U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38736822

Date: NOVEMBER 19, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526E, Immigrant Petition by Regional Center 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) (2016).[1]

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the Petitioner invested in a new commercial enterprise, placed his invested capital at risk, and that the requisite job creation would ensue from the investment. 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

Alien investors are eligible for immigrant classification if they invest or are actively in the process of investing the requisite amount of capital in a new commercial enterprise (NCE) which will benefit the United States economy and create full-time employment for at least 10 United States citizens, lawful permanent residents, or other immigrants authorized to work in the United States. Section 203(b)(5)(A) of the Act (2019); 8 C.F.R. § 204.6(j). An alien may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. A regional center is an economic unit involved with the promotion of economic growth. 8 C.F.R. § 204.6(e). For NCEs located in a targeted employment area (TEA), aliens must invest at least $500,000 of capital. Section 203(b)(5)(C)(ii) of the Act (2019).

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the employment based fifth preference (EB-5) program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed his petition in November 2019, the relevant law then in existence governs this appellate adjudication.

The regulation at 8 C.F.R. § 204.6(j)(2) provides that the alien investor must establish that they have invested or are actively in the process of investing the required amount of capital and must submit evidence verifying that they have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. The precedent decision, *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998), explains that for an investor to establish that they have placed their investment funds at risk for the purpose of generating a return, the full amount of EB-5 money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.

The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit either documentation of relevant records of ten qualifying employees, 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.[2]

To be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential." *Matter of Ho,* 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). "Mere conclusory assertions[, however,] do not enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation." *Id.* The decision concludes: "Most importantly, the business plan must be credible." *Id.*

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was their own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. To show that the capital was their own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. at 195. A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the new commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source.[3] *Id.*

II. ANALYSIS

The record shows the Petitioner invested $500,000 in the [redacted] for the benefit of the NCE, [redacted], which is located in a TEA. The business plan states the project is a $30 million venture which intends to raise up to $20 million from 40 EB-5 investors which will be lent to the job creating entities (JCEs): [redacted] which will be managed by [redacted]. The business

[2] 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; *see also* USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 19 (May 30, 2013), https://www.uscis.gov/legal-resources/policy-memoranda.

[3] 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), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

plan states the project will involve expansion of vehicle fleets servicing disabled individuals, establishment and operation of a driver's academy, a maintenance and repair facility, a parking facility, routing software and an accessible transportation application (app). The business plan and an economic impact analysis state the project will create a total of 1,079 jobs as a result of the EB-5 investment.

A. New Commercial Enterprise and Capital at Risk

FOD determined the Petitioner did not establish that the NCE was exclusively participating in lawful business, as the definition of commercial enterprise at 8 C.F.R. § 204.6(e) requires. FOD also concluded that the Petitioner did not establish that the invested capital remained with the JCEs. However, instead of addressing the various deficiencies under the applicable regulation at 8 C.F.R. § 204.6(j)(1) and (2), FOD denied the petition relying on public lawsuits and legal actions against various actors associated with or surrounding [redacted] without addressing their relationships to the NCE and relevance to the eligibility criteria. In the denial, FOD listed a series of pending lawsuits without incorporating them into the record.

Pursuant to 8 C.F.R. § 103.2(b)(16)(ii), "a determination of statutory ineligibility shall be based only on information contained in the record of proceeding" which is disclosed to the petitioner. 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 the decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976) (explaining the District Director is primarily responsible for ensuring the completeness of the record reviewed on appeal). Here, the record lacks copies of any open-source materials FOD may have reviewed. As a result, the Petitioner did not have a meaningful opportunity to address the derogatory information.

Additionally, FOD discussed the class action lawsuit by former drivers of [redacted] as well as complaints filed by the New York Supreme Court and Federal Bureau of Investigation (FBI) against [redacted] alleging fraud and other illegal activities such as misappropriation of investment from the NCE. However, there is no indication that these cases have been resolved by the courts and the litigation is ongoing. In response to FOD's notice of intent to deny (NOID) and on appeal, the Petitioner submits the defendants' motions to dismiss these complaints and argues that complaints are not the final court findings of illegal or criminal activities. We do not give substantial weight to arrest reports, criminal complaints, and charging documents that did not lead to a conviction. *Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995).

