner made in his September 2025 affidavit, alleging that he had "misinterpreted the instructions," and "mistakenly selected the options for all the expenses related to the EB-5 process." The brief does not allege that we had erred in our most recent motion decision as relating to this ground of dismissal. While the motion brief does allege that we erred in our most recent motion decision as relating to the alternative ground of dismissal, it provides an incorrect restatement of our conclusion. The Petitioner asserts that "a blanket disqualification of promissory notes as 'non-capital' is legally unfounded." This, however, is not our conclusion. Instead, we concluded that a promissory note, a form of indebtedness, could qualify as capital under the regulatory definition, if it is "secured by assets owned by the alien investor, provided that the alien investor is personally and primarily liable," as required under 8 C.F.R. § 204.6(e). The Petitioner's uncle's promissory note is not qualifying because it is secured by his uncle's, not his, assets.

Based on these reasons, the Petitioner's instant motion to reconsider our most recent motion decision does not establish that our prior decision was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, the combined 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

[4] As noted, FOD also concluded that the Petitioner has not satisfied the job creation requirements. *See* 8 C.F.R. § 204.6(j)(4). We will not address this and any other eligibility issues in this decision. Instead, we will reserve any eligibility issues not discussed in this decision for future consideration if the need arises. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.