U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38716904

Date: DECEMBER 15, 2025

Appeal of Field Operations Directorate 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.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish: 1) that the Petitioner's invested funds have been placed at risk to the business most closely responsible for job creation; and 2) that 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 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

[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 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 January 2022, the relevant law then in existence governs this appellate adjudication.

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 not located within a regional center, as is the Petitioner's case here, the full-time positions must be created directly by the NCE to be counted. This means that the NCE (or its wholly owned subsidiaries) must itself be the employer of the qualifying employees. 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.*

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was their own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. To show that the capital was their own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. at 195. A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of

[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.

funds in the new commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source.[3] *Id.*

II. ANALYSIS

The Petitioner invested $500,000 on January 6, 2022, into [redacted], the NCE. The initial business plan dated July 2021 explains that the NCE will purchase and operate 50 electric vehicles to be used as For Hire Vehicles, in "[redacted] and [redacted] counties, and other surrounding areas." The plan also indicates that the NCE will acquire Tesla superchargers, create a Collision and Glass Center for auto repairs, create partnerships with transportation network companies such as [redacted] or [redacted], and develop two mobile applications – one to request car transportation and another that offers the user functions and features for scheduling collision and auto repairs. In addition, the plan includes information about the NCE's corporate structure and its management team, showing that the NCE's operation will be managed by [redacted] that owns 90% of the NCE and [redacted], the NCE's executive chairman, who is also the executive chairman of [redacted].

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 "misperception and confusion" about the project's location and operations without understanding the normal business and industry practice. 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.

A. Capital At Risk

FOD concluded that the Petitioner has not established that he 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.[4] In the denial, FOD listed a series of pending lawsuits without incorporating them into the record and speculated on "signs of concern regarding the lawfulness of business activity."

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

[3] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program are not of suspect origin." *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

[4] These legal actions involve the attorney of the record, the executive chairman of the NCE, and various businesses that may or may not be associated with the NCE.

Dec. 58, 59 (BIA 1976) (explaining the District Director is primarily responsible for ensuring the completeness of the record reviewed on appeal). Here, FOD's notice of intent to deny (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 the class action lawsuit by former drivers of [redacted] and [redacted], as well as complaints filed by the [redacted] and Federal Bureau of Investigations against the attorney of the record and [redacted], alleging fraud and other illegal activities such as misappropriation of investment from the NCE. But there is no indication that these cases have been resolved by the courts and the litigation is ongoing. In response to the NOID and 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 do not give substantial weight to arrest reports, criminal complaints, and charging documents that did not lead to a conviction. *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.[5] 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 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 had 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.

B. Job Creation

As an alternative ground for denial, FOD concluded that the Petitioner had not satisfied the job creation requirements under 8 C.F.R. §§ 204.6(g)(1) and (j)(4). However, FOD focused on the "public sources" and "open source information" to determine that the original business location in [redacted], New York, lacked sufficient business activity. Also, while discussing the other construction site in [redacted], New York, FOD referred to "[redacted] show[ing] 4 complaints and 3 violations on the site, including at least 1 open as of February 2025" but did not include these public sources in the record before reaching the decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. at 59.

[5] FOD stated that the bank statements in the record "do not show that the investment remained with the NCE and its job creating activities." We also note some discrepancies relating to the flow of investment funds to the NCE for the purpose of generating business and employment. The Petitioner stated that "all investor capital from the escrow account" was transferred to the NCE's operating accounts (account numbers ending in [redacted] and [redacted]), but added that "some of the wires derive from an attorney escrow account wired on behalf of the investors."

On appeal, the Petitioner asserts again that the project has made progress but met delays due to COVID-19 and backlogs of construction permit applications across [redacted], and submits various photos of the construction, with relevant invoices and permits. The Petitioner also contends that FOD did not provide sufficient notice of the derogatory information as the publicly sourced information was not previously raised in the NOID.

We conclude that FOD did not adequately notify the Petitioner of the derogatory information considered in denying the petition. 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). We will therefore withdraw FOD's decision on this issue and remand this matter for further review, including review of the additional evidence submitted on appeal, the issuance of a new request for evidence if necessary, and entry of a new decision.

We note here that there are inconsistencies and changes in the business plan that may support FOD's adverse finding on the business plan's credibility. The original 2021 business plan claims that the NCE will create a total of 221 direct jobs and the project's total cost will be approximately $12 million, funded by $10 million from the pooled EB-5 investment and an additional $2 million from the project developer's equity. However, the updated 2025 business plan alters the scope of the project, reducing the number of investors and changing both the amount and sources of the capital stack. Additionally, the original business plan included two mobile phone applications, but the updated plan indefinitely delays the mobile applications' development, which appears to be an integral part of the business. The plan does not provide the project construction's timeline or itemized completion dates, but offers only the permit acquisition timetable, originally set to finish in 2024 but now scheduled for April 2025. FOD should consider these aspects, with other issues identified previously in the denial, to decide whether they serve as substantive inconsistencies in the Petitioner's claims that undermine the credibility of the business plan.

C. Lawful Source of Funds

On remand, FOD may also consider whether the Petitioner has established the lawful source of his EB-5 investment funds, as required by 8 C.F.R. § 204.6(e) and (j)(3). The Petitioner states his EB-5 investment funds derived from a loan from his friends, P-C-[6] and A-D-. In his affidavit, P-C- states that in 2017, he received a home equity line of credit from [redacted] ([redacted]) for $500,000 and on November 30, 2021, he withdrew $500,000 from [redacted] to loan to the Petitioner. P-C- explains the money was transferred from his [redacted] home equity line to his personal [redacted] account ending in [redacted] in November and December 2021 and on December 7, 2021, he wired $500,000 from his [redacted] account to the Petitioner's [redacted] account.

The present record does not fully document the source and path of the Petitioner's EB-5 investment funds. The [redacted] screenshot of activity on P-C-'s account shows that on November 30, 2021, a $200,000 deposit was made from A-D-. The funds from P-C-'s [redacted] account were thus

[6] We use initials to protect the privacy of the referenced individuals.

comingled with this additional $200,000 from A-D- before $500,000 was transferred from P-C-'s [redacted] account to the Petitioner's account on December 7, 2021. The Petitioner did not submit evidence of the lawful source of the $200,000 from A-D-. As money is fungible, the present record thus does not establish the full path and source of the Petitioner's EB-5 investment funds.

III. CONCLUSION

For the reasons discussed, FOD's decision is withdrawn. On remand, FOD may issue a new request for evidence or notice of intent to deny 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.