U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36763844

Date: MAY 28, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Standalone 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) (2021).[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 she had invested the required amount of capital, that the capital was obtained by lawful means, and that the new commercial enterprise 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 dismiss the appeal because the Petitioner did not establish that the new commercial enterprise will create at least 10 full-time positions for qualifying employees. Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether the Petitioner invested the required amount of capital, and whether that capital was obtained by lawful means. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).; *Matter of M-S-I-,* 29 I&N Dec. 61, 65 (BIA 2025) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

[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 her petition in 2021, the relevant law then in existence governs this appellate adjudication.

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 (NCE) 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.

An alien investor must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are [their] own"). In addition, the alien investor must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show the lawful source of the funds, an investor must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the path of the funds back to a lawful source.[2] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a NCE 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.*

[2] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program are not of suspect origin." *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001) (holding that a petitioner had not established the lawful source of her funds because, in part, she did not designate the nature of all of her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

II. ANALYSIS

According to pages 5 and 6 of the petition, the Petitioner stated that, on June 28, 2021, she invested at least $500,000 in the NCE, [redacted]. The NCE is a Wisconsin-based limited liability company created to fund the acquisition, ownership, conversion, reorganization and management of the former [redacted] into a 118-unit apartment complex.[3]

The Petitioner noted that the NCE is affiliated with a project within a designated regional center.[4] However, she stated that her petition was filed "as a Direct Job petition and not as a Regional Center application." Despite this statement, on page 8 of the petition, the Petitioner stated that the NCE is associated with a Regional Center and will rely on indirect job creation.[5] We also note that the Petitioner stated on page 7 of the petition that the job-creating entity (JCE) is different than the NCE, although she identified the JCE as [redacted] the same entity as the NCE. As the Petitioner stated in her initial filing that hers is a standalone petition, FOD treated it as such, which requires that she demonstrate direct job creation.

The Petitioner also indicated on pages 6 and 7 of her petition that she has 3% ownership of the NCE, and that "other EB-5 limited partners" own 51%.[6] The Petitioner submitted a May 2021 business plan for a project titled [redacted] which lists the NCE as [redacted] The business plan states that [redacted] and another entity, [redacted] will serve as the JCEs for the project. The business plan does not make any reference to projected job creation and does not mention the NCE. The Petitioner provided a 2019 job creation estimate of the [redacted] project stating that the total job creation is projected to be 200.4 EB-5 eligible jobs. The job creation estimate also does not mention the NCE.

FOD issued a notice of intent to deny (NOID) the petition identifying multiple issues.[7] In the NOID, FOD stated that the record did not contain sufficient evidence that the NCE will create at least 10 full-time positions for qualifying employees. FOD determined that the May 2021 business plan was not compliant with *Matter of Ho*, in that it lacked sufficient detail and supporting documentary evidence demonstrating that the NCE would create the required number of jobs. FOD noted that the business

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[3] The Petitioner indicated that 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) (2021).

[4] USCIS records reflects that the [redacted] is sponsoring another NCE, [redacted] to pool EB-5 investments in the same project to fund the development of the former [redacted]

[5] 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.*

[6] We note that the record does not include documentation of the other limited partners or their investments.

[7] FOD requested that the Petitioner provide evidence to establish that she was the legal owner of the capital invested in the NCE. FOD acknowledged that the record included evidence that the Petitioner wired $550,000 on June 28, 2021 from three accounts into an account identified as [redacted] The record also included evidence that the Petitioner's representative transferred $500,000 from the [redacted] account to the NCE's account on August 6, 2021. FOD noted that the record did not include evidence that "the funds transferred [from [redacted] to the NCE on August 6, 2021, are the same funds remitted by Petitioner on June 28, 2021, 39 days later."

FOD also requested evidence that the Petitioner's invested capital, derived from her spouse's accumulated income as managing partner and shareholder of his family jewelry business, was obtained through lawful means. FOD noted that the record did not include sufficient evidence that her spouse's income and ownership stake in the jewelry business derived from lawful means.

plan did not reference projected job creation. FOD also noted that the 2019 job creation estimate listing 200.4 construction jobs were "*indirect* jobs that are irrelevant to Petitioner's *direct* job creation requirement" (emphasis in original). The direct job requirement applies to an NCE not located within a regional center, which is the case for the Petitioner's standalone investment.

