U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43175046

Date: JUL. 13, 2026

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Standalone Investor

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).[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 will create at least 10 full-time positions for qualifying employees. We dismissed a subsequent appeal. The Petitioner then filed a motion to reopen our decision, which we dismissed as it was not timely filed, and two combined motions to reopen and reconsider which we also dismissed. The matter is now before us on combined motions to reopen and reconsider for the fourth time.

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 motions.

A motion to reopen must state new facts and be supported by documentary evidence.[2] 8 C.F.R. § 103.5(a)(2). 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.

---

[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 INA 203(b)(5), 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 their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

[2] *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

We incorporate by reference our previous decisions in this matter. On motion, the Petitioner submits an affidavit in which he describes the timeline of his case and asserts, for the first time in these proceedings, that the ineffective assistance of his previous counsel led to the dismissal of his first motion to reopen and reconsider because it was not timely filed with USCIS. He also submits a response from his prior counsel and an email from the state bar of Georgia acknowledging the receipt of his complaint against prior counsel. The Petitioner contends that these new facts show that he has met the requirements for a claim of ineffective assistance of legal counsel and that we should reopen and consider the merits of his initial motion to reopen.

When claiming ineffective assistance of counsel, a petitioner must submit the following to comply with the procedural requirements of such a claim:

- An affidavit explaining the petitioner's legal representation agreement with counsel and attesting to the relevant facts;
- Evidence that counsel has been informed of the allegations against them and has had an opportunity to respond: and
- A complaint filed with disciplinary authorities against the attorney or an explanation for its absence.

Matter of Lozada, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). In addition, a petitioner claiming ineffective assistance of counsel must also show that they were prejudiced by their attorney's errors. *See Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020), *citing Matter of Lozada*,19 I&N Dec. at 638. This means that they must show a reasonable probability that, but for counsel's error, they would have prevailed on their claim. *Id.* Here, the Petitioner now expresses his belief that he would have prevailed in his initial motion to reopen had it been timely filed by his prior attorney, but makes no statement specifying how his petition was prejudiced due to his former counsel's late filing of the motion to reopen.

Further, in our appeal decision, we noted that the Petitioner submitted a new business plan with his appeal that differed from the original 2015 business plan for the project in several ways. It included changes to the project's location, function (memory care versus the original assisted living facility), scale, funding sources and expenditures, job creation expectations, and construction timeline. We concluded that these were impermissible material changes made after USCIS' decision in an attempt to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169,175 (Assoc. Comm'r 1998).[3] As we noted, if at the time of adjudication a petitioner is asserting eligibility under a materially different set of facts that did not exist when they filed the immigrant petition, the petitioner must file a new immigrant petition. *See generally* 6 *USCIS Policy Manual* G.3(C)(1). In addition, we note that the attorney error alleged in this case occurred after the merits of the petition had been fully considered by USCIS and reviewed by this office on appeal. Given these considerations, the Petitioner has not met his burden to establish that his petition for classification as an immigrant investor was prejudiced by his attorney's error.

[3] We also noted that the job-creating entity identified in the initial filing, [redacted] LLC, was involuntarily or administratively dissolved in 2018 by the Georgia Office of Secretary of State in 2018, and thus was not authorized to transact business in Georgia.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility as an immigrant investor. On motion to reconsider, the Petitioner has not challenged our previous 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.