U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38078232

Date: SEP. 26, 2025

Appeal of Field Operations Directorate 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 10 full-time positions for qualifying employees.

Field Operations Directorate (FOD) denied the petition, concluding that the record did not establish: 1) that the Petitioner's invested funds have been placed at risk, in compliance with program requirements, to the business most closely responsible for job creation; and 2) that the Petitioner's purported investment in the NCE, [redacted] will create at least 10 full-time jobs for qualifying employees. 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

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The investor 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 immigrant investor may invest the required funds directly in an NCE or through a "regional center."[2]

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[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) 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 had filed his petition prior to the implementation of the RIA, the relevant law then in existence governs this appellate adjudication.

[2] A regional center is an economic unit involved with the promotion of economic growth through "improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (defining "regional center"). Regional centers apply for designation to participate in the EB-5 program with U.S. Citizenship and Immigration Services (USCIS) and designated regional centers identify and work with NCEs.

For an NCE not located within a regional center, the full-time positions must be created directly by the NCE to be counted. This means that the NCE (or its wholly owned subsidiaries) must itself be the employer of the qualifying employees. 8 C.F.R. § 204.6(e); *see also* 6 *USCIS Policy Manual*, G.2(D)(4), https://www.uscis.gov/policy-manual.

For an NCE affiliated with a regional center, an investor may rely on the creation of direct as well as indirect jobs to satisfy the job creation requirements and may use "reasonable methodologies . . . includ[ing] multiplier tables, feasibility studies, analyses of foreign and domestic markets . . . , and other economically or statistically valid forecasting devices" to show job creation. 8 C.F.R. § 204.6(j)(4)(iii); *see also* 8 C.F.R. § 204.6(m)(7)(ii).

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, 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.[3]

Prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho* held that, to be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential." 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). "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 asserted eligibility based on his investment of $500,000 into the NCE.[4] The NCE proposed to raise $10 million from 20 immigrant investors and intends to construct and operate a medical facility in [redacted] New Jersey within a targeted employment area (TEA).

FOD denied the petition after issuing a request for evidence (RFE) and a notice of intent to deny (NOID). In the denial, FOD determined that the Petitioner did not show he placed the required amount of capital at risk, nor did he demonstrate adequate job creation or a comprehensive business plan that is *Matter of Ho* compliant. We agree that the Petitioner has not demonstrated that the NCE is likely

[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. 6 *USCIS Policy Manual*, *supra* at G.2(D)(5).

[4] The Petitioner provided a receipt letter from the NCE, wire transfer records, and bank statements, showing that he invested $165,000 on October 26, 2021, and $365,000 on December 27, 2021.

to create the required number of jobs as two business plans in the record, the original business plan submitted at the time of filing and the 2024 business plan submitted with the RFE, materially conflict with each other and are not credible. As this issue is dispositive of the appeal, we reserve our opinion and decline to address the Petitioner's appellate arguments regarding the other remaining ground of denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

A. Material Change

We conclude that the Petitioner has made impermissible material changes to the project which precludes this petition's approval beyond the issues that formed the basis for FOD's denial. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition cannot be approved at a future date after the Petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Therefore, 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. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). Although FOD did not directly determine that the Petitioner made material changes to the petition, the business plan, or the project after the initial filing, on appeal, we exercise de novo review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Petitioner initially indicated on Form I-526, Immigrant Petition for Alien Entrepreneur, that this project is *not* associated with an approved regional center. The Confidential Private Placement Memorandum in the record confirms that "[t]his investment is directly into the project and not through a Regional Center." Also, the original business plan submitted in November 2021 included an operational timeline indicating the facility would open for business in January 2023, and its timeline for hiring reflected it would employ 232 personnel within the first month of starting the business.

However, when FOD's RFE questioned the Petitioner's job creation claims and whether the business plan was adequate, the Petitioner responded with an updated business plan from May 2024, detailing various changes to the project. The 2024 business plan switched from the original direct investment model to a regional center model, showing that the NCE is affiliated with [redacted] Also, the updated business plan drastically increased the total EB-5 investment amount from the initial $10 million to "up to $68 million" and the number of immigrant investors from 20 to "up to 85." The plan further changed the construction, operation, and hiring timelines of the project, moving the completion date to "the end of June 2026." Moreover, in contrast to the original business plan which projected direct job creation of 232 personnel in January 2023, the 2024 business plan, along with the economic analysis report submitted with the RFE and the NOID dated May 27, 2024, expands the job creation to 453.1 direct jobs and 612.5 indirect or induced jobs, to make up a total of 1,065.6 jobs under the regional center model.

