U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-Z-

DATE: AUG. 6, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: 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 and reaffirmed that decision on motion. The Petitioner then filed an appeal, which we dismissed after finding that the record did not establish the necessary job creation required by 8 C.F.R. § 204.6(j)(4)(i), or that she had invested, or was in the process of investing, the minimum required amount of capital. 8 C.F.R. § 204.6(j)(2).

The matter is now before us on a motion to reopen and a motion to reconsider.

Upon review, we will dismiss both motions.

I. LAW

A motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. A motion to reconsider must establish that our 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). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

The Petitioner submitted no documents or brief in support of her motions. In Part 2 of the Form I-290B, Notice of Appeal or Motion, the Petitioner indicated that she is "filing a motion to reopen and a motion to reconsider a decision. My brief and/or additional evidence is attached." However, she also requested "30 days to submit my brief with additional evidence." We first note that a motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed; no provision exists for USCIS to grant an extension to the Petitioner to supply evidence or briefs in the future. *See* 8 C.F.R. § 103.5(a)(1)(i).[1] Regardless, we have not received anything further from the Petitioner to date, more than nine months since the filing of the motion.

A. Motion to Reconsider

The Petitioner has not supported her motion to reconsider with any brief, pertinent precedent decisions or documentation to establish that there was an incorrect application of law or USCIS policy in our decision. Petitioner has also failed to establish that our decision was incorrect based on the evidence in the record at the time of decision. Accordingly, Petitioner has failed to meet the applicable requirements for a motion to reconsider.

B. Motion to Reopen

The Petitioner has not stated any new facts or supplemented the record with affidavits or other documentary evidence to be considered on motion. Accordingly, the Petitioner has failed to meet the requirements for a motion to reopen.

III. CONCLUSION

The Petitioner's motions do not meet the applicable requirements. The Petitioner has not established that our previous decision was based on an incorrect application of law or USCIS policy or that the decision was incorrect based on the record before us, nor has Petitioner submitted new facts or supplemented the record on motion to demonstrate eligibility for the benefit sought.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

Cite as *Matter of Y-Z-*, ID# 6618802 (AAO Aug. 6, 2019)

[1] In addition, page 5 of the Form I-290B instructions provides the following: "For motions, you must file any brief and/or additional evidence together with Form I-290B." *See* Instructions for Notice of Appeal or Motion, https://www.uscis.gov/i-290b.