U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34924212

Date: APR. 16, 2025

Appeal of Immigrant Investor Program 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).[1] This employment-based fifth preference (EB-5) classification makes immigrant visas available to individuals 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. Petitioners 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 of 1993, section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not demonstrate the lawful source of the funds that he invested in [redacted] LP (the NCE), an entity associated with the regional center [redacted] The Chief also determined that the record did not establish that the NCE will create full-time positions for at least 10 qualifying employees for each of the investors seeking EB-5 classification. In the denial, the Chief declined to defer to a prior favorable determination related to job creation in another petition associated with this NCE, based upon discrepancies and inconsistences in the record. 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 Chief's decision and remand the matter for entry of a new decision consistent with the following analysis.

A petitioner may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. 8 C.F.R. § 204.6(e) (defining "commercial enterprise"). They may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case.

[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 section 203(b)(5) of the Immigration and Nationality Act, and adding significant new integrity provisions. *See* Section 203(b)(5) of the Act (2022). As the Petitioner filed his petition in November 2019, the relevant law then in existence governs this appellate adjudication.

Regional centers apply for designation as such 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 entities 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 investor seeking EB-5 classification must show that their investment will benefit the U. S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). An NCE may be relied upon by multiple investors each seeking EB-5 classification, provided that each investor has invested or is actively in the process of investing the required amount, and that each individual investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

A petition is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the NCE. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 qualifying employees within the next two years. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Mere conclusionary assertions, however, do not enable USCIS to determine whether the job-creation projections are any more reliable than hopeful speculation. *Id.* Most importantly, the business plan must be credible. *Id.*

A petitioner must demonstrate that they have placed their own capital at risk in the NCE. *See id.*; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are [their] own"). In addition, the petitioner must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show the lawful source of the funds, an investor must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the path of the funds back to a lawful source.[2] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

The Petitioner asserts eligibility based on an investment of $500,000 in the NCE. The NCE proposes to pool up to $7,200,000 from 14 immigrant investors and will lend the entire amount to [redacted] the JCE. The JCE intends to build and operate a [redacted] located in [redacted] FL.

After consideration of the initial evidence in the record, the Chief issued a notice of intent to deny (NOID), advising the Petitioner that the evidence did not establish the requisite job creation or the lawful source of the Petitioner's funds. Following receipt of the Petitioner's response, the Chief denied the petition, concluding that the Petitioner did not overcome the deficiencies in the NOID. The Chief concluded that the evidence did not sufficiently establish how investor funds, or additional loan and

[2] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program are not of suspect origin." *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001) (holding that a petitioner had not established the lawful source of her funds because, in part, she did not designate the nature of all of her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

equity funds, were used and that different versions of the business plan reflect rising project costs without explanation or justification. Based upon various such inconsistencies and discrepancies in the record, the Chief determined that the petition lacked a comprehensive and credible business plan. *See Matter of Ho*, 22 I&N Dec. at 213. Regarding the evidence requested in the NOID to establish the lawful source of the Petitioner's funds, the Chief stated that the Petitioner "did not submit documentary evidence in response to the NOID." The Chief further stated that the Petitioner did not submit specific evidence that was requested in the NOID, including foreign business registration records, tax returns for the Petitioner, and tax returns for the Petitioner's father.

On appeal, the Petitioner acknowledges the delays and rising costs of the project, but asserts that construction is now nearly complete, the [redacted] is scheduled to open, and that the requisite job creation has been established. The Petitioner also submits additional evidence including a new business plan and new economic impact analysis. The Petitioner also contends that, contrary to the Chief's statements in the decision, he did submit substantial additional evidence in response to the NOID regarding the source of his investment funds. Additionally, the Petitioner submitted supplemental evidence during the pendency of this appeal, asserting that the hotel is now open and operating and that these changed circumstances establish eligibility.

Upon review, we will withdraw the Chief's decision and remand the matter for further consideration of the evidence in the record and entry of a new decision. Any evidence submitted in connection with a petition is incorporated into and considered part of the request. 8 C.F.R. § 103.2(b)(1). Here, we note that the record shows that the Petitioner submitted evidence related to the source of the Petitioner's investment funds in response to the Chief's NOID, including tax returns and foreign business registration records. The Chief's findings to the contrary are therefore in error.

On remand, the Chief should consider the entirety of the evidence in the record and determine whether it sufficiently overcomes the deficiencies identified in the NOID. Additionally, the Chief may consider the supplemental evidence submitted on appeal regarding the recent opening of the JCE and whether this overcomes the inconsistencies in the business plan such that the Petitioner has established that his investment will create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). Following review of the entire record, the Chief should enter a new decision. That new decision, if unfavorable, shall include a sufficiently detailed and substantive analysis of the evidence to explain the specific reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i).

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