U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29507798

Date: DEC. 18, 2024

Appeal of Immigrant Investor Program Office 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) (2018).[1] This fifth preference (EB-5) classification makes immigrant visas available to noncitizens 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.

The Chief of the Immigrant Investor Program Office denied the petition on multiple grounds, concluding that the record did not establish (1) the lawful source of the funds the Petitioner invested in the NCE and (2) that the Petitioner's investment will create full-time positions for at least 10 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 Chief's decision and remand the matter for entry of a new decision consistent with the following analysis.

A noncitizen may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. A noncitizen may invest the required funds directly in an NCE or through a regional center. 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). The investor must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998). In addition, they must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show the lawful source of the funds, a noncitizen investor must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(j)(3).

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act of 2022, which made significant amendments to the EB-5 program, including designation of a targeted employment area (TEA) and the minimum investment amounts. *See* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed his petition in August 2018, the relevant law then in existence governs this appellate adjudication.

Furthermore, 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. § 204.5(j)(4). To establish prospective job creation, a petitioner must submit a copy of a comprehensive business plan to demonstrate the need for not fewer than ten qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.[2] *See* 8 C.F.R. § 204.5(j)(4)(i)(B); *see also Matter of Ho*, 22 I&N Dec. at 2013. (specifying that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about the job-creation potential" and "must be credible").

The record indicates that in August 2018, the Petitioner invested $500,000[3] in [redacted] the new commercial enterprise (NCE), which is associated with the [redacted] pursuant to the Immigrant Investor Program. The Petitioner asserted that he derived his investment funds from a dividend payment he received from [redacted], a Nigerian company in which he is an executive director and shareholder.

The Chief denied the petition, in part, based on a determination that the Petitioner did not demonstrate the lawful source of the funds included in this claimed dividend payment, noting that the submitted financial statements for [redacted] showed a substantial increase in revenue in 2018 that was not adequately explained or corroborated in the record. Specifically, the Chief observed the Petitioner provided "no objective evidence to show [redacted] actually earned the claimed total comprehensive income and how there was such a significant increase in 2018."

On appeal, the Petitioner asserts that the Chief's decision contains a factual error, noting that she confused "total comprehensive income" with "profits" in reviewing the Nigerian company's submitted financial statements. Further, the Petitioner emphasizes that the decision "appears to wrongfully and completely disregard the documentation previously provided," which included relevant documentary evidence pertaining to [redacted] operations, as well as detailed explanations for the company's year-to-year increase in profits between 2017 and 2018.

The Petitioner's assertions are persuasive. An officer's written decision must explain the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g. 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).

Here, the Chief's decision included a list of the evidence the Petitioner submitted at the time of filing and in response to a notice of intent to deny (NOID). However, it lacked a substantive analysis of that evidence and a specific explanation of why it was determined to be insufficient to show, by a preponderance of the evidence, that [redacted] paid the Petitioner dividends derived from company profits lawfully accrued through its business activities. As emphasized by the Petitioner on appeal, the record includes audited financial statements, Nigerian tax clearance

[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. *See generally* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual.

[3] The Petitioner indicated the NCE is located in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2018).

certificates for [redacted] and explanations, accompanied by supporting evidence, for the company's significant increase in profits. As such, the Chief's determination that the Petitioner submitted "no objective evidence" is not supported by the record. Because the decision did not explain what evidence was reviewed and how the reviewed evidence supported the Chief's adverse determination, the Petitioner did not have a fair opportunity to contest that determination on appeal.

The Chief further determined that the record did not establish, by a preponderance of the evidence, that the Petitioner's $500,000 investment will create full-time positions for at least 10 qualifying employees within two years, as required by 8 C.F.R. § 204.6(j)(4). The Director concluded that the project is "vastly delayed and vastly underfunded," and briefly explained that the Petitioner did not demonstrate that the NCE had all necessary permits, approvals and financing needed to proceed with its plans to develop and construct two residential housing communities. The Chief also indicated that her adverse determination regarding the job creation requirement was based, in part, on "open-source searches."[4] However, the decision does not identify these sources, and the record lacks copies of any open-source materials the Chief may have reviewed. If a decision will be unfavorable to the 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 before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). A determination of statutory eligibility shall based only on information contained in the record of proceeding which is disclosed to the petitioner. *See* 8 C.F.R. § 103.2(b)(16)(ii).

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. The Chief bears the responsibility of ensuring that the record is complete and contains all evidence submitted by the Petitioner and any other evidence considered by the Chief in reaching her decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976).

Therefore, for the reasons discussed, we will withdraw the Chief's decision and remand this matter. On remand, the Chief should identify and incorporate any documents, which may have been inadvertently omitted from the record of proceeding, before reviewing the entire record, including the Petitioner's brief and new evidence submitted on appeal. If the Chief cannot supplement the record with the missing materials, and if the decision will be based in part, on materials not submitted by the Petitioner, she should issue a new NOID, granting the Petitioner a reasonable opportunity to respond, before issuing a new decision. That new decision, if unfavorable, shall include a sufficiently detailed and substantive analysis of the evidence to explain the specific reasons for denial, as required by 8 C.F.R. § 103.3(a)(1)(i).

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

[4] While the Chief identified and provided links to open-source information in the NOID, copies of this information were not incorporated into the record. Moreover, the decision indicates that the Chief conducted updated searches in 2023, subsequent to issuance of the RFE.