U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43370262

Date: JULY 9, 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 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.

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding that the Petitioner did not satisfy the job creation requirements. *See* 8 C.F.R. § 204.6(j)(4)(i)(B) (2022); *see also Matter of Ho*, 22 I&N Dec. 206, 212-13 (Assoc. Comm'r 1998). Subsequently, USCIS dismissed the Petitioner's combined motions to reopen and reconsider the matter. 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). Upon review, we will dismiss the combined motions.

I. PROCEDURAL AND FACTUAL HISTORY

We incorporate by reference our analysis in the underlying appeal decision. By way of summation, and in relevant part, the Petitioner stated on the Form I-526, Immigrant Petition by Alien Entrepreneur, that he "deposited or committed to deposit" $500,000[2] in [redacted], the NCE, which intends to develop a mixed-use project, "consisting of condos, hotels, convention [halls], retail, restaurants, etc.," in [redacted] Florida. He also stated that the NCE is not associated with a regional center, categorizing his purported EB-5 investment as "a pooled direct investment." Page 21 of the business plan claims that the NCE "intends to utilize foreign capital from qualified EB-5 immigrant investors in conjunction with other capital to create about 4,614 new permanent jobs

[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).

[2] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is thus adjusted from $1,000,000 to $500,000. 8 C.F.R. § 204.6(f)(2).

in the [redacted], Florida, Combined Statistical Area." The business plan further states that the NCE seeks "up to 200 qualified EB-5 immigrant investors" to contribute "up to $100 million" to finance the project.

USCIS denied the Form I-526, noting that it is not entitled to deference to prior, related petitions field for the same project due to material changes, namely inability to obtain sufficient financing to complete and operate the project in accordance with the business plan and to create the required jobs. USCIS then dismissed the Petitioner's combined motions to reopen and reconsider the matter.

The Petitioner appealed the matter to us but we concluded that, as USCIS explained, the matter is not entitled to deference due to material changes. We also determined that the record does not establish the project will create the required number of jobs. More specifically, we noted that the record shows companies that are neither the NCE nor wholly-owned subsidiaries of the NCE are the project property owner and contracted to complete construction. We also discussed the 2019 and 2020 economic impact analyses' job creation projections, which cannot establish eligibility because they include indirect job creation projections for companies that are neither the NCE nor wholly-owned subsidiaries of the NCE and an undifferentiated combination of direct and indirect jobs may be used only for investments associated with a regional center. *See* 8 C.F.R. § 204.6(e) (defining "employee" in general and for regional center programs petitions). We further identified other material changes in the record regarding the proposed project. Therefore, the Petitioner had not credibly established if or when the project will be completed or that it will more likely than not create at least 10 direct jobs for each alien investor within two years. *See* 8 C.F.R. § 204.6(g), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. And we also observed that the record does not show that, at the time the Petitioner filed the Form I-526, he had invested or was actively in the process of investing the requisite amount of qualifying capital in the NCE. *See* 8 C.F.R. § 204.6(j)(2)-(3).

II. MOTION TO REOPEN

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 review only 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).

On motion to reopen, the Petitioner generally references a "2024 feasibility study," which he describes as "new evidence supporting reopening," relating to the project's valuation and financial viability and "demand across residential, retail, and office sectors." He also claims that the project continues to advance through development phases, maintain regulatory compliance, and generate economic activity; however, he does not identify any particular evidence submitted with his motion to reopen that supports such an assertion.

Neither the "2024 feasibility study" nor the remainder of the information the Petitioner submits on motion to reopen addresses fundamental evidentiary problems we discussed in the preceding decision, namely that the record shows companies that are neither the NCE nor wholly-owned subsidiaries of the NCE are the project property owner and contracted to complete construction, and that an undifferentiated combination of direct and indirect jobs—such as those of the property owner and

construction contractors—may not be used to calculate job creation for projects unassociated with a regional center. *See* 8 C.F.R. § 204.6(e). These evidentiary issues preclude a determination that the project would more likely than not create at least 10 direct jobs for each alien investor within two years, and this issue is dispositive. *See* 8 C.F.R. § 204.6(g), (j)(4)(i)(B). Because the Petitioner does not state a new fact, supported by documentary evidence, that overcomes these dispositive evidentiary issues, we will dismiss the motion to reopen. 8 C.F.R. § 103.5(a)(2), (4).

III. MOTION TO RECONSIDER

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).

On motion to reconsider, the Petitioner claims that regional center cases may count direct jobs, indirect jobs, and induced jobs, and he cites 6 *USCIS Policy Manual*, G.2 and G.4, https://www.uscis.gov/policy-manual. He further alleges that, by discounting a professionally prepared economic report and modeling methodologies, we failed to analyze the full record and, thus, we incorrectly applied the preponderance of evidence standard provided by *Matter of Chawathe*, 25 I&N Dec. at 376.

In Part 2. Information About Your Investment on the Form I-526, the Petitioner answered the question, "Is your investment associated with an approved Regional Center?" by stating, "No." As we explained in our prior decision, when the NCE, as in this case, is not associated with an approved regional center, only individuals who provide services or labor for the NCE and who receive wages or other remuneration directly from the NCE may factor as created jobs; the Petitioner may not include jobs created indirectly. *See* 8 C.F.R. § 204.6(e). Contrary to the Petitioner's general references, the USCIS Policy Manual clarifies, in numerous places, that indirect jobs may be counted only in the regional center context; otherwise, full-time positions must be created directly by the NCE to be counted. *See generally* 6 *USCIS Policy Manual*, *supra*, at G.2, G.3, and G.4.

The Petitioner does not identify evidence in the record at the time of our prior decision that shows his investment is associated with an approved regional center, despite his unambiguous statement to the contrary on the Form I-526. Therefore, the Petitioner does not establish that we misapplied the provision at 8 C.F.R. § 204.6(e) that he may use only direct NCE jobs to show the project will create at least 10 direct jobs for each alien investor within two years. *See* 8 C.F.R. § 204.6(g), (j)(4)(i)(B). And because the Petitioner may not use job creation calculations based on an undifferentiated combination of direct and indirect jobs, such evidence does not support the conclusion that the project will create the requisite number of qualifying jobs; therefore, we did not misapply *Matter of Chawathe* by articulating why the record does not show the project will more likely than not create at least 10 direct jobs for each alien investor within two years. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Although the Petitioner generally asserts on motion that we incorrectly applied *Matter of Ho* (discussing comprehensive and credible business plans that need only be feasible, not necessarily certain), we specifically explained the reasons why "the Petitioner has not provided a business plan that is comprehensive and credible," citing 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. In turn, although the Petitioner generally states that we incorrectly applied *Matter of Izummi*,

22 I&N Dec. 169 (Assoc. Comm'r 1998), regarding indirect job creation, indirect job creation is inapposite in this matter for the reasons discussed above.

The Petitioner also addresses the issue of whether invested funds were at risk; however, our decision discussed the record's failure to show that, at the time the Petitioner filed the Form I-526, he had invested or was actively in the process of investing the requisite amount of qualifying capital in the NCE, not merely whether the invested funds were at risk. *See* 8 C.F.R. § 204.6(j)(2)-(3). The Petitioner does not claim on motion to reconsider—and the record does not support the conclusion—that the evidence at the time of our prior decision showed the Petitioner had invested or was actively in the process of investing the requisite amount of qualifying capital in the NCE.

Because the Petitioner does not 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, we will dismiss the motion to reconsider. 8 C.F.R. § 103.5(a)(3)-(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.