U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40165643

Date: NOV. 24, 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 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 U.S. economy and create at least 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding the record did not establish that: 1) the new commercial enterprise (NCE) is conducting lawful business, 2) the required capital was and remained invested in the job creating entities, 3) the business plan was sufficiently credible to establish the requisite job creation, and 4) the NCE is principally doing business and creating jobs in a targeted employment area (TEA). 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

An alien may be classified as an EB-5 immigrant investor if they invest the requisite amount of qualifying capital in an NCE. 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*

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) 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 prior to the implementation of the RIA, the relevant law then in existence governs this appellate adjudication.

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.

An alien 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 (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 NCE may have multiple investors each seeking EB-5 classification, provided that each investor has invested or is actively in the process of investing the required amount and that each individual investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

The 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 TEA, aliens must invest at least $500,000 of capital. Section 203(b)(5)(C)(ii) of the Act (2019).

The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner 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
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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.

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). "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.*

II. ANALYSIS

The Petitioner claims that he invested $500,000 on October 17, 2019, into the NCE [redacted], associated with [redacted] (now called [redacted]). The business plan states that the project is a $30 million venture intended to raise up to $20 million from 40 EB-5 immigrant investors to be lent to the job creating entities (JCEs), [redacted] (JCE 1) and [redacted] (JCE 2). The plan indicates that the project

will be managed by [redacted], a company owning all membership shares in JCE 1. The JCEs intend to expand and operate a fleet of vehicles servicing disabled individuals, establish a driver's academy, a maintenance and repair facility, and a parking facility, and develop routing software and an accessible transportation application. The submitted business plan and an economic impact analysis project a total of 1,079 jobs will be created from the EB-5 investment.

A. Reason for Remand

FOD determined the Petitioner did not establish that the NCE was exclusively participating in lawful business, as required under 8 C.F.R. § 204.6(e). FOD also concluded that the Petitioner did not establish that the invested capital remained with the JCEs. However, FOD denied the petition relying on public lawsuits and legal actions against various actors associated with or surrounding [redacted] without addressing the relevance of these relationships to the NCE and to the eligibility criteria. Additionally, instead of addressing the various deficiencies under the applicable regulation at 8 C.F.R. § 204.6(j)(1) and (2), 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, and a remand is warranted to ensure the Petitioner has a meaningful opportunity to address the derogatory information considered.

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. Importantly, FOD should also identify and incorporate any publicly sourced documents into the record before issuing a new decision.

B. Job Creation

FOD concluded that the Petitioner had not satisfied the job creation requirements under 8 C.F.R. §§ 204.6(g)(1) and (j)(4), and we share FOD's concerns. The Petitioner initially proposed 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 application. The original business plan sought up to $20 million from 40 EB-5 investors and $10 million in additional equity. A document titled "Appendix: Business Changes to the Project," (the Appendix) submitted in response to FOD's NOID, appears to materially change the nature of the project as well as the project's financing posture, such that the business plan may not be credible or establish job creation. On remand, FOD should consider the following and issue a request for additional information or evidence, if necessary, to provide the Petitioner with proper notice of this issue.

The Appendix states that the number of EB-5 investors was reduced from the initial projected 40 to 14 and the anticipated $10 million in additional equity "was removed as the project downscaled." Likewise, the Appendix shows that the project purchased only 12 vehicles despite the original business plan to operate "an in-house fleet totaling 200 vehicles." In addition, the plan underwent extensive changes including the planned smartphone application and extension of non-emergency medical transportation and paratransit vehicles were eliminated and the routing software was developed but not used. And, while the driver's academy was built, the Petitioner acknowledges that it was later closed, and the evidence does not substantiate that the claimed parking facility is being maintained and operated as originally planned.

