U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43353501

Date: JUL. 08, 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) (2021).[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.

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding that the record did not establish that the Petitioner's investment in [redacted] an NCE affiliated with [redacted] (the Regional Center), would create at least 10 full-time positions for qualifying employees. We dismissed a subsequent appeal. The matter is now before us on combined motions 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). 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 motions.

I. LAW

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).

[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 has filed her petition in 2019, prior to the implementation of the RIA, the relevant law then in existence governs this appellate adjudication.

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.

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The investor must show that their investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). An immigrant investor may invest the required funds directly in an NCE or through a "regional center."[2] As required by 8 C.F.R. § 204.6(j)(4)(i), the petitioner must establish that the investment of the required amount of capital in an NCE will create full-time positions for at least 10 qualifying employees within two years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii). For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a NCE will create full-time positions for at least 10 qualifying employees within two years, the petition must be accompanied by:

> (A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
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> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

Where a regional center, NCE or JCE is the subject of termination or debarment from the EB-5 program, investors with a pending or approved petition, including petitions filed prior to the 2022 enactment of the EB-5 Reform and Integrity Act, may retain eligibility. *See* section 203(b)(5)(M) of the Act; *see generally* 6 *USCIS Policy Manual* G.3(E), https://www.uscis.gov/policy-manual. Specifically, an amendment entitled "Treatment of good faith investors following program noncompliance" allows "an otherwise qualified petition," under specified circumstances, to remain valid even if "based on an investment in a terminated regional center." Section 203(b)(5)(M)(i)(I) of the Act.

II. ANALYSIS

At issue is whether the Petitioner has established that our prior decision to dismiss her appeal was based on an incorrect application of law or policy and whether she has submitted new facts, supported by documentary evidence, that demonstrate her eligibility for the benefit sought. For the reasons

[2] A regional center is an economic unit involved with the promotion of economic growth through "improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (defining "regional center"). Regional centers apply for designation to participate in the EB-5 program with U.S. Citizenship and Immigration Services (USCIS) and designated regional centers identify and work with NCEs.

provided below, the Petitioner has not made such a showing. Accordingly, we will dismiss her combined motions.

A. Procedural History

The Petitioner claimed that she invested $500,000 into the NCE, [redacted] The NCE proposed to pool $45 million from 90 immigrant investors to invest an equity interest in [redacted] (the JCE), which intended to develop, construct and operate a luxury hotel in [redacted] Oregon. The record indicates that the JCE failed to secure financing in 2023 and subsequently ceased development of the project. Therefore, the NCE's limited partners voted to amend the [redacted] Agreement, initiate dissolution of the partnership, and discontinue the pursuit of the [redacted] project. The partners also offered investors the option to reinvest their capital into a new NCE.

On March 12, 2024, the NCE notified USCIS that the JCE should be debarred to allow good faith investors to reinvest in other projects without jeopardizing their EB-5 petitions. In March 2024, the Petitioner elected to reinvest her capital into a new NCE. On [redacted] 2024, USCIS, after issuing a request for evidence, denied the Petitioner's petition. On [redacted] 2024, USCIS granted the Regional Center's request for voluntary termination.

The Petitioner appealed the denial of her petition on December 27, 2024, contending that she qualified for the good faith investor status because she timely redeployed all her capital into a new NCE. In our decision dismissing the Petitioner's appeal, we explained how where a regional center, NCE, or JCE is the subject of termination or debarment from the EB-5 program, investors with a pending or approved petition, including petitions filed prior to the 2022 enactment of the EB-5 Reform and Integrity Act, may retain eligibility. *See* section 203(b)(5)(M) of the Act; *see generally* 6 *USCIS Policy Manual* G.3(E), https://www.uscis.gov/policy-manual. Specifically, an amendment entitled "Treatment of good faith investors following program noncompliance" allows "an otherwise qualified petition," under specified circumstances, to remain valid even if "based on an investment in a terminated regional center." Section 203(b)(5)(M)(i)(I) of the Act. Because the Petitioner's petition was neither approved nor pending at the time of the Regional Center's termination or debarment, we determined that the Petitioner was not eligible to claim the good faith investor protections she seeks. We also determined that the Petitioner's premature investment of her capital into a new NCE prior to the termination or disbarment of the initial NCE constituted a material change.

B. Motion to Reconsider

On motion to reconsider, the Petitioner asserts that our prior decision was "arbitrary and capricious under" the Administrative Procedure Act, was based on a "legal error of exceptional consequence," improperly imposed an "extra-statutory timing rule" unsupported by law, and was therefore "ultra vires." In support of her claims, the Petitioner submits an email from the USCIS Immigrant Investor Program Office (IPO), dated September 26, 2025, concerning a request for clarification related to Form I-956F. The Petitioner maintains that she was added to the list of good faith investors prior to the denial of her petition and the termination of the original sponsoring Regional Center and NCE.

We disagree. As stated above, where a regional center, NCE, or JCE is the subject of termination or debarment from the EB-5 program, investors with a pending or approved petition, including those petitions filed prior to the 2022 enactment of the EB-5 Reform and Integrity Act, may retain eligibility. *See* section 203(b)(5)(M) of the Act; *see generally* 6 *USCIS Policy Manual* G.3(E), https://www.uscis.gov/policy-manual. Although the Petitioner advances several policy and equity contentions and has submitted documentary evidence to support her claim of eligibility for the protections described in section 203(b)(5)(M)(i)(I) of the Act, the Regional Center was terminated on [redacted] 2024, 48 days after the petition has been denied. Section 203(b)(5)(M) extends good faith investor protections only to those investors with a pending or approved petition at the time of the Regional Center's termination or debarment. However, the Petitioner does not fall within that category of individuals and is therefore ineligible to claim the good faith investor protections.

While the Petitioner suggests that she is entitled to the same protections despite USCIS' denial of her petition 48 days prior to the Regional Center's termination, she has not established a legal basis for eligibility under the plain language of the statute. The statute clearly requires a good faith investor seeking these protections to have a pending "otherwise qualified petition" or an approved petition for such petition to "remain valid" under section 203(b)(M)(i)(I) of the Act, and this requirement is reflected in USCIS' policy guidance. *See generally* 6 *USCIS Policy Manual, supra*, at G.3(E).

The Petitioner has not met her burden in establishing that we erred as a matter of law or policy in dismissing her appeal. *See Matter of Chawathe*, 25 I&N Dec. at 375. 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)(l)(i), (ii). Here, the Petitioner has not shown that our prior decision contains errors of law or policy or that the decision was incorrect based on the record at the time of that decision. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, we determine that the instant motion does not meet the requirements of a motion to reconsider.

B. Motion to Reopen

We note that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial based on newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)); *see also Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. *INS v. Abudu*, 485 U.S. at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." *Id.* at 108. Granting motions too freely could permit endless delays when aliens continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. *See id.* The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. at 473; *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the Petitioner has not met this burden.

On motion to reopen, the Petitioner submits a copy of the same IPO email to demonstrate her eligibility under the good faith investor provisions. However, the new evidence does not overcome our previous conclusion that the Petitioner is ineligible to claim the good faith investor protections. Although the Petitioner submitted additional evidence in support of her motion to reopen, the new facts and evidence she has presented on motion are insufficient to warrant reopening in this matter. Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the 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 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.