U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-N-C-

DATE: MAY 8, 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 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.

The Chief of the Immigrant Investor Program Office denied the petition, concluding the record did not establish, as required, that [redacted] LP,[1] the NCE, would create the necessary number of jobs.[2] Subsequently, we dismissed his appeal. The matter is before us on combined motions to reconsider and reopen. Upon review, we will deny the combined motions.

We will deny the Petitioner's combined motions because they do not include "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), (a)(4).

In addition, on March 26, 2019, we issued a notice to the Petitioner requesting additional evidence. The Petitioner was afforded 33 days to respond to the notice. He, however, did not respond within or after the time period specified in the request.

A petition may be denied as abandoned, denied based on the record, or denied for both reasons if a petitioner does not respond to a request for evidence by the required date. *See* 8 C.F.R. § 103.2(b)(13)(i). In addition, 8 C.F.R. § 103.2(b)(14) provides that the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. Our RFE specifically informed the Petitioner that "[w]e may dismiss your appeal or deny your motions if we do not receive your response to this RFE **within 33 days of the date on the cover letter**." (Emphasis in original). To date, more than 33 days have lapsed, and we have yet to receive a response from the

[1] Some documents in the record refer to the NCE as [redacted] LP.

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

Petitioner. As such, we will deny his combined motions as abandoned, and his appeal will remain dismissed.

ORDER: The motion to reconsider is denied as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

FURTHER ORDER: The motion to reopen is denied as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

Cite as *Matter of H-N-C-*, ID# 2033361 (AAO May 8, 2019)