U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40158787

Date: JAN. 28, 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) (2019).[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 United States 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 business plan was sufficiently credible and the regional center relied on 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

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

[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 has filed his petition prior to the implementation of the RIA, the relevant law then in existence governs this appellate adjudication.

targeted employment area (TEA), aliens must invest at least $500,000 of capital. Section 203(b)(5)(C)(ii) of the Act (2019).

The regulation at 8 C.F.R. § 204.6(j)(2) provides that the alien investor must establish that he or she has invested or is actively in the process of investing the required amount of capital and must submit evidence verifying that he or she has 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 he or she has placed his or her 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] LLC, associated with [redacted] LLC. The NCE proposed to pool $2.0 million from four immigrant investors and lend the entire amount to two job creating entities (JCEs), [redacted] LLC (JCE 1) and [redacted] LLC (JCE 2). The JCEs intend to open a "comprehensive 12,226 square foot automative service hub" in [redacted] New York. The facility will include multiple automotive and lifestyle services, such as a full-service auto repair and maintenance center with vehicle lifts, an in-bay automatic car wash with detailing services, a 40,000 square foot "market café," and several electric vehicle charging stations.

FOD raised several concerns about the Petitioner's business plan and economic analysis and issued a notice of intent to deny ("NOID") to the Petitioner. FOD noted the petition did not contain sufficient evidence to establish the NCE was a for profit entity formed after [redacted] 1990, for the ongoing conduct of lawful business. FOD also questioned if the Petitioner submitted sufficient evidence to demonstrate that his investment would create full-time positions for at least 10 qualifying employees within a two-year period commencing six months after the adjudication of the petition. Specifically, FOD observed the business plan had become outdated so the documentation in the record did not

[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.

support its project timeline and therefore job creation plans rendering it noncompliant with *Matter of Ho*. And the concerns FOD raised about the business plan also raised doubts about the reasonableness of the economic methodology the Petitioner employed to demonstrate his investment would create the requisite number of jobs.[3]

The Petitioner's response to the NOID claimed the business plan was credible and *Matter of Ho* compliant.[4] The response largely focused on demonstrating the project's progress. And the Petitioner provided payroll journals, job advertisements, and internal candidate job application tracking documents to assert that the requisite job creation was "imminent" in accordance with the business plan included with the initial petition. The Petitioner also asserted that the ownership and management of the NCE had changed and that all invested funds had been received by the NCE. The Petitioner further contended that the economic analysis was based on reasonable methodologies because the business plan was credible.[5]

FOD denied the petition, concluding the Petitioner's response to the NOID did not sufficiently demonstrate the *Matter of Ho* compliance and credibility of the business plan present in the record. FOD noted the Petitioner submitted "ancillary documents" that were non-responsive to the question of the business plan's comprehensiveness such that it could not conclude the business plan was compliant with *Matter of Ho*. And FOD noted the construction and hiring timelines contained different deadlines than the business plan and both deadlines had long since passed.

On appeal, the Petitioner renews his contention that the business plan is credible and the economic methodology is sound. In support of the credibility of the initial business plan, the Petitioner submits an updated business plan into the record along with new photos demonstrating progress of construction and an updated timeline. The Petitioner also submits updated payroll reports and evidence of newer hires to support its assertion that it was more likely than not that the requisite jobs would be created.

Upon our de novo review, we conclude the record does not demonstrate the business plan's credibility and thus its compliance with *Matter of Ho*. And we note upon our de novo review that the Petitioner has not established the funds he invested generated from lawful sources. So, we will dismiss this appeal for the reasons below.

A. Required Job Creation and Reasonableness of Economic Methodology

The Petitioner maintains that the business plan he submitted with his initial petition was credible, the updated business plan included with the appeal supports the initial business plan's credibility, and that

[3] FOD's NOID also mentioned the existence of derogatory information contained in public lawsuits and legal actions against various actors 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).

[4] The evidence the Petitioner submitted with the NOID preponderantly demonstrated that the NCE was a for profit entity formed after [redacted] 1990, for the ongoing conduct of lawful business.

[5] The Petitioner avers that FOD deviated from USCIS policy when it issued a NOID to the Petitioner and not a request for evidence (RFE). The Petitioner is mistaken. The policy does not place limitations on USCIS' discretion to issue "an RFE **or** a NOID when the facts and the law warrant." (emphasis added). *See generally* 1 *USCIS Policy Manual* E.6(F)(1).

both plans are compliant with *Matter of Ho*. However, upon our de novo review, we conclude that the Petitioner's updated business plan describes an impermissible material change precluding the approval of the petition and requiring the dismissal of the Petitioner's appeal.