As the 2024 business plan implements a dramatic expansion of the job creation, changes in terms of financing, the number of investors, and the project's timeline, not consistent with the original business plan at the time of filing, we conclude that the Petitioner has made an impermissible material change. *Matter of Izummi*, 22 I&N Dec. at 175. In other words, the Petitioner cannot rely on the 2024 business plan or the economic analysis report he submitted in the RFE response as those documents utilized a regional center model for job creation based not only on direct but also indirect jobs. The

inputs from the revised project that were used in the model to generate the indirect job creation calculations also amount to a material change.

B. Business Plan

In order to meet the job creation requirements, the Petitioner must show that 10 jobs for each investor have been created or are likely to be created. *See* 8 C.F.R. § 204.6(g)(1), (j)(4). Here, the Petitioner did not provide documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for 10 qualifying employees, showing the requisite number of employees have already been hired following the establishment of the NCE. *See* 8 C.F.R. § 204.6(j)(4)(i)(A). As such, the Petitioner must provide a comprehensive and credible 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. 8 C.F.R. § 204.6(j)(4)(i)(B).

We conclude that the Petitioner has not provided a business plan that is comprehensive and credible that satisfies the job creation requirements as the initial business plan is no longer being followed, and the 2024 business plan introduced material changes.

On appeal, the Petitioner cites to the 2024 economic analysis report[5] discussing direct, indirect, and induced job creation. But we reiterate that the Petitioner may only rely on direct job creation as he filed his original petition as a standalone investment model. The appellate brief does not help to resolve this discrepancy, as the Petitioner asserts in one portion of the brief that "[t]his is a direct investment into the JCE of the EB5 project," but shortly contradicts himself in another part the brief by claiming creation of both indirect and direct under the regional center model: "[a]ccording to the economic study, the construction and operations of the Project are projected to create 1,115.6 direct, indirect, and induced jobs. Out of these 1,115.6 total jobs, 503.1 are considered to be direct, while 612.5 are considered indirect/induced."

Furthermore, the overriding requirement of *Matter of Ho* is that the business plan must be credible. FOD noted the record lacked evidence that actual work had begun in March of 2024. Even though the 2024 business plan showed a 21-month construction timeline beginning in March of 2024, the FOD was unable to determine whether the construction company had started the work to complete each line item listed in the Project Completion Timeline. FOD made note of the new project costs, and a lack of evidence that the source of funds had been obtained or that bridge financing was already secured. Relating to permits, FOD acknowledged preliminary permits for piping, mechanical, and plumbing, but licenses for the remaining permits for the rehabilitation and the detox facility were not submitted.

On appeal, the Petitioner acknowledges that the project still "remains in the planning stage and has not yet generated any revenue" and does not offer any specific evidence to establish credibility for the conflicting business plans. Instead, the Petitioner attempts to show that the project has commenced and provides the project developer's bridge financing to support the project, as well as some contracts, proposals, and quotes from contractors. The Petitioner makes vague and unsupported claims, such as "[j]ob creation will align with the progress the project," "marketing efforts are ongoing to attract

[5] Although this 2024 report is subtitled as "First Addendum to the Economic Analysis Dated December 6th, 2023," the December 6, 2023 economic analysis is not included in the record.

additional EB-5 investors," or "we anticipate securing 50 plus investors and efforts to achieve this goal are actively continuing."[6] Despite these claims, the Petitioner's original business plan and the subsequent 2024 business plan offer inconsistent and contradictory information in regard to the *Matter of Ho* compliant business plan's components, such as financing projections, the project's timeline and staffing. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies.[7] Therefore, the Petitioner's business plans do not overcome the deficiencies noted by FOD and we find the business plan not credible.

III. CONCLUSION

The Petitioner introduced material changes to the original petition undermining his claims. The record also lacks a valid comprehensive and credible business plan showing that, due to the nature and projected size of the NCE, the need for at least 10 qualifying employees will result within the next two years as required by 8 C.F.R. § 204.6(j)(4)(i)(B). *See also Matter of Ho*, 22 I&N Dec. at 213. Therefore, the Petitioner has not demonstrated eligibility for this immigrant investor visa classification by a preponderance of the evidence.

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.

[6] The Petitioner's claim on appeal is also different from the 2024 business plan that projected "up to 85" EB-5 investors.
[7] *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988). We note that this case, addressing unresolved material inconsistencies, is different from *Matter of Ho* decided by the Board of Immigration Appeals in 1998, discussing the credibility of business plans.