U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42968769

Date: AUG. 27, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) 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 foreign nationals 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.

United States Citizenship and Immigration Services (USCIS) Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the NCE will create at least 10 full-time positions for qualifying employees. 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 dismiss the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. An NCE can be an entity consisting of "a holding company and its wholly owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business." 8 C.F.R. § 204.6(e) (2018) (defining "commercial enterprise"). The investor may invest the required funds directly in an NCE or through a regional center.[2] The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). The

[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) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed his petition in 2019, the relevant law then in existence governs this appellate adjudication.

[2] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e).

establishment of an NCE may be used as the basis of a petition for EB-5 classification by more than one foreign national investor, provided that each investor's investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

Additionally, the regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

> (A) Documentation consisting of photocopies of relevant tax records, Form 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
>
> (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 not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.[3]

Prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho* held that, to be "comprehensive," a business plan "must be sufficiently detailed to permit [U.S. Citizenship and Immigration Services (USCIS)] to draw reasonable inferences about the job-creation potential." *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). "Mere conclusory assertions [, however,] do not enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation." *Id.* The decision concludes: "Most importantly, the business plan must be credible." *Id.*

In addition, *Matter of Izummi* specifies that "a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements" and that USCIS "cannot consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (AAO 1998); *see also* 8 C.F.R. § 103.2(b)(1) (stating that a "petitioner must establish that [they are] eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication").

In *Kungys v. United States*, the United States Supreme Court defined a fact as material "if it has a natural tendency to influence, or was capable of influencing, the decision of the decision-making body to which it was addressed." *See Kungys v. United State*, 485 U.S. 759, 770 (1988) (internal quotation marks omitted). USCIS Policy Manual explains that "[c]hanges that occur in accordance with a business plan and other supporting documents as filed will generally not be considered material." 6 *USCIS Policy Manual* G.3(C)(1), https://www.uscis.gov/policy-manual. USCIS Policy Manual further explains: "In general, if, at the time of adjudication, the investor is asserting eligibility under

[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. 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2.

a materially different set of facts that did not exist when they filed the immigrant petition, the investor must file a new immigrant petition."[4] *Id.*

II. DISCUSSION

1. Factual and Procedural Background

The Petitioner claims to have invested $500,000 into [redacted] a new commercial enterprise (NCE) under the auspices of [redacted] LLC (regional center). The NCE proposed to pool up to $1,500,000 from three immigrant investors. The Petitioner is the sister and daughter respectively of the other two investors.

According to the business plan accompanying the initial petition, the NCE intended to use the Petitioner's investment as "start-up capital" to "create jobs, procure and purchase plastic waste, purchase two agglomerators and conveyor belt machinery within the second year [of the project], coordinate freight shipments to and from India for manufacturing, develop operation and warehouse facilities and train employees accordingly" through a "recycling manufacturing facility [with] two distinct phases of operations."

In the first phase, the project would "procu[re] and purchas[e] polymer in primary form materials directly from petrochemical plants, as well as pre-consumer [low-density polyethylene or LDPE] films." In this phase, the materials would be sold to [redacted], which wholly owns [redacted] the managing member of the NCE. [redacted] is directed and beneficially owned by [redacted], the Petitioner's father. The NCE would arrange for the transport of the materials from the United States to India, where [redacted] maintains processing facilities in [redacted] The first phase would also see the NCE import plastic trash can liners and regenerated polymer manufactured from recycled plastic manufactured by [redacted] for retail distribution. The Petitioner stated the NCEs operations for the first phase would require "one employee responsible for running operations."

In the second phase, intended to be started in the second year of the project, the NCE would sign a lease for a warehouse large enough to house storage, conveyor belts, and two agglomerators to start a US based recycling facility. The materials recycled at the plant in the United States would also be purchased by [redacted] along with the materials described in the first phase of the project. But the materials recycled at the plant would also be offered for sale to "purchasers in the U.S. who…manufacture plastic products, such as plastic toys, containers and outdoor furniture. This phase would account for much of the job growth, as "employees [would] be hired to coordinate the

[4] As explained in *Doe v. USCIS*, 410 F. Supp. 3d 86, 101 (D.D.C. 2019):

> An approved I-526 petition is given a priority date as of the date the petition is properly filed. 8 C.F.R. § 204.6(d). If petitions did not have to meet the EB-5 requirements at the time of filing and could be changed at will, then petitioners could file incomplete petitions in order to receive a better priority position for obtaining a visa. Allowing later changes to incomplete petitions would be unfair to those petitioners who waited to file their forms until the appropriate time when they had the evidence necessary to establish all EB-5 requirements.

Id.; *see also Wang v. USCIS*, 375 F. Supp. 3d 22, 36-40 (D.D.C. 2019).

purchasing and selling of the materials as the operations grow and expand." The Petitioner indicated that it expected to create 30 direct and 17 indirect jobs for a total of 47 jobs within 4 years of establishment, with titles such as factory manager, main operator, conveyor operator, helper, maintenance operator, purchase executive, and accounts and administration executive.

On December 10, 2024, FOD issued a request for evidence (RFE) to the Petitioner. The RFE invited the Petitioner to provide additional evidence to show that the NCE will create full-time positions for at least 10 qualifying employees within two years and that the business plan for the project is compliant with *Matter of Ho*, 22 I&N Dec. 206 (AAO 1998). The Petitioner's response contained revisions of the NCE's initial strategy due to the COVID-19 pandemic. Essentially, the NCE revised its strategy by abandoning its planned second phase. In the revision, the NCE would no longer start a United States based recycling facility. So, it no longer required conveyor belts and two agglomerators.

