U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34225112

Date: MAR. 28, 2025

Appeal of Immigrant Investor Program Office Decision

Form I-956F, Application for Approval of an Investment in a Commercial Enterprise

In 1992, Congress established the EB-5 regional center program to promote economic growth in the United States through foreign investment in commercial enterprises associated with U.S. Citizenship and Immigration Services (USCIS) designated regional centers. *See* Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (the "Appropriations Act"), Pub. L. No. 102-395, 106 Stat. 1828, 1874 (repealed 2022). In March 2022, the EB-5 Reform and Integrity Act of 2022 repealed the Appropriations Act, and codified the substantially reformed EB-5 regional center program within Section 203(b)(5) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(5) (2022).

In February 2018, USCIS designated the Appellant to participate in the EB-5 regional center program under the now repealed Appropriations Act. The Appellant subsequently filed a Form I-956 application to demonstrate compliance with reformed program requirements following enactment of the EB-5 Reform and Integrity Act of 2022, which USCIS approved as an amendment to the designation in January 2023. In August 2022, the Appellant filed the Form I-956F application for approval of an investment in [redacted] LLC, the new commercial enterprise (NCE). *See* Section 203(b)(5)(F)(i) of the Act. The Chief of the Immigrant Investor Program Office denied the Appellant's Form I-956F application in March 2024, concluding that it failed to submit "a comprehensive business plan for a specific capital investment project," as required under Section 203(b)(5)(F)(i)(I) of the Act, or "a credible economic analysis regarding estimated job creation," as required under Section 203(b)(5)(F)(i)(II) of the Act. *See generally* 6 *USCIS Policy Manual* G.5, https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-5. The Appellant timely appealed the denial of the Form I-956F application, asserting that it has established eligibility for approval of an investment in the NCE and submitting an appellate brief as well as additional documents in support of the appeal. *See* Section 203(b)(5)(P)(i)(II) of the Act (discussing administrative appellate review of "any determination," including a determination concerning "an application for approval of a business plan filed" under Section 203(b)(5)(F) of the Act).

The Appellant 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); *see generally* 6 *USCIS Policy Manual*, *supra*, at G.2(E). 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.

I. LAW

Section 203(b)(5)(F)(i) of the Act, entitled "Application for approval of an investment in a commercial enterprise," provides in pertinent part:

> A regional center shall file an application with the Secretary of Homeland Security for each particular investment offering through an associated new commercial enterprise before any alien files a petition for classification under this paragraph by reason of investment in that offering. The application shall include –
>
> (I) a comprehensive business plan for a specific capital investment project;
>
> (II) a credible economic analysis regarding estimated job creation that is based upon economically and statistically valid and transparent methodologies . . . .

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. Matter of Ho* explains:

> A comprehensive business plan . . . should contain, at a minimum, a description of the business, its products and/or services, and its objectives. The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor.

Id., 22 I&N Dec. at 213. The decision concludes: "Most importantly, the business plan must be credible." *Id.*; *see generally* 6 *USCIS Policy Manual*, *supra*, at G.2(B), G.5(B)(2).

II. ANALYSIS

The Appellate filed the Form I-956F application in August 2022, submitting supporting documents that included an August 2022 business plan and an August 2022 economic analysis. These documents provide that the NCE plans to raise up to $78.4 million from 98 alien investors to lend to [redacted] LLC, the job creation entity (JCE), to build and operate a nursing and memory care facility in [redacted] Georgia. Both the August 2022 business plan and August 2022 economic

analysis claim that the project will create 2,037 jobs, including 991 direct jobs and 1,046 indirect jobs. In addition to the initial August 2022 business plan, the record includes a January 2023 updated business plan,[1] and a May 2024 business plan that the Appellant offers on appeal. In addition to the initial August 2022 economic analysis, the Appellant claims on page 7 of its appellate brief that it has provided a "revised Economic Plan."

