U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39968826

Date: FEB. 26, 2026

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).[1] This fifth preference (EB-5) classification makes immigrant visas available to foreign nationals 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.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the NCE will create at least 10 full-time positions for 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 dismiss the appeal.

I. LAW

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The investor 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 immigrant investor may invest the required funds directly in an NCE or through a "regional center."[2]

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 an NCE will create full-time positions for at least 10 qualifying

[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* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed his petition in 2017, the relevant law then in existence governs this appellate adjudication.

[2] A regional center is an economic unit involved with the promotion of economic growth through "improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (defining "regional center"). Regional centers apply for designation to participate in the EB-5 program with U.S. Citizenship and Immigration Services (USCIS) and designated regional centers identify and work with NCEs.

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.

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.

Prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998), explains 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" and that "[i]t should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions." It specifies that to be "comprehensive," a business plan "must be sufficiently detailed to permit [U.S. Citizenship and Immigration Services (USCIS)] to draw reasonable inferences about the job-creation potential." *Matter of Ho*, 22 I&N Dec. at 213. "Mere conclusory assertions [, however,] do not enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation." *Id.* The decision concludes: "Most importantly, the business plan must be credible." *Id.*

USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts, upon which a favorable decision was made, have materially changed, there is evidence of fraud or misrepresentation in the record of proceeding, or the previously favorable decision is determined to be legally deficient. *See generally 6 USCIS Policy Manual*, *supra*, at G(3)(A)(2). A change is material if it would have a natural tendency to influence or is predictably capable of affecting the decision. *See Kungys v. United States*, 485 U.S. 759, 770-72 (1988). When a new filing involves a different project from a previous approval or the same previously approved project with material changes to the project plan, USCIS does not defer to the previous adjudication. *See generally 6 USCIS Policy Manual*, *supra*, at G(3)(A)(2).

II. ANALYSIS

The Petitioner states that he invested $500,000[3] into [redacted] (NCE), which is sponsored by [redacted] (Regional Center)[4] pursuant to the Immigrant

[3] The Petitioner contends that the job creating entity is 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) (2017).

[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").

Investor Program. The NCE originally proposed to pool $40 million from 80 immigrant investors and lend the entire amount to [redacted] the job-creating entity (JCE). The JCE was to engage in the construction, operation, and management of two hotels and an office building in [redacted] California.

FOD issued a notice of intent to deny (NOID), in part, because the project did not appear to be moving forward as planned. After reviewing the Petitioner's response, FOD determined that the record contained material changes and that due to delays in the project's execution, the business plan is not credible as originally filed, the economic methodology for showing job creation is not reasonable, and therefore, the Petitioner is not eligible for the immigrant investor classification. Upon review, we agree that the record contains material changes to the business plan as originally filed. Therefore, the record does not establish that the original business plan is credible, and the Petitioner is not eligible for the immigrant investor visa classification.

As mentioned above, the September 2015 business plan submitted with the initial filing indicates that the JCE will engage in the construction, operation, and management of a 170-room hotel, a 110-room, hotel, and an office building in [redacted] California. FOD issued a NOID, in part because, at the time the NOID was issued in August 2024, the project should have been completed. However, FOD determined the "project, and job creation, as proposed, has not come to fruition based on lack of project development. . . ." In response to the NOID, the Petitioner submitted a new business plan dated September 2024. The new business plan states that the NCE is now working on a new project; comprised of a 215-room hotel and a residential building with 147 apartments. However, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998); *see also* 8 C.F.R. § 103.2(b)(1).

On appeal, the Petitioner contends that FOD improperly applied the "material change doctrine" and in doing so, "penalize[ed] [him] for updating the business plan to reflect developments" which did not alter "the nature of the investment but rather clarified and supported the original plan." The Petitioner asserts that after the petition was filed, there were external events outside of his control that required updates to the original business plan. For example, the [redacted] where the construction was to take place, wanted to increase housing availability, so the NCE updated their plan to include housing. In addition, the Petitioner states this updated business plan included construction of a "mixed-use building" for which they entered into a lease agreement with 24 Hour Fitness. However, during COVID, 24 Hour Fitness filed for bankruptcy and was released from their agreement with the NCE and therefore the project's construction plans needed to be redesigned again.

