U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37419655

Date: AUG. 18, 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 the Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference 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. *Id*. Aliens may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

FOD denied the petition. FOD concluded that the record does not establish that the Petitioner acquired the invested funds through lawful means and that, consequently, the record does not establish the Petitioner invested the requisite amount of capital. FOD further determined that the Petitioner failed to submit requested evidence, which precludes a material line of inquiry. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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 de novo review, we will withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

The Petitioner filed the Form I-526, Immigrant Petition by Alien Entrepreneur, in December 2017. FOD sent a notice of intent to deny (NOID) to the Petitioner on September 8, 2023, which requested the Petitioner to respond by October 11, 2023. FOD then denied the Form I-526 due to abandonment on October 23, 2023, believing that the Petitioner had not responded to the NOID. However, FOD later determined that "[t]he NOID response was not associated to the record" and, after FOD "became aware of the submission of a NOID response, this petition was reopened based on a service motion" on October 8, 2024. However, FOD ultimately denied the Form I-526 on October 31, 2024.

"When a [USCIS] officer, on his or her own motion, reopens a [USCIS] proceeding or reconsiders a [USCIS] decision, and the new decision may be unfavorable to the affected party, the officer shall

give the affected party 30 days after service of the motion to submit a brief." 8 C.F.R. § 103.5(a)(5)(ii). The record does not establish that, upon reopening the proceeding on FOD's own motion, FOD gave the Petitioner 30 days after October 8, 2024, to submit a brief before FOD ultimately denied the Form I-526 on October 31, 2024. Therefore, FOD's denial is in violation of the service-motion briefing requirements provided at 8 C.F.R. § 103.5(a)(5)(ii).

Based on the foregoing, we will remand the matter for the entry of a new decision. FOD may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.