U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41241323

Date: APR. 07, 2026

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) (2019).[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.

Field Operations Directorate (FOD) denied the Form I-526, Immigrant Petition by Alien Entrepreneur, concluding the record did not establish that the NCE in which the Petitioner invested, which was associated with [redacted] (the regional center), would create at least 10 full-time positions for qualifying employees. FOD subsequently dismissed each of the Petitioner's three motions to reopen. In the latest motion, the Petitioner sought approval to make a qualifying investment in another NCE based on U.S. Citizenship and Immigration Services' (USCIS) termination of the regional center's designation and claimed eligibility to do so under the "good faith investor" protections at section 203(b)(5)(M) of the Act. FOD determined that she is not eligible for those protections because it denied her petition prior to the regional center's termination. 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.

I. LAW

An alien may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4).

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in INA 203(b)(5), 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 filed her petition in 2019, the relevant law then in existence governs this adjudication.

The alien investor may invest the requisite amount of qualifying capital directly in an NCE or through a regional center, as the Petitioner did in this case.[2] Regional centers apply for designation to participate in the EB-5 program with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project, taken on either directly by the NCE or by one or more separate "job creating entities" (JCEs).

For purposes of the Form I-526 petition adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of petition. Investors in a regional center project are subject to the same program requirements but may rely on indirect job creation demonstrated through reasonable economic methodologies. *See* 8 C.F.R. §§ 204.6(e), (j)(4)(iii), (m)(7)(ii). If the NCE has not already created the jobs, the petition must include a comprehensive business plan demonstrating the need for at least 10 qualifying employees within the next two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). *Matter of Ho* explained that a comprehensive business plan must be credible and contain sufficient detail to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998).

Where a regional center, NCE or JCE is the subject of termination or debarment from the EB-5 program, investors with a pending or approved petition, including petitions filed prior to the 2022 enactment of the EB-5 Reform and Integrity Act, may retain eligibility. *See* Section 203(b)(5)(M) of the Act; *see generally* 6 *USCIS Policy Manual* G.3(E), https://www.uscis.gov/policy-manual. Specifically, an amendment entitled "Treatment of good faith investors following program noncompliance" allows "an otherwise qualified petition," under specified circumstances, to remain valid even if "based on an investment in a terminated regional center." Section 203(b)(5)(M)(i)(I) of the Act.

II. ANALYSIS

The sole issue presented on appeal is whether the Petitioner, who did not have a pending or approved Form I-526 petition at the time USCIS terminated the designation of the regional center through which she made her EB-5 investment, may nevertheless establish eligibility for EB-5 classification by making a qualifying investment in another new commercial enterprise under the good faith investor provisions at section 203(b)(5)(M) of the Act.

The Petitioner claims that she is eligible to have the denial reversed, the matter reopened, and to be afforded the notice and opportunity to amend her petition under section 203(b)(5)(M) of the Act because FOD: (1) was noncompliant with a statutory requirement to terminate the regional center's designation after it failed to pay the EB-5 Integrity Fund Fee for fiscal year 2023 within 90 days of its due date; and (2) acted arbitrarily and capriciously by denying her petition prior to the termination of the regional center's designation while other petitions associated with the same NCE and regional center remained pending. The Petitioner does not contest FOD's determination that the record did not establish the NCE would create at least 10 full-time positions for qualifying employees, which was the sole ground for denial of her petition.

[2] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2019).

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A. Procedural History

In July 2019, the Petitioner made a $500,000 investment into [redacted], an NCE affiliated with [redacted], a then-designated regional center, and filed her Form I-526 petition. The NCE proposed to pool $45 million from 90 immigrant investors to invest an equity interest in [redacted], which intended to develop, construct and operate a luxury hotel in [redacted] Oregon.

FOD denied the petition on September 20, 2023, after issuing a request for evidence in May 2023 and reviewing the Petitioner's response. FOD concluded that the record did not establish, by a preponderance of the evidence, that the NCE would create at least 10 full-time jobs for each immigrant investor, as it did not contain a comprehensive and credible business plan that was *Matter of Ho* compliant and relied on reasonable economic methodologies to demonstrate that the requisite number of jobs would be created.

As noted, the Petitioner has filed three subsequent motions to reopen, and FOD has dismissed each one. In the latest motion, filed in December 2024, the Petitioner provided a copy of the Notice of Voluntary Termination issued to [redacted] on October 28, 2024, indicating that FOD had granted its request for voluntary termination of its regional center designation, made in December 2023.

