U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35977376

Date: MAY 06, 2025

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) (2018).[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.

Field Operations Directorate (FOD) denied the petition, concluding the record did not establish (1) that the required minimum amount of capital has been made available to the business most closely responsible for job creation and (2) that the investment of the required amount of capital in [redacted] LLC (the NCE) will create full-time positions for at least 10 qualifying employees.[2] FOD did not defer to the job creation determination in USCIS' previous approvals of the Form I-526 exemplar project and previously filed Forms I-526 associated with the NCE because FOD found that the underlying facts upon which a favorable determination was made have materially changed. The matter is now before us on appeal. *See* 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and additional evidence and maintains that she has established eligibility for the benefit sought.

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 dismiss the appeal.

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[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in Section 203(b)(5) of the Act, 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 had filed her petition in 2018, the relevant law then in existence governs this appellate adjudication.

[2] The record indicates the NCE is associated with [redacted] LLC. *See* 8 C.F.R. § 204.6(e) (2018) (defining a regional center as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment").

I. LAW

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The investor must show 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). The establishment of an NCE may be used as the basis of a petition for EB-5 classification by more than one investor, provided that each investor's 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, as the Petitioner has done in this case. Regional centers apply for designation to participate in the EB-5 program with U.S. 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 or by one or more separate entities known as the "job creating entities" (JCEs). 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). Specifically, under 8 C.F.R. § 204.6(j)(4)(iii) and 8 C.F.R. § 204.6(m)(7)(ii), an investor may rely on the creation of direct as well as indirect jobs to satisfy the job creation requirements, and may use "reasonable methodologies . . . includ[ing] multiplier tables, feasibility studies, analyses of foreign and domestic markets . . . , and other economically or statistically valid forecasting devices" to show job creation.

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
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> (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.[3]

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." 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.*

[3] 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 3 of the *USCIS Policy Manual* articulates USCIS' policy regarding deference to previous agency determinations.

As a general matter, USCIS does not reexamine determinations made earlier in the EB- 5 process, and such earlier determinations will be presumed to have been properly decided. When USCIS previously concluded that an economic methodology is reasonable to project future job creation as applied to the facts of a particular project, USCIS defers to this determination for all related adjudications directly linked to the specific project for which the economic methodology was previously approved.

Conversely, USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts upon which a favorable decision was made have materially changed, there is evidence of fraud or misrepresentation in the record of proceeding, or the previously favorable decision is determined to be legally deficient. A change is material if it would have a natural tendency to influence or is predictably capable of affecting the decision. *See Kungys v. United States*, 485 U.S. 759, 770-72 (1988). When a new filing involves a different project from a previous approval or the same previously approved project with material changes to the project plan, USCIS does not defer to the previous adjudication.

See generally 6 USCIS Policy Manual G.3(A)(2), https://www.uscis.gov/policy-manual.

II. ANALYSIS

The Petitioner asserts that he remitted a total of $500,000 to [redacted] LLC (the NCE) as her EB-5 capital investment.[4] According to the Confidential Private Placement Memorandum, dated September 15, 2015, the NCE proposes to raise up to $75 million from up to 150 immigrant investors and lend the entire amount to [redacted] LLC (the job-creating entity or JCE), which operates [redacted], and which will be the owner of the project. The JCE intends to construct the [redacted] and expand the facilities and infrastructure of the [redacted]. The [redacted] will include 102 timeshare residential units, 150 luxury timeshare RV pads, and an 85,000 square foot restaurant, retail, classroom, and offices building to be known as the [redacted], all of which will be located at a project site in [redacted], Nevada.

In February 2023, FOD issued a notice of intent to deny (NOID) the petition. In the NOID, FOD acknowledged the March 2014 business plan and November 2013 economic impact analysis in the record but advised that USCIS was unable to verify that any progress had occurred on the project as of December 2022, noting that the JCE had filed for bankruptcy and its acquisition appeared to be imminent at that time. After reviewing the documentation in the record, including the Petitioner's NOID response, FOD denied the petition on the ground that the Petitioner did not demonstrate the JCE will likely create at least 10 jobs for each investor seeking EB-5 classification. *See* 8 C.F.R. § 204.6(g)(1), (j)(4). On appeal, the Petitioner submits a brief and additional supporting evidence, asserting that the project has created sufficient jobs for the number of remaining investors.

