



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

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

MATTER OF P-C-

DATE: FEB. 7, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner seeks classification as an immigrant investor. *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 make a qualifying equity investment of the requisite amount in a new commercial enterprise (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. An immigrant investor may invest the required funds directly in a NCE, or through a “regional center.”<sup>1</sup> Regional centers apply for designation as such with U.S. Citizenship and Immigration Services (USCIS). Designated regional centers identify and work with NCEs, which in turn are associated with a specific project, either taken on directly by the NCE or by one or more separate entities 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).

The Chief of the Immigrant Investor Program Office denied the petition and reaffirmed that decision on motion, concluding that the record did not contain, as required, a comprehensive and credible business plan demonstrating [REDACTED] (NCE) will create at least 10 full-time jobs for each foreign national seeking EB-5 classification.

On appeal, the Petitioner provides additional documentation. In June 2017, we issued a request for evidence (RFE) to which the Petitioner did not respond. For the reasons discussed below, we will dismiss the appeal.

## 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. To invest means to place capital at risk for the purpose of generating a return on the capital. 8 C.F.R. § 204.6(j)(2). A petition based on an investment through a regional center must be accompanied by evidence that the investment will create at least 10 full-time

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<sup>1</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”).

positions for qualifying employees either directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii). The investor may satisfy the job creation requirements by presenting reasonable methodologies, supported by a comprehensive business plan. 8 C.F.R. § 204.6(j)(4)(i)(B), (iii).

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, 210 (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.*

An individual seeking classification as an immigrant investor files a Form I-526 petition. If USCIS grants the petition and an application to adjust status, the investor receives conditional permanent resident status. Approaching the end of a two-year period of conditional status, the investor must request that the conditions be removed by filing a Form I-829, Petition by Entrepreneur to Remove Conditions. If USCIS determines that the investor has met all program requirements, it will remove the conditions and grant (unconditional) lawful permanent resident status.

## II. ANALYSIS

The issue raised on appeal is whether the Petitioner has demonstrated that her investment in the NCE will create at least 10 full-time jobs. The NCE proposes to finance the development, construction, and operation of [REDACTED] wholesale and retail sourcing center, in collaboration with the Central Arizona Regional Center. According to the original filing, the construction of the facility would occur between January 2012 and January 2013. A subsequent timeline projected that construction would commence in 2014, with completion anticipated in November 2015. The Chief found that the business plan was not credible because construction did not substantively commence until years after the initially forecasted completion date. *See Ho*, 22 I&N Dec. at 213 (holding that a business plan must be credible).

On appeal, the Petitioner asserted that construction has begun, creating 401 jobs (no more than 88 at any one time), with the construction budget covering May 2016 through March 2017. The Petitioner maintains that the requisite jobs will be created within the next two years.<sup>2</sup> We requested additional information in our RFE regarding the number of EB-5 investors who are committed to their investments in the NCE, the timeline for the completion of the [REDACTED] facility, and the lawful source of funds of loans obtained by the JCE from non EB-5 sources. The Petitioner, however, did not respond to the RFE.

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<sup>2</sup> 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 G.2(D)(5), <https://www.uscis.gov/policymanual>. The business plan filed with the petition should reasonably demonstrate that the requisite number of jobs will be created by the end of this two-year period. *Id.*

We may dismiss an appeal if the Petitioner does not respond to our request. The regulation provides, in pertinent part:

If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

8 C.F.R. § 103.2(b)(13)(i). Our RFE specifically informed the Petitioner that “we may dismiss your case if we do not receive your response to this RFE **within 87 days of the date on the cover letter**. This time period includes three days added for service by mail.” (Emphasis in original). To date, 229 days have lapsed, and we have yet to receive a response from the Petitioner. As such, we will dismiss the appeal as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

Moreover, because the Petitioner did not submit required information and evidence, she has not established her eligibility for the benefit sought.

### III. CONCLUSION

As the Petitioner did not respond to our RFE, she abandoned her appeal. In addition, the record does not contain the required documentation and information.

**ORDER:** The appeal is dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

Cite as *Matter of P-C-*, ID# 387905 (AAO Feb. 7, 2018)