In regard to the amount of pooled investment, the Petitioner's revised business plan acknowledges that Medicaid is an unreliable payer for NEMT services and that this has affected the scope of the project. Moreover, [redacted] former Chief Legal and Compliance Officer (CLO) claims that since the initial EB-5 capital contribution in 2019, "several major global, industry, and program disruptions and changes took place altering the capital raise and scalability as intended for the project." The affidavit confirms that only 14 out of the claimed 40 EB-5 investors were subscribed resulting in substantial reduction of the needed capital and that major business contracts were lost causing [redacted] "revenue [to be] reduced nearly to zero." Although the business plan emphasizes a critical partnership with [redacted] in assisting [redacted] with coordinating its transportation services, the CLO explains that the "SEC and DOJ regulatory actions in 2023 caused the developer [redacted] to lose its business contracts, e.g. [redacted] that had an enormous trickle-down impact on the business of the Project." As presently constituted, the record does not establish that sufficient capital will be obtained to finance the project.

In addition, the Appendix states that the headquarters of the project at [redacted] New York were abandoned and moved to a maintenance and repair facility at [redacted]

[redacted] New York [redacted] location). The Petitioner's NOID response included a sublease for the [redacted] location dated July 2023, executed with a [redacted] as "Manager/Lessee" to use the facility and equipment. However, the Petitioner does not indicate that [redacted] is affiliated with the NCE, JCEs, or [redacted] the manager of the project. On appeal, the Petitioner claims that the [redacted] location was "subleased due to business difficulties" in 2023 but does not explain whether NCE, JCEs or [redacted] operates the repair facility as intended in the business plan. On remand, FOD may request additional clarification on the business relationship, if any, between the Manager/Lessee and the NCE, JCEs or [redacted] as appropriate.

The Petitioner's appeal includes evidence of expenditures for vehicle purchases, furniture and fixtures, rent and utilities, and other general costs contending that the business is being conducted "in furtherance of the Project as constituted." While this evidence establishes the purchase of materials and other general costs related to launching a business, it does not appear to adequately substantiate claims that the project has been generating revenue and creating jobs. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Overall, the record leaves substantial uncertainty as to the claimed job creation projection of 1,079 jobs resulting from the EB-5 investment since the project did not secure its asserted investors and investments, and material portions of the proposed business plan were downgraded or eliminated.[2] On remand, FOD should evaluate anew the record evidence and determine if the Petitioner has established job creation under 8 C.F.R. § 204.6(j)(4) and *Matter of Ho*, 22 I&N Dec. at 213.

C. Targeted Employment Area (TEA)

FOD concluded the evidence was insufficient to establish the NCE is principally doing business and creating jobs in a TEA. A TEA is defined as, at the time of investment, a rural area or an area that has experienced unemployment of at least 150 percent of the national average rate. 8 U.S.C. § 1153(b)(5)(B)(ii); 8 C.F.R. § 204.6(e). A "rural area" is defined as any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the Untied States). 8 U.S.C. § 1153(b)(5)(B)(iii); 8 C.F.R. § 204.6(e). In other words, a rural area must be both outside of a metropolitan statistical area and outside of a city or town having a population of 20,000 or more.

Upon review, we share similar concerns with FOD over whether the NCE is doing business and creating jobs in a TEA. As FOD noted, various addresses have been linked to the NCE and the evidence submitted to establish it is a TEA does not appear sufficient. However, because FOD appears to have considered evidence outside the record of proceedings and did not clearly articulate the relevant facts and link them to eligibility, we are not able to provide meaningful appellate review. *See*

[2] The Petitioner's NOID response is insufficient to alleviate these concerns. Despite claiming that "[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," the Petitioner did not state how many jobs were created or provide revised projections of the number of jobs that will be created given the significant downsizing of the project. The response lacks the critical details needed to assess job creation. For example, reference is made to "larger fleets" creating numerous jobs however the record reflects that only 12 of the projected 200 vehicles have been purchased.

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).

III. CONCLUSION

For the reasons discussed, FOD's decision is withdrawn. On remand, FOD may issue a request for evidence, as appropriate and needed, to provide the Petitioner with notice of any and all eligibility requirements and a reasonable opportunity to respond. FOD should also identify and incorporate any publicly sourced documents relied upon in its new determination into the record.

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