The Petitioner's initial business plan forecasted that the project would utilize $2 million pooled from four immigrant investors and lend the funds to two JCEs. JCE 1 would use $1.5 million of the funds to construct the market café and leasehold improvements, purchase equipment and inventory, and provide operating capital. JCE 2 would use the remaining $500,000 to construct the auto service center and purchase applicable equipment. The business plan forecasted JCE 1 would have a total income of approximately $3.7 million in year one, increasing to $4.3 million in year five. JCE 2 was forecasted to have a total income of $2.4 million in year one increasing to $2.9 million in year 5.[6] The Petitioner's initial business plan also contained a market analysis sourced from First Research and IBISWorld that provided an outlook for the car wash industry, the auto repair industry, and the market café industry because of the "multi-dimensional nature of the venture." As a result, it included the names of a variety of different potentially competing businesses but did not identify if the businesses were present in the area in which the project would operate. And whilst it contained a surface-level comparison of the services it offered compared to its apparent competitors, it did not provide a comparison of specific pricing structures other than vague generalities of the costs for services generally expected from the individual business category. The business plan did describe the type of permits anticipated for the project and did mention several authorities it would approach to procure the permits but did not list specific required permits and licenses obtained or anticipated to be obtained. The initial business plan did not contain a marketing strategy for the project but did set forth its organizational structure and the experience of its personnel. It contained the project's staffing requirements and a timetable for hiring positions with job descriptions that were out of date whilst anticipating the project would create 77 jobs.

But the updated business plan the Petitioner submitted with his appeal describes a material change to the initial business plan the Petitioner submitted. The updated business plan indicated the project coordinated with two other "EB-5 offerings, each sponsored by [redacted]'. According to the updated business plan, the venture's "evolution proceeded through three conceptual development phases that do not represent sequential operational launches or independent business segments, but rather the progressive enhancement and expansion of a single, integrated facility concept designed to open as a complete, full-integrated operation." The updated business plan describes the project as the starting phase of a three-phase project under the auspices of the [redacted]. Each phase solicits alien investors to invest in a NCE that in turn invests in either JCE 1 or JCE 2. Or in other words, the NCE is not the only entity that invests funds into JCE 1 or JCE 2. JCE 1 and JCE 2 both also receive funds from other unconnected NCEs named [redacted] and [redacted] The initial business plan did not describe the other phases, the other NCEs, and so the other sources of funding for JCE 1 or JCE 2.

[6] We note the five-year projections section corresponding to JCE 1 contains a chart titled "JCE 2" and the section corresponding to JCE 2 contains a chart titled "JCE 1." However, we also observe the facts and figures in each chart correctly relate to the JCE section they are contained within.

Moreover, the updated business plan materially changes direct and indirect job creation estimates ascribed to the Petitioner's investment. A regional center NCE must demonstrate that the investment will create at least 10 full-time direct or indirect job positions. The business plan accompanying the initial petition forecasted 77 jobs as a result of the investment. The updated business plan stated the investment will create 142 "EB-5 Qualifying Jobs." The updated business plan contains a higher estimate for job creation because the calculation includes jobs created by investments into other unrelated NCEs. The Petitioner asserts that this "[t]otal job creation will support the EB-5 qualification requirement" for the Petitioner in the project as well as all the investors in all the other phases described. But under the regulation, the Petitioner must demonstrate that the total number of full-time positions created for qualifying employees will be allocated solely to those alien investors who have used the establishment of the new commercial enterprise as the basis for a petition. *See* 8 C.F.R. § 204.6(g)(2). The updated business plan does not adequately identify the job creation specifically attributable to the NCE, which could lead to a misallocation or double counting of jobs. As such the Petitioner cannot rely on the job creation stemming from unrelated investments in other NCEs, such as [redacted] or [redacted] by other investors to satisfy the job creation requirements credited to her investment. *See* 8 C.F.R. § 204.6(g)(1), (j)(4)(i); *see also* 8 C.F.R. § 204.6(e) (defining "commercial enterprise").

Other changes to the initial business plan described in the updated business plan consisted of new ownership and management of the JCEs as well as a different timeline for the commencement of operations. Taken together along with the consolidated job creation and income projections, the updated business plan constitutes an impermissible material change to the project described in the initial petition.

In short, the updated business plan the Petitioner submitted is a new second business plan. The second business plan changes the NCE's business model and focus, planned use of investment, as well as anticipated job creation. These changes have a natural tendency to influence the eligibility decision because they add new facets and components that combine to essentially form a new three phase project; thus, these changes constitute impermissible material changes to the Petitioner's petition. *See Kungys v. United States*, 485 U.S. 759, 770 (1988); *see also Matter of Izummi*, 22 I&N Dec. at 175-76. *See generally* 6 *USCIS Policy Manual*, *supra*, at G.3(C)(1).

