U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39191459

Date: SEP. 03, 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. In addition, FOD determined that the NCE's business plan was not in compliance with *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998), as repeated construction delays and a lack of sufficient funding affected the credibility of the business plan. 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 the Petitioner filed their petition 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]

Prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998), 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 that "[i]t should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions." It 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." *Matter of Ho*, 22 I&N Dec. at 213. "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.*

II. ANALYSIS

The Petitioner asserts that he invested $150,000[3] in [redacted] LLC, the NCE, which planned to construct a mixed-use real estate development near [redacted], Florida. The NCE was initially associated with a regional center, [redacted] ("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

As stated above, in order to meet the job creation requirement under 8 C.F.R. § 204.6(j)(4)(i), a standalone investor must either submit evidence that at least 10 qualifying jobs have already been created, or submit a comprehensive business plan showing the need for 10 qualifying jobs. The Petitioner initially asserted that the NCE would create over 4600 direct jobs, referring to an economic impact analysis dated June 1, 2020, but also asserted that because the NCE would directly employ all construction workers on the project, the total number of jobs created would exceed 10,000. The economic impact analysis states that through the seven planned phases of the construction project, more than 19,000 direct and indirect jobs would be created. As stated in the report, these job creation figures derive from the RIMS II methodology, which it asserts qualifies as a "reasonable methodology" per 8 C.F.R. § 204.6(m)(7)(ii). However, the creation of indirect jobs supported by

[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 adjusted from $1,000,000 to $500,000. 8 C.F.R. 204.6(f)(2

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

reasonable methodologies is only considered where an investment is associated with an approved regional center. 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 cannot therefore rely upon the jobs calculated using the RIMS II methodology in the economic impact assessment to meet the job creation requirement.

In its notice of intent to deny (NOID), FOD reminded the Petitioner of the requirement that, as a standalone investor, he was 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. FOD also noted that the Petitioner had not submitted evidence that the construction project was moving forward per the timelines stated in its business plan, and that a visit to the construction site by USCIS officers in June 2023 confirmed the lack of construction progress. In addition, FOD provided notice of public information that bonds issued to finance the project were in default, and there were foreclosure proceedings against the project property. Based on the construction delays, property and bond defaults, and other project financing issues detailed in the NOID, FOD noted that the NCE's business plan was not credible and thus not compliant with *Matter of Ho*, and thus did not support the job creation requirements.

The Petitioner's response to FOD's NOID initially asserted that because the NCE had already spent more than $45 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. However, as noted above, 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.

The Petitioner then stated that the NCE "may directly employ all construction jobs," adding in a later sentence that "construction jobs are to be paid directly by [the NCE]." The NOID response referred to two agreements for the construction of buildings [redacted] of the project between [redacted]. While [redacted] appears in other documents in the record as the project property owner, including building permits and court filings, there is no evidence of any relationship between the NCE and this company. It is therefore not apparent that the NCE or a wholly-owned subsidiary is a party to these contracts.

Further, even if we assume that [redacted] is a wholly-owned subsidiary of the NCE, these documents show that the contractor [redacted] is to complete the construction of these buildings, not the NCE or [redacted] and the record does not include evidence that any of the construction work already completed on the project was done by employees of the NCE.[5] In addition, the Petitioner does not assert that [redacted] is a wholly-owned subsidiary of the NCE, such that its employment of construction workers on the project could be considered as qualifying employment by the NCE.

On appeal, the Petitioner repeats the same claims regarding job creation, largely copying his NOID response and a previous statement from the NCE. He continues to refer to the RIMS II direct and indirect job figures from the economic impact analysis, as well as the contracts with [redacted] The

[5] "*Employee* means 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." 8 C.F.R. § 204.6(e). We note that § 8.7.1 of the agreements between [redacted] stipulates that [redacted] provide weekly reports of the number of persons employed by it and its subcontractors on the project.

Petitioner also resubmits part of his response to a separate NOID on an I-956F petition filed by the regional center, which is not material to this standalone immigrant investor petition. He does not directly respond to FOD's determination regarding the NCE's employment of construction workers, and at no point does the Petitioner refer to evidence in the record which complies with the requirements at 8 C.F.R. § 204.6(j)(4)(i) regarding direct, permanent employment of at least 10 workers. Accordingly, we agree with FOD's conclusion that the Petitioner has not met this requirement.

