U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35731664

Date: JUN. 30, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien Investor

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) (2019).[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. Aliens invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center.[2] *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, § 610, 106 Stat. 1828 (1992), as amended (hereinafter the "Appropriations Act").

Field Operations Directorate (FOD) denied the petition on multiple grounds, including finding that the record was insufficient to establish that the Petitioner's purported investment in [redacted] the NCE,[3] will create at least 10 full-time jobs 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 dismiss the appeal.

I. LAW

Under 8 C.F.R. § 204.6(j)(4)(i), a petitioner must establish that their investment of the required amount of capital in an NCE will create full-time positions for at least 10 qualifying employees within two

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

[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." *See* 8 C.F.R. § 204.6(e).

[3] The Petitioner states that the NCE is affiliated with [redacted] a regional center that USCIS designated to participate in the EB-5 program in 2009.

years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii). For purposes of the adjudication of the Form I-526, Immigrant Petition by Alien Investor, 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.

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 similar documents for ten (10) qualifying employees, if such employees have 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 fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

A petitioner is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the NCE. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 employees within the next two years. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998).

Petitioners investing in an NCE within a regional center may rely on economic methodologies to demonstrate that the investment will create indirect jobs as a result of the investment in the NCE, but such methodologies must be reasonable. *See* Pub. L. No. 102-395; 8 C.F.R. §§ 204.6(e), (j)(4)(iii), (m)(7)(ii). A petitioner must provide sufficient evidence for USCIS to determine whether the methodologies used are reasonable.

II. ANALYSIS

The primary issue before us is whether the Petitioner has demonstrated that his investment in the NCE satisfies the job creation requirements under 8 C.F.R. § 204.6(j)(4). For the reasons discussed below, we conclude the Petitioner has not provided a business plan that is both comprehensive and credible. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. Therefore, he has not demonstrated that the job-creating entity (JCE) will likely create at least 10 full-time positions for qualifying employees within two years as projected in the submitted business plan and economic impact report.

The record indicates that in November 2019, the Petitioner remitted a total of $555,000[4] to the NCE's designated escrow account as his EB-5 investment. Bank records show that these funds were

[4] The Petitioner indicates that the NCE and the JCE are in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2019). The Petitioner's $555,000 remittance to the NCE's escrow account included a $55,000 administrative fee.

transferred to the NCE's Interaudi Bank checking account ending in [redacted] on December 20, 2019. According to the NCE's October 2019 business plan, it seeks to raise up to $12.5 million from 25 immigrant investors to loan to the JCE, [redacted] LLC. The JCE intends to use the loan proceeds from the NCE, plus $6 million in "developer funding," to construct [redacted] which is described as a "a new public charter school serving grades 6-12 . . . on a 14-acre parcel of land in [redacted] Florida." The business plan states that the project will create a total of 262.9 qualifying jobs.

FOD issued a request for evidence (RFE) in April 2024. FOD emphasized that although the business plan indicates that the JCE had entered a purchase and sales agreement to buy the project property in October 2019, and was designated to use the funds from the EB-5 investors to construct the school property, USCIS was not able to verify the JCE's existence in the Florida Secretary of State's searchable online business entity database. FOD requested clarification of the date of the JCE's formation along with evidence demonstrating how the funds the Petitioner invested with the NCE were made available to the JCE for the purpose of creating jobs.

In response to the RFE, the Petitioner provided evidence the JCE was established as a Florida limited liability company on [redacted] 2024. The Petitioner also provided an update regarding the status of the project, including statements from representatives of both the NCE and JCE. The Petitioner advised that due to the uncertainty caused by the COVID-19 pandemic and the congressional lapse in the EB-5 Regional Center program, 18 of the project's 25 investors had withdrawn their petitions, leaving seven active investors and $3.5 million invested.[5]

With respect to the status of the project, a letter from the JCE's manager explained: (1) the project was delayed for years due to the pandemic as well as difficulties with permitting the wetland mitigation of a large portion of the roadway near the project site; (2) the City of [redacted] has waited to issue site plan approvals until both the wetlands mitigation and roadways are completed; (3) with the wetlands mitigation completed and roadways under construction, site plan permits were expected to be approved in the fall of 2024; (4) construction is expected to be completed 13 months after permits are obtained; and (5) the JCE remains committed to completing the project.

A brief project update from the NCE's general partner expressed that "[d]espite the EB-5 investment having been reduced from the original business plan (due to I-525 withdrawals), the JCE has firmly committed to fully utilizing the remaining $3,500,000 of EB-5 loan proceeds as soon as the required permitting approvals are in place." The Petitioner provided bank records for the NCE's [redacted] operating account in support of his claims that his invested funds, and the $500,000 investments of six other EB-5 investors, remained available in the NCE's operating account. The Petitioner maintained that the charter school project "remains on track to be completed as described in the 2019 business plan and within the regulatory timeframe."

