

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(4)

DATE **SEP 05 2014** OFFICE: IMMIGRANT INVESTOR PROGRAM

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Regional Center Under the Immigrant Investor Pilot Program Pursuant to Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1874 (1992).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Chief, Immigrant Investor Program, denied the application 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 filed Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program seeking designation as a regional center as [REDACTED], pursuant to section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1828 (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); section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002); section 4 of Pub. L. No. 108-156, 117 Stat. 1944 (2003); and section 1 of Pub. L. No. 112-176, 126 Stat. 1325 (2012) (1993 Appropriations Act). The applicant stated initially that the regional center “will be used to facilitate only the [Form] I-526 [Immigrant Petition by Alien Entrepreneur] for application of one high net worth foreign alien [the applicant’s sole member],” who is unable to “apply on an individual basis” because his investment in a leased airport hangar during his stay as an E-2 nonimmigrant investor has created only indirect jobs.

The chief denied the application, determining that the proposal did not demonstrate in verifiable detail how jobs will be created indirectly and did not describe how it will promote economic growth. On appeal, the applicant has not overcome any of the chief’s grounds for denial. As an additional issue, the applicant has not demonstrated that its regional center proposal is consistent with the purpose of concentrating pooled investment as required by statute. The appeal is dismissed.

I. THE LAW AND REGULATIONS

Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1993 (“1993 Appropriations Act”), as amended, sets aside employment creation visas under section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5), for a program in which U.S. Citizenship and Immigration Services (USCIS) designates regional centers with jurisdiction over a limited geographic area to promote economic growth. The statute, as amended, explains that “a regional center shall have jurisdiction over a limited geographic area, which shall be described in [a] proposal and consistent with the purpose of concentrating pooled investment in defined economic zones.” *Id.* The same law provides that “[t]he 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.” *Id.*

The regulation at 8 C.F.R. § 204.6(e) defines a regional center as “any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.” The regulation at 8 C.F.R. § 204.6(m)(3)(i) provides, in pertinent part, that a regional center proposal must include “in verifiable detail how jobs will be created indirectly.”

II. ANALYSIS

A. Job Creation

The applicant does not propose a future project. Instead, the proposal focuses on existing employment on property at the [REDACTED] that [REDACTED] currently subleases to another employer. Following adjustments in ownership of the relevant property due to a Base Closure and Realignment in 1992, in May 2001, [REDACTED] obtained an option to purchase a leasehold for the portion of the airport property containing a newly built hangar. [REDACTED] is currently subleasing the hangar to [REDACTED]. According to the initial business plan, [REDACTED] the entity from which [REDACTED] obtained the leasehold, completed the hangar on the leasehold property in August 2001. The applicant claimed that “[t]he total new permanent jobs created has settled between 18-25 people that operate from this hangar alone,” and that the jobs that were created were for pilots, flight attendants, maintenance personnel, and security. According to the applicant’s business plan, [REDACTED] venture at the hangar created new indirect jobs rather than transferring jobs from another location. The applicant further explained that the positions have remained stable such that the regional center will be able to demonstrate at least 10 jobs at the hangar.

In response to the director’s request for evidence, the applicant explained that many of the questions on the Form I-924 did not apply because “the jobs were already in place.” The applicant further asserted that it would be inappropriate to request a study pertaining to future job creation for the same reason. The applicant also submitted an “Economic Benefit Analysis: FY2010 [REDACTED] that did not reflect an economic benefit analysis of the single hangar [REDACTED] subleases and [REDACTED] operates; rather it reflected an analysis of the [REDACTED] as a whole for fiscal year 2010. In response to the director’s notice of intent to deny (NOID), the applicant’s managing member claimed that “[c]reating more new jobs is not viable under the current scenario since this project would be considered to be at full capacity, and it would not be reasonable for me to assume, or assure you that any additional new employment would be created from this date forward.”