In her motion, the Petitioner asserted that "INA 203(b)(5)(M) for 'treatment of good faith investors following program noncompliance' clearly applies given the [regional center] termination." Pursuant to this claim, she submitted offering documents and executed agreements for her participation in an NCE associated with a different regional center, bank records indicating that [redacted] transferred the funds remaining from her initial investment into the escrow account of the new NCE, and supporting evidence intended to demonstrate that her investment in the new NCE would meet all project-related requirements for EB-5 classification.

FOD determined that the Petitioner did not submit new evidence overcoming the grounds for denial of her petition. FOD acknowledged the Petitioner's arguments but emphasized that section 203(b)(5)(M) of the Act only applies "upon termination or debarment," as applicable, of a regional center, NCE or JCE. FOD determined that the good faith investor protections would not apply in this case because USCIS denied the Petitioner's Form I-526 prior to terminating the regional center's designation. Based on these facts, FOD emphasized that she did not have a qualifying pending or approved petition that could remain valid or authorized under section 203(b)(5)(M)(i)(I) of the Act.

B. The Good Faith Investor Protections

On appeal, the Petitioner offers "additional clarification about the timeline of [her] I-526 denial and the termination date of the Regional Center" and asserts that she should have been afforded the remedies of section 203(b)(5)(M) of the Act based on the regional center's termination.

First, she emphasizes that "USCIS failed to terminate the regional center for non-payment of the Integrity Fee in early 2023 as it should have done." Specifically, the Petitioner asserts that "[h]ad USCIS acted in terminating the [Regional Center] in accordance with the timeline detailed under INA

203(b)(5)(J)(iv), she would have been afforded protection under INA 203(b)(5)(M) as [her] I-526 denial was not administratively final."

Section 203(b)(5)(J) of the Act establishes an "EB-5 Integrity Fund," mandates the collection of an annual fee from each designated regional center, and describes the permissible uses of the fund. Section 203(b)(5)(J)(iv) of the Act imposes consequences for failure to pay the annual fee and requires USCIS to impose a reasonable penalty if the regional center does not pay the fee within 30 days and to terminate the designation of any regional center that does not pay the fee within 90 days.

The Petitioner states that the annual Integrity Fund Fee for fiscal year 2023 was due March 2, 2023, with a late fee occurring after April 1, 2023. She provides a copy of a news alert published on the USCIS website on March 1, 2023, titled "USCIS to Start Collecting Fee for EB-5 Integrity Fund." The Petitioner emphasizes that despite waiving the late fee for fiscal year 2023, the alert provided notice that USCIS "must terminate the designation of any regional center that did not pay the required fee within 90 days of the due date." Based on Section 204(b)(5)(J)(iv) of the Act and this news alert, she argues that termination of the regional center's designation should have occurred on May 31, 2023, prior to the September 2023 denial of her Form I-526. The Petitioner maintains that she would have been eligible to make an investment in another NCE and amend her petition under the good faith investor protections at section 203(b)(5)(M) of the Act had USCIS terminated the regional center's designation in compliance with the timeline provided in the statute.

The Petitioner's argument is not persuasive. The statute requires USCIS to terminate a regional center's designation if it fails to pay the Integrity Fund Fee within 90 days of the due date; however, there is no statutory mandate as to when termination must occur. The statute does not require that USCIS immediately commence the termination process through issuance of a notice of intent to terminate after 90 days have passed, nor does it impose a specific deadline by which the regional center must be terminated. Therefore, FOD was not required to terminate (or issue a notice of intent to terminate) as of May 31, 2023, as claimed.

In addition, USCIS continued to accept EB-5 Integrity Fund payments for fiscal year 2023 beyond the initially published deadline referenced by the Petitioner. Most recently, in 2024, USCIS published an alert advising that "[f]or regional centers that failed to pay fees for FY 2023 and/or FY 2024, we are also accepting delinquent payments for FY 2023, and FY 2024 from Oct. 1, 2024, through Dec. 30, 2024."[3] This alert also provided notice that "USCIS would take steps to terminate any regional center that, on or before Dec. 30, 2024, has not paid the required EB-5 Integrity fees for each of FY 2023, FY 2024, and FY 2025."

Therefore, the Petitioner has not demonstrated that USCIS failed to comply with the statute or that "termination of the regional center's designation should have occurred on May 31, 2023" or any other date prior to the denial of her Form I-526 in September 2023.

The Petitioner also asserts on appeal that "similarly situated investors in the same project who received an I-526 denial after the [Regional Center] termination have been afforded the protections under INA

[3] *See* "Alert: Notice for Fiscal Year 2025 Integrity Fund Payments – Due Oct. 1, 2024," https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/ eb-5-whats-new.

