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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

K1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 23 2010

IN RE: Applicant: [redacted]

PETITION: Proposal for Designation as a Regional Center Pursuant to Section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 103-121, 106 Stat. 1874 (1992).

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the proposal for designation as a regional center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks designation as a regional center pursuant to section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1874 (1992), as amended by section 116 of Pub. L. No. 105-119, 111 Stat. 2440 (1997); section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000) and section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002).

The director determined that the economic analyses provided were insufficient. On appeal, the applicant asserts that the pertinent regulations are ambiguous, inconsistent and have been superseded by statute and that U.S. Citizenship and Immigration Services (USCIS) improperly issued a policy memorandum that continues to violate congressional intent rather than promulgate new regulations consistent with that intent.

Regardless of whether the promulgation of new regulations would be useful both to adjudicators and regional center applicants, it remains that we are bound by the current regulation at 8 C.F.R. § 204.6(m), which has not been overturned by a federal court or, for the most part, Congress. Other than Congress' explicit reversal of the program's prior focus on exports, Congress has not expressly negated the provisions set forth at 8 C.F.R. § 204.6(m).

I. Relevant Statute and Regulations

Section 203(b)(5)(A) of the Act, as amended, provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
>
> (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, as amended, provides:

> (a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Attorney General, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States, designated by the Attorney General on the basis of a general proposal,

> for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, 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.
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> * * *
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> (c) In determining compliance with section 203(b)(5)(A)(iii) of the Immigration and Nationality Act, and notwithstanding the requirements of 8 CFR 204.6, the Attorney General shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

As noted by the applicant, Congress added the "general proposal" language and the final sentence of subparagraph (a) discussing "general predictions" in 2002, after the regulation at 8 C.F.R. § 204.6(m)(3) was promulgated. We will address that regulation below.

The regulation at 8 C.F.R. § 204.6(m) provides, in pertinent part:

> (1) *Scope.* The Immigrant Investor Pilot Program is established solely pursuant to the provisions of section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, and subject to all conditions and restrictions stipulated in that section. Except as provided herein, aliens seeking to obtain immigration benefits under this paragraph continue to be subject to all conditions and restrictions set forth in section 203(b)(5) of the Act and this section.

The regulation at 8 C.F.R. § 204.6(m)(3) provides:

> *Requirements for regional centers.* Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the Assistant Commissioner for Adjudications, which:
>
> (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.

The regulation at 8 C.F.R. § 204.6(m)(3)(ii) requires the applicant to provide "verifiable" detail as to how the jobs will be created. Nothing in the 2002 amendments to the pilot program suggests that the general proposal need not have verifiable detail at to how the jobs will be created pursuant to 8 C.F.R. § 204.6(m)(3)(ii). Rather, the Congressional language expresses that the regional center proposal may be based on a general proposal rather than a specific project. "General," however, does not have the same meaning as "vague." The proposal, while general in nature in that it may cover several potential industries, must still provide verifiable detail as to how the jobs will be created in each industry proposed.

Counsel also asserts that USCIS is precluded from requiring the submission of an economic analysis based on commentary published with the final regulation at 59 Fed. Reg. 17920-01 (1994). The commentary states:

> The commenter also recommended that a designated regional center file an Economic Impact Report, which is required by the Small Business Administration for a licensed Small Business Investment Company (SBIC). Although the Service is interested in obtaining any information on the impact of the Pilot Program, there is no authority in the statute for the Service to require an Economic Impact Report.

We do not read this commentary to prevent USCIS from requiring an economic analysis. Rather, given the use of capital letters for "Economic Impact Report," the commentary is merely concluding that there is no authority in the statute that would allow the legacy Immigration and Naturalization Service (INS) (now USCIS) to require the submission of a specific report mandated for SBIC licensure. Nothing in this commentary suggests that USCIS is precluded from requesting a general economic analysis of the proposed regional center.

Counsel also asserts that 8 C.F.R. § 204.6(m)(3) conflicts with 8 C.F.R. § 204.6(m)(7), which states than aliens seeking benefits under section 203(b)(5) of the Act through an investment in a regional center must demonstrate that his or her investment will create jobs indirectly and 8 C.F.R. § 204.6(j)(4)(iii), which states that such an alien may demonstrate indirect job creation through reasonable methodologies. We do not contest that the regional center proposal may be more general that a Form I-526, which must be based on a specific investment. We find no conflict, however, among the regulations cited by counsel. The regulation at 8 C.F.R. § 204.6(j)(4)(iii) states that the alien may utilize reasonable methodologies "including those set forth in paragraph (m)(3) of this section." Thus, the regulation clearly anticipated that the regional center proposal would set forth the methodologies on which the alien would then be able to rely in submitting the Form I-526 petition.

While the applicant notes that USCIS has been urged by outside sources to issue new regulations or precedent decisions, these same sources also encourage USCIS to accept any projections previously submitted at the regional center stage when adjudicating the Form I-526 petitions filed by individual alien investors provided that there has been no material change and absent fraud.[1] USCIS will not abdicate its authority to verify that the regional center proposals are reasonable.

