U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06433734

Date: MAY 27, 2020

Motion on Administrative Appeals Office 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 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, finding that the Petitioner did not establish her eligibility for the EB-5 classification. Specifically, the Chief concluded that the Petitioner did not satisfy the job creation requirements. Subsequently, we summarily dismissed the Petitioner's appeal, because she did not present a brief, statement, or additional documents on appeal. Citing 8 C.F.R. § 103.3(a)(1)(v), we determined that she "did not identify specifically any erroneous conclusion of law or statement of fact in the [Chief's] unfavorable decision."

The Petitioner now files combined motions to reconsider and reopen the proceeding. Upon review, we will dismiss the motions.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). 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. BACKGROUND

On page 2 of her petition, the Petitioner claimed to have invested at least $500,000[1] in [redacted] also known as, [redacted] the NCE. According to the executive summary of the NCE's business plan, which the Petitioner submitted to the Chief, the NCE planned to solicit $98,000,000 from 196 foreign national investors to develop and operate "a [redacted] port in [redacted] Washington, with service at [redacted]" The Chief issued a notice of intent to dismiss (NOID) the petition, which the Petitioner responded.

Upon reviewing the record as a whole, including the Petitioner's NOID response, the Chief denied the petition, finding that the evidence did not include "[a] copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result," as required under 8 C.F.R. § 204.6(j)(4)(i)(B) (2016). Specifically, the Chief determined that the evidence "did not establish that the project was on track in accordance with the various phases of construction and milestones for the project"; that the project would likely receive sufficient funds for its development and operation; or that the figures the NCE used to project job creation were credible.

The Petitioner appealed the Chief's denial on December 3, 2018, noting in her Form I-290B, Notice of Appeal or Motion, that she was "filing an appeal to the AAO [Administrative Appeals Office]" and that she would "submit [her] brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal." Approximately 3 months later, in a filing dated March 5, 2019, the Petitioner, through her counsel, requested additional time to "gather evidence" and to submit an appellate brief. We denied the request on March 7, 2019. Subsequently, on April 11, 2019, we summarily dismissed the Petitioner's appeal under 8 C.F.R. § 103.3(a)(1)(v), because she had "fail[ed] to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

In support of her instant combined motions to reconsider and reopen the proceeding, the Petitioner presents her response to the Chief's NOID. She also resubmits documentation she offered to the Chief in her NOID response.

III. ANALYSIS

We will dismiss the Petitioner's combined motions because they do not satisfy the filing requirements under 8 C.F.R. § 103.5(a)(1)(iii)(C) and 8 C.F.R. § 103.5(a)(4). The Petitioner has not presented "a statement about whether or not the validity of [our April 2019] 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).

In the alternative, we will dismiss the motions for the following reasons. The review of the instant motions is limited to the basis for our April 2019 decision. In our prior decision, we summarily dismissed the Petitioner's appeal under 8 C.F.R. § 103.3(a)(1)(v), because her filing had "fail[ed] to identify specifically any erroneous conclusion of law or statement of fact for the appeal." On motion,

[1] The Petitioner indicated that the NCE was located in a targeted employment area, and that 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) (2016).

she explains that she is "re-submitting [her] . . . legal arguments and evidence" that she had provided to the Chief in her NOID response. The Chief specified in her decision that she had considered all arguments and documentation in the record, including those the Petitioner presented in her NOID response, when denying the petition.

In support of the instant motion to reconsider the matter before us, the Petitioner does not "state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that [our April 2019] decision was based on an incorrect application of law or [U.S. Citizenship and Immigration Services (USCIS)] policy," as required under 8 C.F.R. § 103.5(a)(3). She also does not demonstrate that our April 2019 decision "was incorrect based on the evidence of record at the time of the . . . decision." *Id.* As her filing does not satisfy the requirements for a motion to reconsider the matter, we will dismiss the motion.

Similarly, we will dismiss the Petitioner's motion to reopen the proceeding. As noted, on motion, she resubmits documents that she had previously presented to the Chief in her NOID response. These documents do not address the basis of our April 2019 summary dismissal of her appeal. As such, her filing does not "state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence," as required under 8 C.F.R. § 8 C.F.R. § 103.5(a)(2). As her filing does not satisfy the requirements for a motion to reopen the proceeding, we will dismiss the motion.

IV. CONCLUSION

We will dismiss the Petitioner's combined motions under 8 C.F.R. § 103.5(a)(1)(iii)(C), (a)(4). In the alternative, we will dismiss her motion to reconsider the matter because she has not established that we based our April 2019 decision on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record at the time of the decision. In addition, we will dismiss her motion to reopen the proceeding because her filing does not state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.