U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40126710

Date: SEP. 19, 2025

Appeal of Field Operations Directorate 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).[1] 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 (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. The Petitioner claimed that she invested $500,000 into the NCE, [redacted] LLC,[2] and the investment funds derive from a shareholder's loan from a company in Hong Kong, owned 100% by her husband.

Field Operations Directorate (FOD) denied the petition on March 12, 2025, concluding that the record did not establish that the Petitioner's invested funds derive from lawful sources. The Petitioner subsequently filed a motion to reopen and reconsider. The U.S. Citizenship and Immigration Services (USCIS) lockbox rejected the motion on April 16, 2025, as the Petitioner did not sign the signature page of the Form I-290B, Notice of Appeal or Motion. The Petitioner resubmitted the motion filing along with a signed Form I-290B, but FOD dismissed the motion for being untimely. 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 dismiss the appeal.

On appeal, the Petitioner contends that she included "both a properly executed signature page and a blank signature page" when she filed the motion and USCIS "may have inadvertently reviewed only the blank page and erroneously concluded that the form was unsigned." However, a review of the

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in section 203(b)(5) of the Act, and adding significant new integrity provisions. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition prior to the implementation of the RIA, the relevant law then in existence governs this appellate adjudication.

[2] The NCE, affiliated with [redacted] LLC dba [redacted] (Regional Center), proposed to pool $139 million from 278 immigrant investors and lend the entire amount to [redacted] LLC, the job-creating entity, to develop and construct residential homes and related infrastructure in [redacted] California.

USCIS records, including the copy of the motion rejected by the lockbox, does not support the Petitioner's claim. The rejected copy in USCIS records shows that the Petitioner submitted only one signature page (page 4) of the Form I-290B, and the Petitioner's signature box was left blank.[3] Therefore, USCIS lockbox properly rejected the motion filing for the lack of the Petitioner's signature, per 8 C.F.R. § 103.2(a)(7)(ii)(A) (providing that a benefit request will be rejected if it is not signed with valid signature) and 8 C.F.R. § 103.2(b)(1) (each benefit request must be properly completed and filed"; *see also* Instructions for Notice of Appeal or Motion, p.2 (05/31/24) (stating that "[i]f your form is not signed, or if the signature is not valid, we will reject your form.")

Furthermore, FOD's decision to dismiss the motion for being untimely was not erroneous. The Petitioner's resubmission of the motion along with a signed Form I-290B was received on April 25, 2025. This was untimely because the receipt date of April 25 was 44 days after March 12, 2025, the date of the underlying unfavorable decision. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b) (requiring that a motion must be filed within 33 calendar days of the date USCIS served the unfavorable decision by mail). FOD also correctly concluded that the Petitioner did not demonstrate that the delay in filing was reasonable and beyond her control, as her explanation that she submitted both "a properly executed signature page and a blank signature page" contradicted the record.

With the appeal, the Petitioner provides additional documentation on the lawful source of funds and contends that there is "no deficiency regarding [her] lawful source of funds, invested capital, or the EB-5 project documentation."[4] The Petitioner also claims that the denial "will cause the substantial economic damages on the Petitioner and her family." However, we do not address and reserve our opinion on whether the Petitioner has demonstrated that her investment funds derive from lawful sources as the motion was not properly filed. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

Here, the Petitioner has not shown that FOD erred in determining that the motion was untimely filed. On appeal, the Petitioner does not submit sufficient evidence to demonstrate, by the preponderance of the evidence, that the delay in filing her motion was reasonable and beyond her control. Therefore, the Petitioner has not met her burden, and we will dismiss the appeal.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings

---

[3] It is a well-established principle that "a presumption of regularity attaches to the actions of Government agencies" absent clear evidence to the contrary. *See U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001) (citing *United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926)).

[4] We note that the Petitioner offers documents previously requested by FOD, such as financial statements and bank records of her husband's company in Hong Kong at the time of her investment. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we generally do not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.