

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Immigrant Investor Program
131 M Street, NE, MS 2235
Washington, DC 20529



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

TO:

Guam Strategic Development Regional Center
John Ryan
Pan Am Building
139 Murray Blvd. Suite 100
Hagatna, GU 96910
GUAM

DATE: July 7, 2017

Application: Form I-924

A-Number:

File: ID1031910094 / RCW1031910094

NOTICE OF TERMINATION

This letter shall serve as notification that U.S. Citizenship and Immigration Services (“USCIS”) has terminated the designation of Guam Strategic Development Regional Center (the “Regional Center”) as a regional center under the Immigrant Investor Program (the “Program”) pursuant to Title 8 of the Code of Federal Regulations (“8 C.F.R.”) section 204.6(m)(6). The reasons for the termination are explained, below:

(SEE ATTACHED)

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

The Regional Center must send the completed Form I-290B and supporting documentation with the appropriate filing fee to the address indicated below.

If using the U.S. Postal Service:

USCIS
P.O. Box 660168
Dallas, TX 75266

If using USPS Express Main/Courier:

USCIS
Attn: I-290B
2501 S. State Highway 121 Business
Suite 400
Lewisville, TX 75067

For an appeal, the Regional Center may request additional time to submit a brief within 30 calendar days of filing the appeal. Any brief, written statement, or evidence in support of an appeal that is not filed with Form I-290B must be directly sent within 30 days of filing the appeal to:

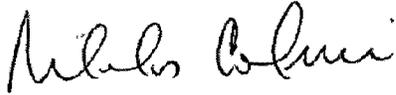
USCIS Administrative Appeals Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS 2090

Guam Strategic Development Regional Center – **Designation Terminated**
ID (formerly ID1031910094)
RCW1031910094
Page 2

Washington, DC 20529-2090

For more information about the filing requirements for appeals and motions, please see 8 C.F.R. § 103.3 or 103.5, or visit the USCIS website at www.uscis.gov.

Sincerely,



Nicholas Colucci
Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on April 26, 2016

cc: Michele Franchett
Stone, Grzegorek & Gonzalez LLP
800 Wilshire Blvd. Suite 900
Los Angeles, CA 90017

NOTICE OF TERMINATION
Termination of Regional Center Designation Under the Immigrant Investor Program
Guam Strategic Development Regional Center

The regulation at 8 C.F.R. § 204.6(m)(6) (*Continued participation requirements for regional centers*) provides:

(i) Regional centers approved for participation in the program must:

(A) Continue to meet the requirements of section 610(a) of the Appropriations Act.

(B) Provide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area, using a form designated for this purpose; and

(C) Pay the fee provided by 8 CFR 103.7(b)(1)(i)(XX).

(ii) USCIS will issue a notice of intent to terminate the designation of a regional center in the program if:

(A) A regional center fails to submit the information required in paragraph (m)(6)(i)(B) of this section, or pay the associated fee; or

(B) USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

(iii) A notice of intent to terminate the designation of a regional center will be sent to the regional center and set forth the reasons for termination.

(iv) The regional center will be provided 30 days from receipt of the notice of intent to terminate to rebut the ground or grounds stated in the notice of intent to terminate.

(v) USCIS will notify the regional center of the final decision. If USCIS determines that the regional center's participation in the program should be terminated, USCIS will state the reasons for termination. The regional center may appeal the final termination decision in accordance with 8 CFR 103.3.

(vi) A regional center may elect to withdraw from the program and request a termination of the regional center designation. The regional center must notify USCIS of such

election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its decision regarding the withdrawal request in writing.

I. Procedural History

On January 15, 2010, USCIS designated and authorized the Regional Center’s participation in the Program. On April 26, 2016, USCIS issued a Notice of Intent to Terminate (“NOIT”) to the Regional Center which afforded the Regional Center 30 days from receipt of the NOIT to offer evidence in opposition to the grounds alleged in the NOIT. On June 21, 2016, USCIS received a response to the NOIT (the “NOIT Response”), which did not sufficiently address the grounds alleged in the NOIT. Accordingly, USCIS has determined that the Regional Center’s participation in the Program should be terminated. Pursuant to 8 C.F.R. § 204.6(m)(6)(v) and through this Notice of Termination, USCIS hereby terminates the Regional Center’s participation in the Program.

