



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

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

In Re: 33204056

Date: FEB. 03, 2025

Appeal of Immigrant Investor Program Office Decision

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).¹ This employment-based fifth preference (EB-5) 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 U.S. economy and create at least 10 full-time positions for qualifying employees.

The Chief of the Immigrant Investor Program Office denied the petition on multiple grounds, including finding that the record was insufficient to establish that the Petitioner's purported investment in [redacted] the NCE,² will create at least 10 full-time jobs for qualifying employees. *See* 8 C.F.R. § 204.6(g)(1), (j)(4) (2017).³ The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and additional evidence, asserting that she has established eligibility for the EB-5 classification.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

¹ On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed her petition in September 2018, the relevant law then in existence governs this appellate adjudication.

² Pages 1 and 5 of the NCE's 2016 business plan explain that the NCE is managed by [redacted] and that [redacted] is managed by its sole principal, [redacted]. On page 15 of her appellate brief, the Petitioner acknowledges that Ms. [redacted] is married to [redacted] the founder and owner of [redacted].

³ The Petitioner states that the NCE is affiliated with [redacted] a regional center that U.S. Citizenship and Immigration Services (USCIS) designated to participate in the EB-5 program in 2011. A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e).

I. LAW

A foreign national may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The investor must show that their investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4) (2017). The establishment of an NCE may be used as the basis of a petition for EB-5 classification by more than one foreign national investor, provided that each investor's investment results in the creation of at least 10 full-time positions for qualifying employees. 8 C.F.R. § 204.6(g)(1).

An immigrant investor may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. Regional centers apply for designation to participate in the EB-5 program with U.S. Citizenship and Immigration Services (USCIS). Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project, taken on either directly by the NCE or by one or more separate entities known as the "job creating entities" (JCEs). 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). Specifically, under 8 C.F.R. § 204.6(j)(4)(iii) and 8 C.F.R. § 204.6(m)(7)(ii), an investor may rely on the creation of direct as well as indirect jobs to satisfy the job creation requirements, and may use "reasonable methodologies . . . includ[ing] multiplier tables, feasibility studies, analyses of foreign and domestic markets . . . , and other economically or statistically valid forecasting devices" to show job creation.

The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

- (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
- (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.⁴

Prospective job creation must be demonstrated through submission of a comprehensive business plan. The precedent decision *Matter of Ho* held that, to be "comprehensive," a business plan "must be sufficiently detailed to permit [USCIS] to draw reasonable inferences about the job-creation potential." 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). "Mere conclusory assertions[, however,] do not enable [USCIS] to determine whether the job-creation projections are any more reliable than hopeful speculation." *Id.* The decision concludes: "Most importantly, the business plan must be credible." *Id.*

⁴ 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/policy-manual>.

II. ANALYSIS

The Petitioner claims that the documents in the record show that in September 2018, she remitted a total of \$500,000⁵ to the NCE's escrow account as her EB-5 investment.

In support of her petition, the Petitioner offers the NCE's December 2016 business plan. Page 1 of the 2016 business plan indicates that the NCE seeks to raise up to \$8 million from 16 foreign national investors to loan to the JCE to "develop and operate the job-creating Project as well as manage its own daily business operations." Page 17 of the 2016 business plan explains that the JCE will use the loan proceeds from the NCE "to create a state of the art [redacted]; the "operation of this center will require developing new hardware and firmware products," "develop[ing] integration software," and "build[ing] a [redacted] to monitor, track and remediate security threats." The business plan provides that "the computer hardware and firmware (sensors) products will be developed by [redacted] and the "integration software products will be developed by [redacted]"⁶ In addition, the 2016 business plan alleges that the JCE's project, financed with \$8 million EB-5 funds, will create a total of 257.7 jobs.

