U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42717254

Date: JUN. 16, 2026

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Alien 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) (2021).[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.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the business plan was sufficiently credible and the regional center relied on reasonable methodologies to establish the requisite job creation. 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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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).

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

[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 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 has filed her petition prior to the implementation of the RIA, the relevant law then in existence governs this appellate adjudication.

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.

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The investor must show that their investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). An immigrant investor may invest the required funds directly in an NCE or through a "regional center."[2] As required by 8 C.F.R. § 204.6(j)(4)(i), the petitioner must establish that the investment of the required amount of capital in an NCE will create full-time positions for at least 10 qualifying employees within two years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii). For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a NCE will create full-time positions for at least 10 qualifying employees within two years, the petition must be accompanied by:

> (A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

Prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998), explains that "[a] comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives" and that "[i]t should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions." It specifies that to be "comprehensive," a business plan "must be sufficiently detailed to permit [U.S. Citizenship and Immigration Services (USCIS)] to draw reasonable inferences about the job-creation potential." *Matter of Ho*, 22 I&N Dec. at 213. "Mere conclusory assertions [, however,] do not enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation." *Id.* The decision concludes: "Most importantly, the business plan must be credible." *Id.*

USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts, upon which a favorable decision was made, have materially changed, there is evidence of fraud or misrepresentation in the record of proceeding, or the previously favorable decision is determined to be legally deficient. *See generally 6 USCIS Policy Manual*, *supra*, at

[2] A regional center is an economic unit involved with the promotion of economic growth through "improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (defining "regional center"). Regional centers apply for designation to participate in the EB-5 program with U.S. Citizenship and Immigration Services (USCIS) and designated regional centers identify and work with NCEs.

G(3)(A)(2). A change is material if it would have a natural tendency to influence or is predictably capable of affecting the decision. *See Kungys v. United States*, 485 U.S. 759, 770-72 (1988). When a new filing involves a different project from a previous approval or the same previously approved project with material changes to the project plan, USCIS does not defer to the previous adjudication. *See generally 6 USCIS Policy Manual*, *supra*, at G(3)(A)(2).

II. ANALYSIS

At issue is whether the Petitioner has established that our prior decision to dismiss her appeal was based on an incorrect application or law or policy and whether she has submitted new facts, supported by documentary evidence, that demonstrate her eligibility for the benefit sought. For the reasons provided below, the Petitioner has not made such a showing. Accordingly, we will dismiss her combined motions.

A. Prior AAO Decision

The Petitioner claimed that she invested $900,000 into the NCE, [redacted] associated with [redacted] The NCE proposed to invest the Petitioner's funds in a job creating entity (JCE), [redacted] (JCE). The JCE intended to add "an additional 2,500 square feet of space…to the architectural design [of the project] to accommodate a larger space for vehicle repair and inspections." Other services were slated to be added, such as "New York DMV licensed inspection services, rapid repair and service, and windshield repair and replacements."

FOD issued a notice of intent to deny (NOID) raising several concerns related to the business plan and economic analysis. Ultimately, FOD denied the petition, concluding that the Petitioner's response to the NOID did not sufficiently demonstrate the credibility of the business plan and its compliance with *Matter of Ho*.

The Petitioner subsequently filed an appeal, contending that the business plan is credible and that the underlying economic methodology is sound. In support of the appeal, the Petitioner submitted additional documents, including an updated business plan dated September 2025, to corroborate the credibility of the initial business plan and the accompanying economic report.

In our appeal decision, we considered the Petitioner's new evidence. Under the 2025 business plan, the project's scope, scale, and funding expanded to three phases with the NCE funding the two JCEs for the first phase and two new NCEs funding the JCEs for the added second and third phases. Our appeal decision identified several significant changes in the updated business plan that raised concerns regarding the credibility of the business plan. These changes included: 1) the addition of two EB-5 offerings, each sponsored by [redacted] with each phase soliciting alien investors to invest in a NCE that in turn invests in either the JCE or a company called [redacted] 2) revised job creation estimates reflecting a significant increase in projected employment numbers, from 19 jobs to 142 EB-5 qualifying jobs; 3) new ownership and management of the JCEs; and 4) modification to the project completion timeline. We therefore determined that the updated business plan constituted an impermissible material change, and concluded that the Petitioner has not presented a comprehensive and credible business plan showing that the NCE will create at

least 10 qualifying employees for each alien investor seeking EB-5 classification. *See Matter of Izummi*, 22 I&N Dec. at 175-76; *see also* 8 C.F.R. § 103.2(b)(1).

A. Motion to Reconsider

On motion, the Petitioner claims that our prior decision raised new issues beyond the original grounds for dismissal, thereby exceeding the scope of appellate review and depriving her of the required notice and meaningful opportunity to address dispositive concerns prior to the adverse appeal decision. In particular, the Petitioner contends our dismissal of the appeal based on new evidence submitted with her appeal, namely the 2025 business plan, raises fair notice and due process concerns because she was not provided an opportunity to address those issues before the appeal was dismissed. The Petitioner further argues that reconsideration is warranted because our determination that the September 2025 business plan reflected a material change overlooked that "the metes and bounds of the project, described in the original business plan and the amended business plan, have remained constant since 2021." She also argues that the overall scope of the project and the intended use of funds remain unchanged, and that the updated business plan "merely clarified additional financing outside of the [p]roject budget."

