U.S. Citizenship and Immigration Services

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

In Re: 42369050

Date: JUN. 2, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

Form I-526E, Immigrant Petition by Regional Center Investor

On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, repealing the prior legislation authorizing the Regional Center Program. Section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5) (2022). The Petitioner seeks classification as an immigrant investor pursuant to Section 203(b)(5) of the Act. This fifth preference (EB-5) classification makes immigrant visas available to aliens who pool their funds for investments that involve a regional center in the United States based on a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. Section 203(b)(5)(E) of the Act.

USCIS denied the petition on multiple grounds, concluding that the record did not establish the Petitioner is eligible for EB-5 classification. The matter is now before us on appeal pursuant to Section 203(b)(5)(P)(i)(III) of the Act. *See also* 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

Subparagraph (A) of Section 203(b)(5) of the Act provides that an alien investor may qualify for EB-5 classification if he or she has invested, or is actively in the process of investing, at least the required amount of capital in a new commercial enterprise (NCE) that will benefit the United States economy by creating full-time employment for not fewer than 10 United States citizens, United States nationals, or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States. Section 203(b)(5)(A) of the Act. The required amount of capital is $1,050,000 or $800,000 for an investment in a targeted employment area or in an infrastructure project. Section 203(b)(5)(C) of the Act.

The Act instructs that an alien investor must "demonstrate that the capital required under subparagraph (A) and any funds used to pay administrative costs and fees associated with the alien's investment

were obtained from a lawful source and through lawful means." Section 203(b)(5)(L) of the Act. Section 203(b)(5)(D)(ii) of the Act specifies that EB-5 capital "does not include . . . assets directly or indirectly acquired by unlawful means, including any cash proceeds of indebtedness secured by such assets." Furthermore, the regulation states that a "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication." 8 C.F.R. § 103.2(b)(1).

## II. ANALYSIS

According to her petition, filed in January 2025, the Petitioner intended to invest $800,000[1] in [redacted] the NCE associated with [redacted] and pay $20,000 in administrative costs and fees associated with her purported investment.[2] In a March 2025 statement, the Petitioner claimed that her EB-5 funds "came from [her] earned income and investments, and gifts from [her] two brothers."

USCIS denied the petition on multiple grounds, including on the ground that "the record does not establish [the Petitioner] invested or [was] actively in the process of investing the required minimum amount of $800,000" at the time she filed the petition in January 2025. *See* Section 203(b)(5)(A)(i) of the Act; *see also* 8 C.F.R. § 103.2(b)(1). The Petitioner acknowledges that at the time she filed the petition, she had remitted only $200,000 of the $800,000 required amount of capital to the NCE's escrow account, claiming that she had planned to remit the remaining $600,000 after filing her petition. Bank record confirms that in December 2024, she remitted $200,000 to the NCE's escrow account; then a month after she filed the petition, in February 2025, she remitted the remaining $600,000 plus $20,000 to pay for her administrative costs and fees. In a January 2025 statement, the Petitioner explained that "[f]or largely procedural reasons . . . , I [was] unable to remit my entire Subscription Amount [of $800,000] before the filing of my . . . [p]etition."

On appeal, the Petitioner argues that "at the time of filing [the petition]," she was actively in the process of investing the required amount of capital because she "had committed the requisite capital pursuant to the investment offering, made an initial capital contribution, and completed the remaining transfer within the contemplated investment framework."[3] The record includes the Petitioner's Subscription Agreement, the "Wiring Instructions" section of which provides that "Payment in U.S. dollars by bank-to-bank wire transfer of the entire Subscription Amount must be received by the Escrow Agent in the manner set forth in the Escrow Agreement on or before the date of the investor's signature on the investor's Subscription Agreement." The Petitioner signed the Subscription Agreement on November 27, 2024, before she remitted any funds to the NCE or its escrow account. The Subscription Agreement also includes the following statement from the NCE's general partner:

---

[1] The Petitioner indicates that the NCE is in a targeted employment area and that the required amount of capital is adjusted from $1,050,000 to $800,000. *See* Section 203(b)(5)(C) of the Act.

[2] The Petitioner offers a December 2024 letter from [redacted] indicating that her administrative fees of $80,000 were reduced to $20,000. A February 2025 letter from the NCE's escrow agent acknowledges the receipt of $20,000 from the Petitioner.

