U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37360938

Date: JUL. 22, 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) (2019).[1] 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 that will benefit the U. S. economy and create at least 10 full-time positions for qualifying employees.

FOD denied the Petitioner's petition due to abandonment under 8 C.F.R. § 103.2(b)(15). The Petitioner filed a subsequent motion to reopen under 8 C.F.R. § 103.5(a)(2) explaining that the notice of intent to deny (NOID) was not received due to the attorney's change of address. U.S. Citizenship and Immigration Services (USCIS) records show that the attorney sent a change of address request after the issuance of the NOID. As the Petitioner did not establish that there was an error on the part of USCIS, FOD dismissed the motion. The matter is now before us on appeal.

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 dismiss the appeal.

The issue on appeal is whether FOD properly dismissed the motion. On appeal, the Petitioner does not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). However, the Petitioner states that he has a new attorney and raises an ineffective assistance of counsel claim against his prior attorney.

Upon review, we conclude the Petitioner has not satisfied the threshold documentary requirements under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). Under *Matter of Lozad*a, an ineffective

[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 2019, prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

assistance of counsel claim must be supported by: (1) an affidavit from the aggrieved individual setting forth the agreement entered into with counsel; (2) evidence that counsel was informed of the allegations and given a chance to respond; and (3) evidence that a complaint has been filed with appropriate disciplinary authorities regarding the alleged ineffective representation, and if not, why not. *Id.* at 639. *Matter of Lozada* explains that "[t]he requirement that disciplinary authorities be notified of breaches of professional conduct not only serves to deter meritless claims of ineffective representation but also highlights the standards which should be expected of attorneys who represent persons in immigration proceedings, the outcome of which may, and often does, have enormous significance for the person." *Id.* at 639-40.

In this case, the Petitioner has not submitted sufficient documents confirming that he has substantially complied with the *Matter of Lozada* threshold documentary requirements. *See Tamang v. Holder*, 598 F.3d 1083, 1090 (9th Cir. 2010) (noting that *Matter of Lozada* "is intended to ensure both that an adequate factual basis exists in the record for an ineffectiveness complaint and that the complaint is a legitimate and substantial one"); *see also Dakane v. U.S. Att'y Gen.*, 399 F.3d 1269, 1273-74 (11th Cir. 2005) (requiring "substantial, if not exact, compliance with the procedural requirements of *Lozada*"). Specifically, the record lacks an affidavit from the Petitioner setting forth the agreement he had with counsel concerning actions to be taken on his petition, or evidence verifying that a complaint against counsel has been filed with the appropriate disciplinary authorities.[2] Without additional evidence, including evidence confirming that he has substantially complied with the threshold documentary requirements, the Petitioner has not sufficiently established an ineffective assistance of counsel claim. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or 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.

[2] The Petitioner states on appeal that he electronically submitted a grievance against counsel with the State Bar of Georgia, but that a confirmation for such grievance was not available at the time of the submission of the appeal brief.