U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39312833

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 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. Aliens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, § 610, 106 Stat. 1828 (1992), as amended.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that the Petitioner has placed the required amount of capital at risk nor documented the lawful source of funds he claimed to have invested in [redacted] LP, the NCE. 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 because the Petitioner has not established that he placed the required amount of capital at risk. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments concerning the lawful source of funds issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the 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 had filed his petition in April 2019, the relevant law then in existence governs this appellate adjudication.

I. LAW

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. They may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. 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(e) defines "invest" to mean "to contribute capital."

An immigrant investor must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are [their] own"). The regulation at 8 C.F.R. § 204.6(e) states that contributing capital "in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the [immigrant investor] and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part...." In addition, the investor must show that their invested capital did not derive, directly or indirectly, from unlawful means. *Id.*

II. ANALYSIS

The record indicates that the Petitioner invested $500,000[2] as an equity stake in the NCE, which intends to pool from up to six investors to fund a mixed-use development commercial plaza. The issue to be addressed is whether the Petitioner established that he made a qualifying investment of capital that was placed at risk for purposes of generating a return on that investment. 8 C.F.R. § 204.6(j)(2).

FOD pointed to certain statements the Petitioner made and documents he submitted which indicate the existence of an impermissible debt arrangement that led FOD to conclude that the Petitioner had not placed his investment funds at risk to meet the regulatory requirements. We agree with that conclusion and will address the evidentiary deficiencies in the discussion below.

A. Redemption Agreement

In a supporting cover letter, the Petitioner stated that he "irrevocably invested" the required funds in the NCE in February 2019. The record shows that the Petitioner became a limited partner in the NCE pursuant to terms described in a Partnership Interest Subscription Agreement. The record also contains a Limited Partnership Agreement (LPA) and a Confidential Private Placement Memorandum, each containing provisions about a limited partner's rights to a return of their investment under certain circumstances.

Under the heading "Profits, Losses, Distributions, and Job Creation Allocations" of the LPA, section 11.7 states the following:

> I-829 Petition Exception. Notwithstanding anything in this Section 11 to the contrary, prior to the end of a Limited Partner's period of conditional residence as interpreted by

[2] The Petitioner indicated on page 5 of the petition that the "petition is based on an investment in a targeted employment area for which the required investment amount of capital has been adjusted downward." *See* 8 C.F.R. § 204.6(f)(2).

> USCIS, including through final adjudication of a Limited Partner's I-829 Petition for removal of conditions on permanent residence, if applicable, distributions made to such Limited Partner may only be made to the extent that such distributions do not result in such Limited Partner's unrecovered Capital Contribution being less than Five Hundred Thousand Dollars ($500,000).

Under the heading "Mandatory Redemption" in the LPA, section 13.10 also contains provisions for returning a limited partner's capital contribution. Namely, section 13.10 (6) states that in the case of a limited partner whose Form I-829 is denied "either without appeal or after denial of any appeal, the Company shall return the Capital Contribution, with interest, within three (3) months upon the receipt of the denial notice from USCIS and cancel such Limited Partner's Limited Partnership Interest."

Likewise, the private placement memorandum contains a substantially similar provision, which is reiterated on two separate pages of the document, stating that "the Company will be obligated to return the $500,000 Capital Contribution, with interest, within three (3) months" of an unfavorable determination on the limited partner's Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status.

After reviewing the evidence, FOD issued a notice of intent to deny (NOID), highlighting provisions in the LPA and private placement memorandum which led FOD to question whether the Petitioner placed the required amount of capital at risk and whether the highlighted provisions in these documents constitute a prohibited redemption agreement. FOD asked the Petitioner to provide additional evidence to show that he met the regulatory criteria at 8 C.F.R. § 204.6(j)(2).

In response, the Petitioner provided a statement claiming that the [redacted], LLC, the regional center associated with the NCE, exhibited "uncooperative behavior . . . and lack of clarity regarding the investment details." Although the Petitioner claimed that he "was assured" that his investment "would be returned within three months," he maintained that his investment "does not involve any redemption agreement that would undermine the capital-at-risk requirement." He further stated that his investment capital is "allocated solely for the project's development . . . without any promise of guaranteed returns."

