U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36883102

Date: MAY 19, 2025

Appeal of Field Operations Directorate (FOD) 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 aliens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) summarily denied the petition as abandoned per 8 C.F.R. § 103.2(b)(13), concluding that the Petitioner did not submit a timely response to a notice of intent to deny (NOID). The Petitioner filed a motion to reconsider under 8 C.F.R.§ 103.5(a)(3), which FOD dismissed. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

The Petitioner asserted eligibility based on an investment into [redacted] the new commercial enterprise (NCE) in the amount of $500,000 on December 15, 2017.[1] The NCE, affiliated with [redacted] proposed to pool up to $1,000,000 from two immigrant investors and invest in an equity interest in [redacted], both the job creating entities (JCEs). JCEs intend to construct and operate a commercial mixed-use development located in [redacted] Kansas.

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in INA 203(b)(5), and adding significant new integrity provisions. *See s*ection 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition on January 19, 2018, the relevant law in existence on that date governs this appellate adjudication. The Petitioner also indicated that the project is located in a targeted employment area. Therefore, 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)(2015).

FOD issued its first NOID on November 20, 2020, with a deadline of December 23, 2020, as the Petitioner did not sufficiently establish that his investment funds derive from lawful sources and that the NCE would create full-time positions for at least ten qualifying employees. In December 2020, the Petitioner requested an extension to file a response to collect additional documents. In February 2021, the Petitioner submitted a response. On January 5, 2023, FOD issued a second NOID, with a deadline of February 7, 2023. The record shows that the Petitioner submitted a response on April 10, 2023. On August 7, 2023, FOD denied the petition citing abandonment and noted that "[a]s of the date of this notice, U.S. Citizenship and Immigration Services (USCIS) does not have a record of a response."

Based on our de novo review of the record, we conclude that the Petitioner did not abandon the benefit request and submitted a timely response. When FOD issued the NOIDs, USCIS COVID-19-related flexibilities were in place. The COVID-19 flexibilities as of January 24, 2023, stated "[USCIS] considers a response received within 60 calendar days after the due date set forth in the . . . requests or notice before taking any action, if the request or notice was issued between March 1, 2020, and March 23, 2023, inclusive." *See* USCIS Alert, "USCIS Extends COVID-19-related Flexibilities," (Jan. 24, 2023), https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities-1. With the added 60 days from the COVID flexibilities, the Petitioner's second NOID response was due on Saturday, April 8, 2023. The Petitioner's NOID response arrived on Monday, April 10, 2023,[2] and FOD should have considered this timely.[3]

We recognize that the Petitioner made no allegation of any service error either on motion[4] to FOD or on appeal.[5] Although we agree with FOD's latest decision issued on March 25, 2024, in that the Petitioner's motion did not meet applicable requirements of a motion, 8 C.F.R. § 103.5(a)(2) or (3), if we were to dismiss only on this latest decision, our conclusion would not serve the appeal's purpose of identifying "erroneous conclusion of law or statement of fact." 8 C.F.R. § 103.3(a)(1)(v).

Here, FOD erroneously denied the underlying petition as abandoned when the record demonstrates that the Petitioner sent a timely response under the COVID flexibilities. FOD should have rendered a decision on the merits of the petition and discussed how the evidence does or does not establish eligibility. *See* 8 C.F.R. 103.3(a)(1)(i) (requiring an officer to "explain in writing the specific reasons for denial"). Therefore, we will withdraw FOD's decision and remand the matter for entry of a full decision on the merits of the petition based on the entire record, including the two NOID responses submitted by the Petitioner.

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[2] The record contains a FedEx envelope showing that the Petitioner's response was mailed on April 7, 2023, and delivered on April 10, 2023.

[3] Since April 8, 2023 was a Saturday, the filing period was extended to the end of the next business day, April 10, 2023. *See* 1 USCIS Policy Manual B.6(D), https://www.uscis.gov/policy-manual (when the last day of a filing period for a paper-based benefit request ends on a Saturday, Sunday, or a federal holiday, USCIS applies the regulatory definition of day at 8 C.F.R. § 1.2 and extends the deadline for filing until the end of the next business day).

[4] The Petitioner appears to acknowledge on motion that he did not provide a timely response, explaining that he "did not have enough time to collect the requested information and documents" and "sent a response asking for more time to supplement the response."

[5] On appeal, the Petitioner primarily addresses the grounds for denial of the underlying petition, contending that he "himself is a victim of a developer who did not follow through on a development plan," and submits documents only on the issue of job creation and does not address the lawful source of his investment funds.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.