



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-L-

DATE: AUG. 15, 2017

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION FOR ALIEN ENTREPRENEUR

The Petitioner seeks classification as an immigrant investor based on an investment in [REDACTED] a new commercial enterprise (NCE) engaged in the operation of hair salons. See 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 foreign nationals who invest the requisite amount of qualifying capital in a NCE that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not demonstrate that (1) the NCE has created or will create at least 10 full-time jobs as a result of her investment, or (2) the location where the NCE is to be principally conducting business is in a targeted employment area (TEA).¹

On appeal, the Petitioner submits additional evidence, and asserts that her investment in the NCE will create 10 full-time jobs, and that she has invested in a TEA. The record, including documentation she presents on appeal, demonstrates that the NCE is located in a TEA. We therefore will withdraw the Chief's finding to the contrary. The Petitioner, however, has not established her eligibility for the classification because she has not shown that the NCE will create the requisite 10 jobs as a result of her capital investment.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A foreign national may be classified under section 203(b)(5)(A) of the Act as an immigrant investor if he or she invests the requisite amount of qualifying capital in a NCE. The commercial enterprise can be any lawful business that engages in for-profit activities. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for

¹ If the NCE is located in a targeted employment area, the required amount of capital is downwardly adjusted from \$1,000,000 to \$500,000. See 8 C.F.R. § 204.6(f).

qualifying employees. This job creation should generally occur within two years of the investor's admission to the United States as a conditional permanent resident.

The regulation at 8 C.F.R. § 204.6(j)(4)(i)(A) lists the evidence required to show the necessary job creation as follows: photocopies of relevant tax records, Forms I-9 (Employment Eligibility Verifications), or other similar documents for 10 full-time qualifying employees. Alternatively, if the NCE has not yet created the requisite 10 jobs, a petitioner must offer a comprehensive business plan demonstrating the business' need for not fewer than 10 full-time employees. 8 C.F.R. § 204.6(j)(4)(i)(B). 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." *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Elaborating on the contents of an acceptable business plan, *Ho*, 22 I&N Dec. at 213, states that the plan should contain a market analysis, the pertinent processes and suppliers, marketing strategy, organizational structure, personnel's experience, staffing requirements, timetable for hiring, job descriptions, and projections of sales, costs, and income. The decision concludes: "Most importantly, the business plan must be credible." *Id.*

II. ANALYSIS

The Chief concluded in his denial that the Petitioner had not established the requisite job creation as the NCE was no longer actively conducting business. The Petitioner confirmed that the NCE's two hair salons, each located in a TEA, opened in 2015, but closed in mid-2016.² She indicated in her August 2016 response to the Chief's request for evidence (RFE) that although "[her \$500,000] capital investment [was] completely depleted," she intended to reopen the salons. She maintained that she had initially agreed to have [REDACTED] operate the salons, but later terminated the agreement due to that organization's mismanagement of the NCE's businesses. She explained that she was working to find a new company to manage the salons. As the Chief noted, however, she did not provide an updated comprehensive business plan, in light of the business closures, explaining how the NCE would successfully reopen and operate the salons or create the necessary number of jobs. *See* 8 C.F.R. § 204.6(j)(4)(i)(B); *Ho*, 22 I&N Dec. at 213.

On appeal, the Petitioner submits additional evidence, including an "Addendum to 5-Year Business Plan" detailing the NCE's plans to resume operations at its two TEA locations. For the reasons discussed below, however, the record, including materials that she offers on appeal, does not establish her eligibility for the classification because it is insufficient to show the requisite job creation.

² The NCE's business plan indicates that it purchased [REDACTED] franchise licenses to operate three hair salons in North Carolina. The business plan notes that the Petitioner establishes her eligibility based on her investment in "only the first two salon locations" and that the location of the third salon is yet to be determined.

³ The record reflects that [REDACTED] was under contract to assist the Petitioner in the creation of the NCE, and to provide management services to the NCE.

As the NCE has not created the necessary number of positions, the Petitioner must present a comprehensive business plan demonstrating the need for not fewer than 10 full-time employees. 8 C.F.R. § 204.6(j)(4)(i)(B). The business plan, supplemented with an addendum on appeal, outlines plans for the reopening of the two hair salons, but does not credibly demonstrate that the NCE will create the requisite jobs.⁴ First, the business plan indicates that the NCE will reopen the hair salons under its [REDACTED] franchise licensing agreement many months after the salon closures. The Petitioner has not shown that the NCE's licensing agreement with [REDACTED] remains in effect. Specifically, page 6 of [REDACTED] License Agreement provides that a salon closure for more than 30 days results in the automatic termination of the agreement, and that the licensee "would have no further rights hereunder." The addendum to the business plan does not specifically address how the NCE's hair salons can resume operations as [REDACTED] franchises without first obtaining a new licensing agreement.