II. Reasons for Termination

USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment as required by 8 C.F.R. § 204.6(m)(6).

A. Failure to Continue to Serve the Purpose of Promoting Economic Growth

Regional centers are designated for the promotion of economic growth and must continue to meet the requirements of section 610(a) of the Appropriations Act as amended, and promote economic growth in a manner that does not conflict with requirements for classification under section 203(b)(5) of the Immigration and Nationality Act (“INA”), removal of conditions on lawful permanent residence under section 216A of the INA, and implementing regulations following their designation. According to section 610(a) of the Appropriations Act, economic growth includes increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *See also* 8 C.F.R. § 204.6(m)(6)(ii) (“USCIS will issue a notice of intent to terminate the designation of a regional center in the program if . . . USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.”).

The reasons why a regional center may no longer serve the purpose of promoting economic growth are varied and “extend beyond inactivity on the part of a regional center.” 75 FR 58962. For example, depending on the facts, a regional center that takes actions that undermine investors’ ability to comply with EB-5 statutory and regulatory requirements such that investors cannot obtain EB-5 classification through investment in the regional center may no longer serve the purpose of promoting economic growth. *See* Section 610(a)-(b) of the Appropriations Act (stating that one purpose of a regional center is to concentrate pooled investment in defined economic zones and accomplishing such pooled investment by setting aside visas for aliens classified under INA 203(b)(5)). Likewise, a regional center that fails to

engage in proper monitoring and oversight of the capital investment activities and jobs created or maintained under the sponsorship of the regional center may no longer serve the purpose of promoting economic growth in compliance with the Program and its authorities.

When derogatory information arises (such as evidence of inaction, mismanagement, theft, or fraud by the regional center or related entities), USCIS weighs all relevant factors in the totality of the circumstances to determine whether the regional center is continuing to serve the purpose of promoting economic growth. Such factors may include the seriousness of the derogatory information, the degree of regional center involvement in the activities described in the derogatory information, any resulting damage or risk imposed on investors and the economy, as well as any mitigating, corrective, or restorative actions taken or forthcoming to redress the situation.

USCIS has considered all evidence in the record including evidence provided in response to the NOIT “for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence.” in determining whether the Regional Center’s continued participation is justified under the regulations by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). For the reasons set forth below, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

1. Lack of Regional Center Activity

As noted in the NOIT, the Regional Center’s Form I-924A filings¹ for fiscal years 2011, 2012, 2013, 2014, and 2015 do not report any EB-5 capital investment or job creation. In addition, although USCIS designated the Regional Center on January 15, 2010, the Form I-924A filings do not report any pending or approved Forms I-526 filed by petitioners who have made or are actively in the process of making investments associated with the Regional Center.

In the NOIT Response, the Regional Center provided the following evidence:

- Copy of a USCIS Decision Re: Reaffirmation of Regional Center Designation, dated December 14, 2015;
- Letter from John Ryan, General Manager of the Regional Center, dated May 26, 2016;
- Activity log for the Regional Center, dated from October 2015 to May 2016;

¹ The Regional Center filed a Form I-924A for fiscal year 2016 on December 21, 2016 (receipt number RCW1700355153), so it was not included in the NOIT issued on April 26, 2016. USCIS notes that the filing for fiscal year 2016 also shows no EB-5 capital investment or job creation and no pending or approved Forms I-526 filed by petitioners who have made or are actively in the process of making investments associated with the Regional Center.

Guam Strategic Development Regional Center – **Designation Terminated**

ID (formerly ID1031910094)

