U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41159630

Date: FEB. 26, 2026

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Standalone Investor

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. An alien may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the NCE's business plan was sufficiently credible and that it relied upon reasonable methodologies 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 dismiss the appeal.

I. LAW

An alien may be classified as an EB-5 immigrant investor if they invest the requisite amount of qualifying capital in an NCE. 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. An immigrant investor may invest the required funds directly in an NCE, or through a regional center. For an NCE associated

[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 INA 203(b)(5), 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 their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

with a regional center, as is the Petitioner's case here, the required full-time positions may be created directly and indirectly by the NCE. 8 C.F.R. § 204.6(e); *see also* 6 *USCIS Policy Manual*, G.2(D)(4), https://www.uscis.gov/policy-manual.

An investor must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are [their] own"). In addition, they must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show that the invested funds were obtained through lawful means, a petitioner must produce evidentiary documents listed at 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source and the record must trace the complete path of the funds back to a lawful source.[2] *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds is USCIS' authoritative position recognized by other relevant precedent decisions); *see also Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998).

In addition, an investor seeking EB-5 classification must demonstrate 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 have multiple investors each seeking EB-5 classification, provided that each investor has invested or is actively in the process of 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).

The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

> (A) Documentation consisting of photocopies of relevant tax records, Form 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.

The prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho* held that, to be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential." 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). "Mere conclusory assertions[, however,] do

[2] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program are not of suspect origin." *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001) (holding that a petitioner had not established the lawful source of her funds because, in part, she did not designate the nature of all of her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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 asserts that he invested $500,000[3] into the NCE, [redacted], which is associated with [redacted] ("the regional center"). The NCE proposed to pool $2 million from four immigrant investors and lend the entire amount to two job creating entities (JCEs), [redacted] (JCE 1) and [redacted] (JCE2). The JCEs intend to open an automotive center named [redacted] ("the project") in [redacted], New York. The facility (as initially described) will include a full-service auto repair and maintenance center, including towing services; an automated car wash and detailing services; and a café and lounge area.

FOD issued a notice of intent to deny (NOID) which raised issues where eligibility had not been established. It noted that the initial filing included no documentation regarding the establishment of the NCE and the details of the project. In addition, FOD indicated that because the record included no information regarding the project, and information about the NCE and project could not be independently verified, the business plan included with other petitions related to the project was not *Matter of Ho*-compliant since it was not credible.[4] Because it found the business plan not credible, FOD stated that the economic analysis was also not credible.

After considering the Petitioner's response to the NOID, FOD concluded that he had not established that the NCE's business plan, which remained unchanged from the plan found in the related project filings, was credible or comprehensive, and thus was insufficient to establish the required creation of at least 10 full-time jobs. FOD noted that photographs and other evidence regarding the project did not show that construction was complete or the business operational, which the business plan projected would occur approximately two years earlier. It also determined that the economic analysis which projected the creation of direct and indirect jobs was not reasonable because it relied upon the non-credible business plan.

On appeal, the Petitioner submits a brief along with new evidence including a new business plan and project documents, including new photographs of the project site. Per the analysis below, we conclude that the Petitioner has not established eligibility as an immigrant investor and will dismiss the appeal.

[3] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is thus adjusted from $1,000,000 to $500,000. 8 C.F.R. 204.6(f)(2).

[4] FOD's NOID also mentioned the existence of derogatory information contained in legal actions against individuals associated with or surrounding the NCE or JCEs. But FOD did not note or cite to this derogatory information in its rationale for denying the petition. Moreover, there is no indication these matters have been resolved by the courts. It appears the litigation is ongoing. We do not give substantial weight to arrest reports, criminal complaints, and charging documents that do not lead to a conviction. *Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995).

