U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40322945

Date: DEC. 15, 2025

Appeal of Field Operations Directorate Decision

Form I-956F, Application for Approval of Investment in a Commercial Enterprise

In 1992, Congress established the EB-5 regional center program to promote economic growth in the United States through foreign investment in commercial enterprises associated with U.S. Citizenship and Immigration Services (USCIS) designated regional centers. *See* Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (the "Appropriations Act"), Pub. L. No. 102-395, 106 Stat. 1828, 1874 (repealed 2022). In March 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) repealed the Appropriations Act and codified the substantially reformed EB-5 regional center program within Section 203(b)(5) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(5) (2022).

USCIS designated the Appellant to participate in the EB-5 regional center program under the now repealed Appropriations Act in 2011. The Appellant subsequently filed a Form I-956 application to demonstrate compliance with the RIA's reformed program requirements, which USCIS approved as an amendment to the designation in September 2023. In November 2022, the Appellant filed the Form I-956F application for approval of an investment in Community Care Funding II LP, the new commercial enterprise (NCE). *See* Section 203(b)(5)(F)(i) of the Act.

Field Operations Directorate (FOD) denied the Form I-956F, concluding the Appellant did not provide "a credible economic analysis regarding estimated job creation," as required under Section 203(b)(5)(F)(i)(II) of the Act. Specifically, FOD determined that the submitted economic analysis did not demonstrate the NCE would create sufficient full-time positions to satisfy the EB-5 job creation requirements for all prospective immigrant investors. The Appellant timely appealed the denial, asserting that FOD's determination contains erroneous conclusions of fact and law.[1]

The Appellant 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 FOD's decision and remand the matter for further review and issuance of a new decision consistent with following analysis.

[1] *See* Section 203(b)(5)(P)(i)(II) of the Act (discussing administrative appellate review of "any determination," including a determination concerning "an application for approval of a business plan filed" under Section 203(b)(5)(F) of the Act).

I. LAW

The EB-5 classification makes immigrant visas available to qualified immigrants seeking to enter the United States for the purpose of engaging in an NCE in which the alien has invested the required amount of capital, and which will benefit the U.S. economy by creating full-time employment for at least 10 qualifying employees. Section 203(b)(5)(A)(i)-(ii) of the Act. The Regional Center program allows immigrant investors to pool their investments with other investors in already defined investment opportunities. *See* Section 203(b)(5)(E) of the Act. An NCE associated with a regional center must create a sufficient number of new full-time positions to satisfy the EB-5 program's job creation requirements for all immigrant investors in the NCE.

Section 203(b)(5)(F)(i) of the Act, entitled "Application for approval of an investment in a commercial enterprise," provides in pertinent part:

> A regional center shall file an application with the Secretary of Homeland Security for each particular investment offering through an associated new commercial enterprise before any alien files a petition for classification under this paragraph by reason of investment in that offering. The application shall include –
>
> (I) a comprehensive business plan for a specific capital investment project;
>
> (II) a credible economic analysis regarding estimated job creation that is based upon economically and statistically valid and transparent methodologies . . . .

To show compliance with the EB-5 program's job creation requirements under section 203(b)(5)(A)(ii) of the Act, the economic analysis supporting a regional center's project application may include (1) jobs estimated to have been created directly; and (2) jobs estimated to have been directly or indirectly created through capital expenditures, revenues generated from increased exports, improved regional productivity, job creation and increased domestic capital investment resulting from the program. Section 203(b)(5)(E)(v)(I)(aa) and (bb) of the Act; *see generally* 6 *USCIS Policy Manual* G.5(4), https://www.uscis.gov/policy-manual. USCIS may consider economically and statistically valid economic methodology that attributes jobs to prospective tenants occupying commercial real estate created or improved by capital investments if the number of such jobs estimated to be created has been determined by an economically and statistically valid methodology; and such jobs are not existing jobs that have been relocated. *See* section 203(b)(5)(E)(v)(II)(aa) of the Act; *see generally* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(6) and G.5(4) (providing guidance on applicability of tenant occupancy methodology to regional center filings made on or after May 14, 2022).

II. ANALYSIS

The sole issue raised by FOD is whether the Appellant demonstrated that its capital investment project would, more likely than not, create sufficient new full-time positions to satisfy the EB-5 program's job creation requirements for all immigrant investors in the NCE. For the reasons discussed below, we will withdraw FOD's decision as it was based on an erroneous conclusion of law. However, as the record contains other deficiencies not raised by FOD, we will remand the matter for further review and issuance of a new decision.

