U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39983788

Date: OCT. 23, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant investor pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 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.

FOD denied the petition, concluding that the Petitioner did not establish that she had invested the required amount of capital, that the capital was obtained by lawful means, and that the new commercial enterprise (NCE) will create at least 10 full-time positions for qualifying employees. We dismissed the subsequent appeal, concluding the Petitioner did not establish that the NCE would create at least 10 full-time positions for qualifying employees and reserved the Petitioner's remaining appellate arguments. The matter is now before us on a motion to reopen. With the motion, the Petitioner submits a brief and evidence.

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 an unfavorable decision must be filed within 33 calendar days of the date we mailed the decision, unless the Petitioner demonstrates that the delay was reasonable and beyond the Petitioner's control. 8 C.F.R. §§ 103.5(a)(1), 103.8(b). On May 28, 2024, we mailed the Petitioner the decision dismissing her appeal. But, the Petitioner did not properly file the Form I-290B, Notice of Appeal or Motion, until July 22, 2025, which is 56 days after the unfavorable decision.

According to the Petitioner's counsel, he initially mailed the motion to our office because it "was the only address listed on the [d]ecision" letter. Counsel also relies on tracking information, which shows something was delivered to "DHS, MD, US" on June 30, 2025, to assert that the motion is timely.

[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 in August 2021, the relevant law then in existence governs this appellate adjudication.

However, the cover letter sent with the decision dismissing the appeal provided the following information: "The Form I-290B website (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**." (emphasis in original). Further, the tracking information does not establish that the Petitioner properly filed her motion within 33 calendar days. Nor has the Petitioner demonstrated that the delay in filing was reasonable or beyond her control, as required under 8 C.F.R. § 103.5(a)(1)(i).

ORDER: The motion to reopen is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). 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.