A. Job Creation

The business plan submitted in response to FOD's NOID, which was dated November 2019, projected that operations at the facility would begin in October 2020, and that by the end of that year would have created 44 direct jobs. Those jobs included 13 positions related to towing services, 11 attributed to auto repair and maintenance, 10 for car wash services, and 10 for the café. The economic analysis, also submitted with NOID response and dated November 2019, projected a total of 77 direct and indirect jobs for the project by the end of year 3, which included 20 indirect construction jobs and 1 auto leasing position.

With his appeal, the Petitioner submits a new business plan for the project dated September 2025.[5] This plan now describes the NCE as funding the first of three phases of the project, with additional phases funded by [redacted] (NCE2) and [redacted] (NCE3). Phase II includes the addition of state inspection station capabilities and windshield repair services funded by a single immigrant investor, while phase III adds an additional $5.6 million in EB5 investor funding for an expanded café, increased vehicle lift capacity, electric vehicle charging stations, and other items. According to the new plan, "the Project was designed from the outset to open as a complete, fully integrated facility and the Project timeline and progress has incorporated the enhancements and expansions developed across the three phases." The new plan now projects operations to begin in January 2026, and unlike the initial business plan, it makes no mention of automotive towing or leasing services.

In addition to the significant material changes to the scope, scale, and timeline of the project, including the addition of two new NCEs that will provide funding to the JCEs, the second business plan also references a new economic impact analysis, which it states was created in August 2025 in support of the third phase of the project. In contrast to the initial business plan, the new plan indicates that the projection for job creation shows 142 direct and indirect positions for all three phases of the project. This projection therefore does not present job creation data pertaining only to [redacted], but also considers the jobs created by the other two entities funding the project, and thus does not show that the funds that the Petitioner asserts he invested with this NCE will create at least 10 jobs for qualifying employees.

Per the foregoing discussion, the Petitioner cannot rely on the newly submitted business plan to establish that, due to the nature and projected size of the NCE, it will create at least 10 full-time positions for qualifying employees for each investor seeking EB-5 classification. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. In addition, due to the significant changes in the project's timeline, scope, structure, and funding since the creation of the initial business plan in 2019, the Petitioner has not shown that that plan is credible and can be relied upon to establish his eligibility for the requested classification.

[5] This new business plan names the NCE for the second phase of the project, [redacted] on its cover and in discussing EB-5 program qualification.

B. Funds Obtained Through Lawful Means

Although not a basis of FOD's decision, we note that the Petitioner has not established the lawful source of the funds he submitted to the NCE's escrow account. The Petitioner submitted evidence regarding several sources for his investment funds, including he and his spouse's accumulated savings and gifts from his father and several friends. One such purported gift was supported by an agreement between the Petitioner and S-T-, who stated that she unconditionally donated $142,000 for purposes of the Petitioner's EB-5 petition. To show the transmittal and lawful source of these funds, the Petitioner submitted a statement from his [redacted] account ending in [redacted] showing that a wire transfer credit of that amount was pending as of 11/18/2019, with a handwritten note stating "gift from friend." However, the record does not include any evidence identifying the source of the wire transfer, such as wire transfer documentation or bank statements from an account held by S-T- showing a transfer to the Petitioner. While the record does include documents showing the sale of two properties by S-T- in March and April of 2018, as well as incoming wire transfers to S-T-'s [redacted] bank account of approximately $76000 in July 2018 and approximately $73,000 in January 2019, this evidence is insufficient to link the sale of the properties to these bank transactions. In addition, the record lacks documentation linking these two wire transfers to the one for $142,000 made to the Petitioner's [redacted] account several months later. Because the evidence is insufficient to show the complete path of these funds, which comprise a significant portion of the funds purportedly invested by the Petitioner, he has not established that his investment funds did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e).

III. CONCLUSION

The Petitioner has not established that the NCE had already hired 10 qualifying employees at the time he filed his petition. He has also not submitted a credible and comprehensive business plan showing that the NCE will hire at least 10 qualifying employees within the required period. Accordingly, his petition will remain denied.

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.