U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 40347942

Date: JAN. 23, 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 noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding the Petitioner did not establish that the new commercial enterprise (NCE), [redacted], would likely create at least 10 full-time positions for qualifying employees. In the denial, FOD declined to defer to the exemplar application associated with this 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 FOD's decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. LAW

An alien can 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"). A petitioner may invest the required funds directly in an NCE or through a regional center. 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 alien 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

[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), 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed her petition in 2018, the relevant law in existence on that date governs this appellate adjudication.

within two years. 8 C.F.R. § 204.6(j)(4). 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. *See generally* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual.

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
>
> (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.

U.S. Citizenship and Immigration Service's (USCIS) policy regarding deference to previous agency determinations in the EB-5 context states that, as a general matter, determinations made earlier in the EB-5 process will not be reexamined and will be presumed to have been properly decided. *See generally* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(5). However, 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 fraud or misrepresentation in the record of proceeding, or the previously favorable decision is legally deficient. 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 Kungys v. United States*, 485 U.S. 759, 770-72 (1988) (finding that a change is material if it would have a natural tendency to influence or is predictably capable of affecting the decision); *see generally* 6 *USCIS Policy Manual*, *supra*, at G.3(A)(2).

If an adverse decision is based on derogatory information considered by USCIS, 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).

## II. ANALYSIS

The Petitioner asserts his eligibility for EB-5 classification based on an investment of $500,000 into the NCE on November 1, 2017. The NCE proposed to pool $23 million from 46 immigrant investors, along with other sources of funding, to finance construction of a hotel and casino in [redacted], Mississippi. Thereafter, the NCE project changed to a proposed hotel, casino, and amusement park in [redacted], Mississippi.

FOD issued a notice of intent to deny (NOID) to the Petitioner in March 2025, notifying the Petitioner of its intent to deny the petition because "based on a review of publicly available sources, the only construction progress for this project is the possible completion of the connecting platform/desk [sic]

(between the [redacted] and the proposed project hotel/casino) and the amusement park." The NOID also included two URL links to the Virginia Secretary of State's website that according to FOD revealed that the "entity status is inactive for both the RC and NCE."

Following receipt of the Petitioner's response, FOD denied the petition concluding that the Petitioner did not establish that the business plans were *Matter of Ho* compliant, or that the Petitioner's investment will create at least 10 full-time positions for qualifying employees.[2] FOD, relying on the aforementioned publicly available sources (specifically, Google and Microsoft Edge searches), further noted that a review of the proposed construction timelines in both the original and updated business plans were not met and "USCIS was not able to find any evidence that renovation of the existing [redacted] has started or any evidence that there will be a casino added to this hotel." In addition, FOD's decision referenced the Mississippi Gaming Commission's website, included a URL, and noted it "did not find any information regarding [redacted]'s plan to obtain a gaming license from the Mississippi Gaming Commission by May 15, 2025." Lastly, FOD determined that the Petitioner failed to establish that the economic methodologies used to demonstrate the creation of indirect jobs were reasonable, as the information underlying the economic model came from business plans FOD found to be neither comprehensive nor credible.

On appeal, the Petitioner asserts that FOD violated USCIS policy by failing to give deference to prior agency determinations and maintains that no material change in facts has occurred, despite some changes to the project's location, structure, and timeline since the initial business plan dated March 2016 was submitted to USCIS. The Petitioner further asserts the project has made sufficient progress, noting that an amusement park (a condition for building a casino under the Mississippi Administrative Codes) has been built and operational since 2023. The Petitioner contends that 272.8 jobs have been created which is sufficient job creation for 27 EB-5 immigrant investors. And the Petitioner explains that "retrofitting" the [redacted] is under "pre-construction activities" and that it is "set to begin in 2025," which is not progress that is viewable via the publicly available sources FOD referenced. Moreover, the Petitioner asserts that FOD does not need to consult information outside the record of proceedings to determine that renovation and retrofit of the hotel is going to take place and that the Mississippi Gaming Commission is supportive of the project. Lastly, the Petitioner provides evidence of the progress of their loan through [redacted], which he asserts is sufficient funding to complete the project.

Upon review, we conclude that FOD did not properly notify the Petitioner of the derogatory information referenced in its decision that the business plans were not credible and therefore could not serve as a basis to project job creation. *See* 8 C.F.R. § 103.2(b)(16)(i). The NOID did not sufficiently identify the "publicly available sources" and provide specific derogatory information regarding the construction project. FOD did not provide further identification or analysis of the relied-upon information, and merely providing a URL is insufficient because no printouts of the Google Street View information were provided to the Petitioner or included in the record of proceedings. As a result,

[2] The record includes two business plans dated March 2016 and January 2025. In addition to these business plans, FOD's decision relies on business plans not in the record, specifically, plans dated October 2020, March 2021, and May 2021. 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. FOD bears the responsibility of ensuring that the record is complete and contains all evidence that has been submitted by a petitioner or considered by FOD in reaching the decision. *See* 8 C.F.R. § 103.2(b)(1).

the NOID did not provide adequate notice of the derogatory information and did not give the Petitioner a meaningful opportunity to respond. *See* 8 C.F.R. § 103.2(b)(16)(i).

Additionally, 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" that is disclosed to a petitioner. Here, the "publicly available sources" were neither included in the record nor adequately disclosed to the Petitioner.[3] In addition, FOD did not meaningfully discuss the derogatory information relied upon.

## III. CONCLUSION

For the above stated reasons, FOD's decision is withdrawn, and the matter is remanded for further review, issuance of a notice providing the Petitioner with an opportunity to rebut any derogatory information from outside the record of proceeding, and entry of a new decision. The new decision, if unfavorable, shall be based only on evidence in the record of proceeding that has been disclosed to the Petitioner, and 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 decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[3] FOD informed the Petitioner that a separate NCE, [redacted], mentioned in the January 2025 business plan does not have a Form I-956F filed with USCIS. On appeal, the Petitioner asserts that [redacted] is in the process of preparing and submitting a Form I-956F to work with this NCE on this project, but that it is possible the NCE will complete the project without [redacted] funding, depending on the loan proceeds, and that if that is the case, [redacted] investor funds may be used to "quickly repay the loan as a "Bridge Loan."" The Petitioner's assertions raise concerns about the viability of the project which should be further explored by IPO on remand. Without more, the Petitioner has not established that the required amount of capital from his investment has been made available to the business most closely responsible for job creation upon which this petition is based. *See Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998).