U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40535623

Date: JAN. 15, 2026

Appeal of Field Operations Directorate (FOD) 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.

On October 15, 2024, Field Operations Directorate (FOD) denied the Petitioner's Form I-526, Immigrant Petition by Alien Entrepreneur, on multiple grounds,[2] including on the ground that he did not sufficiently document the lawful source of the funds he claimed to have invested in [redacted] the new commercial enterprise (NCE) affiliated with [redacted] *See* 8 C.F.R. § 204.6(e) (defining "capital"), (j) (2018). Subsequently, the Petitioner filed with FOD two Forms I-290B, Notice of Appeal or Motion. In his first Form I-290B, the Petitioner filed combined motions to reopen and reconsider, listing the receipt number of the Form I-526 petition as the immigration form that was the subject of the motions, and October 15, 2024, as the date of the unfavorable decision. FOD dismissed the combined motions in February 2025. The Petitioner then filed a second Form I-290B, noting on page 2 of the form that he was filing a motion to reopen, and listing the receipt number of the Form I-526 petition as the immigration form that was

[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 July 2018, the relevant law then in existence governs this appellate adjudication.

[2] In the October 2024 decision, FOD concluded that the Petitioner failed to establish EB-5 eligibility on multiple separate and independent grounds, including the evidence did not confirm that he invested or was in the process of investing the required amount of capital because he did not demonstrate he was "the legal owner of the [purported] investment capital," and that he was or would be "engaged in the new commercial enterprise." *See* 8 C.F.R. 204.6(j)(2), (5).

[3] [redacted] is a regional center that U.S. Citizenship and Immigration Services (USCIS) designated to participate in the EB-5 program in 2011. A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e).

the subject of the motion, and October 15, 2024, as the date of the unfavorable decision. The second Form I-290B did not reference the Petitioner's first Form I-290B.

In August 2025, FOD dismissed the Petitioner's second Form I-290B. Page 3 of FOD's motion decision concludes that the motion was untimely filed because FOD denied the Form I-526 petition on October 15, 2024, and the "Motion to Reopen was filed on February 26, 2025, 134 days after the denial notice was issued." While FOD acknowledged that under 8 C.F.R. § 103.5(a)(1)(i),[4] "USCIS may excuse [an untimely motion] if the . . . petitioner demonstrates that the delay was reasonable and beyond the control of the petitioner," page 4 of FOD's motion decision notes that the "Petitioner does not claim or submit any evidence to establish that the delay was reasonable and beyond [his] control." In the same motion decision, as a separate and independent ground to dismiss the motion, FOD examined the evidence the Petitioner presented on motion and concluded that it failed to demonstrate his EB-5 eligibility.

The Petitioner appeals, asserting that he has established eligibility for EB-5 classification. He submits an appellate brief and additional documents in support of the appeal. In his appellate filing, he does not address the timeliness of his second Form I-290B, an independent ground upon which FOD dismissed the motion. In other words, he does not specifically challenge FOD's dismissal of his second Form I-290B based on the finding that it was untimely filed. He also does not allege or present any documents showing that filing a motion to reopen 134 days after FOD issued the adverse decision that was the subject of the motion was reasonable and was beyond his control. *See* 8 C.F.R. § 103.5(a)(1)(i). Instead, his appellate filing addresses only issues associated with the lawful source of the funds he claimed to have invested in the NCE.

Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Specifically, we generally do not address issues that were not raised with specificity on appeal. Issues or claims that are not raised on appeal are deemed to be waived. An affected party must provide more than a mere reference to, or suggestion of, an argument. He or she must provide at least some development for his or her argument in either the Form I-290B or the brief in order for the argument to not be deemed waived. *See, e.g.*, *Matter of O-R-E-*, 28 I&N Dec. at 336 n.5 (waiving an argument that was mentioned, but not developed); *Iliev v. Holder*, 613 F.3d 1019, 1026 n.4 (10th Cir. 2010) (finding a "suggestion" made "in passing" in a brief is insufficiently developed and is therefore waived); *Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) (waiving an issue that was referred to in the appellant's statement of the case but not discussed in the body of the brief).

In this case, the Petitioner has failed to challenge FOD's dismissal of his second Form I-290B based on the finding that it was untimely filed. We therefore deem the issue waived. We will dismiss the Petitioner's appeal of FOD's dismissal of his second Form I-290B on untimeliness ground. As the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby

[4] 8 C.F.R. § 103.5(a)(1)(i) provides, in pertinent part, "Any motion to reconsider an action by [[U.S. Citizenship and Immigration Services (USCIS)] filed by [a] . . . petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before [USCIS] filed by [a] . . . petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of [USCIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner."

reserve any remaining issues concerning his eligibility.[5] *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).

III. CONCLUSION

The Petitioner's appeal will be dismissed because he has not challenged FOD's dismissal of his second Form I-290B based on untimeliness ground, and he has not presented any documents demonstrating that filing a motion to reopen 134 days after FOD issued the adverse decision was reasonable and was beyond his control. *See* 8 C.F.R. § 103.5(a)(1)(i).

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). 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] The Chief also dismissed the Petitioner's second Form I-290B on the separate and independent ground that the evidence the Petitioner filed on motion did not sufficiently document the lawful source of the funds he claimed to have invested in the NCE. *See* 8 C.F.R. § 204.6(e) (defining "capital" and requiring an alien investor to show that his or her invested capital did not derive, directly or indirectly, from unlawful means); *see also* 8 C.F.R. § 204.6(j). We will reserve this and any other eligibility issues that are not discussed in this decision for future consideration if the need arises. *See supra* note 2.