[4] The record indicates that the NCE's project is located within a targeted employment area (TEA). Therefore, the amount of capital necessary to make a qualifying investment was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(5)(2) (2018).

A. No Deference After Material Change

In the denial decision, FOD noted that USCIS had approved petitions that relied on the JCE's project discussed in the decision. It declined, however, to defer to the prior favorable findings concerning the project's prospective job creation. *See generally* 6 *USCIS Policy Manual*, *supra* at G.3(A)(2). Specifically, FOD found that according to the business plan for the [redacted], dated March 2014 (2014 business plan), actual construction of the project was to begin in the first quarter of 2015 and to be completed in the third quarter of 2017. But FOD was unable to verify that any progress has occurred on the project as of June 2023.

On appeal, the Petitioner acknowledges that there are changes in the project, including delays and a reduction in scope, but contends these changes do not have an impact on her eligibility because the approved economic methodology is unchanged and, therefore, should be given deference. She acknowledges that the NCE raised and deployed less money, the JCE failed after completing a portion of the business plan, and the project produced fewer jobs than anticipated. However, she emphasizes there are only eight remaining investors seeking green cards and the economic impact model indicates the project has created approximately 149 jobs. The Petitioner presents an addendum to the economic and jobs creation impacts report of the [redacted] expansion project, dated September 2019 (2019 addendum to the economic impacts report). The report states that combining the economic impacts of the construction and operations activities, the project has created a total of 247 permanent, new jobs. This includes 117 jobs from the construction activity of the project based on the EB-5 eligible construction expenditures of $7,670,305 and 130 jobs from the operations activity of the project during the expansion of the [redacted] from February 2013 to September 2019.

We conclude that the facts relevant to the adjudication materially changed between the approval of the Form I-526 exemplar project in 2015 and the adjudication of this petition in 2023 such that affording deference is not warranted. The regulation requires the Petitioner to submit a credible and comprehensive business plan showing that job creation will occur within two years, making the project timeline material to determining EB-5 eligibility and deference.[5] *See* 8 C.F.R. § 204.6(j)(4)(i)(B). According to the 2014 business plan, actual construction of the project was to begin in the first quarter of 2015 and be completed in the third quarter of 2017. However, the record lacks sufficient evidence showing that the project has achieved development milestones provided in the 2014 business plan. The Petitioner admits that the NCE was not able to raise the anticipated EB-5 capital of $75 million from 150 immigrant investors and that the JCE has failed to complete the business plan because the JCE went bankrupt and the project has been sold to [redacted], an entity that has no relation to the NCE and bought the assets of the JCE.

The Petitioner claims that the fact that [redacted] continues to develop and operate the project demonstrates its viability and notes the project has resulted in permanent job creation despite the failure of the JCE. However, the previous approval was based on a different set of facts, including (1) the project timeline to complete construction of the project in 2017, (2) the project, which involves the construction of the [redacted], expansion of the [redacted]

[5] *See Kungsys v. United States*, 485 U.S. at 770-72 (stating that a change is material of the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision).

[redacted], and operations of the facilities, and (3) the JCE as the owner, developer, and operator of the project. Thus, we conclude that deference to the prior determination is not appropriate due to material changes. *See generally* 6 *USCIS Policy Manual*, *supra*, *at* G.3(A)(2).

B. Job Creation

FOD determined the record did not establish that the investment of the required amount of capital in the NCE will create full-time positions for at least 10 qualifying employees and that the requisite number of jobs will be created using reasonable methodologies. Specifically, FOD concluded the Petitioner has not established that the business plan is both comprehensive and credible because the record did not contain sufficient evidence to support the capital stack and development timeline.

We agree. The Petitioner has not provided a business plan that is both comprehensive and credible. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. Therefore, she has not demonstrated that the JCE will, more likely than not, create full-time positions for at least 10 qualifying employees within two years as projected in the business plan and economic impact report.

First, the record does not contain sufficient evidence that the JCE will likely have sufficient capital for the project. Page 71 of the 2014 business plan provides that the total cost of expanding the [redacted] and developing and launching the [redacted] is $75 million, which will be sourced entirely from EB-5 capital. Of that amount, the business plan indicates construction and development costs would be approximately $49 million. It further provides that the JCE will contribute the parcel of land for the resort, which has an appraised value of $25 million, and will pledge the entire project (with an estimated enterprise value of $50 million including business operations and income) as security for the EB-5 loan.

