U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40897301

Date: MAR. 24, 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 United States economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the Petitioner's funds had been placed at risk and made available to the business most closely responsible for the requisite job creation. In addition, FOD determined that the Petitioner did not establish eligibility at the time of filing his petition since he did not completely and accurately complete the Form I-526 in accordance with its instructions. 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 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 or are actively in the process of investing the requisite amount of qualifying capital in an NCE. An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. 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) (2018).

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) 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 their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

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 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).

II. ANALYSIS

The Petitioner asserts that he invested $500,000[2] in [redacted] LLC (the NCE), which is associated with the regional center, [redacted] (formerly [redacted] LLC). The NCE proposed to pool $5 million from 10 immigrant investors and loan the entire amount to two job-creating entities, [redacted] Inc. (JCE1) and [redacted] (JCE2). The managing member of the NCE is [redacted] Inc., which also holds 25% of both JCEs. The JCEs intend top build and operate two pharmaceutical plants located in [redacted] NJ.

A. Capital at Risk

FOD issued a request for evidence (RFE) in which it raised derogatory information contained in public lawsuits and legal actions. Specifically, FOD referenced two lawsuits filed against the NCE's managing member, the first by the Petitioner, the regional center and other affiliated parties and the second filed by JCE1. According to the RFE, the plaintiffs in these lawsuits allege that the managing member did not fulfill its contractual obligation to release the investment funds to the JCEs. FOD also referenced a complaint by the U.S. Securities and Exchange Commission (SEC) involving the regional center and Petitioner's counsel, noting that these pending matters raised concerns about whether the full amount of the Petitioner's funds had been made available to the businesses most clearly responsible for job creation.

After receiving the Petitioner's response to its RFE, FOD denied the petition in part due to its conclusion that the Petitioner had not established that his funds had been placed at risk per 8 C.F.R. § 204.6(j)(2) since they had not been made available to the businesses most closely responsible for job creation. However, instead of addressing the various deficiencies under the regulation, FOD's analysis mainly relied on evidence outside the record of proceedings, including the derogatory information

[2] The Petitioner filed his petition prior to March 15, 2022 and indicated that the investment is in a targeted employment area (TEA), so the required investment is reduced from $1,000,000 to $500,000.

mentioned in the RFE, as well as listing a series of lawsuits involving the RC, the NCE, and other parties.[3]

On appeal, the Petitioner contends that FOD's decision was arbitrary and capricious as it relied on unsubstantiated and unproven claims in pending litigation matters. He maintains that he submitted sufficient evidence that his investment funds were released from the NCE to the JCEs, thereby establishing the full investment capital was made available to the businesses most closely responsible for job creation. He emphasizes that the projects are complete and operational, having used the investment funds for construction, development, and operations costs with a portion of the EB-5 funds being held in escrow pending final resolution of the litigation. Upon de novo review, we conclude that FOD did not sufficiently consider or adequately analyze the evidence submitted by the Petitioner 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.

Pursuant to 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 RFE 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 bankruptcy lawsuits, a class action lawsuit involving a separate project associated with the regional center, as well as complaints filed by the SEC and Federal Bureau of Investigations against the attorney of the record and sponsors, 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 a settlement agreement and release dated October 7, 2025, relating to a voluntary petition for relief under a bankruptcy filing from 2022 which involves the regional center and representative (but not the NCE or JCEs), asserting that the settlement agreement does not acknowledge guilt by the RC and its affiliates. In addition, he contends the remaining 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).

We share similar concerns with FOD over the activities of the RC, the NCE, the Managing Member, and its affiliates and the use of EB-5 capital. 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).

[3] These legal actions namely involve the attorney of record, the RC, and various businesses and individuals that may or may not be associated with the NCE.

We share similar concerns with FOD over the activities of the RC, the NCE, the Managing Member, and its affiliates and the use of EB-5 capital. For instance, FOD's decision discusses the two lawsuits briefly mentioned above wherein the Petitioner and others allege that the managing member did not fulfill its contractual obligations to release investment funds to the JCEs, which raises the issue of whether the Petitioner's funds were placed 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).

Therefore, we remand this issue so that FOD can review the evidence based on 8 C.F.R. § 204.6(j)(2) and *Matter of Izummi*, 22 I&N Dec. at 179, to determine whether the Petitioner had placed his funds at risk by making them available to the business most closely responsible for job creation. If FOD questions whether the Petitioner irrevocably committed funds to the NCE, issuance of a request for evidence may be appropriate to provide the Petitioner with a reasonable opportunity to respond. FOD should also identify and incorporate any publicly sourced documents into the record before issuing a new decision.

B. Failure to Follow Form Instructions

As a separate and alternative ground for denial, FOD concluded that because the Petitioner had not followed form instructions and completely and accurately completed Form I-526, he had not established eligibility at the time his petition was filed. It referenced several instances where the Petitioner had not provided a response or indicated that a response was not applicable to him. In addition, FOD noted that the Petitioner had not included his signature, printed or typed name, and the date at the top of sheets containing additional information, as required by the form instructions.

On appeal, the Petitioner concedes that he did not write "N/A" in some of the fields on the form as required, but asserts that the substantive information required was present in the form, and that the missing responses bear no weight in terms of his eligibility. Upon de novo review, we withdraw FOD's determination on this ground. We acknowledge that the Form I-526 must be filed in accordance with the form instructions. *See* 8 C.F.R. § 103.2 and § 204.6. However, the Petitioner's failure to respond "N/A" to some questions on the form or the omission of his signature, printed or typed name, and date on the top of additional sheets of paper filed with the petition does not necessarily show that the Petitioner has not met eligibility for the requested benefit at the time of filing under 8 C.F.R. § 103.2(b)(1) or any other regulation. FOD's decision did not identify any information missing from the form which pertains to the Petitioner's eligibility for classification as an immigrant investor.

III. CONCLUSION

For the reasons discussed above, FOD's decision is withdrawn. On remand, FOD may issue a new RFE or notice of intent to deny to allow the Petitioner an opportunity to provide additional evidence relevant to the issues described above, and any other evidence deemed necessary to demonstrate eligibility for the classification sought, prior to issuing a new decision. FOD should review the entire record, including the Petitioner's claims on appeal.

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

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 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.