U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16155519

Date: JULY 5, 2023

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 classification makes immigrant visas available to noncitizens 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. Noncitizens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

The Chief of the Immigrant Investor Program Office denied the petition on four grounds: (1) the Petitioner did not establish that she has invested or was actively in the process of investing the required amount of capital in [redacted] the new commercial enterprise (NCE), (2) the Petitioner did not demonstrate the lawful source of funds invested in the NCE, (3) the Petitioner made impermissible material changes to her petition, and (4) the English translations of the foreign language documents in the record did not comport with regulatory requirements. We dismissed a subsequent appeal on the first two grounds identified in the Chief's decision. We subsequently dismissed combined motions to reopen and consider. The matter is now again before us on a second motion to reconsider.

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). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reconsider to instances where the petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must

not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee) but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

As a preliminary matter, we note that, by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Thus, the issue before us is whether the Petitioner has established that we erred in dismissing the prior motion to reopen for failure to state new facts supported by affidavits or other documentary evidence and that our decision to dismiss the prior motion to reconsider was based on an incorrect application of law or policy. While we may not address each piece of evidence individually, we have reviewed and considered each one.

As stated above, in order to have established merit for reconsideration of our latest decision, a petitioner must both state the reasons why he or she believes the most recent decision was based on an incorrect application of law or policy and specifically cite laws, regulations, precedent decisions, or binding policies that the petitioner believed we misapplied in that prior decision. Therefore, to prevail in her motion to reconsider, the Petitioner cannot merely disagree with our conclusions but rather must demonstrate how we erred as a matter of law or policy in that immediate prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

While we acknowledge the Petitioner's claims on motion, the brief in support of the current motion lacks any cogent argument as to how we misapplied the law or policy in dismissing the prior motions to reopen and reconsider. The Petitioner does not identify any incorrect application of law or policy by us in our prior decision dismissing the prior motions. The Petitioner's contentions in her current motion merely restate facts and issues we have already considered in our previous decisions. These assertions were thoroughly discussed in our prior decision dismissing the appeal and again in our prior decision dismissing the prior motions. As such, we incorporate our prior decisions by reference, and we will not re-adjudicate the petition anew.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.