U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24993070

Date: JULY 26, 2024

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 classification makes immigrant visas available to noncitizens 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. Noncitizens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish (1) that the funds invested by the Petitioner in [redacted][1] the new commercial enterprise (NCE), which is sponsored by [redacted] (the Regional Center),[2] have been obtained through lawful means, (2) that the required amount of capital has been invested or is actively in the process of being invested, and (3) that the NCE will create at least 10 full-time positions for qualifying employees.

We subsequently dismissed an appeal and combined motions to reopen and reconsider. The Petitioner then filed the second motion to reconsider. The Chief improperly issued a decision on the motion. Specifically, the Chief lacked jurisdiction over the motion because we have jurisdiction over the matter, including motions. *See* 8 C.F.R. § 103.5(a)(1)(ii) (stating that the official having jurisdiction is the official who made the latest decision in the proceeding). In light of the Chief's error, we reopened

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[1] According to the information provided by the Washington Secretary of State, Corporations and Charities Division, in its database, which is available at https://ccfs.sos.wa.gov/#/BusinessSearch, [redacted] was administratively dissolved on [redacted] 2019 because the entity was no longer in active status for failure to file its annual report that was due on January 31, 2019.

[2] In December 2013, the Chief designated [redacted] (Regional Center)'s participation in the EB-5 program. In [redacted] 2018, the Chief terminated the Regional Center's designation to participate in the EB-5 program, finding that it no longer served the purpose of promoting economic growth as required by 8 C.F.R. § 204.6(m)(6). In April 2021, we dismissed the Regional Center's subsequent appeal, concluding that the Regional Center did not present sufficient evidence relating to its [redacted] Project or documentation to show that it was continuing to promote economic growth as required by 8 C.F.R. § 204.6(m)(6).

the matter on a Service motion under 8 C.F.R. § 103.5(a)(5) and provided the Petitioner with an opportunity to submit a brief in support of her motion to reconsider. The Petitioner has not submitted a brief.

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 motion.

I. LAW

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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee) but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The issue before us is whether the Petitioner has established that our prior decision to dismiss the Petitioner's prior motions to reopen and reconsider was based on an incorrect application of law or USCIS policy. We, therefore, incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The Chief denied the petition, concluding that the record did not establish that the Petitioner has obtained her investment funds through lawful means, that she has invested or is actively in the process of investing the required amount of capital, and that the NCE would likely create the requisite number of jobs within two years. We summarily dismissed a subsequent appeal because the Petitioner's appeal did not specifically identify any erroneous conclusion of law or statement of fact in the Chief's unfavorable decision. In support of her appeal, the Petitioner indicated she would submit a brief or additional evidence within 30 days of filing the appeal, but she did not provide such brief or additional evidence.

We subsequently dismissed the Petitioner's motion to reconsider, finding that the Petitioner did not argue our summary dismissal was based on an incorrect application or law or policy. We also dismissed the Petitioner's motion to reopen, finding that the Petitioner provided the documents

previously submitted in the record and did not offer new facts or evidence relevant to our prior appeal decision to summarily dismiss the Petitioner's appeal.

In support of the instant motion to reconsider, the Petitioner contends that our prior motion decision did not provide factual findings or conclusions of law and did not address the applicable standard of proof. The Petitioner claims that our prior decision to summarily dismiss her appeal is not grounded in fact or the law. The Petitioner also contends that the Chief's and our reliance on a judicial proceeding involving another investor as a basis to deny her petition is nonsensical and that the Regional Center has in fact secured an 80-year lease with the [redacted] The Petitioner argues that we ignored the numerous new evidence and arguments she provided.

As stated above, in order to have established merit for reconsideration of our latest decision, a petitioner must both state the reasons why they believe the most recent decision was based on an incorrect application of law or policy and specifically cite laws, regulations, precedent decisions, or binding policies that the petitioner believes we misapplied in that prior decision. Thus, in order to prevail in her motion to reconsider, the Petitioner cannot merely disagree with our conclusions but rather must demonstrate how we erred as a matter of law or policy in that immediate prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

While we acknowledge the Petitioner's claims on motion, the Petitioner does not directly address the conclusions we reached in our prior motion decision nor provide reasons for reconsideration of those conclusions. We dismissed the Petitioner's prior motion to reconsider, finding that the Petitioner did not argue our summary dismissal was based on an incorrect application or law or policy. We also dismissed the Petitioner's prior motion to reopen, finding that the Petitioner did not offer new facts or evidence relevant to our prior appeal decision to summarily dismiss her appeal. The brief in support of the current motion lacks any cogent argument as to how we misapplied the law or USCIS policy in dismissing the Petitioner's prior motions to reopen and reconsider. The Petitioner reiterates her previous arguments presented in response to the Chief's notice of intent to deny and in support of her prior motions to reopen and reconsider. She does not identify any incorrect application of law or policy by us in our prior motion decision.

The Petitioner has not shown that our prior motion decision contains errors of law or policy or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

III. CONCLUSION

The Petitioner's motion to reconsider did not show that our prior motion decision was based on an incorrect application of law or USCIS policy. Accordingly, the motion will be dismissed. *See* 8 C.F.R. § 103.5(a)(4). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.