U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37736371

Date: SEP. 3, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Standalone Investor

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).[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 that the Petitioner has placed the required amount of capital at risk for the purpose of generating a return and that his investment of $500,000 in the NCE 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.

I. LAW

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").

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 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 filed his petition prior to the enactment of the RIA, the relevant law then in existence governs this appellate adjudication.

A petitioner may invest the qualifying capital in an entity associated with a regional center, or in a "standalone" entity, as the Petitioner has done in this case. 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.*

II. ANALYSIS

The Petitioner asserts eligibility for EB-5 classification based on his claimed investment of $500,000 in [redacted] LLC, the NCE. The NCE seeks to pool $3 million from six immigrant investors to finance the construction and management of a 175-room [redacted] branded hotel in [redacted] Florida. The Petitioner states that the NCE's claimed subsidiary, [redacted] LLC "owns the real estate, operates the business and employs the direct employees."

A. Capital at Risk

FOD denied the petition, in part, based on a determination that the terms of the NCE's Confidential Offering Memorandum create an impermissible debt arrangement. FOD concluded that due to this arrangement, the record did not demonstrate the Petitioner's investment was at risk. FOD acknowledged the Petitioner is not guaranteed the return of his investment, but found "it is guaranteed that the immigrant investors will not partake in the financial gain" if the project is successful. FOD further found that a provision whereby the Petitioner's capital would be returned to him at a future date "at face value plus a fixed amount of interest," indicates the parties entered an arrangement that "cannot be considered anything other than a loan."

On appeal, the Petitioner asserts that the evidence clearly demonstrates he made an equity investment in the NCE that carries both a risk of loss and the opportunity for gain based on the financial results achieved by the hotel project. He contends that FOD misinterpreted the terms of the investment arrangement.

We agree. Contrary to FOD's conclusion, the terms of the June 2021 Confidential Offering Memorandum do not indicate that the Petitioner made a loan to the NCE, nor do such terms otherwise create an impermissible debt arrangement. It appears that FOD may have misinterpreted a 0.5% "preferred Rate of Return" payable to the NCE's EB-5 limited members, described at page 9 of the Confidential Offering Memorandum, as the equivalent of a loan interest payment while overlooking a

provision at page 10, Allocations and Distributions, which states that any net proceeds from the NCE's investment in the project "will be allocated and distributed" to all EB-5 limited members. These provisions demonstrate that the Petitioner's investment in the NCE was placed at risk with the possibility for financial gain. We withdraw this basis for denial as it is not supported by the record.

B. Job Creation Requirements

FOD also concluded that the record did not demonstrate that the Petitioner's investment in the NCE would result in the creation of at least 10 full-time jobs for qualifying employees. This ground for denial was based, in part, on a conclusion that the record did not contain a *Matter of Ho*-compliant business plan that is both credible and comprehensive.

Upon review, we will withdraw FOD's decision and remand the matter for entry of a new decision. In concluding that the NCE's business plan is not credible and comprehensive, FOD relied upon evidence that is not in the record. Specifically, the decision refers to a business plan submitted by another EB-5 petitioner who had invested in a different NCE associated with the same EB-5 project. FOD referred to a business plan provided in support of that investor's petition and observed that it stated a significantly higher total project cost when compared to the plan submitted with this petition just two months earlier, with "no justification for the discrepancy." While this may be true, the referenced information from the other investor's filing is not in the record before us. Further, although FOD issued a notice of intent to deny (NOID), it did not provide the Petitioner with notice that its decision would be based, in part, on potentially derogatory information from outside the record.

If a decision will be unfavorable to the 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 the information contained in the record of proceeding which is disclosed to the petitioner. 8 C.F.R. § 103.2(b)(16)(ii). FOD bears the responsibility of ensuring that the record is complete and contains all evidence submitted by the Petitioner and any other evidence it considered 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).

We will, therefore, withdraw FOD's decision and remand this matter for further consideration and entry of a new decision. Prior to issuing a new decision, FOD should issue a new NOID that complies with 8 C.F.R. §103.2(b)(16)(i) and provides the Petitioner with an opportunity to address the issues discussed below, some of which were not raised by FOD previously, and any additional issues relevant to the Petitioner's eligibility for the requested classification.

1. Ownership of [redacted] LLC

FOD determined that the record did not establish that the NCE, or its claimed wholly owned subsidiary, [redacted] LLC, would directly hire qualifying employees. As noted, 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. 8 C.F.R. § 204.6(e). For an NCE not located within a regional center, the NCE (or its wholly owned subsidiary) must be the

employer of the qualifying employees. Here, the Petitioner stated that [redacted] LLC would directly employ the hotel's workers.

FOD found that the submitted project organizational charts show that the NCE is a subsidiary of [redacted] LLC "and not the other way around." FOD concluded that this structure "would make any employees hired through [redacted] ineligible to be considered qualifying employees for EB-5 purposes." However, contrary to FOD's determination, the organizational charts in the record consistently identify [redacted] LLC as the NCE's subsidiary and specify that the NCE is the sole member of that entity.[2]

The NCE's ownership of [redacted] LLC is material to the Petitioner's claim that his investment will result in the direct creation of qualifying jobs, as the record does not show that the NCE itself will act as a direct employer. The record as presently constituted does not include primary evidence of ownership for [redacted] LLC, such as a copy of its articles of organization and limited liability company operating agreement. The project's self-prepared organizational charts are not sufficient to establish [redacted] ownership.

