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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

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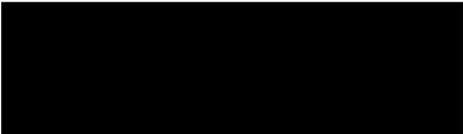


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 18 2011

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:



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, with a fee of \$630. 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,

2 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 applicant had not provided sufficient information as to how it would create jobs directly, which impacts the number of projected indirect and induced jobs. The director also noted certain ambiguities in the applicant's business plan.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's ultimate conclusion that the economic analysis and the exemplar projects provided are insufficient.

I. Relevant Statute and Regulations

Section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5), as amended by Pub. L. No. 107-273, 116 Stat. 1758 (2002), 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.

* * *

(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.

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.

II. Analysis

On appeal, counsel asserts that the director was demanding the type of evidence not required until an alien files a Form I-526 petition based on an investment in a specific regional center project or the regional center seeks preapproval of a specific project.

U.S. Citizenship and Immigration Services (USCIS) is under pressure 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 For example, as will be discussed in more detail below, the applicant claims without support that a “hypothetical” 40-acre greenhouse will create 373 direct jobs. If USCIS were to approve the regional center proposal without evidence to support this job creation claim, the applicant might presume that USCIS, when adjudicating a subsequent Form I-526 based on an investment in an actual greenhouse, could not inquire into how a 40-acre greenhouse can create that number of direct jobs. USCIS will not abdicate its authority to verify that the regional center proposals are reasonable.

Addressing any 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 proposal is not demonstrated to be based on a reasonable economic analysis.

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.

Scope of the Proposed Regional Center

Counsel's proposal states that the regional center would cover the entire state of Nevada and would include investments in the projects within the following industries and economic clusters:

1. Agriculture and Mining
2. Hospitality, Arts, Entertainment, Recreation and Visitor Industries
3. Scientific Research and Technology
4. Manufacturing
5. Energy and Alternative Energy Production
6. Construction and Real Estate Development
7. Education and Knowledge Creation
8. Transportation and Logistics

By requesting approval of the entire state of Nevada as the geographic area for the regional center and including eight industries and economic clusters, the applicant bears the burden of demonstrating how investment in each of the eight areas will impact the economy of the entire state of Nevada. We concur with the director that this burden is a result of the applicant's broad request. Counsel has not explained why USCIS should approve the regional center for all eight industries where the general proposal does not cover each industry. More specifically, the general proposal in this matter covers only agriculture, hospitality, alternative energy production and transportation.

Proposed Regional Center Business Structure

The proposal lists the following services that the applicant will provide:

- Provide seminars and workshops to targeted markets overseas about the Nevada economy and investment opportunities there, as well as basic information about the employment-creation (EB-5) visa program.
- Review business plans for EB-5 Program compliance.
- Provide input into project developers' securities offerings to insure [sic] EB-5 Program compliance.
- Make recommendations regarding asset and investment management.

- Assist investors' immigration lawyers in preparation of employment creation visa petitions and related documentation.
- Provide alternative ways to realize similar goals.

In response to the director's request for additional evidence, counsel asserted:

The [applicant] has adopted the EB-5 compliance consulting services company business model and, as such, will conduct itself as a professional company to provide EB-5 compliance consulting services to investment project developers and to foreign investors. The exemplar investment projects and economic impact analysis previously provided are hypothetical in order to illustrate how the [applicant] would conduct itself and the economic analysis it would employ upon approval of its application by USCIS.

* * *

Because [the applicant] is structured as an EB-5 compliance consulting services company only, the request for project-specific information is not applicable. However, the [applicant] anticipates using escrow accounts established through a limited partnership offering, which would describe the limited partnership as both the "new commercial enterprise" and the "investment vehicle" for the purpose of establishing the flow of foreign investors' funds to the "job-creating entity." This is the same investment structure used by [redacted] [redacted] was approved by USCIS on June 11, 2007.