B. Comprehensive Business Plan

Considering the record in its totality, we find that the Petitioner has not provided a business plan that is comprehensive and credible. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Ho*, 22 I&N Dec. at 213. Therefore, he has not demonstrated that the NCE will likely create at least 10 jobs within two years, as projected in the business plan.

As discussed above, the NCE's business plan relies upon economic analysis reports that use RIMS II methodology to project job creation figures including an undifferentiated combination of direct and indirect jobs. While such a combination is allowable where an investor is associated with a regional center, this is not the case for standalone petitions. Therefore, the business plan's projections for job creation are not credible.

In addition, the evidence in the record does not substantiate the construction timeline, which in turn, does not demonstrate 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"). As noted by FOD in its decision, "very little progress has been made on the project over ten years since the original business plan was submitted to USCIS." The first economic impact analysis, dated October 2014, projected completion of Phase I of the project within 30 months, or April 2017, and completion of Phase III of the project within 72 months, or October 2020. Six years later, the business plan pushed those timelines to October 2022 and October 2023, respectively. However, in responding to the NOID, the Petitioner submitted marketing materials created by the regional center which indicate that it "hopes to begin vertical construction" by the end of 2023. And as stated in FOD's decision, the Petitioner's NOID response pushed the completion date for Phase I to fall of 2026, more than 9 years after the initial projection.

On appeal, the Petitioner asserts that FOD's decision "misconstrues the totality of the evidence submitted," and that an improperly conducted site visit did not convey the amount of progress that the project has made. He then goes on to quote the entirety of the NCE's letter dated June 3, 2024, which was submitted in response to the NOID. That letter stated that "the project is not severely behind schedule" and is "on the cusp of going vertical." We note that this statement was made nearly four years after the business plan indicated that portions of the project site "are ready for vertical construction." The NCE's letter also stated that it "is expecting approval and permitting for vertical construction of Phase I in 60 days or less." But no further evidence of permitting approval or vertical construction is submitted on appeal, approximately 10 months later, reflecting the continuation of construction delays.

We acknowledge the evidence of infrastructure and foundation construction for the project completed in 2022, but 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 by FOD in its decision, the NCE is facing significant funding issues. FOD noted in its decision that the project property, owned by [redacted], was in foreclosure proceedings as of the date of the decision. On appeal, the Petitioner relies upon the NCE's June 3, 2024 letter submitted in response to the NOID. That letter states the following:

> As it currently stands, we believe we will be able to settle the [redacted] and [redacted] suits very soon when we 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 finance current construction.

However, as noted above there is no evidence that the building permits on which the referenced loan apparently rely have been issued despite the expectation of approval within 60 days of June 2024. In addition, the Petitioner does not indicate whether the referenced suits have been settled or provide any status on the foreclosure proceedings. The Petitioner has therefore not resolved the substantial funding issues identified by FOD.

Some delays in project progress might not affect the credibility of a business plan. But in this case, there has been a continual pushing back of vertical construction commencement, and the evidence regarding the foreclosure proceedings on the project property and significant funding issues do not indicate that the developers will likely 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 construction will proceed, this is not supported by documentary evidence in the record. 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. *See* 8 C.F.R. § 204.6(g), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

C. Investment of Required Amount of Capital

In addition, while not a basis of FOD's decision, we note that the Petitioner has not established that he invested, or is actively in the process of investing, at least $500,000 into the NCE. The regulation specifies that an EB-5 petition "must be accompanied by evidence that the alien has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise in the United States which will create full-time positions for not fewer than 10 qualifying employees." 8 C.F.R. § 204.6(j) (2019).

Here, FOD stated in its NOID that a letter from the NCE and a membership certificate for the NCE bearing the Petitioner's name were sufficient to show that he had invested $150,000 into the NCE, but did not show that the remaining $350,000 had been received by the NCE. We note that in support of his investment in the NCE, the Petitioner submitted a statement from his cousin indicating that he was loaning $545,000 each to his brother and to the Petitioner for the purposes of their immigrant investor petitions. This statement also indicated that his cousin had already sent $300,000 to the NCE, $150,000 each for his brother and the Petitioner. In support of the letter, the Petitioner submitted his cousin's [redacted] statements for the months of June and July 2021 showing three wire transfers

totaling $300,000 with the notation [redacted]' The record also includes a promissory note executed by the Petitioner in which he promises to pay $500,000 to his cousin.

