U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 39820881

Date: DEC. 11, 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) (2019).[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.

FOD denied the petition, concluding the Petitioner did not establish that the NCE would create at least 10 full-time positions for qualifying employees. In the denial, FOD declined deference to the exemplar application associated with this NCE and the favorable determination related to job creation, concluding that the underlying facts have materially changed. 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

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. 8 C.F.R. § 204.6(e) (defining "commercial enterprise"). A petitioner 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 other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii).

[1] On March 15, 2022, the EB-5 Reform and Integrity Act (RIA) 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). Because the Petitioner filed her petition prior to enactment of the RIA, the relevant law then in existence governs this appellate adjudication.

An alien 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 within two years. 8 C.F.R. § 204.6(j)(4). For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526. *See generally* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that an NCE will create full-time positions for at least 10 qualifying employees within two years, the petition must be accompanied by:

> (A) Documentation consisting of photocopies of relevant tax records, Forms 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
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> (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 fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

U.S. Citizenship and Immigration Services (USCIS) articulates policy regarding deference to previous agency determinations in the EB-5 context. *See generally* 6 *USCIS Policy Manual, supra*, at G.3(A)(2). As a general matter, USCIS does not reexamine determinations made earlier in the EB-5 process, and such earlier determinations will be presumed to have been properly decided. *Id.* However, USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts upon which a favorable decision was made, have materially changed, there is fraud or misrepresentation in the record of proceeding, or the previously favorable decision is legally deficient. When a new filing involves a different project from a previous approval or the same previously approved project with material changes to the project plan, USCIS does not defer to the previous adjudication. *See Kungys v. United States*, 485 U.S. 759, 770-72 (1988) (finding that a change is material if it would have a natural tendency to influence or is predictably capable of affecting the decision); *see generally* 6 *USCIS Policy Manual, supra*, at G.3(A)(2).

If an adverse decision is based on derogatory information considered by USCIS, of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information and present information on its behalf before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i).

## II. ANALYSIS

The Petitioner asserts that on September 28, 2017, she invested $500,000[2] in the NCE, [redacted], which is sponsored by [redacted] pursuant to the Immigrant Investor Pilot Program. According to a Confidential Offering Memorandum dated

[2] The Petitioner filed her petition in 2017 and indicated that the investment has been made in a targeted investment area. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(t)(2) (2017).

[redacted] is a USCIS designated regional center to participate in the EB-5 program. *See* 8 C.F.R. § 204.6(e) (defining a "regional center").

March 26, 2016, the NCE initially proposed to raise up to $120 million from immigrant investors, along with other sources of funding, to finance the construction and operation of a new casino and hotel resort in [redacted] Mississippi, which would include restaurants, a concert entertainment venue, a RV park, and a parking structure.

In February 2025, FOD issued a notice of intent to deny (NOID), notifying the Petitioner of deficiencies in the evidence. In the NOID, FOD advised that due to material changes to the NCE project, USCIS would not grant deference to the prior favorable determination associated with the NCE and provided the Petitioner an opportunity to submit additional evidence to demonstrate eligibility. The Petitioner's reply to the NOID advised USCIS of changes to the project. Instead of investing in the initial casino-hotel development, the Petitioner explained the project changed to redevelop and operate an existing property, [redacted] by retrofitting the hotel and converting its family entertainment center into a casino. With the reply, the Petitioner submitted supplementary evidence, including a new business plan dated January 2025,[4] a news article related to the opening of an amusement park, and an unsigned letter of intent for financing.

FOD concluded that the business plans[5] were not *Matter of Ho* compliant because the hotel and casino were not likely to be built, and thus the projected jobs would not be created. FOD further determined that the Petitioner did not establish that economic methodologies used to demonstrate the creation of indirect jobs were reasonable. In making these determinations, FOD emphasized that USCIS' review of "publicly available information" did not find evidence about the hotel renovation or the addition of a casino. For instance, FOD stated, "publicly available information via Google and Microsoft Edge searches," did not "find any evidence that renovation of the existing [redacted] has started or any evidence that there will be a casino added to this hotel" and "there is no public information confirming a renovation of the hotel or any public information about adding a casino to this hotel site." FOD, however, did not identify the searched sources or meaningfully discuss any derogatory information they revealed.

