U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34871876

Date: MAR. 5, 2025

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) (2019).[1] 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 U.S. economy and create at least 10 full-time positions for qualifying employees. Foreign nationals may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish (1) that a qualifying NCE has been established, (2) that the required minimum amount of $500,000 has been invested or is actively in the process of being invested, (3) the required minimum amount of capital has been made available to the business most closely responsible for job creation, (4) that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital obtained through lawful means, and (5) that the NCE will create at least 10 full-time positions 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.

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 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 in 2019, the relevant law then in existence governs this appellate adjudication.

The Petitioner asserted on page 6 of his petition that on March 22, 2019, he invested $50,000[2] into [redacted] (NCE), which is sponsored by [redacted][3] According to the Private Placement Memorandum, the NCE proposes to raise $5,000,000 from 10 immigrant investors and lend the entire amount to [redacted] the job-creating entity (JCE). The JCE intends to (1) lease or purchase a real property located at [redacted] Florida, (2) construct a new building or renovate an existing building on the property, and (3) operate the building as a mental and behavioral health facility that will provide mental and behavioral health services to individuals.

The Petitioner asserted that he derived his investment funds through the sale of a real property in Iran. The Petitioner further asserted that he used the services of hawala money transferors to exchange his investment funds from Iranian rials to United Arab Emirates (UAE) dirhams and to transfer these funds from Iran to Dubai, UAE, and then to the United States.

On appeal, the Petitioner contends that the Chief denied his petition without first issuing a request for evidence (RFE) or a notice of intent to deny (NOID) to allow him to submit supporting documents for his petition. He argues that the Chief's objections were based on alleged gaps and inconsistencies in the evidence on record and issues that could have been easily addressed with the submission of corrected and supplemental documentation by the Petitioner if he was provided with an RFE or a NOID.

Although 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE or a NOID, neither the Act nor the regulations compels us to do so. Moreover, while the Petitioner claims that the Chief's grounds for denial could have been easily addressed with the submission of corrected and supplemental documentation, he does not offer any additional evidence to address the deficiencies noted in the Chief's decision. The Chief's decision provided adequate notice regarding the deficiencies in the petition, yet the Petitioner does not present sufficient documentation to establish eligibility for the EB-5 classification.

Furthermore, the Petitioner does not address or contest the Chief's specific findings regarding eligibility for the EB-5 classification. The Chief discussed the deficiencies in the evidence submitted to establish the Petitioner's eligibility as an immigrant investor and concluded that he did not meet the establishment of an NCE, required amount of capital investment, capital at risk, lawful source of funds, and job creation requirements. *See* 8 C.F.R. § 204.6(h) (explaining the establishing of an NCE); 8 C.F.R. §§ 204.6(f)(1), (j)(2), (j)(6) (providing that an immigrant investor must invest or be actively in the process of investing the required amount of capital in the NCE); 8 C.F.R. § 204.6(e) (defining "capital" and "invest"); 8 C.F.R. § 204.6(j)(2) (stating that the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk); 8 C.F.R. § 204.6(j)(3) (providing that the petitioner must demonstrate by a preponderance of the evidence that the capital was their own and was obtained through lawful means); 8 C.F.R. § 204.6(j)(4)(i) (stating that the petition must establish that the

[2] The Petitioner had filed his petition in 2019 and asserted that the NCE will be located in a targeted employment area. Therefore, the requisite amount of capital investment was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2019). He claims that he is in the process of investing the remaining $450,000 in the NCE.

[3] [redacted] is a USCIS designated regional center to participate in the EB-5 program. *See* 8 C.F.R. § 204.6(e) (defining a "regional center").

investment of the required amount of capital in an NCE will create full-time positions for at least 10 qualifying employees within two years). The Petitioner does not identify an erroneous conclusion of law or statement of fact in the Chief's decision regarding eligibility for the EB-5 classification. *See* 8 C.F.R. § 103.3(a)(1)(v).

Because the Petitioner has not addressed the Chief's determination that the Petitioner does not qualify for the EB-5 classification, we deem the issue waived and will dismiss the appeal based on this dispositive issue. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and providing that any ground of ineligibility that is not raised on appeal is waived).

ORDER: The appeal is dismissed.