Upon de novo review, we share similar concerns with FOD over the activities of the NCE and its management and the use of EB-5 capital. However, because FOD did not clearly articulate the relevant facts and link them to eligibility, it did not allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Therefore, we remand the matter so that FOD can review the evidence based on 8 C.F.R. § 204.6(j)(2) and *Matter of Izummi*, 22 I&N Dec. at 179, to determine whether the Petitioner made his funds available to the business most closely responsible for job creation in this pooled investment case. If FOD questions whether the Petitioner irrevocably committed funds to the NCE, issuance of a request for evidence may be appropriate to provide the Petitioner with a reasonable opportunity to respond. FOD should also identify and incorporate any publicly sourced documents into the record before issuing a new decision.

A. Job Creation

FOD also determined the Petitioner did not establish the requisite job creation. FOD issued a NOID for evidence of the credibility of the business plan. In response, the Petitioner submitted a document entitled "Appendix: Business Changes to the Project." The Appendix states that of the projected 40 EB-5 investors, only 14 EB-5 investors were obtained and the projected $10 million in additional equity was not obtained; of the original 200 vehicle expansion, only 12 vehicles were purchased; the driver's academy was built, but later closed; the software was developed, but not used; the app was eliminated; and the maintenance and repair facility was upgraded from five-bays to 12-bays.

The Appendix states the headquarters of the project at [redacted] were let go and moved to the maintenance and repair facility at [redacted]. In response to the NOID, the Petitioner also submitted a July 23, 2023 sublease of this [redacted]. The Petitioner does not indicate that [redacted] is affiliated with the NCE, JCEs, or the manager of the project.

The Appendix also asserts "[n]umerous jobs were created for drivers, repair technicians and the associated personnel required in support of the larger fleets, technology, facilities management and administrative support." However, the Petitioner does not state how many jobs were created and did not submit revised projections of the number of jobs that will be created in the future given the downsizing of the project.

In response to the NOID, the Petitioner also submitted an affidavit from T-G-[4], former Chief Legal and Compliance Officer with [redacted] the manager of the project. T-G- explains that since the initial raise of EB-5 capital in 2019, "several major global, industry, and program disruptions and changes took place altering the capital raise and scalability as intended for the project." As a result of the COVID-19 crisis, macroeconomic uncertainty, and Securities and Exchange Commission and Department of Justice regulatory actions in 2023, T-G- states only 14 EB-5 investors were subscribed, the capital raise and equity investment were halted, major business contracts were lost, and the manager's "revenue reduced nearly to zero." Although the project was downscaled, T-G- states the project evolved and "a portion of the business plan" was executed.

FOD determined the business plan was not comprehensive and credible because it did not establish the requisite job creation, the business activities were not clear and supported with evidence, the record contained inconsistencies about site status, entity operating status, and there was a lack of evidence

[4] We use initials to protect the privacy of the referenced individuals.

regarding vehicle operation, and the flow of invested funds. On appeal, the Petitioner asserts he submitted sufficient evidence of business activity and the project, while downsized, is operational. The record does not establish that the limited amount of business activity is consistent with the business plan's description of the project such that the business plan remains credible.

First, the record does not establish that sufficient capital will be obtained to finance the project. The business plan sought up to $20 million from 40 EB-5 investors, but the evidence shows just 14 EB-5 investors subscribed and contributed only $7 million in capital. In addition, T-G- confirms the $10 million in additional equity originally included in the capital stack was not obtained. On appeal, the Petitioner asserts that "the developers were able to implement a revised business plan that would inject capital where it would be needed the most, while still preserving the Project's growth trajectory and capacity to expand." The record does not support this assertion. The Petitioner did not submit a revised business plan or other evidence that the project's growth and capacity to expand have been preserved.

