U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39797920

Date: OCT. 29, 2025

Appeal of Field Operations Directorate 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 (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.

Field Operations Directorate (FOD) denied the petition, concluding the record did not establish: 1) that the Petitioner qualified as a new commercial enterprise; 2) that the Petitioner's invested funds have been placed at risk to the business most closely responsible for job creation; and 3) that the Petitioner's investment will create at least 10 full-time jobs 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.

I. LAW

An alien may be classified as an EB-5 immigrant investor if they invest the requisite amount of qualifying capital in an NCE. An alien 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

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

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(j)(2) provides that the alien investor must establish that they have invested or are actively in the process of investing the required amount of capital and must submit evidence verifying that they have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. The precedent decision, *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998), explains that for an investor to establish that they have placed their investment funds at risk for the purpose of generating a return, the full amount of EB-5 money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.

An investor seeking EB-5 classification must demonstrate 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). An NCE may have multiple investors each seeking EB-5 classification, provided that each investor has invested or is actively in the process of investing the required amount and that each individual investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

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.[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). "Mere conclusory assertions[, however,] do not enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation." *Id.* The decision concludes: "Most importantly, the business plan must be credible." *Id.*

[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.

II. ANALYSIS

The Petitioner claimed he invested $500,000 on November 18, 2019, into [redacted] LLC (NCE). The initial business plan dated October 2019 explains that the NCE intends to build a "55-unit luxury apartment complex with unobstructed views of the [redacted] skyline."

On appeal, the Petitioner contends that FOD's decision was arbitrary and capricious as it relied on unsubstantiated evidence unrelated to the project and FOD based its decision on "arbitrary assumptions and bias." Upon de novo review, we conclude that FOD did not sufficiently consider or adequately analyze the evidence submitted by the Petitioner and unduly relied on evidence outside the record of proceedings. Accordingly, we will remand the matter for entry of a new decision consistent with our discussion below.

A. New Commercial Enterprise & Capital At Risk

FOD concluded the Petitioner has not established that the NCE satisfies the definition of a "commercial enterprise" and that he had placed at least $500,000 at risk for the purpose of generating a return on the capital. However, instead of addressing the various deficiencies under the applicable regulation at 8 C.F.R. § 204.6(j)(2), FOD denied the petition relying solely on public lawsuits and legal actions against various actors associated with or surrounding the NCE without addressing their relationships to the NCE and relevance to the issue of capital at risk.[3] In the denial, FOD listed a series of pending lawsuits without incorporating them into the record and speculated on "unlawful activities" at the NCE.

Pursuant to 8 C.F.R. § 103.2(b)(16)(ii), "a determination of statutory ineligibility shall be based only on information contained in the record of proceeding" which is 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 submitted by the Petitioner and any other evidence considered by FOD in reaching the decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976). Here, FOD's notice of intent to deny (NOID) did not sufficiently identify specific derogatory information and the record lacks copies of any open-source materials FOD may have reviewed. As a result, the Petitioner did not have a meaningful opportunity to address the derogatory information.

Additionally, FOD discussed bankruptcy lawsuits, as well as complaints filed by the Securities and Exchange Commission and Federal Bureau of Investigations against the attorney of the record and sponsors, alleging fraud and other illegal activities such as misappropriation of investment from the NCE. But there is no indication that these cases have been resolved by the courts and the litigations are ongoing. On appeal, the Petitioner submits the defendants' motions to dismiss these complaints and asserts that complaints are not the final court findings of illegal or criminal activities. We acknowledge we do not give substantial weight to arrest reports, criminal complaints, and charging

[3] These legal actions namely involve the attorney of the record, sponsors of the NCE, and various businesses that may or may not be associated with the NCE.

documents that did not lead to a conviction. *See Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995).

Upon de novo review, we share similar concerns with FOD over the activities of the NCE and its management and the use of EB-5 capital. However, because FOD did not clearly articulate the relevant facts and link them to eligibility, they did not allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Therefore, we remand this issue so that FOD can review the evidence based on 8 C.F.R. § 204.6(j)(2) and *Matter of Izummi*, 22 I&N Dec. at 179, to determine whether the Petitioner had made his funds available to the business most closely responsible for job creation in this pooled investment case. If FOD questions whether the Petitioner irrevocably committed funds to the NCE, issuance of a request for evidence may be appropriate to provide the Petitioner with a reasonable opportunity to respond. FOD should also identify and incorporate any publicly sourced documents into the record before issuing a new decision.

B. Job Creation

As another alternative ground for denial, FOD concluded that the Petitioner had not satisfied the job creation requirements required under 8 C.F.R. §§ 204.6(g)(1) and (j)(4). Specifically, FOD stated that it does not appear that the project has not been completed and it currently does not appear to be in construction. FOD referenced a Google Maps street view of the proposed project location but did not include a printout in the record of proceedings.

On appeal, the Petitioner asserts that the project has made progress but met delays due to COVID-19 and bankruptcy, and submits various photos of the construction, along with a job creation letter showing that 7 direct jobs and 28 indirect jobs were created. The Petitioner notes that since there are only two investors, they are only required to create 20 jobs.

We conclude that FOD did not adequately discuss the evidence in the record such that the affected party has a fair opportunity to contest the decision, and we have an opportunity to conduct a meaningful review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. at 787-88. Instead, FOD focused on the project's delay relying on open-source information not in the record. We will therefore withdraw FOD's decision on this issue and remand the matter for further review, including review of the additional evidence submitted on appeal, the issuance of a new request for evidence if necessary, and entry of a new decision. To ensure fair and complete consideration of the proceedings before us, it is necessary that the record contain copies of all evidence considered. FOD bears the responsibility of ensuring that the record is complete and contains all 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. at 59.

III. CONCLUSION

For the reasons discussed, FOD's decision is withdrawn. On remand, FOD may issue a new request for evidence or notice of intent to deny allowing the Petitioner an opportunity to provide additional evidence relevant to the issues discussed above, and any other evidence deemed necessary to demonstrate eligibility for the classification sought, before issuing a new decision.

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