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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**



K1

DATE: **AUG 06 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Applicant:

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, 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 applicant filed the proposal on September 20, 2010.<sup>1</sup>

The applicant proposes to use make “qualifying investments to commercial enterprises in the enumerated industries . . . pursuant to debt and equity offerings, with debt being the primary focus.” The financing will be below market rate and offered to commercial enterprises that are primarily unidentified. The director determined that the economic analysis and business plan were insufficient to allow USCIS to approve the application. On appeal, the applicant submits a brief and exhibits, including a new economic analysis. The applicant asserts that the director applied the wrong standard, and improperly relied on instructions to the Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program.

That AAO finds that the director properly relied on the pertinent regulations, and not the instructions to the Form I-924, and affirms the director’s other findings.

## I. THE LAW

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:

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<sup>1</sup> Effective November 23, 2010, U.S. Citizenship and Immigration Services designated the Form I-924 for filing a regional center proposal.

(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) addresses requirements for regional center proposals, including an explanation of how the regional center will promote economic growth and including verifiable detail how jobs will be created indirectly. The proposal must also discuss the amount and source of funds. Proposals must be supported by economically or statistically valid forecasting tools.

## II. PROCEDURAL AND FACTUAL HISTORY

The initial proposal requested designation as a regional center to cover 34 counties in Indiana. The applicant submitted a September 1, 2010 Business Plan and a July 30, 2010 Economic and Demographic Profile report. The Business Plan lists 12 potential industries, followed by mostly vague

discussions of their importance and current funding in Indiana without explaining how the regional center would invest in these industries. For example, the discussion of agriculture, health care, life sciences, advanced manufacturing, financial and professional services and logistics merely provides a general description of each industry and existing initiatives in Indiana. The more detailed sections relating to infrastructure and clean energy discuss more concrete proposals, including expansion of mass transit, the purchase of buses and the development of biofuel stations. Even these discussions, however, provide no additional information beyond the categorizations.

The economic report lists the Indiana Business Research Center (IBRC) on the cover page and concludes with information about the

and (Economic Research Analyst)

. None of the individuals listed in the IBRC biographies signed the report and there are no authors on the cover page. The report uses the IMPLAN economic impact modeling system and estimates the number of jobs to be created per \$1 million investment in various industries.<sup>2</sup> The report does not explain how IBRC calculated these numbers other than using the IMPLAN as the source. The report does not analyze a hypothetical investment project in any of the 12 industries.

On April 27, 2011, the director issued a request for additional evidence (RFE). Although the applicant filed the proposal on September 20, 2010, two months prior to implementation of Form I-924, the director referenced that form number on the RFE cover page, Form I-797E. In addition, on page 5 of the RFE, the director stated: "A regional center proposal must provide business plans for projects within each economic zone, now called on the Form I-924, industry category or industry cluster." The director's references to the Form I-924 do not suggest that the applicant had filed its application on Form I-924 or that the applicant is required to comply with the Form I-924 instructions. Rather, the cover page simply referenced the current form number to identify the type of benefit sought (i.e., regional center designation). The director quoted the statute and regulations but did not rely on the instructions to the Form I-924 to justify the RFE.

The director requested the North American Industry Classification System (NAICS) codes for each of the 12 industries included in the proposal. The director further requested an economic analysis that provided a more detailed analysis of the regional center's prospective impact on the regional or national economy. In addition, the director requested "descriptions (Business Plans) of planned or contemplated projects within the proposed regional center which include all of the 12 industry categories named and identify the valid and reasoned inputs into the econometric model taken from the exemplar or actual projects." The director also expressed concern that the 12 industries and sub-categories were too broad and all inclusive, precluding any analysis of feasibility. The director recommended reducing the number of industries.

