U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38772068

Date: OCT. 1, 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 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 that the record did not establish that the Petitioner's investment in [redacted] LLC, the new commercial enterprise (NCE), would likely 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. 8 C.F.R. § 204.6(e) (defining "commercial enterprise"). An alien may invest the required funds directly in an NCE, as the Petitioner has done in this case, or through a regional center. An NCE may be relied upon by multiple alien 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).

[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* 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed this petition on September 29, 2021, the relevant law in existence on that date governs this appellate adjudication.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a new commercial enterprise 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 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. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit U.S. Citizenship and Immigration Services (USCIS) to draw reasonable inferences about 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.*

The Petitioner asserted her eligibility based on an investment of $500,000 into the NCE on August 12, 2021. The NCE proposed to pool $1,000,000 from two immigrant investors to renovate and operate a preschool in [redacted], New York.

FOD concluded that the Petitioner did not establish that the business plan was compliant with *Matter of Ho*, or that the Petitioner's investment will create at least 10 full-time positions for qualifying employees. FOD acknowledged the Petitioner's submission of Forms 941, Employer's Quarterly Federal Tax Return, for 2024 showing 9 and 12 employees for the first and second quarters, respectively, and 10 employees in the last two quarters. However, FOD stated that "[t]hrough 2024, the record of the NCE does not show steady operations, with a period of several months in late 2024 when the preschool closed, according to [redacted] permit inspection records."

On appeal, the Petitioner contends that the project has made sufficient progress and that FOD erred in concluding that its business plan was "neither comprehensive nor credible" due to the NCE being temporarily closed in 2024. She explains that the NCE's closure was due to the resignation of its director and two regulatory violations, which were quickly corrected, and the NCE was reopened in January 2025. The Petitioner also points out that during the NCE's closure it continued to pay rent and maintained staff on its payroll. The Petitioner submits a business plan addendum, along with additional evidence showing its expenses in 2024 and the first quarter of 2025.

Upon review, we conclude that FOD did not substantially discuss and analyze the Petitioner's evidence regarding the project's progress, thereby precluding the affected party from a fair opportunity to contest the decision, and precluding us from having an opportunity to conduct a meaningful appellate review. 8 C.F.R. § 103.3(a)(1)(i). Namely, FOD did not offer a meaningful and detailed analysis of the business plan. In addition, the Petitioner has presented new documents for the first time on appeal, which FOD has not had an opportunity to review.

Based on the foregoing, we will withdraw FOD's decision and remand the matter for further review, including the additional evidence submitted on appeal, the issuance of a new request for evidence if necessary, and entry of a new decision.

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

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.