On appeal, the Petitioner contends that the project has made progress, pointing out that an amusement park has been built and operating since 2023, and that the hotel and casino redevelopment would begin in later 2025. She asserts that the construction of the amusement park, a non-gaming amenity needed for the casino development, has already created jobs sufficient for the EB-5 investments.[6]

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[4] The business plan dated January 2025 relates to [redacted] another NCE, raising funds from immigrant investors for the redevelopment of [redacted]. The business plan indicates that [redacted] (this petition's NCE) will be the project's developer and provide $15 million towards the redevelopment project. However, the Petitioner did not provide details or evidence about the $15 million funding for the changed project. Without further evidence, the Petitioner has not established that the required amount of capital from her investment has been made available to the business most closely responsible for job creation upon which this petition is based. *See Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998).

[5] The record includes two business plans dated March 2016 and January 2025. In addition to these business plans, FOD's decision relies on business plans not in the record, specifically plans dated October 2020, March 2021, and May 2021. 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. FOD bears the responsibility of ensuring that the record is complete and contains all evidence that has been submitted by a petitioner or considered by FOD in reaching the decision. *See* 8 C.F.R. § 103.2(b)(1).

[6] While FOD's decision found that a portion of the overall project was built, namely [redacted] and a

If a decision will be adverse 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 and present information on its behalf before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). Here, beyond the NOID providing a Google Maps street view website link, the NOID did not identify the "publicly available sources" relied on in the decision or identify any derogatory information regarding the progress of the casino-hotel project. As a result, the NOID did not provide adequate notice of the derogatory information that formed the basis of FOD's decision and did not provide a meaningful opportunity for the Petitioner to address it.

Additionally, 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. In order to ensure fair and complete consideration of the proceedings before us, it is necessary that the record of proceeding contains copies of all evidence that has been submitted by a petitioner or considered in reaching a decision. Here, the "publicly available sources" are not contained in the record. Moreover, as previously noted, the record does not include some business plans and a letter about project costs, which are mentioned in FOD's decision. FOD bears the responsibility of ensuring that the record is complete and contains all evidence that has been submitted by a petitioner or considered by FOD in reaching the decision. *See* 8 C.F.R. § 103.2(b)(l6)(2); *cf. Matter of Gibson,* 16 I&N Dec. 58, 59 (BIA 1976).

Accordingly, we will withdraw FOD's decision and remand the matter for further review, issuance of a new NOID, and entry of a new decision. We are remanding this matter to ensure that the Petitioner has an opportunity to rebut the derogatory information that resulted in FOD's denial.

## III. CONCLUSION

FOD's decision is withdrawn as FOD did not provide the Petitioner with adequate opportunity to rebut derogatory information from outside the record of proceeding prior to making a decision, as required by 8 C.F.R. § 103.2(b)(16)(i). On remand, FOD should consider all evidence already submitted, including the evidence and claims submitted on appeal, issue a new NOID providing adequate notice of any derogatory information considered, and enter a new decision.

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

connecting platform/desk, the evidence in the record does not support FOD's determination that [redacted] is part of the project. The business plan dated January 2025 and a lease agreement between [redacted] as the property owner and lessor, and [redacted] as the lessee, set out terms for the lease and redevelopment of the [redacted] The documents state that [redacted] will continue to retain ownership and operation of [redacted] while [redacted] will lease and redevelop with the option to purchase, the [redacted]. The evidence submitted does not indicate that the [redacted] is part of the project or the job creating entity. While FOD's decision references a letter dated September 18, 2023, from [redacted] relating to costs for [redacted] and parking garage, the letter is not in the record. Without further evidence, the Petitioner has not established that the [redacted] is part of the project, or that the capital invested in the NCE has created or will create the jobs required under 8 C.F.R. § 204.6(j)(4).