U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39254532

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 United States 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 NCE would create at least 10 direct full-time positions for qualifying employees. FOD determined that the repeated construction delays and a lack of sufficient funding affected the credibility of the NCE's business plan, thereby indicating that the business plan was not in compliance with *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). 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 they invest the requisite amount of qualifying capital in an NCE. An investor seeking EB-5 classification must show that their 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 regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

[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 INA 203(b)(5), and adding significant new integrity provisions. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As this petition was filed prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

(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

(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.[2]

The precedent decision *Matter of Ho* explains that "[a] comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives" and "should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions." 22 I&N Dec. at 213. The decision specifies that to be "comprehensive," a business plan "must be sufficiently detailed to permit [U.S. Citizenship and Immigration Services (USCIS)] to draw reasonable inferences about the job-creation potential." *Id.* at 213. It further states that "[m]ere conclusory assertions do not enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation" and it concludes that "[m]ost importantly, the business plan must be credible." *Id.*

II. ANALYSIS

The primary issue in this matter is whether the Petitioner provided sufficient evidence, most notably a credible business plan, to establish that the [redacted] LLC, the NCE in this matter, would create at least 10 direct full-time positions for qualifying employees thereby meeting the job creation requirement for standalone investors. *See* 8 C.F.R. § 204.6(j)(4)(i).

The Petitioner asserts that in 2016 he invested $500,000[3] in the NCE whose plan is to construct a mixed-use real estate development near [redacted] Florida. The NCE was initially associated with a regional center [redacted] LLC ("the regional center"), which was approved in September 2015.[4] However, the Petitioner is one of a small group of immigrant investors who invested in the NCE through pooled standalone petitions.

A. Job Creation

The Petitioner's initial submission included an economic impact analysis prepared in October 2014 and revisions dated June 2019 and June 2020. The 2014 analysis includes the estimate that the project will result in over 4,600 "Direct & Indirect Jobs Created." Later revisions included higher estimates, rising to more than 19,000 direct and indirect jobs, which would be created during seven planned phases of the construction project. These projected estimates were calculated using RIMS II economic impact multipliers and made distinction between direct job creation by the NCE and indirect job creation by other employers. This distinction, however, is critical since a standalone NCE only allows

[2] The two-year job creation period described in 8 C.F.R. § 204.6(j)(4)(i)(B) commences six months after the adjudication of the petition. 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2.

[3] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is thus downwardly adjusted from $1,000,000 to $500,000. 8 C.F.R. 204.6(f)(2).

[4] This regional center was terminated in [redacted] 2025.

USCIS to consider direct employment by the NCE and its wholly owned subsidiaries, if any.[5] *See* 8 C.F.R. § 204.6(e). Here, the Petitioner indicated on Form I-526 that his investment was not associated with a regional center, and the record does not include evidence to show otherwise. He therefore cannot rely upon the jobs calculated using the RIMS II methodology in the economic impact assessment and project plan to meet the job creation requirement.

The evidence in the record also does not substantiate the construction timelines listed in the impact analyses from 2014 and 2019, or in the "project plan" from October 2020. The original economic impact analysis from October 2014 projected that Phase I of the project would be completed within 30 months, by April 2017, and that Phase III of the project would be completed within 72 months, by October 2020. Five years later, the 2019 impact analysis pushed those timelines back to May 2021 and May 2022, respectively; and the October 2020 project pushed those timelines even further back to October 2022 and October 2023, respectively. The record also contains an impact analysis from June 2020, which shows four more phases added to the project, including construction of vacation condominiums, apartments, and office space. However, no timeline was provided for the additional phases either in the 2020 impact analysis or in the October 2020 project plan, the latter of which only included timelines for the original three phases.

FOD issued a notice of intent to deny (NOID) informing the Petitioner of various evidentiary deficiencies, including the lack of evidence substantiating the construction timeline. FOD explained that, because the petition does not involve a regional center, only direct employment by the NCE will count toward EB-5 job creation. FOD reminded the Petitioner that because he is a standalone investor, he is required to provide evidence showing that the NCE had already hired at least 10 qualifying employees or a comprehensive business plan showing the need for those employees within the required period. Further, citing the record and USCIS verification efforts, including a June 2023 site visit, FOD stated that "very little progress has been made on the Project over nine years since the original business plan was submitted to USCIS," and that the NCE did not appear to have obtained sufficient funding to complete the project. FOD provided notice of public information that bonds issued to finance the project were in default, and that foreclosure proceedings were ongoing against the project property. Therefore, given the construction delays, property and bond defaults, and other project financing issues detailed in the NOID, FOD determined that the NCE's business plan was neither credible nor compliant with *Matter of Ho* and that it therefore did not satisfy the job creation requirements. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Ho*, 22 I&N Dec. at 213.

