U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42582672

Date: JUN. 05, 2026

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

USCIS denied the petition, concluding that the record did not establish that the NCE, [redacted], would create at least 10 full-time positions for qualifying employees.[2] In the denial, USCIS declined to defer to the exemplar application associated with this NCE and the favorable determination 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 the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An alien may 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, as the Petitioner has done in this case. 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).

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[1] On March 15, 2022, the EB-5 Reform and Integrity Act (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). Because the Petitioner filed his petition in 2017, prior to enactment of the RIA, the relevant law then in existence governs this appellate adjudication.

[2] USCIS initially denied the petition on July 7, 2023, and the Petitioner appealed that decision to our office. In December 2024, we remanded the matter for entry of a new decision, which USCIS issued on January 16, 2026.

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 within two years. 8 C.F.R. § 204.6(j)(4).[3] According to 8 C.F.R. § 204.6(j)(4)(i), to show that an NCE 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
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> (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.

USCIS articulates policy regarding deference to previous agency determinations in the EB-5 context. *See generally* 6 *USCIS Policy Manual,* G.3(A)(2), https://www.uscis.gov/policy-manual. As a general matter, USCIS does not reexamine determinations made earlier in the EB-5 process, and such earlier determinations will be presumed to have been properly decided. *Id.* 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).

II. ANALYSIS

The Petitioner asserts that, in October 2017, he invested $500,000[4] in the NCE, [redacted] which is sponsored by [redacted]. According to a Confidential Offering Memorandum dated March 26, 2016, the NCE initially proposed to raise up to $120 million from immigrant investors, along with other sources of funding, to finance the construction and operation of a new casino and hotel resort in [redacted] Mississippi, which would include restaurants, a concert entertainment venue, an RV park, and a parking structure.

In October 2025, USCIS issued a request for evidence (RFE), advising the Petitioner that due to material changes to the NCE's project, USCIS would not grant deference to its prior favorable determination regarding the project's job creation potential. The RFE stated that "four (4) business plans were submitted" (dated March 2016, October 2020, March 2021 and January 2025) and included

[3] 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.

[4] The Petitioner filed his petition in 2017 and indicated that the investment has been made in a targeted investment area. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(t)(2) (2017).

a table intended to provide a "high-level summary of material changes between the various business plans." USCIS provided the Petitioner with an opportunity to submit additional evidence to demonstrate eligibility.

The Petitioner's response to the RFE advised USCIS of the current status of the project and included, among other evidence: a copy of a January 2025 business plan for the [redacted] Redevelopment Project" in [redacted] Mississippi; a news article relating to the 2023 opening of the [redacted] amusement park adjacent to the [redacted] and a July 2025 term sheet describing proposed equity financing for the project.

In its decision, USCIS, again relying on a comparison of four different business plans, found that there had been "a wholesale re-envisioning of a general project concept over time" that constituted a material change. USCIS further emphasized that the Petitioner's RFE response indicated that the senior loan, permits and licenses needed to commence work on the main component of the updated project (hotel redevelopment and casino) had not been secured. USCIS determined that even in the "best case scenario" the project described in the 2025 business plan "would likely not be completed until sometime in 2028 or 2029." Finally, citing *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998), USCIS concluded that "[c]hanges that are considered material that occur after the filing of an immigrant investor petition result in the investor's ineligibility if the investor has not obtained [conditional permanent resident] status."

On appeal, the Petitioner disagrees with USCIS' determination that there has been a material change, pointing out that construction of a new hotel and casino is scheduled to begin in June 2026 and be completed no later than early 2028.[5] The Petitioner also emphasizes that the adjacent amusement park has been built and operating since 2023, that this non-gaming amenity was a necessary part of the NCE's project under Mississippi law, and that it has already created jobs over 312 jobs, a significant portion of the total number required to meet the job creation requirements for the project's EB-5 investors. He contends that USCIS erred by not addressing these jobs and their impact on his eligibility.

Upon review, we will withdraw USCIS' decision and remand the matter for entry of a new decision.

The record before us includes two business plans dated March 2016 and January 2025. However, USCIS' decision relies on consideration of business plans that are not in the record, specifically plans dated October 2020 and March 2021.[6] 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. USCIS bears the responsibility of ensuring that the record is complete and contains all evidence that has been submitted by a petitioner or considered by USCIS in reaching the decision. *See* 8 C.F.R. § 103.2(b)(1). Accordingly, we are remanding this matter to ensure that the record is complete and contains all evidence considered by USCIS.

[5] The Petitioner indicates that the project will now involve construction of a new hotel adjacent to the existing [redacted] rather than renovation or redevelopment of that existing hotel property, as described in the January 2025 business plan.

[6] USCIS' prior decision dated July 2023 referenced information from another business plan, dated May 2021, which is also not in the record.

Without the ability to review copies of the 2020 and 2021 business plans referenced by USCIS, we cannot, for example, evaluate the Petitioner's claim that the [redacted] amusement park that has been operating since 2023 was part of the EB-5 project in which he invested and that jobs resulting from its construction and operation should be attributed to the NCE. We note that documents accompanying the January 2025 business plan state that [redacted] will continue to retain ownership and operation of [redacted] amusement park." This evidence, therefore, raises questions as to whether the amusement park was ultimately part of the NCE's project, or whether the amusement park's development was undertaken directly by [redacted] the owner of the adjacent [redacted]

In addition, we observe that the business plan dated January 2025 relates to [redacted] an NCE established in 2023, which seeks to raise at least $32 million from 40 or more immigrant investors for the redevelopment of [redacted] The business plan indicates that [redacted] (the NCE in which the Petitioner invested) will be the project's developer and provide $15 million towards this redevelopment project, with another entity, [redacted], serving as the job creating entity. While USCIS considered this business plan as an "update" to the project in which the Petitioner invested in 2017, it appears to be a newly conceived project with a new NCE and JCE.

In addition, the Petitioner did not provide details or evidence regarding the $15 million in funding that [redacted] would provide to the new NCE or otherwise explain the status of the NCE in which he invested and the location of his invested funds. Therefore, without further evidence, 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).

III. CONCLUSION

USCIS' decision is withdrawn, as it was based on evidence that is not in the record. On remand, USCIS should ensure that the record is complete and consider all evidence already submitted, including the claims and evidence submitted on appeal. Based on the additional issues discussed above, USCIS may issue an RFE prior to issuing a new decision. Any new decision, if unfavorable, shall be based only on evidence in the record which has been disclosed to the Petitioner. *See* 8 C.F.R. § 103.2(b)(16)(ii).

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