U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39351356

Date: DEC. 18, 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) (2018).[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.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the NCE is more likely than not to create at least 10 full-time positions for qualifying employees. FOD did not defer to the job creation determination in USCIS' previous approvals of the Form I-526 exemplar project and a previously filed Form I-526 associated with the NCE because FOD found that the underlying facts upon which a favorable determination was made 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

As required by 8 C.F.R. § 204.6(j)(4)(i), the petitioner must establish that the investment of the required amount of capital in a NCE will create full-time positions for at least 10 qualifying employees within two years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii). 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.

[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. As the Petitioner filed this petition in August of 2018, the relevant law in existence on that date governs this appellate adjudication.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a 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 not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

A petitioner is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the NCE. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 qualifying employees within the next two years. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Mere conclusionary assertions, however, do not enable USCIS to determine whether the job-creation projections are any more reliable than hopeful speculation. *Id.* Most importantly, the business plan must be credible. *Id.*

The Petitioner indicated on page 6 of his petition that on July 10, 2018, he invested $500,000[2] into [redacted] (NCE), which is sponsored by [redacted] LLC regional center pursuant to the Immigrant Investor Pilot Program. According to the Confidential Offering Memorandum, dated October 2017, the NCE proposes to raise $6,000,000 from 12 immigrant investors and engage in the development and construction of a 60,000 square foot senior living facility, housing 80 assisted living and memory care units, in [redacted], Florida.

At the time of filing his petition, the Petitioner submitted a project summary and EB-5 business plan of an 80-unit assisted living community at [redacted] in [redacted] Florida, dated August 2017 (2017 business plan). After reviewing the Petitioner's filing, FOD issued a notice of intent to deny (NOID) the petition, notifying him of deficiencies in his petition. Specifically, FOD stated that the overarching deficiency is that the projected construction timeline and job creation in the 2017 business plan do not appear to have materialized. In light of (1) media reports of delays, (2) the loss of the main contractor, [redacted], (3) the developer's inability to secure sufficient funding, and (4) the results of Google Maps searches of the proposed project address that indicate no project progress, FOD concluded that the credibility of the 2017 business plan appears fatally undermined by multiple sources of evidence.

In response to FOD's NOID, in April 2024 the Petitioner submitted evidence related to the project financing, an update to the economic impact report, dated November 13, 2020, and pro forma figures of expenses used in the job creation analysis. The Petitioner stated that, due to the COVID-19

[2] The Petitioner filed his petition in 2018 and indicated on the petition that the project is located in a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2018).

pandemic, "the senior living industry has suffered mightily . . . . As a result, the project had to pivot and is now effectively in the process of restoring the Harder Hall as a hotel."

The Petitioner submitted an addendum to the NOID response in February 2025. That submission included evidence of project expenditures, photographs of construction and completed work on the building, a promissory note, and a letter regarding future project job creation.

FOD concluded that the Petitioner's NOID response made impermissible material changes to the petition. In denying the petition, FOD referenced an updated business plan dated November 2020 and an appraisal for the new proposed project dated September 30, 2020. However, neither of these documents is found in the record. Nor does the Petitioner reference these documents in his NOID response or in the February 2025 addendum.

In order to apply existing law and policy to the facts of an individual case, it is necessary that the record of proceedings contains copies of all evidence that has been submitted by a petitioner or considered by FOD in reaching its decision. 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). 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 referenced documents containing derogatory information that were absent from the record. Furthermore, FOD did not advise the Petitioner of the derogatory information and offer an opportunity to rebut. As the denial did not comply with the relevant regulatory requirements, we will withdraw FOD's decision and remand this matter.

Accordingly, the matter will be remanded to FOD to determine if the Petitioner has established eligibility and to enter a new decision. FOD may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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