203(b)(5)(M)." She contends this is "an arbitrary and capricious result in light of USCIS botching the statutorily required termination of regional centers who had not paid Integrity Fees." The Petitioner asserts she should not be ineligible for good faith investor protections "because of USCIS' relative efficiency in adjudicating her petition over others."

As already discussed, the Petitioner has not established that FOD was noncompliant in its enforcement of the EB-5 Integrity Fee-related termination provisions described at section 203(b)(5)(J)(iv) of the Act, or that it was statutorily mandated to take steps to terminate the regional center's designation on any specific date prior to the denial of the Petitioner's Form I-526. Her petition was also denied months before the regional center made the decision to request that USCIS grant a voluntary termination of its designation in December 2023.

The Petitioner's contention that the "relative efficiency in adjudicating her petition over others" led to an "arbitrary and capricious result" is similarly unpersuasive. FOD received the Petitioner's Form I-526 in July 2019, issued an RFE in May 2023, and denied the petition in September 2023, shortly after receiving her RFE response and based on the latest available information regarding the progress of the hotel project, which the NCE was still actively pursuing at the time. While the Petitioner states that some petitions associated with the same NCE remained unadjudicated as of October 2024 when FOD granted the regional center's request for voluntary termination, she has not provided any legal support for her claim that FOD's processing of her case according to the timeline described above was unreasonable or that any differences in processing times must be considered "arbitrary and capricious." FOD is not required to hold otherwise deniable petitions in abeyance based on the possibility that a regional center may request termination or become noncompliant in the future.

The protections provided by section 203(b)(5)(M) of the Act are available to good faith EB-5 alien investors whose I-526 petitions were pending at the time USCIS terminates the designation of the regional center through which they invested and those whose petitions were approved prior to regional center termination. While the Petitioner suggests that she is entitled to the same protections despite FOD's denial of her petition 13 months prior to the regional center's termination, she has not established a legal basis for eligibility under the plain language of the statute. The statute clearly requires a good-faith investor seeking these protections to have a pending "otherwise qualified petition" or an approved petition for such petition to "remain valid" under section 203(b)(M)(i)(I) of the Act, and this requirement is reflected in USCIS' policy guidance. *See generally* 6 *USCIS Policy Manual, supra*, at G.3(E).

Finally, the Petitioner argues that the denial of her petition "is not yet administratively final" and that termination of the regional center's designation "prior to administratively final action" should trigger the good faith investor provisions. With this argument, she suggests that her filing of three successive motions and the instant appeal have preserved her eligibility to make a qualifying investment in a new commercial enterprise under section 203(b)(5)(M)(ii)(I)(bb) of the Act.

The Petitioner has not provided support for her claim that a petition denied prior to the termination of a regional center, even if the subject of a pending appeal or motion at the time of termination, remains a pending "otherwise qualified petition" that may "remain valid." She does not contend, for example, that USCIS has a statutory duty to identify and notify immigrant investors with such pending appeals

or motions and provide them with notice of a regional center's termination under section 203(b)(5)(M)(i)(II) of the Act.

We observe that the Petitioner could potentially establish eligibility for treatment under the good faith investor provisions if she established with the instant appeal that she met all eligibility requirements for EB-5 classification at the time FOD adjudicated her petition, such that the petition should have been approved. As noted, FOD concluded in its initial decision that the record did not establish that the NCE in which the Petitioner invested would create at least 10 full-time positions for qualifying employees. The Petitioner contested this conclusion in her first motion to reopen and FOD determined she did not overcome the sole basis for denial. She has not addressed that determination in her two subsequent motions to reopen or in the instant appeal. Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (*citing Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Therefore, FOD's determination on that issue is final.

While we do not question that the Petitioner made her investment in the NCE in good faith, she has not established that FOD erred by denying her Form I-526 petition or subsequent motions, that USCIS was required to terminate the regional center's designation for noncompliance prior to the date on which it denied her petition, or that FOD acted arbitrarily or capriciously in the processing of her case. The record does not establish that the matter should be reopened to allow her the opportunity to amend her petition and invest in another new commercial enterprise under the statute's good faith investor provisions.

III. CONCLUSION

It is the Petitioner's burden to demonstrate her eligibility for the EB-5 classification. *Matter of Chawathe*, 25 I&N Dec. at 375-76. For the reasons discussed above, the Petitioner has not established, by a preponderance of the evidence, her eligibility for this classification. Specifically, the Petitioner has not demonstrated that her EB-5 investment in the NCE will result in the creation of at least 10 full-time jobs for qualifying employees, or that USCIS is compelled to reopen this matter to allow her the opportunity to file an amended petition under the good faith investor provisions at section 203(b)(5)(M) of the Act. Accordingly, 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 may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.