U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39255249

Date: SEPT. 24, 2025

Appeal of Field Operations Directorate (FOD) Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant investor under the Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference (EB-5) classification makes immigrant visas available to qualified immigrants 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.[1]

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 under 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

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. An investor seeking EB-5 classification 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 regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

[1] The enactment of the EB-5 Reform and Integrity Act of 2022 on March 15, 2022, revised general eligibility requirements, substantially reformed and codified the Regional Center Program in section 203(b)(5) of the Act, and added significant new integrity provisions. *See* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). Because the Petitioner filed the petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

(A) Documentation consisting of photocopies of relevant tax records, Form 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.[2]

The precedent decision *Matter of Ho* 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." *Id.* at 213. It specifies that to be "comprehensive," a business plan "must be sufficiently detailed to permit [U.S. Citizenship and Immigration Services (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.*

II. ANALYSIS

The Petitioner asserts that 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, [redacted] LLC ("the regional center"), which was approved in [redacted] 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's initial submission included an economic impact analysis prepared in October 2014, along with revisions dated June 2019 and June 2020. The 2014 analysis includes the estimate that the project will result in 4,614 "Direct & Indirect Jobs Created." Later revisions included higher estimates, rising to a total of 19,876 in the June 2020 analysis. The cited figures derived from estimates calculated using RIMS II economic impact multipliers. The economic impact analyses in the record do not distinguish between direct job creation by the NCE and indirect job creation by other employers.

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

[3] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,800,000 to $900,000 under the regulations in effect at the time of filing. *See* 8 C.F.R. § 204.6(f)(2) (2021).

[4] At the time of filing in November 2021, the statutory authority for the regional center program had lapsed. As a result, the Petitioner acknowledged that she was filing a standalone petition, involving "a direct investment without regional center affiliation." The Petitioner has acknowledged that USCIS terminated the regional center's designation in [redacted] 2025.

The Petitioner also submitted "selected portions" of a "Project Plan" dated October 2020, which repeated job creation estimates from the economic impact analysis but did not specify how many permanent employees the NCE would directly hire.

Because this petition involves direct investment in an NCE without the involvement of a regional center, USCIS will only consider direct employment by the NCE and its wholly owned subsidiaries, if any. *See* 8 C.F.R. § 204.6(e). *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. This definition does not include independent contractors. 8 C.F.R. § 204.6(e).

In March 2024, FOD issued a notice of intent to deny the petition (NOID). In the NOID, FOD stated that, because the petition does not involve a regional center, only direct employment by the NCE will count toward EB-5 job creation. Citing the record and USCIS verification efforts, including a June 2023 site visit, FOD stated that "very little progress has been made on the Project over nine years since the original business plan was submitted to USCIS," and that the NCE did not appear to have obtained sufficient funding to complete the project.

FOD also provided notice of public information that bonds issued to finance the project were in default, and that 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 concluded that the NCE's business plan was not credible and thus not compliant with *Matter of Ho*, and therefore did not support the job creation requirements.

In response, the Petitioner stated: "The original Economic Report . . . showed a total number of direct jobs in Phase 1 for construction of 1,532. That number is now over 19,800 [over all seven phases of the project]." This claim, however, derives from a misreading of the record. As discussed above, the figures in the economic impact analyses are estimates of direct *and indirect* job creation. The use of reasonable methodologies such as RIMS II multipliers in calculating job creation is only permissible when immigrant investors are associated with a regional center, which is not the case here.

The Petitioner asserted 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]." [redacted], chief executive officer of the NCE, stated that the NCE "will create at least 10,681.58 fulltime direct jobs since the construction jobs and retail leasing and real estate jobs will be employed directly by [the NCE]." The use of decimal figures appears to indicate a reliance on statistical estimates rather than known, specific positions that the NCE will create.

The record contradicts the claim that the NCE will directly employ construction workers. The NOID response referred to two agreements for the construction of buildings AB and CJ of the project between [redacted] and [redacted] Inc [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. In addition, the Petitioner does not assert or establish 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 employment by the NCE.