In response, the applicant stressed that it had not filed a Form I-924 and that USCIS was erroneously treating the proposal as one filed "pursuant to the requirements" on that form. The applicant requested

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<sup>2</sup> IMPLAN, short for "impact analysis for planning," is built on Nobel Laureate Wassily Leontief's mathematical input-output model to express relationships between sectors of the economy in a chosen geographic location. Proposed Indiana EB-5 Economic Region Economic and Demographic Profile, p.36 (July 30, 2010).

that the proposal be amended to include the entire state of Indiana. The applicant stated that it was not reducing the number of industries in which it would invest, and submitted an economic study increasing its potential EB-5 investments to 15 projects. The applicant stated that the new economic study demonstrates that the 15 projects will create 61,775 jobs, not including temporary construction jobs. Finally, the applicant stated: "It is anticipated that the majority of the above-referenced projects will receive other forms of financing and that our Regional Center EB-5 investment will not be a significant percentage of the total financing." The applicant concluded that this factor ensures that "the projects will be viable and sustainable throughout the participation of the Regional Center and its EB-5 investments in the project."

The July 19, 2011 Supplemental Business Plan provides a sampling of contemplated investments. Tourism Economics, Inc., a tourism consulting company, prepared the July 2011 Economic Analysis of the Proposed Indiana EB-5 Regional Center. The report concludes with the biography of [REDACTED] and [REDACTED], although the report does not identify an author. The report analyzes 15 contemplated investments using the RIMS II Direct Effect Jobs multiplier.

The director determined that the economic analysis "did not provide a detailed or even a general 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 increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and outside of the regional center. The director stated that, instead, the economic analysis was limited to statewide job creation impacts, which does not include other regional impacts. The director further expressed concern that the economic analysis does not take into account the EB-5 capital requirements for each project or identify the inputs for the RIMS II calculations. The director noted that the Supplemental Business Plan lacked: (1) a timeframe for commencement, implementation, and realization of each project; (2) an explanation of how the investor funds would flow into the project and create jobs; and (3) a budget for each project. Finally, the director found that the Supplemental Business Plan failed to identify the number of EB5 investors expected to fund the regional center projects, or describe the amount of EB5 capital and non-EB5 capital for each project. The director cited the pertinent public law and regulation in support of the decision and not the Form I-924 instructions.

On appeal, the applicant asserts that the director should have adjudicated the proposal under the standards set forth in the memorandum, *Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829*, Donald Neufeld, AD09-38, Dec. 11, 2009. The applicant suggests that if the director had adjudicated the proposal under those standards, the director would have approved the proposal. The applicant contends that previous submissions included "key elements" that the director referenced as missing.

### III. ANALYSIS

#### A. Proper Standard

While the statute provides that a proposal may be based on "general predictions," the statute also explains that those predictions must be contained in a proposal that addresses "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.” Section 610(a) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, as amended.

The regulation at 8 C.F.R. § 204.6(m)(3) sets out the requirements for regional center applications. Specifically, 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. *See also* Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829, [REDACTED], AD09-38, Dec. 11, 2009 at 9 (The regional center applicant must provide “[a] detailed description of how EB-5 capital investment . . . will create qualifying EB5jobs.)” The applicant cites no legal authority that expressly overturns this regulation, other than the statutory amendment that expanded the original focus beyond exports. Section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000). USCIS is bound by its own regulations absent a showing that an authority has expressly struck down or overturned a particular regulation. *See Bahramizadeh v. U.S. I.N.S.*, 717 F.2d 1170, 1173 (7th Cir. 1983) citing *Pearce v. Director, Office of Wkrs. Compensation*, 647 F.2d 716, 726 (7th Cir. 1981).

In promulgating the regulation at 8 C.F.R. § 204.6(m), legacy Immigration and Naturalization Service (INS), now USCIS, concluded that the intent of Congress in enacting section 610(a) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, as amended, was to obtain empirical evidence of the effectiveness of the regional center concept in promoting economic growth. 58 Fed. Reg. 44606, 44607 (Aug. 24, 1993). USCIS has been encouraged 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.

Addressing all concerns at the regional center stage will increase the likelihood of job creation and, absent a material change, that 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 USCIS recognizes that the applicant cannot guarantee the proposed regional center’s success, it is (1) not in the interest of USCIS or the aliens who invest in a regional center or (2) consistent with Congressional intent to improve regional productivity to approve a regional center whose proposal is not based on a reasonable economic analysis or verifiable detail. USCIS created and designated the Form I-924 as part of a fee rule. 75 Fed. Reg. 58962, 58980 (Sept. 24, 2010).

