U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5531147

Date: JUNE 8, 2020

Appeal of Immigrant Investor Program Office Decision

Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program

In 1990, Congress established the EB-5 program to promote economic growth in the United States through foreign investment. See Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5). Foreign national investors who comply with the program's requirements first receive conditional status, followed by the opportunity for the removal of conditions and permanent resident status. Investors may fund their own projects or invest through a United States Citizenship and Immigration Services (USCIS) designated regional center. See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (the "Appropriations Act"), 1993, Pub. L. No. 102-395, 106 Stat. 1828, 1874 (Oct. 6, 1992), as amended.

In January 2017, the Chief of the Immigrant Investor Program Office (IPO) terminated the Appellant's designation as a regional center authorized to participate in the EB-5 program, concluding that it failed to show it was continuing to serve the purpose of promoting economic growth. The Appellant then filed a motion to reconsider (MTR) this termination with IPO which the Chief denied.

On appeal, the Appellant asserts that it maintains eligibility for continued participation in the EB-5 program and requests that its designation be reinstated.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. 8 C.F.R. § 103.5(a)(1)(i).

A motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

USCIS granted the Appellant its initial designation in October 2013. In June 2016, the Chief issued a Notice of Intent to Terminate (NOIT) finding that the Appellant no longer served the purpose of promoting economic growth. In [redacted] 2017, the Chief terminated the Appellant's designation, noting that the Appellant had not responded to this NOIT or cured the deficiencies noted therein. The Appellant filed a motion to reconsider this termination with IPO in June 2018 which the Chief dismissed, forming the basis for the instant appeal.

Although the Appellant's brief primarily addresses the Chief's initial decision to terminate its regional center designation, we emphasize that the Appellant did not appeal the termination itself, but rather the Chief's dismissal of its MTR. Therefore, the merits of the termination decision are not before us. Rather, the only issues before us are whether the Chief properly found that the Appellant's motion to reconsider met the applicable requirements pursuant to 8 C.F.R. § 103.5(a)(1)(i) and to 8 C.F.R. § 103.5(a)(3).

In her decision, the Chief noted that the Appellant's MTR was filed "more than 17 months after the date of the decision" and dismissed it as untimely. On appeal, the Appellant submits a cover letter, a memorandum, and a copy of the first page of the Chief's decision dismissing its MTR.[1]

In relevant part, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. In the memorandum submitted on appeal, the Appellant contends that it did not receive either the NOIT or notice of termination and that this is why it "did not appeal the decision back in 2017."[2] It states that it had moved "since then" and, based upon its contention that the Chief's 2018 decision was addressed incorrectly, speculates, "perhaps the correspondence back in 2017 went to the wrong address." However, it does not submit evidence on appeal demonstrating when it relocated or that it notified the Chief of this change of address prior to filing its MTR.

On appeal, the Appellant provides a copy of the initial page of the Chief's dismissal of its MTR, showing that its address was not correct on that correspondence.[3] However, the Appellant acknowledges in the accompanying memorandum that it received that decision, as its "mailman knows [it] well." The Appellant does not explain how this document establishes that it filed a timely response to the Chief's 2017 NOIT or notice of termination or otherwise overcomes the grounds for the Chief's dismissal. It provides no additional evidence on appeal addressing the Chief's finding that it did not timely file its MTR. For these reasons, we find that the Appellant has not established that it complied with the requirements of 8 C.F.R. § 103.5(a)(1)(i) for properly filing a motion.

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[1] We note that the record also includes a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, a cover letter, and a memorandum for the [redacted]

[2] We note that the Applicant also uses this to explain why it did not file its Form I-924A, Annual Certification of Regional Center, or pay the associated fees for 2017. This is not a requirement for filing a motion to reconsider. Accordingly, we do not discuss it in the instant decision.

[3] This document was addressed to [redacted] The record reflects that the Form I-290 B submitted with its MTR provides an address of [redacted]

III. CONCLUSION

The Appellant has not established on appeal that the Chief improperly dismissed its motion to reconsider her termination of its regional center designation.

ORDER: The appeal is dismissed.