A. Economic Analysis based on Tenant Occupancy Methodology

The Appellate filed the Form I-956F application in November 2022, with supporting evidence that included an undated business plan, an economic impact analysis prepared in August 2022, and other project documents required by section 203(b)(5)(F)(i) of the Act. These documents indicate the NCE planned to raise up to $4.8 million from six alien investors to lend to [redacted], the job creating entity (JCE), to repay a bridge loan in the same amount. The JCE will use the funds to renovate an acquired vacant building in [redacted] California and lease the refurbished building to [redacted] (tenant) for the operation of a 55-bed psychiatric health care facility.

The August 2022 economic impact analysis, which uses RIMS II as its economic methodology for projecting job creation, estimated that the project will create a total of 231.1 direct and indirect jobs. This figure includes an adjusted total[2] of 38.5 jobs resulting from the JCE's hard construction costs (NAICS industry code 2362, Nonresidential Building Construction) and 192.6 total jobs resulting from the tenant's operating revenue (NAICS industry code 6222, Psychiatric and Substance Abuse Hospitals).

FOD subsequently issued a request for evidence (RFE), followed by a notice of intent to deny (NOID). In both notices, FOD advised the Appellant that because the JCE does not intend to operate a psychiatric health care facility and does not have a documented "direct relationship" with its prospective tenant, it could not use its tenant's operating revenue as an economic input for purposes of projecting employment creation.[3] Accordingly, FOD concluded the submitted economic analysis was not based on credible inputs and as a result, was "not statistically valid."

The Appellant emphasized in response to both the RFE and the NOID that section 203(b)(5)(E)(v)(II)(aa) of the Act plainly states that USCIS may consider a valid economic methodology that attributes jobs to prospective tenants occupying commercial real estate improved by capital investments, as long as the jobs are not existing jobs that have been relocated. It asserted that FOD's imposition of a requirement that the JCE and the tenant have a "direct relationship" is not supported by the statute.

In response to the NOID, the Appellant provided a July 2024 business plan, a July 2024 economic impact analysis, and a July 2024 resolution of the NCE's general partner indicating that the number of EB-5 limited partners would be reduced to five, with total EB-5 funding of $4,000,000. The updated business plan reflected this reduction in EB-5 investor funding and a $1,425,050 increase in the project's total construction costs.[4]

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[2] For direct job creation purposes, the number of jobs created by construction activity lasting less than two years must be calculated by multiplying the total number of such jobs estimated to be created by the fraction of the two-year period that the construction activity lasts. Section 203(b)(5)(E)(II)(cc) of the Act.

[3] To support the need to show a "direct relationship" between the JCE and the tenant company, FOD relied on the definition of "job-creating entity" at section 203(b)(5)(D)(v) of the Act, which states that a JCE may include "a holding company and its wholly owned subsidiaries or affiliates . . . that receives capital investment from alien investors."

[4] The Appellant provided a promissory note indicating that the JCE had obtained a $3,000,000 private loan to ensure availability of the capital required for project completion, based on the revised costs and decrease in EB-5 investments.

The updated economic analysis included two projected employment impact models. The first, which focuses solely on jobs that would be created by the JCE through nonresidential building construction (NAICS 2362) and leasing of real estate (NAICS 5311), indicates that the total number of direct and indirect jobs, would be 55.3. The alternative model, like that provided in the August 2022 economic analysis, is based on economic inputs from the JCE's building construction costs (NAICS 2362) and the tenant hospital's operating revenue (NAICS 6222), resulting in 231.6 direct and indirect jobs.

FOD denied the petition concluding that the project would result in insufficient job creation for the number of investors requested. In reaching this determination, FOD once again excluded any employment creation attributable to the prospective tenant's operations, noting the Appellant "failed to show [tenant] is a wholly owned subsidiary of the JCE or affiliate of the JCE." FOD emphasized that the Appellant stated on the Form I-956F application that it would have six EB-5 investors and concluded that "with six investors, this project requires 60 jobs to be created, more than the 55.3 in the supplied economic analysis." FOD stated that USCIS could not issue a "partial approval" for five investors.

On appeal, the Appellant contends that FOD erred by refusing to consider evidence of jobs that would be created by the JCE's prospective tenant, emphasizing that inclusion of job creation under a "tenant occupancy methodology" is expressly permitted under Section 203(b)(5)(E)(v)(II)(aa) of the Act, provided certain conditions are met. The Appellant also alleges that FOD erroneously found that the project will have six investors, despite its submission of amended project documents showing that there are, and will be, only five immigrant investors.

We agree with the Appellant that FOD erred by imposing a requirement that is not found in the plain language of section 203(b)(5)(E)(v)(II)(aa) of the Act. The statute states that USCIS, in determining compliance with the job creation requirement, may consider jobs estimated to be created under a methodology that attributes jobs to prospective tenants occupying commercial real estate created or improved by capital investments, provided that the tenant does not intend to relocate existing jobs. *See generally*, 6 *USCIS Policy Manual*, *supra* at G.5(A)(4) (discussing prospective tenant jobs in the context of project applications filed on Form I-956F).

