U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-K-

DATE: MAR. 13, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: 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 the record did not establish, as required, that [redacted] the NCE, would create the necessary number of jobs.[2] On appeal, the Petitioner submits additional evidence and asserts that the record 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 or through a regional center,[3] as the Petitioner has done in this case. Regional centers apply for designation as such with the United States Citizenship and Immigration Services (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, as it is the case here, or by one or more separate entities known as the "job creating entity." Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii).

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[1] Some documents in the record refer to the NCE as [redacted]

[2] 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).

[3] 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).

Prospective job creation must be demonstrated through submission of a comprehensive business plan. 8 C.F.R. § 204.6(j)(4)(i)(B).[4] 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.*

In addition, the regulation explains that the job creation projection should be based on reasonable methodologies and economically or statistically valid forecasting tools, which include, but are not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables. 8 C.F.R. § 204.6(j)(4)(iii), (m)(3).

II. ANALYSIS

In this case, the Petitioner invested $500,000[5] in the NCE, which is associated with a USCIS-designated regional center, [redacted] She claims that the NCE intends to pool up to $67,500,000 EB-5 capital from 135 foreign national investors to build a complex with approximately 460,000 square feet of leasable space in [redacted] California, near the United States-Mexico border.

In her decision denying the petition, the Chief relied, in part, on "the 2016 Updated Business Plan for [redacted]" to conclude that the Petitioner did not submit a credible and comprehensive business plan demonstrating that the NCE would likely create the required number of jobs within two years. Specifically, she stated on page 5 of her decision that the Petitioner had presented multiple business plans that included conflicting projected construction figures, while the "Updated Business Plan 2016 does not even include the Total Project Cost." Moreover, she noted on pages 8 through 10 of her decision that the record did not substantiate the market analysis and tenant occupancy information presented in "the 2016 Updated Business Plan." On appeal, the Petitioner submits an appellate brief in which she addressed the concerns the Chief raised in regard to the NCE's 2016 business plan.

The record, however, does not include the referenced 2016 business plan.[6] The Petitioner filed the petition in August 2016, and submitted three business plans: an undated regional center business

[4] 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.

[5] 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).

[6] The Petitioner has not listed the NCE's 2016 business plan in the evidence lists she filed in support of the petition, in response to the Chief's notice of intent to deny the petition, or on appeal.

plan, and two NCE's business plans, dated January 2011 and January 2011 (Revised), respectively. In response to the Chief's notice of intent to deny (NOID) the petition, she presented the NCE's December 2017 business plan. On appeal, she offers the NCE's March 2017 business plan. In light of the missing 2016 business plan discussed in the Chief's decision, we will remand the matter to the Chief to review the record in its totality and to determine if the Petitioner has provided a comprehensive and credible business plan showing that the NCE will likely create the required number of jobs within two years.

In addition, on remand, the Chief should consider the Petitioner's argument that she erred in denying the petition, because she had approved petitions of the NCE's other EB-5 investors. A previously favorable decision may not be relied on where facts have materially changed, when evidence of fraud or misrepresentation is discovered, or if the prior decision is determined to have been legally deficient. *See* USCIS Policy Memorandum PM-602-0083, *supra*, at 23; 6 *USCIS Policy Manual*, *supra*, at G.6. In this case, it appears that facts relevant to the adjudication – which include the NCE's repeated modifications on project timeline and completion date – may have materially changed between the approvals of the earlier petitions and this adjudication.

III. CONCLUSION

For the reasons discussed above, we will withdraw the Chief's decision and remand the matter for consideration of whether the Petitioner has shown that the NCE will likely create the necessary number of jobs in the relevant timeframe. If the Chief finds it appropriate, she may request the Petitioner to submit the NCE's 2016 business plan.

ORDER: The decision of the Chief is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse, shall be certified to us for review.

Cite as *Matter of L-K-*, ID# 1972489 (AAO Mar. 13, 2019)