U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 07891159

Date: APR. 16, 2021

Appeal of Immigrant Investor Program 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). This fifth preference (EB-5) classification makes immigrant visas available to foreign nationals 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.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish, as required, that the Petitioner placed her capital at risk in [redacted] the NCE. Specifically, the Chief determined that the Petitioner did not demonstrate she would risk suffering a loss on her investment consistent with an equity interest. We dismissed the subsequent appeal, finding that the Petitioner did not establish eligibility under 8 C.F.R. § 204.6(j)(2) because her arrangement with the NCE did not meet the definition of "invest" set forth in 8 C.F.R. § 204.6(e) as well as an additional denial ground that she did not sufficiently document the lawful source of her EB-5 investment. We reopened this matter on motion in response to an update to the USCIS Policy Manual that clarifies its policy on debt arrangements and the matter is now before us on *de novo* review. Subsequently, we issued a notice of intent to dismiss (NOID) the appeal to which the Petitioner has failed to respond.

Upon de novo review, we will dismiss the appeal.

I. LAW

8 Code of Federal Regulations (C.F.R.) § 103.2(b)(13) states:

> *Effect of failure to respond to a request for evidence or a notice of intent to deny or to appear for interview or biometrics capture* -- (i) *Failure to submit evidence or respond to a notice of intent to deny.* If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

II. ANALYSIS

We issued the NOID on July 23, 2020, providing 33 days of the date of the NOID for the Petitioner to respond. As of the date of this decision, we have not received a response.[1] Therefore, the appeal will be dismissed for failure to respond to a NOID. 8 C.F.R. § 103.2(b)(13). In accordance with 8 C.F.R. § 103.2(b)(15), this decision may not be appealed; however, the dismissal of this appeal due to abandonment does not preclude the filing of a new Form I-526 with a new filing fee. The priority date of this abandoned petition may not be applied to a later-filed petition. This dismissal due to abandonment will not itself affect the later-filed petition, but the facts and circumstances surrounding this petition will otherwise be material to the new petition.

Although the decision may not be appealed, 8 C.F.R. § 103.5(a)(2) provides limited motion rights as follows:

> A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:
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> (i) The requested evidence was not material to the issue of eligibility;
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> (ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
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> (iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[1] Subsequent to the issuance of the NOID, we received a letter from counsel indicating the firm had changed offices. The new address provided was the address to which the NOID had been mailed.