Further, we observe that public records held by the Florida Secretary of State indicate that amended and restated articles of organization for [redacted] LLC identify the NCE as its "authorized managing member."[3] However, the same records show that this amendment occurred in October 2024, approximately three years after this petition was filed. It appears there were no prior amendments of the original articles of organization filed in June 2015, which identify another entity, [redacted] LP, as the authorized managing member.

On remand, FOD should notify the Petitioner of this potentially derogatory information and request additional evidence to document the ownership of [redacted] LLC at the time of filing. *See* 8 C.F.R. §103.2(b)(1) (stating a petitioner must establish that he or she is eligible for the requested benefit at the time of filing and must continue to be eligible through adjudication). A petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998).

2. Direct Employment of Hotel Employees

FOD also determined that, even if the record demonstrated that [redacted] is the NCE's wholly owned subsidiary, the record did not establish that this entity would directly employ the hotel's staff as claimed. Specifically, FOD noted that the NCE's March 2018 limited liability company agreement identifies [redacted] LLC as the "Property Owner," and states that "Property Owner itself shall

[2] The record also includes the NCE's limited liability company agreement dated March 28, 2018, which states at Article 2.6 that the purpose of the company was "to acquire ownership of all of the limited liability company member interests" of [redacted] LLC. However, this operating agreement was superseded by a 2021 [redacted] LLC Agreement, which is referenced in the subscription agreement the Petitioner signed in 2021 but not included in the record.

[3] *See* Florida Dept. of State, Div. of Corporations, Search Records, https://search.sunbiz.org/Inquiry/CorporationSearch/ByName (last visited September 3, 2025, and added to the record).

have no employees."[4] Based on this evidence, FOD concluded the record did not demonstrate that either the NCE *or* [redacted] LLC would directly employ any qualifying workers, and as such, the Petitioner's investment in the NCE would not result in the creation of jobs that meet the requirements for this classification.

The March 2018 limited liability company agreement referenced by FOD supports its conclusion that [redacted] would not directly employ the hotel's employees. However, the record indicates that agreement was superseded by a 2021 [redacted] LLC Agreement. Although the 2021 agreement pre-dates the filing of this petition and was part of the NCE's offering documents, it was neither provided by the Petitioner nor requested by FOD.

On appeal, the Petitioner asserts that FOD misunderstood the project structure. He states that the NCE in which he invested "owns 100% of the entity that owns 100% of the entity that does employ the hotel workers" and therefore his investment in the NCE has resulted in job creation. However, neither the Petitioner's statement nor the supplemental evidence submitted on appeal identifies which entity directly employs the hotel's staff.

For the reasons discussed, the record does not contain sufficient evidence to demonstrate which entity employs or was designated to employ the hotel's employees upon completion of the project and therefore does not show that the NCE or its wholly owned subsidiary is the employer of the qualifying employees, as required. On remand, FOD should provide the Petitioner an opportunity to submit additional evidence to demonstrate that his claimed investment in the NCE meets the direct job creation requirements for this classification. Such evidence should include, but is not limited to, the 2021 [redacted] LLC agreement and any agreement between the NCE and the hotel management company. As the evidence submitted on appeal indicates that the hotel is now operational, FOD may request the evidence outlined at 8 C.F.R. § 204.6(j)(i)(A) for employees who have already been hired.

C. The Petitioner's Investment

Finally, although not raised in FOD's decision, the record does not include sufficient evidence to demonstrate that the NCE received the Petitioner's claimed $500,000 investment. The record indicates that the Petitioner's investment was funded from his income.

The Petitioner documented the transfer of $500,000 from the Petitioner to a [redacted] account ending in [redacted] on August 31, 2021. According to the wire transfer records, this U.S. account is owned by [redacted] In addition, an email correspondence dated September 1, 2021, from the vice president and branch manager of the [redacted] community office of [redacted] stated that a "transfer of $500K from [redacted] [NCE] is done." However, the Petitioner did not provide sufficient evidence to establish what kind of entity is [redacted] and whether the email correspondence confirming a transfer of money was in fact the Petitioner's $500,000

[4] This provision in the March 2018 company agreement is under the heading "Hotel Management Provisions," and suggests that a hotel management company would serve as the employer. The August 2024 update to the project's business plan and other evidence submitted in response to FOD's NOID indicates that [redacted] would be managing the hotel and hiring its staff. The record does not include a copy of any agreement between the NCE and [redacted] documenting the terms of this arrangement.

investment. Absent such evidence, the record does not establish that the Petitioner's $500,000 was invested in the NCE.

III. CONCLUSION

For the reasons discussed, the matter will be remanded to FOD for further review of the record, issuance of a new NOID, and entry of a new decision. FOD may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand. The new decision, if unfavorable, shall be based only on evidence in the record of proceeding that has been disclosed to the petitioner, and shall include a sufficiently detailed and substantive analysis of the evidence to explain the specific reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i).

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