Second, the record shows the project's business has been greatly reduced from that described in the business plan. From a $30 million project consisting of a 200-vehicle fleet expansion, a maintenance and repair facility, a driver's academy, a parking facility, routing software, and an accessible transportation app, the record indicates that only 12 vehicles were purchased. On appeal, the Petitioner asserts that evidence of expenditures for vehicle purchases, furniture and fixtures, rent and utilities, and other general costs show that business is being conducted "in furtherance of the Project as constituted." However, the record shows the driver's academy closed, the software was not used, and the app was eliminated. The Petitioner did not submit evidence that the parking facility has been maintained and the sublease indicates that the location of the maintenance and repair facility has been subleased to another business that is not associated with the project.

Contrary to the Petitioner's assertions on appeal, the record does not establish that sufficient capital has or will be obtained to finance the project as described in the business plan and the evidence shows the scope of the project has been greatly reduced. Although the Appendix explained how the project was downscaled, it did not demonstrate that the project has the capacity to develop in the future as described in the business plan. Consequently, the business plan lacks credibility and the Petitioner has not established that the NCE, the JCEs, or the manager of the project will likely create at least 10 jobs for each investor seeking EB-5 classification, within two years, as projected in the business plan and economic analysis. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

However, in determining that the Petitioner did not submit a comprehensive business plan establishing the requisite potential for job creation, FOD relied upon its prior conclusion that the NCE was not engaging in lawful business. As FOD's conclusion relied upon complaints in pending litigation, we remand this issue so that FOD can review the evidence based on 8 C.F.R. § 204.6(j)(4) and *Matter of Ho*, 22 I&N Dec. at 213, to determine whether the Petitioner has established the requisite job creation.

B. Lawful Source of Funds

On remand, FOD may also consider whether the Petitioner has established the lawful source of his EB-5 investment funds, as required by 8 C.F.R. § 204.6(e) and (j)(3). In a Source of Funds Memorandum, the Petitioner states he obtained the $525,000 for his investment and the administrative

fee from: $175,000 in savings of income of the Petitioner and his wife and distributions from their employer; a $150,000 gift from his friend A-B-; a $125,000 gift from his sister-in-law S-B-; and a $75,000 gift from his friend S-M-. The record does not fully document the path of funds from these sources.

The record shows the Petitioner wired $525,000 from his individual checking account to the Regional Center's escrow account on November 13, 2019. The Petitioner submitted a screenshot of his checking account showing on November 12, 2019, a $100,000 "online/phone xfr in" with a handwritten notation of "distribution," on November 8, 2019, a $15,000 "online/phone xfr in" with a handwritten notation of "salary" and a $60,000 "online/phone xfr in" with a handwritten notation of "salary/distribution."

The record does not establish the source and path of this $175,000 in funds that the Petitioner states came from his and his wife's savings of their income and distributions from their employer, The Petitioner submitted bank statements of his and his wife's joint checking and savings accounts from May to October 2019 showing that on October 7, 2019, the total balance on the accounts was $12,731. One of these statements shows a $24,000 deposit to the savings account on September 19, 2019 with a handwritten notation "distribution from" The Petitioner also submitted bank statements of his individual checking and savings accounts from May to October 2019 showing that on October 17, 2019, his total balance on the accounts was $52,001. One of these statements shows a $24,000 "online/phone Xfr IN" from the Petitioner's and his wife's joint savings account on September 23, 2019. The bank statements show that in October 2019, the Petitioner and his wife had a total balance of $64,732 in their accounts, which is less than the $75,000 notated as "salary" and "salary/distribution" on the screenshot of the Petitioner's checking account. The Petitioner did not submit bank statements from November 2019 showing debits or transfers of the $75,000 identified as "online/phone xfr in" on November 8, 2019, or the $100,000 identified as "online/phone xfr in" on November 12, 2019 in the screenshot of the Petitioner's checking account. The bank statements from May to October 2019 also do not reflect any deposit of $100,000 corresponding to the claimed distribution from the Petitioner's employer. The record thus does not document the source and path of funds the Petitioner claims came from his and his wife's saved income and distributions from their employer.

