U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-L-

DATE: JUNE 30, 2017

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: 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). This fifth preference classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise (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 record did not establish, as required, that the business had created or would create the necessary number of full-time jobs.

On appeal, the Petitioner submits additional evidence and asserts that the business has already met the job creation requirements.

Upon *de novo* review, we will withdraw the Chief's decision and remand the matter back to him for further proceedings.

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 NCE. The commercial enterprise can be any lawful business that engages in for-profit activities. An immigrant investor may invest the required funds directly in a NCE, or invest through a regional center.[1] In this matter, the Petitioner did not invest through a regional center and must therefore demonstrate the creation of 10 direct jobs. 8 C.F.R. § 204.6(j)(4)(i).

The regulation at 8 C.F.R. § 204.6(j)(4)(i) lists the evidence that a petitioner must submit to corroborate employment creation, including photocopies of relevant tax records, Form I-9

[1] Regional centers apply for designation as such with United States Citizenship and Immigration Services (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).

(Employment Eligibility Verification), or other similar documents for 10 qualifying employees, if such employees have already been hired following the establishment of the NCE; or a copy of a comprehensive business plan showing the need for not fewer than 10 qualifying employees.

A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products 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, that decision 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.*

The regulation at 8 C.F.R. § 204.6(e) defines employee as an individual who provides services directly to the commercial enterprise and excludes independent contractors. Section 203(b)(5)(D) of the Act, as amended, defines full-time employment as "employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position." The definition of "full-time employment" at 8 C.F.R. § 204.6(e) explains that a "job-sharing arrangement whereby two or more qualifying employees share a full-time position shall count as full-time employment provided the hourly requirement per week is met." This definition clarifies, however, that combinations of part-time positions will not suffice, even if, when combined, such positions meet the hourly requirement per week.

II. ANALYSIS

The Petitioner invested $535,000 into [redacted] doing business as [redacted] the NCE.[2] The initial filing included a business plan that explained the NCE would provide shuttle and tour services in California and would "also engage in the sale of auto accessories" and parts. The Petitioner proposed that the "auto accessories sales" would constitute "10% of [the NCE's] total business." The plan projects that the NCE would require the services of a sales manager, an administrative assistant, an operation supervisor, a sales representative, a customer service representative, a dispatcher, and four drivers. Subsequently, the Petitioner advised that her company would frequently replace floor mats, cup holders, and seat covers, and would purchase them in bulk while selling the excess for a profit.

In a December 2015 notice of intent to deny the petition, the Chief referenced an August 2015 site visit where a USCIS officer visited the NCE's business address on a Tuesday at 11 a.m. and found no evidence of a shuttle or tour business.[3] Based in part on this site visit, the Chief determined that the shuttle and tour services were not generating the projected income and that the sale of auto accessories and parts appeared to be far more than 10 percent of the business operation. The Chief

[2] As 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).

[3] The record, however, lacks documentation corroborating the referenced site visit.

concluded that a new business plan was required because "the NCE [was] conducting very little meaningful tour/shuttle business."

Merely shifting the percentages of the types of services the Petitioner said the NCE would offer is not, by itself, a sufficient basis to deny the petition. In addition, while the Petitioner only employs nine full-time employees, it contends that its two part-time employees share a full-time position as allowed under the regulation. Evidence of job sharing may include, but is not limited to, the following:

- A written job-sharing agreement;
- A weekly schedule that identifies the positions subject to a job sharing arrangement and the hours to be worked by each employee under the job sharing arrangement; and
- Evidence of the sharing of the responsibilities or benefits of a permanent, full-time position between the employees subject to the job sharing arrangement.

6 USCIS Policy Manual G.2(D)(3), https://www.uscis.gov/policymanual. The Chief did not request such evidence or otherwise consider the Petitioner's job-sharing assertion.

In summary, a shift in percentages of the services that the NCE provides should not serve as the sole basis for a denial, and the Chief did not consider the Petitioner's job sharing contention. Accordingly, we will remand the matter to the Chief to further develop the record.

ORDER: The decision of the Chief is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of W-L-*, ID# 365439 (AAO June 30, 2017)