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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
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 10 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:
[Redacted]

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,

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 sufficiently explained the regional center's projected positive impact on the regional or national economy in general. In addition, the director concluded that the applicant had not sufficiently explained what type of jobs would be created or provided the job creation multipliers used for all industries identified. Finally, the director questioned the conclusion that the 21.2 direct jobs would be for jobs requiring 167 hours per week, which could then be multiplied by four shifts.

On appeal, the applicant provides a new economic analysis. For the reasons discussed below, the applicant has not overcome all of the director's concerns. In addition, a review of the proposed limited partnership agreement reveals terms that are problematic.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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).

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 by section 116 of Pub. Law 105-119 (1998), section 402 of Pub. Law 106-396 (2000) and section 11037 of Pub. Law 107-273 (2002), 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.

II. Analysis

Initially, the applicant submitted a business plan indicating that the applicant intended to provide capital investment for government capital projects such as a heritage center and the construction of new campus buildings for Arizona State University. The business plan also indicates that the applicant was in discussions with [REDACTED] to identify other investment projects. The business plan refers to an online Building Characteristics Table prepared by the U.S. Department of Energy (DOE) and available at [REDACTED] (accessed on October 27, 2010 and incorporated into the record of proceedings). The applicant's business plan references the number of "35 Hour per Week Employees per 1,000 Square Feet" for the following activities: education, health care, office, public order and safety and service. The numbers under this column are not on the DOE table referenced. Rather, the plan indicates that the number of 35 hour per week workers was calculated by dividing the mean hours of operation per week by 35 and multiplying by the number of workers per 1,000 square feet.

The operating agreement for the applicant indicates that the members organized the limited liability company to develop and sell real estate as well as to "transact any and all lawful business for which limited liability companies may be organized."

The director issued a request for additional evidence that included the following language:

Submit an Economic Analysis and model that shows and describes job creation for each industrial cluster. Clearly identify the industry cluster. Further, for each

industrial cluster described in the economic analysis, list the actual job creating activities. The analysis must clearly show the inputs to the model, and the calculations used to determine the jobs that will be created. Also, show how the investors' money will be used to create jobs.

To support the economic analysis, submit either a hypothetical investment plan for each industry project type to show how an investment project will be capitalized and operated in a manner that will create 10 direct and indirect jobs or an actual investment plan for a specific proposed project. For multiple industries a combination of hypothetical and actual plans may be submitted. The plan must clearly identify how the investor funds will flow to the job creating entity and how the jobs will be created.

In response, the applicant submitted an economic analysis prepared by [REDACTED] with TW+A Research. The analysis reiterates that the applicant "will focus on capital projects for Arizona governmental entities." The analysis adds, however, that the applicant has "identified 14 different commercial businesses," with a particular focus on franchises because of the support provided by franchisors. The commercial areas are subsequently listed as retail, health care, accommodations and restaurants and automotive services. The analysis indicates that the investments will be made through the infusion of capital for public projects and the purchase and management of new commercial businesses. The analysis states that with respect to government projects, the applicant will provide the capital and lease the facilities back to the government and that "each business will be run by either [the applicant] or a professional management firm."

As an example, the analysis examines a proposed 65 room motel project. The size of the projected hotel is 43,968 square feet. Using the same DOE table referenced above, the analysis states:

[T]he mean square feet per worker for lodging is 2,074. This means that the 43,968 square foot motel would support 21.2 direct employees each of whom work an average of 167 hours per week. Rather than one employee working an average of 167 hours per week, it is more realistic to have 4.8 ($= 167/35$) employees each of whom works 35 hours per week. Thus, the total number of direct employees that would be needed for the motel are 101.8 ($= 21.2 \times 4.8$).

As stated above, we have accessed this chart and incorporated it into the record of proceeding. It includes the following regarding lodging:

Table B1. Summary Table: Total and Means of Floorspace, Number of Workers, and Hours of Operation for Non-Mall Buildings, 2003

	Number of Buildings (thousand)	Total Floorspace (million square feet)	Total Workers in All Buildings (thousand)	Mean Square Feet per Building (thousand)	Mean Square Feet per Worker	Mean Hours per Week
All Buildings*.....	4,645	64,783	72,807	13.9	890	61
Lodging	142	5,096	2,457	35.8	2,074	167

The title of the table references hours of operation and the table itself references mean hours per week. Thus, the mean hours per week must refer to the hours of operation rather than the mean number of hours per employee. Given that there are only 168 hours in a week, it cannot be concluded that the table demonstrates that the mean hours per week per employee is 167. Nothing on the table suggests that the square footage per worker represents square footage per worker during a given shift only rather than as a function of total employment.

The director concluded that [REDACTED] had not adequately explained how it determined that the mean hours per week for a lodging employee is 167. The director also determined that the applicant had not explained the applicant's potential impact on the region. Finally, the director concluded that the applicant had not explained the type of direct jobs that would be created or provided the job creation multipliers based on IMPLAN for each industry identified.

On appeal, the applicant submitted a new assessment from [REDACTED]. The new assessment lists private industries not previously mentioned including transportation and finance. The new assessment provides additional detail regarding the economic impact of investment in the region. The new assessment includes Table 9, which lists the employment impacts of representative sub-industries. Table 9 lists the NAICS code, IMPLAN code, direct impact number, indirect impact number, induced impact number and total impact number. The total impact number for hotels is 6.8. Table 9 does not explain from where the direct, indirect and induced numbers derive. The applicant did not submit the local IMPLAN multipliers for Arizona. Most significantly, the applicant does not respond to the director's concern about how the previous analysis utilized the mean operating hours as mean employee hours.

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. Without a sufficient explanation as to why the number of lodging employees can be multiplied based on the unrelated data concerning mean operating hours or the local IMPLAN multipliers, we cannot conclude that the applicant has provided "verifiable" detail.

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

Beyond the decision of the director, the proposed limited partnership agreement has terms that raise concerns. First, the capital contributions section, 3(b), provides that limited partners may contribute "services." The regulation at 8 C.F.R. § 204.6(e) defines capital as "cash, equipment, inventory, other tangible property, cash equivalents" and certain indebtedness. The regulation at 8 C.F.R. § 204.6(j)(2) does not allow qualifying investor pursuant to section 203(b)(5) of the Act to establish an investment through the contribution of services.

In addition, the full amount of the requisite investment 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). Section 3(c) of the limited partnership agreement allows any amounts "not required for purposes of its business, including reasonable reserves for contingencies" to be distributed. Section 5(b) provides for the distribution of funds unrelated to profits, which are discussed in section 5(c). These sections, which provide for distributions of funds above and beyond profits, raise concerns that the investors may not be placing the full investment amount at risk.

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

ORDER: The appeal is dismissed.

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