U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39968688

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 United States economy and create at least 10 full-time positions for qualifying employees.

FOD denied the petition, concluding the Petitioner did not establish that the EB-5 investment was within a designated regional center pursuant to 8 C.F.R. § 204.6(m) (2019). In addition, FOD concluded that the Petitioner did not satisfy the job creation requirements and demonstrate the EB-5 investment was made available to the business most closely responsible for job creation. *See* 8 C.F.R. § 204.6(j)(4) (2019). 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.

I. LAW

An alien may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). The establishment of an NCE may be used as the basis of a petition for EB-5 classification by more than one investor, provided that each investor's investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

[1] On March 15, 2022, the EB-5 Reform and Integrity Act (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). Because the Petitioner filed his petition on November 19, 2019, prior to enactment of the RIA, the relevant law then in existence governs this appellate adjudication.

Additionally, an alien may invest the requisite amount of qualifying capital directly in an NCE or through a regional center, as the Petitioner did in this case. 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." 8 C.F.R. § 204.6(e) (2019). Regional centers apply for designation to participate in the EB-5 program with U.S. Citizenship and Immigration Services (USCIS). 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). When investing through a regional center, the alien must demonstrate that his or her qualifying investment is within a USCIS-approved regional center. 8 C.F.R. § 204.6(m)(7) (2019).

Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2019). Specifically, under 8 C.F.R. § 204.6(j)(4)(iii) and (m)(7)(ii) (2019), an investor who invests in a regional center affiliated project 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

The Petitioner filed an investor petition in 2019 based on an investment through the then USCIS-designated regional center, [redacted] LLC (the Regional Center). He indicates investing $500,000[2] in [redacted] LP, the NCE, which at the time of filing was affiliated with the Regional Center. According to the 2017 business plan[3] and the 2018 Confidential Private Offering Memorandum, the NCE planned to raise up to $30,000,000 from 60 investors who would seek EB-5 classification, and loan the offering proceeds to [redacted] the JCE, to construct and sell 202 residential townhomes in [redacted] California, known as the [redacted] The 2017 economic analysis specifies that the project would create 775.4 construction-related jobs, comprising 360.3 direct jobs and 415.1 indirect jobs.

In [redacted], FOD terminated the Regional Center's designation, finding that it no longer served the purpose of promoting economic growth. In 2024, FOD advised the Petitioner of its intent to deny the petition because, among other reasons, the Regional Center's designation had been terminated and, therefore, could no longer be a basis to establish eligibility for the Petitioner's immigrant status under the EB-5 visa classification. FOD denied the petition in 2025.

[2] The Petitioner claims that the NCE is located 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) (2019).

[3] The initial petition included a 2019 updated business plan entitled, "[redacted]," describing EB-5 foreign investment of up to $35,000,000 from 70 investors in [redacted] LP and [redacted] LP, both described as the NCEs, to finance the development and construction of the [redacted] In his response to a notice of intent to deny, the Petitioner advised that [redacted] LP is not associated with the [redacted] and submitted a 2017 business plan naming [redacted] LP as the sole NCE.

A. The Good Faith Investor Provisions

On appeal, the Petitioner argues that even though the Regional Center's designation was terminated in [redacted], the 2022 enactment of the RIA preserves his EB-5 eligibility. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). Specifically, an amendment entitled "Treatment of good faith investors following program noncompliance" allows "an otherwise qualified petition," under specified circumstances, to remain valid even if "based on an investment in a terminated regional center." Section 203(b)(5)(M)(i)(I) of the Act.

