U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40968865

Date: MAR. 17, 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).[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. Aliens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that he placed the required amount of capital "at risk" or that the NCE would likely create at least 10 full-time positions for qualifying employees for each alien seeking EB-5 classification. *See* 8 C.F.R. § 204.6(e) (defining "full-time employment" and "qualifying employee"), (g)(1), (j)(2). FOD dismissed a subsequent combined motion to reopen and reconsider. We then dismissed an appeal, concluding that while the record demonstrated the Petitioner placed his investment funds at risk, he did not overcome the finding that the NCE would likely create 10 full-time jobs. In addition, we concluded 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 of at least $500,000 at the time of filing.[2] The matter is now before us again on combined motion 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 motion.

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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 2019, the relevant law then in existence governs this motion adjudication.

[2] The Petitioner indicates that the NCE and [redacted], the job creating entity (JCE), are 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) (2019).

I. LAW

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 state the reasons for reconsideration and establish that our prior decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider, when filed, must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* 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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4).

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).

II. ANALYSIS

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

A. Job Creation

In our appeal decision, we concluded that the 2023 business plan for the Petitioner's hotel project did not credibly demonstrate its likely creation of the requisite number of employees. We agreed with FOD that the business plan lacked credibility based on "unmet project timelines and lack of funding and construction permits." As part of this determination, we found that FOD properly considered evidence related to eminent domain legal proceedings over the proposed hotel property, including news articles and court documents submitted by the Petitioner with his initial combined motion to reopen and reconsider, noting evidence of the litigation casts doubts on the property's availability for the hotel project. In addition, we found that contrary to the Petitioner's arguments, FOD reasonably determined that construction on the hotel had not started and the claimed delays, including the COVID-19 pandemic and the property legal proceedings, did not preclude development during the two years prior to the pandemic. Given the project delays and inconsistent estimates of the hotel project's costs and funding, we agreed with FOD that the Petitioner did not demonstrate by a preponderance of the evidence the credibility of his business plan. Moreover, because the job creation estimates relied on inputs from the business plan, we agreed with FOD that the Petitioner did not establish that job creation estimates relied on reasonable economic methodologies. Without evidence of a comprehensive business plan, we concluded that the that the Petitioner did not demonstrate that the NCE would create at least 10 full-time positions for qualifying employees per alien investor within two years of the petition's decision. *See* 8 C.F.R. § 103.5(j)(4)(i).

On motion to reconsider, the Petitioner argues that the appeal decision was based on factual and legal errors. The Petitioner disagrees with our reliance on *Doe v. USCIS*, No. 15 VC 10958, 2017 WL 770998, at *5 (N.D. Ill. Feb. 28, 2017) to determine that this project's almost eight-year delay

undermines the credibility of his business plan. He asserts that unlike *Doe*, the delays were reasonable and beyond his control based on documented changes in zoning laws, pre-pandemic construction halts, and the eminent domain legal dispute over the project site. While the Petitioner claims that USCIS did not consider the property litigation from 2017 onward and the COVID-19 pandemic economic effects and supply chain disruptions on the hospitality and construction industries, the record does not include evidence that the property has been the subject of litigation since 2017. Instead, the record indicates the eminent domain litigation was initiated in 2021. In addition, the Petitioner raises for the first time in this motion that pre-pandemic site development complications contributed to the hotel project delays. We acknowledge the Petitioner's assertions that USCIS policy allows for reasonable project delays, "particularly when justified and well-documented." The Petitioner, however, did not provide evidence to support his claims relating to the pre-pandemic project delays.

Unlike this case, the Petitioner emphasizes that *Doe* was decided in 2017, prior to the COVID-19 pandemic, which caused supply chain disruptions and construction delays not present in *Doe*. The Petitioner argues he has provided updated business plans reflecting revised timelines with explanations for delays, thereby rebutting presumption of non-credibility. In addition, the Petitioner contends, "the current project has demonstrated ongoing good faith efforts toward completion," including "updated permits, contractor engagement, revised timelines, and continued capital investment." When analyzing credibility, he claims that *Matter of Ho*, 22 I&N Dec. 206 (AAO 1998), "acknowledges that business plans may evolve or encounter external setbacks without rendering them inherently non-credible."

