U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-M-M-D-

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 Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not demonstrate, as required, that the NCE, or at the job creating entity (JCE), would create the necessary number of jobs. On appeal, the Petitioner submits additional evidence and asserts that the record establishes his eligibility for the classification.

Upon *de novo* review, we will sustain 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,[1] 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 a separate entity known as the 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).

[1] 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
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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 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]

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). The decision concludes: "Most importantly, the business plan must be credible." *Id.*

In addition, the regulation explains that the job creation projections should be based on reasonable methodologies and economically or statistically valid forecasting tools, which include, but are not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables. 8 C.F.R. § 204.6(j)(4)(iii), (m)(3).

II. ANALYSIS

The Petitioner has invested $550,000[3] in the NCE, which is associated with a USCIS-designated regional center, [redacted] The record includes a business plan and three economic analyses. These documents state that the NCE will pool up to $15,000,000 EB-5 capital from 30 foreign national investors to lend to the JCE to develop and operate the [redacted] a 72,000 square foot office building in [redacted] Florida. The JCE will create jobs during the planning, construction, and operation phases of the project.[4]

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[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. 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.

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

[4] On appeal, the Petitioner indicates: "the [p]roject is nearly complete, with additional construction work and tenant improvements ongoing."

The Chief denied the petition, concluding that the record was insufficient to show that the NCE or the JCE would create the necessary number of jobs. He stated that "the economic model lack[ed] geographic consistency between the inputs into the economic model" because the inputs "assume[d] a geographic area of the while the economic multipliers relied on the "measures of economic activity within the [larger] He also determined that the Petitioner did not illustrate that the project would create new jobs rather than relocate existing jobs.

On appeal, the Petitioner presents the project's third economic analysis as well as documentation relating to the commercial rental demand in Based on the record as a whole, we find that he has sufficiently addressed the Chief's concerns. First, he updated the job creation projections in the most recent economic analysis.[5] Specifically, page 2 of the document notes that it uses economic multipliers for the location of the project, to determine the total number of newly created jobs during the operation phase of the project. While this change lowers the anticipated number of new jobs from 627.3 to 570.2, the updated figure nonetheless satisfies the requisite 300 jobs that the NCE or the JCE must create. *See* 8 C.F.R. § 204.6(g), (j)(4)(i)(B) (As the NCE aims to have 30 foreign national investors who are seeking the EB-5 classification, it must create at least 300 jobs, 10 for each investor.)

Second, the Petitioner offers sufficient evidence confirming that there is a demand for the project's office space. For example, according to the from a commercial real estate services firm, the economy has "experienced rapid diversification as international trade, finance, real estate, light manufacturing, healthcare and telecommunications have grown to rival the traditional preeminence of tourism." In addition, the county is now home to "150 corporate headquarters" that "form a diversified cluster of industries, including telecommunications, financial services, higher education, [and] healthcare services . . . ." As a result, the report states that "[t]he office market of is experiencing historically low vacancy and high demand which continues to push rental rates higher." This evidence and other documents relating to commercial vacancy and absorption rate sufficiently confirm a demand for the office space, and show that the job creation projections in the updated economic analysis and business plan are credible. As such, the Petitioner has met his job creation requirements.

III. CONCLUSION

The Petitioner has submitted a comprehensive and credible business plan and updated economic analysis showing that, due to the nature and projected size of the NCE or the JCE, it will need at

[5] On May 15, 2018, USCIS rescinded its prior guidance on tenant occupancy methodology. However, as the Petitioner filed the petition prior to the rescission, he may rely on the methodology to satisfy job creation requirements. USCIS Policy Alert PA-2018-03, *Rescission of Guidance Regarding Tenant-Occupancy Methodology* 1 (May 15, 2018), https://www.uscis.gov/policymanual/Updates/20180515-EB5TenantOccupancyMethodology.pdf; *see also* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(6).

least 10 qualifying employees for each EB-5 investor within the next two years. Accordingly, he has demonstrated eligibility for the immigrant investor classification.

ORDER: The appeal is sustained.

Cite as *Matter of J-M-M-D-*, ID# 1517832 (AAO Oct. 2, 2018)