The Petitioner emphasized his "limited understanding of legal and financial matters" as well as his "limited English proficiency" and stated that he nevertheless "remains fully committed to ensure his petition complies with the statutory and regulatory requirements." The Petitioner did not, however, address FOD's concerns regarding the above-highlighted provisions in the LPA and memorandum, both of which state that an unfavorable outcome in the filing of Form I-829 entitles the EB-5 investor to a refund of their investment, thereby indicating that the Petitioner's funds were not placed at risk.

On appeal, the Petitioner contends that his investment "does not involve any redemption agreement that would undermine the capital-at-risk requirement." He highlights the regional center's role in managing the investment funds and assuming "full responsibility for refunding" those funds, but he does not explain the relevance of this information or clarify how the terms in the LPA and memorandum, both of which provide for refunds of the investment capital pending an adverse outcome in the filing of a Form I-829, are consistent with the capital-at-risk requirement.

The Petitioner also references previously submitted documents, including a loan agreement and an immigration agreement, which were submitted as part of the Petitioner's NOID response. The Petitioner asserts that all previously submitted agreements "should not be understood separately from the purposes and terms of all these documents"; he further argues that the evidence establishes that his investment capital has been placed at risk and that there is no impermissible debt arrangement. We disagree.

An arrangement under which funds have been contributed in exchange for an equity interest subject to a redemption agreement that provides the investor an opportunity to demand a return of some portion of his or her investment funds, including after obtaining conditional permanent resident status, is an impermissible debt arrangement that is no different from the risk any business creditor incurs. Funds that are part of such an arrangement do not constitute a qualifying contribution of capital and, because the redemption provides for a guaranteed return to the immigrant investor, the funds are similarly not at risk. *See Matter of Izummi*, 22 I&N Dec. 169, 178-79 (Assoc. Comm. 1998); *see also 6 USCIS Policy Manual* G.2(A)(2), https://www.uscis.gov/policymanual.

In the matter at hand, the record contains documents, the LPA and private placement memorandum, whose terms indicate that an EB-5 investor's capital contribution is contingent upon a favorable determination of their Form I-829. As previously discussed, the LPA allows for "mandatory redemption" of the Petitioner's investment funds and the private placement memorandum ensures that "the Company will be obligated to return" the investment. Both documents list an unfavorable determination in an I-829 filing as the triggering event for the mandatory redemption and obligation to return the Petitioner's invested funds. Given this unambiguous intent to refund the Petitioner's investment in the event of the denial of his Form I-829, the Petitioner has not established that his capital was placed at risk.

B. Loan Agreement

The record also shows that two additional agreements – a loan agreement and an immigration agreement – both of which were provided in response to the NOID, further compromise the Petitioner's claim that his invested capital was placed at risk.

The immigration agreement lists the regional center and the Petitioner as parties A and B, respectively, and refers to a "Loan Investment" at section 2-2, which states the following, in pertinent part:

> Loan investment is actually an additional agreement on the basis of equity investment . . . . Based on EB-5 immigrant investor in English version . . . if the relationship between immigration applicants and the project company is just borrower and lender, not the project company shareholders, the investors are not eligible for the 10 jobs creation sharing. Therefore, the loan investment is the method which is not involved in the U.S. Immigration Law and actually caters to EB-5 investors to increase confidence during the financing process. Upon signing this contract, if Party B [the Petitioner] chose the method of loan investment, Party A will provide evidence that Party B is the shareholder of the project company in order to make Party B's immigration application succeeded [sic]. Loan Agreement is only a supplemental agreement.

The immigration agreement does not adequately define what a "loan investment" is, clarify the distinction, if any, between a loan investment and a loan agreement, or explain how a loan investment will "increase confidence during the financing process." In sum, the described ambiguities preclude a meaningful understanding of how a loan investment, as contemplated in the immigration agreement, ensures that an EB-5 investor's capital will be placed at risk. Also, the very use of the terms "loan" and "loan investment" within the context of this agreement gives cause to further question whether the Petitioner's invested capital was in fact placed at risk, or alternatively whether it was merely a loan.

