U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34042026

Date: FEB. 20, 2025

Appeal of 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).[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. Aliens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

The Chief of the Investor Program Office denied the petition, concluding that the record did not establish that the new commercial enterprise will create at least 10 full-time positions for qualifying employees. The matter is now before us on appeal. 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.

As required by 8 C.F.R. § 204.6(j)(4)(i), the petition must establish that the investment of the required amount of capital in a new commercial enterprise 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 of 2022 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. As the Petitioner filed her petition in 2019, the relevant law then in existence governs this appellate adjudication.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a new commercial enterprise 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.

A petition 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.*

Petitioners investing in an NCE within a regional center may rely on economic methodologies to demonstrate that the investment will create indirect jobs as a result of the investment in the NCE, but such methodologies must be reasonable. *See* Pub. L. No. 102-395; 8 C.F.R. §§ 204.6(e), (j)(4)(iii), (m)(7)(ii). The petitioners must provide sufficient evidence for USCIS to determine whether methodologies used are reasonable.

Indirect jobs are those that are held outside of the NCE but are created as a result of the NCE. *See generally* 6 *USCIS Policy Manual* G.2(D)(4), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2. For example, indirect jobs include, but are not limited to, those held by employees of the job-creating entity (JCE) (when the JCE is not the NCE) as well as employees of producers of materials, equipment, or services used by the NCE or the JCE. *Id.*

The Petitioner asserts eligibility based on an investment in [redacted] pursuant to the Immigrant Investor Program.[2] On page 6 of her petition, the Petitioner indicated that she has invested $500,000[3] into [redacted] the NCE. According to the updated Confidential Offering Memorandum dated October 2017, the NCE proposed to pool up to $9,000,000 from 18 immigrant investors to fund the acquisition and development of a real estate parcel in [redacted] Arizona. The NCE intends to develop and construct two communities, [redacted] on the two adjoining plots on a hill. [redacted] will be built on the top of a mountain and will feature 17 luxury homes. [redacted] will be built on the lower portion of the slope and will feature 36 luxury homes.

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

[3] The Petitioner indicated the project is located in a TEA, and, therefore, the required amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2019).

The Chief determined that the record did not establish that the Petitioner's $500,000 investment in the NCE 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 Chief 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 or approvals and financing to proceed with its plans to develop and construct the two residential housing communities. The Chief also indicated that her adverse determination regarding the job creation requirements 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).

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). We will, therefore, 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 proceedings before reviewing the entire record, including the Petitioner's brief and additional evidence submitted on appeal, and issuing a new decision. 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. Upon receipt of a timely response, the Chief should review the entire record and enter 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 a notice of intent to deny (NOID), copies of this information were not incorporated into the record.