U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39405475

Date: SEP. 8, 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 employment-based fifth preference (EB-5) classification makes immigrant visas available to individuals 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. Aliens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

FOD denied the petition, concluding that the record did not establish that the NCE will create at least 10 full-time positions for qualifying employees for each alien seeking EB-5 classification. 8 C.F.R. § 204.6(g)(1). In the denial, FOD declined to defer to the prior favorable determination regarding job creation made in previously filed Forms I-526, Immigrant Petition by Alien Entrepreneur, associated with this NCE. FOD explained that USCIS does not defer to a previously favorable determination when the underlying facts upon which the favorable decision was made have materially changed. FOD further stated there was insufficient evidence to establish the project will progress as proposed, and that therefore the Petitioner had not met their burden.

The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and additional evidence and contends that he has established eligibility for the benefit sought. 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.

[1] On March 15, 2022, the EB-5 Reform and Integrity Act 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 in June 2021, the relevant law then in existence governs this appellate adjudication.

I. LAW

An alien may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. An NCE can be an entity consisting of "a holding company and its wholly-owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business." 8 C.F.R. § 204.6(e) (defining "commercial enterprise"). The investor may invest the required funds directly in an NCE or through a regional center.[2] The investor 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 establishment of an NCE may be used as the basis of a petition for EB-5 classification by more than one foreign national investor, provided that each investor's investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

Additionally, 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 [Employment Eligibility Verification], 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.[3]

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." *Matter of Ho* specifies that to be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential." *Id.* "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.*

In addition, *Matter of Izummi* specifies that "a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements" and that USCIS "cannot consider facts that come into being only subsequent to the filing of a petition." *Id.*, 22 I&N Dec. 169, 175-76 (BIA 1998); *see also* 8 C.F.R. § 103.2(b)(1) (stating that a "petitioner must establish that [he or she is] eligible for the requested benefit at the time of filing

[2] 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).

[3] 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. *See generally* 6 *USCIS Policy Manual* G.2(D)(5), https://www.uscis.gov/policy-manual.

the benefit request and must continue to be eligible through adjudication"). In *Kungys v. United States*, the U. S. Supreme Court defined a fact as material "if it has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed." *Id.*, 485 U.S. 759, 770 (1988) (internal quotation marks omitted). USCIS policy explains that "[c]hanges that occur in accordance with a business plan and other supporting documents as filed will generally not be considered material." *See generally* 6 *USCIS Policy Manual* G.3(C)(1), https://www.uscis.gov/policy-manual. The *USCIS Policy Manual* further explains: "In general, if, at the time of adjudication, the investor is asserting eligibility under a materially different set of facts that did not exist when they filed the immigrant petition, the investor must file a new immigrant petition." *Id.*[4]

II. ANALYSIS

The Petitioner claims to have invested $500,000[5] into [redacted] LP, an NCE associated with the regional center, [redacted]. The NCE proposed to pool $49 million from 98 immigrant investors. According to the private placement memorandum, the NCE intends to lend the entire amount to [redacted], LLC, the JCE. The JCE intends to use the funds to create a multi-purpose real estate development project on the former site of a [redacted] property located in [redacted] Indiana.

FOD denied the petition, concluding that the Petitioner did not establish the requisite job creation requirements. FOD concluded that the 2013 business plan is not comprehensive, credible, and *Matter of Ho* compliant, due to continuing project delays, an ongoing eminent domain lawsuit[6] over a portion of the property, and a lack of funding. Because the job creation estimates relied on inputs from the business plan, and because FOD determined that the business plan lacks credibility, FOD therefore concluded that the Petitioner did not establish that the job creation estimates relied on reasonable economic methodologies.

On appeal, the Petitioner asserts that there has been substantial progress on the project and that three of the four planned components of the project have been completed. The Petitioner further asserts that the remaining component of the project, an apartment complex, has been delayed due to the COVID-19 pandemic and ongoing litigation, and that these issues are "extenuating circumstances." The

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[4] As explained in *Doe v. USCIS*, 410 F. Supp. 3d 86, 101 (D.D.C. 2019):

> An approved I-526 petition is given a priority date as of the date the petition is properly filed. 8 C.F.R. § 204.6(d). If petitions did not have to meet the EB-5 requirements at the time of filing and could be changed at will, then petitioners could file incomplete petitions in order to receive a better priority position for obtaining a visa. Allowing later changes to incomplete petitions would be unfair to those petitioners who waited to file their forms until the appropriate time when they had the evidence necessary to establish all EB-5 requirements.

Id.; *see also Wang v. USCIS*, 375 F. Supp. 3d 22, 36-40 (D.D.C. 2019).

