U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12566964

Date: JUN. 15, 2021

Appeal of Immigrant Investor Program Office 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). 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.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not establish eligibility for the EB-5 classification. Specifically, the Chief determined that the Petitioner did not establish, as required, that [redacted], the NCE, would create the necessary number of jobs. [1] On appeal, the Petitioner submits additional evidence and asserts that the record establishes her eligibility for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a NCE. The foreign national must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. An immigrant investor may invest the required funds directly in an NCE, as in this case, or through a regional center.

The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have

[1] The Petitioner does not allege, and the record does not demonstrate, that the NCE has already created the requisite number of jobs. *See* 8 C.F.R. § 204.6(j)(4)(i)(A).

already been hired following the establishment of the new commercial enterprise; 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]

Prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho* held that, to be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential." 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 indicates she invested $500,000[3] in the NCE on December 27, 2017. According to the February 2018 business plan, the NCE offers [redacted] and "concentrates its attention on tour consultation and bus tour [redacted]." The NCE intends to create 10 qualifying jobs by its second year of operation consisting of: a general manager, three travel consultants, three bus drivers, one bookkeeper, and two tour guides.

The Chief issued a request for evidence (RFE), notifying the Petitioner that she did not submit a business plan that was *Matter of Ho* compliant. The Chief raised concerns regarding the NCE's failure and delays in obtaining permits necessary to operate the bus tour portion of its business model and thereby create the necessary number of jobs. After reviewing the record, the Chief denied the petition, finding that the Petitioner had not submitted sufficient evidence indicating the NCE had taken sufficient steps to secure the necessary permits and licenses for its tour guide operation and did not submit sufficient documentation of its advertising and marketing materials to evidence its travel consulting operations.

Considering the record in its totality, we find that the Petitioner has not provided a business plan that is comprehensive or credible. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Ho*, 22 I&N Dec. at 213. Therefore, the Petitioner has not demonstrated that the NCE will likely create at least 10 jobs within two years, as projected. Page 48 of the business plan states that five of the 10 required jobs will come from the NCE's tour guide business which, according to the Petitioner, requires a license from the Department of Transportation (DOT) Federal Motor Carrier Safety Administration to begin operations. The initial

[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. USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 19 (May 30, 2013), https://www.uscis.gov/legal-resources/policy-memoranda; *see also* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[3] The Petitioner indicates that the NCE is located in a targeted employment area, and that the requisite amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2).

record indicates the NCE purchased a 25-seat vehicle in order to begin the process of obtaining the DOT license.

However, the NCE's application for the DOT license has been pending since 2018, which the Petitioner claims on appeal is due to "the hardships in getting an insurance company offering a plan due to recent high rate of death in travel industry in [redacted]." While the Petitioner provided copies of e-mails between the NCE and four insurance brokers showing an attempt to obtain the necessary insurance, the emails reveal the brokers are wary to offer a policy because the NCE's name is "too similar to another company in [redacted]" and the price of insurance coverage is prohibitively expensive for the NCE's business. Given the delays in obtaining the license required for the NCE to operate its tour guide business and a lack of documentation indicating that it is likely the NCE will be able to secure an insurance policy necessary to obtain the license, the business plan to create five full-time tour guide jobs is not credible.

On appeal, the Petitioner indicates the NCE has proactively provided travel consulting service to its clients and referred clients to other businesses. The Petitioner claims the NCE, while waiting on its DOT license, hired four employees in its first year: one general manager and three travel consultants. The travel consultants do not arrange any sales of transportation, but "simply provided travel consulting such as customizing the clients' needs in travel route design, calculating the trip costs, providing travel proposals to prioritize costs, referring clients alternatives in travel destinations, and providing cultural knowledge to clients." While this evidence indicates the NCE has been an active business, the Petitioner has not submitted comprehensive evidence indicating the travel consulting business will generate 10 full-time jobs without the tour guide portion of the business. The Petitioner offered payroll records showing the NCE hired four employees, but the most recent business plan indicates the NCE plans to only hire three travel consultants as it has done in this case. The Petitioner's lack of detail in showing the operation of its travel consultant business indicates its business plan is not comprehensive. For the reasons discussed above, we find the Petitioner has not sufficiently demonstrated it will create 10 qualifying jobs as required by 8 C.F.R. § 204.6(j)(4)(i).

III. CONCLUSION

The Petitioner has not submitted a comprehensive or credible business plan and did not sufficiently demonstrate it will hire 10 qualifying employees. *See Ho,* 22 I&N Dec. 206 at 213 and 8 C.F.R. § 204.6(j)(4)(i).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.