U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 3735917

Date: MAR. 6, 2020

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 foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

According to the Petitioner, he invested $500,000[1] in [redacted] the NCE, which is associated with a United States Citizenship and Immigration Services (USCIS) designated regional center, [redacted] Regional Center. The business plan indicated that the NCE would pool up to $5,000,000 EB-5 capital from 10 foreign national investors "to develop, manage and market a state of the art mixed use 30,000 sq. ft. building" in [redacted], Washington.

The Chief of the Immigrant Investor Program Office denied the Petitioner's petition. Subsequently, we dismissed his appeal. We found that he did not establish that the NCE would create the required number of jobs,[2] or that he had placed at least $500,000 at risk in the NCE. The matter is now before us on a motion to reopen the proceeding. Upon review, we will dismiss the motion.

We will dismiss the Petitioner's motion to reopen the proceeding because it does not "state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2) (specifying requirements for a motion to reopen the proceeding). His filing includes only documentation that he had previously offered in support of the petition and that we considered on appeal. He does not present any "affidavits or other documentary evidence" in support of any "new facts." *See id.* Indeed, he does not state any new facts in his motion brief.

---

[1] The Petitioner indicated that the NCE was located in a targeted employment area, and that the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2011).

[2] The Petitioner did not allege, and the record did not demonstrate, that the NCE had already created the requisite number of jobs. *See* 8 C.F.R. § 204.6(j)(4)(i)(A) (2011).

Instead, on motion, the Petitioner claims that we had used an incorrect standard of proof when reviewing his appeal. He alleges that "USCIS is seeking a level of certainty about a prospective project that is impossible to provide," rather than applying the preponderance of the evidence standard.[3] In short, he contends that the prior decision was based on an incorrect application of law or policy regarding the standard of proof applied to the evidence in the record. Such arguments are inapposite in a motion to reopen, which requires submission of new facts and evidence. 8 C.F.R. § 103.5(a)(2).

As explained in our decision dismissing the Petitioner's appeal, the record did not include, as required, a credible and comprehensive business plan "showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired."[4] 8 C.F.R. § 204.6(j)(4)(i)(B) (2011); *see also Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). For example, the record did not sufficiently show that the NCE would, more likely than not, have enough funds to complete the project, which was an assumption that the economic analysis relied on to project job creation estimates. Similarly, we raised concerns over the consistency and credibility of the project construction cost, which was one of the figures the economic analysis relied on to calculate job creation projections. Moreover, we determined that the record lacked sufficient corroboration over other data that the economic analysis relied on to project job creation figures.

As discussed in our prior decision, the Petitioner must comply with statutory and regulatory requirements, which include presenting a credible and comprehensive business plan confirming that the NCE will likely create the required number of jobs, and establishing that he has placed the required amount of capital at risk in the NCE. *See* 8 C.F.R. § 204.6(j)(4)(i)(B), (j)(2) (2011). He has not submitted these types of evidence on motion.

In conclusion, the Petitioner's motion to reopen the proceeding will be dismissed because his filing does not "state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2). Additionally, he has not demonstrated, by a preponderance of the evidence, that he is eligible for the EB-5 classification. *See* Section 291 of the Act, 8 U.S.C. § 1361 (providing that it is a petitioner's burden to establish eligibility for the immigration benefit sought); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

ORDER: The motion to reopen is dismissed.

---

[3] If a petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also* 6 *USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[4] As explained in our previous decision, the two-year job creation period described in 8 C.F.R. § 204.6(j)(4)(i)(B) (2011) commences six months after the adjudication of the petition. USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 19 (May 30, 2013), https://www.uscis.gov/legal-resources/policy-memoranda; *see also* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(5).