RCW1031910094

Page 6

- Letter from Senator Dennis G. Rodriguez, Jr., dated December 10, 2015;
- Criminal History Record from Guam Police Department, Records and Identification Section, for John Ryan, dated December 11, 2015;
- Draft exclusivity agreement between the Regional Center and Guam WangFang Construction, Ltd., dated May 24, 2016;
- Copy of an article from GuamPDN.com, dated April 30, 2016;
- Copy of a Notice of Action from Guam Land Use Commission, dated May 3, 2016;
- Copy of a website promoting the China Beijing International Overseas Property Investment and Immigration Show for October 17-19, 2015;
- Copy of Pago Bay Harbor Resort project proposal flyer, undated;
- Copy of Economic Impact of Developing and Operating a 300-Unit Condominium to be Operated as a Hotel, Located in Pago Bay, Guam, as part of an EB-5 Regional Center for Guam, prepared for Dacheng Law Offices, by Evans, Carroll & Associates, Inc., dated November 4, 2015;
- Copy of a Business Overview presentation for Northgate Market Place, dated August 2015;
- Copy of North Gate Business Plan, dated December 2015;
- Copy of a Teaming Agreement and Mutual Confidentiality and Non-Disclosure Agreement between the Regional Center and Northern Market, LLC, dated January 12, 2016;
- Copy of a presentation for Wellness Living for Guam's Seniors, undated;
- Copy of a Mutual Confidentiality and Non-Disclosure Agreement between the Regional Center and Magas Patriot Group, LLC, dated March 16, 2016;
- Copies of two news articles various sources, relating to activities of Magas Patriot Group, LLC, dated November 19, 2015 and May 1, 2016, respectively;
- Copy of an assisted living facility for the elderly project proposal flyer, undated;
- Copy of a draft of Micronesian World and Entertainment Center Business Plan, undated;
- Copy of Micronesian World and Entertainment Center project proposal flyer, undated;
- Copy of a letter from Tor Gudmundsen, President of TG Engineers, PC, dated April 12, 2016, regarding a project titled Takano Towers;

Guam Strategic Development Regional Center – **Designation Terminated**

ID (formerly ID1031910094)

RCW1031910094

Page 7

- Copy of a letter from the Regional Center to First Hawaiian Bank, regarding Takano Project, dated February 22, 2016;
- Copy of a Notice of Action from Guam Land Use Commission, Department of Land Management, dated November 19, 2009;
- Copy of a Takano Twin Towers promotional flyer, undated;
- Letter from Benson Au-Yeung, President of the Chinese Chamber of Commerce of Guam, undated;
- Copy of a Memorandum of Understanding between the Regional Center and Guam Economic Development Authority, dated June 2012;
- Copy of a promotional flyer for the Regional Center, undated;
- Copy of a blank Mutual Confidentiality and Non-Disclosure Agreement for the Regional Center;
- Copy of a blank Teaming Agreement for the Regional Center;
- Copy of a EB5 Business Plan Matter of Ho document and investor questionnaire outline;
- Copy of a Teaming Agreement and Mutual Confidentiality and Non-Disclosure Agreement between the Regional Center and Purestone, LLC, dated July 27, 2015 and July 14, 2015, respectively;
- Copy of a Teaming Agreement and Mutual Confidentiality and Non-Disclosure Agreement between the Regional Center and Gist Capital, Ltd., dated October 25, 2015 and October 9, 2015, respectively; and
- Copy of a Mutual Confidentiality and Non-Disclosure Agreement between the Regional Center and Ambros Inc., dated July 31, 2015.

In the NOIT Response, John Ryan, the General Manager of the Regional Center, indicated that the Regional Center was involved in several proposed projects, including Pago Bay Marina Resort and Takano Towers. The Regional Center also provided evidence related to projects titled North Gate Market Place, Micronesian World and Entertainment Center, and an unnamed assisted living facility for the elderly. Additionally, the Regional Center provided copies of letters and agreements with Purestone, LLC, Gist Capital, Ltd., and Ambros Inc. However, none of the evidence in the record shows that the Regional Center's activities have resulted in the promotion of economic growth. The various projects and issues are described in detail, below.

The Regional Center also provided evidence that generally relates to its activities such as a memorandum of understanding it entered into with Guam Economic Development Authority in 2012, copies of

templates for agreements it would use with prospective partner entities, evidence that it has attended promotional events, copies of the activity logs for the Regional Center’s meetings and communications, and a letter from the Chinese Chamber of Commerce of Guam generally agreeing that immigration-based investment projects were good for Guam. While this evidence shows that the Regional Center is engaged in discussions and events that could lead to the promotion of economic growth, there is no evidence showing that any of the Regional Activities have actually resulted in the development of any job-creating projects since its initial approval on January 15, 2010.

a. Pago Bay Marina Resort

Regarding the Pago Bay Marina Resort project (the “Pago Bay project”), Mr. Ryan explained that the Regional Center was in the process of “finalizing the negotiation of an Exclusivity Agreement with Guam Wang Fang to market [the Pago Bay Marina Resort project].” The Pago Bay project is described as a “condominium building in Pago Bay, Guam, that will be operated as a hotel.” Mr. Ryan also stated that the Regional Center would form a Limited Liability Partnership (an “LLP”) to serve as the new commercial enterprise for EB-5 purposes and then promote the Pago Bay project, obtain investors, and facilitate the filing of the EB-5 investors’ I-526 petitions.