In response to the director’s email requesting clarification, the applicant submitted an email from [REDACTED], [REDACTED] Business Analyst for [REDACTED], who stated that “in the summer of 2001 [an undisclosed number of] full time people began working in the hangar” and “[w]e have held an average of 29 full time jobs at the hangar for the past 12 years.” The applicant also submitted an “Economic Impact Analysis: Fiscal Year 2013” that again reflected the economic impact of the [REDACTED] rather than the economic impact of the hangar that [REDACTED] subleases to [REDACTED]. Accordingly, the initial filing and responses to the NOID and USCIS email did not indicate the amount of jobs [REDACTED] had created or the projected number of jobs that [REDACTED] would create.

The chief denied the application determining that “the applicant’s assertion that jobs created in 2001 can be []credited to the regional center is unfounded.” On appeal, the applicant claims that the chief did not cite any statutes or regulations to support his decision, and the chief incorrectly assumed that only jobs created going forward from this time are “new.” By statute, a regional center is designated by USCIS “on the basis of a general *proposal*, for the promotion of economic growth.” Section 610(a) of the 1993 Appropriations Act, as amended (emphasis added). Moreover the general proposal “may be based

upon general *predictions* . . . 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 other positive economic effects such capital investments *will* have.” *Id.* (emphasis added). By regulation, a regional center is required to show prospective benefits, including job creation. The regulations provide that an applicant shall submit a proposal that clearly describes how the regional center “will” promote economic growth through job creation. 8 C.F.R. § 204.6(m)(3)(i). An applicant shall also submit a proposal that provides verifiable details about how jobs “will” be created indirectly. 8 C.F.R. § 204.6(m)(3)(ii). A proposal shall be submitted that details predictions on how a regional center “will” have a positive impact on the regional or national economy. 8 C.F.R. § 204.6(m)(3)(iv). Once designated, a regional center must annually update USCIS with information demonstrating that it “continue[s] to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area.” 8 C.F.R. § 204.6(m)(6). USCIS may terminate a designated regional center that no longer serves the purpose of promoting job creation. *Id.* Once a regional center is approved, an alien investor must show that such investment “will” create jobs indirectly from the new commercial enterprise. 8 C.F.R. § 204.6(m)(7). In addition, the instructions to the Form I-924, page 2, item 5, require a general prediction regarding the “prospective impact” of the proposed regional center projects. *Compare* 8 C.F.R. § 204.6(j)(4)(A) (requiring evidence to support the filing of a Form I-526 by an investor to demonstrate that at least 10 full-time positions have already been created following the establishment of a new commercial enterprise).

The applicant did not project any additional direct or indirect jobs would be created beyond those jobs created in 2001 or that there would be additional capital investment in the commercial enterprise. Therefore, upon approval, the regional center would not create any future jobs; it is exclusively relying on previously created indirect jobs. Although the applicant on appeal relies on the regulation at 8 C.F.R. § 204.6(j)(4)(i)(A) for the assertion that a regional center need not project future investment or job creation, that regulation pertains to the Form I-526 that an investor may file once USCIS approves the regional center. The applicant did not establish how the *regional center* will promote economic growth through job creation and how jobs will be created indirectly pursuant to the regulation at 8 C.F.R. § 204.6(m)(3)(i).

On appeal, the applicant also relies on language from *Operational Guidance for EB-5 Cases Involving Tenant-Occupancy*, GM-602-0001 (Dec. 20, 2012) to support the proposition that a regional center proposal need not create any new jobs and can rely on existing jobs. Specifically, the applicant noted that the guidance memorandum provides that applicants and petitioners must “project the number of newly created jobs that would not have been created but for the economic activity of the EB-5 commercial enterprise.” However, the applicant’s reliance on a statement taken out of context ignores the regulatory requirements for regional centers, specifically the requirement to “promote economic growth through increased export sales, improved regional productivity, job creation, or increased domestic capital investment” at 8 C.F.R. § 204.6(m)(3)(i).

B. Promotion of Economic Growth within the Selected Geographic Area

Section 610(a) of the 1993 Appropriations Act, as amended, provides that a regional center shall have jurisdiction over a limited geographical area for the promotion of economic growth, including increased

export sales, improved regional productivity, job creation, or increased domestic capital investment. The regulation at 8 C.F.R. § 204.6(m)(3)(i) provides that a regional center shall submit a proposal that clearly describes how it will focus 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.