[5] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2021).

[6] On appeal, the Petitioner asserts that the eminent domain litigation concerning the land upon which the project is to be constructed is close to settlement. According to the Public Access to Court Electronic Records (PACER) electronic database, the court ordered dismissal without prejudice of the action on August 15, 2025. *See* Order of Dismissal Without Prejudice, [redacted] 2025), [redacted] available at PACER (last viewed Sept. 5, 2025).

Petitioner also objects to FOD's conclusion that the project lacks sufficient funding, and claims that the evidence submitted establishes that funding has been secured. The Petitioner resubmits on appeal much of the evidence already in the record, as well as additional new evidence concerning the eminent domain litigation, a letter dated July 2025 from [redacted] project manager, an update to the business plan dated July 1, 2025, and a new economic analysis report dated July 2025.

Upon de novo review, we conclude that the Petitioner has not provided a business plan that is comprehensive, credible, and *Matter of Ho* compliant. *Id.* at 213. Thus, we agree with FOD that the evidence is insufficient to establish that the NCE, or the JCE, will likely create at least 10 full-time jobs for qualifying employees for each investor seeking EB-5 classification, within two years, as projected in the business plans or the economic impact reports.

The Petitioner has made material changes to the original 2013 business plan, which he initially submitted in support of his petition. As FOD pointed out, the original 2013 business plan anticipated that all aspects of the project would be completed in 2018. The Petitioner does not dispute that the project has not progressed according to the original 2013 business plan. Instead, he cites the eminent domain litigation and the COVID-19 pandemic to justify the delays and changes to the project. However, the Petitioner has not provided a reasonable explanation as to why the project was not completed in 2018 as originally planned. The COVID-19 pandemic began after 2018, and the Petitioner's evidence shows the eminent domain issue began in September 2021 when the [redacted] Town Council adopted "A Resolution Expressing Concern and Requesting Assistance Regarding the Preservation of Historically Significant Structures Located on the Former [redacted] Manufacturing Plant Property." Thus, while the COVID-19 pandemic may provide a reasonable explanation for delays in construction beginning in 2020, and the litigation may explain delays in construction for the remaining portion of the project, beginning in 2021, the Petitioner has not provided a reasonable explanation for the material changes to the project - including delays in construction timeline and completion - from the original 2013 business plan.

On appeal, the Petitioner contends we should consider that because three quarters of the project (the Call Center/Data Center, Logistics, and Offices) has been completed and is operational, the remainder of the project (the Multifamily Loft Apartments) will also be completed, and that therefore the July 2025 business plan is comprehensive, credible, and *Matter of Ho* compliant. However, there is insufficient evidence to establish the costs of the remainder of the project. The initial business plan claimed that the project would cost $76 million, with $49 million from the NCE and $27 million from tax credits and developer equity. Later submissions, including the updated 2025 business plan and July 2025 letter from the project manager, do not amend the costs or financing of the project. The NCE, however, appears to have raised only $34 million in EB-5 investment funds. None of the revised economic impact reports or other project documents acknowledge this $15 million shortfall in EB-5 investment funds or describe how the JCE intends to make up for it. Furthermore, the Petitioner asserts the eminent domain litigation concerns, in part, tax increment financing (TIF), and the TIF will be used to fund the project. However, at this juncture, there is no evidence of that portion of the financing as the litigation was recently dismissed pursuant to the parties' settlement. Accordingly, although a portion of the project has been completed, the absence of updated cost projections and identified funding sources for the remaining phases of the project undermines the credibility of the business plan and, consequently, the associated job creation estimates. Thus, although a portion of the project has been completed, the absence of updated cost projections and identified funding sources for the

remaining phases of the project undermines the credibility of the business plan and, consequently, the associated job creation estimates.

The Petitioner asserts on appeal, as he did in response to the NOID, that the evidence is sufficient to show that the necessary funding has been secured based on two letters of intent to invest: one from [redacted] dated September 22, 2020, and the other from [redacted] dated February 4, 2024. We agree with FOD, however, that these letters are insufficient. Both letters of intent are non-binding and do not demonstrate actual commitment to invest. The [redacted] letter includes several conditions that must be met to secure funding, and the agreement remained valid until "close of business on October 15, 2020." However, no evidence was provided to show that the conditions to secure funding were met. Additionally, the [redacted] letter offers only $7 million in funding and the [redacted] letter does not clearly state the amount of funding being offered, because the financing for the renovations of the apartment complex is combined with financing for the building of a 140-room Aloft hotel, which is not part of the JCE's project. The [redacted] letter also states that the offer to invest is not binding, is only a basis for negotiating an agreement, and was valid until "close of business on December 30, 2024." Furthermore, we note that the amount of funding offered through these letters does not appear to equal the shortfall of funding needed to complete the project and there is no evidence that the offers remain valid. These non-binding letters of intent are not sufficient to demonstrate that the project is likely to obtain the necessary funds and given that no updated costs have been provided to assess what capital investments are needed, the business plan's economic methodologies, upon which the job creation projections are based, are not reasonable. *See Matter of Ho*, 22 I&N Dec. at 213 (a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential").

