U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38971763

Date: MAR. 18, 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).[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 may invest in a project associated with a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. *See* section 203(b)(5)(E)(i) of the Act.

The Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish: 1) that the Petitioner's invested funds have been placed at risk to the business most closely responsible for job creation; and 2) that the Petitioner's investment will create at least 10 full-time jobs for qualifying employees. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An alien may be classified as an EB-5 immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The regulation at 8 C.F.R. § 204.6(j)(2) provides that the alien investor must establish that they have invested or are actively in the process of investing the required amount of capital and must submit evidence verifying that they have placed the required amount of capital at

[1] On March 15, 2022, the EB-5 Reform and Integrity Act 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.
https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221006 EB5ReformAndIntegrityAct.pdf.
As the Petitioner filed this petition in November of 2018, the relevant law in existence on that date governs this appellate adjudication.

risk for the purpose of generating a return on the capital placed at risk. The precedent decision, *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998), explains that for an investor to establish that they have placed their investment funds at risk for the purpose of generating a return, the full amount of EB-5 money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.

An investor seeking EB-5 classification must demonstrate that their 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 NCE may have multiple investors each seeking EB-5 classification, provided that each investor has invested or is actively in the process of investing the required amount and that each individual investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

An immigrant investor may invest the required funds directly in an NCE, or through a regional center. 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, Form 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.[2]

Prospective job creation must be demonstrated through submission of a comprehensive business plan. 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." *Matter of Ho*, 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.*

II. ANALYSIS

The Petitioner claimed that he invested at least $500,000 into [redacted] (NCE), on November 6, 2018. The Petitioner is the sole investor in the NCE. The NCE falls under the umbrella of the [redacted] (Regional Center). Additionally, the business plan reflected [redacted] would manage the NCE's day-to-day operations as detailed in the Management Services Agreement. The business plan also explained that the NCE will purchase and lease out nine wheelchair-accessible vehicles to be used by [redacted] drivers in the local area.

[2] 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. 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual.

On appeal, the Petitioner contends that FOD's decision was arbitrary and capricious as it relied on unsubstantiated evidence unrelated to the project. Upon de novo review, we conclude that FOD did not sufficiently consider or adequately analyze the Petitioner's evidence and unduly relied on evidence outside the record of proceedings. Accordingly, we will remand the matter for entry of a new decision consistent with our discussion below.

A. Capital At Risk

FOD concluded that the Petitioner did not establish that he placed at least $500,000 at risk for the purpose of generating a return on the capital. FOD denied the petition relying on public lawsuits and legal actions against various actors associated with or surrounding the NCE without addressing their relationships to the NCE and relevance to the issue of capital at risk.[3] In the denial, FOD listed a series of pending lawsuits without incorporating them into the record and speculated on "signs of concern regarding the lawfulness of business activity."

Under 8 C.F.R. § 103.2(b)(16)(ii), "a determination of statutory ineligibility shall be based only on information contained in the record of proceeding" which is disclosed to the petitioner. To ensure fair and complete consideration of the proceedings before us, it is necessary that the record of proceedings contains copies of all evidence considered. 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 the decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976). Here, FOD's notice of intent to deny (NOID) did not sufficiently identify specific derogatory information and the record lacks copies of any open-source materials FOD may have reviewed. As a result, the Petitioner did not have a meaningful opportunity to address the derogatory information.

Additionally, FOD discussed the class action lawsuit by former drivers of [redacted] as well as complaints filed by the [redacted] against the attorney of record and [redacted] alleging fraud and other illegal activities such as misappropriation of investment from the NCE. But there is no indication that these cases have been resolved by the courts and the litigations are ongoing. On appeal, the Petitioner submits the defendants' motions to dismiss these complaints and argues that complaints are not the final court findings of illegal or criminal activities. We acknowledge we do not give substantial weight to arrest reports, criminal complaints, and charging documents that did not lead to a conviction. *See Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995).

Upon de novo review, we share similar concerns with FOD over the activities of the associated entities and the use of EB-5 capital. FOD raised concerns relating to the relationship between the NCE and [redacted] and the NCE's ownership connection to the vehicles. The Petitioner claims the agreements between the companies gives [redacted] the authority to manage the NCE's affairs. On the issue of actual business activity occurring, while the Petitioner provided

[3] These legal actions namely involve the attorney of the record's law firm and various businesses that may or may not be associated with the NCE.

invoices as evidence of this, that type of documentation might reflect that a business agreement occurred. However, it does not establish proof of payment for the business activity.

Considering whether the Petitioner executed the investment and placed his capital at risk, in the proceedings before FOD, the Petitioner provided a document that appears to illustrate his transfer of funds into an account bearing the NCE's name, but that document does not reflect the NCE's account number. Before FOD, he also submitted a funds transfer application listing himself and a [redacted] representative, but no definitive evidence showing the funds actually changed hands. Accompanying the appeal, the Petitioner offers the NCE's November 2018 bank statement for the account ending in 9591 reflecting both the transfer in of his invested funds, as well as a transfer out to [redacted] account ending in 5806. On appeal, the Petitioner identifies bank statements as evidence of actual business activity. The only bank statement relating to the NCE that the Petitioner identifies in the appeal is a single statement from January 2024, which does not support their claims that business activity occurred placing the capital at risk.

