U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42551641

Date: JUL. 22, 2026

Motion of U.S. Citizenship and Immigration Services (USCIS) 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.

USCIS, relying in part on inconsistencies in the record,[2] denied the petition, ultimately concluding that the Petitioner did not show that he invested or was in the process of investing the required amount of capital of at least $500,000; the Petitioner did not sufficiently document the lawful source of funds and there was a material change regarding this issue; and he did not demonstrate that [redacted] the new commercial enterprise (NCE) will create at least 10 full-time positions for qualifying employees. We dismissed the appeal and three subsequent combined motions to reopen and reconsider. 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. 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).

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[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] *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On motion, the Petitioner asserts, for the first time in these proceedings, that the ineffective assistance of his previous counsel led to the denial of the petition and the subsequent appeal and motions. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). He also submits an affidavit explaining the agreement with prior counsel and the claimed ineffective assistance, a response from his prior counsel, and an email from the state bar of Georgia acknowledging the receipt of his grievance.[3] The Petitioner asserts 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 appeal.

According to the current motion, the Petitioner contends that prior counsel erred by incorrectly identifying his personal income and assets as the source of the invested capital and by submitting the Petitioner's financial records in support of the petition. However, these current allegations are not consistent with previously submitted evidence. In response to the request for evidence, the Petitioner submitted evidence showing an initial payment of $100,000 from the Petitioner's uncle's account and a second payment of $400,000 from a different bank account. The Petitioner also submitted two declarations from the uncle stating that he gifted the Petitioner $100,000 initially and an additional $400,000 thereafter. The petition was subsequently denied because the Petitioner provided inconsistent information about the source of the investment funds, claiming the capital came from gifts from his uncle while also identifying his own income and tangible assets as the source and failed to submit evidence to resolve those inconsistencies.

On appeal, the Petitioner provided a "Statement of Clarification" where he [s]olemnly affirmed and sincerely stated" that "all information given in this statement [is] true and correct," explaining that he "selected the options for the [s]ource of funds in Form I-526 as Gift, Income and Tangible assets" because his "uncle's gift funds. . . were sourced through [the uncle's] income, savings and assets." And prior counsel's brief confirmed that it was the Petitioner who "selected the Sources of Investment options in the Form I-526" because the form "specifically did not mention the given option must be specifically applied only to the petitioner." In the first motion, the Petitioner maintains that the entire $500,000 investment was a gift from his uncle and that selecting "income" and "tangible assets" merely referred to the uncle's lawful income and assets used to make the gift. He further contends that USCIS interpreted the source of funds requirement too narrowly by focusing on the checked boxes on the form instead of the evidence as a whole.[4] The third motion contained an affidavit from the Petitioner, which he signed under penalty of perjury on September 5, 2025, stating that he "mistakenly understood the instructions from [his] attorney" and "incorrectly identified [his] income, savings and property references as part of the investment funds," explaining that it was "an honest misunderstanding" which stemmed from his "limited knowledge of the technical requirements." Counsel's brief indicated that "[t]his was an inadvertent clerical error," because the Petitioner "misunderstood our instructions on the source of the funds, which [counsel] believe[s] may be due to linguistic misunderstanding." And as we explained in our decision, "[a]s we have concluded previously, the information stated in the petition, the Petitioner's initial evidence, as well as the sequence of events did not corroborate claims he makes in his September 2025 affidavit."

[3] A copy of the grievance was not submitted. *See Matter of L-R-M-C- & V-A-M-M-*, 29 I&N Dec. 757, 761 (BIA 2026).
[4] The second motion was limited to arguments related to our rejection of the prior motion as untimely and will not be addressed further.

As noted above, the Petitioner now asserts that these errors were made by prior counsel. According to his sworn statement signed under penalty of perjury on February 13, 2026, the Petitioner claims for the first time that he "had informed" prior counsel that "the only source of my investment into [redacted] was the gift from [his] uncle" and that it was prior counsel's error, directly contradicting his prior affidavit and statements. And according to a sworn statement from prior counsel, he now contends his "office incorrectly indicated on Form I-526 that [the Petitioner's] income and tangible assets were sources of his investment . . . instead of solely a gift from his uncle" and "regret[s] that [the Petitioner] was prejudiced by these oversights." But neither of their sworn statements explain why they have repeatedly claimed throughout their previous filings that it was the Petitioner, not prior counsel, who misunderstood and who provided the "incorrect" information. Nor do they even address their previous explanations which they are now contradicting. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

