U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-H-W-

DATE: OCT. 1, 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 (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.

According to the Petitioner, she invested $500,000[1] in [redacted] the NCE, which is associated with a United States Citizenship and Immigration Services (USCIS) designated regional center, [redacted] Regional Center.[2] The business plan indicated that the NCE would pool up to $5,000,000 EB-5 capital from 10 foreign national investors "to develop, manage and market a state of the art mixed use 30,000 sq. ft. building" in [redacted], Washington.

The Chief of the Immigrant Investor Program Office denied the Petitioner's petition. Subsequently, we dismissed her appeal. We found that she did not establish that the NCE would create the required number of jobs,[3] that the funds she remitted to the NCE came from a lawful source, or that she had placed at least $500,000 at risk in the NCE. The matter is now before us on a motion to reopen the proceeding. Upon review, we will deny the motion.

We will deny the Petitioner's motion to reopen the proceeding because it does not "state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2) (specifying requirements for a motion to reopen the proceeding).

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[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).

[2] As noted in our prior decision, in 2017, the Securities and Exchange Commission (SEC) filed a complaint against [redacted] as well as associated individuals and business entities, alleging misappropriation of EB-5 funds. *SEC Charges Businessman with Misappropriating EB-5 Investments*, https://www.sec.gov/litigation/litreleases/2017/[redacted].htm, accessed on November 19, 2018, a copy of the printout was incorporated into the record of proceedings. Our previous and current decisions do not rely on allegations specified in the SEC complaint.

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

Her filing includes only documentation that she had previously offered in support of the petition and that we considered on appeal. She does not present any "affidavits or other documentary evidence" in support of any "new facts." *See id.* Indeed, she does not state any new facts in her motion brief.

Instead, on motion, the Petitioner claims that we had used an incorrect standard of proof when reviewing her appeal. She alleges that "USCIS is seeking a level of certainty about a prospective project that is impossible to provide," rather than applying the preponderance of the evidence standard.[4] In short, she contends that the prior decision was based on an incorrect application of law or policy regarding the standard of proof applied to the evidence in the record. Such arguments are inapposite in a motion to reopen, which requires submission of new facts and evidence. 8 C.F.R. § 103.5(a)(2).

As explained in our decision dismissing the Petitioner's appeal, the record did not include, as required, a credible and 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, including approximate dates, within the next two years, and when such employees will be hired."[5] 8 C.F.R. § 204.6(j)(4)(i)(B); *see also Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). For example, the record did not sufficiently show that the NCE would, more likely than not, have enough funds to complete the project, which was an assumption that the economic analysis relied on to project job creation estimates. Similarly, we raised concerns over the consistency and credibility of the project construction cost, which was one of the figures the economic analysis relied on to calculate job creation projections. Moreover, we determined that the record lacked sufficient corroboration over other data that the economic analysis relied on to project job creation figures. Furthermore, we found that the documents in the record were insufficient to confirm that the Petitioner had obtained her funds from a lawful source or that she had placed at least $500,000 at risk in the NCE.

As discussed in our prior decision, the Petitioner must comply with statutory and regulatory requirements, which include presenting a credible and comprehensive business plan confirming that the NCE will likely create the required number of jobs, as well as offering evidence verifying that her funds came from a lawful source and that she has placed the required amount of capital at risk in the NCE. *See* 8 C.F.R. § 204.6(j)(4)(i)(B), (j)(3), (j)(2). She has not submitted these types of evidence on motion.

In conclusion, the Petitioner's motion to reopen the proceeding will be denied 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." 8 C.F.R. § 103.5(a)(2). Additionally, she has not demonstrated, by a preponderance of the evidence, that she is eligible for the EB-5 classification. *See* Section 291 of the

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[4] If a petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also* 6 *USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[5] As explained in our previous decision, the two-year job creation period described in 8 C.F.R. § 204.6(j)(4)(i)(B) commences six months after the adjudication of the petition. USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 19 (May 30, 2013), https://www.uscis.gov/legal-resources/policy-memoranda; *see also* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(5).

Act, 8 U.S.C. § 1361 (providing that it is a petitioner's burden to establish eligibility for the immigration benefit sought); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

ORDER: The motion to reopen is denied.

Cite as *Matter of C-H-W-*, ID# 3774123 (AAO Oct. 1, 2019)