U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43064638

Date: MAY 28, 2026

Appeal of USCIS 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) (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 U. S. economy and create at least 10 full-time positions for qualifying employees.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that she had invested the required amount of funds, that the funds were obtained by lawful means, and that the new commercial enterprise (NCE) will create at least 10 full-time positions for qualifying employees. We dismissed a subsequent appeal and two motions to reopen. The matter is now before us on motion to reopen 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).

Our review on motion is limited to reviewing our latest decision, the dismissal of your second motion on February 25, 2026, and not SCOPS' denial decision or our dismissal of your appeal. 8 C.F.R.

[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). As the Petitioner filed his petition prior to the enactment of the RIA, the relevant law then in existence governs this appellate adjudication.

§ 103.5(a)(1)(ii). In support of your third motion, you submit a brief and evidence in support of your initial petition.

Motions to reopen must be filed within 30 days of the decision, or 33 days if the decision is served by mail. 8 C.F.R. § 103.5(a)(l)(i), 103.8(b). The date of filing is the date U.S. Citizenship and Immigration Services (USCIS) receives the intended motion: (1) completed, signed, and accompanied by the required fee as specified by the Form I-290B, Notice of Appeal or Motion, instructions; and (2) at the location that those instructions designate for filing motions. *See* 8 C.F.R. §§ 103.2(a)(l) and 103.2(a)(6). USCIS may, in its discretion, excuse the untimely filing of a motion to reopen where the record demonstrates that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(l)(i).

We dismissed the Petitioner's appeal on May 28, 2024. In that decision, we discussed the merits of the petition. Upon dismissal of the appeal, the Petitioner had 33 days to file a motion. *See* 8 C.F.R. § 103.5(a)(1)(i). USCIS did not receive the completed and signed Form I-290B with the required fee at the designated location until July 22, 2025, 56 days after our decision was issued. Accordingly, we dismissed the motion to reopen as untimely and a subsequent motion to reopen did not overcome that issue.

In the current motion, the Petitioner again asserts that the previously late-filed motion to reopen should be excused because the untimely filing resulted from inconsistent and unclear filing instructions provided by the Service. Specifically, the Petitioner contends that the USCIS "Direct Filing Addresses" webpage for Form I-290B did not list the [redacted] Texas address referenced in the denial notice. The Petitioner further argues that the instructions were ambiguous because the public-facing guidance did not have the address referenced in the denial decision. Accordingly, the Petitioner contends that the delay was reasonable and beyond her control and requests that the proceeding be reopened to consider the motion on its merits.

We still do not find the Petitioner's argument regarding allegedly inconsistent filing addresses persuasive. Although the Petitioner contends that USCIS maintains multiple addresses that created ambiguity, the record reflects that the Petitioner did not mail the motion to the Texas address identified in the decision notice or even to the address referenced on the USCIS webpage. Instead, the Petitioner sent the filing directly to the AAO office, despite the fact that our decision specifically informed her in bold type to "not mail any motions directly to the AAO." As we have explained in our prior decisions, the claimed confusion does not explain the Petitioner's actual filing error.

Moreover, the existence of multiple USCIS filing locations does not, by itself, render the filing instructions ambiguous or unreasonable. USCIS routinely utilizes different filing addresses depending on the form type, underlying classification, adjudicating office, and delivery method. For this reason, the form instructions and our decision notice direct parties to consult the USCIS website for the correct filing location before submission. Specifically, the instructions for Form I-290B, Notice of Appeal or Motion, under the section regarding where to file the form, informed the Petitioner to use the website at www.uscis.gov/i-290b for the most current information about where to file an appeal or motion.[2]

[2] Every form, benefit request, or other document must be submitted and executed in accordance with the form instructions. 8 C.F.R. § 103.2(a)(1).

Accordingly, the Petitioner has not shown that the delay in filing her first motion to reopen was reasonable and beyond her control, such that her untimely filing should be excused in USCIS' discretion under 8 C.F.R. § 103.5(a)(l)(i). Rather, the record indicates that the motion was mailed to an incorrect office despite the availability of filing instructions identifying the proper filing address and the Petitioner being specifically instructed not to file a motion directly to the AAO. Accordingly, we will dismiss the motion to reopen.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, 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 prior 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 proceedings, 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.