U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36620741

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).[1] This fifth preference (EB-5) classification makes immigrant visas available to noncitizens 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.

Field Operations Directorate (FOD) denied the petition, concluding the Petitioner did not establish (1) that the capital invested was made available to the business most closely responsible for job creation, and (2) that the new commercial enterprise (NCE), [redacted] LP, would likely create at least 10 full-time positions for qualifying employees. In the denial, FOD declined to defer to the exemplar application associated with this NCE and the favorable determinations related to job creation, concluding that the underlying facts have materially changed. 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 FOD's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An alien can 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"). A petitioner may invest the required funds directly in an NCE or through a regional center. 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 alien investor seeking EB-5 classification must demonstrate that their

[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 Act, and adding significant new integrity provisions. *See* Section 203(b)(5), 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed her petition in 2018, the relevant law in existence on that date governs this appellate adjudication.

investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying employees within two years. 8 C.F.R. § 204.6(j)(4). For purposes of the Form I-526 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 the Form I-526. *See generally* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a new commercial enterprise will create full-time positions for at least 10 qualifying employees within two years, the petition must be accompanied by:

> (A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
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> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

If an adverse decision is based on derogatory information considered by USCIS, of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information and present information on its behalf before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i).

II. ANALYSIS

The Petitioner asserts her eligibility for EB-5 classification based on an investment of $500,000 into the NCE on September 14, 2018. The NCE proposed to pool $23 million from 46 immigrant investors, along with other sources of funding, to finance construction of a hotel and casino in [redacted] Mississippi. Thereafter, the NCE project changed to a proposed hotel, casino, and amusement park in [redacted] Mississippi.

FOD issued a notice of intent to deny (NOID) to the Petitioner in February 2021, notifying the Petitioner of its intent to deny the petition because "publicly available resources [did not verify] that progress had been made as projected in the business plan towards completion of the project." The NOID included a footnote with a URL to a Google Street View search result (conducted in May 2020) that according to FOD revealed no project progress at the location of the job-creating site. Following receipt of the Petitioner's response, FOD denied the petition concluding that the Petitioner did not establish that the business plan was *Matter of Ho* compliant, or that the Petitioner's investment will create at least 10 full-time positions for qualifying employees. FOD, relying on the aforementioned publicly available sources, further noted that the proposed construction timelines in both the original and updated business plans were not met and concluded that there was "no evidence that construction of the hotel/casino has started." FOD further determined that the Petitioner failed to establish that the economic methodologies used to demonstrate the creation of indirect jobs were reasonable, as the information underlying the economic model came from a business plan FOD found to be neither comprehensive nor credible.

On appeal, the Petitioner asserts that FOD violated USCIS policy by failing to give deference to prior agency determinations and maintains that no material change in facts has occurred, despite some changes to the project's location, structure, and timeline since the initial business plan dated March 2016 was submitted to USCIS. The Petitioner submits additional evidence to show that the project has made sufficient progress, noting that an [redacted] (a condition for building a casino under the Mississippi Administrative Codes) has been built and operational since 2023. The Petitioner further asserts that jobs have been created by the [redacted] even though the originally planned hotel and casino have not yet been built. Finally, the Petitioner submits a revised business plan (dated January 2025) and a market analysis projecting hotel and casino construction, along with loan documentation for the construction.

Upon review, we conclude that FOD did not properly notify the Petitioner of the derogatory information considered in its decision that she did not invest in the job creating entity and that the business plans were not credible and therefore could not serve as a basis to project job creation. *See* 8 C.F.R. § 103.2(b)(16)(i). The NOID did not sufficiently identify the "publicly available sources" and provide specific derogatory information regarding the construction project. FOD did not provide further identification or analysis of the relied-upon information, and merely providing a URL is insufficient because no printouts of the Google Street View information were provided to the Petitioner or included in the record of proceedings. As a result, the NOID did not provide adequate notice of the derogatory information and did not give the Petitioner provide a meaningful opportunity to respond. *See* 8 C.F.R. § 103.2(b)(16)(i). Pursuant to 8 C.F.R. § 103.2(b)(16)(ii), "a determination of statutory ineligibility shall be based only on information contained in the record of proceeding" that is disclosed to a petitioner. Here, the "publicly available sources" were neither included in the record nor adequately disclosed to the Petitioner.

FOD also concluded that the Petitioner did not establish that the required amount of capital has been made available to the business most closely responsible for job creation, citing *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998). *Matter of Izummi* provides that, for an investor to establish that they have placed their investment funds at risk for the purpose of generating a return, "[t]he full amount of [EB-5] money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based." However, in making this determination, FOD again relied on unidentified "public sources," and did not provide adequate notice to the Petitioner of the derogatory information.

For the above stated reasons, we withdraw FOD's decision and remand the matter for further review, issuance of a notice providing the Petitioner with an opportunity to rebut any derogatory information from outside the record of proceeding, and entry of a new decision.

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