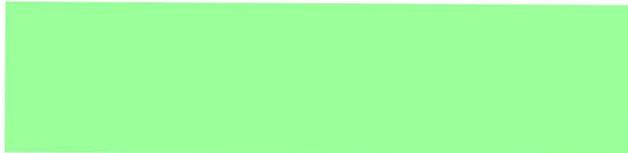




U.S. Citizenship  
and Immigration  
Services

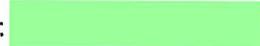
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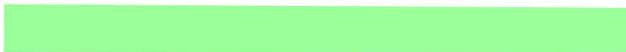
DATE: JUL 19 2013

Office: CALIFORNIA SERVICE CENTER

FILE:



IN RE: Applicant:



APPLICATION: Proposal for Designation as a Regional Center Pursuant to Section 610 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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the proposal for designation as a regional center on June 15, 2011. The matter is now before the Administrative Appeals Office (AAO) on certification pursuant to 8 C.F.R. § 103.4. The director's decision will be withdrawn and the proposal for designation as a regional center will be approved. The matter is returned to the director for issuance of a formal letter to the applicant consistent with this decision.

The applicant seeks designation as a regional center under the name [REDACTED] pursuant to section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended by section 116 of Pub. L. No. 105-119, 111 Stat. 2440 (1997); section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000); section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002); section 4 of Pub. L. No. 108-156, 117 Stat. 1944 (2003); and section 1 of Pub. L. No. 112-176, 126 Stat. 1325 (2012).

The applicant proposes to establish limited liability companies to allocate [REDACTED] in capital to each of [REDACTED]. The funding companies intend to loan this capital to [REDACTED] companies that would be obligated to match the funds and use the loaned capital to [REDACTED] located primarily in [REDACTED] Georgia. The applicant asserts that [REDACTED] of pooled investment from all [REDACTED] will be spent within [REDACTED] counties, which are the [REDACTED] Georgia metropolitan statistical area (MSA). Further, the regional center economist's projections are based on expenditures that are entirely within that same MSA.

The director determined that the applicant had not provided a business plan with verifiable detail regarding how the proposal will create sufficient jobs. The director denied the proposal accordingly and certified the matter to the AAO. The director afforded the applicant 30 days to supplement the record. The applicant's response is now part of the record. On August 17, 2012, prior counsel withdrew as counsel.

For the reasons discussed below, the AAO will withdraw the director's determination.

#### 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:

- (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 Secretary of Homeland Security, 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 Secretary of Homeland Security 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.

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. FACTUAL AND PROCEDURAL HISTORY

The applicant proposes to invest in the [redacted] industry in the following counties in Georgia: [redacted] [redacted] The first project will be the [redacted] which will raise an anticipated [redacted] and loan those funds to a joint venture between [redacted] and its [redacted] partner, together the actual [redacted] company that will serve as the borrower of funds.

The applicant has submitted two undated business plans for the [redacted] (one with the application and one in response to the director’s request for evidence) and an August 4, 2010 Business Plan for [redacted] The applicant resubmitted the second business plan for the [redacted] on certification. According to prior counsel’s initial statement, the [redacted] company “is expected to match the full [redacted] such that job creation will be based upon expenditures of [redacted] The initial proposal for the [redacted] also references matching funds from the [redacted] company. According to the subsequent undated [redacted] Business Plan provided in response to the RFE, the [redacted] company will “be required to match the [redacted] expenditure of EB-5 capital with [redacted] of its own capital.” According to page 5 of the August 4, 2010 Summary Offering Memorandum, [redacted] and its [redacted] partner “shall” match the [redacted] As the applicant proposes to seek funding for [redacted] the total projected investment amount for the [redacted] MSA is [redacted]

Both business plans for [redacted] list [redacted] as potential [redacted] partners. According to both business plans, the [redacted] company must agree to demonstrate, within two years, that it has spent the [redacted] and created at least 500 jobs. According to page 4 of the second undated business plan, the [redacted] partner will also be required to match the [redacted] expenditure with [redacted] of its own capital.” Page 5 of both business plans also projects a potential [redacted] impact in 10 years based on a study of Vancouver, Albuquerque, and Boston, noting that this estimate is conservative because year-round [redacted] is possible in [redacted] In explaining [redacted] funding, both business plans include [redacted] and advertising.

