U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39503875

Date: DEC. 3, 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 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. An alien 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.

Field Operations Directorate (FOD) denied the petition, concluding the record did not establish that 1) the NCE was formed for the ongoing conduct of lawful business; 2) the Petitioner's invested funds were placed at risk with the business most closely responsible for job creation; and 3) the Petitioner's investment will create at least 10 full-time jobs 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 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 EB-5 immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The regulation at 8 C.F.R. § 204.6(j)(2) provides that the alien investor must establish that they have invested or are actively in the process of investing the required amount of capital and must submit evidence verifying that they have placed the required amount of capital at

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) 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. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

risk for the purpose of generating a return on the capital placed at risk. The precedent decision, *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998), explains that for an investor to establish that they have placed their investment funds at risk for the purpose of generating a return, the 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.

An investor seeking EB-5 classification must demonstrate that their investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). An NCE may have multiple investors each seeking EB-5 classification, provided that each investor has invested or is actively in the process of investing the required amount and that each individual investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

An immigrant investor may invest the required funds directly in an NCE, or through a regional center. For an NCE located within a regional center, as is the Petitioner's case here, the full-time positions may be created directly and indirectly by the NCE. 8 C.F.R. § 204.6(e); *see also* 6 *USCIS Policy Manual*, G.2(D)(4), https://www.uscis.gov/policy-manual.

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.[2]

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 [USCIS] to draw reasonable inferences about the job-creation potential." 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.*

[2] 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.

II. ANALYSIS

The Petitioner asserts that he invested $500,000 on May 9, 2019, into [redacted] (the NCE), which is associated with [redacted] (formerly [redacted]). According to the business plan submitted with the initial filing, the NCE proposed to pool $20 million from 40 immigrant investors and lend the entire amount to the job-creating entities (JCE), [redacted] ([redacted] and JCE1) and [redacted] [redacted] (JCE2), The JCEs intended to expand and operate a fleet of vehicles in the non-emergency medical transportation, paratransit, and institutional transportation markets. The proposed project included the purchase of 200 vehicles, development of supporting software, and the development of new facilities including a vehicle maintenance and repair facility and a driver academy. The record indicates that the NCE and JCEs proposed to principally do business within a targeted employment area (TEA).[3]

FOD issued a notice of intent to deny (NOID) the petition, identifying derogatory information contained in public lawsuits and legal action against individuals associated with or surrounding the NCE and/or JCEs.[4] After receiving the Petitioner's response, FOD denied the petition, concluding that the Petitioner had not established a new commercial enterprise or placed the required amount of capital at risk. In addition, FOD determined that the business plan was not compliant with *Matter of Ho* as it was not credible and thus did not establish that the Petitioner's invested funds would create at least 10 qualifying jobs.

On appeal, the Petitioner contends that FOD's decision to deny the petition was arbitrary and capricious as it relied on unsubstantiated evidence unrelated to the project. In addition, the Petitioner asserts that FOD's decision was based on confusion about the project's location and nature. Upon de novo review we conclude that FOD did not sufficiently consider or adequately analyze the record and unduly relied on evidence outside the record of proceedings. Accordingly, we will remand the matter for entry of a new decision consistent with the discussion below.

A. New Commercial Enterprise and Capital at Risk

FOD concluded that the NCE did not meet the definition of a "commercial enterprise" at 8 C.F.R. § 204.6(e) because it was not formed for "the ongoing conduct of lawful business." In FOD's discussion, it tied this issue to its conclusion that the evidence did not establish that the Petitioner's funds had been made available to the JCEs for job creation, and thus had not been placed at risk. However, instead of addressing the various deficiencies under the applicable regulation at 8 C.F.R. § 204.6(j)(1) and (2), FOD's conclusion regarding these issues primarily relied upon public

[3] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is thus adjusted from $1,000,000 to $500,000. 8 C.F.R. 204.6(f)(2).

[4] The derogatory information related to some of the following: 1) a class action lawsuit filed against [redacted] in the U.S. District Court for th[redacted] of New York, 2) a 19-count complaint filed against [redacted] in the Supreme Court of New York, 3) a Federal Bureau of Investigation (FBI) complaint filed against N-A-K-, the principal managing member/executive chairman of [redacted] and JCE 1, 4) a U.S. bankruptcy suit in New Jersey related to the regional center and Petitioner's counsel alleging fraud, improper diversion of funds, and securities violations, and 5) multiple complaints from the Securities and Exchange Commission (SEC) involving the regional center and Petitioner's counsel.

lawsuits and legal actions against various actors associated with or surrounding [redacted], the manager of the project, without addressing their relationships to the NCE and relevance to the eligibility criteria.

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" which is 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 FOD 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). Here, the record lacks copies of any open-source materials FOD may have reviewed. As a result, the Petitioner did not have a meaningful opportunity to address the derogatory information.

