U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37362812

Date: MAR. 11, 2026

Appeal of Field Operations Directorate (FOD) 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 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.

FOD denied the Form I-526, Immigrant Petition by Alien Entrepreneur, and dismissed the Petitioner's subsequent Form I-290B, Notice of Appeal or Motion. FOD concluded that the record did not establish that the Petitioner's investment in [redacted] an NCE affiliated with [redacted] (the Regional Center), would 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.

On appeal, the Petitioner asserts that FOD improperly denied her petition. She notes that FOD granted the Regional Center's request for voluntary termination on October 28, 2024, and emphasizes that she had "timely notified USCIS and redirected her investment" to a new regional center and qualified NCE in March 2024. The Petitioner maintains that she is eligible for the good faith investor protections under Section 203(b)(5)(M) of the Act, 8 U.S.C. § 1153(b)(5)(M), and that FOD erred by failing to adjudicate her Form I-526 based on evidence related to her investment in the new EB-5 project.

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 INA 203(b)(5), 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 filed her petition in 2019, the relevant law then in existence governs this adjudication.

I. LAW

An alien may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. The investor must show that his or her investment will benefit the U. S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). An alien may invest the requisite amount of qualifying capital directly in an NCE or through a regional center, as the Petitioner did in this case.[2] Regional centers apply for designation to participate in the EB-5 program with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project, taken on either directly by the NCE or by one or more separate "job creating entities" (JCEs).

For purposes of the Form I-526 petition adjudication 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 petition. Investors in a regional center project are subject to the same program requirements but may rely on indirect job creation demonstrated through reasonable economic methodologies. *See* 8 C.F.R. §§ 204.6(e), (j)(4)(iii), (m)(7)(ii). If the NCE has not already created the jobs, the petition must include a comprehensive business plan demonstrating the need for at least 10 qualifying employees within the next two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). *Matter of Ho* explained that a comprehensive business plan must be credible and contain sufficient detail to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998).

Where a regional center, NCE or JCE is the subject of termination or debarment from the EB-5 program, investors with a pending or approved petition, including petitions filed prior to the 2022 enactment of the EB-5 Reform and Integrity Act, may retain eligibility. *See* section 203(b)(5)(M) of the Act; *see generally* 6 *USCIS Policy Manual* G.3(E), https://www.uscis.gov/policy-manual. Specifically, an amendment entitled "Treatment of good faith investors following program noncompliance" allows "an otherwise qualified petition," under specified circumstances, to remain valid even if "based on an investment in a terminated regional center." Section 203(b)(5)(M)(i)(I) of the Act.

II. ANALYSIS

The Petitioner filed her Form I-526 petition in November 2019 after making a $500,000 investment in the NCE. The NCE proposed to pool $45 million from 90 immigrant investors to invest an equity interest in [redacted] the JCE), which intended to develop, construct and operate a luxury hotel in [redacted] Oregon. USCIS records show that FOD granted the Regional Center's request for voluntary termination on October 28, 2024.

FOD denied the Petitioner's Form I-526 on September 10, 2024, after issuing a request for evidence (RFE) and reviewing her response. FOD noted the Petitioner's submission of an amendment to the NCE's partnership agreement dated December 7, 2023, indicating that its partners had voted to begin the dissolution process. FOD also referenced a communication provided to the NCE's limited partners, offering them the option to reinvest in another EB-5 project or to request the return of their

[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) (2019).

capital. FOD found that the referenced documents indicated there had been a material change from the original business plan. Finally, FOD concluded that the evidence provided in response to the RFE did not demonstrate that the NCE would create at least 10 full-time jobs for each immigrant investor. Specifically, FOD found a lack of evidence describing a senior construction loan and other financing mentioned in the accompanying business plan and referenced "publicly available information" regarding the status of the project. FOD reached similar conclusions in its dismissal of the Petitioner's Form I-290B.

A. Derogatory Information

While not raised on appeal, we withdraw portions of FOD's analysis that relied on "publicly available information" or "open sources" as this evidence was not incorporated into the record.[3]

FOD sought to establish with its open-source searches that construction at the NCE's project site has not proceeded. But in her response to the RFE, the Petitioner expressly acknowledged the project's status and its failure to obtain required financing; she did not contest FOD's determination that the project would not be completed or create sufficient full-time jobs for qualifying employees for each investor. In fact, the Petitioner provided evidence in response to the RFE indicating that the NCE's partners had taken steps to dissolve the limited partnership and that she intended to have her invested funds transferred to an NCE associated with a different regional center.