We previously considered the Petitioner's claims that the project delays are due, in part, to the pandemic economic disruptions. As we pointed out in our previous decision, the original business plan projected the hotel's completion in 2019 but had been delayed nearly eight years with a new expected completion in October 2027, and construction described by the Petitioner as "shovel ready" and yet to begin. The Petitioner emphasizes his previous arguments that "site work has commenced" with restoration of the historic clock adjacent to the property in November 2023 and "site preparation, utility relocation, and fencing installation already underway" as evidenced in photographs, invoices, and a declaration from the general contractor. The Petitioner argues, "USCIS should not narrowly construe 'construction' to mean only vertical or structural work. Pre-development and site preparation work qualifies as construction under EB-5 guidance," citing *Matter of Izummi*, 22 I&N Dec. 169, 195 (BIA). However, we previously considered the Petitioner's arguments, as well as the construction photographs and the community's restoration of the historic clock, which is not part of this hotel project. The Petitioner does not dispute that the project has not progressed according to the original and amended plans. Instead, he cites eminent domain litigation and the COVID-19 pandemic to justify the delays to the project. The COVID-19 pandemic may provide a reasonable explanation for delays in construction beginning in 2020, and the litigation may explain delays in construction beginning in 2021. But, as discussed above, the Petitioner has not provided a reasonable explanation why the project has not progressed since its initial 2017 plans, as pointed out in our prior decision.

With respect to inconsistencies in the record for the estimated project costs and funding, the Petitioner asserts that he submitted only the $20 million estimate and financial details as outlined in the 2023 business plan, and no alternative project budgets or funding structures were part of the project. Thus, he maintains that any alternative documentation should not be considered as part of the record, including his appeal brief stating that the project has more than $40 million in funding and a 2023 loan

presentation stating nearly $32 million in project costs. We disagree with the Petitioner's assertions. "Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request." 8 C.F.R. § 103.2(b)(1). When adjudicating a petition under the preponderance of evidence standard, USCIS examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the evidence's totality, to determine whether the fact to be proven is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner's claims and supporting documentation are materials relevant to the petition's adjudication and are part of the record for consideration. As explained in our prior decision, these unexplained inconsistencies of the project costs and funding cast doubt on the business plan's credibility. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

In addition, the Petitioner claims that we overlooked "critical evidence" and ignored EB-5 policy standards by finding that he did not sufficiently explain how the project would attract additional EB-5 investors or secure the remaining $3 million in financing needed to complete the project. Acknowledging that under the regulations, he is required to submit a comprehensive business plan, he argues that such regulations do not, however, require that the full capital investment be fully secured from all investors at the time of filing, "nor that any third-party financing be finalized, provided there is credible evidence of the project's ability to attract additional capital." He maintains that his business plan "[c]learly outlines a multi-stage funding strategy, including EB-5 capital, bank loans, and developer equity," "[p]rovides evidence of initial investor participation and ongoing marketing efforts;" "[r]eferences communications with lenders and commitment letters for bank loans;" and "[i]ncludes third-party market feasibility studies showing demand sufficient to support the project and attract investors." He maintains that he has exceeded the regulatory requirements by providing such evidence.

The record, however, lacks evidence supporting the project's financial plan, as set out in the 2023 business plan, which the Petitioner claims in this motion is the accurate basis for the project's funding structure. The 2023 business plan indicates that funding would comprise three sources, $12,240,727 in bank loans, $5 million of EB-5 investment, and $2,853,817 owner equity. The Petitioner provided evidence relating to $2 million of EB-5 investments without providing an explanation for how he intends to obtain the additional $3 million of EB-5 investments. In his motion, the Petitioner emphasizes the letter of intent to invest from Encore Enterprises dated February 4, 2024. The letter, however, is not sufficient to show that the necessary loan financing has been committed to this hotel project. The letter of intent offers $3 million for this hotel project, as well as another $7 million for multifamily units which are unrelated to the JCE, with certain conditions required to be met to secure the funding. The letter, however, states it is non-binding and is only a basis for negotiating an agreement with validity until "close of business on December 30, 2024." No evidence was provided to show that the conditions to secure funding were met or that the parties entered into a funding agreement. Moreover, the Petitioner does not explain the source of the additional $9,240,727 in loan financing.[3] The non-binding letter of intent is not sufficient to demonstrate that the hotel project is

[3] In his request for evidence reply, the Petitioner submitted the 2023 business plan and a proposed loan term sheet from [redacted] dated July 17, 2023. [redacted] sets out terms of a potential loan to the NCE in the amount of the lesser of $18,100,000 or 55% of the project costs, which the loan term sheet estimates at over $32 million. In this motion, the Petitioner does not indicate that this proposed loan term sheet continues to be valid or is part of the hotel project's current funding sources.

likely to obtain the necessary funds and given that no updated costs have been provided to assess what capital investments are needed, the business plan's economic methodologies, upon which job creation projections are based, are not reasonable.