Based on the above discussed reasons, the Petitioner has not presented a comprehensive and credible business plan showing that, due to the nature and projected size of the NCE, it will create at least 10 qualifying employees for each foreign national 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. Specifically, when the Petitioner presents the updated business plan, he makes impermissible material changes to his petition, regarding the NCE's business model and focus, planned use of investment, and anticipated job creation. *See Matter of Izummi*, 22 I&N Dec. at 175-76; *see also* 8 C.F.R. § 103.2(b)(1). As such, he cannot rely on the project described in the updated business plan to establish his eligibility for the EB-5 classification. Instead, he must establish eligibility based on the project specified in the first business plan. And neither the Petitioner's response to the NOID, nor any other evidence in the record, supports the first business plan is sufficiently comprehensive, credible and *Matter of Ho* compliant that we could determine the project's job creating ability.

B. Required Amount of Capital

In addition, whilst not a basis of FOD's decision, we note that the Petitioner has not established that he invested, or is actively in the process of investing, at least $500,000 into the NCE. The regulation specifies that an EB-5 petition "must be accompanied by evidence that the alien has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise in the United States which will create full-time positions for not fewer than 10 qualifying employees." 8 C.F.R. § 204.6(j).

The evidence the Petitioner submitted into the record did not demonstrate that he has invested, or is actively in the process of investing, the requisite amount of funds into the NCE. The regulation at 8 C.F.R. § 204.6(j)(2)(iv) lists among possible evidence of an investor's commitment of the required funds "[e]vidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock." The record contains an executed subscription booklet, subscription agreement, and investor qualification questionnaire but no evidence showing the transfer of funds from the Petitioner to the NCE. We note that the bank documentation shows funds transferred to the regional center, not the NCE. Further, the record does not include bank account statements showing the regional center's, or more importantly the NCE's, receipt of those funds. Accordingly, he has not established that he has met the requirement at 8 C.F.R. § 204.6(j).

C. Lawful Source of Funds

And, whilst not a basis for FOD's decision, we note the record is also insufficient to confirm by a preponderance of the evidence the lawful source of the Petitioner's purported EB-5 capital investment. *See* 8 C.F.R. § 204.6(e), (j)(3); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The Petitioner identifies five sources from where his investment funds flow. The Petitioner states that $145,631 was procured via a home equity line of credit secured by a property he and his wife own in [redacted] Georgia. The Petitioner and his wife took out loans and distributions in the amounts of $42,163 and $87,560.19 respectively from their individual 401(k) retirement accounts. The Petitioner stated that he received $53,500 from the account of a company of which he is the sole owner. He and his wife also received funds from the sale of a different property located in Georgia, the proceeds of which amounted to $136,531.09. And the Petitioner and his spouse received a gift in the amount of $75,000 from the Petitioner's spouse's brother [redacted][7]

The record reflects that all funds transferred to the [redacted] LLC came from the Petitioner and his spouse's [redacted] Bank account ending in [redacted]." Copies of bank account statements and transaction history reports for September, October, and November 2019 for [redacted] Bank account ending in [redacted]' reflect that the funds from the five sources the Petitioner identified were deposited. It appears that the bank account was newly opened in 2019 shortly before the deposits were made from the sources the Petitioner has identified. However, the bank account statements also reflect other deposits from '[redacted]" totaling $7,500. The record does not identify the nature of these deposits that have commingled with the funds the Petitioner transferred to the [redacted] LLC for his investment. So, we

[7] The sum total of funds from all of the Petitioner's identified sources is over $540,000. The [redacted] LLC charged the Petitioner a $40,000 administrative fee.

conclude that there is insufficient material, relevant, or probative evidence to support the lawful source of the Petitioner's funds that were transferred to the [redacted] LLC by a preponderance of the evidence.

Based on these reasons, the Petitioner has failed to establish that his purported EB-5 capital investment did not derive, directly or indirectly, from unlawful means, as the evidence does not trace the complete path of the funds back to lawful sources. *See* 8 C.F.R. § 204.6(e) (defining "capital"); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

III. CONCLUSION

The Petitioner has not established that the NCE had already hired 10 qualifying employees at the time he filed his petition. Nor has he submitted a comprehensive business plan showing that due to the nature and projected size of the NCE, it will hire not fewer than 10 direct, permanent, qualifying employees within the required period. It is the Petitioner's burden to demonstrate his eligibility for the EB-5 classification. Here, the Petitioner has not made such a showing.

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.