Because FOD used information from outside the record to establish a fact that is not at issue, we conclude that withdrawing this portion of FOD's analysis is an appropriate remedy for this error.

B. Good Faith Investor Provisions

At issue on appeal is whether the Petitioner, who did not have a pending or approved Form I-526 petition at the time USCIS terminated the regional center's designation, may nevertheless be permitted an opportunity to establish her eligibility as an immigrant investor by making a qualifying investment in another NCE under the good faith investor provisions at section 203(b)(5)(M) of the Act. Upon de novo review, we conclude that she cannot.

As stated above, where a regional center, NCE, or JCE is the subject of termination or debarment from the EB-5 program, investors with a pending or approved petition, including petitions filed prior to the 2022 enactment of the EB-5 Reform and Integrity Act, may retain eligibility. *See* section 203(b)(5)(M) of the Act; *see generally* 6 *USCIS Policy Manual* G.3(E), https://www.uscis.gov/policy-manual. Specifically, an amendment entitled "Treatment of good faith investors following program noncompliance" allows "an otherwise qualified petition," under specified circumstances, to remain valid even if "based on an investment in a terminated regional center." Section 203(b)(5)(M)(i)(I) of the Act.

[3] To ensure fair and complete consideration of the proceeding, we must be able to review the complete administrative record, including any materials considered by FOD in its decision. FOD bears the responsibility of ensuring that the record is complete and contains all evidence submitted by the Petitioner and any other evidence considered by FOD in reaching its decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976).

On appeal, the Petitioner emphasizes that she previously provided evidence that she reinvested her capital in a different NCE after the original Regional Center, NCE and JCE submitted requests that FOD terminate the regional center's designation and debar the JCE.[4] She asserts that some of these requests were made prior to the denial of her petition and argues that FOD should have deemed her eligible for the protections described in section 203(b)(5)(M)(i)(I) of the Act and adjudicated her Form I-526 based on evidence related to the new EB-5 project in which she invested.

The Regional Center's designation was terminated on October 28, 2024, 48 days after FOD denied the Petitioner's Form I-526. Section 203(b)(5)(M) extends good faith investor protections only to those investors with a pending or approved petition at the time of the Regional Center's termination or debarment. The Petitioner does not fall within that category of individuals and is therefore ineligible to claim the good faith investor protections she seeks. The Petitioner offers no legal support for her claim that FOD was required to accept an amendment to her petition and adjudicate the petition based on evidence related to a new EB-5 project prior to processing the Regional Center's request for termination and issuing a Notice of Termination to affected immigrant investors.

Further, the record shows that the Petitioner transferred the remaining portion of her invested capital from EB5 [redacted] into a bank account owned by a different NCE almost immediately following the JCE's request for debarment. The investor protections applicable to amendments at Section 205(b)(5)(M)(iii)(II)(aa) of the Act, which allow USCIS to permit amendments to a business plan, without the underlying amendment being deemed a material change, only apply "upon the termination or debarment" of a regional center or job-creating entity and after USCIS notifies affected investors of such termination or debarment. There is no statutory provision that allows investors to amend a petition and reinvest their funds in a new NCE prior to receiving a notice of termination. Therefore, the Petitioner's claim that she "timely notified" FOD of her reinvestment in a new NCE is not persuasive. As noted in FOD's September 2024 decision, the Petitioner's premature reinvestment of her capital in a new NCE represented a material change to her petition and provided proper cause for denial.

III. CONCLUSION

It is the Petitioner's burden to demonstrate her eligibility for the EB-5 classification. *Matter of Chawathe*, 25 I&N Dec. at 375-76. For the reasons discussed above, the Petitioner has not established her eligibility by a preponderance of the evidence. Specifically, the Petitioner has not demonstrated that she is eligible to file an amended petition under the good faith investor provisions at section 203(b)(5)(M) of the Act. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings

[4] In general, USCIS debars entities based on noncompliance with or prohibited conduct under applicable statutory provisions and does not debar entities for merely failing to establish investor eligibility for visa classification or removal of conditions, such as not creating sufficient employment, or upon receipt of requests for debarment. *See generally* 6 *USCIS Policy Manual*, *supra*, at G.8(A)(2).

under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.