To support this assertion, the Regional Center provided copies of a draft agreement with the Pago Bay project’s developer, Guam Wang Fang Construction, a copy of the Guam Land Use Commission’s conditional zoning approval for the Pago Bay project, news articles related to the development of the Pago Bay project, related promotional materials, and an Economic Impact of Developing and Operating a 300-Unit Condominium to be Operated as a Hotel, Located in Pago Bay, Guam, as part of an EB-5 Regional Center for Guam, prepared for Dacheng Law Offices, by Evans, Carroll & Associates, Inc. (the “economic analysis”).

While it is clear that the Regional Center is in the process of promoting the Pago Bay project, it has not established that it has actually engaged with the developer or that the project is viable. The agreement with Guam Wang Fang Construction is merely a draft exclusivity agreement and it is unsigned by either party. The promotional materials do not provide any substantive detail of the Pago Bay project, its construction timeline, or evidence of any progress on the construction or operation of the Pago Bay project.

The economic analysis indicates that the Pago Bay project will be [REDACTED]

(b)(4)

[REDACTED] However, the Notice of Action from Guam Land Use Commission, dated May 3, 2016, indicates that the Pago Bay project building would be smaller than the size stated in the economic analysis. The zoning approval also indicated that, as a condition of obtaining the approval, the developer would be required to obtain a building permit no later than May 10, 2017 or the approval would be rescinded.

In a February 23, 2017 article from The Guam Daily Post², the Pago Bay project’s developer indicated that the project will no longer be a single tower or hotel, but rather will be constructed as “two ‘mid-rise’ condominium structures at 11 and 12 stories each with 232 residential units.” The article also states that the budget of the Pago Bay project has been reduced from \$120 million to \$90 million.

A May 25, 2017 article from The Guam Daily Post³ describes some of the difficulties the developer has had in constructing the Pago Bay project, including delays in obtaining building permits and ongoing litigation related to the zoning approval. The article notes that, as of May 25, 2017, the developer had not obtained the required building permits and was awaiting a decision of the Guam Land Use Commission regarding its request to extend the approval period.

Due to the apparent significant changes in the Pago Bay project and the lack of evidence showing that it will be constructed or create the required number of jobs, the Regional Center has not established that it has promoted economic growth through the Pago Bay project or that it will do so in the future.

b. Takano Towers

Like the Pago Bay project, the Regional Center asserts that it is engaged in promoting a project called Takano Towers. The Regional Center provided a copy of the Guam Land Use Commission’s zoning approval for the Takano Towers project from 2009. However, the correspondence between the Regional Center and First Hawaiian Bank and TG Engineers, Inc., indicates that the Regional Center believed the zoning approval was expired, and had reached out to a company to either renew the zoning approval or file a new application. The Regional Center did not provide any evidence to show that it had engaged with a developer or that there was a proposed budget, a business plan, any timeline for construction, or plan to obtain investors in the Takano Towers project. Without evidence showing that the Takano Towers project is in development, the Regional Center has not established that it has promoted economic growth through the Takano Towers project or that it will do so in the future.

c. Micronesian World and Entertainment Center

The Regional Center provided materials related to the Micronesian World and Entertainment Center (“MWEC”), a proposed cultural education and entertainment center in Guam. The Regional Center provided a draft business plan for MWEC, with many features still blank or requiring further detail as dictated in the notes and parenthetical statements throughout, but no indication that the Regional Center has actually engaged with the developers of MWEC. The draft business plan indicates that some EB-5 investment will be involved, but the details of that investment are not included in the business plan or promotional materials.

² <https://www.postguam.com/news/local/pagobaydeveloperexplainsubstantialchangesinplan/>, “Pago Bay developers explain substantial changes in plan,” The Guam Daily Post, February 23, 2017, last accessed June 26, 2017.