As mentioned earlier, the Petitioner also provided a loan agreement, which FOD discussed in detail in the denial. The agreement lists the NCE as the "Loan Beneficiary" and the Petitioner as the "Loan Provider." Section 1-2 of the agreement states the following, in pertinent part:

> Since there is no certain law that an EB-5 immigration applicant can apply for investment immigration through providing loans, this Loan Agreement can only be in effect after the EB-5 investor's USD $500,000 investment fund has been transferred into the account supervised by the Regional Center or account manage [sic] by escrow company . . . .

Subsections 2-1 and 2-2 of the agreement list the loan term as five years and the loan annual interest rate as 1%. The following sections are also relevant to this discussion: Section 3 contemplates a full refund of an EB-5 investor's funds; Section 4 refers to a "Loan Guarantee Agreement"; Section 5 discusses a loan repayment schedule; and Section 6 contemplates advance loan repayment in the event of an unfavorable outcome of an EB-5 investor's Form I-829 filing. In the denial, FOD discussed these provisions, deeming them inconsistent with the Petitioner's claim that his invested capital was placed at risk. We agree with FOD's determination.

The record in its totality does not support the Petitioner's claim that his investment "does not involve any redemption agreement that would undermine the capital-at-risk requirement." As discussed earlier, both of the Petitioner's original submissions – the LPA and private placement memorandum – include provisions that protect the EB-5 investor from loss of their investment in the event of an unfavorable determination on their Form I-829 filing.

Likewise, the immigration and loan agreements that the Petitioner provided in response to the NOID also contain provisions that are at odds with the capital-at-risk requirement as they offer the EB-5 investor protection of their invested capital. Namely, by executing a loan agreement in which the NCE assumes the part of the "Loan Beneficiary" and the Petitioner assumes the part of the "Loan Provider" in a five-year loan term with a guaranteed a 1% annual rate of return, the Petitioner is, in effect, ensured that the funds he invested will eventually be recovered in the form of a loan repayment, which thereby indicates that the invested funds were not truly at a risk of loss.

On appeal, the Petitioner points to section 10-2 of the immigration agreement where the Petitioner delegates to the regional center "the rights to supervise the legal use and safety of the investment fund, provide the required documents for the EB5 visa processing[,]" and to sign various documents on his behalf, including the LPA and private placement memorandum. He argues that "none of the

mentioned [] documents can include any guarantee or promise of fixed investment income" and that "therefore, they align with the USCIS requirements on an EB-5 investor application." Importantly, however, the list of documents did not include the immigration and loan agreements, which, as discussed above, contain terms and conditions that contradict the Petitioner's claim that his invested capital was placed at risk. We further note that the Petitioner has not addressed FOD's concerns about certain clauses in the LPA and private placement memorandum which guarantee the Petitioner a return of his investment funds in the event of an unfavorable outcome in his Form I-829 filing.

In short, the evidence the Petitioner submitted indicates the existence of the very type of arrangement that is deemed impermissible. In the first instance, the LPA and private placement memorandum obligate the NCE to refund the Petitioner's investment capital upon the occurrence of a specified event, in this case, an unfavorable outcome in the filing of the EB-5 investor's Form I-829. *See* 6 USCIS Policy Manual, G.2(A)(2). The Petitioner then submitted a loan agreement that goes a step further by framing the investment as a loan in which the lender, in this case the EB-5 investor, is guaranteed a return of the loan amount within a five-year term along with an additional 1% interest. However, as determined in *Matter of Izummi*, "For the alien's money truly to be at risk, the alien cannot enter into a partnership knowing that he already has a willing buyer in a certain number of years, nor can he be assured that he will receive a certain price. Otherwise, the arrangement is nothing more than a loan, albeit an unsecured one." 22 I. & N. Dec. at 186.

Because the record indicates that the Petitioner's capital investment was in the form of a loan, he has not established that his capital was at risk. *See* 8 C.F.R. § 204.6(j)(2).

III. CONCLUSION

For the reasons discussed above, we conclude that the Petitioner has not established by a preponderance of the evidence that he made or was in the process of making a qualifying investment in the NCE by placing the required amount of capital at risk for the purpose of generating a return on that capital.[3] *See* 8 C.F.R. § 204.6(j)(2).

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.

[3] In light of this finding, we need not address FOD's alternative ground for denial which contemplates whether the Petitioner's investment was derived from a lawful source of funds. We will reserve this issue for future consideration should the need arise. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.