U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11809754

Date: JUN. 22, 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] The NCE is associated with [redacted] a USCIS designated regional center.[2] 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 withdraw the Chief's decision and remand the petition for further action and consideration.

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.

[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).

[2] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2016); *see also* 8 C.F.R. § 204.6(j)(4)(iii), (m) (2016) (providing that a petitioner may satisfy job creation requirements through evidence that the NCE created jobs indirectly).

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 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 not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.[3]

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[4] in the NCE on December 4, 2015. According to the July 2019 amended business plan, the NCE will solicit up to $5 million from 10 foreign national investors to lend to [redacted] the job creating entity (JCE), which intends to operate a factory to produce [redacted] pipe insulation in [redacted] Missouri.

The Chief issued a request for evidence (RFE), notifying the Petitioner that, among other things, she did not submit a business plan that was *Matter of Ho* compliant. After reviewing the record, the Chief denied the petition, finding that the Petitioner had not submitted sufficient evidence indicating the NCE had taken steps to secure any necessary permits and did not submit credible projections of the project costs, financing, or timetables. More specifically, the Chief found that the original May 2015 business plan did not list the necessary permits to operate a factory and the 2019 business plan amendment did not include evidence of the permits necessary for the claimed environmental remediation. The Chief also determined the Petitioner did not submit sufficient evidence of the project's funding sources needed to finance the estimated $22,600,000 in project costs and failed to adequately explain the numerous and lengthy delays in bringing the factory, purchased in 2009, into the production stage.

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[3] 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.

[4] 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).

On appeal, the Petitioner provides a statement detailing the lengthy delays associated with the projects as well as the efforts taken to bring the factory up to production. She submits for the first time on appeal evidence that the factory is properly zoned, does not need any permits, and successfully completed the environmental remediation. The Petitioner also submits more documentation identifying the sources of funding as well as insurance documentation explaining the lengthy delays in bringing the project up to production.

The Chief did not have an opportunity to review the documentation the Petitioner submits on appeal. We will therefore remand the matter for her to analyze the evidence to determine if it shows that the Petitioner has established the necessary job creation according to 8 C.F.R. § 204.6(j)(4)(i).

III. CONCLUSION

The appeal will be remanded to the Chief for further action in accordance with this decision.

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