U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39251646

Date: SEP. 11, 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 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

As required by 8 C.F.R. § 204.6(j)(4)(i), the petition must establish that the investment of the required amount of capital in a new commercial enterprise (NCE) will create full-time positions for at least 10 qualifying employees within two years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii). For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526.

[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 her petition in 2021, the relevant law then in existence governs this appellate adjudication.

An alien investor must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are [their] own"). In addition, the alien investor must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show the lawful source of the funds, an investor must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the path of the funds back to a lawful source.[2] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a NCE will create full-time positions for at least 10 qualifying employees within two years, the petition must be accompanied by:

> (A) Documentation consisting of photocopies of relevant tax records, Forms 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.

A petition 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. *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 indicated on page 6 of her petition that on April 28, 2020 she invested $900,000[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, EB5 [redacted] LLC ("the regional center"), which was approved in September

[2] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program are not of suspect origin." *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001) (holding that a petitioner had not established the lawful source of her funds because, in part, she did not designate the nature of all of her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

[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) (2021).

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 10,000 direct jobs, referring to an economic impact analysis dated June 1, 2020. 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 reasonable methodologies is only considered where an investment is associated with an approved regional center. Here, the Petitioner indicated on Form I-526 that her investment was not associated with a regional center, and the record does not include evidence to show otherwise. She 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) the petition, FOD reminded the Petitioner of the requirement that, as a standalone investor, she is required to provide evidence showing that the NCE had already hired at least 10 qualifying employees or provide 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*. FOD concluded that the business plan did not support the job creation requirements.

In response to the NOID, the Petitioner submitted a letter from her representative, [redacted] a letter from the NCE's Chief Executive Officer, [redacted] a 2024 project analysis, and evidence of the project's current status. The Petitioner also submitted copies of documents already in the record, including an October 2020 business plan and economic impact analysis reports dated October 2014, June 2019 and June 2020.

On page 3 of the letter from the Petitioner's representative, Mr. [redacted] states, "The original Economic Report from [redacted] Inc. showed a total number of direct jobs in Phase 1 – 3 for construction of 1,532. That number is now over 4,614. See Report of May 1, 2019. City Center will employ all construction worker jobs." However, on page 10, Mr. [redacted] states, "The original Economic Report from [redacted] Inc. showed a total number of direct jobs in Phase 1 for construction

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

of 1,532. That number is now over 19,800. [redacted] will directly employ all construction jobs."

The response to the NOID did not include independent, objective evidence demonstrating that the NCE had already created any direct jobs. Nor did it include evidence to support the prospective creation of either 4,614 or 19,800 direct jobs. Although Mr. [redacted] referenced the RIMS II direct and indirect job figures from the economic impact analysis, 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 stated that the NCE "will 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 AB and CJ of the project between [redacted] and [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 direct employment by the NCE.

On appeal, the Petitioner repeats the same claims regarding job creation, largely copying her NOID response and a previous statement from the NCE. She continues to refer to the RIMS II direct and indirect job figures from the economic impact analysis, as well as the contracts with [redacted] She 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, she has not demonstrated that the NCE will likely create at least 10 jobs within two years, as projected in the business plan.

[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] and [redacted] stipulates that [redacted] provide weekly reports of the number of persons employed by it and its subcontractors on the project.

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, which the Petitioner here has filed. 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 October 2020 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. She then goes on to quote the entirety of Mr. [redacted] letter dated March 21, 2025, 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 five years after the October 2020 business plan indicated that portions of the project site "are ready for vertical construction." Mr. [redacted] letter also stated that the building permit issuance is expected in "early 2025." However, no further evidence of permitting approval or vertical construction is submitted on appeal, approximately 5 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 states that the lawsuit with its creditor has been settled. She relies upon Mr. [redacted] March 21, 2025 letter submitted in response to the NOID, stating, "As it currently stands, we believe we will be able to get the construction loan [$297 million] as soon as the [redacted] issues the building permits." 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 in early 2025. 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 determination 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. 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] LLC. 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 for this petition. 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 she filed her petition. Nor has she 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.

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.