FOD determined the record did not establish that the NCE will create at least 10 full-time positions for qualifying employees and the requisite number of jobs will be created using reasonable methodologies. Specifically, FOD concluded the Petitioner had not established that the NCE's

[5] Bank records submitted in response to the RFE show that these individuals withdrew their invested funds from the NCE's operating account between November 2023 and January 2024.

business plan is both comprehensive and credible. FOD observed that, with only $3.5 million of an expected $12.5 million in funding available from immigrant investors, the project appears to be facing a significant shortage of $9 million needed to finance the construction of the school, nearly half of the total proposed budget of $18.5 million. FOD emphasized the Petitioner did not explain how these additional funds would be sourced. In addition, while acknowledging the updates provided in response to the RFE and the JCE's explanation for various project delays, FOD noted that the record lacks supporting evidence of any project progress made to date.

On appeal, the Petitioner contends that while the project's development has been delayed through no fault of the developers or investors, "the JCE/Developer only continues to pursue the Project because it believes, more likely than not, that it will be successful in that endeavor." The Petitioner states that USCIS should not overrule the developer's "independent, commercially reasonable assessment that the Project will be developed" and maintains that "a reasonable delay in the full execution and completion of the Business Plan is not grounds to deny the [petition]."

We conclude the Petitioner has not provided a business plan that is both comprehensive and credible. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. Therefore, he has not demonstrated that the JCE will likely create at least 10 full-time positions for qualifying employees within two years as projected in the business plan and economic impact report.

First, as observed in FOD's decision, the record contains insufficient evidence that the JCE will likely have sufficient capital for the project. The business plan states that the project will require (1) EB-5 capital of $12.5 million from 25 immigrant investors and (2) "developer funding" of $6 million to fund the total project cost of $18.5 million. Although the NCE received $12.5 million in funding from 25 immigrant investors, the Petitioner concedes that 18 of those individuals withdrew their investments, leaving only $3.5 million available for the NCE to loan to the JCE.

The record does not demonstrate, by a preponderance of the evidence, that the JCE has obtained or is likely to obtain the remaining $15 million in construction financing required to complete the project. Although the Petitioner claims on appeal that the JCE remains committed to pursuing the project to completion and resubmits the JCE's letter to that effect, neither the Petitioner's brief nor the letter from the JCE addresses FOD's concerns regarding the $9 million shortfall in EB-5 investment funding. Further, the business plan is predicated, in part, on the JCE being an established entity with the financial ability to provide $6 million in "developer funding" for the project. For example, the business plan states at page 3 that the JCE entered a purchase and sales agreement to acquire the project's property on [redacted], 2019.[6]

Notwithstanding this claim, the record reflects that the JCE was established as a limited liability company in the State of Florida in [redacted] 2024, shortly after FOD inquired about its date of establishment, and nearly five years after this petition was filed. This calls into question the credibility of the business plan, which states in multiple places that the JCE had already purchased the project property and was preparing to apply for site permits. On appeal, the Petitioner emphasizes "the JCE's substantial and continuing substantial investment in the project's development." However, the record

[6] According to the Construction Budget at page 27 of the NCE's business plan, the cost of the claimed land purchase was $2.8 million.

does not include evidence of this "substantial investment" in the project, document the availability of $6 million in "developer funding" contemplated in the business plan, corroborate the JCE's alleged [redacted] 2019 property purchase, or show how the JCE intends to carry out the project with only $3.5 million in available EB-5 capital.

Second, the evidence in the record does not substantiate the development timeline, which in turn does not substantiate that the project will likely create enough jobs for the Petitioner and other investors seeking EB-5 classification within the required two-year timeframe. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *see also* 8 C.F.R. § 204.6(g) (providing that each individual investor's investment must result in the creation of at least 10 full-time positions for qualifying employees). The claimed project timeline has shifted significantly, with the latest estimate suggesting the JCE's construction of the charter school would be complete in 2026, five years later than initially projected. The JCE's manager provided a general update regarding the project's status, citing lengthy delays that it attributes to the pandemic, the need for wetlands mitigation in the [redacted] development where the school will be situated, the need to construct and expand roadways in and near the development, and a claim that "[t]he City of [redacted] has been extremely slow in their deliberations and decisions regarding [redacted] site plan and our site."