The Petitioner explains that the changes to the project required new land entitlement documents, environmental impact reports, economic reports, and construction plans; all which resulted in a delay in construction. However, we conclude these changes also resulted in a materially different project than what was originally filed. Although we acknowledge the reasons provided for the delays, it does not change the fact that the project as it was originally submitted did not come to fruition and the new project required the Petitioner to submit a new business plan and new documentation due to changes in the nature of the project. Since facts relevant to the adjudication materially changed between the approval of the Form I-526 exemplar and the adjudication of this petition, deference to the prior determination is not appropriate. *See generally* 6 *USCIS Policy Manual*, *supra*, *at* G.3(A)(2).

We further note that the timeline for the project has materially changed. The September 2015 business plan stated that the project was "estimated to take 51 months from the administration phase to operational and occupancy." However, when the NOID was issued, FOD noted that the project had "barely started." The September 2024 business plan submitted in response to the NOID indicates that vertical construction is to begin at the end of 2024 and the residential building would be complete at the end of 2027, and the hotel would be complete by the end of 2029. This is over 10 years after the original plan was supposed to be finished. The regulation requires the Petitioner to submit a credible and comprehensive business plan showing that job creation will occur within two years, making the project timeline material to determining EB-5 eligibility.[5] *See* 8 C.F.R. § 204.6(j)(4)(i)(B).

On appeal, the Petitioner submits an updated project status report dated July 2025, which indicates they are still in the plan check phase and construction has not begun. While the Petitioner requests permission to supplement the appeal when additional documents regarding the city's approval are ready, these documents will not impact our decision regarding the material changes of the petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Izummi*, 22 I&N Dec. at 175.

Additionally, the cost of the project has materially changed. The original project proposed a total cost of $79.97 million; with $40 million pooled from immigrant investors and $39.97 million from "domestic funds." The September 2024 project status report states that the project received $40 million from [redacted]. However, the September 2024 business plan states that the new project has a total cost of $131.6 million; $38 million from immigrant investors and $93.6 million from "domestic funds." FOD's decision stated that the proposed project increased without the Petitioner showing how they will obtain the additional required funding. On appeal, the Petitioner submits a document he describes as the "JCE's Agreement for domestic construction funding." We note, however, that the agreement is for financial advisory services, not for actual funding, and the contract is not signed. Therefore, this does not further show the Petitioner has acquired the funding needed to move the project forward to create the required jobs.

On appeal, the Petitioner contends that there is no material change because "the nature and investment structure of the Project remain unchanged." We disagree. The NCE made changes to the type of structures being built, to the timeline, the construction plans, the economic and environmental reports, and the project costs. These changes amount to a change in the nature of the project. The investment structure has also changed as the NCE has not established they have the required funding to move the project forward. The Petitioner cannot establish eligibility based on facts that come into being after he filed his petition. *See Matter of Izummi*, 22 I&N Dec. at 175-76. In other words, he cannot rely on the project described in response to the NOID or in his appellate filing to establish his eligibility for the immigrant investor visa classification. Instead, he must establish eligibility based on the original business plan dated September 2015.

[5] *See Kungsys v. United States*, 485 U.S. at 770-72 (stating that a change is material if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision).

The record establishes that the original business plan is not moving forward as the Petitioner has submitted a new business plan. Therefore, we conclude that the Petitioner has not provided a business plan that is both comprehensive and credible. The Petitioner has not credibly demonstrated that the project will be completed as originally filed or that the original business plan will likely create at least 10 jobs for investors within two years. *See* 8 C.F.R. § 204.6(g), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

Because the Petitioner is ineligible for the EB-5 immigrant investor visa classification we need not reach, and therefore reserve, the remaining issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision.

III. CONCLUSION

The Petitioner has not presented a comprehensive and credible business plan showing that the JCE will likely create full-time positions for at least 10 qualifying employees within the next two years – as discussed in the September 2015 business plan and other documents the Petitioner initially submitted at the time of filing his petition in 2017. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. Because the Petitioner has not satisfied the job creation requirements, he has not demonstrated by a preponderance of the evidence eligibility for the immigrant investor visa classification.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.