We acknowledge the Petitioner's claim on appeal that much of the project has already been completed and that the remaining phase to be completed—the apartment complex—represents only a small portion of the total project. We also recognize that some changes in timeline and funding might not affect the overall credibility of a business plan, and the record here does show that some work has been completed. However, in this case, the uncertainty regarding the terms of the settlement agreement reached in order to resolve the litigation, the lack of probative evidence to establish that the developers will receive the funding necessary to complete the project, and the lack of supporting documentation to demonstrate the claimed job creation thus far, taken together, do not support a finding that the Petitioner has submitted a credible business plan that includes cost information, a credible completion date or job creation projections. Therefore, the Petitioner has not demonstrated when the project will likely be completed or that it will likely create at least 10 jobs for each investor within two years. *See* 8 C.F.R. § 204.6(g), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

Finally, and as a separate ground of ineligibility, we also note that, although not discussed by FOD in the decision, the record does not establish that the Petitioner had invested or was actively in the process of investing the required amount of capital, as required by 8 C.F.R. § 204.6(j), at the time of filing. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to establish that they are eligible for the requested benefit at the time of filing). The regulation at 8 C.F.R. § 204.6(j)(2) states that the petition "must be accompanied by evidence that the petitioner has placed the required amount of capital at risk," and that the petitioner must show "actual commitment" of the required amount of capital. Where the NCE is located in a targeted employment area, as is the case here, the requisite amount of qualifying capital

is downwardly adjusted; at the time of filing for the Petitioner's petition, the adjusted amount was $500,000. 8 C.F.R. § 204.6(f)(2) (2021).

With the initial filing, submitted in June 2021, the Petitioner claimed to have invested $500,000 in the NCE, and submitted evidence confirming the NCE's receipt of $100,000. On page 6 of the Form I-526 petition the Petitioner also confirmed that he had only invested $100,000 in the NCE. In response to the NOID, the Petitioner submitted evidence to show that the remaining $400,000 was transferred to the NCE. However, because the Petitioner claims to have invested only $100,000 in the NCE at the time of filing the petition and that the remaining investment amount was not invested, the Petitioner has not established that he invested or was actively in the process of investing the required capital at the time of filing. Even if the Petitioner intended to later complete his investment, the regulation states that "evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing." 8 C.F.R. § 204.6(j)(2). The record must demonstrate actual commitment of the required amount of capital at the time of filing, and the record does not do so here. Moreover, the subsequent commitment of the required amount of capital does not overcome this deficiency. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Izummi*, 22 I&N Dec. at 175-76 (stating that "a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements" and that USCIS "cannot consider facts that come into being only subsequent to the filing of a petition"). The Petitioner's June 2021 promissory note is insufficient to establish he was actively in the process of investing in the NCE because the note is not evidence that he was personally and primarily liable for the debt, or that his assets adequately secured the promissory note, and that those assets are fully amendable to seizure by a U.S. noteholder. *See Matter of Hsiung*, 22 I&N Dec. 201, 202 (Assoc. Comm'r 1998)*; and see also* 6 *USCIS Policy Manual*, *supra*, at G.2(A)(1). According to *Matter of Hsiung*, an investor must establish that a promissory note is secured by their own assets. *See Matter of Hsiung*, 22 I&N Dec. 202-03. Furthermore, an investor must demonstrate that the security interest has been perfected to the extent provided for by the jurisdiction in which the asset is located. *Id.* Here, the promissory note did not identify the asset being used to secure the $400,000 debt and that whatever asset he intended to use was perfected to the extent provided for by the jurisdiction in which the asset is located. The Petitioner, therefore, has not established that he has invested or was actively in the process of investing the required amount of capital as required under 8 C.F.R. § 204.6(j).

For the foregoing reasons, the Petitioner has not presented a comprehensive or credible business plan showing that, due to the nature and projected size of the NCE, the JCE, or the project, the invested capital will result in the hiring of no fewer than 10 qualifying employees for each investor seeking EB-5 classification within the next two years. *See* 8 C.F.R. § 204.6(g), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

III. CONCLUSION

The Petitioner has not demonstrated eligibility for the immigrant investor classification and the petition remains denied.

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.