In December 2020, the Chief issued a request for evidence (RFE). In her RFE response, the Petitioner presents additional materials, including a November 2020 business plan and a December 2020 [redacted] Operations Summary." The [redacted] Operations Summary" explains that "due to the changing circumstances, . . . [the JCE] has created new partnerships that have been very instrumental in launching the business and initial revenue generation." Pages 3, 4 and 20 of the 2020 business plan explain that [redacted] encountered financial problems" and [redacted] experienced "financial difficulties," leading to their failure "to honor the initially contemplated marketing agreement" with the JCE. Instead, the 2020 business plan claims that the JCE "is focusing its marketing efforts to a larger audience in physical security marketplace" and "has utilized some of the new technologies, such as [the] use of Artificial Intelligence (AI) and advanced video analytics, streaming video, cloud, etc., to build a robust solution" that the JCE has named [redacted] Page 20 of the 2020 business plan provides that based on the JCE's projected revenue, it will create 63.8 jobs in fiscal year 2021, 103.1 jobs in fiscal year 2022, 266.2 jobs in fiscal year 2023, and 367.1 jobs in fiscal year 2024.

In January 2024, the Chief issued a notice of intent to deny (NOID) the petition.⁷ In her NOID response, the Petitioner, through counsel, states that "due to the changing of world economy and [the COVID-19] pandemic, the need for expanding [redacted] and construction was not required" and that the JCE and NCE "determined that 12 investors and \$6.0 million [instead of \$8 million] was sufficient for

⁵ The Petitioner indicates that the NCE and the JCE are in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from \$1,000,000 to \$500,000. See 8 C.F.R. § 204.6(f)(2) (2017).

⁶ According to a November 2016 letter from [redacted] to the JCE, [redacted] is a wholly owned subsidiary of [redacted]

⁷ The NOID notes that the founder and owner of [redacted] was convicted in a U.S. district court and sentenced to a 12-month imprisonment term. On appeal, the Petitioner submits the indictment, which indicates that Mr. [redacted] was involved in an ongoing scheme from 2009 to 2016, during which he bribed a city official to benefit and enrich himself and [redacted] The Petitioner presents a January 2024 statement from Mr. [redacted] claiming that he stepped down from [redacted] in March 2017; the JCE contacted [redacted] about constructing the [redacted] after his departure from [redacted] and that [redacted] ceased operation in 2018. The Petitioner also submits a December 2023 statement, bearing the JCE's letterhead and signed by the JCE's "Former President (Retired)," stating that the JCE terminated Mr. [redacted] position as its unpaid advisor/consultant. See *supra* note 2.

[the JCE] to successfully continue its operations.” The Petitioner offers additional materials from [redacted] discussing the JCE’s job creation through 2023. The Petitioner also submits documents from [redacted], discussing the JCE’s job creation from October 2017 through November 2023.

After reviewing the documentation in the record, the Chief denied the Petitioner’s petition on multiple grounds, including on the ground that the Petitioner failed to show that the JCE will likely create at least 10 jobs for each foreign national investor seeking EB-5 classification. *See* 8 C.F.R. § 204.6(g)(1), (j)(4). On appeal, the Petitioner submits a brief and additional supporting evidence, including employee documents, invoices, and U.S. Patent and Trademark Office filings, showing that the JCE has hired employees, is in operation, and has applied for a patent for an AI invention.

A. Deference Policy

In the denial decision, the Chief noted that USCIS had approved petitions that relied on the JCE’s project discussed in this decision. The Chief, however, declined to defer to the prior favorable findings concerning the project’s prospective job creation. *See* 6 *USCIS Policy Manual* G.3(A)(2), <https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-3>. As an initial matter, we note that, on appeal, we exercise de novo review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Additionally, a prior favorable decision may not be relied on if the underlying facts upon which the decision was made have materially changed, there is evidence of fraud or willful misrepresentation, or the prior decision is determined to be legally deficient. *See* 6 *USCIS Policy Manual*, *supra*, at G.3(A)(2). In this case, the Petitioner has not specifically challenged the Chief’s deference decision on appeal. We will therefore not address the issue and will deem it waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

B. Business Plans

There are two business plans in the record, the 2016 business plan and the 2020 business plan. The Petitioner explains that information contained in the 2016 business plan, including the amount of needed EB-5 funds and project details, no longer reflects the nature of the project. As discussed, in her NOID response, the Petitioner, through counsel, claims that the JCE and NCE “determined that 12 investors and \$6.0 million [not \$8 million] was sufficient for [the JCE] to successfully continue its operations.” As such, to meet the job creation requirements, the Petitioner must show that the lower EB-5 amount of \$6 million from 12 foreign national investors have created or will likely create at least 120 jobs, 10 jobs for each investor. *See* 8 C.F.R. § 204.6(g)(1), (j)(4).⁸