On motion to reopen, the Petitioner submits new evidence and asserts that because the eminent domain litigation affecting completion of the project has ended, the project can continue unencumbered. The Petitioner submits court orders and a local news article to establish the litigation has ended. The court order of dismissal dated [redacted], 2025, states the order dismissing the cause of action is pursuant to a Joint Stipulation and Motion to Dismiss between the parties. The Petitioner did not submit evidence or discuss the terms of the joint stipulation, a basis for the dismissal order. The news article references a settlement resolving the land dispute, stating "the town agreed to work with [the landowner] to identify and apply for Tax Increment Financing, or TIF, funding, state tax credits and other funding opportunities." While the Petitioner contends the 2023 business plan has not changed, the news article indicates the hotel project may have funding sources different from those described in the 2023 business plan. These funding inconsistencies, together with the lack of information relating to the terms of the joint stipulation, cast doubt on the Petitioner's claims in the 2023 business plan. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (noting that "it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.").

The Petitioner also submits a new letter dated September 30, 2025, from [redacted] the regional center (RC), reaffirming that the hotel project is progressing in development with support from the [redacted] and engineering and financial partners. The letter, however, mainly reiterates claims from its previous letter, which were considered in the appeal. The RC states that since May 2025, engineers and consultants "have been actively engaged in completing the site development package, grading plans, and utility coordination with the [redacted]." In support of these claims, the Petitioner submits an agreement dated September 16, 2025, between the property owner and [redacted] for an evaluation of structural options for the building 40 roof framing project. The Petitioner, however, does not explain how this structural evaluation has progressed the hotel project. Instead, the RC indicates that resolution of delays allows the project to resume under the business plan and schedule, noting, "[t]he project remains fully entitled, shovel-ready, and credible in its implementation timeline." The RC also reiterates the community's preservation of the historic clock in 2023, noting it was separate from this project but indicated support for the redevelopment of the property and the hotel site.

With respect to the project's funding, the RC's letter states, "[t]he project is overcapitalized, and all funding sources remain fully committed. [redacted] have reaffirmed their financial participation and are providing additional equity and credit resources dedicated to the hotel's completion." The Petitioner, however, does not provide evidence corroborating claims that [redacted] reaffirm their financial participation in the project. Statements made without supporting documentation are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The RC also notes, "[s]eparate developer debt packages and marketing materials prepared for conventional lenders or TIF underwriters may show additional costs, . . . but these are not modifications to the EB-5 capital structure," but instead "standard lender materials prepared for financing purposes and do not constitute material changes to the USCIS-approved EB-5 plan." We recognize that some changes in timeline and funding might not affect the overall credibility of a business plan. However, in this case, the uncertainty regarding the terms of the joint stipulation reached in order to resolve the litigation, the lack of documentation to establish that the developers will receive the funding necessary to complete the project, and the lack of supporting documentation to demonstrate the claimed job creation thus far, taken together, do not support a finding that the Petitioner has a credible business plan that includes cost information, a credible completion date, or job creation projections. Therefore, the Petitioner has not demonstrated when the project will likely be completed or that it will likely create at least 10 jobs for each 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.

In our prior decision, we affirmed FOD's determination that the Petitioner's job creation methodology is unreasonable because it relies on input from the 2023 business plan, which we found not credible. On motion, the Petitioner states he is submitting a supplemental economist's report using revised inputs based on updated project cost estimates and construction timelines. However, the supplemental report is not included in this motion and is not in the record. Thus, the Petitioner has not overcome our findings that his job creation methodology is unreasonable.

B. Investment's Availability for Job Creation

In our prior decision, we determined that the Petitioner did not demonstrate the availability of his investment for job creation. *See Matter of Izummi*, 22 I&N Dec. at 179; *see generally* 6 *USCIS Policy Manual* G.2(A)(2), https://www.uscis.gov/policy-manual. The record indicated that the JCE received wire transfer payments in 2019 and 2020 totaling $2 million, two $500,000 wire transfers, one in August 2019 and the other in February 2020, and a $1 million wire transfer in September 2019. We pointed out that the bank statements did not sufficiently demonstrate the NCE forwarded the Petitioner's entire investment to the JCE, as the statements do not indicate which wire transfer contained the Petitioner's $500,000 investment or where the wire transfers came from.

On motion, the Petitioner submits new evidence, including a letter from the RC and the NCE's bank statements to show that wire transfer proceeds received by the JCE came from the NCE. The NCE's bank statements indicate that on August 26, 2019, $500,000 was wired out of the NCE's account, and the JCE's bank statements indicate that on the same date $500,000 was wired into the JCE's bank account. The RC's letter indicates that these monies are the Petitioner's investment funds which were initially received by the NCE by wire transfer from the Petitioner's relatives' bank accounts, $200,000 on May 17, 2019, and $300,000 on May 14, 2019. Considering the new evidence with evidence in the record, the Petitioner has shown the availability of his investment for job creation. However, as discussed above, because the Petitioner has not overcome the finding that the NCE would likely create 10 full-time jobs, he has not established eligibility for the benefit.

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.