U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43316724

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 Petitioner did not establish that the NCE, [redacted] will create at least 10 full-time positions for qualifying employees. In the denial, USCIS declined to defer to its prior favorable determinations regarding previously-filed Forms I-526, Immigrant Petition by Alien Entrepreneur, associated with this NCE because of material changes in the underlying facts.[2] We dismissed a subsequent appeal and combined motions to reopen and reconsider, concluding that, among other concerns, that the Petitioner had not demonstrated that he had invested or was actively in the process of investing the required amount of capital per 8 C.F.R. § 204.6(j). The matter is now before us on a second 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.

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

[1] On March 15, 2022, the EB-5 Reform and Integrity Act 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 filed his petition in November 2019, the relevant law then in existence governs this appellate adjudication.

[2] Although not cited in the decision, USCIS noted in the notice of intent to deny that the record did not establish that the Petitioner had invested or was actively in the process of investing the required amount of capital at the time of filing. 8 C.F.R. § 204.6(j).

I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our prior decision, we concluded the record did not establish that the Petitioner had invested, or was actively in the process of investing, the required amount of capital in the NCE, at the time of filing the petition.[3] In the instant motion, the Petitioner does not offer any new evidence; rather, he refers to documents previously submitted and maintains that he has placed the required amount of capital at risk. As noted above, 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 Petitioner's motion to reopen. Here, the Petitioner has not submitted any evidence or arguments that could be construed as "new facts" that were previously unavailable or undiscoverable to establish that we erred in dismissing his motion. We will not re-adjudicate the petition anew. The motion to reopen will therefore be dismissed.

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.

In his motion to reconsider, the Petitioner does not explain how we erroneously dismissed his prior motion, nor does he demonstrate that our previous decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. Instead, he reiterates that the record reflects that he was actively in the process of investing the required amount of capital at the time he filed his petition. However, the Petitioner merely reasserts arguments we have already considered and found unpersuasive in our previous decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). Moreover, 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. Accordingly, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion to reopen, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. 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).

[3] Here, the requisite amount of qualifying capital was downwardly adjusted to $500,000 in June 2021 because the NCE is in a targeted employment area. 8 C.F.R. § 204.6(f)(2).

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.