While the record includes evidence of the JCE’s direct job creation, the materials do not confirm that a total of 120 jobs have already been created. *See* 8 C.F.R. § 204.6(j)(4)(i)(A). As such, the Petitioner must provide a comprehensive and credible business plan showing that, due to the nature and projected size of the JCE, the need for not fewer than 120 qualifying employees will result, within the next two

⁸ As the Chief did not raise the issue in the denial, we will not discuss in this decision whether the Petitioner has made an impermissible material change when she presents the 2020 business plan that changes the nature of the project discussed in the 2016 business plan. *See Matter of Izummi*, 22 I&N Dec. 169, 175-76 (BIA 1998); *see also Kungys v. United States*, 485 U.S. 759, 770-72 (1988). We will reserve this and any other eligibility issues not discussed in this decision for future consideration if the need arises.

years. See 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. The Petitioner has not provided a business plan that is comprehensive and credible that satisfies the job creation requirements. In other words, she has not demonstrated that the JCE will likely create at least 120 jobs for the 12 foreign national investors seeking EB-5 classification, within the next two years.

First, while the Petitioner claims in her NOID response that the JCE needs \$6 million in EB-5 investor funding for the project, the 2020 business plan does not similarly claim that the JCE needs \$6 million. Instead, the 2020 business plan is silent on the amount of needed EB-5 funds. Additionally, although the 2020 business plan provides updated information on the JCE's product offerings, target markets, and customers, it does not specify how it has spent or plans to spend any EB-5 funds. The 2020 business plan also does not explain how the lower EB-5 investment amount of \$6 million will affect the JCE's planned expenditures on the various project costs listed in the 2016 business plan, including "acquisition costs," "hard construction costs," "computer systems development costs," "FF&E [furniture, fixtures, and equipment] costs," "A&E [architect and engineering] costs," "soft costs," and "operational costs." As such, while there are two business plans in the record, the 2016 business plan does not accurately reflect the nature of the project, and the 2020 business plan does not explain specifically the amount of EB-5 funding the JCE requires or how it has used or will use any EB-5 funds to create jobs.

Second, the JCE claims to have paid [redacted] and [redacted] over \$3 million of EB-5 funds for product development and [redacted] construction, but [redacted] and [redacted] did not fully fulfill their obligations. According to the JCE's status reports, which the Petitioner presents on appeal, by December 2022, the NCE had loaned \$6 million EB-5 funds to the JCE. An April 2018 email from the JCE to [redacted] which the Petitioner presents on appeal, explains that the JCE awarded multiple contracts, "in an aggregate amount of approximately \$3.8 million, to [redacted] to create the enterprise security products and build the [redacted] and that "[a]s of December 2017, the projects were about 80%-85% complete and [the JCE] had already paid approximately \$3.2 million." However, according to a December 2023 letter from the JCE,⁹ the JCE terminated these contracts "because of a financial default of [redacted] and [redacted] and that [redacted] and [redacted] "failed to fulfill their obligations" under the contracts. Additionally, in a January 2024 statement from [redacted] founder and owner, [redacted] ceased operation in 2018.¹⁰ Considering the large sum of EB-5 funds that the JCE purportedly remitted to [redacted] and [redacted] and the two entities' inability to fully fulfill their obligations for product development and [redacted] construction, the Petitioner has not sufficiently demonstrated that these remitted EB-5 funds, or a portion of them, created jobs or will likely create jobs for foreign national investors seek EB-5 classification.

Third, the evidence in the record does not support the job creation projections stated in the 2020 business plan. Page 20 of the 2020 business plan claims that, based on the JCE's projected revenue, the JCE will create a total of 800.3 jobs between fiscal years 2021 and 2024. The record, however, is insufficient to support these projected job creation figures. Indeed, documents in the record, including those that the Petitioner presents on appeal, such as the [redacted] documents as well as the JCE's employee documents and tax records, fail to support the job creation figures alleged in the 2020 business plan.

⁹ The December 2023 letter from the JCE bears the JCE's letterhead and is signed by its "Former President (Retired)."

¹⁰ See *supra* note 9.

