U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06245414

Date: FEB. 25, 2025

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner[1] 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) (2013).[2] 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 that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

The Chief of the Immigrant Investor Program Office denied the petition on the ground that the Petitioner did not satisfy the job creation requirements. *See* 8 C.F.R. § 204.6(j)(4) (2013). The Petitioner appeals the Chief's denial to us, asserting that he has established eligibility for EB-5 classification. He submits an appellate brief and additional documents in support of the appeal.

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 dismiss the appeal.

I. LAW

An alien may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). The establishment of an NCE may be used as the basis of a petition for EB-5 classification by more

[1] In a July 2019 correspondence, we informed the Petitioner that we would consider him to be self-represented because he did not submit a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with his appeal.

[2] 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. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition in 2013, the relevant law then in existence governs this appellate adjudication.

than one investor, provided that each investor's investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

Additionally, an alien may invest the requisite amount of qualifying capital directly in an NCE or through a regional center, as the Petitioner did in this case. A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e). Regional centers apply for designation to participate in the EB-5 program with U.S. Citizenship and Immigration Services (USCIS). Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project, taken on either directly by the NCE or by one or more separate entities known as the "job creating entities" (JCEs). 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). Specifically, under 8 C.F.R. § 204.6(j)(4)(iii) and (m)(7)(ii), an investor who invests in a regional center affiliated project may rely on the creation of direct as well as indirect jobs to satisfy the job creation requirements, and may use "reasonable methodologies . . . includ[ing] multiplier tables, feasibility studies, analyses of foreign and domestic markets . . . , and other economically or statistically valid forecasting devices" to show job creation.

II. ANALYSIS

The Petitioner filed the petition in 2013, alleging that he invested $500,000[3] in [redacted] the new commercial enterprise (NCE). At the time he filed the petition, the NCE was affiliated with [redacted] a regional center that USCIS designated to participate in the EB-5 program in 2008. The 2013 business plan and the 2013 Confidential Private Placement Memorandum indicate that the NCE aims to raise up to $60,000,000 from 120 investors who seek EB-5 classification, and to use the funds to construct and operate an electric vehicle manufacturing facility in [redacted] Mississippi. Page 4 of the 2013 business plan specifies that the facility "is expected to create 426 direct jobs, 3,584 indirect and 3,422 induced jobs for a total of 7,432 jobs."[4] The record also includes a 2015 updated business plan, page 27 of which claims that the project "is expected to create a total number of EB-5 eligible jobs of 3,801.9," including "72.3 indirect and induced jobs from hard and soft construction costs, 114.4 indirect and induced jobs from equipment purchases and 3,615.2 from the [redacted] Facility operations," of which "250 . . . are direct, 1,884.5 are indirect and 1,480.7 are induced [jobs]."

As noted, under the relevant regulation, an alien investor may rely on direct as well as indirect jobs to satisfy the job creation requirements if he or she invests in a regional center affiliated project. *See* 8 C.F.R. § 204.6(j)(4)(iii), (m)(7)(ii). If the investor does not invest in a regional center affiliated project, then he or she must demonstrate that the investment has created, or is likely to create, at least 10 full-time direct jobs for the investor, as well as for each of the other investors seeking EB-5 classification. *See* 8 C.F.R. § 204.6(g)(1).

[3] The Petitioner claims that 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).

[4] USCIS Policy Manual indicates that induced jobs are a type of indirect jobs. *See generally* 6 *USCIS Policy Manual* G.1(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-1.

In this case, while the Petitioner's purported investment in the NCE was initially affiliated with [redacted] the Chief terminated [redacted] designation as a regional center to participate in the EB-5 program in [redacted] 2018. Subsequently in January 2025, we dismissed the regional center's associated appeal. As such, the record does not support a finding that the Petitioner's purported investment in the NCE is affiliated with a currently designated regional center, or that he may rely on indirect jobs to satisfy his job creation requirements. *See* 8 C.F.R. § 103.2(b)(1) (providing that a "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication"); *see also* 8 C.F.R. § 204.6(j)(4)(iii), (m)(7)(ii).

The NCE's business plans and other corporate documents, including the 2013 Confidential Private Placement Memorandum, indicate that the NCE aims to raise funds from 120 alien investors, each seeking EB-5 classification. Under 8 C.F.R. § 204.6(j)(4) and 8 C.F.R. § 204.6(g)(1), the Petitioner must therefore demonstrate that the EB-5 investment has created, or is likely to create at least 1,200 direct jobs, 10 for each investor seeking EB-5 classification. The Petitioner has not alleged, and the evidence in the record, including business plans and economic impact reports, does not support a finding that the NCE's project has created or will likely create at least 1,200 direct jobs. Accordingly, we will dismiss the Petitioner's appeal on the ground that he has not satisfied the job creation requirements. *See* 8 C.F.R. § 204.6(j)(4); *see also* 8 C.F.R. § 204.6(g)(1).

III. CONCLUSION

It is the Petitioner's burden to demonstrate his eligibility for the EB-5 classification, which includes establishing, by a preponderance of the evidence, his investment in the NCE has created or is likely to create the requisite number of jobs. *See* 8 C.F.R. § 204.6(j)(4)(iii), (m)(7)(ii); *see also* 8 C.F.R. § 204.6(g)(1). Here, the Petitioner has not made such a showing.

ORDER: The appeal is dismissed.