[3] While the Petitioner had requested "the opportunity to submit a brief in support of the appeal," as of the date of this decision, approximately five months after she initiated the appeal, we have not received an appellate brief. We are therefore adjudicating the appeal based on the materials before us, which include a document entitled "Statement in Support of Form I-290B, Notice of Appeal."

"Receipt and acceptance of foregoing subscription and payment of the Subscription Amount for one (1) Unit is hereby acknowledged by the [NCE] on November 28, 2024." The bank record, however, does not confirm that as of November 28, 2024, the Petitioner had remitted any funds to the NCE or its escrow account for EB-5 purposes. Instead, the bank record indicates that the Petitioner remitted $200,000 to the NCE's escrow account on December 18, 2024, and then $620,000 on February 4, 2025. The evidence does not confirm that the Petitioner had invested in the NCE pursuant to the terms of the Subscription Agreement.

The record includes a January 2025 statement, in which the Petitioner stated that after remitting $200,000 to the NCE's escrow account, she planned to remit $600,000 plus $20,000 for administrative costs and fees by January 15, 2025. She indicated that if she "fail[ed] to complete payment of [her] entire Subscription Amount prior to [January 15, 2025,]" she would "forfeit $50,000 of [her] then-remitted Principal Investment Amount" of $200,000. The Petitioner has not pointed to any legal authority to support her position that the potential forfeiture of $50,000 of her remitted $200,000 is sufficient to demonstrate that she was actively in the process of investing at least $800,000 in the NCE when she filed her petition. *See* Section 203(b)(5)(A)(i) of the Act; *see also* 8 C.F.R. § 103.2(b)(1).

At most, the record shows that at the time the Petitioner filed the petition in January 2025, she had invested $200,000 in the NCE and planned to invest the remaining required amount. She, however, has not established or referenced any legal authority to support the position that her planned investment of the entire required amount after she had filed the petition, and agreeing to a forfeiture $50,000 for not remitting the entire amount, is sufficient to demonstrate that she was actively in the process of investing at least $800,000 at the time she filed the petition. *See* Section 203(b)(5)(A)(i) of the Act; *see also* 8 C.F.R. § 103.2(b)(1). At issue is not whether the Petitioner had eventually remitted the required amount of EB-5 funds to the NCE after she filed the petition. Rather, at issue is whether at the time she filed her petition, she had met the EB-5 requirements, which include showing that she had "invested . . . or [was] actively in the process of investing" at least $800,000 in the NCE.[4] The Petitioner has not made such a showing.

On appeal, the Petitioner maintains that USCIS erred because "USCIS denied the petition based on grounds that were not clearly identified in the Request for Evidence [RFE], including the application of the 'actively in the process of investing' standard . . . ." She argues that she "was not afforded a meaningful opportunity to address the dispositive reasoning relied upon in the decision, and the administrative record is incomplete."

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) explains that USCIS "in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS." The Petitioner has not pointed

[4] As noted in *Doe v. USCIS*, 410 F. Supp. 3d 86, 101 (D.D.C. 2019):

> An approved I-526 petition is given a priority date as of the date the petition is properly filed . . . . If petitions did not have to meet the EB-5 requirements at the time of filing and could be changed at will, then petitioners could file incomplete petitions in order to receive a better priority position for obtaining a visa. Allowing later changes to incomplete petitions would be unfair to those petitioners who waited to file their forms until the appropriate time when they had the evidence necessary to establish all EB-5 requirements.

to any legal authority to support her position that USCIS must issue an RFE or that USCIS is permitted to deny a petition based solely on issues raised in the RFE. *See* 8 C.F.R. § 103.2(b)(8)(ii). Additionally, assuming *arguendo* that she did not have an opportunity to address an eligibility issue before USCIS denied the petition, she could have fully addressed the issue on appeal, which she did not do.[5] In short, the Petitioner has not shown that USCIS erred.

## III. CONCLUSION

The Petitioner has not satisfied the requirements under Section 203(b)(5)(A)(i) of the Act, because she has not sufficiently established that at the time she filed the petition, she had invested or was actively in the process of investing at least $800,000 in the NCE.[6] *See also* 8 C.F.R. § 103.2(b)(1).

**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.

[5] *See supra* note 3.

[6] As noted, USCIS denied the petition on multiple grounds, including on the grounds that the Petitioner did not satisfy the lawful source of funds requirements under Section 203(b)(5)(D)(ii)(III), (L) of the Act, and did not properly complete the petition. We will reserve any eligibility issues not discussed in this decision for future consideration if the need arises. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).