U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30354812

Date: MAY 27, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien Investor

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 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 satisfy the job creation requirements. 8 C.F.R. § 204.6(j)(4), (m)(3), (7) (2018). Specifically, FOD stated that the Petitioner claimed to have invested $500,000[2] in [redacted],[3] the NCE that was associated with [redacted], an entity U.S. Citizenship and Immigration Services (USCIS) had formerly designated as a regional center.[4] The FOD's decision denying the petition explains that in January 2020, FOD determined that [redacted]s regional center designation request was approved in error, reopened the matter, and denied the request.[5] FOD then denied the Petitioner's petition, noting that as the NCE was no longer associated with a designated regional center, he failed to establish that his investment, along with other investments, resulted or would likely result in the NCE hiring at least 10 full-time qualifying employees for each investor seeking EB-5 classification. *See* 8 C.F.R. § 204.6(e) (defining "employee"), (g)(1), (j)(4). On appeal, the Petitioner

[1] On March 15, 2022, the EB-5 [redacted] 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 his petition in August 2018, the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner indicates that the NCE and the job creating entity (JCE) are in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2018).

[3] Some evidence in the record – such as the 2017 business plan, the 2018 private placement memorandum, and the 2018 subscription agreement – refers to the NCE as '[redacted]' or '[redacted]'

[4] 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).

[5] USCIS records show that in April 2025, FOD dismissed [redacted]s combined motions to reopen and reconsider the matter, and affirmed FOD's denial of the regional center designation request.

submits a brief and additional evidence, maintaining that he has established eligibility for the EB-5 classification.

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.

I. LAW

An alien investor may invest the requisite amount of qualifying capital directly in an NCE or through a regional center. Entities apply for designation as regional centers to participate in the EB-5 program. 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).

The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, an alien investor 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.[6]

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). The decision concludes: "Most importantly, the business plan must be credible." *Id.* Additionally, under 8 C.F.R. § 204.6(j)(4)(iii) and 8 C.F.R. § 204.6(m)(7)(ii), an alien investor who has invested through a regional center 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.

II. ANALYSIS

A 2017 business plan indicates that the NCE plans to lend $9,000,000 EB-5 funds from 18 alien investors to [redacted], the JCE, to develop, construct and operate a hotel – [redacted] North Carolina. According to the accompanying

[6] 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.

2017 economic analysis prepared by [redacted], "the construction and operations of the [p]roject will create 214.1 direct, indirect, and induced jobs."[7] *See* 8 C.F.R. § 204.6(m)(7). On appeal, the Petitioner offers additional letters from [redacted] claiming: (1) the "development of the project is estimated to have created 31.4 EB-5 eligible jobs(s) (indirect and induced) during FY [fiscal year] 2018"; (2) the "development of the project is estimated to have created 106.7 EB-5 eligible jobs during FY 19, and 138.1 EB-5 eligible jobs during the life of the project"; and (3) the "operations of the project is estimated to have created 28.5 EB-5 eligible jobs during FY20, and development/construction and operations of the project are estimated to have created 166.6 EB-5 eligible jobs during the life of the project." The Petitioner, however, has not shown, or alleged, that the jobs referenced in these materials are jobs that are or will be filled by the NCE's full-time qualifying employees. Indeed, on appeal, the Petitioner, through counsel, alleges that "the JCE [not the NCE] has a viable plan to create jobs to meet the requirements for EB-5 investors."

As noted, in January 2020, FOD denied [redacted]s regional center designation request. As such, the NCE is no longer associated with a designated regional center, and to meet the job creation requirements, the Petitioner cannot rely on indirect job creation. Instead, he must show that his investment, along with other alien investors' investments, has resulted or will likely result in the NCE hiring at least 10 full-time qualifying employees for each alien investor seeking EB-5 classification. *See* 8 C.F.R. § 204.6(e) (defining "employee"), (g)(1), (j)(4)(i).

On appeal, the Petitioner does not argue that an NCE not associated with a regional center could rely on indirect jobs to satisfy the job creation requirements. *See* 8 C.F.R. § 204.6((j)(4)(i), (iii); *see also* 8 C.F.R. § 204.6(m)(7). Instead, he asserts that FOD should not have denied [redacted] regional center designation request and should have permitted [redacted], to continue to operate as a regional center. He also maintains that his petition should be approved under the "legal principles [of] Equitable Estoppel and Equal Protection clause under the Fourteenth Amendment of the United States Constitution," because he invested in the NCE under the assumption that it was associated with a designated regional center and USCIS has classified other alien investors involved in the same project as EB-5 investors.

We are dismissing the Petitioner's appeal for the following reasons. First, the process to request regional center designation for [redacted] and the process to request EB-5 classification for the Petitioner are separate proceedings, regulated by different sections of 8 C.F.R. § 204.6, and require different types of evidence. *See* 8 C.F.R. § 204.6(m); *see also* 8 C.F.R. § 204.6(j). The Petitioner has not cited any legal authority that permits his collateral challenge to FOD's denial of [redacted] regional center designation request in his appeal of FOD's denial of his petition to be classified as an EB-5 investor.

Second, we have no authority to apply judicially devised doctrine such as equitable estoppel to preclude FOD from undertaking lawful course of actions – denying [redacted] regional center designation request and denying the Petitioner's petition to be classified as an EB-5 investor – that FOD is empowered to pursue by statute and regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991). Estoppel is an equitable form of relief that is available only through

[7] Page 5 of the economic analysis specifies that the referenced "direct jobs" are "jobs created directly by [the project's] expenditures or revenues," not jobs that are or will be filled by the NCE's employees. *See* 8 C.F.R. § 204.6(j)(4)(i)(A).

the courts. The Petitioner has not pointed to any delegation of authority, statute, regulation, or other law that permits us to apply such doctrine to the matter before us. *Id.* Rather, when "any person makes application for a visa or any other document required for entry, or makes application for admission, . . . the burden of proof shall be upon such person to establish that he [or she] is eligible" for the benefit. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not made such a showing of eligibility to be classified as an EB-5 investor.

Third, USCIS administers the EB-5 program pursuant to statutory and regulatory authorities. To the extent that the Petitioner's equal protection argument is grounded in the constitutionality of the EB-5 statute and regulations, we cannot address arguments on the constitutionality of laws enacted by Congress or on regulations. *See, e.g., Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) (holding that the Immigration Judge and Board of Immigration Appeals lacked jurisdiction to rule upon the constitutionality of the Act and its implementing regulations); *Matter of Hernandez-Puente*, 20 I&N Dec. at 339 ("It is well settled that it is not within the province of this Board to pass on the validity of the statutes and regulations we administer.") (citations omitted).

III. CONCLUSION

For the reasons we have discussed above, we conclude that the Petitioner has not established, by a preponderance of the evidence, his eligibility for the EB-5 classification. Specifically, he has not demonstrated that, as an investor of an NCE not associated with a designated regional center, he has shown that his purported EB-5 investment has resulted or will likely result in the NCE hiring at least 10 full-time qualifying employees. *See* 8 C.F.R. § 204.6(j)(4); *see also* 8 C.F.R. § 204.6(g)(1). It is the Petitioner's burden to demonstrate his eligibility for the EB-5 classification. Here, the Petitioner has not made such a showing.[8]

ORDER: The appeal is dismissed.

[8] As the identified ground for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any remaining issues concerning his eligibility. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).