U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40159969

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]

FOD denied the petition, concluding the record did not establish that: 1) the Petitioner invested in a new commercial enterprise that is conducting lawful business and placed his invested capital at risk; and 2) the business plan was sufficiently credible to establish the requisite job creation. 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.

I. LAW

Alien investors are eligible for immigrant classification if they invest or are actively in the process of investing the requisite amount of capital in a new commercial enterprise (NCE) which will benefit the United States economy and create full-time employment for at least 10 United States citizens, lawful permanent residents, or other immigrants authorized to work in the United States. Section 203(b)(5)(A) of the Act (2019); 8 C.F.R. § 204.6(j). An alien may invest the required funds directly in an NCE or through a regional center. A commercial enterprise is defined as any for-profit activity formed for the ongoing conduct of lawful business and a regional center is defined as an economic unit involved with the promotion of economic growth. 8 C.F.R. § 204.6(e). For NCEs located in a targeted employment area (TEA), aliens must invest at least $500,000 of capital. Section 203(b)(5)(C)(ii) of the Act (2019).

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) 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 prior to the implementation of the RIA, the relevant law then in existence governs this appellate adjudication.

The regulation at 8 C.F.R. § 204.6(j)(2) provides that the alien investor must establish that they have invested or are actively in the process of investing the required amount of capital and must submit evidence verifying that they have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. The precedent decision, *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998), explains that for an investor to establish that they have placed their investment funds at risk for the purpose of generating a return, the full amount of EB-5 money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.

The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit either documentation of relevant records of ten qualifying employees, or

> (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.[2]

To be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential." *Matter of Ho,* 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). "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.*

II. ANALYSIS

The Petitioner claimed that he invested $500,000 into the NCE, [redacted], associated with [redacted] (now called [redacted]). The NCE proposed to pool $20 million from 40 immigrant investors and lend the entire amount to two job creating entities (JCEs), [redacted] (JCE 1) and [redacted] (JCE 2). The business plan indicates that the project will be managed by [redacted] ([redacted]), a company owning all membership shares in JCE 1, and N-A-, who is the chairman of both the NCE and [redacted]. The JCEs intend to expand and operate a fleet of vehicles servicing disabled individuals, establish a driver's academy, a maintenance and repair facility, and a parking facility, and develop routing software and an accessible transportation application. The submitted business plan and an economic impact analysis project a total of 1,079 jobs from the EB-5 investment.

In the notice of intent to deny (NOID), FOD raised derogatory information contained in public lawsuits and legal actions against various actors associated with or surrounding the NCE or JCEs.[3] FOD

---

[2] The two-year job creation period described in 8 C.F.R. § 204.6(j)(4)(i)(B) commences six months after the adjudication of the petition. 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual.

[3] The derogatory information related to some of the following: 1) a class action lawsuit filed against [redacted] in the U.S. District Court for the [redacted] of New York, 2) a 19-count complaint filed against [redacted] in the Supreme Court of New York, 3) a Federal Bureau of Investigation (FBI) complaint filed against N-A-, the principal managing member/executive chairman of [redacted], 4) a U.S. bankruptcy suit in New Jersey related to the regional center and Petitioner's counsel alleging fraud, improper diversion of funds, and securities violations, and 5) multiple complaints from the Securities and Exchange Commission (SEC) involving the regional center and Petitioner's counsel.

subsequently denied the petition concluding that the Petitioner did not establish a new commercial enterprise and that the required amount of capital was placed at risk, but FOD's analysis largely relied on evidence outside the record of proceedings, which appeared to indicate that the NCE or JCEs, and their affiliates, were not conducting lawful and credible business. FOD also concluded that the business plan was not "*Matter of Ho* compliant" or credible based on the same derogatory information, as well as inconsistencies found in the business plan.

On appeal, the Petitioner asserts he submitted sufficient evidence of the project's business activities and contends that the project, while downsized, is operational. The Petitioner claims that FOD's reliance on pending legal matters, namely the class action lawsuit, the New York Supreme Court complaint, and the FBI complaint, among others, was improper as "it is not within the jurisdiction of [FOD] to draw conclusions based on assumptions especially while cases are pending in a court of law."

Upon de novo review, we conclude that FOD did not sufficiently consider or adequately analyze the evidence submitted by the Petitioner and unduly relied on evidence outside the record of proceedings. Accordingly, we will remand the matter for entry of a new decision consistent with our discussion below.

A. New Commercial Enterprise and Capital at Risk

FOD determined the Petitioner did not establish that the NCE was exclusively participating in lawful business, as required by the definition of commercial enterprise at 8 C.F.R. § 204.6(e). FOD also concluded that the Petitioner did not establish that the invested capital remained with the JCEs. However, instead of addressing the various deficiencies under the applicable regulation at 8 C.F.R. § 204.6(j)(1) and (2), FOD denied the petition relying on public lawsuits and legal actions against various actors associated with or surrounding [redacted] without addressing their relationships to the NCE and relevance to the eligibility criteria. In the denial, FOD listed a series of pending lawsuits without incorporating them into the record.