Appendix C to the second business plan discusses the [redacted] industry’s economic impact in [redacted] in 2009. Specifically, in 2009, [redacted] companies [redacted] two [redacted] in [redacted] over 112 days of [redacted] spending [redacted] The plan uses a “statistical model developed by [redacted] to justify a “conservative multiplier of 2.12.” Thus, the economic impact of these two [redacted] in 2009 would have been [redacted]

The applicant also submitted a July 28, 2010 Economist's Report. [REDACTED] prepared the report. [REDACTED] explains that he used final demand economic impact multipliers obtained from the United States Department of Commerce, Bureau of Economic Analysis (BEA), and that "projected employment impacts are derived from a comprehensive input-output model of the economy of the [REDACTED] GA Metropolitan Statistical Area." [REDACTED] notes that the projected budget for the [REDACTED] with half to come from EB-5 investor funds and "an equal amount of 'outside' funds" from yet-to-be identified private sector [REDACTED] industry partners. As [REDACTED] uses 2007 dollar amounts, he discounts the value of [REDACTED] to [REDACTED]. [REDACTED] asserts that the BEA employment multiplier provides that an investment of [REDACTED] in expenditures in the [REDACTED] industry will support 12.7768 jobs. Thus, [REDACTED] concludes that an investment of [REDACTED] will support 2,428 jobs.

On April 11, 2011, the director requested additional evidence. Specifically, the director requested information relating to: (1) how [REDACTED] calculated the 2,428 jobs; (2) the feasibility of the project; (3) the timeframe for commencement, implementation, and realization of the project; (4) the disposition of the limited liability company in the event the project fails to produce the requisite jobs; (5) the identity of the [REDACTED] partners; (6) a brief description of the [REDACTED]; (7) the locations where the [REDACTED] and (8) how the EB-5 contribution of [REDACTED] per fund is sufficient.

In response, the applicant explained that the estimated 2,428 jobs result from the BEA multipliers for the [REDACTED] industry and the [REDACTED] total projected investment into [REDACTED]. The applicant further noted that it is not seeking preapproval of an actual project or exemplar. Thus, the applicant declined to address the director's requests for the identity of the [REDACTED] partners, information about the proposed [REDACTED] or the location of the [REDACTED]. The applicant reiterated that the [REDACTED] company will receive the invested funds as a loan and will be responsible for demonstrating that it has spent the loaned funds and created the requisite jobs within two years. The applicant agreed to comply with U.S. Citizenship and Immigration Services (USCIS) guidance should the [REDACTED] company not create the requisite jobs, including, where necessary, the submission of new Forms I-526, Immigrant Petitions by Alien Entrepreneur.

The applicant did not submit letters of commitment or interest from potential [REDACTED] partners. Instead, the applicant submitted affidavits from [REDACTED] the applicant's manager, and [REDACTED] the applicant's [REDACTED]. [REDACTED] asserted that he met with four [REDACTED] companies in December 2010 and five [REDACTED] companies in January 2011. [REDACTED] asserted that the content of the meetings is subject to a non-disclosure agreement and that none of the companies will enter into a formal agreement prior to the applicant's designation as a regional center. [REDACTED] supported his assertions with his itinerary for the trips to Los Angeles and email discussions preceding the meetings.

[REDACTED] asserted that he met with four [REDACTED] in December 2010 and three [REDACTED] in January 2011. He also confirmed that the content of the meetings is subject to non-disclosure agreements and that none of the companies will commit until the applicant receives designation as a regional center. He supported his affidavit with email correspondence. All of the post-meeting emails are

from [REDACTED]. In November 2010, [REDACTED] stated that she enjoyed meeting with [REDACTED], that [REDACTED] is interested in being involved with the applicant and that she will coordinate [REDACTED] schedules and see if we can all get together.”