The proposed rule stated:

In addition to providing a vehicle for fee collection, the standardized “Application for Regional Center under the Immigrant Investor Pilot Program,” (Form I-924); will clarify requirements for a regional center document; improve the quality of applications; better document eligibility for the Pilot Program; alleviate content inconsistencies among applicants' submissions; and support a more efficient process for adjudication of applications.

75 Fed. Reg. 33446, 33465 (June 11, 2010) (proposed rule).

Contrary to counsel's assertion on appeal, the director did not state on page 5 of the RFE that the applicant must comply with the Form I-924 instructions. Instead, the director referenced the form only to explain the phrase "economic zone." The director did not cite the Form I-924 instructions in the RFE or the final decision as authority for the evidentiary requirements. Moreover, as is clear from the Federal Register materials quoted above, USCIS designated the Form I-924 to help organize filings under current statute, regulations and policy, not to add evidentiary requirements. Statutory, regulatory and policy issues were outside the scope of the final rule that designated the Form I-924 and fee for regional center proposals. 75 Fed. Reg. 58962, 58980 (Sept. 24, 2010).

The applicant asserts on appeal that the Form I-924 "contradicts numerous USCIS documents, including the [memorandum entitled *Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829*, ██████████, AD09-38, Dec. 11, 2009]." In support of this claim, the applicant contends that USCIS previously accepted "hypothetical" projects while the Form I-924 requirements "subvert the clear language and intent of Congress" by requiring "actual" or "exemplar" projects and leaving no room for "hypothetical scenarios or general predictions of the type of projects that will receive EB-5 investments and create jobs."

The language on the Form I-924 permits the submission of an exemplar Form I-526 petition as requiring a business plan for an actual or exemplar project, but there is no requirement that a regional center applicant include an exemplar Form I-526. The AAO acknowledges that the applicant filed the regional center proposal prior to the implementation of the Form I-924 and is not bound by the instructions to that form. *See* 8 C.F.R. § 204.6(m)(3). The director, however, did not use an incorrect standard in adjudicating the proposal or retroactively apply "new" standards derived from the Form I-924. Rather, the director relied on the statute and regulations in analyzing the evidence in her decision.

Finally, as noted by the applicant, the proper standard of proof for evaluating these requirements is preponderance of the evidence. The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.* The AAO will evaluate the evidence under this standard.

## B. Economic Analyses

At the outset, it should be noted that the economic analyses and business plan are most specific with regard to the hotel project, which the petitioner describes as “shovel-ready.” Accordingly, this decision will focus on that information. The applicant also seeks approval in multiple industries and declined the director’s suggestion that it focus on fewer industries in its proposal.

On appeal, the applicant asserts that the initial July 30, 2010 economic analysis was compliant because it included multiplier tables pursuant to 8 C.F.R. § 204.6(m)(3)(v). The applicant further asserts on appeal:

In addition to the verifiable detail provided regarding [REDACTED], our Supplemental Business Plan and RIMS II economic study provided information on 15 other projects, including general predictions on the potential for EB-5 job creation.

USCIS determines the truth not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376. In other words, USCIS does not simply count evidence, but may evaluate the usefulness of that evidence. While the July 30, 2010 economic analysis does include multiplier tables, the record did not place those tables into the necessary context. For example, the analysis provided insufficient detail beyond stating the number of jobs to be created per each \$1 million invested based on IMPLAN without further discussing hypothetical plans or addressing the permanency of those jobs.

The July 2011 economic analysis attempts to address some of the deficiencies in the July 30, 2010 analysis. Specifically, it includes an explanation for many of the job estimates. For example, the analysis states that [REDACTED] will create 120 direct employees at the hotel for 200 rooms. The analysis claims that the estimate of .6 employees per room is reasonable given that the normal range of employees per room at hotels ranges from .5 to 1 employee per room. The report then uses the direct effect multiplier for hotels and motels to project 182 total direct and indirect jobs.

The underlying figures used to estimate the number of direct employees in the July 2011 economic analysis contradict the estimates in the July 19, 2011 Supplemental Business Plan (Supplemental Business Plan), which states that the hotel will have 220 rooms, yet will still have 120 direct employees at the hotel. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* Based on these contradictory figures, the petitioner has not established the number of direct employees at the hotel project.