The Petitioner notes that the good faith investor provisions require USCIS to notify an alien investor with an "otherwise qualified petition" of the termination of their associated regional center. *See* section 203(b)(5)(M)(i)(II) of the Act. USCIS must terminate such a petition 180 days after notifying the petitioner, "(but not sooner than 180 days after March 15, 2022)," the date of the provisions' enactment. Section 203(b)(5)(M)(ii) of the Act. Such petition would not be terminated, however, if, within the 180-day period, the NCE in which the petitioner invested associates with a new USCIS-approved regional center or the alien investor makes a qualifying investment in another NCE. *Id.*

The Petitioner argues that the parenthetical phrase "but not sooner than 180 days after March 15, 2022" indicates retroactive application of USCIS' notification to petitions where the regional center termination occurred prior to the provisions' enactment date. He states:

> If 8 U.S.C. § 1153(b)(5)(M) did not explicitly apply to regional center terminations prior to the effective date of the statute, there would be no possibility of an investor needing to affiliate with a new regional center or NCE sooner than 180 days of the date of enactment. The issue would simply never arise. If the statute were prospective only, then 180 days from the date of enactment (March 15, 2022) could *never* be less than 180 days after March 15, 2022.

The Petitioner also points to USCIS policy which discusses the good faith investor provisions applying to petitions filed before March 15, 2022. The USCIS Policy Manual states:

> USCIS recognizes that there are distinct considerations that may apply to investors who filed their underlying Form I-526 prior to March 15, 2022, for purposes of retaining eligibility under [Section 203(b)(5)(M) of the Act]. In general, these investors may continue to rely on direct and indirect job creation despite termination of their associated regional center.

See generally 6 *USCIS Policy Manual* G.3(E), https: //www.uscis.gov/policy-manual.

Thus, the Petitioner contends that the good faith investor provisions retroactively apply to his petition and that its denial, without notice of the regional center's termination and a following 180-day period, is "an unlawful act."

We are not persuaded by the Petitioner's legal arguments. His interpretation of Section 203(b)(5)(M) of the Act is not supported by reason or applicable case law. Contrary to his assertions about the inclusion of the parenthetical clause at the end of the statute, the best reading and interpretation of the

plain language of this provision would not be that it applies to the termination of a regional center that occurred a year before the RIA was enacted. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024) (providing that "[i]n the business of statutory interpretation, if it is not the best, it is not permissible.").

This provision added under the RIA was enacted on March 15, 2022, and became effective 60 days later on May 14, 2022. While the Petitioner contends he is owed the statutory notice in connection with the regional center's termination in [redacted], a year before this statute notice requirement existed, the plain language of the statute does not support such a notification requirement.

The notice required under Section 203(b)(5)(M)(ii)(II) of the Act provides, "upon termination or debarment . . . of a regional center . . . the Secretary of Homeland Security shall notify the alien beneficiaries of such petitions of such termination or debarment." The statute is phrased to require notification "upon" the regional center's termination. In this context, upon is used "when mentioning an event that is followed immediately by another event." *Upon*, Collins Dictionary, www.collinsdictionary.com/us/dictionary/english/upon. Thus, such notices are intended to be issued prospectively as terminations occur after an enactment. The best reading of the plain language of the provision is that the statutory notice is required "upon" termination of the regional center after such provisions were enacted and became effective.

We acknowledge that the USCIS Policy Manual recognizes distinct considerations that may apply to good faith investors who filed their petitions prior to enactment of the RIA. However, the USCIS Policy Manual specifically focuses on petitions filed prior to March 15, 2022, and does not mention regional centers terminated prior to March 15, 2022.

Moreover, unless Congress expressly states a statute's retroactive reach, there is a presumption against it. *Landgraf v USI Film Prods.*, 511 U.S. 244, 280 (1994) (establishing a two-prong test for determining whether a statute should be applied retroactively). Here, Congress did not expressly prescribe the temporal reach of the good faith investor provisions. *See id.* Also, retroactive application of the good faith investor provisions would impose new duties on the Petitioner. *See id.* To maintain eligibility as an immigrant investor, the provisions require that the investor show that the NCE in which he or she invested associated with an approved regional center or made a qualifying investment in another NCE, all within 180 days of the termination notice. Thus, the imposition of these new duties to pre-enactment terminations has an impermissible retroactive effect, triggering the traditional presumption against retroactive laws.