The director concluded that the applicant’s submission was not responsive and denied the proposal. Specifically, the director found that the applicant failed to identify specific [REDACTED] had not received commitment letters from any [REDACTED] and had not provided sufficient detail about the location and costs of the proposed [REDACTED]. The director certified the matter to the AAO, advising the applicant that it could submit a brief to the AAO within 30 days pursuant to the regulation at 8 C.F.R. § 103.4(a)(2).

In response, prior counsel submitted a brief and exhibits, some of which were previously submitted. Specifically, prior counsel asserted that the director applied the wrong legal standard to the proposal. Prior counsel noted that section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, as amended, only requires that the applicant identify the “kinds” of businesses that will receive EB-5 capital and does not require the type of specificity the director requested. Prior counsel also asserted that the proposal did demonstrate, in verifiable detail, how job creation will result from the investment. Prior counsel contended that the applicant must only demonstrate “how” the investment will create jobs and not the feasibility of job creation.

Finally, prior counsel asserted that the [REDACTED] industry is unique because it requires a [REDACTED] [REDACTED] which makes it impossible to identify specific projects and timelines at this stage. Because of the fluidity that is inherent to the industry, prior counsel also argued that it is impossible to break down specific [REDACTED] costs and expenditures on a per-project (i.e., per-[REDACTED] basis. Prior counsel further contended that the director failed to take into account the unique financing structure, economic structure, and hypothetical project-based nature of the [REDACTED] industry. Prior counsel emphasized:

Furthermore, we emphasize that a regional center cannot, at the regional center proposal stage, accurately demonstrate the feasibility of job creation by a particular project because facts and circumstances are almost certain to change between the time a regional center general proposal is filed and the time associated I-526 petitions are filed.

### III. ANALYSIS

The applicant seeks regional center designation based solely on a hypothetical project to establish [REDACTED] funds that will invest in the [REDACTED] and distribution of unidentified [REDACTED]. The applicant concedes on certification, through prior counsel, that the regional center proposal is not based on an actual project and does not include an exemplar I-526 petition. Page 14 of *EB-5 Adjudications Policy*, PM-602-0083 (May 30, 2013), provides:

The level of verifiable detail required for a [regional center proposal] to be approved and provided deference may vary depending on the nature of the [regional center proposal]. If the [regional center proposal] projects are “hypothetical” projects, general proposals and general predictions may be sufficient to determine that the proposed regional center will more likely than not promote economic growth, improved regional productivity, job creation, and increased domestic capital investment.

The record contains a general proposal based on general predictions concerning the kinds of commercial enterprises that will receive capital, the jobs that will be created as a result of such capital investments based on RIMS II data and multipliers, and other positive economic effects. As the record contains a general proposal, the applicant is not required to submit letters of intent or commitment from the prospective sources of matching funds for regional center designation.<sup>1</sup> Thus, the AAO withdraws the director’s determination.

While the proposal for designation as a regional center is approved, it is based on hypothetical projects. Determinations based on hypothetical projects will not receive deference, and the actual projects on which the Form I-526 petitions will be based will receive de novo review in a subsequent filing (e.g., an amended Form I-924 application including the actual project details or the first Form I-526 petition filed by an investor under the regional center project). *See EB-5 Adjudications Policy*, PM-602-0083, page 14 (May 30, 2013).

#### IV. CONCLUSION

In application proceedings, it is the applicant’s burden to establish eligibility for the immigration benefit sought. *See, e.g.*, section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met. Accordingly, the decision of the director denying the proposal for designation as a regional center will be withdrawn and the proposal approved. The matter is returned to the director for issuance of a formal approval letter consistent with this decision.

**ORDER:** The director’s decision dated June 15, 2011 is withdrawn. The applicant’s proposal for designation as a regional center is approved.

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<sup>1</sup> The regulation at 8 C.F.R. § 204.6(g)(1) requires an individual investor to identify the sources of all capital invested and to demonstrate that all invested capital has been derived by lawful means when filing an I-526 petition for classification as an alien entrepreneur.