U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32690328

Date: MAY 3, 2024

Appeal of Immigrant Investor Program Office 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) (2017).[1] 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 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 on the ground that the Petitioner did not show the new commercial enterprise, [redacted] (NCE), or its wholly-owned subsidiary, [redacted] would likely create at least 10 full-time positions for qualifying employees for each of the investors seeking EB-5 classification. *See* 8 C.F.R. § 204.6(g)(1), (j)(4)(i) (2017). We subsequently dismissed the Petitioner's appeal. The Petitioner challenged our dismissal in federal court. Pursuant to a settlement agreement, U.S. Citizenship and Immigration Services (USCIS) agreed to reopen the matter to reconsider evidence on record.

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 sustain the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. An NCE can be a commercial enterprise as well as "a holding company and its wholly-owned subsidiaries, provided that each such subsidiary is engaged in a for-profit

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition in March 2017, the relevant law then in existence governs this appellate adjudication.

activity formed for the ongoing conduct of a lawful business." 8 C.F.R. § 204.6(e) (defining "commercial enterprise").

An investor seeking EB-5 classification must show that their investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). An NCE may be relied upon by 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).

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*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998), explains that "[a] comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives" and that "[i]t should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions." *Matter of Ho*, 22 I&N Dec. at 213, specifies that to be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential." "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

According to page 5 of the petition, the Petitioner invested $500,000[3] in the NCE. He presented to the Chief two business plans, dated June 2016 and October 2020, respectively. On appeal, he submitted a third business plan, dated September 2021. Page 5 of the 2016 business plan indicates that the NCE intends to fund "the establishment of a [redacted] in the area of [redacted] Pages 8 and 9 of the 2016 business plan explain that the NCE is seeking $5 million investment from 10 foreign national investors to facilitate the establishment and operation of the hotel.

[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/volume-6-part-g-chapter-2.

[3] The Petitioner indicates that, at the time of filing, the NCE was in a targeted employment area and that the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2017).

The Petitioner claims that his investment funds have been deployed for the construction of the [redacted] hotel project.

According to page 15 of the September 2021 business plan, the NCE's wholly-owned subsidiary, [redacted] will hire "at least 111 new full-time" employees to operate the [redacted] hotel. These employees will work as "management team staff," "front office staff," "housekeeping staff," "administrative/security staff," "sales staff," "maintenance staff," and "food and beverage staff." The September 2021 business plan includes information on the [redacted] hotel project, "its products and/or services, and its objectives." *See Matter of Ho*, 22 I&N Dec. at 213. Pages 32 through 41 of the business plan provide information on the duties and responsibilities of the anticipated employees, their annual salary, and the approximate dates of their hiring. *See* 8 C.F.R. § 204.6(j)(4)(i)(B).

The Petitioner indicates that the NCE, through its wholly-owned subsidiary, intends to use operational revenue of the [redacted] hotel to compensate the anticipated employees. The record includes an October 2016 Hotel Management Agreement, noting that [redacted] is "to direct, supervise, manage, and operate the Hotel." Page 10 and Exhibit A of the agreement specify that before [redacted] begins its operation of the hotel, it will have access to "the Hotel accounts ('Operating Funds') sufficient in amount to properly operate the Hotel" and that the "minimum operating funds balance [will be] $100,000."

As additional supporting evidence, the Petitioner offers a March 2021 letter from [redacted] a firm that manages "three full-service hotels with room counts that are similar to the [redacted] hotel project discussed in the September 2021 business plan. The March 2021 letter explains that under the "[g]uidance provided by The Traditional Hotel Industry study, . . . a hotel with similar amenities and room count as the [redacted] [hotel] has the employee ratio of 0.625:1." The letter concludes that based on this ratio, the NCE, through its wholly-owned subsidiary, will likely have "an employee count of 111" as stated in the business plan. In addition to the March 2021 letter, the Petitioner has presented other documents from [redacted] including a September 2021 letter that discusses the multiple hotels and resorts that the firm manages and information on their staffing size, as well as materials on the firm's experience on managing hotels and resorts.

Based on the evidence in the record, the Petitioner has satisfied the job creation requirements, as he has shown that each individual investment in the NCE, including his, will more likely than not result in the creation of at least 10 full-time positions for qualifying employees. *See* 8 C.F.R. § 204.6(g)(1). Specifically, he has presented a comprehensive and credible business plan showing that, due to the nature and projected size of the NCE, it or its wholly-owned subsidiary will likely hire at least 10 qualifying full-time employees for each foreign national investor seeking EB-5 classification within the next two years. *See* 8 C.F.R. § 204.6(g)(1), (j)(4)(i)(B); *Ho*, 22 I&N Dec. at 213.

III. CONCLUSION

The Petitioner has demonstrated, by a preponderance of the evidence, his eligibility for the immigrant investor classification.

ORDER: The appeal is sustained.