We will dismiss the appeal, because the Appellant has not submitted a comprehensive and credible business plan for the project or a credible economic analysis regarding estimated job creation, as required under Subsections (I) and (II) of Section 203(b)(5)(F)(i) of the Act. *See also Matter of Ho*, 22 I&N Dec. at 213. The business plans in the record are insufficient to show that the project will more likely than not progress as planned. The initial August 2022 business plan asserts on page 8 that "construction . . . resumed in full as of July 2022," and that construction would "be complete in July 2023 and [the facility would be] open in October 2023." In response to the Chief's notice of intent to deny the application (NOID), the Appellant submitted a letter from counsel in January 2024. Page 4 of counsel's letter acknowledges that the project "was unable to adhere to the original development timeline presented in the [August 2022] business plan," and that the opening of the facility had been delayed from October 2023 to April 2025. The Appellant again changed the project timeline when it filed the instant appeal. In support of its appeal, the Appellant submits a May 2024 business plan, page 7 of which states: "a firm timeline for completion has been set for the Project: construction will be 100% complete in October 2025 and [the facility] will be fully operational in December 2025." Page 22 of the May 2024 business plan claims that 25% of construction will be completed in July 2024; 50% of construction will be completed in January 2025; 100% of construction will be completed in October 2025; and the facility will be operational in December 2025. The business plans thus postpone the opening of the facility from October 2023 to April 2025, then to December 2025.

Other evidence in the record similarly confirms that there have been multiple and extensive delays associated with the project. Page 21 of the May 2024 business plan explains that the Georgia Department of Community Health (DCH) and the JCE entered into a "Memorandum of Understanding (MOU) . . . on April 8, 2024, detailing terms and effectively extending the CON [Certificate of Need] and defining a firm schedule by which the Project will be completed in order to remain in compliance and maintain the CON for operations." According to the MOU, DCH initially approved the JCE's CON to establish the facility in [redacted] Georgia, in September 2013, listing January 31, 2017, as the mandatory date of completion for the facility. When the JCE was unable to meet the mandatory completion date, DCH granted a twelve-month extension. Subsequently, the JCE requested three additional extensions, which DCH granted, postponing the mandatory date of completion to June 2019. Then the JCE requested its fifth extension, which DCH denied. In April 2024, DCH and the JCE executed the MOU, under which the JCE agrees to certain construction benchmarks – including completing at least 25% of construction by July 2024, 50% of construction by January 2025, and 100% of construction by October 2025 – and to begin operation of the facility in December 2025. The MOU provides that if the JCE does not timely meet these benchmarks, then it will "relinquish such CON without further avenue for appeal or other relief." On appeal, the Appellant has not submitted sufficient evidence showing by a preponderance of the evidence that the JCE will more likely than not

[1] Page 2 of the Appellant's counsel's letter provides that the updated business plan changed "the [initial] overall plan . . . to include a veterans' skilled nursing component."

reach the benchmarks referenced in the May 2024 business plan and the MOU. The record thus does not sufficiently confirm that the project is progressing according to the latest project timeline.

Furthermore, the Appellant has not sufficiently demonstrated that the JCE has the needed funds to complete the project as planned. Page 11 of the initial August 2022 business plan indicates that the project needs approximately $114.5 million, financed by $78.4 million in EB-5 funds, approximately $9 million in bank financing from [redacted] LLC, and $26.75 million in developer's equity. Subsequently, in January 2023, the Appellant presented an updated business plan, pages 5 through 7 of which include the same financing information. On appeal, the Appellant references a July 2022 proposal from [redacted] LLC, which expresses its "interest . . . [in] entering into a financial transaction with [the JCE]" for the loan amount of $9,350,525. The document notes that "[t]he proposal is provided for preliminary discussion purposes only and is not a commitment to proving financing." The record does not include other documents showing that the JCE has secured financing from [redacted] LLC or another entity for the project.