The record also does not establish the path of the gifted funds from the Petitioner's sister-in-law and friends to the Petitioner. The Petitioner submitted a "Gift Agreement" dated October 14, 2019, stating that A-B- unconditionally gifts $150,000 to the Petitioner and that the gifted funds were obtained through A-B-'s accumulated income. The Petitioner submitted bank statements of A-B- from January to October 2019 from but none of these statements reflect a $150,000 withdrawal or transfer on October 14, 2019. The Petitioner submitted a $25,000 official check of payable to the Petitioner and dated November 7, 2019, but the check does not state the remitter's name or account number. The Petitioner also submitted a cashier's check for $125,000 payable to the Petitioner and dated November 7, 2019, but the check does not state the remitter's name or account number. The screenshot of the Petitioner's checking account shows a $275,000 "deposit" on November 7, 2019, but does not identify the source of the deposit apart from a handwritten notation of ' $125k $150k." The Petitioner did not submit account statements of A-B- from showing withdrawals or transfers of $25,000 and $125,000 to the

Petitioner. The evidence thus does not document the path of the $150,000 gifted funds from A-B- to the Petitioner.

The Petitioner submitted a "Gift Agreement" dated October 19, 2019, stating that S-B- unconditionally gifts $100,000 to the Petitioner and that the gifted funds were obtained through her accumulated income. The Gift Agreement for $100,000 is inconsistent with the Petitioner's Source of Funds Memorandum stating that S-B- gifted him $125,000. The Petitioner submitted a checking account summary of S-B- that shows a $125,000 "customer withdrawal" on November 7, 2019, and a cashier's check of $125,000 payable to the Petitioner that does not identify the payor or source account. As discussed, the screenshot of the Petitioner's checking account that reflects a $275,000 "deposit" on November 7, 2019, does not identify the source of the deposit apart from a handwritten notation of [redacted]$125k[redacted]$150k". The Petitioner submitted bank account statements of S-B-, but they do not cover October or November 2019 when the record indicates the gift was made. Consequently, the record does not document the path of funds from S-B- to the Petitioner.

The Petitioner submitted a "Gift Agreement" dated November 10, 2019, stating that S-M- unconditionally gifts $75,000 to the Petitioner and that the gifted funds come from S-M-'s accumulated income. The Petitioner submitted income tax returns showing S-M-'s adjusted gross income was $330,413 in 2017 and $364,328 in 2018. The Petitioner also submitted [redacted] statements of S-M- from December 2018 to October 2019 showing balances between $42,365 and $83,072. The Petitioner submitted a copy of a $75,000 [redacted] cashier's check dated November 8, 2019, from S-M- payable to the Petitioner with a copy of a receipt showing $75,000 was deposited into the Petitioner's checking account on November 8, 2019. However, the cashier's check does not state the account number from which the funds were withdrawn and the Petitioner does not submit a bank statement of S-M- showing a $75,000 withdrawal or transfer to the Petitioner. Moreover, the screenshot of the Petitioner's checking account shows a $75,000 "deposit" on November 8, 2019, but does not identify the source of the deposit apart from a handwritten notation of "[redacted]" Consequently, the evidence does not document the path of the $75,000 gifted funds from S-M- to the Petitioner.

While the record documents the path of the $525,000 from the Petitioner's checking account to the Regional Center's escrow account, the evidence does not establish the source and path of funds from the Petitioner's and his wife's bank accounts to the Petitioner's checking account and from S-B-'s, A-B-'s, and S-M-'s accounts to the Petitioner's checking account. As the Petitioner has not established the full path of funds to his investment in the Regional Center, he has not demonstrated that his investment derived from lawful means. *See Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds is required to show funds were obtained through lawful means, as recognized by precedent decisions). However, as the Petitioner was not advised of this issue in FOD's denial decision, FOD may address the issue on remand and provide the Petitioner with an opportunity to respond before issuing a new decision.

III. CONCLUSION

For the reasons discussed, FOD's decision is withdrawn. On remand, FOD may issue a new request for evidence or notice of intent to deny allowing the Petitioner an opportunity to provide additional

evidence relevant to the issues discussed above, and any other evidence deemed necessary to demonstrate eligibility for the classification sought, before issuing a new decision.

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