U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF LCR-O-R-C-

DATE: SEPT. 23, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

APPLICATION: FORM I-924, APPLICATION FOR REGIONAL CENTER UNDER THE IMMIGRANT INVESTOR PILOT PROGRAM

In 1990, Congress established the EB-5 program[1] to promote economic growth in the United States through foreign investment.[2] Investors who comply with the program's requirements first receive conditional status, followed by the opportunity for the removal of conditions and permanent resident status.[3] Investors may fund their own projects, or invest through a U.S. Citizenship and Immigration Services (USCIS) designated regional center.[4]

In May 2014, USCIS designated the Applicant, [redacted] Regional Center, as a regional center to participate in the program. The Applicant submitted an amendment in September 2015, seeking to amend its designation and requesting approval of a proposed project as an exemplar. The Chief of the Immigrant Investor Program Office denied the application, concluding that the record did not establish, as required, that the full amount of capital would be placed at risk for the purpose of job creation, that the business plan complied with *Matter of Ho*,[5] and that the NCE would create at least ten qualifying jobs for each investor.

The Applicant filed a motion to reopen the Chief's decision in June 2017, providing additional evidence and asserting these materials were sufficiently detailed to address the Chief's concerns. In

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[1] The EB-5 program, as it is commonly called, issues employment-based fifth preference visas.

[2] *See* Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5).

[3] An immigrant investor files a Form I-526, Immigrant Petition by Alien Entrepreneur, attesting that the investor meets the criteria for conditional resident status, which includes showing that their investment (of either $500,000 or $1,000,000, depending on the geographical area) creates at least 10 jobs for qualified U.S. workers. After two years, the investor may file Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, which, if granted, affords the investor full lawful permanent residence in the United States. As part of the petition, the investor must show that their initial investment is still creating the requisite number of qualifying jobs.

[4] *See* Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (the "Judiciary Appropriations Act"), 1993, Pub. L. No. 102-395, 106 Stat. 1828, 1874 (Oct. 6, 1992), as amended.

[5] A *Matter of Ho* compliant business plan must include the following components: (1) a description of the business: (2) business structure and objectives; (3) a marketing plan with target market analysis; (4) personnel experience; (5) competitive analysis; (6) required licenses and permits; (7) a staffing timetable for hiring; (8) job descriptions; and (9) budget and financial projections. Additionally, the overriding requirement of *Matter of Ho* is that the business plan must be credible. *See Matter of Ho* 22 I&N Dec. 206 (Assoc. Comm'r. 1998).

September 2017, the Chief upheld his decision. On appeal, the Applicant submits additional evidence and asserts that it has established eligibility for the amendment to its designation.

Upon *de novo* review, we will withdraw the Chief's determinations and remand this matter for entry of a new decision consistent with the following analysis which, if adverse, shall be certified to us.

I. LAW

USCIS may designate an entity as a regional center based on a general proposal for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. Appropriations Act § 610, as amended. The showing that a regional center will more likely than not promote economic growth may be based on general predictions concerning the kinds of commercial enterprises that will receive capital from immigrant investors, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have on the area. *Id.*

The implementing regulation at 8 C.F.R. § 204.6(m)(3) indicates that an entity that wishes to apply for regional center designation shall submit a proposal that:

(i) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;

(ii) Provides in verifiable detail how jobs will be created indirectly through increased exports;

(iii) Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;

(iv) Contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and

(v) Is supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables.

To show that the regional center will promote economic growth, applicants may submit proposals for actual or hypothetical projects. The amount of verifiable detail required depends on the type of project proposed. Actual project proposals require the submission of a business plan compliant with *Ho*, 22 I&N Dec. at 206. Applicants submitting these proposals may also choose to file an exemplar Form I-526, Immigrant Petition by Alien Entrepreneur, with additional project documents. If approved, both

the actual project and the exemplar filing will be accorded deference in subsequent related filings, barring mistake of law or fact, fraud, or material misrepresentation.

II. ANALYSIS

USCIS initially designated the Applicant as a regional center in 2014. In 2015, the Applicant filed a Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program, seeking to amend its designation and requesting approval of an exemplar project. The application filed in 2015 indicates that the new commercial enterprise (NCE), [redacted] would pool $12,000,000 of immigrant investor funds to loan to [redacted] a job-creating entity (JCE), which in turn would loan funds to [redacted] franchise operators for the development of franchise locations, also JCEs.

In March 2017, the Chief issued a notice of intent to deny (NOID) identifying deficiencies in the original 2015 business plan, economic report, and limited partnership agreement. In response to the Chief's NOID, the Applicant provided a revised 2017 business plan indicating that the NCE would now pool $8,000,000 in immigrant investor funds to loan to the JCE as well as a revised economic impact analysis reflecting this amount. The Applicant submitted funding documentation "represent[ing] the actual borrowers and projects to be capitalized by [the JCE]" in order to demonstrate that it has "a credible program to identify, underwrite, and fund" franchises as well as underwriting documentation for an existing loan. The NOID response also included a revised economic impact analysis, market analysis for each of the proposed franchises, letters from stakeholders, and LFF's service agreements related to its lending activities.

In May 2017 the Chief denied the application finding that the Applicant had not established the full amount of capital would be placed at risk for the purpose of job creation, that the business plan was *Matter of Ho* compliant, and that the NCE would create at least ten qualifying jobs for each investor. The Applicant then filed the abovementioned motion to reopen, providing an amended 2017 business plan, jobs analysis, underwriting due diligence, and existing commitment letters and loan agreements executed between [redacted] and [redacted] franchises. Upon review of these materials, the Chief dismissed the motion.

