U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37171859

Date: AUG. 25, 2025

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) (2018).[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 (2015).

Field Operations Directorate (FOD) denied the petition, concluding the record did not establish that the Petitioner has placed the required amount of capital at risk and that the investment of the required amount of capital will create full-time positions for at least 10 qualifying employees within two years. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.[2]

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.

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return. *See* 8 C.F.R. § 204.6(j)(2). To meet this requirement, the "full amount of money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based." *Matter of Izummi*,

[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. As the Petitioner filed her petition in September 2018, the relevant law then in existence governs this appellate adjudication.

[2] On appeal, counsel asserts that at the time the Petitioner timely filed her Form I-290B, Notice of Appeal or Motion, neither he nor the Petitioner had received a copy of the denial notice issued by FOD on August 30, 2023.

222 I&N Dec. at 179. In addition, to demonstrate that the qualifying contribution of capital has been placed at risk for the purpose of generating a return, a petitioner must present evidence of the actual undertaking of business activity. *See Matter of Ho*, 22 I&N Dec. at 209-210.

In addition, the regulation specifies that an EB-5 petition "must be accompanied by evidence that the alien has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise in the United States which will create full-time positions for not fewer than 10 qualifying employees." 8 C.F.R. § 204.6(j). To establish prospective job creation, a petitioner must submit a copy of a comprehensive business plan to demonstrate the need for not fewer than 10 qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.[3] *See* 8 C.F.R. § 204.5(j)(4)(i)(B); *see also Matter of Ho*, 22 I&N Dec. at 2013. (specifying that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about the job-creation potential" and "must be credible").

The Petitioner indicated on page 5 of her petition that she had invested $500,000 in [redacted] (the NCE), which is associated with [redacted] LLC (the Regional Center). The NCE proposes to pool up to $5,000,000 from up to 10 immigrant investors and lend the entire amount to [redacted] LLC, the job creating entity (JCE). The JCE intends to convert an existing industrial building in [redacted] Indiana to a [redacted] branded hotel with 128 guest rooms.

FOD denied the petition in August 2023 based, in part, on a determination that the Petitioner did not meet her burden to show that the NCE will create, directly or indirectly, at least 10 full-time positions for qualifying employees within two years. Although FOD acknowledged evidence the Petitioner submitted at the time of filing and in response to a request for evidence (RFE) in September 2021, its conclusion that the Petitioner did not meet this eligibility requirement was primarily based on "open source evidence related to development of the project site." FOD's decision cites to URL addresses for six online sources it consulted in 2022 and 2023, noting that such sources establish there has been "a documented lack of progress developing the property" which has resulted in "its attempted seizure by the [redacted]" and ongoing litigation between the town and the property owners in federal court. FOD concluded that information contained in these sources undermined the credibility of the submitted business plans, the project's timeline, and the economic methodology used to determine the number of direct and indirect jobs the project would create.

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

If a decision will be unfavorable to a 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). A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the petitioner. 8 C.F.R. § 103.2(b)(16)(ii).

[3] The two-year job creation period described in 8 C.F.R. § 204.6(j)(4)(i)(B) commences six months after the adjudication of the petition. *See generally* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual.

Here, although FOD stated the decision was based on the "evidence of record," the decision reflects that the unfavorable determination regarding the job creation eligibility requirement was based, in substantial part, on the open-source information referenced in the decision. FOD did not advise the Petitioner of this potentially derogatory information prior to rendering the decision. Further, the record lacks copies of any open-source materials FOD reviewed and was therefore not based on information in the record of proceeding which had been disclosed to the petitioner.

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 by the Chief in reaching her 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 all documents, which may have been inadvertently omitted from the record of proceeding, before reviewing the entire record and entering a new decision. If the new decision will be based in part, on materials not submitted by the Petitioner, FOD must issue a new RFE or notice of intent to deny (NOID), granting the Petitioner a reasonable opportunity to respond, before issuing the new decision, in compliance with 8 C.F.R. § 103.2(b)(16)(i) and (2). In addition, any new RFE or NOID should provide the Petitioner with the opportunity to address any additional potential grounds of ineligibility, including whether she met her burden to demonstrate that the funds she invested have been made available to the business most closely responsible for job creation.

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