Additionally, FOD discussed the class action lawsuit by former drivers of [redacted] and [redacted], as well as complaints filed in the New York Supreme Court and by the Federal Bureau of Investigation against the attorney of the record and [redacted], alleging fraud and other illegal activities such as misappropriation of investment from the NCE. Although we share FOD's concerns in that the derogatory information is reflective of potential issues regarding the Petitioner's eligibility, we do not give substantial weight to arrest reports, criminal complaints, and charging documents that did not lead to a conviction. *See Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995).

Upon de novo review, we share similar concerns with FOD over the activities of the NCE and its management and the use of EB-5 capital. However, because FOD did not clearly articulate the relevant facts and link them to eligibility, it did not allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also 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).

Therefore, we remand the matter so that FOD can review the evidence based on 8 C.F.R. § 204.6(j)(2) and *Matter of Izummi*, 22 I&N Dec. at 179, to determine whether the Petitioner's funds were made available to the business most closely responsible for job creation in this pooled investment case. If FOD questions whether the Petitioner irrevocably committed funds to the NCE, issuance of a request for evidence may be appropriate to provide the Petitioner with a reasonable opportunity to respond. FOD should also identify and incorporate any publicly sourced documents into the record before issuing a new decision.

B. Job Creation

The NCE's business plan included in the Petitioner's initial filing proposed a $30 million project consisting of a 200-vehicle fleet expansion, a maintenance and repair facility, a driver's academy, a parking facility, routing software, and an accessible transportation application. The business plan also included projections from an economic analysis that the project would create a total of 1079 direct, indirect, and induced qualifying jobs. When issuing the NOID in this case, FOD identified several issues negatively affecting the credibility of the business plan, including the lawsuits and legal actions

mentioned above. FOD stated that these actions "demonstrated a pattern of fraud, self-dealing, and illegal conduct" by individuals and businesses associated with the project which "suggest[s] a lack of business plan credibility and project viability." The NOID also focused on deficiencies in evidence of the capital stack, deployment of investment funds in furtherance of the project, and the project timeline, all of which FOD stated detracted from the credibility of the business plan.

When responding to the NOID, the Petitioner submitted a document entitled "Appendix: Business Changes to the Project" (the Appendix). This document described a number of what appear to be material alterations to the originally proposed project that significantly reduced its scope, including the reduction of EB-5 investors in the project from 40 to 14, the NCE's inability to obtain an additional $10 million in non-EB5 equity, and a reduction in fleet vehicle purchases from the projected 200 to only 12. The Petitioner asserted that these changes were due to effects of the COVID-19 pandemic, "changes in business landscapes," and an investigation and complaint by the SEC which led to the cancellation of a major business contract. Because the Appendix appears to have introduced material changes to the scope of the project as well as its funding, on remand FOD should consider the following issues in assessing the credibility of the business and the initial job creation projections.

We first note that despite the dramatic changes in the funding and scope of the project described in the Appendix, it did not include economic impact figures or job creation projections which would support the creation of at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). While it asserts that "[n]umerous jobs were created for drivers, repair technicians and the associated personnel required in support of the larger fleets, technology, facilities management and administrative support," it does not indicate the exact number of jobs created under the changed project conditions. On remand, FOD should determine whether the record includes evidence showing either the hiring of these employees or projections of hiring based on an economic analysis as required under 8 C.F.R. § 204.6(j)(4)(i).

In addition, the Appendix states that the headquarters of the project at [redacted], New York were abandoned and moved to a maintenance and repair facility at [redacted], New York ([redacted] location). The Petitioner's NOID response included a sublease for the [redacted] location dated July 2023, executed with a [redacted] as "Manager/Lessee" to use the facility and equipment. However, the Petitioner does not indicate that [redacted] is affiliated with the NCE, JCEs, or [redacted], the manager of the project. On appeal, the Petitioner claims that the [redacted] location was "subleased due to business difficulties" in 2023 but does not explain whether the NCE, JCEs or [redacted] operates the repair facility as intended in the business plan. On remand, FOD may request additional clarification on the business relationship, if any, between the Manager/Lessee and the NCE, JCEs or [redacted] as appropriate.

Overall, the record leaves substantial uncertainty as to the claimed job creation projection of 1,079 jobs resulting from the EB-5 investment since the project did not secure its asserted investors and investments, and material portions of the proposed business plan were downgraded or eliminated. However, as FOD's conclusion relied upon complaints in pending litigation as well as information not contained in the record of proceeding, we remand this matter so that FOD can review the evidence based on 8 C.F.R. § 204.6(j)(4) and *Matter of Ho*, 22 I&N Dec. at 213, to determine whether the Petitioner has established that the JCEs will create a need for not fewer than 10 qualifying employees.

III. CONCLUSION

For the reasons discussed above, we withdraw FOD's decision. On remand, FOD may issue a new request for evidence or NOID, as appropriate or needed, allowing the Petitioner to provide additional evidence relevant to the issues discussed above, and any other evidence deemed necessary to demonstrate eligibility for the classification sought, before issuing a new decision. FOD should also identify and incorporate into the record any publicly sourced documents it may rely upon in its new determination.

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