FOD found that as of June 2023, there were only 21 petitions filed for this project of which three petitioners had withdrawn their petitions and which would provide $9 million in EB-5 capital, implying a shortfall of $66 million in EB-5 capital. The Petitioner acknowledges that the NCE was able to recruit only 19 immigrant investors and further states that the 19th investor withdrew their petition, leaving 18 investors and $9 million in EB-5 capital. The Petitioner does not explain how the JCE will overcome the shortfall of $66 million in EB-5 capital, which is necessary to complete the project. The inability of the JCE to obtain the required capital to fund the project undermines the claimed credibility of the business plan.

Second, the evidence in the record does not substantiate the development timeline, which in turn does not demonstrate that the project will likely create enough jobs for the Petitioner and other investors seeking EB-5 classification within the required two-year time frame. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *see also* 8 C.F.R. § 204.6(g) (providing that each individual investor's investment must result in the creation of full-time positions for at least 10 qualifying employees). As noted above, the 2014 business plan anticipates the completion of the construction in 2017. The record reflects a delay of over seven years for the construction of the project from 2017 to 2024. Moreover, the record does not establish that the JCE is likely to start or complete the construction because the assets of the JCE have been sold to a third party during the bankruptcy proceedings filed by the JCE, as FOD determined in its decision and the Petitioner acknowledges on appeal.

The Petitioner has not provided sufficient evidence to establish that the JCE has achieved development milestones provided in the 2014 business plan to support the claimed credibility and comprehensiveness of the business plan. The Petitioner provided some evidence to support the claim that the JCE has spent approximately $8.8 million on the construction of the project, mainly to improve site infrastructure. However, given that the project is significantly behind on the construction and the JCE went bankrupt and sold all its assets, including the project, to a third party during the bankruptcy proceedings, the Petitioner has not offered a business plan that is both credible and comprehensive. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

Third, the record does not sufficiently demonstrate that the requisite number of jobs will be created using reasonable methodologies. *See* 8 C.F.R. §§ 204.6(j)(4)(iii), (m)(7)(ii). To demonstrate that the requisite number of jobs will be created using reasonable methodologies, the Petitioner submitted the economic and jobs creation impacts report of the [redacted] expansion project, dated November 2013. On appeal, she offers the 2019 addendum to the economic impacts report, as we discussed above.

FOD determined that because the business plan is no longer sufficient to establish job creation due to the delay in the timeline for construction and completion of the project, the specific job creating information used from the business plan as a basis to support the inputs into the economic model is not credible for demonstrating that the requisite number of jobs will be created.

The Petitioner contends that there is nothing to suggest that the RIMS II model used in the economic impacts report is invalid or that the multipliers or model itself is unreliable. She claims that by inputting the total construction expenditures into the model, the model shows approximately 149 jobs were created and that this is more than the 80 jobs needed for the remaining eight petitioners who are seeking to obtain the immigrant investor visa classification.[6] While we acknowledge the Petitioner's claims, we agree with FOD that the record does not sufficiently demonstrate that the requisite number of jobs will be created using reasonable methodologies because the economic model is based on the job creating information from the business plan, which is found to be neither comprehensive nor credible due to the inability of the project to meet established development timeline and the JCE's inability to obtain the required financing to fund the project. *See* 8 C.F.R. §§ 204.6(j)(4)(iii), (m)(7)(ii). In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966).

The Petitioner has not offered a business plan that is both credible and comprehensive. She also has not sufficiently demonstrated that the requisite number of jobs will be created using reasonable methodologies. Accordingly, she has not established by a preponderance of the evidence that the investment of the required amount of capital in the NCE will create full-time positions for at least 10 qualifying employees within two years, which commence six months after the adjudication of the Form I-526. *See* 8 C.F.R. § 204.6(j)(4)(i). *See also* 8 U.S.C. § 1153(b)(5)(A)(ii).

[6] The Petitioner states that the NCE has recruited 19 immigrant investors for this project, that 11 investors have withdrawn their petitions, and that only 8 investors, including the Petitioner, are seeking to obtain permanent resident status through their investments in the NCE.

