U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-J-Y-

DATE: MAR. 15, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner seeks EB-5 classification as an immigrant investor based on a $500,000[1] investment in a new commercial enterprise (NCE). *See* Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). She made her investment through a U.S. Citizenship and Immigration Services (USCIS)-designated regional center,[2] *See* 8 C.F.R. § 204.6(j)(4)(iii). This fifth preference classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in an NCE that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not establish her eligibility. We dismissed the appeal. Specifically, we determined that she did not satisfy the job creation requirements or document the lawful source of the funds she remitted to the NCE.

The Petitioner now files a motion to reopen the matter. On motion, she submits essentially the same brief as the one she offered on appeal, and does not address the reasons upon which we dismissed her appeal. She also resubmits previously presented documents.

Upon review, we will deny the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original

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

[2] In her appellate brief, the Petitioner acknowledged that in March 2017, the Securities and Exchange Commission filed a complaint against and associated individuals and business entities, alleging misappropriation of EB-5 funds. The proceedings remain pending before the U.S. District Court for the Our adjudications of her appeal as well as motion to reopen the matter do not rely on allegations specified in the complaint.

petition. A motion to reopen is based on documentary evidence of new facts. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." 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

According to the NCE's business plan and other supporting documents, the NCE would pool up to $15,500,000 EB-5 capital from 31 foreign national investors to make loans to the job creating entity (JCE), to construct a 100,000 square foot facility in Washington, to be used for manufacturing, wholesale trade, or distribution. The project was known as .

We will deny the Petitioner's motion to reopen the matter because it lacks "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." *See* 8 C.F.R. § 103.5(a)(1)(iii)(C); 8 C.F.R. § 103.5(a)(4).

In the alternative, we will deny the Petitioner's motion to reopen the proceeding for the following reasons. The Petitioner submits a motion brief that is virtually the same as her appellate brief, and it does not address the bases under which we dismissed her appeal. Moreover, in support of her motion, she resubmits documents that are already in the record, including the NCE's Confidential Program Description Memorandum and bank records. Upon a review of these documents and others in the file, we dismissed her appeal, concluding that she did not establish her eligibility for the classification. In light of the above, the Petitioner has not submitted any documentary evidence on motion that supports any new facts, or that overcomes our grounds for dismissal. *See* 8 C.F.R. § 103.5(a)(2). As noted, facts that a petitioner had previously asserted or documents that he or she had previously submitted do not constitute "new facts" on motion.

III. CONCLUSION

The Petitioner's motion to reopen the matter 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 addition, the motion will be denied because it does not present documentary evidence of new facts or establish the Petitioner's eligibility for the classification. *See* 8 C.F.R. § 103.5(a)(2).

ORDER: The motion to reopen is denied.

Cite as *Matter of H-J-Y-*, ID# 2018358 (AAO Mar. 15, 2019)