U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-B-

DATE: OCT. 2, 2018

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: 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). This fifth preference (EB-5) classification makes immigrant visas available to foreign nationals 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.

The Acting Chief of the Immigrant Investor Program Office denied the petition, concluding the record did not establish, as required, that [redacted][1] the NCE, would create the necessary number of jobs.[2] On appeal, the Petitioner submits additional evidence and asserts that the record establishes eligibility for the benefit sought.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a NCE. The foreign national must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. An immigrant investor may invest the required funds directly in an NCE or through a regional center,[3] as the Petitioner has done in this case. Regional centers apply for designation as such with the United States 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 entity" (JCE). 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).

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[1] Some documents in the record refer to the NCE as [redacted]

[2] The Petitioner does not allege, and the record does not demonstrate, that the NCE has already created the requisite number of jobs. *See* 8 C.F.R. § 204.6(j)(4)(i)(A).

[3] 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).

The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

> (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.[4]

Prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho* held that, to be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential." 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.* A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products or services, and its objectives. *Id.* Elaborating on the contents of an acceptable business plan, *Ho*, 22 I&N Dec. at 213, states that the plan should contain a market analysis, information on the pertinent processes and suppliers, marketing strategy, organizational structure, personnel's experience, staffing requirements, timetable for hiring, job descriptions, and projections of sales, costs, and income. The decision concludes: "Most importantly, the business plan must be credible." *Id.*

II. ANALYSIS

The Petitioner claims to have invested $500,000[5] in the NCE, which is associated with a USCIS-designated regional center, [redacted] The record includes two business plans, dated 2014 and 2017.[6] These documents state that the NCE will pool up to $33,000,000 EB-5 capital from 66 foreign national investors to lend to [redacted] the JCE, to develop the [redacted] a cellulose-to-sugar conversion factory that will process raw natural waste, also known as biomass, into industrial sugar syrup and its byproducts.[7] Page 17 of the 2014 business plan indicates that other companies can purchase the JCE's product to make "Ethanol, Bio

[4] 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. USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 19 (May 30, 2013), https://www.uscis.gov/legal-resources/policy-memoranda; *see also* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

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

[6] Both the 2014 and 2017 business plans are entitled "Confidential Business Review."

[7] Certain sections of the business plans refer to "industrial sugar syrup" as "cellulosic sugar" and "glucose syrup."

Diesel, [and] Bio Plastics," to use in "other industrial applications," or to refine "into edible table sugar and a variety of other consumer and feed products." The 2014 business plan and economic impact analysis provide that the JCE will create jobs during the planning, construction, and operation phases of the project.

The Chief issued a notice of intent to deny (NOID) the petition, notifying the Petitioner that the record did not demonstrate that the NCE or the JCE would, more likely than not, create the requisite number of jobs for qualifying employees within two years, because the 2014 business plan was not comprehensive or credible. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). Specifically, the Chief determined that the business plan lacked sufficient details and included inconsistencies, such that he could not draw reasonable inferences about the JCE's job-creation potential. *See Ho*, 22 I&N Dec. at 213. In his NOID response, the Petitioner submitted additional evidence, including the 2017 business plan, which updated the previous plan, and maintained that he had presented sufficient documents on employment creation.

On appeal, the Petitioner contends that the Chief's denial misstated the facts and misunderstood the evidence presented in the petition and his NOID response. He also submits additional materials pertaining to equipment developed as part of the cellulose-to-sugar conversion and ethanol production process.

A. Job Creation

Considering the record in its totality, we find the Petitioner has not provided a business plan that is comprehensive or credible, because the 2017 plan still contains insufficient details and inconsistencies. *See Ho*, 22 I&N Dec. at 213. Therefore, the Petitioner has not demonstrated that the JCE or the NCE will create the requisite number of jobs for qualifying employees within two years, as projected in the business plan.

