U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39337489

Date: DEC. 8, 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 U.S. economy and create at least 10 full-time positions for qualifying employees. Aliens may invest in a project associated with a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. *See* section 203(b)(5)(E)(i) of the Act.

The Field Operations Directorate (FOD) issued a notice of intent to deny (NOID) the petition, denied the filing, issued a Service motion to reopen the petition, then denied it a second time concluding that the record did not establish that the Petitioner's invested funds were placed at risk with the business most closely responsible for the required job creation. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) 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. An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. Regional centers can pool immigrant (and

[1] On March 15, 2022, the EB-5 Reform and Integrity Act 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.
https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221006 EB5ReformAndIntegrityAct.pdf.
As the Petitioner filed this petition in August of 2019, the relevant law in existence on that date governs this appellate adjudication.

other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii).

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 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.

II. ANALYSIS

Petitioner claimed he was eligible based on an investment in [redacted] [redacted] (Regional Center) pursuant to the Immigrant Investor Program. The record showed that Petitioner invested $500,000 into [redacted] the new commercial enterprise (NCE). The NCE proposed to pool $6.5 Million from 13 immigrant investors. According to the petition and supporting evidence, the NCE would make an equity investment in [redacted] [redacted], the job-creating entity (JCE). The JCE intended to construct and develop a 10-story, 97-unit multi-family apartment building, with ground floor retail accompanied by fifty-four below ground parking spaces, in [redacted], NJ. The NCE and JCE are principally doing business within a targeted employment area (TEA). The regulation provides for a reduced investment amount of $500,000 for investments made within TEAs. 8 C.F.R. § 204.6(f)(2).

FOD ultimately denied the filing concluding the Petitioner did not place the full amount of their funds at risk. On appeal, the Petitioner contends that FOD's decision was arbitrary and capricious as it relied on unsubstantiated evidence unrelated to the project and FOD based its decision on "arbitrary assumptions and bias." Upon de novo review, we conclude that FOD did not sufficiently consider or adequately analyze the evidence submitted by the Petitioner and unduly relied on evidence outside the record of proceedings. Accordingly, we will remand the matter for entry of a new decision consistent with our discussion below.

FOD concluded the Petitioner did not establish that the NCE satisfies the definition of a "commercial enterprise" or that he had placed at least $500,000 at risk for the purpose of generating a return on the capital. However, instead of addressing the various deficiencies under the applicable regulation at 8 C.F.R. § 204.6(j)(2), FOD denied the petition relying solely on public lawsuits and legal actions against various actors associated with or surrounding the NCE without addressing their relationships to the NCE and relevance to the issue of capital at risk. In the denial, FOD listed a series of pending lawsuits without incorporating them into the record and speculated on "unlawful activities" at the NCE.

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, FOD's NOID did not sufficiently identify specific derogatory information and 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 bankruptcy lawsuits, as well as complaints filed by the Securities and Exchange Commission and Federal Bureau of Investigations against the attorney of record and sponsors, alleging fraud and other illegal activities such as misappropriation of investment from the NCE, as well as dissolution of the NCE and JCE. But there is no indication that these cases have been resolved by the courts and the litigations are ongoing. On appeal, the Petitioner submits the defendants' motions to dismiss these complaints and argues that complaints are not the final court findings of illegal or criminal activities. We acknowledge 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, they 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 this issue 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 made his funds 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.

III. CONCLUSION

For the reasons discussed, FOD's decision is withdrawn. On remand, FOD may issue a new request for evidence or NOID allowing the Petitioner an opportunity 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.

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