U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39827761

Date: JULY 31, 2025

Appeal of Field Operations Directorate 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 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.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the NCE, [redacted] LP, and the job creating entity (JCE), [redacted] LLC, would likely create at least 10 full-time positions for qualifying employees. 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 the decision and remand the matter for entry of a new decision consistent with the following analysis.

The Petitioner asserted his eligibility based on an investment of $500,000 into the NCE[2] on November 5, 2019. The NCE proposed to pool $49 million from 98 EB-5 investors, along with other sources of funding, to finance construction of a multi-purpose real estate development in [redacted] Indiana.

FOD concluded that the Petitioner did not establish that the business plan was compliant with *Matter of Ho*, or that the Petitioner's investment will create at least 10 full-time positions for qualifying employees. FOD further determined that the Petitioner did not establish that economic methodologies used to demonstrate the creation of jobs were reasonable because the information used as a basis to

[1] On March 15, 2022, the EB-5 Reform and Integrity Act (RIA) of 2022 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 had filed the instant petition prior to the enactment of the RIA, the relevant law in existence on that date governs this appellate adjudication.

[2] The NCE is affiliated with [redacted] Regional Center.

support the inputs into the economic model are from the business plan that were already determined to be not credible.

On appeal, the Petitioner submits a brief, asserting that FOD did not review all the documents submitted prior to concluding that the business plan is not credible and its economic methodologies are unreliable.[3] The Petitioner further claims that FOD may have reviewed documents related to a different petitioner in making the decision.

We note that FOD's decision contains statements and references that do not pertain to this petition casting doubt on the thoroughness and fairness of FOD's findings. For example, FOD referred to another petitioner's name in the denial and erroneously stated that the notice of intent to deny (NOID) notified the Petitioner of multiple deficiencies in the record (regarding establishment of a new commercial enterprise, qualifying investment, and capital placed at risk), when in fact, the NOID only raised the employment creation issue.[4]

To ensure fair and complete consideration of the proceedings before us, it is necessary that the record of proceedings contains copies of all evidence considered. FOD bears the responsibility of ensuring that the record is complete and contains all evidence submitted by the Petitioner and any other evidence considered by FOD in reaching the decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976). Here, FOD does not accurately describe the evidence considered. Therefore, we will remand the matter to FOD for further review of the record and to issue a decision based on correct recitation of facts and documents.

Moreover, FOD should reconsider the issue of lawful source of funds on remand. Here, the Petitioner claimed that the funds originate from his father's gift money and submitted the father's statement, gift affidavit, bank statements of companies that the father purportedly owns in the United Arab Emirates (UAE), and UAE trade licenses. FOD should examine the father's ownership of the company that directly remitted $500,000 to the NCE on the Petitioner's behalf and the father's legal ownership of the company's funds, to determine whether the Petitioner invested his own capital into the NCE and sufficiently traced the path of funds leading to the lawful source. Although not raised in the NOID or in the denial, upon review of the record, we note that this issue warrants additional attention.

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

[3] The Petitioner also claims that FOD arbitrarily denied the petition due to the high volume of documents in the record. However, we do not find the Petitioner's claim persuasive as FOD merely noted that "hundreds" or "the thousand page plus of evidence" were submitted without index. On appeal, the Petitioner submits reorganized, labelled, and tabbed documents that were previously submitted to demonstrate that the project has made progress and has the necessary funding.
[4] FOD also misstated the NOID issuance date as August 19, 2024 (the NOID was in fact issued on September 6, 2024) and the Petitioner's NOID response date as September 25, 2024 (the Petitioner responded to the NOID in October 2024).