FOD acknowledged that the Petitioner submitted an "Apartment Employee Roster" that was undated and "internally-generated." Although the roster listed a total of 11 positions, it did not include employee names, hiring dates, or other specific information demonstrating that these are full-time qualifying positions or that they were actually created. FOD specifically requested that the Petitioner provide relevant tax and payroll records for any qualifying employees already hired, and complete bank statements and tax records "of the NCE from Petitioner's contribution of funds through present" to support the claimed job creation.

In response to the NOID, in addressing job creation, the Petitioner stated that "the JCE has hired two people and is contracting out all other services until this [petition] is approved." She provided the names of two individuals who "are on site in a full-time capacity," and stated that "it is more likely than not that 10 people will be *after* the I-526 is approved." (Emphasis in original).[8] The Petitioner did not submit evidence specifically requested in the NOID, such as bank statements tracing the funds from Petitioner's bank accounts to the NCE's bank accounts, complete bank statements and tax records "of the NCE from Petitioner's contribution of funds through present," or tax and payroll records for any qualifying employees the NCE already hired.[9]

FOD determined that the record did not establish the lawful source of funds for the Petitioner's EB-5 investment, or that she had invested the required capital.[10] FOD also determined the record did not establish that the NCE has already created, nor will create, at least 10 full-time positions for qualifying employees. FOD noted that the Petitioner did not submit "any documentation substantiating the hiring of the two employees" claimed in response to the NOID, or "any new information regarding a hiring timetable, specific information such as duty descriptions or projected salaries" to support the job creation claimed in the employee roster.

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[8] Corporate records submitted with the initial filing identify [redacted] entity identification number as [redacted] A search of Wisconsin corporate records reveals that this business registration has been revoked or terminated as of October 14, 2021. State of Wisconsin, Department of Financial Institutions, https://apps.dfi.wi.gov/apps/corpsearch/search.aspx (visited May 15, 2025). As a result, it is unclear how the NCE could have hired two employees in qualifying positions as of the October 2023 response to the NOID. While not the basis of our decision, this inconsistency must be addressed with any further filings. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[9] In response to the NOID, the Petitioner also submitted additional evidence related to the source of her EB-5 investment capital, including business registration, tax documents, and partnership agreements related to her spouse's income from his jewelry business. The Petitioner resubmitted the evidence of wire transfers evidencing the Petitioner's transfer of $550,000 to [redacted] and counsel's transfer of $500,000 from [redacted] to the NCE.

[10] FOD noted that the Petitioner did not submit specific evidence requested in the NOID, including "bank statements belonging to [redacted] or a confirmation letter from the NCE confirming that the transferred funds belonged to Petitioner or were received on Petitioner's behalf." FOD also noted that the Petitioner did not submit sufficient evidence that the accrual and maintenance of her spouse's income, the basis for her EB-5 investment, was derived from lawful means.

On appeal, the Petitioner submits a brief and additional evidence.[11] In an attempt to document job creation, the Petitioner submits an undated "Statement by [redacted] Regarding Direct Employment," stating:

> [redacted] will be changing the employment status of the current contract ("indirect") employees of [redacted] to permanent full-time employment status ("direct") once the I-526 Petition of [the Petitioner] has been approved. This will create ten (10) full-time ("direct") employees for which the Investor will receive credit for their full-time permanent employment status.

Based on the reasons discussed below, the Petitioner has not sufficiently established that the NCE will create at least 10 full-time positions for qualifying employees, as required by 8 C.F.R. § 204.6(j)(4)(i).

As noted above, an investor seeking EB-5 classification must demonstrate 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). "For a new commercial enterprise not located within a regional center, the full-time positions must be created directly by the new commercial enterprise to be counted. This means that the new commercial enterprise (or its wholly owned subsidiaries) must itself be the employer of the qualifying employees." *6 USCIS Policy Manual G.2(D)(4), supra. See also* 8 C.F.R. § 204.6(e).