But even assuming that the good faith investor provisions have retroactive reach and the Petitioner meets all other good faith investor requirements, the provisions would not apply to him. He has not demonstrated that this filing is "an otherwise qualified petition." *See* section 203(b)(5)(M)(i)(I) of the Act. Specifically, as discussed below, he has not established that his investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4) (2019). Thus, the good faith investor provisions, even if retroactive, would not apply to him.

B. Job Creation

As noted above, an alien investor may rely on direct as well as indirect jobs to satisfy the job creation requirements if he or she invests in a regional center affiliated project. *See* 8 C.F.R. § 204.6(j)(4)(iii), (m)(7)(ii) (2019). If the investor does not invest in a regional center affiliated project, then he or she must demonstrate that the investment has created, or is likely to create, at least 10 full-time direct jobs for the investor, as well as for each of the other investors seeking EB-5 classification. *See* 8 C.F.R. § 204.6(g)(1) (2019).

In this case, while the Petitioner's purported investment in the NCE was initially affiliated with [redacted] LLC, FOD terminated [redacted] LLC's designation as a regional center to participate in the EB-5 program in [redacted] As such, the record does not support a finding that the Petitioner's purported investment in the NCE is affiliated with a currently designated regional center, or that he may rely on indirect jobs to satisfy his job creation requirements. *See* 8 C.F.R. § 103.2(b)(1) (providing that a "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication"); *see also* 8 C.F.R. § 204.6(j)(4)(iii), (m)(7)(ii) (2019).

On appeal, the Petitioner maintains that investments in the NCE have already created 19 direct jobs. He explains that since the NCE only raised $1,000,000 in EB-5 funds from two investors and the NCE will not raise additional funds under this regional center, nearly enough jobs for two investors have already been created and it is more likely than not that there will be at least ten direct jobs available to satisfy his job creation requirements. The Petitioner does not agree with part of his independent accountant report which states, "we only traced $1,000,000 construction expenses. The expenses that we traced were paid for land purchased." Instead, he contends that the $1,000,000 was provided to the JCE, not for land purchased, but only in furtherance of construction-related jobs, including "$436,102.99 on soft costs" with "274,786.88 in EB-5 eligible architectural, engineering and related services costs." Based on these costs, he asserts "more than 19.0 new, full-time, permanent jobs for U.S. workers were created." He claims he is only required to show the ten jobs necessary to support his petition.

However, the NCE's 2017 business plan and other corporate documents, including the 2018 Confidential Private Offering Memorandum indicate that the NCE aims to raise funds from 60 alien investors, each seeking EB-5 classification. Under 8 C.F.R. § 204.6(j)(4) (2019) and 8 C.F.R. § 204.6(g)(1) (2019), the Petitioner must therefore demonstrate that the EB-5 investment has created, or is likely to create at least 600 direct jobs, 10 for each investor seeking EB-5 classification. The Petitioner has not alleged, and the evidence in the record, including the business plan and economic impact reports, does not support a finding that the NCE's project has created or will likely create at least 600 direct jobs. Accordingly, we will dismiss the Petitioner's appeal on the ground that he has not satisfied the job creation requirements. *See* 8 C.F.R. § 204.6(j)(4) (2019); *see also* 8 C.F.R. § 204.6(g)(1) (2019).

III. CONCLUSION

It is the Petitioner's burden to demonstrate his eligibility for the EB-5 classification. *Matter of Chawathe*, 25 I&N Dec. at 375-76. For the reasons discussed above, the Petitioner has not established,

by a preponderance of the evidence, his eligibility for this classification. Specifically, the Petitioner has not demonstrated that his EB-5 investment was within a designated regional center, or that he satisfied the job creation requirements. Accordingly, we will dismiss the appeal.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any remaining arguments concerning his eligibility. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.