U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39085312

Date: SEP. 18, 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)(2019). 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 U.S. economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition due to abandonment as the Petitioner did not submit a response to the notice of intent to deny (NOID). The Petitioner then filed a combined motion to reopen and reconsider, which FOD dismissed stating that "the evidence in the record fails to establish that the denial due to abandonment . . .was in error." 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.

Our review on appeal is generally limited to the basis of the immediate prior decision. However, the Petitioner asserts for the first time on appeal that the cause for not responding to the NOID was due to ineffective assistance of their prior counsel. In support, the Petitioner submits a sworn statement, a sworn statement from their prior counsel, and a grievance filed with the State Bar of Georgia; and contends that he satisfies the requirements for an ineffective assistance of counsel claim. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988).

In light of this additional evidence that FOD did not have an opportunity to review, we will withdraw FOD's decision and remand the matter for the entry of a new decision. On remand, FOD should consider the Petitioner's new ineffective assistance of counsel claim. If FOD determines the Petitioner meets the threshold, they should then review the documents the Petitioner submitted in his combined motion and make a determination on the merits of the petition. FOD may request any additional

evidence considered pertinent to the new determination. We express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision is withdrawn.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