U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40536707

Date: MAY 12, 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) (2017).[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 that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

FOD denied the petition on the ground that the Petitioner did not satisfy the job creation requirements. *See* 8 C.F.R. § 204.6(j)(4) (2017). FOD then dismissed the Petitioner's combined motions to reopen and reconsider the matter. *See* 8 C.F.R. § 103.5(a)(4). 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.

An alien investor must establish that his or her investment of the required amount of capital in a new commercial enterprise (NCE) has created or will create full-time positions for at least 10 qualifying employees within two years. Section 203(b)(5)(A)(ii) of the Act; 8 C.F.R. § 204.6(j)(4)(i). U.S. Citizenship and Immigration Services (USCIS) Policy Manual provides that "[t]he 2-year period is deemed to begin 6 months after adjudication of Form I-526." *See generally* 6 *USCIS Policy Manual* G.2(D)(5), www.uscis.gov/policy-manual/volume-6-part-g-chapter-2.

To demonstrate job creation, an alien investor must submit:

(A) Documentation consisting of photocopies of relevant tax records, Form I-9 [Employment Eligibility Verification], or other similar documents for ten (10) qualifying employees, if such

[1] On March 15, 2022, the EB-5 Reform and Integrity Act was signed into law, which made significant amendments to the EB-5 program. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition in January 2017, the relevant law then in existence governs this appellate adjudication.

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.

In this case, the Petitioner claims that he invested $500,000[2] to [redacted], the NCE affiliated with [redacted].[3] *See* 8 C.F.R. § 204.6(e) (defining "capital"), (j). At this time, we are unable to address the merits of this case because the record is incomplete. The record contains a notice of intent to deny the petition (NOID), which FOD issued on July 15, 2020. FOD's decisions indicate that the Petitioner responded to the NOID on October 2, 2020, with the submission of additional evidence. However, the record lacks complete copies of these documents. Additionally, FOD's decisions discuss a business plan and updates to the business plan, but these materials are not in the record. Thus, we cannot determine if FOD incorporated these materials into the record and properly considered all relevant evidence or if the Petitioner has established his eligibility for the EB-5 immigrant classification. *See* 8 C.F.R. § 103.2(b)(1) (indicating that "[a]ny evidence submitted in connection with a benefit request is incorporated into and considered part of the request"). We will, therefore, withdraw FOD's most recent decision – decision dismissing the Petitioner's combined motions – and remand this matter.

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

[2] The Petitioner claims to have invested at least $500,000 in the NCE, and alleges that, at the time he filed the petition, 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).

[3] [redacted] is a regional center that USCIS designated to participate in the EB-5 program in 2011. A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e).