U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37920976

Date: AUG. 15, 2025

Appeal of Field Operations Directorate (FOD) 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) (2017).[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. Aliens 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, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended by section 575 of Pub. L. No. 114-113 (2017).

Field Operations Directorate (FOD) initially approved the petition in October 2018 but subsequently revoked the approval in February 2025. FOD concluded that the Petitioner did not establish her capital was obtained through lawful means. 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 decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. They may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. 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) (2017). In

[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. https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221006-EB5ReformAndIntegrityAct.pdf. As the Petitioner filed her petition in September 2017, the relevant law then in existence governs this appellate adjudication.

addition, the investor must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e).

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may, at any time, for what he or she deems to be good and sufficient cause, revoke the approval of any petition approved under section 205. *See also* 8 C.F.R. §205.2(a) (stating that USCIS may revoke the approval of a petition upon notice to the petitioner on any ground other than those specified in § 205 when the necessity for the revocation comes to the attention of USCIS). There is "good and sufficient" cause within the meaning of section 205 of the Act to revoke the approval of a visa petition if the evidence of record at the time of the decision, including any explanation or rebuttal by the petitioner, warrants a denial based on the petitioner' failure to meet their burden of proof. *Matter of Estime*, 19 I&N Dec. 450, 452 (BIA 1987).

Volume 6, Part G, Chapter 3 of the *USCIS Policy Manual* articulates USCIS' policy regarding deference to previous agency determinations in the EB-5 context. *See generally* 6 *USCIS Policy Manual* G.3(A)(2), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-3. As a general matter, USCIS does not reexamine determinations made earlier in the EB-5 process, and such earlier determinations will be presumed to have been properly decided. *Id.* However, USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts upon which a favorable decision was made, have materially changed, there is fraud or misrepresentation in the record of proceeding, or the previously favorable decision is legally deficient.

II. ANALYSIS

The record indicates that in September 2017, the Petitioner invested $500,000[2] in [redacted] LLC (the NCE), which is associated with the [redacted] LLC, pursuant to the Immigrant Investor Program. The record indicates that the NCE proposed to pool $100 million from 200 immigrant investors to finance the construction of a building in New York. FOD initially approved the petition in October 2018.

FOD issued a notice of intent to revoke (NOIR) in March 2023. In the NOIR, FOD indicated that the record did not "establish that the capital which has been invested by Petitioner or which the Petitioner is actively in the process of investing is capital that has been obtained through lawful means." Specifically, FOD noted that the Petitioner appeared for a consular visa interview in June 2019, but "was unable to answer basic questions about her planned investment" and "failed to describe in detail investments she claimed to have in Ukraine or demonstrate any ability to speak as a credible investor." FOD concluded therefore that the "Petitioner fraudulently represented her qualifications and sources of income." FOD further alleged that the Petitioner's spouse "is connected to money laundering and corruption, per open source. Additional investigation reveals significant derogatory information that indicated Petitioner and spouse might be involved in multiple unlawful activities in the United States."

FOD provided the Petitioner with an opportunity to respond to the information in NOIR. The Petitioner's response included a detailed brief addressing FOD's allegations as well as a declaration

[2] The Petitioner indicated the NCE is located in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2017).

from the Petitioner, her source of funds documentation, and criminal history checks for her and her spouse. For example, the Petitioner provided information from the Ministry of Internal Affairs of Ukraine indicating that she and her spouse did not have criminal records.

FOD revoked the approval of the petition in February 2025. Its decision maintained that the Petitioner had not demonstrated "the requisite knowledge or experience that would substantiate her credibility as an investor" and concluded that she "fraudulently represented her qualifications and sources of income." The decision, however, did not specify the qualifications and income sources the Petitioner misrepresented. FOD also stated that the Petitioner was "investing an amount exceeding her documented life savings," but its decision did not sufficiently consider the documentation in the record indicating that the Petitioner received a $270,000 monetary gift from her mother.

FOD reiterated in its decision that the Petitioner's spouse is "allegedly connected to money laundering and corruption, as indicated by publicly available sources. Additional investigative findings have uncovered substantial derogatory information suggesting that both the Petitioner and her spouse may be implicated in multiple unlawful activities within the United States." FOD's decision, however, did not identify "the publicly available sources" reporting on the Petitioner's spouse's misconduct or provide specific facts demonstrating that he engaged in money laundering and corruption. Nor did FOD point to any evidence showing that the Petitioner and her spouse were involved in unlawful activities in the United States.

Furthermore, FOD's decision faulted the Petitioner for not submitting certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or resolved) involving monetary judgments against her from any court in or outside the United States within the past fifteen years. *See* 8 C.F.R. § 204.6(j)(3)(iv). This basis for revocation, however, was not included in the NOIR. A revocation can only be grounded upon, and the petitioner is only obliged to respond to, the allegations in the NOIR. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

On appeal, the Petitioner argues that her investment in the NCE originated from lawful sources. She contends that FOD revoked its approval of the petition "based only on vague allegations that are unsupported by any evidence on record."

Upon review, we will withdraw FOD's decision and remand the matter for further review and entry of a new decision.

An officer's written decision must explain the specific reasons for the revocation. *See* 8 C.F.R. § 205.2(c). This explanation should be sufficient to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Here, FOD's decision did not sufficiently consider the documentation the Petitioner submitted in response to the NOIR. Further, despite stating that the decision was based on "the evidence in the record," it lacked a substantive analysis of the Petitioner's exhibits and a specific explanation of why they were determined to be insufficient to show, by a preponderance of the evidence, that the Petitioner

obtained her invested capital through lawful means. Rather, FOD's decision reflects that it was based in substantial part on unsupported assertions and information from "publicly available sources." The decision does not identify these sources, and the record lacks copies of any open-source materials FOD may have reviewed.

If a decision will be unfavorable to the petitioner and is based on derogatory information considered by USCIS and of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). Further, observations that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. at 568.

To ensure fair and complete consideration of the proceedings before us, it is necessary that the record of proceedings contains copies of all evidence considered. FOD bears the responsibility of ensuring that the record is complete and contains all evidence submitted by the Petitioner and any other evidence considered in reaching its decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976).

Therefore, on remand, FOD should identify and incorporate any documents, which may have been inadvertently omitted from the record of proceeding, before reviewing the entire record, including the Petitioner's brief and new evidence submitted on appeal. If FOD cannot supplement the record with the missing materials, and if the new decision will be based in part on materials not submitted by the Petitioner, FOD should issue a new NOIR, granting the Petitioner a reasonable opportunity to respond, before issuing 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 revocation.

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