We disagree. For appellate review, we exercise de novo review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). This means that we look at the record anew, including evidence submitted on appeal, and are not required to defer to findings made in the initial decision. Thus, our decision may address new issues that were not raised or resolved in the prior decision. In addition, a petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the initial decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

Moreover, as discussed above and in our appeal decision, FOD sent a NOID advising the Petitioner that the evidence did not establish eligibility for the benefit. In addition, the NOID advised that the project could not be independently verified and the business plan included with other petitions and relied on by the Petitioner for her petition was not credible and not *Matter of Ho* compliant. The evidence provided in response did not resolve the deficiencies outlined in the NOID and the petition was later denied.

Furthermore, the NOID provided adequate notice regarding the deficiencies in the petition, yet the Petitioner has not submitted sufficient documentation to establish that her business plan is comprehensive and credible either on appeal or on the current motion. Our appeal decision provided specific examples of discrepancies that undermined the updated business plan, and she does not sufficiently address those inconsistencies on motion. As the Petitioner has not sufficiently addressed the stated reasons for denial on motion, she has not met her burden in establishing that we erred as a matter of law or policy in dismissing her appeal. *See Matter of Chawathe*, 25 I&N Dec. at 375. 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)(l)(i), (ii). The Petitioner has not shown that our prior decision contains errors of law or policy or that the decision was incorrect based on the record at the time of that decision. *See* 8

C.F.R. § 103.5(a)(3). Accordingly, we determine that the instant motion does not meet the requirements of a motion to reconsider.

B. Motion to Reopen

We note that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial based on newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)); *see also Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. *INS v. Abudu*, 485 U.S. at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." *Id.* at 108. Granting motions too freely could permit endless delays when aliens continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. *See id.* The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. at 473; *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the Petitioner has not met this burden.

1. Material Change

On motion, the Petitioner submits new evidence to resolve ambiguities in the business plan and job allocation for the NCE. The new evidence includes a second amended business plan; an economic report addendum dated February 27, 2026; and permits and license submissions to the [redacted] Department of Buildings. The Petitioner contends that the new NCE has "its own distinct offering" and did not "materially change or replace the offering of this [p]roject." The Petitioner further contends that she was not required to disclose the third NCE that subsequently loaned funds to the original JCEs because "it was not a material fact necessary to adjudicate eligibility as of the filing date." She also asserts that the business plan "merely" added details about the "subsequent offering and features to give full context" and that "neither the statute nor the regulations prohibit a JCE from accepting capital from multiple NCEs."

We disagree. The updated business plan reflected changes to the types of structure being built, to the timeline, the expansion plans, the economic report, the job creation estimates, and the project costs. These changes amount to a change in the nature of the project. The updated business plan also reflected a change in the investment structure with three conceptual development phases that do not represent sequential operational launches. As we noted in the appeal, the initial business plan did not describe the other phases listed in the updated business plan. Subsequently, the Petitioner's second amended business plan removed references to phases one and three. The issue here is that the Petitioner cannot establish eligibility based on facts that come into being after she filed her petition. *See Matter of Izummi*, 22 I&N Dec. at 175-76. In other words, she cannot rely on the project described in her appellate filing to establish her eligibility for the immigrant investor visa classification. Instead, she must establish eligibility based on the original business plan dated January 2021.

As stated in the appeal decision, the Petitioner has not demonstrated the credibility of the original business plan. Therefore, we conclude that the Petitioner has not provided a business plan that is both comprehensive and credible. Similarly, the Petitioner has not credibly demonstrated that the original business plan will likely create at least 10 jobs for the 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.

2. Job Creation

On motion, the Petitioner asserts, "[t]he jobs attributed to this [p]roject are derived exclusively from the economic activity generated by the $900,000 capital contribution of [this NCE]" and "[j]obs generated by the supplemental capital invested through later offerings have their own independent job-creation analyses and are not counted toward, or commingled with, the job-creation claim for this petition." Based on the economic report addendum, she claims that the revised projection of 17 jobs created by the $900,000 capital contribution exceeds the 10 EB-5 qualifying jobs required to be created for the investor. Based on the new evidence and evidence in the record, the Petitioner contends that she has established the project is almost complete, that the business plan is credible, and that the Petitioner's capital will be used for job creation for this NCE.

The evidence submitted on motion, however, does not resolve the concerns regarding the credibility of the business plan and the job creation projections. Instead, the second amended business plan mainly updates the previous business plan by focusing on phase two of the overall project and deleting references to phases one and three. In addition, the new evidence does not show progress with the project, while delaying its completion timeline even further into the future. The second amended business plan indicates that the project continues to be 85 – 90% complete but changes the completion timeline from October 2025 to April 2026 pending certificate of occupancy. The Petitioner has not explained or provided evidence about this change and the continued delays to the completion timeline. Moreover, while the second amended business plan states, "[a]ll requisite construction permits are in place," the Petitioner has not provided evidence corroborating the receipt of any permits for the project's construction.

The evidence on motion also includes an economic report addendum for job creation projections which focuses on phase two for this NCE. However, the addendum does not sufficiently demonstrate the revenue projections beyond the first year. We also find it notable that the job creation projections outlined in the second amended business plan and in the economic report addendum include jobs related to electric vehicle charging operations. According to the previously submitted business plans, funding for electric vehicle charging was included in phase three, not phase two related to this NCE. The economic report addendum's inclusion of electric vehicle charging operations for the revised job creation projections is inconsistent with the Petitioner's statements and the prior business plans. The Petitioner has maintained that the electric vehicle charging construction and operations relate to phase three of the overall project, not phase two, thereby undermining the accuracy of the job creation projections.

When considered with the totality of the evidence in the record, the new evidence is insufficient to establish that the January 2021 business plan is credible and that the necessary number of jobs will be created.

Although the Petitioner has submitted additional evidence in support of her motion to reopen, the new facts and evidence she has presented on motion are insufficient to warrant reopening in this matter. Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

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 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.