Addressing these concerns at the regional center stage should increase the likelihood that, absent a material change, the aliens who invest in the project will not only be able to obtain conditional permanent resident status but also demonstrate compliance with the requirements to remove conditions on their status through the success of their investment in the regional center. While we recognize that the applicant cannot guarantee the proposed regional center's success, it is not in the interest of USCIS or the aliens who invest in a regional center or consistent with Congressional intent to improve regional productivity to approve a regional center whose general proposal is not demonstrated to be based on a reasonable economic analysis.

II. Analysis

Initially, the applicant indicated that the regional center would focus on the following industries: "energy, alternative energy, bio-recycle, manufacture, process, warehouse, transport, retirement, tourism and related facilities and infrastructure." The applicant indicated more specifically that it would "give priority to bio-fuels, coal gasification, waste recycling, tourist attractions, assisted living and environmental projects." The applicant provided that the two initial projects would consist of a coal gasification project and a small business lending company. The latter project does not appear to fall under any of the above industries.

The applicant submitted a June 11, 2008 Economic Impact Study prepared by [redacted] at Rogers State University. [redacted] asserts that the coal gasification plant "will create 39 jobs directly" and another 35 indirect and induced jobs. [redacted] indicated that he used the Federal Reserve Bank Fiscal Impact Tool to estimate the economic impact of the plant. He further stated

[1] *See* the March 28, 2009 Employment Creation Immigrant Visa (EB-5) Program Recommendations prepared by the USCIS Office of the Ombudsman, incorporated into the record of proceeding.

that other "tools and data are used to enhance the analysis." He did not provide the multipliers or input any of these tools utilize or identify the other tools. Thus, he projected the total direct, indirect and induced jobs for the plant to be 74 jobs.

The applicant also submitted an unattributed analysis of the business lending company that concludes that the company will create 50 direct jobs. Using a "multiplier ratio of 4:1" without explanation as to the source or appropriateness of this ratio, the analysis concludes that the lending company will create 200 indirect jobs and an additional 200 induced jobs, for a total of 450 jobs. Thus, the initial submission projected that the plant and lending company would generate 524 jobs.

In response to the director's first request for additional evidence, the petitioner submitted a document entitled "Overall Economic Impact on the Region." The record does not establish who prepared this document. The analysis once again states that the gasification plant will create 39 direct jobs. The analysis then discusses unidentified "second and third projects" in collaboration wit the Small Business Administration Certified Community Development Corporation. The analysis states that the size of these projects was not yet determined. The analysis references unidentified Small Business Administration studies for the proposition that each business would employ 20 workers. The analysis then states that in addition to the 79 direct jobs (39 + 20 +20), the three projects would generate an additional 70 indirect or induced jobs for a total of "139 jobs." The total of direct and indirect jobs projected actually totals 149 jobs, still far below the 524 jobs initially projected.

In response to a second request for additional evidence, the applicant submitted the following statement from [redacted]:

> The estimated economic impact of the proposed Regional Center is based on the analysis of a projected coal gasification plant conducted in 2008 by Rogers State University. The analysis of the proposed coal gasification plant used the Federal Reserve Board Fiscal Impact Tool (FIT) Kansas City Version. Researchers entered local data to complement the FIT data composed of industrial and regional data and then analyzed the projected impact. In estimating the economic impact of the proposed Regional center, the applicant assumed the impact would be similar based on capital investment.

The applicant then submitted information about the Southwestern Oklahoma State University (SWOSU) Economic Impact Analysis model but conceded that there had been no time to evaluate the gasification plant with this tool.

On appeal, the applicant submits an analysis prepared by SWOSU. The analysis, however, begins with the assumption that the gasification plant would create 80 direct jobs. This is more than double the direct jobs projected in this proceeding prior to the filing of the appeal. The applicant provides no explanation for doubling the number of direct jobs. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice

unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* Moreover, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The analysis submitted on appeal includes a chart listing the number of jobs in various fields that will be created either directly or indirectly both in Oklahoma as a whole and in southeast Oklahoma. The total employment impact for southeast Oklahoma, similar to the geography of the proposed regional center, is 656 employees annually, approximately nine times the original projections for the plant alone (74). The analysis suggests that these numbers were calculated using the REMI model but does not explain why they differ so dramatically from the initial calculation using the Federal [redacted]. The applicant also provided a 2003 SWOSU analysis of [redacted], which appears to be outside the geographic area of the regional center. This analysis does not appear to relate to a proposed regional center project.

While we acknowledge that the applicant need not submit an exemplar project and need only submit a general proposal, the petitioner has not provided a sufficient general proposal. The record is absent any multipliers or tools that will be utilized to project direct, indirect and induced jobs for all of the industries identified in the general proposal. If the gasification plant is submitted as an exemplar, the inconsistencies in the number of direct jobs and the failure of the analysis submitted on appeal to explain the discrepancies between the original and final projections for the coal gasification plant alone prevents USCIS from considering this proposal credible.

For the above stated reasons, considered both in sum and as separate grounds for denial, the proposal may not be approved.

ORDER: The appeal is dismissed.