U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38068065

Date: SEP. 12, 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 (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 ten (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, Pub. L. No. 102-395, § 610, 106 Stat. 1828 (1992), as amended.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish that: (1) the Petitioner placed the required amount of capital at risk, (2) the business plan was credible in describing how the investment would result in the required job creation, and (3) the economic methodology used to estimate job creation was reasonable. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

On appeal, the Petitioner asserts that the capital was fully invested in the NCE's project and that FOD's contrary conclusion rests on a selective reading of flawed evidence. The Petitioner also contends that, despite setbacks, the NCE's project was completed and created the required permanent jobs.

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 FOD's decision and remand the matter for entry of a new decision consistent with the following analysis.

[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 the petition on November 20, 2019, the relevant law in existence on that date 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. 8 C.F.R. § 204.6(e) (defining "commercial enterprise"). The investor must show that the 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). An immigrant investor may invest the required funds directly in an NCE or through a regional center.[2] Regional centers apply for designation to participate in the EB-5 program with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project, taken on either directly by the NCE or by one or more separate entities known as the "job created entities" (JCEs). Regional centers can pool immigrant (and 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 he or she has invested or is actively in the process of investing the required amount of capital and must submit evidence verifying that he or she has 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 he or she has placed his or her investment funds at risk for the purpose of generating a return, "[t]he 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."

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, a petitioner must include a comprehensive business plan showing that, due to the nature and projected size of the NCE, the need for not fewer than 10 qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.[3] 8 C.F.R. § 204.6(j)(4)(i)(B).

To be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential." *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Conclusory assertions 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.*

Under the statute and regulations, petitioners investing in an NCE within a regional center may rely on economic methodologies to demonstrate that the investment will create indirect jobs as a result of the investment in the NCE, but such methodologies must be reasonable. *See* Appropriations Act at § 610; 8 C.F.R. §§ 204.6(e), (j)(4)(iii), (m)(7)(ii). A petitioner must provide sufficient evidence for USCIS to determine whether methodologies used are reasonable.

Indirect jobs are those that are held outside of the NCE but are created as a result of the NCE. They include jobs that may be considered "economically direct," such as jobs created directly by a JCE that

[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.

is not also the NCE. They also include economically indirect jobs, such as those further down the supply chain, or induced jobs created through increased spending.

II. ANALYSIS

The Petitioner asserted eligibility based on an investment of $500,000 into [redacted] LLC (the NCE), on November 18, 2019, under the [redacted] LLC. The record indicates that [redacted], LLC (the JCE) would build a 10-story apartment building with ground floor retail space. EB-5 investors, including the Petitioner, would provide $6.5 million for the project, the anticipated cost of which was estimated at $49 million.

FOD issued a Notice of Intent to Deny (NOID) for the issues related to construction delays and their impact on the credibility of the business plan and the economic methodology used to estimate job creation, as well as issues concerning a bankruptcy filing and legal actions against members of management involved with the project. Following the Petitioner's response to the NOID, FOD denied the petition.

The basis for FOD's denial is unclear. In discussing whether or not the full amount of the Petitioner's capital was at risk and made available to the business most closely responsible for job creation, FOD's decision first introduces an item submitted in response to the NOID: Disclosure Statement for the Joint Chapter 11 Plan of Liquidation for [redacted] LLC. FOD cites a section of this bankruptcy plan referencing the investment by thirteen EB-5 petitioners—a group that includes the Petitioner—of $450,000 each into the NCE, as well as the investment by four additional investors of $500,000 each into a separate NCE. Next, FOD's denial pivots to a statement from a former manager of the project describing the use of an accounting firm to reconstruct the NCE's financial history. FOD then provides the following:

> Counsel for the Petitioner asserted that this was a misunderstanding regarding the 10% holdback in the escrow account of the NCE. The Escrow Agreement for [redacted] LLC does not support this explanation, as it also contains a nearly identical holdback provision (at 5%), and the court noted that the full amount was invested in the NCE. This evidence establishes, with evidence that was developed for the NOID Response and the Bankruptcy Court, that the minimum amount of necessary funds required to be invested and made available to the business most closely responsible for job creation (the JCE) were not received and therefore do not meet the requirements to qualify for the Program.

The decision does not explain how the bankruptcy plan or provisions in the escrow agreement relate to FOD's determination that the Petitioner's investment was not at risk or made available to the JCE. The decision does not identify the relationship between [redacted] and the present petition, nor does it analyze or otherwise elaborate on any misunderstanding or unsupported explanation present in assertions made by either the Petitioner or the attorney of record. The references to "evidence" here do not specify what evidence FOD used in reaching its conclusion or provide the reasoning that FOD used in making its determination. Concerning the bankruptcy, FOD's denial simply states, "The ongoing nature of the business, both the NCE and JCE, do not seem clear based on the evidence provided" (quoted as written), emphasizing the following in reference to

8 C.F.R. § 204.6(e): "*Commercial enterprise* means any for-profit activity formed for the ongoing conduct of lawful business. The nature of the previous business activities is clear, while the future activities, management, and receipt of new funds seem unclear."

FOD's decision further provides an insufficient explanation for conclusions concerning the issue of job creation.[4] The denial appears to tie the credibility of both the business plan and the economic methodology used to estimate job creation to the bankruptcy plan, stating that "the business plan does not address the reality of the project and all the financial movements." Without explanation, FOD's denial concludes that "[i]t is unclear if the NCE and JCE has, or will continue to engage in lawful business moving forward," and that the bankruptcy plan "does not satisfy the most basic issues of any *Matter of Ho* Business Plan, such as how the NCE and JCE will operate without a managing partner for either nor the company the JCE was relying on for expertise and support in completing the project" (quotes as written). FOD then concluded that the Petitioner did not establish that the economic methodology used to demonstrate the creation of indirect jobs was reasonable because the information used as a basis to support the inputs into the economic model was from a business plan that FOD determined to be not credible.

FOD did not clearly discuss and analyze the Petitioner's evidence regarding the project's completion or evidence concerning the availability of the EB-5 investment funds for the project such that the affected party has a fair opportunity to contest the decision, and we have an opportunity to conduct a meaningful appellate review. An officer must fully explain the specific reasons for denying a visa petition. 8 C.F.R. § 103.3(a)(1)(i). Absent a specific explanation for denial and adequate notice of why the submitted evidence was insufficient to establish eligibility, a petitioner does not have a fair opportunity to contest a denial through the motion or appellate process. *See, e.g., 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). Here, FOD cited various elements within the record without providing an argument tying those elements together to create a full picture of FOD's basis for denial.

Because FOD presented an unclear and incomplete analysis, we are remanding the case for further review and for FOD to provide an accurate and sufficient explanation of the grounds of denial. If FOD's determinations on remand are dispositive, FOD should clearly explain the specific reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i). Accordingly, we will withdraw FOD's decision and remand the matter for further consideration and entry of a new decision. On remand, FOD should re-evaluate the evidence initially submitted, as well as the Petitioner's claims on appeal.

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

[4] *See* 8 C.F.R. § 204.6(j)(4)(i).