The Petitioner now asserts that the inconsistencies in the record resulted from prior counsel's errors. However, these assertions do not satisfy the requirements for ineffective assistance of counsel claim under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). As an initial matter, *Matter of Lozada* requires a petitioner to establish that prior counsel rendered ineffective assistance before relief may be considered. *Id.* at 639. Here, neither the Petitioner's sworn statement nor prior counsel's affidavit sufficiently established that counsel, rather than the Petitioner, was responsible for the inconsistent information submitted with the petition. Neither affidavit explains why the Petitioner signed and submitted the petition containing allegedly erroneous information or explains why these purported errors were not identified and corrected during the initial proceedings or on appeal. The affidavits provide conclusory assertions that prior counsel made a mistake and do not establish that counsel rendered ineffective assistance within the meaning of *Matter of Lozada*.

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.* Even if we were to assume that the Petitioner has substantially complied with the *Lozada* requirements, he has not demonstrated that prior counsel's alleged errors prejudiced the outcome of the proceeding. In *Matter of Lozada*, the Board determined that the appellant was not prejudiced by counsel's failure to file an appeal brief (resulting in the summary dismissal of the appeal) because the appellant received a full and fair hearing at his deportation hearing, at which he was given every opportunity to present his case; the appellant did not allege any inadequacy in the quality of prior counsel's representation at the hearing; the immigration judge considered and properly evaluated all the evidence presented; and the immigration judge's decision was supported by the record.

In the present matter, the petition was denied, in part, because the Petitioner did not establish investment of the required capital. An immigrant investor must show that they "ha[ve] invested or [are] actively in the process of investing the required amount of capital." 8 C.F.R. § 204.6(j)(2). The Petitioner argues that the capital consisted of the cash his uncle ultimately paid to the NCE, rather than the promissory note by the uncle, and that the full amount of capital was invested. To establish

eligibility for classification as an immigrant investor, a petitioner must demonstrate that all statutory and regulatory requirements were satisfied at the time the petition was filed. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Here, at the time the petition was filed, the record reflected that he had contributed only $100,000 to the NCE and stated that he was "actively in the process of investing" the remaining capital. However, the Petitioner did not submit evidence demonstrating that he had, in fact, taken concrete steps toward investing the balance of the required capital. In response to the request for evidence, the Petitioner submitted for the first time his uncle's 2017 promissory note to explain why the remaining $400,000 had not yet been transferred but did not submit that promissory note with the initial petition. Instead, he first presented it only after USCIS identified deficiencies in the petition. The later submitted promissory note cannot establish that the Petitioner has demonstrated eligibility at the time of filing or cure the evidentiary deficiencies in the original petition. The Petitioner's evidence that the uncle later transferred the remaining funds is likewise insufficient to establish eligibility at the time of filing. Further, the Petitioner's discussion regarding whether the qualifying capital should be characterized as the cash gift rather than the uncle's promissory note does not resolve the issue, because regardless of how the funds are characterized, the Petitioner did not submit sufficient evidence with the initial petition to establish that he had invested, or was actively in the process of investing, the required capital at the time of filing.

Therefore, the Petitioner has not demonstrated that he was prejudiced by prior counsel's alleged ineffective assistance. Although, the Petitioner now asserts that prior counsel incorrectly completed portions of the Form I-526 and submitted unnecessary evidence regarding the Petitioner's personal finances, the petition was denied on multiple independent grounds, and the Petitioner has not established that counsel's errors affected those dispositive findings. As one example, and as discussed above, the Petitioner failed to establish that the funds invested in the new commercial enterprise constituted qualifying capital under the applicable regulations. Consequently, even if prior counsel had completed the form accurately, the Petitioner still would not have established eligibility for classification as an immigrant investor. The Petitioner has not shown a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different.

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.

Regarding the motion to reconsider, we stress again that in order to have established merit for reconsideration of our latest decision the petitioner must both state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; and specifically cite laws, regulations, precedent decisions, and/or binding policies that the petitioner believed we misapplied in our prior decision. To prevail in a motion to reconsider, the petitioner

cannot merely disagree with our conclusions, but rather it must demonstrate how we erred as a matter of law or policy in our immediate prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision.) This fourth motion repeats claims previously made on prior motions and does not establish that our decision in response to the third motion was incorrect based on an incorrect application of law or policy or the evidence in the record of proceedings.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, he 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.