The 2020 business plan job creation figures rely on the JCE's projected revenue figures, which are not supported by the record. Page 20 of the 2020 business plan claims that the JCE's revenue in the "computer system design operations" category, the "management, scientific and technical consulting services" category, and the "investigative and security services" category will increase significantly, from a total revenue of \$2.5 million in fiscal year 2021 to a total revenue of \$14.5 million in fiscal year 2024. The [redacted] documents, however, indicate that the JCE's actual revenue in the three above referenced categories was approximately \$1.8 million during fiscal year 2021, and that its total revenue in the three above referenced categories, since the project's inception, remained at approximately \$3.7 million from the end of fiscal year 2021 through the end of fiscal year 2023. Similarly, page 5 of the JCE's status report for December 2023 provides that the JCE's overall revenue was \$1.7 million for fiscal year 2021 and \$1.4 million for fiscal year 2022. The status report further claims that the JCE's anticipated total revenue for fiscal year 2023 was \$1 million. These revenue figures from the [redacted] documents and the JCE's December 2023 status report do not support a determination that the projected revenue figures, which were used to calculate job creation, in the 2020 business plan are credible.

Additionally, while page 20 of the 2020 business plan projects that the JCE will create a total of 800.3 jobs between fiscal years 2021 and 2024, according to the [redacted] documents, based on the JCE's actual revenue, it created far fewer jobs. The [redacted] documents indicate that the JCE's "total Project-to-date job creation [was] 68.1 jobs" at the end of fiscal year 2020; its "total Project-to-date job creation [was] 74.4 jobs," a gain of less than 7 jobs, at the end of fiscal year 2021; and its "total Project-to-date job creation [remained at] 74.4 jobs" from the end of fiscal year 2021 through the end of fiscal year 2023. The JCE's December 2023 status report states on page 7 that the JCE has "created 76 jobs through September 30, 2023." These job creation figures from the [redacted] documents and the JCE's December 2023 status report do not support a finding that the projected job creation figures in the 2020 business plan are credible.

Based on the above discussed reasons, the Petitioner has not presented a comprehensive and credible business plan showing that, due to the nature and projected size of the JCE, the need for not fewer than 120 qualifying employees will result. See 8 C.F.R. § 204.6(j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. Specifically, the 2020 business plan does not specifically discuss how the JCE has used or will use the \$6 million EB-5 funds, and it includes revenue projections – from which job creation projections are calculated – that are not supported by the record. Moreover, the JCE claims to have paid [redacted] and [redacted] approximately \$3.2 million EB-5 funds for contracts associated with the project, but [redacted] and [redacted] have not fully fulfilled their obligations under the contracts. The Petitioner has not shown that the JCE has recovered any of these funds or that these funds created or will likely create jobs. Accordingly, the Petitioner has not credibly demonstrated that the JCE will likely create at least 120 jobs, 10 jobs for each of the NCE's 12 foreign national investors seeking EB-5 classification, within the next two years. See 8 C.F.R. § 204.6(g)(1), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213.

III. CONCLUSION

Upon considering the record as a whole, we conclude that the Petitioner has not presented a comprehensive and credible business plan showing that, due to the nature and projected size of the JCE, the JCE will create no fewer than 10 jobs for each investor seeking EB-5 classification within the next two years. See 8 C.F.R. § 204.6(g)(1), (j)(4)(i)(B); *Matter of Ho*, 22 I&N Dec. at 213. As

the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any remaining issues concerning her eligibility.¹¹ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

It is the Petitioner's burden to demonstrate her eligibility for the EB-5 classification, which includes establishing that her investment will likely create at least 10 full-time jobs for qualifying employees. See 8 C.F.R. § 204.6(j)(4). Here, the Petitioner has not made such a showing.

ORDER: The appeal is dismissed.

¹¹ The Chief denied the petition on other grounds, concluding the Petitioner did not demonstrate the NCE qualifies as a commercial enterprise as defined in the regulations and that her invested funds have been placed at risk, in compliance with program requirements, to the business most closely responsible for job creation. See 8 C.F.R. § 204.6(e) (defining "commercial enterprise" and requiring a commercial enterprise to conduct ongoing lawful business); see also 8 C.F.R. § (j)(2). We will reserve these and any other eligibility issues, including those related to the lawful source of the Petitioner's EB-5 funds, that are not discussed in this decision for future consideration if the need arises. See 8 C.F.R. § 204.6(e) (defining "capital" and requiring an investor to show that their invested capital did not derive, directly or indirectly, from unlawful means). See also *supra* note 8.