Second, the addendum to the business plan does not credibly support the NCE's staffing proposal as relating to its hiring of a manager. The Petitioner initially hired [REDACTED] to manage the salons. Page 4 of [REDACTED] Program Candidate Packet indicates that [REDACTED] responsibilities included matching the investor "with a franchise and a manager to run the franchise," "property selection, lease negotiation, location build-out, and the hiring [of] employees." The Petitioner signed a June 2014 management services agreement with [REDACTED] that detailed its services, which included those noted above and specified that the NCE would enter into an employment agreement with a general manager. Pages 24-27 of the business plan stress that the general manager position requires someone with extensive management experience and outline the managerial duties for the position. These duties include reviewing financial statements and sales reports; ensuring salon compliance with applicable local codes, laws, and regulations; monitoring and conducting franchise-related staff training; ensuring employee compliance with franchise policies and procedures; staff scheduling; and the recruitment, hiring, and termination of employees.

Page 9 of the addendum to the business plan, which the Petitioner offers on appeal, however, states that the NCE will now be "eschewing a General Manager." Instead, in each of its two locations, it will rely on "a more senior stylist to operate as a salon manager while also serving as a stylist" The individual will hire the other salon personnel, which is projected to include four to six full-time hair stylists at each location. The addendum to the business plan does not identify the managerial experience required of the senior stylists, which is relevant in demonstrating whether they will be qualified to manage the salons. We also note that the licensing agreement provides that a designated salon manager "must attend and successfully complete a [REDACTED] conducted by [the [REDACTED] licensor] . . . prior to assuming responsibility for the day-to-day operations of the [REDACTED]." The updated staffing plan does not mention this training requirement for senior stylists, nor does it credibly explain who will recruit, hire, and train the senior stylists, and how they will be qualified to perform the managerial duties outlined in the business plan while concurrently providing hair styling services to the NCE's customers.

⁴ See 8 C.F.R. § 204.6(j)(4)(i)(B); *Ho*, 22 I&N Dec. at 213.

⁵ See [REDACTED] License Agreement, page 3.

In addition, the record does not credibly support the hiring timeline specified in the addendum to the business plan. The addendum states that within the first year of the salons' reopening, the NCE will hire 10 stylists, with two of them also serving as salon managers. It also anticipates a steady increase in total sales after the reopening. The record does not sufficiently support these projections. Specifically, on appeal, the Petitioner explains that the locations of the salons contributed, in part, to their closures, stating:

[T]he fact that these salons are located in a TEA . . . created a situation where opening promotions intended to garner repeat customers succeeded by only having one-off purchases of services with little sustainable business growth. In an area of average financial stability and employment, salons such as the ones opened and operated by [the NCE] would have flourished – however, as indicated above, these operations struggled to obtain loyal and repeat customers to maintain sustained success.

In light of the Petitioner's statements above and her intention to reopen the salons in their previous locations, the record does not sufficiently demonstrate that the NCE will have a sustainable operation or that it will create at least 10 full-time positions. Moreover, as of the date of this decision, the Petitioner has not offered evidence confirming that the NCE has reopened either of the two salons.

Lastly, the Petitioner has not sufficiently shown that the NCE has the necessary funds to restart operations. She indicates that she will contribute an additional \$100,000 to the NCE, but she has not documented an actual investment of the funds.⁶ Further, the projected reopening budget references the NCE's need for \$100,741 in "start-up expenses" and \$100,000 in "re-opening budget (2 salons)." As she acknowledged in her response to the Chief's RFE that her initial \$500,000 investment was "completely depleted," she has not established that an additional \$100,000 will be adequate for the NCE to recommence operations. As such, the evidence does not demonstrate that the Petitioner has committed sufficient capital to reopen the salons. *See* 8 C.F.R. § 204.6(j)(4)(i)(B).

For the reasons discussed above, the Petitioner has not sufficiently shown that the job creation projections specified in the business plan and its addendum are credible. *See Ho*, 22 I&N Dec. at 213. Specifically, she has not submitted a business plan that is comprehensive, or that credibly establishes her investment will create, or that the NCE will need, no fewer than 10 full-time positions. *See* 8 C.F.R. § 204.6(j)(4)(i)(A),(B).⁷

⁶ She has also not demonstrated the lawful source of the additional \$100,000 investment. *See* 8 C.F.R. § 204.6(e), (j)(3).

⁷ In his decision, the Chief determined that the Petitioner's updated staffing plan constituted a material change to her petition. We disagree. The NCE may elect to hire a different management company or manager; such an action does not constitute a material change. However, as discussed in the decision, the new staffing arrangements as specified in the addendum to the business plan are insufficient to show that the NCE will create the requisite number of jobs.

Matter of S-L-

III. CONCLUSION

The Petitioner has not established eligibility for the immigration benefit sought

ORDER: The appeal is dismissed.

Cite as *Matter of S-L-*, ID# 500608 (AAO Aug. 15, 2017)