U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43630151

Date: JUL. 29, 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 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 establish that his investment would create full-time positions for at least 10 qualifying employees. We remanded a subsequent appeal, and FOD denied the petition for a second time. We dismissed the Petitioner's appeal of this second denial, and then dismissed a subsequent motion to reopen as untimely filed. The matter is now before us on motion to reopen for the second 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 motion.

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).

On motion, the Petitioner submits a FedEx tracking information relating to the filing of his previous motion as well as new information relating to the status of NCE's project. The Petitioner requests that we exercise our discretion to excuse the late filing of his previous motion, and asserts that the new facts pertaining to the project establish eligibility by showing the required creation of 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).

A motion to reopen an unfavorable decision must be filed within 33 calendar days of the date we mailed the decision, unless a petitioner demonstrates that any delay in filing was reasonable and beyond their control. 8 C.F.R. §§ 103.5(a)(1), 103.8(b).[2] Here, the FedEx information relating to the previous motion shows that it was picked up by a courier on the evening of December 2, 2025, 32 days after our second appeal decision was issued, but was delayed due to "local delivery restrictions" on December 3, 2025 and was not delivered to the USCIS receiving facility until the next day.[3] Additional information states that due to weather disruptions at a FedEx hub on December 2, 2025 package deliveries would potentially be delayed. The Petitioner asserts that he "timely mailed" the motion and that it would have been delivered timely on December 3, 2025 "under normal operating conditions."

We conclude that the evidence of courier service delays due to inclement weather does not establish that the Petitioner's failure to file the prior motion within 33 days from the issuance of our appeal decision was reasonable or beyond his control. Notably, the Petitioner does not explain why he was unable to ship his motion earlier than the day before the end of the filing deadline, particularly during a time of year when weather-related travel and shipping disruptions are common in the United States.

As noted above, the Petitioner's motion is also accompanied by evidence that was included with his previous motion (but not considered) which addresses issues raised in USCIS' denial of his petition. But 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. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen 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.

[2] The Petitioner incorrectly cites to the regulation at 8 C.F.R. § 214.1(c)(4), which pertains not to the filing of motions to reopen but to petitions for the extension or amendment of nonimmigrant status.

[3] We note that the brief includes the erroneous and inconsistent statement that "The shipment was received by USCIS on December 2, 2025."