U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37010436

Date: MAY 15, 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) (2019).[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.

Field Operations Directorate (FOD) denied the petition, concluding that the Petitioner did not establish that the new commercial enterprise, [redacted] will create at least 10 full-time positions for qualifying employees because the entity was dissolved. The Petitioner subsequently filed a combined motion to reopen and motion to reconsider. FOD dismissed the motion to reopen and affirmed the denial without addressing the Petitioner's motion to reconsider. 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

As required by 8 C.F.R. § 204.6(j)(4)(i), the petition must establish that the investment of the required amount of capital in a new commercial enterprise will create full-time positions for at least 10 qualifying employees within two years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii). For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526.

[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 filed his petition in 2019, the relevant law then in existence governs this appellate adjudication.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a new commercial enterprise will create full-time positions for at least 10 qualifying employees within two years, the petition must be accompanied by:

> (A) Documentation consisting of photocopies of relevant tax records, Forms 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.

A petition is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the NCE. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 qualifying employees within the next two years. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Mere conclusionary assertions, however, do not enable USCIS to determine whether the job-creation projections are any more reliable than hopeful speculation. *Id.* Most importantly, the business plan must be credible. *Id.*

Petitioners investing in an NCE within a regional center may rely on economic methodologies to demonstrate that the investment will create indirect jobs as a result of the investment in the NCE, but such methodologies must be reasonable. *See* Pub. L. No. 102-395; 8 C.F.R. §§ 204.6(e), (j)(4)(iii), (m)(7)(ii). The petitioners must provide sufficient evidence for USCIS to determine whether methodologies used are reasonable.

Indirect jobs are those that are held outside of the NCE but are created as a result of the NCE. *See generally* 6 *USCIS Policy Manual* G.2(D)(4), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2. For example, indirect jobs include, but are not limited to, those held by employees of the job-creating entity (JCE) (when the JCE is not the NCE) as well as employees of producers of materials, equipment, or services used by the NCE or the JCE. *Id.*

Where a regional center, NCE or JCE is the subject of termination or debarment from the EB-5 program, investors with a pending or approved petition, including petitions filed prior to enactment of the EB-5 Reform and Integrity Act of 2022, may retain eligibility under certain circumstances. *See* section 203(b)(5)(M) of the Act, 8 U.S.C. § 1153(b)(5)(M). *See also* 6 *USCIS Policy Manual,* supra at G.3(E).

II. ANALYSIS

The Petitioner asserts eligibility based on an investment in [redacted] pursuant to the Immigrant Investor Program.[2] On page 6 of his petition, the Petitioner indicated that

[2] At the time of filing, USCIS designated [redacted] as a regional center to participate in the EB-5 program. *See* 8 C.F.R. § 204.6(e) (defining "regional center"). USCIS records show that in October 2024, FOD terminated [redacted] designation as a regional center.

he had invested $500,000[3] into [redacted] the NCE. The NCE proposed to pool $45,000,000 from 90 immigrant investors to invest an equity interest in the JCE, which would develop, construct, and operate a hotel in [redacted] Oregon.

After the initial filing, FOD issued a request for evidence (RFE) dated February 9, 2024. In the RFE, FOD cited to "publicly available information" that was inconsistent with the Petitioner's project timeline and project capitalization described in the business plan in the record. Specifically, FOD noted that public information from the City of [redacted] suggested that the required permits for the hotel's proposed location were pending, although the business plan estimated permit approval dates by January 2019. FOD also noted that the record lacked evidence of a senior construction loan described in the business plan, as well as sufficient evidence of how the project was financed.

In response to the RFE, the Petitioner stated that, due to circumstances outside the Petitioner's control, the JCE was "unable to act in conformity with the business plan and economic report filed with USCIS." The Petitioner submitted evidence that, in December 2023, the NCE approved an amendment to its partnership agreement to begin dissolution as a result of the JCE's failure to secure financing and begin development of the project. The Petitioner also submitted evidence that the regional center notified USCIS in March 2024 of its request for debarment of the JCE. In the RFE response, the Petitioner notified USCIS of his reassociation with a new regional center, pursuant to section 203(b)(5)(M) of the Act. The Petitioner submitted evidence that in May 2024, his remaining EB-5 investment funds were transferred to a new project managed by another regional center.

FOD denied the petition based on the dissolution of the NCE and the failure of the JCE to create jobs. FOD acknowledged the Petitioner's evidence of reinvestment in another project but concluded that this demonstrated a material change from the business plan.

The Petitioner filed a combined motion to reopen and motion to reconsider the matter. He submitted additional evidence and argued that the EB-5 Reform and Integrity Act of 2022, and section 203(b)(5)(M) of the Act, allows investors to amend their petition to retain eligibility where the original capital investment project has failed.

FOD concluded that the Petitioner's motion to reopen presented new facts supported by documentary evidence but did not overcome the deficiencies identified in the denial. FOD dismissed the motion to reopen but did not address the motion to reconsider.

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Since FOD did not properly consider the Petitioner's motion to reconsider, we will remand the matter for consideration of that motion in accordance with the provisions of 8 C.F.R. § 103.5(a)(3). FOD shall consider both the brief submitted in support of that motion and the brief submitted in support of the appeal. FOD shall then issue a new decision on the motion to reconsider.

[3] The Petitioner indicated the project is located in a TEA, and, therefore, the required amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2019).

On appeal, the Petitioner asserts that FOD erred in not acknowledging the Petitioner's affiliation with a new regional center. He submits a notice of voluntary termination, dated October 28, 2024, from USCIS to the regional center. The Petitioner also identifies errors in fact in the dismissal of the motion to reopen, including instances where FOD misquoted his brief and referenced "extensive" evidence that he states was not submitted on motion.

We also note that, in dismissing the motion to reopen, FOD again indicated that the adverse determination regarding the job creation requirements was based in part on "public sources."[4] However, the decision does not identify these sources, and the record lacks copies of any open-source materials FOD may have reviewed. If a decision will be unfavorable to the petitioner and is based on derogatory information considered by USCIS and of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i).

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 a decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976). We will, therefore, withdraw FOD's decision and remand this matter.

On remand, FOD should identify and incorporate any documents, which may have been inadvertently omitted from the record of proceedings before reviewing the entire record, including the Petitioner's brief and additional evidence submitted on appeal, and issuing a new decision. If FOD cannot supplement the record with the missing materials, and if the decision will be based in part on materials not submitted by the Petitioner, it should issue a new RFE, granting the Petitioner a reasonable opportunity to respond. Upon receipt of a timely response, FOD should review the entire record and enter a new decision. That new decision, if unfavorable, shall include a sufficiently detailed and substantive analysis of the evidence to explain the specific reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i).

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

[4] While the Chief identified "Google Street view … depicting photos of the site," copies of this information were not incorporated into the record. Additionally, copies of the public information from the City of [redacted] as mentioned in the RFE were not included in the record.