U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37236501

Date: AUG. 26, 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). This fifth preference 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 United States economy and create at least 10 full-time positions for qualifying employees. *Id*. Aliens may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

FOD denied the petition, concluding that the record did not establish that the job-creating entity (JCE) would 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.

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*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998). 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. 206, 209-10 (Assoc. Comm'r 1998).

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.[1] *See* 8 C.F.R. § 204.5(j)(4)(i)(B); *see also Matter of Ho*, 22 I&N Dec. at 213 (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 the Form I-526, Immigrant Petition by Alien Entrepreneur, that he had invested $500,000[2] into [redacted] LP, the NCE, which is associated with [redacted] LLC, a regional center designated pursuant to the Immigrant Investor Program.[3] The NCE proposes to pool up to $17,000,000 from up to 34 immigrant investors. The NCE indicates it will lend the entire amount to [redacted] LLC, the JCE. The JCE intends to acquire, construct, renovate, and operate a 112-room hotel with a restaurant, a lounge, and a beach club, located in [redacted], California.

FOD determined that the business plan is not *Matter of Ho* compliant because the record does not establish, among other things, that the project was completed as planned. Based on the business plan's deficiencies, FOD further concluded that, because the business plan is not credible, the record does not establish through reasonable methodologies that the JCE would 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 both a request for evidence (RFE) and a notice of intent to deny (NOID), its conclusion that the Petitioner did not meet this eligibility requirement was substantially based on "publicly available information regarding the stalled project status." FOD's decision cites a URL address for an online source, dated 2021, that it consulted in 2024, noting that the source "casts doubts on the overall project credibility moving forward." FOD concluded that information contained in this source 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 it 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).

---

[1] 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.

[2] The EB-5 Reform and Integrity Act of 2022 made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See s*ection 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed his petition in 2016 and he asserted that the JCE would be principally doing business within a TEA. Therefore, the requisite amount of capital investment was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

[3] *See* Appropriations Act at § 610.

Here, although FOD stated the decision was "based on a review of the entire record of proceeding," 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. The record lacks copies of the open-source materials FOD reviewed; therefore, the decision was not based on information in the record of proceeding, which had been disclosed to the Petitioner.[4]

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 it in reaching the 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 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)-(ii). In addition, any new RFE or NOID should provide the Petitioner with the opportunity to address any additional potential grounds of ineligibility, including whether he met his burden to demonstrate that the funds he 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.

[4] We acknowledge that, in the NOID, FOD included a footnote with the same URL as that in the decision. However, FOD did not include a copy of the source and the information it contains in the record.