



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

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

MATTER OF L-P-T-

DATE: JUNE 22, 2017

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

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

The Petitioner, an individual, seeks classification as an immigrant investor. *See* Immigration and Nationality Act section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. Foreign nationals may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 section 610, as amended.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner had not responded to a request for evidence (RFE). On a subsequent motion to reopen the matter, the Chief determined that he could not alter the prior decision as it was factually correct.

On appeal, the Petitioner submits additional evidence and asserts she received ineffective assistance of counsel. She explains that prior counsel's death resulted in her inability to provide an RFE response. The technical correctness of the denial did not preclude the Chief from reopening the matter to consider the RFE response, which the Petitioner had offered on motion.<sup>1</sup> Also, his decision not to give any consideration to the obvious, that an attorney is no longer able to effectively assist clients after death, runs counter to case law. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) (holding that ineffective assistance of counsel warranted a new hearing). In light of that decision and because the RFE response is now part of the record, we will adjudicate the appeal on its merits.

Upon *de novo* review we will sustain the appeal.

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<sup>1</sup> Even if the Petitioner's motion did not meet one of the requirements for a motion to reopen an abandoned decision at 8 C.F.R. § 103.5(a)(2)(i)-(iii), the regulation at 8 C.F.R. § 103.5(a)(5) allows a USCIS officer to reopen a matter on a government motion.

## I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a new commercial enterprise (NCE), which can be any lawful business that engages in for-profit activities. An immigrant investor may invest the required funds directly in an NCE, or invest through a regional center.<sup>2</sup> Regional centers apply for designation as such with USCIS. Designated regional centers identify and work with new commercial enterprises, which in turn are associated with a specific project, known as the job creating entity (JCE). Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii). A comprehensive business plan and an economic analysis using reasonable methodologies are necessary to demonstrate that the JCE will create the necessary number of direct or indirect jobs. 8 C.F.R. § 204.6(j)(4)(i)(B), (iii).

## II. ANALYSIS

The Petitioner invested \$500,000<sup>3</sup> in [REDACTED], the NCE, which is affiliated with the [REDACTED] a USCIS designated regional center. The NCE proposed to loan investor funds to [REDACTED], for the purpose of building the [REDACTED] the JCE. The initial submission included a business plan and an economic analysis that projected the creation of 385 direct and indirect jobs.

The Chief's RFE raised concerns relating to the business plan and economic analysis. First, the Chief noted that while the market analysis demonstrated a demand for charter schools in [REDACTED] Florida, in 2011, it did not show the current demand for the JCE. Second, the business plan did not sufficiently explain financial projections or contain operating expenses. Third, the operational inputs in the economic model did not derive from the business plan or use projected revenue. Fourth, the executed documents were in draft form. The record now contains a response to these concerns, including a new business plan and an executed lease, a construction loan, and an inter-creditor agreement.

The Petitioner has overcome the concerns pertaining to the market analysis. The evidence reveals that the school is now open, with an enrollment of 1,106 students for the 2015-2016 school year, and 1,241 students on the wait list for the 2016-2017 school year. Accordingly, the record now demonstrates the demand for the JCE. In addition, new agreements confirm the construction and leasing of the school, and resolve the Chief's concerns that the draft versions of those documents were not executed.

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<sup>2</sup> 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").

<sup>3</sup> The Petitioner documented that the NCE is located in a targeted employment area; thus, the requisite amount of qualifying capital is downwardly adjusted from \$1,000,000 to \$500,000. *See* 8 C.F.R. § 204.6(f).

The Petitioner has explained that the financial projections for which the Chief expressed concern were those of the developer, not the JCE, and resolved any disparity between the business plan and the economic analysis. Specifically, the new business plan now contains the JCE's balance sheet and statement of revenue for the year ending on January 31, 2016. The school's enrollment is projected to reach capacity, 1,340, for the 2017-2018 school year. Multiplied by the per student amount spent by the State of Florida, \$6,871.51, the revenue would be more than the \$8.176 million in revenue that the economic analysis uses to calculate direct job creation at the school. Accordingly, the financial projections do not indicate that the economic analysis overestimated the revenue. As the response addresses all of the Chief's concerns in the RFE, we find that the Petitioner has demonstrated eligibility for the classification sought.

### III. CONCLUSION

The Petitioner has submitted a credible and comprehensive business plan as well as an economic analysis report that sufficiently demonstrate that the investment will result in the necessary job creation.

**ORDER:** The appeal is sustained.

Cite as *Matter of L-P-T-*, ID# 363156 (AAO June 22, 2017)