U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37360708

Date: JUNE 25, 2025

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition by Standalone Investor

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 ten full-time positions for qualifying employees.

After issuing a notice of intent to deny (NOID) the petition alleging the Petitioner did not document the lawful source of funds he claimed to have invested in the new commercial enterprise, the Chief of the Immigrant Invest Program Office denied the petition for abandonment as he did not respond to the NOID. 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 dismiss the appeal.

I. LAW

The regulation at 8 C.F.R. § 103.2(b) provides:

> (13) *Effect of failure to respond to a request for evidence or a notice of intent to deny or to appear for interview or biometrics capture —*
>
> (i) *Failure to submit evidence or respond to a notice of intent to deny.* If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons. If other requested material necessary to the

[1] On March 15, 2022, President Joe Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. 1153(b)(5) (2022). As the Petitioner filed his petition in November of 2019, the relevant law then in existence governs this appellate adjudication.

processing and approval of a case, such as photographs, are not submitted by the required date, the application may be summarily denied as abandoned.

. . . .

(15) *Effect of withdrawal or denial due to abandonment.* The USCIS acknowledgement of a withdrawal may not be appealed. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new benefit request with a new fee. However, the priority or processing date of a withdrawn or abandoned benefit request may not be applied to a later application petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior benefit request shall otherwise be material to the new benefit request.

II. ANALYSIS

In June of 2024 the Chief issued the NOID to the addressed listed on the petition and after receiving no response to the notice, they denied the petition for abandonment. The Petitioner filed a motion to reopen and reconsider that denial, and the Chief dismissed the motions for failure to show the original denial was in error. *See* 8 C.F.R. § 103.5(a)(2). Within this appeal—and after obtaining new counsel—the Petitioner claims ineffective assistance of counsel relating to his first attorney.

In *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), the Board of Immigration Appeals (the Board) established a framework for asserting and assessing claims of ineffective assistance of counsel. First, the Board in *Lozada* set forth the following threshold documentary requirements for asserting a claim of ineffective assistance:

- A written affidavit from the Petitioner attesting to the relevant facts. The affidavit should provide a detailed description of the agreement with former counsel (i.e., the specific actions that counsel agreed to take), the specific actions actually taken by former counsel, and any representations that former counsel made about his or her actions.

- Evidence that the Petitioner informed former counsel of the allegation of ineffective assistance and was given an opportunity to respond. Any response by prior counsel (or report of former counsel's failure or refusal to respond) should be submitted with the claim.

- If the Petitioner asserts that the handling of the case violated former counsel's ethical or legal responsibilities, evidence that the Petitioner filed a complaint with the appropriate disciplinary authorities (e.g., with a state bar association) or an explanation why the Petitioner did not file a complaint.

Id. at 639. These documentary requirements are designed to ensure we possess the essential information necessary to evaluate ineffective assistance claim and to deter meritless claims. *Id.* Allowing former counsel to present his or her version of events discourages baseless allegations, and the requirement of a complaint to the appropriate disciplinary authorities is intended to eliminate any incentive for counsel to collude with his or her client in disparaging the quality of the representation.

Here, the Petitioner has not met the requirements within the *Lozada* decision. First, he has not offered a written affidavit attesting to the facts. Instead, the Petitioner's new counsel requests we accept the attorney's commentary in the appeal brief as the filing party's affidavit. As the record does not contain a proper affidavit from the Petitioner, he has not satisfied this requirement. Second, the record does not contain evidence that the Petitioner filed a complaint with the appropriate disciplinary authorities or an explanation why he did not file a complaint. Rather, he claims he electronically submitted a grievance with the state bar but presents no confirmation of the submission, as the brief reflects the confirmation was not available.

Because the Petitioner has not satisfied his burden, we will dismiss the appeal.

ORDER: The appeal is dismissed.