U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39749748

Date: SEP. 16, 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. In the denial, FOD declined to defer to the prior favorable determination regarding job creation made in previously filed Form I-526 petitions 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 that based on the lack of anticipated funding, project delays, and the eminent domain litigation involving the project, the record did not show that the project will progress as proposed.

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. However, the Petitioner does not challenge FOD's finding regarding deference and thus has waived the issue. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and stating that an issue not raised on appeal is waived).

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

[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 November 2019, the relevant law then in existence governs this appellate adjudication.

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 individual may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. 8 C.F.R. § 204.6(e) (defining "commercial enterprise"). An investor seeking EB-5 classification 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). An NCE may be relied upon by multiple alien investors seeking EB-5 classification, provided that each investor has invested or is actively in the process of investing the required amount, and that each individual investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

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.[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." *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." *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (BIA 1998). In *Kungys v. United States*, the U. S. Supreme Court defined a fact as material "if it has a natural tendency to influence, or

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

was capable of influencing, the decision of the decisionmaking body to which it was addressed." 485 U.S. 759, 770 (1988) (internal quotation marks omitted). The *USCIS Policy Manual* 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 *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.*[3]

II. ANALYSIS

The Petitioner claims to have invested $500,000 into [redacted], 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] the job creating entity (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 business plan is not comprehensive or credible, and therefore not complaint with *Matter of Ho*, due to continuing project delays, an ongoing eminent domain lawsuit[4] 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 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 including recent news articles about the eminent domain litigation, a letter dated April 2025 from a project manager of the regional center, [redacted] and a new economic analysis report, dated March 2025.

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[3] 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.

[4] On appeal, the Petitioner asserts that the eminent domain litigation is expected to be resolved favorably. According to the Public Access to Court Electronic Records (PACER) electronic database, subsequent to the filing of this administrative appeal, the district court ordered dismissal without prejudice of the action on August 15, 2025. *See* Order of Dismissal Without Prejudice, *Town of Clarksville v. Clarksville Landing Enterprise Investments LLC, Clark County Treasurer*, No. 4:23-cv-00062 (S.D. Ind. Aug. 15, 2025), ECF No. 125, available at PACER (last viewed Sept. 5, 2025).

Considering the record in its totality, we conclude 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); *Matter of Ho*, 22 I&N Dec. at 213. Therefore, he has not demonstrated 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.

First, the record contains insufficient evidence that the developers will likely have sufficient capital to complete the project. The 2013 business plan, 2015 business plan, and the April 2025 letter from [redacted] all indicate that the project will cost $76 million. The business plans and the 2012, 2015, and 2019 economic impact reports all claim that the project will receive $49 million in funding from the NCE, with the remaining $27 million being received from tax credits and developer equity. 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.

The Petitioner asserts on appeal, as he did in response to the notice of intent to deny (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 offer remained valid until "close of business on October 15, 2020." However, no evidence was provided to show that the conditions to secure the 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 [redacted] 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 is valid only until December 30, 2024. These non-binding letters of intent are not sufficient to demonstrate that the project is likely to obtain the necessary funds. As such, the Petitioner has not established that the employment creation projections, which rely on the assumption that the developers will complete the project, are credible. *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").

Second, the evidence in the record does not substantiate the claimed expenditures made and revenues received so far by the JCE and therefore does not support the conclusions in the economic impact reports regarding jobs already created. The latest economic impact report, dated March 2025 and submitted on appeal, claims that the project has created 701.5 jobs based upon the work already completed on the project, and projects that a total of 74.2 additional jobs will be created from the construction of the final component, the apartment complex. The estimate of 701.5 jobs already created is based on claimed expenditures including $32.5 million in construction costs, $1.53 million in architectural, engineering, and related services, and $15.47 million in business support services. The April 2025 letter from [redacted] claims that, "[t]he JCE has invested $34 million in base hard construction costs and, in 2023, the operating entities generated $15,470,724." This letter also claims

that of the total $76 million project cost, approximately $64.5 million has been spent and that $11.5 million, which will be dedicated to the apartment complex renovation, remains to be spent.

But the record does not contain sufficient documentation to substantiate these specific claimed expenses already incurred or the source of the $64.5 million in claimed expenditures. For example, the record does not contain tax returns or financial statements to document the claimed operational expenses and revenue. As noted above, the NCE appears to have raised only $34 million in EB-5 investment funds, and the record does not establish other sources of funding. Although not identified by FOD in its decision, we note that the record also lacks evidence of the EB-5 investment funds being made available to the JCE. *See Matter of Izummi*, 22 I&N Dec. at 179 ("The full amount of money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.") Although the private placement memorandum claims that a loan will be made to the JCE by the NCE, the record lacks evidence, such as a loan agreement or promissory note, to document that this loan occurred. Without this documentation, the record therefore does not establish that the EB-5 investment funds have been invested in the project at all. The record before us therefore does not demonstrate that the claimed expenditures, operational expenses, and revenue are accurate. As such, the Petitioner has not established that the employment creation estimates, which rely on these expenditures, are credible. *See Matter of Ho*, 22 I&N Dec. at 213.

Third, the evidence in the record does not substantiate the construction timeline, which in turn, does not demonstrate that the project will likely create a sufficient number of jobs for the Petitioner and other investors seeking EB-5 classification, within the required two-year time frame.[5] *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"). The project timeline has been delayed multiple times. The initial 2013 business plan stated that the project would be completed by 2018. The Petitioner does not dispute that the project has not progressed according to the original 2013 business plan. Instead, he cites 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] 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.

The most recent estimate, provided on appeal in the April 2025 letter from [redacted] claims that the project will be completed in 2027. This letter also states that the developers anticipate "issuance of TIF tax credits, and securing of additional Historic Tax Credits for the project." But as discussed above, the record does not contain sufficient evidence to demonstrate that additional funding has been

[5] *See supra* footnote 2.

secured. Without this evidence, it is unclear what the basis is for the estimate that the project will be completed in 2027.

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 ongoing project delays, the lack of documentation 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 a credible completion date or job creation projections. Therefore, the Petitioner has not sufficiently 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) (2019).

With the initial filing, submitted in November 2019, the Petitioner claimed to have invested only $50,000 in the NCE, and submitted evidence of wire transfers and a confirmation letter from the NCE confirming the receipt of $50,000. On page 6 of the Form I-526 petition the Petitioner also confirmed that he had invested $50,000 in the NCE. In response to the NOID, the Petitioner submitted evidence purporting to show that his brother gifted him the remaining $450,000 and transferred this money to the NCE in 2024 on his behalf.

Because the Petitioner claims to have invested only $50,000 in the NCE at the time of filing the petition and asserts that the remaining investment amount was not invested until 2024, 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. It does not do so here. Moreover, the subsequent commitment of the required amount of capital, even if the record were to establish this, 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 therefore has not established

that he has invested or is actively in the process of investing the required amount of capital. 8 C.F.R. § 204.6(j).

III. CONCLUSION

Upon considering the record as a whole, we conclude that 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, it will hire 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. Accordingly, he has not demonstrated eligibility for the immigrant investor classification.

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.