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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

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DATE: MAY 02 2011 Office: [Redacted] FILE: [Redacted]

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:

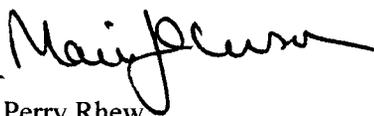
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INSTRUCTIONS:

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, [REDACTED] 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 analysis was insufficient and denied the proposal.

On appeal, counsel submits a brief and a statement from Dr. [REDACTED] who prepared the economic analysis. The applicant seeks approval of an extremely broad proposal that covers seven broad investment possibilities. For the reasons discussed below, while the applicant need only support the proposal with general predictions, the economic analysis fails to sufficiently address all of the proposed types of investment possibilities for which the applicant seeks approval. In addition, parts of the analysis rely on assumptions for which Dr. [REDACTED] provides no source. Finally, the AAO acknowledges that a regional center may include investments in non-targeted employment areas. Nevertheless, the proposal implies that the regional center would strive to focus investments within targeted employment areas (TEAs). The petitioner, however, has not established that any such areas exist within the proposed geographical limits of the regional center.

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) 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

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 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 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.

A. Types of Projects

The initial submission indicated that the regional center proposed to invest in the following types of projects:

1. Commercial/industrial developments, including but not limited to hospitality, retail, industrial, flex, office, and transportation facilities;
2. Public/private arrangements with governmental agencies, non-profits, or other entities to develop civic/public facilities and infrastructure;
3. Renovation of functionally obsolete buildings preserving historical features where appropriate, within a modern facility;
4. Mixed use or residential developments with or without ground floor retail, including apartments and condominiums;
5. The provision of capital, loans, or investment in businesses wishing to locate in the regional center area;
6. Establish or invest in lending institutions such as community banks; and
7. Establish or invest in agricultural or agricultural-related endeavors, including, but not limited to vineyards and wineries.

Dr. [REDACTED] then analyzes five scenarios:

1. Renovation and conversion of an abandoned warehouse to space for architecture/engineering firms, restaurants, or those requiring warehouse or light manufacturing space;
2. Renovation and conversion of an abandoned office building to a hotel;
3. Construction of a four-story mixed use building with a bank, two small retail shops and 20 apartment units;
4. Direct investment in a company developing online computer games; and
5. Investment in a 65 acre farm for development of a vineyard and winery.

Regarding development of civic/public facilities and infrastructure, Dr. [REDACTED] asserts that the [REDACTED] Input-Output model cannot include a government sector and concludes: "A more complete explanation of methodology for such a project will be developed in the future should such a project actually be proposed." USCIS, however, will not approve a regional center covering

potential investments in projects for which the applicant has submitted no economic analysis whatsoever. The AAO also notes that the scenarios do not cover project number five, the establishment of or investment in lending institutions such as community banks, a heavily regulated industry. The only mention of a bank is in scenario three, which presumes a bank will rent space in mixed use development the regional center constructs. This scenario does not contemplate that the new commercial enterprise would establish or invest in the bank, a project the applicant specifically requests approval to pursue. Thus, the applicant seeks to include projects in the proposal for which it has provided no economic analysis.

Moreover, the first set of proposed projects is overly broad, including development for hospitality, retail, industrial, flex, office, transportation and other unnamed industries. [REDACTED] provides an analysis for a hotel, but it can be presumed that the analysis of an investment in a transportation facility would involve different factors. Moreover, the applicant expressly leaves open the possibility of development in an entirely unrelated, unidentified industry. USCIS will not approve a regional center proposal for such a vague purpose.

In light of the above, the proposal is overly broad, covering several potential projects, some of which are not even identified, for which the applicant has provided no economic analysis at all.

B. Unsupported Assumptions

In addition, Dr. [REDACTED] relies on three assumptions for which he provides no source. He also does not suggest that he has evaluated the assumptions to determine whether they are reasonable or otherwise explain why they are reasonable.