[redacted] proposal is not before this office. At issue is whether the applicant's proposal is sufficient. While neither the statute nor the regulations state exactly how a regional center entity must be structured or what services it must provide, the applicant cannot demand that USCIS waive the requirements for a regional center simply because the applicant has chosen a business strategy in which it will not be responsible for selecting and structuring the investments. Significantly, the applicant does not identify any of the "investment project developers" or even explain what type of entity will serve as a developer. The applicant also fails to explain how the applicant will attract and select among various prospective developers.

Significantly, the full amount of the requisite investment (\$500,000 or \$1,000,000 depending on the location) must be made available to the business most closely responsible for creating the employment upon which the petition is based. *Matter of Izummi*, 22 I&N Dec. 169, 179 (Comm'r. 1998). As it appears that the applicant plans to delegate the significant duty of preparing business plans and organizing the individual investments, the applicant must also account for the expenses that will be required to engage the services of these "investment project developers" and whether these expenses will be covered by the \$30,000 administrative fee for each alien investor. The record does not contain this information.

Economic Analysis and Job Creation Projections

Initially, the petitioner submitted an Economic Research and Analysis for the Nevada Regional Center Application. [REDACTED] Principal of Edwards Economics, prepared the analysis. [REDACTED] analysis spends several pages discussing how past policy focused on agriculture has failed to improve the economic situation of rural areas in the United States. The importance of attracting investment dollars to rural areas is apparent from congressional mandates of a lower minimum investment amount for rural areas and we do not contest the importance of investing in rural areas. That said, it is still the applicant's burden to provide a business plan explaining how the regional center will create the necessary employment in rural areas and high unemployment areas (defined at 8 C.F.R. § 204.6(e)) as claimed. Moreover, counsel acknowledges that only eight of Nevada's 17 counties qualify as "rural" under the definition of that term at 8 C.F.R. § 204.6(e). Thus, it is the applicant's burden to demonstrate how it will select investments in the non-rural counties that are also included in the requested regional center geographic area.

The analysis goes on to discuss the advantages of clusters for rural economic development in Nevada. Once again, the proposed regional center includes nine counties that are not rural as defined at 8 C.F.R. § 204.6(e). If the applicant wants to include those counties in the regional center, it must provide an economic analysis that encompasses the non-rural counties as well. The analysis does not explain how the alien investment limited partnerships would structure their investments in individual projects. For example, the analysis does not indicate whether they would provide loans to fund the project, would purchase an equity interest in the project or some other means. It would seem that such information is vital to the type of "general proposal" contemplated by Congress.

The petitioner also included four "exemplar" projects. These projects include a greenhouse, an outlet and hotel, a solar energy research facility and an investment in an existing helicopter transport company for development on its land. We accept that these are hypothetical projects that do not represent the actual projects in which the aliens will invest. Nevertheless, it remains that these hypothetical projects must be sufficiently detailed and credible pursuant to 8 C.F.R. §§ 204.6(m)(3)(iv) and (v) if USCIS is to approve the regional center proposal.

The proposal for the Russells Gourmet greenhouse states that it will be a \$3.4 million construction project that will employ 373 direct employees. The proposal then employs multipliers to determine the number of indirect and induced jobs that would be created. We do not question the economic model of using these multipliers. The model, however, can only produce accurate estimates where the input value, the number of direct jobs, is reasonable. The proposal asserts that [REDACTED] advised the applicant that the greenhouse would require 373 direct jobs. The proposal does not explain, however, how [REDACTED] calculated that number or provide a breakdown of what type of jobs these employees would fill. [REDACTED] does not suggest that his economic analysis involved any verification that a 40-acre greenhouse would, in fact, require 373 employees. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 proposal also does not provide a source for its conclusion that \$3.4 million is a reasonable cost for a greenhouse of this size.²

While a general proposal as contemplated by Congress may include hypothetical plans, they may not rely on investment costs and direct employment numbers that have no basis in reality. Extrapolating from the hypothetical plan, it would appear that [REDACTED] analyses of the actual projects will be limited to applying multipliers to unsupported attestations of costs and direct employment rather than analyzing whether those input numbers are reasonable.

