U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-A-

DATE: MAR. 4, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION FOR ALIEN ENTREPRENEUR

The Petitioner seeks classification as an immigrant investor. *See* 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 make a qualifying equity investment of the requisite amount in a new commercial enterprise (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. An immigrant investor may invest the required funds directly in a NCE, or through a "regional center."[1]

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish, as required, that the Petitioner's investment into the NCE would create at least 10 full-time jobs. On appeal, the Petitioner provides a brief as well as additional exhibits, and asserts that the Chief erred in reaching her decision and that the instant petition establishes her eligibility for the benefit sought.

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 the Petitioner has done in this case. 8 C.F.R. § 204.6(j)(4)(iii). For a new commercial enterprise not located within a regional center, the full-time positions must be created directly by the new commercial enterprise to be counted. This means that the new commercial enterprise (or its wholly owned subsidiaries) must itself be the employer of the qualifying employees.[2]

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[1] A regional center is an economic unit involved with the promotion of economic growth through "improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (defining "regional center").

[2] 8 C.F.R. § 204.6(e). USCIS Policy Memorandum PM-602-0083, *supra*, at 18 ; *6 USCIS Policy Manual, supra*, at G.2(D)(4),

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, 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
>
> (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]

A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products or services, and its objectives. *Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). Elaborating on the contents of an acceptable business plan, *Ho*, 22 I&N Dec. at 213, states that the plan should contain a market analysis, the pertinent processes and suppliers, marketing strategy, organizational structure, personnel's experience, staffing requirements, timetable for hiring, job descriptions, and projections of sales, costs, and income. The decision concludes: "Most importantly, the business plan must be credible." *Id.*

II. ANALYSIS

In December 2015, the Petitioner filed the instant petition based upon her investment into the NCE, [redacted] According to the business plan included with her petition, this investment would "finance the acquisition and operations of ten trucks. Ten trucks hire ten drivers." The NCE would then contract with a third party, [redacted] doing business as [redacted] for "the booking of customer loads, fuel purchasing, maintenance, human resources, safety, licensing, and other needed functions, including use of the [redacted] brand name and office and depot space."

In October 2017, the Chief issued the Petitioner a notice of intent to deny (NOID) the petition identifying a number of deficiencies in the business plan that she found called into question its credibility. She subsequently denied the petition, finding that the Petitioner's response had not overcome her concerns, and that she had not established eligibility. On appeal, the Petitioner asserts that the Chief erred in determining that the NCE was unlikely to create the requisite number of jobs. In support of these assertions, she provides a copy of her NOID response and copies of the Form W-2, Wage and Tax Statement, for the NCE's employees in 2016.

[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.

Upon review, the Chief's decision fails to identify any specific eligibility requirement that the Petitioner has not established. Although she discusses aspects of the business plan, she makes no specific findings as to its credibility or the job creation requirement. Additionally, in parts of her analysis, the Chief mistakenly identifies E3 Cargo as the NCE and indicates that the Petitioner and other foreign investors are participating in a pooled investment that must demonstrate a total of 80 jobs. Furthermore, much of the Chief's analysis relies on documentation submitted by those other foreign investors in support of their individual petitions, which is absent from the record before us and could not be considered.

III. CONCLUSION

We withdraw the Chief's decision and remand the matter for consideration of whether the Petitioner has established eligibility under 8 C.F.R. § 204.6(j). 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). If the Chief determines it appropriate, she may issue a request for evidence or notice of intent to deny containing specific findings that will afford the Petitioner the opportunity to present a meaningful response in order to establish eligibility for the immigration benefit sought.

ORDER: The decision of the Chief, Immigrant Investor Program Office, is withdrawn. The matter is remanded to the Chief, Immigrant Investor Program Office, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of T-A-*, ID# 1939227 (AAO Mar. 4, 2019)