U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41586411

Date: MAR. 03, 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.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that the NCE will create at least 10 full-time positions for qualifying employees. We dismissed a subsequent appeal. The Petitioner then filed a motion to reopen, which we dismissed because it was not timely filed. The matter is now before us on combined motions to reopen and reconsider for the third 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).

A motion to reopen must be filed within 33 days of the date an unfavorable decision is mailed. The failure to file a motion to reopen timely may be excused, in our discretion, if it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). In our previous decision, we dismissed the Petitioner's motion to reopen because the new evidence submitted

[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.

did not overcome our previous determination that his initial motion was untimely filed on the 36th day after the mailing of our unfavorable decision on appeal. Specifically, we concluded that the evidence of inclement weather did not establish that his delay in filing the motion was reasonable and beyond his control pursuant to 8 C.F.R. § 103.5(a)(1)(i).

On motion, the Petitioner submits a brief and new evidence regarding the inclement weather that he asserts led to his delay in filing his initial motion. The Petitioner asserts that these new facts establish that the delay was reasonable and beyond his control. This includes a local media report published a few days before the inclement weather indicating that the [redacted] area may experience winter weather, as well as notices that a statewide state of emergency was declared in Georgia on January 9, 2025 due to a winter storm. The notices indicate that the impact of this storm would be experienced the next day, which was a Friday and the 32nd day after issuance of our unfavorable appeal decision. In addition, the Petitioner submits two service alerts from the delivery service it used to submit its motion to reopen which indicate that delays in service were possible on January 10 and January 11, 2025 due to winter weather in [redacted] Tennessee.

The Petitioner asserts that this evidence shows that a "Documented Natural Disaster" occurred, and that "USCIS guidelines regarding emergencies and unforeseen emergencies are directly relevant here." However, as stated in our previous decision, "natural disasters" as defined in the USICS Policy Manual are those identified by the Federal Emergency Management Agency. *See generally* 1 *USCIS Policy Manual, supra*. Other identified emergencies or circumstances include national emergencies, conflicts abroad, and terrorist attacks. The evidence submitted on motion does not establish that these or similar broader circumstances occurred and resulted in the delayed receipt of his initial motion to reopen.

The new facts and evidence submitted with the Petitioner's motion to reopen show that inclement weather occurred in his region at the end of the filing period for his initial motion. But this does not establish that the delay in the filing of that motion was either reasonable or beyond his control. See 8 C.F.R. § 103.5(a)(1)(i). Accordingly, the Petitioner has not shown that the reopening of the motion, as a matter of discretion, is warranted.

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.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner asserts that we misapplied *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) in our previous decision because his previous motion was supported by evidence. We cited to the Board's decision for the proposition that "statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight," and noted that the record did not include evidence which supported the Petitioner's contention that all mailing services were closed and that the pick up of his package had been cancelled. The Petitioner did not point to evidence regarding these specific contentions in his previous motion, and does not do so now. He has therefore not established that we

misapplied *Matter of S-M-* or that that our decision was incorrect based on the evidence in the record of proceedings at the time of the decision

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 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.