The outlet mall and hotel hypothetical project suffers from similar problems. [REDACTED] projects the number of employees for the hotel without even projecting what size hotel could be constructed for the \$55 million that also includes outlet construction. Once again, USCIS is not requiring the applicant to “make up” numbers but rather to provide a realistic estimate of the hotel size that could be constructed with the funds remaining after constructing the outlet. Otherwise the direct employment projections and, therefore, the indirect and induced employment projections, are meaningless.

The proposal states that the EnviroSun research and development project would cost approximately \$12 million and create 55 manufacturing jobs and 32 research and development jobs. The director questioned the source of these estimates. On appeal, counsel asserts that if a plan for this project existed, the applicant would have submitted it. Counsel asserts that the director provides no basis for questioning the above numbers. We acknowledge that the EnviroSun project was only submitted as a “hypothetical.” The proposal, however, would have been bolstered by providing an example of a similar completed project with similar costs and job requirements or some other basis for reaching these estimates.

As noted by the [REDACTED] proposal relies on job preservation in addition to job creation. The proposal indicates that the regional center would invest in the construction of “a high end resort, small equestrian ranches or country cabins.” [REDACTED] does not explain the amount required for this investment or why these three very different alternatives would result in similar employment projections.

[REDACTED] April 30, 2002, available for download from the website of the Center for Integrated Pest Management (CIPM) at North Carolina State University, expressly projects that a large greenhouse requires two to three employees per acre in the greenhouse and one employee per acre in the packing area. See <http://cipm.ncsu.edu/cropTimelines/pdf/USgreenhousetomato.PDF> (accessed November 24, 2010 and incorporated into the record of proceeding). According to this information, a 40-acre greenhouse would employ, at most, 160 direct employees, less than half of Russells Gourmet’s estimate. We note this information not as definitive but as an example of the type of information that should support even a hypothetical plan if that plan is to be deemed credible. Similarly, in 2009, Houweling unveiled its \$50 million 40-acre greenhouse. See <http://thepacker.com/Houweling-to-unveil-new-greenhouse-in-May/Article.aspx?oid=274006&fid=PACKER-CROPS-AND-MARKETS&aid=342> (accessed November 24, 2010 and incorporated into the record of proceeding). Once again, while the \$50 million price tag for the Houweling 40-acre greenhouse is not the definitive cost for any 40-acre greenhouse, the hypothetical plan lacks any explanation as to how the regional center could fund a 40-acre greenhouse for only \$3.4 million.

In the request for additional evidence, the director inquired as to whether the [redacted] intended to rely on job preservation in a troubled business or new jobs through the expansion of an existing business. In response, counsel states:

[If the applicant] selects [redacted] to be funded through [redacted] will likely be treated by [the applicant] as both a “troubled business” and an “expansion of an existing business,” but [redacted] will not be submitted to the [director] for pre-approval until a formal accounting statement is ordered to determine for certain that it is a “troubled business.”

The director concluded that the applicant had not provided the amount of capital required for this project or the number and type of jobs to be saved. The director further concluded that the response to the request for additional evidence did not resolve whether this investment would be structured as an investment in a troubled business.

On appeal, counsel asserts that the applicant should be able to count jobs saved at a troubled business in addition to those created through an expansion of a troubled business. We concur with counsel insofar as the applicant need not demonstrate that [redacted] is a troubled business at this stage because the applicant is not yet seeking approval for this project as an exemplar. Nevertheless, it remains of concern that the proposal lacks any discussion of the amount of investment that might be required in this project or the type of jobs that might be saved or created.

Ultimately, while we acknowledge that the projects discussed in the proposal are “hypothetical,” [redacted] provides no reliable source for his statements of the investment amounts and the direct jobs required, the major input data for his analyses. Thus, we cannot evaluate whether the proposal is relying on reasonable projections as required under 8 C.F.R. §§ 204.6(m)(3)(iv) and (v).

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.