C. Capital at Risk

FOD determined the record did not establish that the required minimum amount of capital has been made available to the business most closely responsible for job creation. Because the Petitioner, for the reasons already discussed, did not establish her eligibility for EB-5 classification, we decline to address this remaining ground for denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). Instead, we reserve this issue, and the additional eligibility issue discussed below, for future consideration should the need arise.

D. Investment of Capital

Although not addressed in FOD's decision, the Petitioner has not demonstrated, by a preponderance of the evidence, that when she filed the petition in July 2018, she invested or was actively in the process of investing at least $500,000 in the NCE. *See* 8 C.F.R. § 204.6(j); *see also* 8 C.F.R. § 103.2(b)(1) (providing that a "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication").

As evidence of her investment, the Petitioner provided bank documentation showing that she transferred $350,000 from her [redacted] account ending in [redacted] to the escrow account designated by the NCE on May 18, 2018. She also submitted a promissory note, executed by her on July 5, 2018, indicating that she would pay the remaining sum of $150,000 to the NCE within six months of the date of filing her EB-5 petition with USCIS. The promissory note states that it was secured by real property located in [redacted], India that is valued at 2 million Indian rupees. A letter from the NCE's president, dated July 6, 2018, indicates the company agreed to accept the promissory note for the balance of the $500,000.

The Petitioner has not established that this promissory note qualifies as capital or that her execution of the promissory note constitutes an investment in the NCE. As explained in *Matter of Hsiung*, 22 I&N Dec. 201, 202 (Assoc. Comm'r 1998), capital can include an investor's promise to pay, i.e., a promissory note, if the investor shows he or she is personally and primarily liable for the promissory note debt, that his or her own assets adequately secure the note, and that those assets are fully amenable to seizure by a U.S. noteholder. *See also* 6 *USCIS Policy Manual*, *supra*, at G.2(A)(1). The *USCIS Policy Manual* specifies that the fair market value of a promissory note depends on its present value, not the value at any different time. *Id.* The regulation at 8 C.F.R. § 204.6(e) further provides that "[a]ll capital shall be valued at fair market value in United States dollars."

Here, the Petitioner did not demonstrate that the promissory note she executed was secured by her own assets. Rather, the record contains documentation showing the Petitioner's mother is the sole owner of the real property in [redacted], India that secured the promissory note. Further, the Petitioner did not provide sufficient evidence establishing the fair market value of the property.[7]

[7] The record reflects that the Petitioner's mother secured a personal loan in the amount of $94,380.72 using the same asset as collateral. The loan agreement, executed May 1, 2018, indicates "[t]he said property is worth around [20,000,000 Indian rupees], i.e. USD 290,402 as per current market value." No supporting documentation was provided to establish the source of this valuation.

Finally, an investor who invests a promissory note in a new commercial enterprise must demonstrate that the security interest has been perfected to the extent provided for by the jurisdiction in which the asset is located. *See Matter of Hsiung*, 22 I&N Dec. at 202-03. The record does not include evidence that the security interest of the $150,000 promissory note – the real property located in [redacted] has been perfected. In other words, the Petitioner has not established that she has taken steps in the relevant jurisdiction to make the security interest effective against third parties or to retain its effectiveness in the event of default by the grantor of the security interest. *See id.*; *see generally* 6 *USCIS Policy Manual*, *supra*, at G.2(A)(1).

For these reasons, the Petitioner has not sufficiently established that her July 2018 promissory note substantiates her claim that she invested or was actively in the process of investing $500,000 in the NCE at the time of filing. Although not a basis for dismissal of the appeal, the Petitioner should address this issue in any future proceedings in this matter.

III. CONCLUSION

The record lacks a comprehensive and credible business plan showing that, due to the nature and projected size of the NCE, the need for at least 10 qualifying employees will result within the next two years as required by 8 C.F.R. § 204.6(j)(4)(i)(B). *See also Matter of Ho*, 22 I&N Dec. at 213. The record also does not sufficiently demonstrate that the requisite number of jobs will be created using reasonable methodologies. *See* 8 C.F.R. §§ 204.6(j)(4)(iii), (m)(7)(ii). Because the Petitioner has not satisfied the job creation requirements, she has not demonstrated by a preponderance of the evidence eligibility for the immigrant investor visa classification.

ORDER: The appeal is dismissed.