The Petitioner's NOID response includes marketing materials created by the regional center stating that it "hopes to begin vertical construction" by the end of 2023. In fact, the NOID response pushed the completion date for Phase I to fall of 2026, more than 9 years after the initial projection. This lack of corroborating evidence undermines the Petitioner's claim that the project will likely create at least 10 permanent, direct, qualifying jobs for the Petitioner within the required two-year time frame. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *see also* 8 C.F.R. § 204.6(g) (providing that "each individual [investor's] investment [must] result[] in the creation of at least ten full-time positions for qualifying employees").

[5] The record contains several references to the [redacted] LLC. But at the time of filing in January 2022, the statutory authority for the regional center program had lapsed, and the Petitioner acknowledged that he was filing a standalone petition, involving "a direct investment without regional center affiliation." The Petitioner has also acknowledged that USCIS terminated the regional center designation of [redacted].

And despite the Petitioner's submission of the October 2020 project plan, the plan focuses primarily on project financing, location, and the "development team" which is comprised of a general contractor and a variety of subcontractors. The plan mentions only the general contractor as a payroll employee and does not otherwise discuss the number of permanent employees the NCE plans to directly hire or state the dates of any future hires. As such, the October 2020 plan does not meet the requirements of 8 C.F.R. § 204.6(j)(4)(i)(B).

Also, in response to the NOID, the Petitioner asserted that because the NCE had already spent over $43 million on construction, engineering, and architectural costs for the project, it could apply RIMS II multipliers to show that it had already created 730 jobs. This job total was based on the calculation that "for each million spent on architecture/engineering, we will create 15.95 jobs and for each million spent on construction costs, we will create 16.36 jobs." The Petitioner also referred to the original economic impact analysis, which states that "[a]s a Business Affiliate of an approved USCIS Regional Center the Project is allowed to support its EB-5 investors with direct, indirect, and induced job creation." However, as previously noted, the use of reasonable methodologies in calculating job creation is only permissible when immigrant investors are associated with a regional center, which is not the case here where the matter concerns a standalone NCE.

The Petitioner also referred to two agreements between [redacted] and [redacted] Inc. [redacted]. The agreements discuss the construction of buildings [redacted] and [redacted] of the project and state that the contractor [redacted], not the NCE or [redacted],[6] is to complete the construction of these buildings; the record does not include evidence that any of the construction work already completed on the project was done by employees of the NCE. To the contrary, § 8.7.1 of the agreements between [redacted] and [redacted] stipulates that [redacted] provide weekly reports of the number of people employed by it and its subcontractors on the project. The term "employee" is limited only to an individual who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise. This definition does not include independent contractors. 8 C.F.R. § 204.6(e).

While other documents in the record, including building permits and court filings, list [redacted] as the project property owner, there is no evidence of a relationship between [redacted] and the NCE. It is therefore not apparent that the NCE or a wholly-owned subsidiary is a party to these contracts. In addition, the Petitioner does not assert, nor does the record indicate, that [redacted] is a wholly-owned subsidiary of the NCE. As such, [redacted] employment of construction workers on the project could not be considered as qualifying employment by the NCE. *See id.*

The Petitioner also submitted a March 2025 letter from [redacted], chief executive officer of the NCE. Extrapolating from figures in the 2020 revision of the economic impact analysis, Mr. [redacted] stated that the NCE "will create at least 10,681.58 fulltime direct jobs since the construction jobs and retail leasing and real estate jobs will be employed directly by [the NCE]." The use of decimal figures appears to indicate a reliance on statistical estimates rather than known, specific positions that the NCE will create. As stated above, the assertion that the NCE will directly employ construction workers contradicts record materials identifying the contracted construction company. The Petitioner

[6] If the evidence showed that [redacted] is a wholly-owned subsidiary of the NCE, we would then consider [redacted] role in the completion of the construction of buildings [redacted] and [redacted] of the project. *See* 8 C.F.R. § 204.6(e).

must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the Petitioner repeats the prior claims regarding job creation, largely copying his NOID response and incorporating significant portions of Mr. [redacted] letter. The Petitioner continues to refer to the RIMS II direct and indirect job figures from the economic impact analysis, as well as the contracts with [redacted], despite FOD's explanations, first in the NOID and later in the denial, regarding the evidentiary deficiencies in the record, and why as a standalone petition the Petitioner cannot rely on indirect jobs. The Petitioner does not directly respond to FOD's concerns, nor does he point to specific evidence in the record that establishes the NCE's compliance with the provisions at 8 C.F.R. § 204.6(j)(4)(i), which require evidence of direct, permanent employment of at least 10 qualifying employees by the NCE.