The response to the NOID also includes a "Final Judgment of Foreclosure," which named Mr. [redacted] and [redacted] among the defendants. The judgment indicates that the defendants had defaulted on an $18.2 million mortgage for the project site, and that "[i]f the total sum with interest . . . [is] not paid, the Clerk of this Court shall sell the Property at a public sale on May 12, 2025." Mr. [redacted] stated: "We are actively pursuing the satisfaction of this judgment. We also reserve the right to bid at the sale. . . . Any new owner will also be subject to the project[']s business plan. Even if the property is sold the development will still create sufficient jobs for the EB5 investors."

Given that the construction contract is between [redacted] and the contractors, it is not readily apparent that the contract would remain in effect, and the project plans would remain in place, if [redacted] were to sell the property.

FOD denied the petition on May 8, 2025, stating that the Petitioner did not "establish that the NCE will create at least 10 full-time positions for qualifying employees." FOD noted that "there is no evidence that the NCE is the employer for the construction work done on the project so far." FOD noted that the record identifies construction contractors, indicating that the NCE did not directly employ those construction workers.

On appeal, the Petitioner repeats the same claims regarding job creation, largely copying her NOID response and a previous statement from Mr. [redacted] She continues to refer to the RIMS II direct and indirect job figures from the economic impact analysis, as well as the contracts with the construction contractor. She does not directly respond to FOD's determination regarding the NCE's employment of construction workers, and does not identify evidence in the record showing that the NCE has directly hired at least 10 permanent employees as required by 8 C.F.R. § 204.6(j)(4)(i). 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 conclude that the Petitioner has not provided a comprehensive and credible business plan. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of 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.

As discussed above, the NCE's business plan relies upon economic analysis reports that use RIMS II multipliers 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. 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 at the NCE 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 FOD noted 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 revision of the NCE's business plan pushed those timelines to October 2022 and October 2023, respectively. However, the Petitioner's response to the NOID included regional center marketing materials indicating that the NCE "hopes to begin vertical construction by the end of the year [2023]." And as noted 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. The Petitioner quotes at length from Mr. [redacted] March 31, 2025 letter, previously 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." Mr. [redacted] made this statement in March 2025, about four and a half years after the October 2020 business plan indicated that portions of the project site "are ready for vertical construction."

A December 2020 letter from a project engineer indicated: "The garage buildings . . . are anticipated to start in March of 2021 and be completed in March 2022," but the Petitioner has not shown that this construction took place. The record, therefore, shows that individuals associated with the project have stated for several years that vertical construction was imminent. The Petitioner has not established that Mr. [redacted] March 2025 letter is more credible than the previous communications in this regard.

The appellate brief, submitted in late May 2025, does not address the court-ordered sale of the project site, scheduled for May 12, 2025, either to state the results of that sale or even to show whether or not the sale occurred. The appeal also quotes earlier references to pending permit applications, but the Petitioner submits no evidence to show that the NCE actually received those permits.

The record does not show that the project is proceeding at the rate claimed by the Petitioner, or that it is likely to be completed.

Some delays in project progress might not affect the credibility of a business plan. But this case shows repeated and continuing delays in commencing 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. The record does not permit us to conclude 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, the record does not support this claim. 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.uscis.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 her 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 filed between 2014 and 2019, and were associated with the now-terminated [redacted] LLC. In the denial notice, FOD observed that the present petition was filed as a standalone. There are important differences between the requirements for standalone petitions and regional center petitions. For example, unlike standalone petitions such as the one before us on appeal, petitions involving a regional center can take indirect job creation into account. While the evidence submitted in 2019 or earlier 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, the record in this case is not sufficient to establish the direct job creation required for a standalone petition. Given the divergent eligibility requirements, FOD properly declined to defer to those earlier approvals. 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 the NCE would hire at least 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.