U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37241434

Date: JULY 28, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526E, Immigrant Petition by Regional Center 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). This fifth preference 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 U.S. economy and create at least 10 full-time positions for qualifying employees. Aliens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, § 610, 106 Stat. 1828 (1992), as amended.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that: 1) "all invested capital" was derived from a lawful source of funds; and 2) the NCE will create 10 full-time positions for qualifying employees within two years. On appeal, the Petitioner disputes the denial, asserting that "the project is actively creating jobs" and is not solely dependent on investor funding. The Petitioner argues that FOD is "abusing the EB-5 investment immigration law by requesting proof of the legal source of funds for the GP's investment."

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.

In a supporting cover letter, the Petitioner indicated that he invested $500,000[1] in [redacted] the NCE that is associated with [redacted]

[1] On March 15, 2022, the EB-5 Reform and Integrity Act (RIA) was signed into law, revising generally 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 filed his petition in 2017, which is prior to the enactment of the RIA, the relevant law then in existence governs this appellate adjudication. The Petitioner also indicated that the project is located in a targeted employment area (TEA). Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

Although FOD stated that a notice of intent to deny (NOID) was issued on November 10, 2022, the record does not contain a copy of such a notice. The record also does not contain the 27 listed documents that FOD labeled as NOID Exhibits 1-5 (with Exhibits 3 and 4 consisting of multiple parts). FOD listed these exhibits in its decision and attributed them as being part of a response to the absent NOID. FOD also made ambiguous references to "recent filings with USCIS" and "responses to USCIS," neither of which appear to be part of this record of proceeding. Additionally, FOD did not adequately inform the Petitioner of deficiencies, if any, in these "recent filings," as it did not elaborate on the contents of the purported filings and responses. Importantly, the record does not show that FOD issued a request(s) for the Petitioner to address.

In addition, FOD stated that "Hawaii records indicate that the project has not paid property taxes in several years" and it referred to "open source satellite images [that] do not show construction activity on the site." However, the record lacks copies of the records and images referenced in FOD's decision, nor does it appear that the Petitioner was made aware of these documents prior to the denial. If a decision will be unfavorable to a petitioner and is based on derogatory information considered by USCIS and of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the petitioner. 8 C.F.R. § 103.2(b)(16)(ii).

In order to ensure fair and complete consideration of the proceedings before us, it is necessary that the record of proceeding contains copies of all evidence that has been submitted by a petitioner. It is also necessary that the Petitioner receive notice of any derogatory information upon which a decision may be based or considered by FOD in reaching their decision, and that the record also contains this information. 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 the FOD in reaching their decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976). We will, therefore, withdraw FOD's decision and remand this matter.

On remand, FOD should identify and incorporate any documents that may have been inadvertently omitted from the record of proceeding. If FOD cannot supplement the record with the missing materials referenced as the Petitioner's "recent filings," and "responses to USCIS," it should issue a request for evidence or NOID, granting the Petitioner a reasonable opportunity to respond. Additionally, FOD should provide notice to the Petitioner of any derogatory information it may rely on in its decision and incorporate such documentation into the record. Upon receipt of a timely response, FOD should review the entire record and enter a new decision.

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