U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34042022

Date: FEB. 25, 2025

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).[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 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, concluding the record did not establish that the Petitioner's investment in [redacted] the new commercial enterprise (NCE), would likely create at least 10 full-time positions for qualifying employees. In the denial, the Chief declined to defer to the exemplar application associated with the NCE and the favorable determinations related to job creation, concluding that the underlying facts 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 Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. 8 C.F.R. § 204.6(e) (defining "commercial enterprise"). An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. 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). An investor seeking EB-5 classification must show that their investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). An NCE may be relied upon by multiple alien investors each seeking EB-5 classification, provided that each investor has invested or is actively in the process of

[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. *See* 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition on August 23, 2019, the relevant law in existence on that date governs this appellate adjudication.

investing the required amount, and that each individual investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

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 petitioner is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the commercial enterprise. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 employees within the next two years. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit U.S. Citizenship and Immigration Services (USCIS) to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, at 213. Additionally, *Matter of Ho* held that a "comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives." *Id.*

Under the statute and regulations, petitioners investing in a new commercial enterprise 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 Petitioner must provide sufficient evidence for USCIS to determine whether methodologies used are reasonable.

The Petitioner asserted his eligibility based on an investment of $500,000 into the NCE on July 30, 2019. The NCE proposed to pool $9,500,000 from 19 immigrant investors, along with other sources of funding, to finance construction of two adjacent residential communities in [redacted] Arizona, specifically 17 homes in [redacted] and 36 homes in [redacted]

The Chief concluded that the Petitioner did not establish that the business plan was compliant with *Matter of Ho*, or that the Petitioner's investment will create at least 10 full-time positions for qualifying employees. The Chief stated that the project is "vastly delayed" because despite the business plan anticipating that the project construction would begin in 2016 and be completed by 2018, "neither the record nor USCIS open-source searches yield any indication that project has progressed beyond the very initial planning stages." The Chief also noted that the project is "vastly underfunded" because unlike the claims in the business plan of having 19 EB-5 investors contributing $9.5 million into the project, there are only 10 investors "representing $4.5 million shortfall." The Chief further determined that the Petitioner did not establish that economic methodologies used to demonstrate the creation of

indirect jobs were reasonable because the information used as a basis to support the inputs into the economic model are from the business plan that the Chief determined to be not credible.

Upon review, we conclude that the Chief did not adequately notify the Petitioner of "USCIS open-source searches" or "publicly available resources" considered in denying the petition. If a decision will be adverse to a 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 and present information on its behalf before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). The Chief's notice of intent to deny (NOID) did not sufficiently identify specific derogatory information regarding the progress of the construction project other than stating that "[t]he Google street view of area does not show any project progress." The Chief's decision also did not provide information regarding "USCIS open-source searches," and the record lacks copies of any open-source materials the Chief may have reviewed. Pursuant to 8 C.F.R. § 103.2(b)(16)(ii), "a determination of statutory ineligibility shall be based only on information contained in the record of proceeding" which is disclosed to the petitioner. As a result, the Petitioner did not have a meaningful opportunity to address the derogatory information.

The Chief also did not substantially discuss and analyze the Petitioner's evidence regarding the project's progress such that the affected party has a fair opportunity to contest the decision, and we have an opportunity to conduct a meaningful appellate review. 8 C.F.R. § 103.3(a)(1)(i). On appeal, the Petitioner submits a brief reiterating the claims made in his response to the Chief's NOID, that the project has made progress but met delays due to COVID-19 pandemic. The Petitioner also presents the same evidence previously submitted in the NOID response, including updated economic analysis with two-phased projections for the construction, updated milestones for the project estimating preliminary site plan approval to be secured in 2023 and civil permits to follow in 2024, and the documentation showing that the [redacted] has committed to lending $4 million to "enable construction of the water delivery infrastructure" for the project. However, the Chief's decision lacks meaningful and detailed analysis of such evidence.

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 for further review, including review of the additional evidence submitted on appeal, the issuance of a new request for evidence if necessary, and entry of 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.