The Petitioner also asserts that FOD's decision "misconstrues the totality of the evidence submitted," and argues that an "improperly conducted site visit" did not convey the amount of progress that the project has made. He continues to claim that he submitted a comprehensive business plan showing that the NCE "will directly employ all construction jobs" even though FOD outlined evidentiary deficiencies that undermine the Petitioner's claims. Job creation numbers that involved an undifferentiated combination of direct and indirect jobs, while acceptable in a regional center petition, are not acceptable here, in the case of a standalone petition. The Petitioner has not shown how the NCE will directly employ the required number of permanent employees. Expenditures by the NCE which cause other employers to hire workers do not count toward the direct employment requirement.

The Petitioner continues to reference Mr. [redacted] March 2025 letter, in which Mr. [redacted] asserted: "We are on schedule. We have the financing available." In that letter, Mr. [redacted] also stated: "We are expecting approval and permitting for vertical construction of Phase I in 60 days or less," and that "[t]he project expects Ocoee to issue its building permits . . . in early 2025." However, the record does not show the subsequent approval of those applications, and the asserted expectation of future approval has no evidentiary weight. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (establishing that a Petitioner's assertions must be supported with relevant, probative, and credible evidence).

In addition, Mr. [redacted] broadly stated that "direct job creation . . . will result from the Project's capital expenditures on design, development and construction as well as its . . . revenues from apartment rentals and commercial space leasing." But he did not specify the jobs that the NCE would create for individuals that the NCE itself would directly employ, relying instead on statistical probabilities showing that the NCE's expenditures will generally increase local employment.

It is also worth noting that Mr [redacted] 2025 letter states that "there has been continued substantial progress" and that the project is "on the cusp of going vertical." However, similar references were made four years earlier in the October 2020 project plan, which also indicated that portions of the project site "are ready for vertical construction." While we acknowledge the evidence of infrastructure and foundation construction for the project completed in 2022, the record shows no further construction in the ensuing period, and no apparent progress in the approval of permits since that time.

In addition, as stated in the denial, the NCE is facing significant funding issues and the project property, which is owned by [redacted], was in foreclosure proceedings as of the date of FOD's decision.[7]

On appeal, the Petitioner relies on Mr. [redacted] 2025 letter, which states the following on the issue of project funding:

> As it currently stands, we believe we will be able to get the construction loan as soon as the [redacted] issues the building permits. Please note that the current loan is for $297 million is enough to pay off [redacted] and [redacted] and finance current construction.

As stated earlier, there is no evidence that the building permits on which the referenced loan apparently relies have been issued, thereby enabling construction of this project to move forward.

Some delays in project progress might not affect the credibility of a business plan. In this case, however, the commencement of vertical construction has been continually pushed, and evidence of significant funding issues and foreclosure proceedings on the project property indicates that the developers likely will not have the needed funds to proceed with the project. These facts do not support a finding that the Petitioner has submitted a credible business plan that includes a credible projected completion date. Although the Petitioner continues to assert that the project has the necessary funding and that construction will proceed, these claims are not supported by documentary evidence in the record. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In short, the Petitioner has not credibly demonstrated if or when the project will likely be completed or that it will likely create at least 10 jobs for investors within two years. Therefore, the Petitioner has not established that the NCE has met the job creation requirements. *See* 8 C.F.R. § 204.6(g), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

B. Deference

In the denial decision, FOD acknowledged prior approvals of petitions associated with the same NCE. But FOD "determined that deference to the prior determinations is not appropriate due to material change." USCIS does not defer to a previously favorable decision in later proceedings when the underlying facts have materially changed. A change is material if it would have a natural tendency to influence, or is predictably capable of affecting, the decision. *See generally* 6 *USCIS Policy Manual* G.3(A)(2), https://www.uscis.gov/policy-manual.

On appeal, the Petitioner maintains that the petition "is entitled to deference based on numerous approvals for prior I-526 [petitions] by investors in [redacted]," and disputes FOD's conclusion that there has been a material change that would overcome deference to prior approvals.

[7] The record includes several documents pertaining to a lawsuit in which Mr. [redacted] and [redacted] were included among the defendants. The documents included a court order, entered on [redacted] 2024, which approved a settlement between the plaintiff and the defendants. The court order gave the defendants a deadline of [redacted], 2025, to satisfy their debt with the plaintiff, notifying the parties of "the potential entry of an agreed final judgement of foreclosure for all relief sought" by the plaintiff if the debt was left unsatisfied.

USCIS records show that the approved petitions were filed between 2014 and 2019 and were affiliated with the now-terminated [redacted] LLC. FOD observed that the present petition was filed as a standalone. Importantly, there are critical differences between the requirements for standalone petitions and regional center petitions. As highlighted in our discussion above, unlike standalone petitions such as the one before us on appeal, petitions involving a regional center can take indirect job creation into account. Given the divergent eligibility requirements, FOD properly declined to defer to those earlier approvals.

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.