U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43098024

Date: JUN. 23, 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. An alien may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding that the Petitioner did not establish that the NCE or the job-creating entity (JCE) will create at least 10 full-time positions for qualifying employees for each alien seeking EB-5 classification. 8 C.F.R. § 204.6(g)(1). In its denial decision, USCIS declined to defer to its favorable determinations regarding job creation made in previously filed Form I-526 petitions associated with this NCE, pointing to material changes to the underlying facts upon which those earlier petitions were approved. USCIS also noted that there was insufficient evidence to establish that the project which is the subject of this petition would proceed as proposed. We dismissed a subsequent appeal, as well as a motion to reopen and reconsider. The matter is now before us on combined motions to reopen and reconsider 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

[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.

I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our previous decision, we determined that the Petitioner had not shown that our determination on appeal that the scope of the project had impermissibly materially changed was incorrect. *Matter of Izummi,* 22 I&N Dec. 169, 175-76 (BIA 1998)(stating that "a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements" and that USCIS "cannot consider facts that come into being only subsequent to the filing of a petition"). The USCIS Policy Manual explains that "[c]hanges that occur in accordance with a business plan and other supporting documents as filed will generally not be considered material." *See generally* 6 *USCIS Policy Manual* G.3(C)(1), www.uscis.gov/policy-manual. It further explains that "[i]n general, if, at the time of adjudication, the investor is asserting eligibility under a materially different set of facts that did not exist when they filed the immigrant petition, the investor must file a new immigrant petition." *Id.*[2]

The project at issue in this matter involves rehabilitation of the historic [redacted] industrial complex in [redacted] Indiana. We pointed out in our prior decision that while the record showed that three-fourths of the project as initially proposed had been completed, the original business plan from 2013 had projected that all four phases of the project would be complete by 2018. In addition, we noted that several documents in the record, including some submitted with the motion to reopen, indicated that the project included several buildings and features, including a hotel, that had not been included in the original business plan. We determined that this evidence was insufficient to overcome our prior determination on appeal that the project construction delays represented a material change to the project. Together with the project funding issues also described in our appellate decision, we concluded that the new materials submitted on motion did not overcome our previous determination that the Petitioner had not shown that the project would create the required 10 full-time jobs for qualifying employees for each immigrant investor.[3]

On motion, the Petitioner submits additional evidence including a new letter from the regional center, a new letter of intent (LOI) regarding potential equity investment in the project, letters and emails regarding project delays encountered before the COVID 19 pandemic and 2021 eminent domain litigation, and media reports about the redevelopment of the former industrial complex owned by the NCE. The Petitioner asserts that these new facts establish eligibility, as they show that there have not

---

[2] As explained in *Doe v. USCIS*, 410 F.Supp. 3d 86, 101 (D.D.C. 2019):

> An approved I-526 petition is given a priority date as of the date the petition is properly filed. 8 C.F.R § 204.6(d). If petitions did not have to meet the EB-5 requirements at the time of filing and could be chamged at will, then petitioners could filed incomplete petitons in order to receive a better priority position for obtaining a visa. Allowing later changes to incomplete petitions would be unfair to those petitioners who waited to file their forms until the appropriate time when they had the evidence necessary to establish all EB-5 requirements.

[3] We also acknowledged the Petitioner's assertions regarding whether he invested or was actively in the process of investing the required amount of capital, but we declined to address this issue because our decision rested on a separate, dispositive ground. As the instant decision relies upon the same grounds for dismissal as our previous decision, we will continue to reserve the issue of whether the Petitioner invested or was actively in the process of investing the required amount of capital. *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).

been material changes to the project and business plan and that the project will create at least 10 qualifying full-time positions for each immigrant investor.

Regarding changes to the scope of the project, the letter from the regional center notes that the instant EB-5 project is part of broader redevelopment planning effort on the same property, and that "references in engineering reports or planning documents to other portions of the campus reflect the scale of the overall property" and "do not introduce new project components." The Petitioner also asserts that the scope of the project has remained consistent since the initial 2013 business plan, and despite the evidence referred to in our previous decision has never included a hotel or conference center. He states that those components form part of a separate project on the same property which is partially funded by EB-5 funds.[4] In addition, while the Petitioner acknowledges that that separate project involves many of the same stakeholders involved in the instant case, it states that the parties quoted in media reports are not authorized to bind the regional center, NCE, or JCE in the instant project.

We note that both of the new local media reports submitted on motion regarding the historic [redacted] site on which the project is located specifically mention only a restaurant and hotel as part of the redevelopment plans, and do not discuss the proposed residences which comprise the fourth phase of the project. Nevertheless, aside from the issue of the scope of the project, the new evidence submitted on motion does not overcome our previous conclusion that the project has materially changed.

