



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

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

In Re: 15397691

Date: JULY 12, 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 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 Petitioner has placed the required amount of capital at risk and that the investment of the required amount of capital will create full-time positions for at least 10 qualifying employees within two years. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Chief's decision was arbitrary, capricious, and an abuse of discretion. The Petitioner further contends that the Chief did not adequately weight the evidence provided and unreasonably relied on information extraneous to the record in a manner that was arbitrary and capricious.

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.

The Petitioner indicated on page 6 of his petition that he invested \$500,000¹ in [REDACTED] [REDACTED] the new commercial enterprise (NCE), from May 8, 2017 to June 29, 2017. The NCE is

¹ On March 15, 2022, President Joe Biden signed the EB-5 Reform and Integrity Act of 2022, which made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed his petition in 2018 and indicated that the project is located in a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from \$1,000,000 to \$500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

associated with [REDACTED] (Regional Center)² pursuant to the Immigrant Investor Pilot Program.

At this time, we are unable to address the merits of this case because the record is incomplete. The Chief found that the Regional Center's website and promotional materials guaranteed a return of immigrant Investors' \$500,000 capital contribution and that social media posts continue to promote such a guarantee to prospective investors. The Chief concluded that the Petitioner has not placed the required amount of capital at risk. However, the record lacks complete copies of the promotional materials provided by [REDACTED], screenshots or printouts from the [REDACTED] website, transcripts of the testimonial video in the [REDACTED] YouTube channel, or screenshots or printouts of the Regional Center's Twitter and Instagram accounts. In addition, it appears that all of the links referenced in the Chief's decision are no longer valid. Thus, we cannot determine whether the Chief properly considered all the relevant evidence in the record or whether the Petitioner has established eligibility for the immigrant investor visa classification.

In order to insure fair and complete consideration of the proceedings before us, it is necessary that the record of proceeding contains copies of all evidence that has been submitted by a petitioner or considered by the Chief in reaching her decision. 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 notice of intent to deny, 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.

² On April 29, 2014, the Chief approved [REDACTED] (Regional Center)'s Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program, designating the Regional Center as a qualifying participant in the Immigrant Investor Pilot Program. However, on July 21, 2020, the Chief terminated the designation of the Regional Center as a regional center under the Immigrant Investor Pilot Program because the Regional Center no longer served the purpose of promoting economic growth, including export sales, improved regional productivity, job creation, or increased domestic capital investment, as required by 8 C.F.R. 204.6(m)(6). The Regional Center subsequently appealed the decision of the Chief, and the appeal is still pending.