Although the Petitioner asserts that the NCE has already hired two individuals to fill qualifying positions, the record does not document that each of these individuals is lawfully authorized for employment in the United States, when these individuals began employment, or that these individuals represent qualifying employees filling jobs created by the Petitioner's investment, *i.e.,* that they began employment after the investment.[12] *See generally 6 USCIS Policy Manual G.2(D), supra.* Nor does it document their job titles and duties, their salaries, or whether the positions are full-time. Further, because the Petitioner noted multiple "EB-5 limited partners" on the petition but did not identify them, we are precluded from determining that any jobs already created can be credited to the Petitioner. "In general, multiple immigrant investors may not claim credit for the same job. An immigrant investor may not seek credit for the same specifically identified job position that has already been allocated to another immigrant investor in a previously approved case." *6 USCIS Policy Manual G.2(D)(4).*

The undated statement asserting that [redacted] contract employees will be converted to direct employees is insufficient to establish job creation. The statement does not provide the job titles, job duties or other information about the contract employees to establish that these positions were created

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[11] The Petitioner submits additional records of her spouse's income and business documents for the jewelry company. In an attempt to document the Petitioner's investment of the required capital, the Petitioner submits an undated "Statement from NCE" attesting to the transfer of the Petitioner's EB-5 investment funds from [redacted] along with two redacted bank statements for [redacted]. While this tends to demonstrate that the Petitioner transferred her EB-5 investment funds to [redacted] an account that appears to hold funds from multiple investors, the Petitioner does not submit corroborating documentation demonstrating that the funds transferred from [redacted] to the NCE actually derive from her investment deposit.

[12] The Petitioner must either create 10 new positions that did not previously exist or must demonstrate job maintenance from an investment in a troubled business pursuant to 8 C.F.R. § 204.6(j)(4)(ii). The Petitioner here does not claim that her investment was in a troubled business.

by the Petitioner's investment. The statement does not indicate that the NCE itself, [redacted] will be the actual employer of these converted employees.[13]

Because the Petitioner has not established that the NCE has already hired 10 qualifying employees, the Petitioner must establish by a preponderance of the evidence that her investment in the NCE will create full-time positions for at least 10 qualifying employees. *See* 8 C.F.R. § 204.6(j)(4)(i). As such, to satisfy the job creation requirements, the Petitioner must present a comprehensive and credible business plan showing that the NCE will likely use her $500,000 remittance to create at least 10 full-time positions for qualifying employees within the next two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. The record is insufficient to demonstrate that the Petitioner has satisfied these requirements.

As discussed in FOD's decision, neither the 2021 business plan nor the 2019 job creation estimate addresses the NCE's projected direct job creation. On appeal, the Petitioner does not address this. The record does not include a comprehensive business plan that reasonably demonstrates that the NCE will create the requisite number of direct jobs within the next two years.

Based on the reasons discussed above, we conclude that the Petitioner has not sufficiently shown that her purported $500,000 remittance to the NCE will likely result in the NCE, [redacted] directly creating at least 10 full-time jobs for qualifying employees. *See* 8 C.F.R. § 204.6(g)(1), (j)(4). Specifically, she has not submitted a credible and comprehensive business plan showing that the NCE will likely create the requisite number of full-time positions for qualifying employees within the next two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *see also Matter of Ho*, 22 I&N Dec. at 213.

In light of our discussion of job creation requirements, we need not consider other eligibility issues in this case. We will reserve other eligibility issues for future consideration should the need arise.

III. CONCLUSION

For the reasons we have discussed above, we conclude that the Petitioner has not established by a preponderance of the evidence, her eligibility for the classification. Specifically, she has not demonstrated that her EB-5 investment will likely result in the NCE directly creating at least 10 full-time jobs for qualifying employees. *See* 8 C.F.R. § 204.6(g)(1), (j)(4). As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning her eligibility. *See INS v. Bagamasbad,* 429 U.S. at 25.

ORDER: The appeal is dismissed.

[13] As noted above, a search of Wisconsin corporate records reveals that [redacted] business registration has been revoked or terminated as of October 14, 2021. State of Wisconsin, Department of Financial Institutions, https://apps.dfi.wi.gov/apps/corpsearch/search.aspx (visited May 15, 2025). While not the basis of our decision, with any further filings, the Petitioner must establish the valid business registration and lawful operation of the NCE, as well as its ability to serve as employer.