U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38968123

Date: OCT. 2, 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) (2021). 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 (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees.

FOD denied the petition, concluding the record did not establish that the Petitioner has placed the required amount of capital at risk for the purpose of generating a return, and that her investment will 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.

To be eligible for EB-5 classification, a petitioner must show that he or she "invested or is actively in the process of investing the required amount of capital" and "the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk." 8 C.F.R. § 204.6(j)(2). A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien investor and the new commercial enterprise does not constitute a contribution of capital. *See* 8 C.F.R. § 204.6(e) (defining the term "invest").

A petitioner must show that their investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). As defined at 8 C.F.R. § 204.6(e), an employee is 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.

A petitioner is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the NCE. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 qualifying employees within the next two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Mere conclusionary assertions, however, do not enable USCIS to determine whether the job-creation projections are any more reliable than hopeful speculation. *Id.* Most importantly, the business plan must be credible. *Id.*

The Form I-526, Immigrant Petition by Alien Entrepreneur, indicates that the Petitioner invested $500,000[1] in the NCE, [redacted] LLC, through [redacted] LLC, a designated regional center, to fund the job-creating enterprise (JCE), [redacted] LLC. The record indicates the JCE intends to use those funds "to develop a mixed-use project, named [redacted], that includes a 6-story building, approximately 400 residential units, approximately 87,000 feet of retail space and associated parking spaces . . . occupy[ing] a 4.28-acre (approximately 1.73 hectare) lot directly to the west of the existing [redacted]" in [redacted], California.

Although FOD stated the decision was "based on a review of the entire record of proceeding," the decision reflects that the unfavorable determination was based, in substantial part, on open-source information referenced in the decision. For example, FOD's decision indicates, "USCIS conducted extensive open-source search and did not find any meaningful progress on the project when compared to the development timeline asserted by Petitioner in the record." However, FOD's statement does not clarify the extent of the "open-source search" it conducted and the derogatory information it found, if any. On appeal, the Petitioner asserts that FOD conflated street addresses and locations, and that FOD "repeats . . . erroneous factual statement[s] multiple times throughout the I-526 [d]enial" based on the referenced "open-source" information.

If a decision will be unfavorable to a petitioner and is based on derogatory information considered by USCIS and of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the petitioner. 8 C.F.R. § 103.2(b)(16)(ii). Here, we cannot determine whether the Petitioner may have been aware of derogatory information related to the progress on the project and, if not, whether FOD appropriately advised the Petitioner of that information and offered an opportunity to rebut it. Further, the record lacks copies of any open-source materials FOD reviewed and was therefore not based on information in the record of proceeding which had been disclosed to the Petitioner. To ensure fair and complete consideration of the proceedings before us, it is necessary that the record of proceedings contains copies of all evidence considered. FOD bears the responsibility of ensuring that the record is complete and contains all evidence

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law. It made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed her petition in 2018 and she asserted that the JCE would be principally doing business within a TEA. Therefore, the requisite amount of capital investment was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

submitted by the Petitioner and any other evidence considered by FOD in reaching its decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976).

As the Petitioner asserts on appeal, FOD's decision contains numerous factually incorrect statements, which, cumulatively, demonstrate FOD's inadequate analysis. *See* 8 C.F.R. § 103.3(a)(1)(i). For example, FOD's decision misstates, "According to the Form I-526 and supporting evidence, the NCE will lend the entire amount [of $50 million pooled from 100 immigrant investors] to [redacted] LLC, the job-creating entity (JCE)." Contrary to FOD's misstatement, the Form I-526 identifies [redacted] LLC, not [redacted] LLC, as the JCE.

As another example, FOD's decision misstates, multiple times, "In fact, Google [M]aps search for the [p]roject address show[s] results for [redacted] building." However, FOD did not include a copy of the purported Google Maps search showing such a result. On the contrary, the record consistently describes the project address as the "4.28-acre lot located directly to the west of the existing [redacted] . . . at the southwest corner of [the intersection of] [redacted] and [redacted]," not within the existing [redacted] wherein the [redacted] location is, to the east of that intersection.

On appeal, the Petitioner notes FOD's numerous factually incorrect statements, and she submits an affidavit from a partner at [redacted] LLP. The affidavit acknowledges that [redacted] prior owner, [redacted] LLC, and its subsidiary, [redacted], LLC, filed for bankruptcy in 2021, and that [redacted] LLC, sold [redacted] to another entity. The affidavit also acknowledges, "The similarity in numbers [redacted] and [redacted] and the term [redacted] associated with both projects can lead to confusion."[2] However, the affidavit reiterates that the JCE, [redacted] LLC, "is building an entirely separate project" and that the JCE "still retains ownership of the property under development," notwithstanding the activities of the project's similarly named neighbors.

Based on the foregoing, we will remand the matter for the entry of a new decision. If the new decision will be based in part on materials not submitted by the Petitioner, FOD must issue a request for evidence or notice of intent to deny granting the Petitioner a reasonable opportunity to respond before issuing the new decision. *See* 8 C.F.R. § 103.2(b)(16)(i) and (2). Further, if FOD's determinations on remand are dispositive, FOD should clearly explain the specific reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i). As such, we express no opinion regarding the ultimate resolution of this case on remand.

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

[2] We acknowledge that the record indicates both the JCE and NCE are principally doing business at [redacted] California, despite the project being located nearby in a lot west of that physical address, which also may lead to confusion.