U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36764625

Date: MAY 16, 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).[1] This employment-based fifth preference (EB-5) classification makes immigrant visas available to individuals 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. Aliens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the Petitioner's investment in the NCE will create at least 10 full-time positions for qualifying employees. 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.

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 an NCE will create full-time positions for at least 10 qualifying employees within two years. *See also* section 203(b)(5)(A)(ii); 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.

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:

[1] On March 15, 2022, the EB-5 Reform and Integrity Act 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 September 2019, the relevant law then in existence governs this appellate adjudication.

(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

(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 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). 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 may 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.*

The Petitioner asserts eligibility based on an investment in [redacted] an NCE associated with [redacted] On page 6 of the petition, the Petitioner indicated that he has invested $500,000[3] into the NCE. According to the updated Confidential Offering Memorandum, dated October 2017, the NCE proposes to pool up to $9,000,000 from 18 immigrant investors and fund the acquisition and development of a real estate parcel in [redacted] Arizona. The NCE intends to develop and construct two communities, [redacted] on the two adjoining plots on a hill. [redacted] will be built on the top of a mountain and will feature 17 luxury homes. [redacted] will be built on the lower portion of the slope and will feature 36 luxury homes.

[redacted] has been designated by USCIS as a regional center permitted to participate in the EB-5 program. *See* 8 C.F.R. § 204.6(e) (defining "regional center").

[3] The Petitioner indicated the project is located in a targeted employment area, 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).

FOD determined that the record did not establish that the Petitioner's $500,000 investment in the NCE will create full-time positions for at least 10 qualifying employees within two years as required by 8 C.F.R. § 204.6(j)(4). FOD concluded that the project is "vastly delayed and vastly underfunded" and briefly explained that the Petitioner did not demonstrate that the NCE had all necessary permits or approvals and financing to proceed with its plans to develop and construct the two residential housing communities. FOD also indicated that the adverse determination regarding the job creation requirements was based in part on "open-source searches."[4] However, the decision does not identify these sources, and the record lacks copies of any open-source materials FOD may have reviewed.

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. 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). 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 its 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 issue 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, FOD should issue a new NOID, 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 FOD identified and provided links to open-source information in a notice of intent to deny (NOID), copies of this information were not incorporated into the record.