



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF C-O-C

DATE: JUL. 06, 2018

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 classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. Foreign nationals may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center.<sup>1</sup> 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 initially approved the petition, but subsequently revoked the approval, concluding that the record did not establish, as required, that the Petitioner's investment remained affiliated with a regional center. We dismissed the appeal and subsequently denied two combined motions to reopen and reconsider.

The Petitioner now files a third motion to reconsider. She continues to maintain that she did not receive effective assistance from the regional center attorney, that her investment satisfied all legal requirements when she filed the petition, and that we should take into account her severe hardship. Further, the Petitioner asserts that we should grant the immigration benefit she seeks due to her unique circumstances.

Upon review, we will deny the motion.

## I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a new commercial enterprise (NCE). The commercial enterprise can

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<sup>1</sup> A regional center is an economic unit involved with the promotion of economic growth through "improved regional productivity, job creation, and increased domestic capital investment." See 8 C.F.R. § 204.6(e) (defining "regional center").

be any lawful business that engages in for-profit activities. An immigrant investor may invest the required funds directly in a new commercial enterprise, or invest through a regional center.

Regional centers apply for designation as such with USCIS. Designated regional centers identify and work with new commercial enterprises, which in turn are associated with a specific project, known as the job creating entity (JCE). Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii).

An individual seeking classification as an immigrant investor files a Form I-526, Immigrant Petition by Alien Entrepreneur. Under certain circumstances, the Chief may revoke an approved petition after first issuing a notice of intent to revoke the approval. These types of revocations must be justified by "good and sufficient cause." *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). The approval of a petition vests no rights in the beneficiary of the petition, as approval of a petition is but a preliminary step in obtaining an immigrant visa. *Id.* at 589.

## II. ANALYSIS

At the time she filed the petition, the Petitioner was actively in the process of investing \$500,000<sup>2</sup> in [REDACTED] (the NCE), which was affiliated with the [REDACTED] (the Regional Center). The Chief initially approved the petition. When USCIS subsequently terminated the Regional Center's designation, however, the Chief revoked that approval. On appeal and through the subsequent motions, the Petitioner attests that [REDACTED] the acting president and managing partner of the Regional Center and her former attorney for a separate application, misappropriated millions of dollars from several foreign investors, including the Petitioner. She argues for relief, asserting ineffective assistance by [REDACTED] that imposed a severe hardship on her for actions beyond her control. Further, she has affirmed that her investment was qualifying at the time she filed the petition, and contends that an unreasonable delay in the processing of her Form I-485, Application to Register Permanent Residence or Adjust Status, filed subsequent to the approval of the Form I-526 Petition, resulted in the revocation.

The current filing does not meet the requirements for a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3). A motion to reconsider must establish that our 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). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS or Department of Homeland Security policy.

The Petitioner has not supported her current motion to reconsider with legal authorities showing that our prior decision was in error. She notes that we cited *Matter of Lozada*.

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<sup>2</sup> As the NCE is located in a targeted employment area, the required amount of capital is downwardly adjusted from \$1,000,000 to \$500,000. *See* 8 C.F.R. § 204.6(f).

19 I&N Dec. 637 (BIA 1988), which allowed some relief for foreign nationals who received ineffective assistance of counsel. We stated in our decision that *Lozada* does not imply that USCIS must approve a benefit for an individual based on the attorney's failings. The Petitioner asserts, however, that we should interpret *Lozada* as giving us the authority to approve a benefit under certain circumstances, and accordingly, should grant the requested benefit due to the unique nature of her case. As explained in our prior decision, we have already afforded comparable relief for those who received poor assistance because we have considered all evidence on appeal and subsequent motions. With regard to her assertion that the Form I-485 processing delay mandates our reinstatement of the petition's approval or her request that we take into account the hardships resulting from the petition's revocation, the Petitioner reiterates her previous arguments, which we have already addressed in our past decisions.

### III. CONCLUSION

The Petitioner has not cited any legal authority to support her assertion that our prior decision was incorrect, as required for a motion to reconsider.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of C-O-C*, ID# 1308291 (AAO Jul. 06, 2018)