U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40074175

Date: SEP. 16, 2025

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) (2015).[1] This fifth preference (EB-5) classification makes immigrant visas available to qualified immigrants who invest the requisite amount of qualifying capital into a new commercial enterprise (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the Petitioner invested or was actively in the process of investing the required amount of capital of at least $500,000 into the NCE, nor did the record document the lawful source of his purported EB-5 investment. *See* 8 C.F.R. § 204.6(e), (f), (j) (2015). We dismissed a subsequent appeal on the two grounds identified in FOD's decision as well as on the ground that the Petitioner did not satisfy job creation requirements. *See* 8 C.F.R. § 204.6(j)(4). We then dismissed three combined motions to reopen and reconsider the matter, explaining in detail why the Petitioner had not established eligibility for the EB-5 classification to warrant reopening or that our most recent decision was based on an incorrect application of law or policy at the time the decision was issued. We then rejected an additional combined motion because it was filed using an outdated Form I-290B, and we dismissed a subsequent motion as untimely. The matter is again before us on a 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). We review the questions in this matter de novo. *Matter of Christo's*, Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon review, we will dismiss the combined 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

[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 2015, the relevant law then in existence governs this appellate adjudication.

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).

On motion to reopen, the Petitioner submits a brief in which he describes a timeline of his motion filings. He also submits documentation of customer service inquiries concerning material submitted with his rejected motion that he alleges was not returned and which he states was intended for use in refiling his motion. He indicates that the fact that his rejection package was not returned delayed the refiling of his motion, which resulted in the dismissal of that motion as untimely.

The Petitioner acknowledges receipt of his rejection notice, which prompted his inquiries concerning the return of his rejection packet. We note that the record shows that the Petitioner was notified of the rejection within the required timeframe to resubmit a new motion using the correct Form I-290B. The customer service documentation explains that USCIS sent the rejection packet via U.S. Postal Service Standard Mail to the address of record, which the Petitioner attests did not change, and that USCIS did not have evidence that the packet was returned as undelivered; the Petitioner was advised to contact his local post office or mail carrier for assistance. It is the Petitioner's burden of proof to establish eligibility for the benefit sought by a preponderance of the evidence.[2]

On motion, the Petitioner does not identify new facts supported by probative evidence to demonstrate that his dismissed motion should be considered timely filed. Because the Petitioner has not submitted new facts that that would warrant reopening of the proceedings, he has not met the requirements for a motion to reopen. 8 C.F.R. § 103.5(a)(2). The motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

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 to reconsider, the Petitioner does not contest that the motion filed following his rejected motion was received more than 33 calendar days after the date we mailed the decision[3] on his third motion. The decision was mailed on September 27, 2024; the rejection notice was mailed on November 4, 2024; and the Petitioner's motion was received April 2, 2025, 187 days after the dismissal of his third motion. 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. 8 C.F.R. § 103.5(a)(3). Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

[2] *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).
[3] *See* 8 C.F.R. §§ 103.5(a)(1), 103.8(b).

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.