U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39351080

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) (2019).[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 ten (10) full-time positions for qualifying employees. Aliens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center, as the Petitioner claims to have done in this case. *See* Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (the "Appropriations Act"), Pub. L. No. 102-395, 106 Stat. 1828, 1874 (repealed 2022).

Field Operations Directorate (FOD) denied the petition, concluding on page 6 of the decision that the Petitioner failed to establish that [redacted] LLC, the NCE, "satisfies the definition of a 'commercial enterprise,' namely, any for-profit activity formed for the ongoing conduct of lawful business, or that the full amount of the [purported EB-5] investment has remained available to the business most closely responsible" for job creation. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

On appeal, the Petitioner maintains that FOD's decision was based on unsubstantiated allegations, and that FOD "[erred in] conclud[ing] that there has been insufficient proof demonstrating that [his] full capital investment went to the entity most closely related to job creation," or that the NCE does not qualify as a commercial enterprise. Additionally, the Petitioner contends that, despite setbacks, the intended project was completed in 2023, and it created the required number of permanent jobs.

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,

[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 the petition on November 15, 2019, the relevant law in existence on that date governs this appellate adjudication.

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 immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. 8 C.F.R. § 204.6(e) (defining "commercial enterprise" as any for-profit activity formed for the ongoing conduct of lawful business). The investor must show that the 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). An immigrant investor may invest the required funds directly in an NCE or through a regional center.[2] Regional centers apply for designation to participate in the EB-5 program with 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 created entities" (JCEs). 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).

The regulation at 8 C.F.R. § 204.6(j)(2) provides that the alien investor must establish that he or she has invested or is actively in the process of investing the required amount of capital and must submit evidence verifying that he or she has 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 he or she has placed his or her investment funds at risk for the purpose of generating a return, "[t]he 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."

II. ANALYSIS

The Petitioner asserts eligibility based on a purported $500,000 investment in the NCE, which is associated with the [redacted] LLC (the Regional Center). The record includes a business plan, which the Petitioner initially submitted in support of the petition, indicating that the NCE was seeking 11 alien investors to contribute $500,000 each or a total of $5.5 million to finance "a preferred equity investment" in [redacted] LLC, the JCE. The JCE would use these and other funds to "construct and develop a [redacted] and ground floor retail development" in New Jersey. On appeal, the Petitioner claims that the project had 13, not 11, alien investors, and that it attracted $6.5 million, not $5.5 million, in EB-5 funds.

FOD decision does not sufficiently explain the bases of the denial. Instead, FOD's decision seems to rely on allegations made in ongoing litigations to support the denial. For example, page 6 of FOD's decision states that "the Regional Center, its Principal, the NCE, and the JCE have all been named across multiple lawsuits (multiple SEC [Securities and Exchange Commission] and civil [actions]) alleging specific violation of securities laws, bankruptcy, class lawsuits, and FBI [Federal Bureau of Investigation] investigations, which both undermine the [P]etitioner's demonstration of lawful

[2] 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).

business and that the investor's capital remained with job creation activities." FOD's decision then cites a complaint filed with the U.S. Bankruptcy Court and indicates that the complaint "states how the EB-5 investors' money (associated with this NCE) was used in a way that violated several of the origination agreements and securities laws." Ultimately, FOD concluded that the complaint filed with the U.S. Bankruptcy Court "together with the Complaint from Securities and Exchange Commission . . . undermines the Petitioner's claim that [his] full investment was made available (and remained available) to the job creating activities." In general, however, we do not give substantial weight to allegations stated in arrest reports, criminal complaints, and charging documents that did not lead to a conviction. *See Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995).

In addition, FOD's decision discusses other lawsuits involving [redacted],[3] whom the decision identified on page 8 as "the Regional Center principal" and a manager and partner of companies and projects named as defendants in the various lawsuits.[4] The decision also references [redacted] statements and notes that her statements "suggest extensive unlawful activities occurred at the NCE and JCE" and "[a]ll the details of the alleged unlawful activities and full impact of the misuse and misappropriation is not clear from the evidence in the record, including [redacted] role."

The regulation at 8 C.F.R. § 103.2(b)(16)(ii) instructs that "[a] determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or 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), (16)(ii); *see also* 8 C.F.R. § 103.3(a)(1)(i). Here, the record lacks copies of any open-source materials, including lawsuit-related materials, that FOD may have reviewed. As a result, the Petitioner did not have a meaningful opportunity to address the purported derogatory information.