First, the 2017 business plan lacks sufficient details on how the JCE will acquire an adequate supply of biomass for its cellulose-to-sugar conversion factory. Without additional corroboration, the Petitioner has not established that the job creation estimates in the 2017 business plan, which rely, in part, on the JCE processing a large quantity of biomass, "are any more reliable than hopeful speculation." *See Ho*, 22 I&N Dec. at 213. The business plan suggests that the plant will be able to process approximately 453,976 tons of biomass by the second year of operation.[8] The Chief noted in the denial that the record did not contain any documents to establish that the JCE had secured biomass beyond the 40,000-ton annual supply referenced in an option agreement. On appeal, the Petitioner contends that this amount is sufficient for the initial start-up of the project and it is

[8] Page 29 of the 2017 business plan states that by the second year, the plant will "be capable of processing 55,000 kilograms of raw biomass feed per hour. The plant will operate 24 hours per day for 312 days per year, for a total of 7,488 operating hours per year." These figures indicate that the JCE will be able to process approximately 453,976 tons of biomass per year (55,000 kilograms multiplied by 7,488 hours equals 411,840,000 kilograms per year; 411,840,000 kilograms are approximately 453,976 tons).

unreasonable to require the JCE to secure the entirety of the project's required biomass. He further asserts that the federal government studies included in the record show the ready availability of additional biomass in Florida, the intended location of the project, and provides a list of potential suppliers.

While the Petitioner has identified the JCE's potential biomass suppliers, the 2017 business plan, as well as other evidence in the record, is insufficient to establish how the JCE will acquire biomass for its project. The referenced biomass annual supply of 40,000 tons is not a contractual commitment but instead an "Option Agreement" between an entity that manages the JCE[9] and in Florida. In addition, the document specifies that "[t]he County does not guarantee the quality or quantity" of the biomass to be provided; neither the 2017 business plan nor any other evidence in the record, however, explains how biomass quality may affect the cellulose-to-sugar conversion process. Furthermore, the agreement states that the option is contingent on the acquisition of a property in Florida, for the cellulose-to-sugar plant. The record, however, does not demonstrate that the JCE or any of its affiliated entities has obtained the specified property.[10] Rather, page 18 of the 2017 business plan lists a Florida, location for the plant. In light of the high volume of biomass the JCE plans to process and the lack of sufficient documentation confirming that the JCE has secured any biomass for the project, the Petitioner has not shown that the 2017 business plan, specifically, as relating to its job creation estimates, is either comprehensive or credible.

Second, the Petitioner has not demonstrated that the 2017 business plan credibly shows the JCE will create the necessary number of jobs, because the record includes inconsistent evidence on the location of the factory, and lacks sufficient documentation on the construction and operation stages of the project. Page 22 of the 2017 business plan specifies that the factory will be in Florida. Page 18 states that the JCE, through one of its affiliated entities, "has secured an agreement with for the first plant to be located in Florida," and that "[o]nce the facility is under [the JCE's] control [it] will begin processing material on the site." The Petitioner, however, has not provided documentation to support these assertions. In addition, this site location is inconsistent with other documents in the record, which provide that the plant will be in Florida. The Petitioner must resolve these 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). He has not done so here.

Moreover, the record lacks sufficient information relating to the construction and operation phases of the project. While the 2017 business plan projects the creation of 90.2 jobs from the project's "hard

[9] The Petitioner's initial filing indicated that was the JCE's managing member. His NOID response stated that became

construction costs," the record lacks evidence, such as contractual arrangements, relating to any potential construction companies that will construct and develop the plant.

In addition, while the 2017 business plan provides that the operation of the cellulose-to-sugar plant will create 685 jobs, the record does not substantiate this projection because it lacks evidence relating to the necessary permits the JCE will need to operate the plant. On appeal, the Petitioner asserts that the Chief erred in requiring evidence of permits because he is uncertain that they are required for the project. He further maintains that if the JCE needs permits, it will obtain them. According to an email from which the Petitioner submitted in his NOID response, the JCE will need "air permit," "water permit," and "solid waste permit" from "the County Agency" and "the State Agency." The email states that the permit application process is "labor intensive" and cannot begin until the JCE has a factory location. The Petitioner has not explained how long the application process will be or if the JCE will likely obtain the necessary permits. In light of the inconsistent evidence on the plant location as well as the insufficient documentation on the factory's construction and operation phases, the Petitioner has not demonstrated that the job creation projections in the 2017 business plan are credible.