On appeal, the Appellant presents the May 2024 business plan, which claims on page 11 that the JCE will fund the project with $78.4 million EB-5 funds, and approximately $36.1 million developer's equity. The business plan does not reference bank financing from [redacted] LLC or another entity. The Appellant points to 2024 audited personal financial statements to support its argument that the developer – who is the principal of the regional center and owner of the JCE – and his spouse have sufficient funds to finance the project. The 2024 audited financial statements indicate that the developer and his spouse's assets are valued to be approximately $92.68 million, including approximately $91 million in "investment[s] in closely held [businesses]," approximately $442,000 in cash and cash equivalents, approximately $1.2 million in real properties, and $250,000 in jewelry. The Appellant has not explained the liquidity level of the developer and his spouse's assets in "investment[s] in closely held [businesses]" or in real properties, or established that these assets could be used to finance the construction and operation of the nursing and memory care facility. Additionally, while the Appellant repeatedly claims that the project requires $78.4 million EB-5 funds, it alleges on appeal that it has thus far attracted "a total of $3.2 million in [EB-5] investment." The record lacks sufficient evidence confirming that the JCE will likely attract the needed EB-5 funds. Based on the lack of sufficient evidence demonstrating that the project has secured funding from [redacted] LLC or another entity, the developer and his spouse have adequate assets that can finance the construction and operating of the facility, or that the JCE will likely attract enough EB-5 capital, the Appellant has not shown that the JCE will likely have sufficient funds to complete the project as planned.

In short, based on the project's multiple and extensive construction delays and the lack of sufficient evidence verifying the required financing for the project, the Appellant has not demonstrated that any of the business plans in the record is comprehensive and credible, as required under Section 203(b)(5)(F)(i)(I) of the Act. *See also Matter of Ho*, 22 I&N Dec. at 213. The business plans are not comprehensive and credible because they are insufficient "to permit [USCIS] to draw reasonable inferences about the job-creation potential" or "enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation." *Matter of Ho*, 22 I&N Dec. at 213.

Additionally, the Appellant has not submitted a credible economic analysis regarding estimated job creation, as required under Section 203(b)(5)(F)(i)(II) of the Act. The record includes the August

2022 economic analysis, which claims that the project will create 2,037 jobs, including 991 direct jobs and 1,046 indirect jobs. The Appellant claims on page 7 of the appellate brief that it has provided a "revised Economic Plan." While the appellate filing includes an appraisal report from Integra Realty Resources (IRR), an EB-5 targeted employment area analysis, and other supporting documentations, it does not include a "revised Economic Plan" regarding job creation projections, as the Appellant claims. Page 13 of the May 2024 business plan alleges that the project will create a total of 1,899 jobs and references an "Economic Impact Report addendum" as support for the revised job creation figures. The record, however, does not include the referenced addendum. Instead, the only economic analysis concerning job creation estimates in the record is the August 2022 economic analysis that the Appellant initially filed with the application.

Pages 4 and 5 of the August 2022 economic analysis explains that job creation estimates are calculated using "capital expenditures and operational revenues," including "expenditures on hard construction, architectural and engineering services, and FF&E [furniture, fixtures, and equipment]-related purchases," as well as "projected revenues from operations." These expenditures and operational figures assume that the project will be completed as planned. For the reasons we have discussed above, however, we conclude that the Appellant has not sufficiently shown that the JCE will more likely than not complete the project as planned. As such, the Appellant has not sufficiently established that the job creation estimates stated in the economic analysis is credible, as required under Section 203(b)(5)(F)(i)(II) of the Act.

III. CONCLUSION

It is the Appellant's burden to demonstrate its eligibility for the approval of an investment in the NCE. *See* Section 203(b)(5)(F)(i) of the Act. As discussed, the Appellant has not submitted "a comprehensive [and credible] business plan for a specific capital investment project," as required under Section 203(b)(5)(F)(i)(I) of the Act. Additionally, the Appellant has not presented "a credible economic analysis regarding estimated job creation," as required under Section 203(b)(5)(F)(i)(II) of the Act. *See generally* 6 *USCIS Policy Manual*, *supra*, at G.5. Accordingly, the Appellant has not established its eligibility for the approval of an investment in the NCE under Section 203(b)(5)(F)(i) of the Act.

ORDER: The appeal is dismissed.