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. 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. 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, the record lacks copies of any open-source materials FOD may have reviewed and as a result, the Petitioner did not have a meaningful opportunity to address the derogatory information.

Additionally, FOD discussed the class action lawsuit by former drivers of [redacted] and [redacted], as well as complaints filed by the New York Supreme Court and FBI against the attorney of the record and N-A-, alleging fraud and other illegal activities such as misappropriation of investment from the NCE. But there is no indication that these cases have been resolved by the courts, and the litigations are ongoing. In response to FOD's notice of intent to deny (NOID) and on appeal, the Petitioner submits the defendants' motions to dismiss

these complaints and argues that complaints are not the final court findings of illegal or criminal activities. We do not give substantial weight to arrest reports, criminal complaints, and charging documents that did not lead to a conviction. *Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995).

Upon de novo review, we share similar concerns with FOD over the activities of the NCE and its management and the use of EB-5 capital. However, because FOD did not clearly articulate the relevant facts and link them to eligibility, it did not allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Therefore, we remand the matter so that FOD can review the evidence based on 8 C.F.R. § 204.6(j)(2) and *Matter of Izummi*, 22 I&N Dec. at 179, to determine whether the Petitioner made his funds available to the business most closely responsible for job creation. If FOD questions whether the Petitioner irrevocably committed funds to the NCE, issuance of a request for evidence may be appropriate to provide the Petitioner with a reasonable opportunity to respond. FOD should also identify and incorporate any publicly sourced documents into the record before issuing a new decision.

B. Job Creation

FOD also determined that the Petitioner did not establish the requisite job creation. However, FOD relied on the same derogatory information as discussed above in finding that "it does not seem completely lawful or credible business is occurring." Additionally, FOD offered only a conclusory statement regarding the generalized nature of the inconsistencies found in the business plan: "Obvious examples include inconsistencies about site status, entity operating status, lack of probative evidence regarding vehicle operation, and flow of invested funds." But the denial does not cite to specific evidence in the record or explain the inconsistencies in each of the areas mentioned.

We agree that there are inconsistencies and changes in the business plan that may support FOD's adverse finding on the business plan's credibility. The Petitioner initially proposed a $30 million project consisting of a 200-vehicle fleet expansion, a maintenance and repair facility, a driver's academy, a parking facility, routing software, and an accessible transportation application. The original business plan sought up to $20 million from 40 EB-5 investors and $10 million in additional equity.

In response to the NOID, the Petitioner submitted a document entitled "Appendix: Business Changes to the Project" that appear to materially change the nature of the project as well as the project's financing posture. Some of these changes in the appendix include the following: the number of EB-5 investors reduced from the projected 40 investors to only 14 investors; the anticipated $10 million in additional equity was eliminated "as the project downscaled"; the project purchased only 12 vehicles despite that the original business plan aimed to operate 200 vehicles; the planned extension of non-emergency medical transportation and paratransit vehicles, as well as the planned smartphone application, were eliminated from the project; the asserted software was developed but not used; the driver's academy was built but was later closed; and the evidence does not substantiate that the claimed parking facility is being maintained and operated.

The Petitioner also submitted with the NOID response an affidavit from T-G-, former Chief Legal and Compliance Officer with [redacted], the manager of the project. T-G- explains that since the initial raise of EB-5 capital in 2019, "several major global, industry, and program disruptions and changes took place altering the capital raise and scalability as intended for the project." As a result of the COVID-19 crisis, macroeconomic uncertainty, and Securities and Exchange Commission and Department of Justice regulatory actions in 2023, T-G- states only 14 EB-5 investors were subscribed, the capital raise and equity investment were halted, major business contracts were lost, and the manager's "revenue reduced nearly to zero." Although the project was downscaled, T-G- states the project evolved and "a portion of the business plan" was executed.

Contrary to the Petitioner's assertions on appeal, the record does not establish that sufficient capital has or will be obtained to finance the project as described in the business plan and the evidence shows the scope of the project has been greatly reduced. Although the Appendix explained how the project was downscaled, it did not demonstrate that the project has the capacity to develop in the future as described in the business plan. Consequently, the business plan lacks credibility and the Petitioner has not established that the NCE, the JCEs, or the manager of the project will likely create at least 10 jobs for each investor seeking EB-5 classification, within two years, as projected in the business plan and economic analysis. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

However, in determining that the Petitioner did not submit a comprehensive business plan establishing the requisite potential for job creation, FOD relied upon its prior conclusion that the NCE was not engaging in lawful business. As FOD's conclusion relied upon complaints in pending litigation, we remand this issue so that FOD can review the evidence based on 8 C.F.R. § 204.6(j)(4) and *Matter of Ho*, 22 I&N Dec. at 213, to determine whether the Petitioner has established the requisite job creation.

III. CONCLUSION

For the reasons discussed, FOD's decision is withdrawn. On remand, FOD may issue a new request for evidence or notice of intent to deny allowing the Petitioner an opportunity to provide additional evidence relevant to the issues discussed above, and any other evidence deemed necessary to demonstrate eligibility for the classification sought, before issuing a new decision.

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