In our previous decision, we determined that new evidence submitted with that motion, including a letter from the regional center, did not sufficiently address the delay in the project timeline from the original projection of completion in 2018. The new regional center letter submitted with the instant motion asserts that the delays "reflect the complexities inherent in redeveloping a historical industrial campus of this scale together with several external events that affected the project timeline." It discusses "extended municipal review timelines" regarding building code compliance, occupancy approvals, and building egress. The letter also mentions damage to electrical infrastructure serving the project site due to a severe ice storm in November 2018, and indicates that this damage was not repaired until the following year.

The regional center's letter is accompanied by evidence of correspondence between regional center personnel and city officials and contractors in 2014, as well as a media report concerning an ice storm in Indiana in November 2018 and correspondence concerning electrical work performed at the site in 2019. Regarding the ice storm, the evidence does not establish a link between it and the electrical work done in 2019. Further, it occurred late in the year in which the project was originally to have been completed, and so cannot account for project delays in the preceding five years that resulted in passing the timeline established in the 2013 business plan.

As for the communications regarding building and fire code compliance, the Petitioner has not established that the violations discussed in May and June 2014 were responsible for the ensuing lengthy delay. The regional center letter indicates that the town's insistence on the installation of an

[4] USCIS records show that a separate ongoing project under the regional center and partially funded by EB-5 investors is located on the same property.

additional exit door "required extensive engineering coordination and regulatory review" which "extended the timeline for certain approvals," but it states that the project otherwise continued to move forward. This evidence does not support the Petitioner's assertion that this issue was at the heart of the delay in project construction, or that it could not have reasonably anticipated the requirements of state and local building codes relating to historic buildings.

We have previously acknowledged that in this case the COVID 19 pandemic may serve as a reasonable explanation for the delay in the completion of the project beginning in early 2020, and that the eminent domain litigation brought by the town in 2021 further impacted the project.[5] However, while the Petitioner has addressed the concerns expressed in our most recent decision about the addition of a hotel to the project, the record remains insufficient to overcome our conclusion that the pre-pandemic delays in construction that pushed the construction timeline well past the initial projections constitute an impermissible material change. *See Limphoka v. Jaddou*, 2024 WL 5414974 (N.D. Fla. Dec. 24, 2024)(finding that "past failures to meet self-imposed deadlines in a business plan can constitute substantial evidence for USCIS's determination that a business plan is insufficient to demonstrate the need for ten full-time employees.")

As noted above, our prior decision also concluded that new evidence submitted with the Petitioner's first motion to reopen in this matter did not address or resolve the issues regarding the funding of the project that had been raised in our dismissal of the appeal. We determined that the Petitioner had not overcome our previous conclusion that the record was insufficient to establish that the JCE would create at least 10 full-time jobs for qualifying employees for each EB-5 investor. With the instant motion, the Petitioner submits the already-mentioned media reports about other projects taking place on the site,[6] and a new LOI from [redacted] The letter discusses a "potential equity investment" of $7 million into the fourth portion of the project, the residential units, and clearly states that its terms "do not constitute a binding offer or commitment to invest but are a basis for negotiating an agreement."

We note that other than the offer and termination dates and the amount of funding specified for the separate hotel project, this letter is identical to the LOI from [redacted] submitted in response to USCIS' notice of intent to deny. Although the regional center's letter characterizes this new letter as "a letter committing equity participation of seven million dollars," the terms of [redacted] letter clearly state that it has made no such commitment. As we stated regarding the earlier [redacted] LOI in our decision on appeal, this evidence is insufficient to address the project funding shortfall arising from the project attracting fewer EB-5 investors than initially planned. It therefore does not support the credibility of the initial business plan and does not help to establish that the JCE will create the required direct and indirect qualifying jobs.

For all of the reasons discussed above, we conclude that the new evidence submitted in support of the Petitioner's motion to reopen does not establish his eligibility as an EB-5 immigrant investor.

[5] We note that the media reports in the record regarding the litigation and settlement indicate that the town brought the lawsuit against the JCE over concerns regarding the lack of progress on the redevelopment project.

[6] This includes an article about an illumination ceremony for a historic clock on the project site. The Petitioner does not claim, nor does the record indicate, that the restoration of the clock was part of this project.

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.

The Petitioner asserts on motion that "the development team has continued advancing the Multifamily Residential Development phase utilizing financing structures consistent with those contemplated in the 2013 business plan," and that the previously submitted LOIs from [redacted] were elements of that financing. But as initially stated in our decision on appeal and reiterated in our previous dismissal of the Petitioner's motion, those letters had expired and the potential funding they represented remained insufficient to cover the shortfall in funding due to fewer EB-5 investors than anticipated in the 2013 business plan. We noted that we had previously determined that this evidence did not support the credibility of that plan and job creation projections contained therein, and the Petitioner does not now identify a particular law or policy that we incorrectly applied in reaching that determination.

Further. 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). The Petitioner's contentions in their current motion to reconsider merely reargue facts and issues we have already considered in our previous decisions. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We will not re-adjudicate the petition anew.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, he has not established eligibility. The issue regarding the scope of the project identified in our previous decision is resolved, but the new evidence offered on motion does not overcome the conclusions in that motion and establish the Petitioner's eligibility as an immigrant investor. Therefore, the motion 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.