The July 2011 economic analysis provides less explanation for the other projects. For example, the report includes the following limited and inconsistent analysis of the

Based on an overall budget of \$2 billion, the entire has tremendous potential for statewide job creation. The project will last over a 10-year period, resulting in many ongoing construction jobs. Assuming that 50% of direct expenditures are allocated to hard costs, 30% to materials costs, and 20% to professional, scientific, and technical services, the project could generate over 35,000 total jobs statewide, including over 18,000 indirect jobs.

This discussion does not include any explanation of the calculations used to reach a projection of many “ongoing” construction jobs or the 35,000 total jobs. While the text refers to the construction jobs as “ongoing,” the chart that follows lists 35,224 “one-time jobs” and no ongoing jobs. Moreover, according to the Supplemental Business Plan, the project appears to include work on at least two bridges. The July 2011 economic analysis and Supplemental Business Plan do not explain whether these will be concurrent projects, or consecutive projects for which investors in the second bridge might seek credit for preserving jobs that were created with the first bridge.<sup>3</sup> Notably, the Supplemental Business Plan also contains inconsistent job predictions for this project, stating first on page 5 that the project will create 57,000 direct and indirect jobs, and then stating on page 6 that it would create 35,224 direct and indirect one-time jobs. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N at 591-92. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* In addition, the July 2011 economic analysis states that the project is a 10-year project but does not state how many jobs will be created within two years of the EB-5 investment.

The applicant submits an undated economic analysis from Oxford Economics on appeal. The new analysis goes into more detail regarding the hypothetical Evansville hotel but provides general conclusions for the other projects. With respect to the Evansville hotel project, the July 11, 2010 economic analysis projected 182 direct and indirect jobs from the operation of the hotel and 541 one-time construction jobs, whereas the new Oxford Economics analysis concludes that the construction of the hotel will yield 520 direct and indirect jobs. The analysis then concludes that the operation of the hotel will result in only 49 direct jobs, 26 indirect jobs and 75 total jobs. The new analysis also includes an additional three jobs in the accommodation industry for a total of 78 jobs. The discrepancies between the projected total jobs for the hotel projects have not been resolved. Moreover, given the deficiencies in the business plans that will be discussed below, the petitioner has failed to establish the number of jobs projected in the economic analyses that will be qualifying permanent jobs.

The July 2011 economic analysis and the undated Oxford Economics analysis contain contradictory estimates for direct employment. In addition, the July 2011 economic analysis for the hotel project,

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<sup>3</sup> Job preservation is a qualifying means of demonstrating job creation only if the job-creating entity is a troubled business. 8 C.F.R. § 204.6(j)(4)(ii).

which the petitioner characterizes on appeal as “shovel-ready,” contain underlying hotel room estimates that are contradicted by the July 19, 2011 Supplemental Business Plan. Finally, both the July 2011 and the undated Oxford Economics analysis lack sufficient explanation for other projects and contain contradictory information. Therefore the economic analyses do not provide verifiable detail on how jobs will be created pursuant to 8 C.F.R. § 204.6(m)(3)(ii).

### C. Business Plans

Regarding the issue of timelines and projections of EB-5 capital, the applicant must provide verifiable detail as to how the regional center will create jobs. 8 C.F.R. § 204.6(m)(3)(ii). *See also Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829*, [REDACTED] AD09-38, Dec. 11, 2009 at 9.

In addition, the regulation at 8 C.F.R. § 204.6(m)(3)(iv) provides the following requirement for a regional center proposal:

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.

As stated above, notwithstanding references to “general” proposals and predictions in the statute, the applicant cites no legal authority that expressly overturns this regulation. USCIS is bound by its own regulations in adjudication of regional center applications.

Finally, “full-time employment” means continuous, permanent employment. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1039 (E.D. Calif. 2001) *aff’d* 345 F.3d 683 (9th Cir. 2003) (finding this interpretation not to be an abuse of discretion). Thus, short-term construction jobs are not full-time employment.