As previously discussed, the “Economic Benefit Analysis: FY2010 [REDACTED],” and “Economic Impact Analysis: Fiscal Year 2013” reflect only the economic impact of the [REDACTED]. They do not reflect how [REDACTED] would promote economic growth within the geographic area. In fact, neither analysis mentions [REDACTED]. On appeal, the applicant’s managing member claims that the original economic impact study “was specific to employment and economic benefits related exclusively to our airport location,” and that he personally compiled a table claiming that the revenue sources, earnings sources, and employment sources were related to [REDACTED] jobs.

The applicant’s revised table purportedly relates to economic benefits from [REDACTED] within the “Airport Service Area.” On the Form I-924, however, the applicant does not define the geographic area of the proposed regional center other than to provide the location of the [REDACTED] hangar. As the applicant has not defined the geographic boundaries of the proposed regional center, the applicant has not established that the revised table is relevant. Moreover, the applicant has not provided any documentation in order to support his economic multipliers, one of which differs from the similar chart in the initial economic analysis. The applicant also does not explain the source of the visitor spending, wage, on-airport benefits, and visitor benefits’ numbers, which drive his calculation of secondary economic benefits using multipliers. In fact, the applicant’s managing member stated in his appellate statement that he “was only able to personally substantiate the building rental since [he did] not have detailed information on the additional spending required to keep the jets operational on a daily basis.”

At the initial filing of the application, the applicant did not claim any intention to purchase additional hangars or to expand [REDACTED]. In response to the chief’s NOID, the applicant’s managing member claimed that his “only option at this stage to help preserve these existing jobs is by making [REDACTED] an attractive term offer for lease extensions.”¹ The applicant claims no further plans to expand [REDACTED] offer any new projects, or create any further jobs; rather, the applicant claimed it would maintain the 2001 staffing levels. Accordingly, the applicant has not demonstrated that the regional center will promote economic growth pursuant to the regulation at 8 C.F.R. § 204.6(m)(3)(i).

¹ At the time of the applicant’s interview, the applicant’s managing member claimed that he was thinking of purchasing additional hangars and was in negotiations with three other companies. On appeal, the applicant’s managing member states that this “potential purchase . . . would not have been an addition to the [REDACTED] regional center application for many reasons,” and was “not related to the [REDACTED] current application.” Accordingly, the possibility that the applicant’s managing member might purchase additional hangars is not probative to whether the applicant will promote economic growth.

C. Pooled Investment

Beyond the chief's decision, the applicant's proposal is not consistent with the purpose of concentrating pooled investment.² Section 610(a) of the 1993 Appropriations Act, as amended, provides that "[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 Immigrant Investor Program was implemented with the goal of spurring greater economic growth in the geographic area in which the regional center is developed. *EB-5 Adjudications Policy*, PM-602-0083, p. 14 (May 30, 2013). The employment creation requirements for an investor under the program are essentially the same as in the standard employment creation investor program, except investments made through regional centers can take advantage of a more expansive concept of job creation including both direct and indirect jobs. 8 C.F.R. §§ 204.6(e), 204.6(j)(4)(iii), and 204.6(m)(7)(ii). It is investments with the potential for greater regional economic growth from a pooled investment that allow an investor to rely on indirect job creation.

The applicant has maintained throughout this proceeding, including on appeal, that the applicant's managing member will be the only investor, and he has no intention of pooling funds from other investors. The applicant seeks approval for a regional center so that the managing member can then file Form I-526 based on his previous investment located within what would become a regional center and use the existing indirect jobs. As the applicant's managing member will be the sole investor, and the proposal does not include any plans for future investors or project the need for additional capital, the proposal is not "consistent with the purpose of concentrating pooled investment." Section 610(a) of the 1993 Appropriations Act, as amended. Therefore, the applicant's proposal does not meet the requirements for a regional center pursuant to the statute.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.

² We may dismiss an appeal on an application that fails to comply with the technical requirements of the law even if the underlying decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).