First, in scenario two, Dr. [REDACTED] discusses the conversion of an abandoned office building of unspecified size into a hotel of unspecified size. Dr. [REDACTED] estimates the cost of such development at \$20 million. Dr. [REDACTED] continues: "Hotel operators in the area inform the developer that for every \$1 million in hotel revenue, the developer can assume that hotel guests will spend another \$1 million at nearby businesses." Dr. [REDACTED] then breaks down where these amounts would be spent. Dr. [REDACTED] continues: "These estimates are assumed to be based on surveys conducted by a local hotel association or Chamber of Commerce, providing a statistically valid basis for the estimates." Citing the actual survey source rather than speculating as to the potential source would bolster Dr. [REDACTED] discussion. Simply 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)). In addition, Dr. [REDACTED] then presumes that the hotel would create \$2 million in local business revenue at the hotel through hotel and nearby business revenue. Dr. [REDACTED] does not explain how the alleged fact that hotel patrons spend \$1 million on local businesses for every \$1 million of hotel revenue leads to the conclusion that every hotel, regardless of size, generates \$1 million in hotel revenue in the first place. Thus, while the AAO does not question Dr. [REDACTED] model, he has not explained how he justifies the input data for that model.

Second, in scenario three involving mixed use development, Dr. [REDACTED] calculates jobs created by apartment rental income. Dr. [REDACTED] does not explain how apartment rental income will necessarily benefit the geographic territory of the regional center. The owner/manager of the apartment need not be local. For example, if the limited partnerships in which the alien investors will invest will own the apartments and receive the rental income, the alien investors may very well reside outside the geographical limits of the regional center and, thus, the apartment income will not benefit the regional center at all.

Finally, in scenario four, Dr. [REDACTED] discusses an investment in a hypothetical computer gaming development company. Dr. [REDACTED] states: "After a 2 year startup period when the company is mostly engaged in development activities, the company projects revenues of \$15 million per year." Dr. [REDACTED] implies this project is purely hypothetical. As such, it is not clear what "company" is projecting such revenues. Dr. [REDACTED] does not provide any examples of similar companies that have realized such income after two years or otherwise explain why this number is reasonable and not pure speculation.

In summary, while the AAO does not question the models Dr. [REDACTED] uses or his expertise in applying the models to accurate input data, Dr. [REDACTED] has not adequately explained the basis for using certain input data. Even the best of models is only as good as the input data. Without adequate support for input data Dr. [REDACTED] uses, the results have little value.

C. Targeted Employment Areas

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part, that:

Rural area means any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more.

Targeted employment area means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

The regulation at 8 C.F.R. § 204.6(j)(6) states that:

If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or

(ii) In the case of a high unemployment area:

(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or

(B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. § 204.6(i).

Initially, the applicant asserted that “certain census tracts within the regional center territory will qualify as targeted employment areas.” The applicant indicated that immigrant investors would invest \$500,000 in TEAs and \$1,000,000 in non-TEAs. The remaining examples in the applicant’s statement, however, all involve an investment of \$500,000, suggesting that the proposal contemplates investments in TEAs.

Dr. [REDACTED] asserts that the proposed regional center would encompass a mostly rural area that includes “four” Metropolitan Statistical Areas (MSAs) and four Micropolitan Statistical Area. In fact, the geographical limits include six MSAs: Spokane, Yakima, Portland-Vancouver-Beaverton, Longview, Lewiston and Wenatchee.² These six MSAs cover eight of the 26 counties within the geographical limits of the proposed regional center. Of the remaining counties, the record contains no evidence regarding the population of these counties.

As eight of the 26 counties fall within an MSA, they cannot be considered rural. Without city and town population data for the remaining counties, the petitioner cannot establish these counties contain rural areas as defined at 8 C.F.R. § 204.6(e).

The petitioner initially submitted a list of unemployment rates for all 26 counties in 2007, four of which were at or above 150 percent of the national rate. None of the counties within an MSA had an unemployment rate at or above 150 percent of the national rate. In response to the director’s request for additional evidence, the applicant concedes that while the unemployment rate in many of these counties exceeds the national rate, none of them have unemployment rates at or above 150 percent of the national rate in September 2009.

While the state has purportedly designated some of the counties as “distressed areas,” there is no evidence the state has designated them as targeted employment areas pursuant to the requirements

² See <http://www.whitehouse.gov/sites/default/files/omb/assets/bulletins/b10-02.pdf>.

set forth at 8 C.F.R. § 204.6(i) and based on qualifying unemployment rates. The AAO reiterates that in September 2009, none of the counties had an unemployment rate at or above 150 percent of the national rate.

In light of the above, the applicant has not demonstrated that any of the areas within the geographical limits of the proposed regional center territory constitute targeted employment areas as defined at 8 C.F.R. § 204.6(e). Thus, without additional evidence, even if USCIS approved the proposal, the minimum investment amount would be \$1,000,000.

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.