Third, as noted by the Chief, the record lacks sufficient documentation establishing that the JCE has or will have sufficient funds to complete the project. Page 25 of the 2017 business plan indicates that in addition to the $33,000,000 loan from the NCE, the JCE will need approximately $8,800,000 for the project. In his NOID response, the Petitioner provided a document entitled, "Development Expenses to Date," and an explanation that the JCE was unable to provide additional documentation on funding. On appeal, the Petitioner contends that the Chief allowed a short response time to provide the requested documentation and subsequently used the "inability to procure full receipts of a multi-million dollar project" as a basis for denial.[11] As of the date of this decision, almost a year after the Chief issued the NOID and six months after he denied the petition, the Petitioner has not submitted additional evidence that adequately shows the JCE has obtained or will likely secure sufficient funds to complete the project. As such, he has not demonstrated that the employment projections in the 2017 business plan, which are predicated on the completion of the project, are credible.

Fourth, although not discussed in the Chief's decision, the 2017 business plan's market analysis does not comply with the requirements under *Ho*, 22 I&N Dec. at 213. Specifically, the business plan notes that while the JCE has distinct advantages with its exclusive license to a patented process and does not have direct competitors, it "will be competing with established sugar and ethanol producers." Despite the acknowledgment of competing producers, the market analysis does not list the competing businesses, their relative strengths and weaknesses, or a comparison of the competition's products and pricing structures. *See id.* *Ho* explains that these types of information should be included in a comprehensive business plan. Based on the reasons we have discussed, the Petitioner has not submitted a comprehensive and credible business plan confirming that the NCE or JCE will satisfy the job creation requirement.

[11] The Chief allowed the Petitioner 33 days to respond to the NOID, pursuant to C.F.R. §§ 103.2(b)(8)(iv), 103.8(b).

B. Investment of Capital

While the Chief did not discuss this issue, the record is insufficient to show that the Petitioner has invested his own capital in the NCE and to demonstrate the lawful source of the invested funds. To establish eligibility for the classification, a petitioner must demonstrate, among other requirements, that he or she has placed his or her own capital at risk in the NCE. *See Ho*, 22 I&N Dec. at 213; *Matter of Soffici*, 22 I&N Dec. 158, 164-65 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 his [or her] own"). In addition, the investor must document the complete path of his or her capital, and cannot establish the lawful source of funds merely by submitting bank letters or statements reflecting the deposit of funds. *Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). Without documentation of the complete path of capital, an investor cannot show that the funds are his or her own. *Izummi*, 22 I&N Dec. at 195.

The Petitioner indicates that his $500,000 EB-5 investment derived from dividends he received from two companies in February 2014 and February 2015. The bank documents show that a portion of the dividends went to an account belonging to a trust, which he referenced as "the Investor's family's Trust" in his initial filing. The record lacks information about the trust, and the ownership and control of the funds therein. As such, the Petitioner has not established the lawful source of the funds that were in the trust account, which he claims to have invested in the NCE, nor has he shown that the funds were his own.

In addition, the Petitioner remitted $500,000 to the regional center as his investment in the NCE in December 2015, months after his February 2015 dividends and over a year after his February 2014 dividends. The record lacks sufficient evidence, such as bank documents, confirming that he retained at least $500,000 from the dividends to invest in the NCE in December 2015. Without additional corroboration, the Petitioner has not documented the complete path of the capital he claims to have invested in the NCE or demonstrated that he invested $500,000 of his own funds in the NCE.

III. CONCLUSION

The Petitioner has not submitted a comprehensive and credible business plan showing that, due to the nature and projected size of the NCE or JCE, it will need at least 10 qualifying employees for each EB-5 investor within the next two years. In addition, he has not documented the lawful source of the funds he purportedly invested in the NCE. Accordingly, he has not demonstrated eligibility for the immigrant investor classification.

ORDER: The appeal is dismissed.

Cite as *Matter of L-B-*, ID# 1713403 (AAO Oct. 2, 2018)