Section 203(b)(5)(E)(v)(II)(aa) of the Act does not include a reference to the statute's definition of "job creating entity" or otherwise support FOD's position that employment creation attributable to prospective tenants may only be considered when there is evidence that the tenant is a wholly owned subsidiary or affiliate of the JCE that will receive capital investment from immigrant investors. Here, the Appellant consistently indicated that the prospective tenant will occupy commercial real estate improved by EB-5 capital investments, and that it does not intend to relocate existing jobs from another location. As FOD had no legal basis for rejecting the economic methodology attributing job creation, in part, to the JCE's prospective tenant, the Appellant has overcome the sole basis for denial.[5] Accordingly, FOD's decision is withdrawn.

[5] We also observe that even if the prospective job creation attributed to the tenant were excluded, the economic analysis indicates that the JCE alone would generate sufficient jobs for five immigrant investors. The record reflects that the NCE executed a company resolution to reduce the number of immigrant investors, amended its business plan, and obtained additional funding from another source to accommodate the reduction in EB-5 funds and did not simply request a "partial approval" as suggested by FOD.

B. Business Plans

Although FOD's decision will be withdrawn, we cannot sustain the appeal based on the record before us. The Appellant has not submitted a comprehensive and credible business plan for the project or a credible economic analysis regarding estimated job creation, as required under Subsections (I) and (II) of Section 203(b)(5)(F)(i) of the Act.

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.*; *see generally* 6 *USCIS Policy Manual*, *supra*, at G.2(B), G.5(B)(2).

Here, the business plans in the record are insufficient to show that the project will more likely than not progress as planned. The initial undated business plan, submitted with the Form I-956F application in November 2022, asserts on page 5 that the JCE "will purchase a 23,450 square foot facility . . . that is already zoned for hospital use and will conduct reconstruction and renovation," with the prospective tenant expected to gain access to the premises and begin paying rent in October 2023.[6] It described an approximately 9-month construction and renovation timeline.

In its May 2024 response to FOD's RFE, the Appellant acknowledged delays in its construction timeline, indicated that the JCE had obtained all necessary permits from the [redacted] as of April 2024, and stated that the project "is now on track for completion in the fourth quarter of 2024." It provided a May 2024 business plan and a letter from the NCE's general partner. The general partner explained delays caused by unexpected zoning, fire code, and safety issues, an unanticipated need to revise the project's building occupancy type, and the resulting requirement to make multiple revisions to the building designs and plans based on instructions it received from city officials.

Subsequently, in response to FOD's NOID, the Appellant submitted the project's July 2024 business plan, which identified additional construction costs of over $1.4 million. According to page 12 of the updated business plan, the installation of solar and LED fixtures (part of the additional construction costs) "will extend the project timeline by three to four months, moving the renovation work completion date from December 2024 to possibly March 2025." Although the July 2024 business plan includes a construction timeline from the project management company at page 97, that timeline did not account for the latest project delays and therefore provided insufficient support for the business plan's claim that the construction and renovation work would be completed by March 2025.

The business plans thus postpone the opening of the facility from October 2023 to December 2024, then to "possibly March 2025." The Appellant's brief, dated August 26, 2025, provides no update on the progress of the project. Based on the project's multiple construction delays and a lack of evidence

[6] The record includes a Letter of Intent to Lease signed by the JCE and tenant in September 2022, indicating the parties had a non-binding agreement to execute a lease for a ten-year term with a tentative start date of November 1, 2022. The letter indicates the tenant will operate a psychiatric hospital at the leased building and will pay base rent of $80,000 per month.

regarding its current status, we cannot determine that any of the business plans in the record is comprehensive and credible, as required under Section 203(b)(5)(F)(i)(I) of the Act. *See also Matter of Ho*, 22 I&N Dec. at 213.

Further, with respect to the economic analyses in the record, we note that they rely on construction expenditures and operational figures which assume that the project will be completed. For the reasons we have discussed above, however, the Appellant has not sufficiently shown that the JCE will more likely than not complete the project as planned. As such, the Appellant has not sufficiently established that the job creation estimates stated in the economic analysis documents are credible, as required under Section 203(b)(5)(F)(i)(II) of the Act.

As these issues were not raised in FOD's decision, we will remand the matter. On remand, FOD should review the record, considering the issues addressed above, and provide the Appellant an opportunity to provide an update on the project's timeline and any relevant documentation related to the requirements at Section 203(b)(F)(i)(I) and (II) of the Act.

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