U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13718788

Date: MAY 1, 2023

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). This fifth preference (EB-5) classification makes immigrant visas available to noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Noncitizens may invest in a project associated with a U.S. 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 record did not establish that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital that has been obtained through lawful means. The Chief also determined that the record did not establish that [redacted] the new commercial enterprise, will create at least 10 full-time positions for qualifying employees per investor. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner maintains that he established his eligibility for the EB-5 visa 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 withdraw the Chief's decision and remand the matter for entry of a new decision consistent with the following analysis.

At this time, we are unable to address the merits of this case because the record is incomplete. The record contains a notice of intent to deny (NOID), which was issued by the Chief on October 31, 2019. The Chief's decision indicates that the Petitioner responded to the NOID on December 6, 2019 with the submission of additional evidence. However, the record lacks complete copies of these documents. Thus, we cannot determine whether the Chief properly considered all the relevant evidence in the record or whether the Petitioner has established his eligibility for the EB-5 visa classification. The Chief bears the responsibility of ensuring that the record is complete and contains all evidence that has

been submitted by a petitioner or considered by the Chief in reaching her decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976). We will, therefore, withdraw the Chief's decision and remand this matter.

On remand, the Chief should identify and incorporate any documents, which may have been inadvertently omitted from the record of proceeding before reviewing the entire record and issuing a new decision. If the Chief cannot supplement the record with the missing materials, she should issue a new NOID, granting the Petitioner a reasonable opportunity to respond. Upon receipt of a timely response, the Chief should review the entire record and enter a new decision.

ORDER: The Chief's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.