U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43314016

Date: JUL. 28, 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 employment-based 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 U.S. economy and create at least 10 full-time positions for qualifying employees.[2]

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding that the record did not establish that the NCE will create at least 10 full-time positions for qualifying employees for each alien seeking EB-5 classification. We dismissed a subsequent appeal. In addition, we concluded, as a separate basis for dismissal of the appeal, that the Petitioner is ineligible for the immigrant investor classification because he did not establish that he had invested or was actively in the process of investing the required amount of capital at the time of filing. The Petitioner filed a motion to reopen and motion reconsider the matter, which we dismissed. The matter is again 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 motions.

On page 6 of the Form I-526 petition the Petitioner confirmed that he had only invested $100,000 of the total $500,000 requisite investment in the NCE. The Petitioner later submitted a June 2021 promissory note to show that he was actively in the process of investing the required capital at the time of filing. The promissory note names the Petitioner as borrower, the regional center as lender, and indicates that the note was payable within three years. He also submitted evidence that the remaining $400,000 was eventually transferred to the NCE in June 2023.

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[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 June 2021, the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner claimed that the NCE is in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2021).

In our prior appellate and motion decisions, we concluded that the Petitioner's June 2021 promissory note is insufficient to establish he was actively in the process of investing in the NCE because the note is not evidence that he was personally and primarily liable for the debt, or that his assets adequately secured the promissory note, and that those assets are fully amendable to seizure by a U.S. noteholder. *See Matter of Hsiung*, 22 I&N Dec. 201, 202 (Assoc. Comm'r 1998); *see also* 6 *USCIS Policy Manual*, G.2(A)(1), https://www.uscis.gov/policy-manual. We noted that the promissory note did not identify the asset being used to secure the $400,000 debt and that whatever asset he intended to use was perfected to the extent provided for by the jurisdiction in which the asset is located. *See Matter of Hsiung*, 22 I&N Dec. 202-03.

In our motion decision, we also noted that the terms of the promissory note state that it was payable within three years and included no provisions that required repayment of any portion of the $400,000 within two years, as required by *Matter of Izummi*. *See Matter of Izummi*, 22 I&N Dec. 169, 193-94 (Assoc. Comm. 1998). In our prior motion decision, we reserved discussion of whether the NCE will create at least 10 full-time positions for qualifying employees. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

A motion to reopen must state new facts and be supported by documentary evidence. 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. *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, the Petitioner submits a brief, accompanied by a "Certificate of Stamp Duty" and a mortgage agreement, both dated March 20, 2023. The "Certificate of Stamp Duty" describes a "gift deed" of "zero" rupees, purchased by the Petitioner. The mortgage agreement lists the NCE as borrower and the Petitioner as lender. The agreement grants the NCE the Petitioner's mortgage on two properties to secure the repayment of a $400,000 loan, "as evidenced by a Promissory Note dated June 11, 2021." The Petitioner asserts that these new facts establish eligibility, as the agreement demonstrates that the promissory note was secured by assets owned by the Petitioner.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner asserts that the promissory note "satisfies the legislative intent of 'capital' as contemplated by the regulation," even if the repayment term is three years rather than the two years required by *Matter of Izummi*. The Petitioner further asserts that, even if the promissory note does not constitute indebtedness, the preponderance of the evidence demonstrates that the Petitioner was actively in the process of investing.

The Petitioner does not directly address our determination that the submitted promissory note did not comply with regulatory provisions and relevant precedent decisions. The Petitioner has not established that our prior decision to dismiss his combined motions on this ground was based on an

incorrect application of law or policy. Nor does the Petitioner explain how the "Certificate of Stamp Duty" and mortgage agreement, dated two years after the promissory note and listing no value, demonstrate that the note was secured by assets for which the petitioner is personally and primarily liable at the time of filing, or establish the fair market value of any such assets. Therefore, the Petitioner is ineligible for the immigrant investor classification because he did not establish that he had invested or was actively in the process of investing the required amount of capital at the time of filing.

Because this identified basis for denial is dispositive of the Petitioner's eligibility, we decline to reach and hereby reserve the Petitioner's arguments regarding the NCE's job creation. *See INS v. Bagamasbad*, 429 U.S. at 25.

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 combined motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

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 motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Nor has the Petitioner established that our prior decision was based on an incorrect application of law or policy. Because the Petitioner has not established new facts that would warrant reopening of the proceeding or errors that would warrant reconsideration, we have no basis to grant these motions. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

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.