Instead, the NCE "leveraged market insights" gained prior to the COVID-19 pandemic from [redacted] attendance at the [redacted] in July 2019 to revise the project and restrict it to what was initially described as its first phase. The revised economic analysis contained a table which reflected the anticipated direct jobs decreased from 30 to two in year four. And the revised economic analysis also anticipated indirect jobs also decreased from 17 to 11 in year 4. Nevertheless, the Petitioner stated that the NCE now anticipated an increased number of jobs to 59 over five years.

FOD issued a second RFE on June 20, 2025, wherein it raised several concerns considering the Petitioner's response to the first RFE. Specifically, FOD queried if the business plan was *Matter of Ho* compliant because the record did not adequately demonstrate how EB-5 funds were being spent and if the expenditure was supporting the required job creation. FOD also questioned if the NCE relied on methodology that is economically and statistically valid and transparent because it was not readily apparent if import activity had been specifically excluded from the inputs utilized in the economic model. And FOD pointed out that the NCE's job creation estimates did not correspond with the figures mentioned in the table contained in the economic analysis and instead appeared to be the sum of incorrectly aggregating direct and indirect jobs resulting in double counting. FOD subsequently denied the petition after it received the Petitioner's response to the second RFE. The Petitioner timely appealed.

2. Analysis

Upon our de novo review, we conclude the Petitioner has made impermissible material changes to make an apparently deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169 (AAO 1998). The Petitioner eliminated the recycled materials manufacturing entity phase and limited itself to import and export operations with raw plastic materials procurement. This removed the need for the purchase of agglomerators and conveyor belts to be maintained and operated by eliminated direct job positions earmarked for United States workers.

On appeal, the Petitioner states that "the NCE transitioned from a manufacturing-based operation to a wholesaling-based operation." The nature of this change is not a mere "operational evolution" or "marginal business adaptation" as the Petitioner seeks to characterize it. It is a fundamental alteration of the nature and character of the investment because the NCE's alteration prompted the Petitioner to

present several different multiplier inputs to calculate job creation, rendering it unclear if the NCE's business plan and job creation projections were based on an economic analysis developed utilizing an economically and statistically valid and transparent methodology.

As stated above, the initial documentation describing job creation utilized the REDYN model and manufacturing inputs. But the projects transfiguration from a recycling operations entity into a warehousing and import-export entity necessitated utilizing margin-adjusted revenue as model input in the warehousing industry. And, on appeal, the Petitioner states that this was incorrect and overly conservative, necessitating a further change to full revenue inputs taking transportation costs into account and assuming firms follow profit maximizing behavior to estimate job creation. In sum, the record reflects shifting explanations and justifications for the variable job creation estimates contained in materials supporting the initial filing, RFE responses, and the appeal.

For example, the change of the multiplier units coincided with a change in how direct and indirect jobs were calculated within the REDYN model. Both the initial economic impact analysis and the subsequent update prepared by Economic & Policy Resources state that direct jobs are calculated based on a productivity concept and indirect jobs are calculated by subtracting the number of direct jobs from the total number of new jobs. But, whilst the initial economic impact analysis counted direct and indirect jobs as calculated based on applicable inputs in one representative year (Year 3), the updated economic impact analysis counted only direct jobs in Year 3 and counted indirect jobs cumulatively in Years 1 through 5. This was a double counting of jobs based on new multipliers. When we eliminate the double counting and focus only on the information for Year 3, the high year on the model, we note that the model demonstrates that 20 total jobs (direct and indirect) would be created, which is less than the 30 required for the number of investors the NCE anticipates.

On appeal, the Petitioner submits a letter from [redacted] to "address the denial's assertions and demonstrate[e] that the Project has already created the jobs required by program requirements." In order to "avoid the appearance of double counting of jobs," [redacted] focuses on one year of job creation showing 77 jobs in 2022. [redacted] asserts that the 77 jobs were calculated with a new model input that is not margin-adjusted but is based on full revenue. [redacted] asserts there is "no need to remove revenue associated with wholesaling goods" because the REDYN model incorporates cost data for modes of transportation and transportation costs are "a critical component" of "the assumption that all firms will follow a profit-maximizing behavior." This is materially different than the inputs used in the previous economic analyses the Petitioner submitted into the record and therefore influences the ultimate job creation estimates.

Based on the above discussed reasons, the Petitioner has not presented a comprehensive and credible business plan showing that, due to the nature and projected size of the NCE, it will create at least 10 qualifying employees for each foreign national investor seeking EB-5 classification. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. Specifically, when the Petitioner presents the updated business plans, economic impact analyses from Economic & Policy Resources, and letter from [redacted] she makes impermissible material changes to her petition regarding the NCE's business model and focus, planned use of investment, and anticipated job creation. *See Matter of Izummi*, 22 I&N Dec. at 175-76; *see also* 8 C.F.R. § 103.2(b)(1). These variances cast into doubt that the business plan is *Matter of Ho* compliant and that the economic analysis for the project is based on an economically and statistically valid and transparent methodology.

III. CONCLUSION

The Petitioner has not presented a comprehensive and credible business plan showing that the NCE will likely create full-time positions for at least 10 qualifying employees within the next two years – as discussed in the business plan and other documents the Petitioner initially submitted at the time of filing her petition in 2019. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. Because the Petitioner has not satisfied the job creation requirements, she has not demonstrated by a preponderance of the evidence eligibility for the immigrant investor visa classification.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.