However, the evidence described above is insufficient to establish that the Petitioner has invested, or is actively in the process of investing, the requisite amount of funds into the NCE. The regulation at 8 C.F.R. § 204.6(j)(2)(iv) lists among possible evidence of an investor's commitment of the required funds "Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock." While the record includes the Petitioner's membership certificate indicating his ownership of 1667 shares in the NCE, this is not accompanied by sufficient evidence showing the transfer of funds from the Petitioner to the NCE. We note that the statement from the Petitioner's cousin's bank account shows money transferred to the regional center, not the NCE. Further, the record does not include bank account statements showing the regional center's, or more importantly the NCE's, receipt of those funds.

In response to FOD's statement in the NOID regarding the remaining $350,000 not shown to have been invested, the Petitioner initially asserted that he had "paid in $210,000" without specifying a recipient, but indicated several paragraphs later that he had "paid $300,000 *into the Regional Center*" (emphasis added). It is not apparent whether these statements referred to the previous transfers by the Petitioner's cousin, but the response did not include evidence of additional funds transferred by the Petitioner or on his behalf to the regional center or the NCE. The totality of the evidence regarding the Petitioner's investment provides an inconsistent picture of both the amount that the Petitioner claims to have invested and whether those funds were sent to the NCE or are held by the [redacted] with which the Petitioner is not associated. 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). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.; see also Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021) ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up).[6]

The Petitioner asserted in his NOID response, and repeats on appeal, that the request for proof of his investment of the full $500,000 was premature, as the evidence was sufficient to show that he was actively in the process of investing the required funds. However, given the inconsistencies and deficiencies noted above, the evidence is insufficient to establish that the Petitioner has already invested or is actively in the process of investing any funds into the NCE. Accordingly, he has not established that he has met the requirement at 8 C.F.R. § 204.6(j).

[6] With his appeal, the Petitioner submits a copy of a wire transfer notice showing that his cousin wired $225,000 to the [redacted] with a notation identifying the Petitioner, on April 14, 2025. We note that this evidence shows these funds were transferred after the Petitioner filed his petition, does not show that funds were transferred to the NCE, and does not demonstrate that the Petitioner has invested the full $500,000 into the NCE. We further note that FOD had terminated the regional center several months prior to the time of this transfer. Therefore, this evidence is not sufficient to meet the requirement at 8 C.F.R. § 204.6(j) or resolve the inconsistency noted above.

D. Deference

As a general matter, USCIS does not reexamine determinations made earlier in the EB-5 process, and such earlier determinations will be presumed to have been properly decided. *See generally* 6 *USCIS Policy Manual* G.3(A)(2), www.usicis.gov/policy-manual. Conversely, USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts upon which a favorable decision was made have materially changed, there is evidence of fraud or willful misrepresentation, or the previously favorable decision is determined to be legally deficient. A change is material if it would have a natural tendency to influence, or is predictably capable of affecting, the decision. *See Kungys v. United States*, 485 U.S. 759, 770-72 (1988).

The Petitioner notes on appeal that USCIS has approved investor petitions associated with this project and NCE in the past, and asserts that his petition is entitled to deference because there has been no material change to the project. However, USCIS records show that the previously approved I-526 petitions for this NCE were associated with [redacted] As discussed above, unlike immigrant investor petitions associated with a regional center, petitioners filing standalone petitions must show that at least 10 direct jobs have already been created or will be created within two years. While the same evidence may have proved sufficient in those cases to show the creation of 10 indirect jobs per regional center investor, particularly for petitions filed prior to the construction delays discussed above, here it is not sufficient to establish the required direct job creation. Accordingly, we will not defer to the previous decisions involving petitions associated with the regional center.

III. CONCLUSION

The Petitioner has not established that the NCE had already hired 10 qualifying employees at the time he filed his petition. Nor has he submitted a credible, comprehensive business plan showing that due to the nature and projected size of the NCE, it will hire not fewer than 10 direct, permanent, qualifying employees within the required period. In addition to agreeing with FOD's conclusion on these grounds, we further conclude that the Petitioner has not established that he has invested or is actively in the process of investing the required amount of funds, as he has not submitted sufficient evidence to show that he has placed the required funds at risk.

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.