The director concluded that the business plan lacked sufficient timeframes and projections of EB-5 capital investment. On appeal, the applicant asserts that the proposal explained that the applicant would “predominantly rely upon a debt financing structure in making its EB-5 investments to projects securing other forms of financing in addition to the EB-5 loan.” The applicant notes that with respect to the Evansville Hyatt Place Hotel project, the business plan states that the City of Evansville will finance up to \$8 million of the project in addition to the Hyatt Corporation committing another \$1 million to the project.

The hotel project has a budget of \$33 million. The Supplemental Business Plan states that EB-5 investors will provide “up to” \$20 million in financing. The use of the phrase “up to” results in too vague a proposal. The business plan does not make clear whether the project could go forward with fewer than 40 investors and, if so, how few, and the alternative source of funding. On appeal, the applicant confirms that the EB-5 investors will provide a loan of \$20 million, and that the project

would require a full 40 investors to fund the loan. Accordingly, the petitioner has clarified the proposal and overcome this ground of denial on appeal.

The Supplemental Business Plan's job projections appear to be inconsistent with the July 2011 economic analysis. Specifically, the economic analysis projects 541 direct and indirect "one-time" jobs from construction on the hotel, and 182 direct and indirect jobs from the operation of the hotel. While the text of the Supplemental Business Plan uses the similar one-time construction job numbers of "over 540" at page 15, the chart that follows on page 16 projects 2,073 total direct and indirect one-time jobs. The Supplemental Business Plan also includes a mathematical error on pages 15 and 16. Specifically, the plan concludes, as the July 2011 economic analysis does at page 12, that the operation of the hotel will generate 120 direct and 62 indirect jobs, but erroneously concludes that these numbers total 73 rather than 182. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

On appeal, the applicant submits the undated Oxford Economics analysis, but no new business plan. The new analysis concludes that the construction of the hotel will yield 520 direct and indirect jobs. The analysis then concludes that the operation of the hotel will result in only 49 direct jobs, 26 indirect jobs and 75 total jobs. The analysis also includes an additional three jobs in the accommodation industry for a total of 78 jobs.

As the business plan does not include any timelines establishing that the construction jobs will last at least two years, the applicant cannot include those jobs. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1039. Even accepting the projection of 182 total jobs from the operation of the hotel rather than the smaller numbers of 73 or 78, no more than 18 EB-5 investors (182 divided by 10) could qualify for removal of conditions based the requisite employment creation of 10 jobs per investor. Thus, it appears that the project cannot support even half of the 40 EB-5 investors that would be required to invest \$20 million in this project.

An applicant may allocate jobs created by investment from non EB-5 sources to the EB-5 investors. 8 C.F.R. § 204.6(g)(2). In this case, the applicant has not provided sufficient information about the total investment. As such, the petitioner has failed to establish that the investment would create sufficient jobs for all of the anticipated EB-5 investors.

Finally, the analysis of the hotel does not relate to the 11 other industries in which the applicant seeks designation to invest. While the new analysis purports to calculate job projects for all hypothetical projects, the record includes no timeframes for these projects, some of which appear to include construction. Short term construction jobs are not permanent. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1039 as interpreted in *Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829*, [REDACTED], AD09-38, Dec. 11, 2009, at 14. The petitioner failed to establish whether any construction jobs created during the development phase of the hotel or during the construction of the bridge, for example, are qualifying permanent jobs. For all of the above reasons, the business plan does not provide verifiable detail as to how the applicant

will create jobs indirectly or contain a detailed prediction regarding how the applicant will have a positive impact pursuant to 8 C.F.R. §§ 204.6(m)(3)(ii), (iv).

#### IV. SUMMARY AND CONCLUSION

USCIS has the authority to evaluate whether a regional center will have a positive impact on the regional or national economy. 8 C.F.R. § 204.6(m)(3)(iv). Thus, USCIS must evaluate all of the documents submitted with a regional center approval for compliance with regional center requirements.

*Matter of Chawathe*, 25 I&N Dec. at 376 provides:

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “more likely than not” or “probably” true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

In this matter, the petitioner has not submitted relevant, probative and credible evidence that includes verifiable detail how jobs will be created indirectly. Instead, as discussed above, even for its most detailed project, the petitioner has submitted analyses and a business plan that are contradictory, inconsistent, and include math errors. Such evidence cannot meet the petitioner’s burden of proof. 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.