U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-O-C-

DATE: MAR. 7, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: 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. Foreign nationals may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center.[1] *See* 8 C.F.R. § 204.6(j)(4)(iii).

The Chief of the Immigrant Investor Program Office initially approved the petition, but then revoked the approval, concluding that the record did not establish, as required, that the Petitioner's investment remained affiliated with a regional center or that she continued to be eligible for the classification. Subsequently, we dismissed the appeal, two combined motions to reconsider and reopen the proceeding, and one motion to reconsider the matter. The Petitioner now files her fourth motion, a motion to reconsider our previous decision.

The record shows that the Petitioner invested in doing business as, , the NCE, which was affiliated with the an entity whose regional center status the Chief had terminated. The Securities and Exchange Commission obtained a final judgment in a United States district court against – an attorney who managed the – and other related individuals and businesses for conducting an investment scheme to defraud EB-5 investors.

In support of the instant motion to reconsider our previous decision, the Petitioner submits a brief and a July 2018 statement. She maintains, as she did previously in her appeal and motions, that she did not receive effective assistance from and that we should approve her petition because of the hardship she has experienced as a victim of EB-5 fraud that and others perpetuated.

I. LAW

[1] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e).

A motion to reconsider must establish that our previous 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). Moreover, a motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS or Department of Homeland Security policy (DHS). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

In addition, the regulation specifies motion filing requirements, providing that a petitioner must submit "a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed."

II. ANALYSIS

We will deny her motion to reconsider our previous decision for the following reasons. Initially, she has not submitted "a statement about whether or not the validity of [our last] unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." We will therefore deny her motion because she has not met the motion filing requirements. *See* 8 C.F.R. § 103.5(a)(1)(iii)(C), (a)(4).

Moreover, even if she had complied with the motion filing requirements, we would deny the instant motion to consider. The Petitioner argues that we erred in our previous decision because we did not approve her petition. Citing *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988), she claims that we "can in fact approve a benefit for an individual under certain circumstances." As noted in our decisions, the Petitioner has not demonstrated that Mr. Lee served as her counsel for her EB-5 petition. Regardless, assuming *arguendo* that he did, her argument that we may approve her petition, based on the facts of this case, is not supported by either case law or other legal authority. While *Lozada* sets forth the procedure under which a foreign national may advance an ineffective assistance of counsel claim, it does not hold that the remedy for such a claim is a grant of immigration benefit. In fact, in *Lozada*, the Board of Immigration Appeals denied the foreign national's motion because he did not establish prejudice resulted from his prior counsel's alleged ineffective assistance. *Lozada*, 19 I&N Dec. at 640 (noting that "no prejudice was shown to have resulted from prior counsel's failure to or decision not to file a brief in support of the appeal").

As explained in our most recent decision, and reiterate in this one, *Lozada* does not stand for the proposition that we must grant a foreign national's benefit request in light of his or her attorney's failings. Rather, the foreign national bears the burden of establishing eligibility for an immigration benefit, and we may approve the request upon he or she meeting that burden. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). The Petitioner in this case has had multiple opportunities to offer evidence. She, however, has not established her eligibility for the EB-5 classification based on an investment in the NCE that was

associated with a terminated regional center. On motion, she has not pointed to any legal or factual basis showing that we erred in our previous decision.

Additionally, the Petitioner argues on motion that USCIS violated her due process rights because it revoked her approved EB-5 petition, but not the approved petitions of other foreign nationals who invested in the NCE. She has not offered any legal authority or submitted evidence in support of her argument. USCIS records also do not corroborate her assertion that the NCE's other foreign investors' petitions have been unaffected in light of the termination of the [redacted] status and [redacted] actions.

III. CONCLUSION

The Petitioner's motion to reconsider our previous decision will be denied because it does not meet the motion filing requirements. *See* 8 C.F.R. § 103.5(a)(1)(iii)(C), (a)(4). In the alternative, for the reasons discussed above, she has not demonstrated that our previous decision was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record at the time. She has also not established her eligibility for the EB-5 classification. We will therefore deny her motion to reconsider the matter.

ORDER: The motion to reconsider is denied.

Cite as *Matter of C-O-C-*, ID# 2018194 (AAO Mar. 7, 2019)