U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 03627119

Date: FEB. 28, 2020

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). 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 United States economy and create at least 10 full-time positions for qualifying employees.

The Chief of the Immigrant Investor Program Office initially approved the petition, but subsequently issued a notice of intent to revoke (NOIR) the approval based on publically available information indicating that the project referenced in the Petitioner's initial submission was no longer viable. After reviewing the NOIR response, the Chief revoked the approval, concluding that the Petitioner had made impermissible material changes to the project, including its employment creation projections and construction timeline. The Petitioner appeals, submitting additional documentation and maintaining that the changes to the project were permissible.

In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, its eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).[1] Upon *de novo* review, we will withdraw the Chief's decision and remand the petition for further action and consideration.

I. LAW

The Act provides that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition . . . ." Section 205 of the Act, 8 U.S.C. § 1155. The Board of Immigration Appeals has discussed revocations on notice, stating:

> [A] notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

> unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987)).

United States Citizenship and Immigration Services (USCIS) Policy Manual provides the following guidance on revocations based on a finding of material changes:

> A petitioner must establish eligibility at the time of filing and a petition cannot be approved if, after filing, the immigrant investor becomes eligible under a new set of facts or circumstances. Changes that are considered material that occur after the filing of an immigrant investor petition will result in the investor's ineligibility if the investor has not obtained conditional permanent resident status.
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> If material changes occur after the approval of the immigrant petition, but before the investor has obtained conditional permanent residence, such changes would constitute good and sufficient cause to issue a notice of intent to revoke and, if not overcome, would constitute good cause to revoke the approval of the petition. A change is material if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision.

6 *USCIS Policy Manual* G.4(C), https://www.uscis.gov/policy-manual (citing *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998); 8 C.F.R. § 103.2(b)(1); *Kungys v. United States*, 485 U.S. 759, 770-72 (1988)).

II. ANALYSIS

In this case, the Petitioner filed the petition in September 2015, which the Chief approved in October 2016. According to her initial filing, the Petitioner invested in [redacted] the new commercial enterprise (NCE), which is associated with [redacted] a USCIS designated regional center.[2] According to a May 2015 business plan, the NCE will solicit up to $219 million from 438 foreign national investors to make a commercial loan to [redacted] (the borrower) to develop and construct "an ultra-luxury condominium tower" at [redacted] in [redacted] The record, including a February 2018 letter from the [redacted], which the Petitioner submitted in response to the Chief's NOIR, identifying [redacted] as the developer and the [redacted] as its manager. A property deed and related documents show that in 2013, [redacted], an affiliate of the

[2] 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) (2016); *see also* 8 C.F.R. § 204.6(j)(4)(iii), (m) (2016) (providing that a petitioner may satisfy job creation requirements through evidence that the NCE created jobs indirectly).

borrower and developer, purchased the project site for $654,316,306. The 2015 business plan and a June 2015 economic impact report estimate that the project will create 5,517 jobs.

As discussed in the Chief's NOIR, in 2017, a federal judge forced the sale of the project site after the United States Department of Justice initiated a civil forfeiture action, alleging that [redacted], a Malaysian national, misappropriated from a Malaysian development fund, to, among other actions, purchase an interest in the project.[3] In response to the Chief's NOIR, the Petitioner claimed that the developer "intend[ed] to continue the construction and development of the [p]roject in a manner that is consistent with the original business plan" and that the developer intended to acquire [redacted]'s equity interest in the project. Based on this representation and evidence then before her, the Chief revoked the petition approval, finding that the Petitioner had made impermissible material changes to the original petition.

On appeal, the Petitioner no longer claims that her capital will be used for the project located at [redacted]. Instead, she claims that "the NCE is making a secured commercial real estate mezzanine loan to finance [the] construction of a similar nearby construction project" located at [redacted] in [redacted]. She submits for the first time on appeal evidence relating to the [redacted] project, including but not limited to, a June 2018 business plan for [redacted], documents identifying [redacted] as the project's developer; and materials concerning job creation projections of the project.

The Chief did not have an opportunity to review the documentation the Petitioner submits on appeal. We will therefore remand the matter for her to analyze the evidence to determine if it shows that the Petitioner has made impermissible material changes to her petition, as well as whether it rebuts the grounds of revocation specified the NOIR. *See Ho*, 19 I&N Dec. at 590; Section 205 of the Act; 6 *USCIS Policy Manual*, *supra*, at G.4(C).

III. CONCLUSION

The appeal will be remanded to the Chief for further action in accordance with this decision.

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

[3] *United States v.* [redacted] 2:16-cv-05362 (C.D. Cal. Jul. 20, 2016) (Verified Complaint for Forfeiture *In Rem*), available at https://www.justice.gov/archives/opa/page/file[redacted]download, accessed on December 10, 2019; *see also* [redacted] New York Times, [redacted] 2017, available at https://www.nytimes.com[redacted] accessed on December 10, 2019, a copy of the article has been incorporated into the record of proceedings.