U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38973841

Date: JUL. 03, 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). 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 U. S. economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish the lawful source of the $500,000 she invested in [redacted] (the NCE). We summarily dismissed the Petitioner's subsequent appeal of that decision because the appeal did not identify specifically any erroneous conclusion of law or statement of fact in FOD's unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). The matter is now before us on combined motions 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). Upon review, we will dismiss the motions.

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 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).

In our prior decision issued on March 6, 2025, we acknowledged that the Petitioner stated on the Form I-290B, Notice of Appeal or Motion, that she intended to submit a brief and/or additional evidence to our office within 30 calendar days of filing the appeal on August 12, 2024. However, the record indicated we had not received a supplemental brief or evidence. Because the Petitioner also did not provide a statement regarding the basis for appeal as instructed at Part 3 of the Form I-290B, we summarily dismissed the appeal as required by 8 C.F.R. § 103.3(a)(1)(v).

On motion, the Petitioner contends that she timely submitted a brief in support of her appeal and states she is providing evidence that the brief was delivered on August 12, 2024 to the Lewisville, Texas address provided in FOD's July 10, 2024 decision. She provides a copy of an undated brief that references the receipt number for her appeal and addresses the issues raised in FOD's decision denying her Form I-526, Immigrant Petition by Alien Entrepreneur. She also submits a Federal Express delivery confirmation for a package delivered to a Lewisville, Texas address on August 12, 2024. The Petitioner asserts that this new evidence establishes that she submitted an appellate brief and that we erred by summarily dismissing her appeal.

While the new evidence supports the Petitioner's claim that her attorney sent a Federal Express package to USCIS' Lewisville, Texas address that was delivered on August 12, 2024, it does not demonstrate that package included a brief. The record, which includes the Petitioner's prior appeal and a copy of the Federal Express mailing envelope, reflects that the package USCIS received on August 12, 2024, contained a Form I-290B with filing fee, a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, a copy of FOD's July 10, 2024 decision, and a cover letter from counsel, dated August 9, 2024, in which she stated "I will submit a brief in support of the appeal within 30 days." The Petitioner has not shown that she submitted a brief within the timeframe allowed or otherwise shown proper cause for reopening the appeal.

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). The record before us at the time we summarily dismissed the Petitioner's appeal in March 2025 did not contain a brief or other statement specifically identifying an erroneous conclusion of law or statement of fact in the decision being appealed as required by 8 C.F.R. § 103.3(a)(1)(v). The Petitioner has not established that our decision to summarily dismiss the appeal was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record at the time of the decision. We need not consider the merits of the arguments made in the Petitioner's newly submitted brief absent evidence that it was timely submitted in support of the appeal.

For the reasons discussed above, the Petitioner has not established grounds to warrant reopening the appeal or reconsideration of our prior decision to summarily dismiss the appeal. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.