Moreover, FOD's decision includes the following discussion:

> [redacted] letter and the evidence show[] the escrow money held back was eventually deposited into the JCE four years after the initial investment, and after the Certificate of Occupancy on the project was obtained and the bankruptcy was under way. The evidence provided, including the letter from [redacted], and additional issues discussed here, show that the NCE and JCE were not operating in a lawful capacity and are now dissolved ([redacted] statements regarding the NCE and JCE state both entities were dissolved, and are not operating at all), demonstrating an inability to meet the commercial enterprise eligibility requirement by a preponderance of evidence . . . . Further, the misuse and misappropriation undermine the Petitioner's ability to demonstrate their capital was available for job creating activities.

While the record includes a "Disclosure Statement for the Joint Chapter 11 Plan of Liquidation," FOD's decision does not elaborate on how this bankruptcy plan or the documentation showing deposit

[3] In an April 11, 2025, statement, [redacted] acknowledges to be a Regional Center principal.
[4] These legal actions involve various entities and businesses that may or may not be associated with the NCE, the JCE, the Regional Center, and/or [redacted].

of the escrow money into the JCE supports the determinations that the Petitioner's investment was not made available to the JCE or that the NCE does not meet the regulatory definition of a commercial enterprise. The decision also does not sufficiently explain how the record shows that the Petitioner's specific investment was misused or misappropriated.

Regarding dissolution of the NCE and JCE, the Petitioner concedes on page 10 of his appellate brief that: "At about the same time that the [p]roject completed [in 2023] and received its Certificate of Occupancy, the NCE, [redacted] LLC, and the JCE, [redacted], LLC, were dissolved in connection with the Bankruptcy Plan." The appellate brief further provides that "[a]s a result, [redacted] LLC was created as a passthrough entity for the Trustees, [redacted] LLC, owned 1% by [redacted] and 99% by [redacted]." FOD's decision does not discuss how or if the creation of the passthrough entity affects the Petitioner's eligibility.

Furthermore, FOD's decision does not sufficiently discuss and analyze the Petitioner's evidence regarding the project's completion or evidence concerning the availability of the EB-5 funds for the project such that the Petitioner has a fair opportunity to contest the decision, and we have an opportunity to conduct a meaningful appellate review. An officer must fully explain the specific reasons for denying a visa petition. 8 C.F.R. § 103.3(a)(1)(i). Absent a specific explanation for denial and adequate notice of why the submitted evidence was insufficient to establish eligibility, a petitioner does not have a fair opportunity to contest a denial through the motion or appellate process. *See, e.g., Matter of M-P-*, 20 I&N Dec. 786, 787-88 (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). Here, FOD's decision cites various elements within the record without providing an argument tying those elements together to create a full picture of FOD's bases for denial.

Beyond the issues raised in FOD's decision, we note that the record does not appear to sufficiently document the lawful source of the Petitioner's purported EB-5 funds. The Petitioner claims that his EB-5 funds derived from his brother's business income. While there are bank records showing transfers of funds from a business account to the Petitioner's brother's account, and then to the NCE's escrow account, the record appears to lack sufficient documentation confirming that his brother lawfully obtained the funds from the business. Specifically, a corporation is a separate and distinct legal entity from its owners or shareholders, regardless of the number of shareholders or their relationship with one another. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, Att'y Gen. 1958); *Matter of Aphrodite Investments Ltd.*, 17 I&N Dec. 530, 531 (Comm'r 1980); *Matter of Tessel*, 17 I&N Dec. 631, 633 (Act. Assoc. Comm'r 1981). Funds of a business, without evidence such as profit or dividend distributions, do not constitute funds that its owner could claim as his or her own. In short, the record does not appear to support a finding that the Petitioner has documented the lawful source of his purported EB-5 funds. *See* 8 C.F.R. § 204.6(e), (j).

As FOD's decision presents an unclear and incomplete analysis, we are remanding the matter for further review and for FOD to provide an accurate and sufficient explanation of the grounds of denial. *See* 8 C.F.R. § 103.3(a)(1)(i). On remand, FOD should re-evaluate the evidence initially submitted, as well as the Petitioner's claims on appeal.

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