U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-C-F-

DATE: MAR. 12, 2018

MOTION ON IMMIGRANT INVESTOR PROGRAM DECISION

PETITION: 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 foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise 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 and Immigration Services designated regional center. See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended. The Chief of the Immigrant Investor Program denied the petition and we summarily dismissed appeal. The matter is now before us on a motion to reopen and a motion to reconsider. Upon review, we will deny the motions.

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

For the purposes of this motion, the scope of our review is limited to the latest decision, which was our decision dismissing the Petitioner's appeal. Therefore, the issue in this matter is whether we properly summarily dismissed the Petitioner's appeal of the Director's revocation decision. The Petitioner's appeal was dismissed because the Petitioner indicated on Form I-290B, Notice of Appeal or Motion, that a brief and/or additional evidence would be submitted to us within 30 days. At the time of the dismissal, we had not received anything further from the Petitioner. In the instant motion, the Petitioner submits a statement that the Petitioner filed a brief on or about December 15, 2016. However, the Petitioner provided no evidence of the submission of a brief to us on that date and no brief was received at the time of the prior dismissal. In addition, it is not clear from the Petitioner's statement where the brief was filed. The instructions for the Form I-290B state that "[a]ny brief and/or additional evidence submitted after the initial filing of Form I-290B must be submitted directly to the AAO." USCIS, *Instructions for Notice of Appeal or Motion*, 4 (April 10, 2017), available at https://www.uscis.gov/system/ files_force/files/form/i-290binstr.pdf (last accessed Mar. 1, 2018).

As discussed, no brief or additional evidence was received by us, nor did the Petitioner provide evidence of submission to us of a brief or additional evidence that he indicates was submitted on or about December 15, 2016. As such, the Petitioner has not shown proper grounds for the reopening or reconsideration of our decision.

A review of the record confirms that our summary dismissal of the appeal was warranted. The regulations state: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." 8 C.F.R. § 103.3(a)(1)(v).

The Petitioner's appeal consisted of a Form I-290B, Notice of Appeal or Motion, in which the Petitioner indicated a brief and/or additional evidence would be submitted to us within 30 days. While the Petitioner was not required to submit a brief or additional evidence, Part 4 of the Form I-290B does require the filing party to provide a separate sheet of paper with a statement that specifically identifies an erroneous conclusion or law or fact in the decision being appealed. The Petitioner did not submit this required statement and did not supplement the appeal with a brief or evidence after filing it. We properly determined that the regulations required the summary dismissal of the appeal.

The Petitioner has not provided new evidence on motion to establish that it had timely submitted the required statement, a brief, or additional evidence to establish a basis for its appeal. Nor has the Petitioner stated that our decision to summarily dismiss the appeal was based on an incorrect application of law or policy. Accordingly, the combined motion will be denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of H-C-F-*, ID# 1246851 (AAO Mar. 12, 2018)