However, because FOD did not clearly articulate the relevant facts and link them to eligibility, they did not allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

B. Job Creation

As another alternative ground for denial, FOD concluded that the Petitioner had not satisfied the job creation requirements listed under 8 C.F.R. § 204.6(g)(1) and (j)(4). FOD questioned whether the methodologies within the business plan were reasonable, leading to a determination that the business plan itself was not credible and comprehensive. FOD stated that "the information used from the business plan as a basis to support the inputs into the economic model are not credible for demonstrating that the requisite number of jobs will be created." They further noted the "inputs used for vehicle acquisition expenditures and revenue from operations were not reasonable because the Business Plan and other documentary evidence submitted did not credibly explain the bases of the underlying assumptions." But the FOD did not offer additional discussion relating to the inputs and why they found them to not be credible.

We note here that there are inconsistencies and changes in the economic analysis that may support FOD's adverse finding on the business plan's credibility. Accompanying the initial filing, the Petitioner provided a May 11, 2018, Economic Analysis in which they listed three North American Industry Classification System (NAICS) codes related to their economic inputs. Under the category of Equipment Acquisition, the first NAICS code was 33611 (light truck and utility vehicle manufacturing) for expenditures totaling $297,000 for a fleet of nine minivans. They also listed NAICS code 81112 (automotive body, paint, interior and glass repair) for expenditures totaling $142,200 for making the minivan fleet wheelchair accessible ready. Under the Operations category, they listed NAICS code 4853 (taxi and limousine service). The economic analysis in the initial filing also noted expenditures were not included from the impact study totaling $60,800 that applied to working capital and other costs such as insurance, licenses, and permits.

However, in response to the NOID, the Petitioner submitted a January 20, 2025, updated economic report. Within that report, the Petitioner presented different NAICS codes than in the May 11, 2018, Economic Analysis. Under the category of Equipment Acquisition they again used NAICS code 33611, but they substituted NAICS code 811121 (customizing automotive vehicle bodies and interiors) for the former NAICS code 81112, and more importantly they added a new code to the formula, NAICS code 42311 (automobile and other motor vehicle wholesalers). Under the Operations category, they also substituted a different code than before, NAICS 53211 (automobile leasing). The number of jobs the investment would create also differed alongside the changes to the inputs.

And the economic reports contained other variances. Within the initial economic analysis, it reflected $439,200 would be used to purchase and convert nine vehicles. But in the January 20, 2025, updated economic report, the amended plan stated the project input spending would total "$346,050 for a fleet of wheelchair accessible vans. These vehicles were purchased locally and retrofitted for wheelchair access." In other words, the Petitioner presented a variance totaling more than $93,000 difference to purchase and convert the same number of vehicles. The petitioner offered these varying figures without an explanation for the changes.

Also within the Petitioner's NOID response, it appears that he claimed both that the project will create a certain number of jobs, and that it already had created them. Either the jobs have already been created or they have not; it cannot be both. The Petitioner stated:

> The updated analysis shows that the project will create 11 jobs attributable to the regional center based on acquisition and driving operations. [] This is enough to satisfy the job creation requirement. Further, the project has utilized the EB-5 funds based on the financials and have generated the projected income. Therefore, the jobs have been created.

Not only did he offer inconsistent information about whether the jobs would be—or had already been—created, but they also did not submit the types of evidence necessary to demonstrate the jobs already existed (i.e., relevant tax records, Forms I-9, or other similar documents for 10 qualifying employees). *See* 8 C.F.R. § 204.6(j)(4)(i)(A). The Petitioner should resolve this inconsistent information in the record through relevant, independent, and objective evidence that reveals which facts are true. *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988). Attempts to explain or reconcile the conflicting accounts by itself without competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.*

When evaluating job creation, FOD again focused on the "public sources" and "open-source information" to determine that the original business location in [redacted] New York, lacked sufficient business activity. Also, while discussing the other construction site in [redacted] New York, FOD referred to "NYC.gov [showing] 4 complaints and 3 violations on the site, including at least 1 open as of February 2025" but did not include these public sources in the record before reaching the decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. at 59.

We conclude that FOD did not adequately notify the Petitioner about the derogatory information considered in denying the petition. If a decision will be adverse to a petitioner and is based on derogatory information considered by USCIS and of which the petitioner is unaware, the petitioner

must be advised of this fact and offered an opportunity to rebut the information and present information on its behalf before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). We will therefore withdraw FOD's decision on this issue and remand this matter for further review, including review of the additional evidence submitted on appeal, and entry of a new decision.

III. CONCLUSION

For the reasons discussed, we are withdrawing FOD's decision. On remand, FOD may issue a new request for evidence or NOID allowing the Petitioner an opportunity to provide additional evidence relevant to the issues discussed above, and any other evidence deemed necessary to demonstrate eligibility for the classification sought, before issuing a new decision.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.