FOD acknowledged the provided explanation for the delay in construction but emphasized that the Petitioner provided "no evidence of any progress" relating to the project. On appeal, the Petitioner emphasizes that he provided a signed letter from the JCE's manager confirming its commitment to completing the construction of the school. The Petitioner maintains the project will still be completed "as per the business plan."

We agree with FOD's conclusion that the Petitioner has not provided sufficient evidence to support the credibility and comprehensiveness of the submitted business plan. While we acknowledge the effect of the COVID-19 pandemic on the construction industry and recognize that it is not unusual for projects to undergo unforeseen delays, the Petitioner's claims that the significant delays here are entirely outside the JCE's control, and that the JCE has nevertheless made substantial investment in the project's development, are not adequately supported by evidence.

As noted by FOD, while the Petitioner provided a general project update from the JCE in June 2024, that update was not accompanied by evidence to support claims in the record that the JCE has been actively investing in the project and pursuing the necessary approvals needed to commence construction. For example, while the June 2024 update from the JCE suggested that the City of [redacted] was making deliberations regarding the JCE's project site, the record does not contain, for example, evidence of any documentation the JCE has submitted to the city for approval, any other communications between the JCE and the city, or evidence of other preliminary steps the JCE has taken or expenditures it has made to get the project underway, such as entering contracts for architectural, engineering, or legal expenses. The Petitioner's claim that the JCE has been actively pursuing and investing in the project is also undermined by evidence that the JCE did not exist as a legal business entity in Florida prior to June 19, 2024.

In addition, while the Petitioner maintains that the project will be completed "as per the business plan," the October 2019 business plan is not sufficiently detailed to permit us to make reasonable inferences about job-creation potential. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998).

For example, the section of the business plan titled "Permits and Licenses" states that the JCE "entered into a purchase agreement on [redacted] 2019 to purchase the property" and states it would apply for "site and building construction permits" in "early 2020." However, it does not identify the permits and licenses required to proceed with the project or the expected timeline for receiving them. Further, the record does not contain evidence that the JCE had entered into a property purchase and sales agreement in 2019 or document the JCE's current ownership of the claimed project property, the exact address of which has not been provided or documented in the record. Similarly, the business plan at page 26 includes a section titled "Construction Timeline," but it does not detail any expected plans or milestones other than stating that construction was estimated to start in the first quarter of 2020 and be completed by August 2021. Finally, the business plan's abbreviated discussion of job creation and allocation and "timeline for hiring," on page 26, refers to a different JCE called [redacted] as the owner of "the property," and indicates that "teachers and staff" would be hired beginning in the second quarter of 2021, with no further detail provided. Overall, the level of detail provided in the business plan is lacking.

For all the reasons discussed, we conclude the Petitioner has not offered a business plan that is both credible and comprehensive. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

In addition, the record does not sufficiently demonstrate that the requisite number of jobs will be created using reasonable methodologies. *See* 8 C.F.R. §§ 204.6(j)(4)(iii), (m)(7)(ii). To demonstrate that the requisite number of jobs will be created using reasonable methodologies, the Petitioner offered an economic impact report dated October 2019, the NCE's October 2019 business plan, and brief project update letters from the NCE and JCE dated June 2024. FOD determined that because the business plan is neither credible nor comprehensive, the specific job creation information used from the business plan as a basis to support the inputs into the economic model is not credible for demonstrating that the requisite number of jobs will be created. The Petitioner does not directly address this determination on appeal.

We agree with FOD that the record does not sufficiently demonstrate that the requisite number of jobs will be created using reasonable methodologies because the economic model is based on the job creation information from the business plan, which is found to be neither comprehensive nor credible due to insufficient evidence that the project can meet the established development timeline and that the JCE will obtain the required construction funding to complete the project. In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966).

III. CONCLUSION

Upon considering the record as a whole, we conclude the Petitioner has not presented a comprehensive and credible business plan showing that the JCE will create no fewer than 10 jobs for each investor seeking EB-5 classification within the next two years. *See* 8 C.F.R. § 204.6(g)(1), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. The record also does not sufficiently demonstrate that the requisite number of jobs will be created using reasonable methodologies. *See* 8 C.F.R. §§ 204.6(j)(4)(iii), (m)(7)(ii). Because the Petitioner has not satisfied the job creation requirements, he has not demonstrated by a preponderance of the evidence eligibility for the immigrant investor visa classification.

As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any remaining issues concerning his eligibility.[7] *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).

ORDER: The appeal is dismissed.

[7] FOD denied the petition on other grounds, concluding the Petitioner did not demonstrate that his invested funds have been placed at risk, in compliance with program requirements, to the business most closely responsible for job creation. *See* 8 C.F.R. § (j)(2). We will reserve this and any other eligibility issues that are not discussed in this decision for future consideration if the need arises.