On appeal, the Applicant asserts that capital is placed with the entity most responsible for job creation and that the NCE will create a sufficient number of qualifying positions. It provides an amended business plan, documentation related to each franchise location, a letter from [redacted] and Forms W-2, Wage and Tax Statement, for [redacted]'s employees.[6]

For the reasons discussed below, we withdraw the Chief's findings with respect to the placement of capital at risk and job creation, and remand the matter for further consideration of this issue.

[6] The Applicant also references the limited partnership agreement, private placement memorandum, subscription agreement, escrow Agreement, and reservation deposit agreement from the initial filing; the documents provided with its NOID response (with the exception of the business plan, letters of intent, and economic impact analysis); and Appendices A, E, and F from its motion to reopen.

A. Capital At Risk

The Chief provided two reasons for concluding that the full amount of capital was not placed at risk for the purpose of job creation. First, the decision indicates that the Applicant has not established that EB-5 petitioners would be investing the minimum required amount of capital. The Chief notes that the locations of the 11 [redacted] franchises identified on motion are tentative "because the rights to develop the locations have not been secured. Therefore, [the Applicant] does not qualify for TEA certification." [7] He goes on to state that EB-5 investors "will **not** necessarily be making investments of the minimum required amount of capital" as "the Petitioner [redacted] and EB5 investors … are not eligible for [targeted employment area] certification." (emphasis in original.) The decision indicates that this finding was based upon the revised business plan submitted on motion, but does not address other evidence or explain in detail how that document supports such a conclusion. Moreover, we note that each EB-5 petitioner, not the Applicant, bears the burden of establishing that his or her investment was made in a targeted employment area. *See* 8 C.F.R. § 204.6(j)(6).

Next, the Chief determined that funds used by [redacted] would not be made available for use by the franchises, and that therefore it was not being put at risk, as required by *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm. 1998) (holding that to satisfy the at "at risk" requirements of 8 C.F.R. § 204.6(j)(2), the full amount of EB-5 capital must be made available to the businesses most closely related to job creation). The Chief declared that the [redacted] franchises were "the real [JCE]" and that, "as $1,010,000 of investor funds would be used by [redacted]," the full amount of funds were not placed at risk. On appeal, the Applicant asserts that [redacted] should "be considered another job-creating entity" and points to the revised business plan and Forms W-2 submitted with the motion to reopen as evidence of such.

Here the record contains evidence supporting the Applicant's contention that [redacted] is a JCE. Page 8 of the amended 2017 business plan submitted on appeal states that LFF will "borrow investor funds from [the NCE] for job-creating purposes." Page 16 of this same business plan states, in reference to [redacted], "[t]his is the Job-Creating Entity." Moreover, the record contains an executed loan agreement between the NCE and [redacted] and executed loan documents between [redacted] and individual franchisees for the development of the [redacted] they will be opening. The Chief's decision does not address this evidence or provide an explanation for the conclusion that [redacted] is not a JCE as contemplated by the EB-5 program. Accordingly, we will remand the matter for the issuance of a new decision including analysis of the evidence noted above.

B. Job Creation

As an additional ground for denial, the Chief found that the Applicant had failed to establish that an investment in the NCE would create the required number of jobs. In his initial decision, he determined

[7] In regional center sponsored projects, the requisite amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000 when the job creating enterprise is located in a targeted employment area (TEA). *See* 8 C.F.R. § 204.6(f)(2). We note, however, that it is the immigrant investor who must establish that the geographic area in question qualifies as a TEA, not the regional center. *See* 6 USCIS Policy Manual G.2(A)(5), https://www.uscis.gov/policymanual; *see also* USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 19 (May 30, 2013), https://www.uscis.gov/laws/policy-memoranda.

that the business plan did not comply with the requirements of *Matter of Ho*, noting multiple concerns. The denial identified issues regarding the terms of the loan agreements, the flow of capital from the NCE, the availability of outside financing, the applicability of bridge financing, the uncertainty of site locations, and inconsistencies between the financial projections and other documents in the record.

In contrast, when discussing the comprehensive business plan in the motion decision, the Chief only identified two issues related to finance when finding that the business plan did not comply with *Matter of Ho*. Beyond identifying the concerns, the Chief did not provide further explanation regarding how they detract from the credibility of the business plan. Furthermore, the decision does not indicate whether the Applicant's motion resolved the other concerns identified in the Form I-924 denial.

Next, he noted that the March 2017 economic impact analysis report "assumes operations phase direct jobs shall satisfy EB5 Program requirements for "qualifying" jobs and concludes that the "direct jobs at the stores will not meet EB5 requirements" without further explanation. As with the analysis of the business plan, the Chief does not explain the basis for this conclusion or discuss how the economic methodology is unreasonable.

As the Chief did not sufficiently address the Applicant's motion or explain the reasoning underlying the conclusions in the decision such that the Applicant could meaningfully address these issues on appeal, we will remand the matter for the issuance of a new decision.

III. CONCLUSION

The appeal will be remanded to the Chief for further action in accordance with this decision. If the Chief issues a new denial, the notice must contain specific findings to afford the Applicant the opportunity to present a meaningful appeal. It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U .S.C. § 1361.

ORDER: The decision of the Director 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 LCR-O-R-C-* ID# 2835402 (AAO Sept. 23, 2019)