³ <https://www.postguam.com/news/local/litigationloomsinpagobayextensionrequest/>, “Litigation looms in Pago Bay extension request,” The Guam Daily Post, May 25, 2017, last accessed June 26, 2017.

d. North Gate Marketplace

Evidence in the record shows that the Regional Center entered into a Teaming Agreement and a Mutual Confidentiality and Non-Disclosure Agreement with Northern Market, LLC, who plans to develop a retail facility in Guam. The Regional Center provided a copy of a promotional presentation and business plan related to Northgate Market Place (“Northgate”). The promotional presentation indicates that the project would receive HUD approval and financing commitments in late 2015, with construction beginning in the first quarter of 2016, with leasing activities throughout. However, an article from January 26, 2017 in The Guam Daily Post⁴ indicates that Northgate has not begun construction and that its developers are engaged in a dispute over the size of the land where Northgate will be developed. Another article, from February 13, 2017⁵, states that Northgate “is still in its early stages.”

e. Assisted Living Facility for the Elderly

The Regional Center provided evidence showing that it has entered into a Mutual Confidentiality and Non-Disclosure Agreement with Magas Patriot Group, LLC (“MPG”). According to evidence in the record, MPG is in the early stages of developing a yet-unnamed assisted living facility for the elderly. The Regional Center provided promotional materials and news articles related to the MPG project, but there is no evidence of a proposed budget, a business plan, any timeline for construction, or plan to obtain investors in the MPG project. Additionally, the Regional Center did not provide evidence that it has entered into a “Teaming Agreement” or memorandum of understanding with MPG.

f. Other projects

The Regional Center submitted copies of Teaming Agreements and Non-Disclosure Agreements that it has entered into with companies including Purestone, LLC, Gist Capital, Ltd., and Ambros Inc. Other than the boilerplate agreements in the record, there is no evidence showing that any of these prospective partners has any projects in development or that the Regional Center is involved beyond the most preliminary engagements, as represented by these agreements.

g. Summary

While the Regional Center has provided substantial evidence showing that it has been in discussions with several prospective partners regarding the development of various projects in Guam, there is no evidence that any of that activity has resulted in or will result in the promotion of economic growth. The most substantial evidence of any projects currently in development, the Pago Bay project, lacks sufficient detail regarding its proposed size, construction timeline, budget, and its ability to obtain required permits and

⁴ <https://www.postguam.com/news/local/shopping-center-developer-seeks-reduced-rent/>, “Shopping center developer seeks reduced rent,” The Guam Daily Post, January 26, 2017, last accessed June 26, 2017.

⁵ <https://www.postguam.com/news/local/economic-boom-expected-along-route/>, “Economic boom expected along Route 3,” The Guam Daily Post, February 13, 2017, last accessed June 26, 2017.

licenses, so it is unclear whether it will ever be developed. The remainder of the projects that the Regional Center has described are in the earliest development stages, have stalled, or appear to be mere ideas for future projects. In all, the Regional Center has failed to show—in more than seven years since its initial designation as a regional center under the EB-5 program—that it has promoted economic growth by providing evidence of increased export sales, improved regional productivity, job creation, or increased domestic capital investment.

In the absence of evidence of increased export sales, improved regional productivity, job creation, or increased domestic capital investment, USCIS concludes that the Regional Center no longer serves the purpose of promoting economic growth.

III. Conclusion

For the reasons described above and set forth in the NOIT and pursuant to 8 C.F.R. 204.6(m)(6), USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth and hereby terminates the Regional Center’s participation in the Program.

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

The Regional Center must send the completed Form I-290B and supporting documentation with the appropriate filing fee to the address indicated below.

If using the U.S. Postal Service:

USCIS
P.O. Box 660168
Dallas, TX 75266

If using USPS Express Main/Courier:

USCIS
Attn: I-290B
2501 S. State Highway 121 Business
Suite 400
Lewisville, TX 75067

For an appeal, the Regional Center may request additional time to submit a brief within 30 calendar days of filing the appeal. Any brief, written statement, or evidence in support of an appeal that is not filed with Form I-290B must be directly sent within 30 days of filing the appeal to:

USCIS Administrative Appeals Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

Guam Strategic Development Regional Center – **Designation Terminated**

ID (formerly ID1031910094)

RCW1031910094

Page 12

For more information about the filing requirements for appeals and motions, please see 8 C.F.R. § 103.3 or 103.5, or visit the USCIS website at www.uscis.gov.