

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

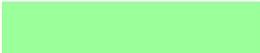


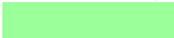
U.S. Citizenship  
and Immigration  
Services

(b)(6)



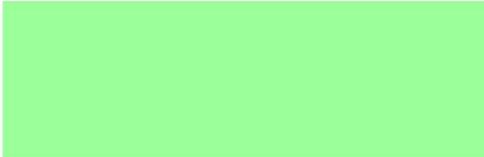
DATE: **MAR 07 2014** OFFICE: INVESTOR PROGRAM OFFICE

FILE: 

IN RE: PETITIONER: 

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Chief, Immigrant Investor Program Office (IPO), denied the preference visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the chief's decision based on procedural concerns; however, because the petition is not approvable, it is remanded for further action and consideration.

The petitioner seeks classification as an employment creation alien (EB-5) pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The record indicates that the petition is based on an investment in [REDACTED] a new commercial enterprise (NCE) associated with the [REDACTED] a designated regional center, pursuant to section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended by section 116 of Pub. L. No. 105-119, 111 Stat. 2440 (1997); section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000); section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002); section 4 of Pub. L. No. 108-156, 117 Stat. 1944 (2003); and section 1 of Pub. L. No. 112-176, 126 Stat. 1325 (2012). According to the evidence in the record, including a Limited Partnership Agreement and page three of the initial business plan, the NCE aims to raise funds from up to 80 "Class A unit holders (EB-5 investors)" and "one Class B unit holder (the General Partner [REDACTED])" to lend to [REDACTED] to construct and operate a marina and associated businesses in [REDACTED] Florida. As the NCE proposes to create jobs within a targeted employment area (TEA), the required amount of capital in this case is \$500,000.

## I. THE LAW

Section 203(b)(5)(A) of the Act, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

- (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
- (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

## II. PROCEDURAL AND FACTUAL HISTORY

The petitioner filed the petition on May 1, 2012, supported by a number of documents, including: (1) an undated economic impact analysis, (2) a January 2011 economic impact analysis, (3) an undated business plan, and (4) documents relating to the source of the petitioner's claimed capital investment. On August 9, 2012, the Director, California Service Center, issued a Request for Evidence (RFE). The petitioner responded to the director's RFE with a letter from counsel, dated October 25, 2012, and supporting evidence, including a business plan that included sections entitled "Idiosyncratic Issues &

*Matter of Ho* Compliance,” and “Economic Feasibility Analysis.” On April 10, 2013, the director issued a second RFE. The petitioner responded to the second RFE with a letter from counsel, dated June 17, 2013, and supporting evidence that includes a June 9, 2013 economic feasibility analysis.

In his July 16, 2013 decision denying the petition, the chief concluded that the petitioner’s evidence did not show that the claimed investment created or would create at least 10 full-time positions for qualified employees. Specifically, the chief concluded that the petitioner did not resolve the inconsistencies among the four economic impact and feasibility analyses in the record or provide sufficient evidence to support job creation estimates. According to the regional center approval notice, when seeking its designation as a regional center, [REDACTED] submitted an economic analysis to show that it met the employment creation requirements. The chief did not reference this document in his decision.

The AAO will remand the matter back to the chief to consider whether a recent memorandum requires deference to the economic analyses in the record and, if not, to provide notice to the petitioner as to why not such that the petitioner can file a meaningful appeal.

### III. ANALYSIS

Under the policy of deference set forth in the United States Citizenship and Immigration Services (USCIS) May 30, 2013 Policy Memorandum, if the regional center proposal the Director, California Service Center, approved on October 12, 2010 contained a comprehensive business plan satisfying the requirements set forth in *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm’r 1998), then that business plan, and the accompanying economic impact analysis, should be afforded deference. *EB-5 Adjudications Policy*, PM-602-0083, 14-15, 23 (May 30, 2013). On appeal, counsel asserts that the economic impact analyses submitted in support of the petition “utilized the same economic methodology and multipliers” as the economic impact analysis submitted in support of the regional center proposal, and contends that the chief should have given the analyses submitted in support of the petition deference.

The chief’s July 16, 2013 decision does not reference the economic impact analysis filed in support of the regional center proposal. The chief’s decision also does not discuss if deference should be afforded to any of the four economic impact and feasibility analyses filed in support of the instant petition, or explain why deference should not be afforded. See *EB-5 Adjudications Policy* at 14-15, 23. The Policy Memorandum provides that under certain circumstances, the chief is not required to afford deference to USCIS’s previous favorable determinations. For example, USCIS need not give deference to previous determinations that were based on hypothetical projects, that were legally deficient, or where the underlying facts have materially changed. See *EB-5 Adjudications Policy* at 14-15, 23. In this case, if the chief concludes that the underlying facts have materially changed, he must provide notice to the petitioner of that fact, supported by examples.

As the chief did not explain why the economic impact and feasibility analyses filed in support of the instant petition were not afforded due deference, the petitioner was unable to file a meaningful appeal. Thus, the AAO is remanding the matter to the chief to determine whether any of the four economic impact and feasibility analyses in the record should be afforded deference. If the chief determines that

deference is not warranted, the chief must explain that determination to the petitioner such that she may file a meaningful appeal.

In light of the above, the AAO remands the matter to the chief for a new decision that explains its compliance with the May 30, 2013 Policy Memorandum.

#### IV. ADDITIONAL ISSUES

As an additional issue, the regulation at 8 C.F.R. § 103.2(b)(3) states: “Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” In support of the petition, the petitioner filed documents relating to the source of her claimed capital investment, including employment income verifications and a March 4, 2011 statement, that are not accompanied by a certificate of translation. On remand, the chief should consider whether the lack of certified translations for some of the documents comply with the regulation at 8 C.F.R. § 103.2(b)(3), and if not, the chief may wish to consider the weight he should afford to these documents.

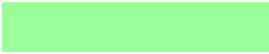
Moreover, the chief should consider if the petitioner has provided sufficient evidence showing the lawful source of her \$500,000 claimed capital investment. If the evidence does not document the complete path of the petitioner’s funds, the petitioner has not met her burden of establishing that the invested funds were her own or of lawful source. *See Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm’r 1998) (citing *Matter of Soffici*, 22 I&N Dec. 158 (Assoc. Comm’r 1998).) According to the petitioner, the source of her claimed capital investment derived from the sale of two real estate properties in 2010. While the petitioner has filed bank documents showing that she received some funds in 2010 and 2011, the chief should consider if she has provided sufficient evidence, including back records, documenting the complete path of the funds from her [REDACTED] accounts ending in [REDACTED] to her [REDACTED] account ending in [REDACTED]. Specifically, the bank statements for the account ending in [REDACTED] show that from August 2011 through January 2012, the petitioner received funds wired from [REDACTED] totaling \$452,615. The chief should consider if the evidence in the record is sufficient to document the complete path of the funds.

#### V. SUMMARY

Based on the reasons stated above, this matter will be remanded. The chief must issue a new decision, containing specific findings that will afford the petitioner the opportunity to present a meaningful appeal. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

**ORDER:** The chief’s decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the chief for

(b)(6)



Page 5

*NON-PRECEDENT DECISION*

issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.