U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39300858

Date: SEP. 22, 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) (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 that the record did not establish that the NCE would create at least 10 direct full-time positions for qualifying employees. FOD also determined that the NCE's business plan is not comprehensive or credible. 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

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 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

[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.

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.

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
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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.

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 being actively in the process of investing $500,000 in [redacted] the NCE.[2] The NCE seeks to pool $100 million from 200 immigrant investors[3] to develop and operate a mixed-use development. 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 business plan is not comprehensive or credible, in compliance with *Matter of Ho*, as repeated construction delays and a lack of sufficient funding affected the credibility of the business plan. Upon review, we agree that the record does not establish the NCE will create the required jobs and that the business plan is not comprehensive or credible. Therefore, the Petitioner is not eligible for EB-5 classification.

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[2] The Petitioner contends that the job creating entity 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). At the time of filing, the Petitioner had invested $150,000. In response to the request for evidence (RFE), the Petitioner submitted evidence of subsequent payments made to the NCE to demonstrate he is actively in the process of investing $500,000. 8 C.F.R § 204.6(j).

[3] The project consists of EB-5 investors under a previously approved regional center and pooled standalone investors, including the Petitioner.

A. Job Creation

The Petitioner requests EB-5 classification based on his investment in a standalone project. Under 8 C.F.R. § 204.6(j)(4)(i), the investor must either submit evidence that at least 10 qualifying jobs have been already created or submit a comprehensive business plan showing a need for 10 qualifying jobs.

Here, the record does not demonstrate that at least 10 direct jobs have been created or there is a need for 10 qualifying jobs. The record describes the jobs that will be created by the project as "direct, indirect, and induced jobs" and refers to a methodology associated with indirect job creation. For example, the operating agreement states "[t]he Investing Member desires to. . . enable the Company to create ten (10) direct, indirect and induced qualifying jobs. . . ." Further, a letter from [redacted] President and Managing Member of the NCE states that "[t]he project is expected to create 4614 direct, indirect, and induced jobs." Additionally, the October 2020 business plan includes a RIMS II economic impact analysis which states that "the Project is permitted to count indirect and induced, as well as direct job creation" while speaking of the project as "within a USCIS Regional Center." However, as noted, the petition before us is not affiliated with a regional center, it is a standalone project.

The regulations define employee as "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). Therefore, individuals working in jobs created by the Petitioner's investment must be directly employed by the NCE. The NCE cannot meet the job creation requirement with indirect job creation methodologies, as the Petitioner has referred to here, because this petition is not affiliated with a regional center. 8 C.F.R. § 204.6(m)(7)(ii). Therefore, we cannot take multiplier estimates and indirect or induced job creation into consideration. We can only consider specific, identified jobs, for individuals directly employed by the NCE. However, the record does not identify how many of the estimated jobs are direct jobs. Therefore, the record does not establish that at least 10 full-time positions for qualifying employees will be directly employed by the NCE per 8 C.F.R. § 204.6(e).

The Petitioner contends that the NCE will directly employ all construction jobs for the project. However, the record contains contradictory information. The record contains a contract between [redacted][4] 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 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 [redacted] is to complete the construction of these buildings, not the NCE or [redacted] and the

[4] The response to the NOID includes copies of "Agreement[s] Between Owner and Contractor," showing the engagement of a construction contractor, [redacted] at the project site. We note that the "Owner" named in these documents is [redacted] Therefore, the NCE is not a party to these contracts, which places the NCE even further from the employment of the construction workers. The Petitioner has not identified any record document that clarifies the relationship between the NCE and [redacted] or that shows that the NCE will directly employ contractors engaged by [redacted]

record does not include evidence that any of the construction work already completed on the project was done by employees of the NCE. In addition, the Petitioner does not assert that Randall 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.

As stated above, the record does not indicate that the NCE will directly employ the individuals working in construction jobs. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.; see also Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021) ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up). Here, the record contradicts the Petitioner's assertions and therefore the Petitioner has not established his investment will create at least 10 jobs for the NCE.

B. Comprehensive Business Plan

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 a notice of intent to deny (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. He then goes on to quote the entirety of [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." [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. He relies upon [redacted] March 21, 2025, letter submitted in response to the NOID, stating, "[a]s 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 delay of vertical construction, 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] 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 he filed his petition. Nor has he 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.