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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

DATE: JUN 05 2013 Office: CALIFORNIA SERVICE CENTER

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 APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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,

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] filed a proposal on September 1, 2010, seeking 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 failed to meet the regulatory requirements outlined for regional centers relating to job creation. Specifically, the director concluded that the September 25, 2011 economic report does not sufficiently project a rise in payroll. The director also questioned the economist's use of the RIMS II final demand multiplier, particularly, the economist's use of a scaled local ratio rather than the national ratio if salaries were projected to be at the national average level. The director denied the proposal accordingly. On appeal, the applicant submits a brief and additional evidence.

While the applicant has now overcome the director's finding relating to the final demand multiplier, the applicant has not overcome the director's finding that the projected payroll increase to \$13.4 million is inconsistent with an increase of direct jobs from 57 to 145. As such, the AAO affirms the director's denial of the applicant's proposal as relating to this basis. As the petitioner has filed a proposal based on hypothetical projects, USCIS will not review the organizational documents as part of this adjudication.

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 in which the alien has invested or is actively investing the requisite amount of capital and which will benefit the United States economy and create full-time employment for not fewer than ten qualified workers.

Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, as amended, provides for a specific number of visas to implement a pilot program involving regional centers in the United States. Subparagraph (a) of this section provides for designation of regional centers based on "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 applicant must explain how the 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." Subparagraph (c) provides that aliens admitted under the pilot program may rely on "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)(3) addresses requirements for regional center proposals, including the requirements that the regional center describes how it will promote economic growth and provides in verifiable detail how jobs will be created indirectly. The proposals must also be supported by economically or statistically valid forecasting tools.

II. FACTUAL AND PROCEDURAL HISTORY

The applicant proposes to focus on a geographic area including [REDACTED] North Carolina and [REDACTED] South Carolina. According to the initial August 16, 2010 business plan, the applicant is “part of a group of business enterprises organized as subsidiaries of [REDACTED]. The applicant formed [REDACTED] “which is under the management of [REDACTED],” to purchase common shares in [REDACTED]. Both [REDACTED], are subsidiaries of [REDACTED].

The same business plan states that the alien investors’ capital would fund (1) the development of a new, consolidated headquarters in [REDACTED] South Carolina, resulting in the relocation of jobs currently in [REDACTED] North Carolina; (2) additional [REDACTED] including expenses toward obtaining [REDACTED] approval of a [REDACTED] and (3) the establishment of a [REDACTED]. The applicant asserts that in 2008, [REDACTED] purchased [REDACTED], an Indiana company that developed [REDACTED]. The audited financial statements for [REDACTED] indicate that as of July 1, 2008, [REDACTED] owns all of the equity in [REDACTED].

The applicant submitted an August 2010 economic report from [REDACTED]. On page 34 of the report, [REDACTED] estimates the construction costs of a [REDACTED] in [REDACTED] South Carolina, at \$4.7 million. By applying a RIMS II final demand multiplier of 16.79, [REDACTED] predicts 79 direct, indirect, and induced jobs. [REDACTED] acknowledges that the construction jobs would last less than two years and, thus, would not be permanent. Accordingly, [REDACTED] does not include the 43 direct construction jobs in his final analysis. [REDACTED] does, however, include the 36 indirect and induced jobs resulting from the short-term construction.

[REDACTED] analysis of job creation from the operations of the [REDACTED] begins on page 35 of the report, and presumes the creation of 145 direct jobs at that facility, including approximately 50 that would be relocated from “other locations,” and an expected payroll of \$13,398,750. [REDACTED] explains his inclusion of the relocated jobs as follows:

According to figures furnished by the company, employment at the new facility in [REDACTED] SC, will total 145 in 2013, with a total payroll of \$13,398,750. Of

these 145 jobs, approximately 50 will be relocated from other locations of [REDACTED]. Since those operations are part of a business that because of [REDACTED] meets the accounting definition of a troubled business, all jobs can be counted in the new employment calculations.

Using a payroll amount of \$13.4 million on page 36, [REDACTED] calculates a total projected output of \$91.6 million, based on a scaled down output/payroll ratio of 6.84. By then applying a final demand multiplier of 9.92 for the [REDACTED] industry, [REDACTED] concludes that the operations of the [REDACTED] would create 909 permanent new jobs, to which he adds the 36 indirect and induced jobs from the construction of the [REDACTED] for a total of 945 permanent jobs.

The applicant also included audited financial statements for [REDACTED] and its subsidiaries. These financial statements confirm that [REDACTED] suffered a net loss of more than 20 percent of its pre-loss net worth in 2009.

On March 9, 2011, the director issued a request for evidence (RFE). In this notice, the director raised two issues. First, the director expressed concern about a license agreement between [REDACTED] and the applicant, whereby [REDACTED], agreed to license the rights for the project for \$600,000. Second, the director noted that troubled business determinations are made at the Form I-526 petition stage.

In response, the applicant submitted a March 2011 economic report by [REDACTED], projecting that the "infusion of [REDACTED] into the company and its subsequent expansion" will save 56 jobs. He further concludes that of the 909 jobs to be created from operations of the new [REDACTED] 334 are direct jobs, of which 278 (334 - 56) are new jobs. On page 36, [REDACTED] explains that [REDACTED] has current sales of approximately \$11 million, or approximately \$200,000 per employee, and that sales are expected to rise to \$91.9 million. [REDACTED] concludes that if the same ratio continues, [REDACTED] will have 460 employees based on the projected sales of \$91.9 million. [REDACTED] predicts that revenue per employee will increase, so he ultimately calculates 334 direct jobs, 56 of which are saved jobs. This new number of direct jobs, 334, is far higher than the original projection of 145 stated in his August 2010 economic report. Nevertheless, [REDACTED] continues to use the \$13.4 million total payroll amount to calculate the total number of direct, indirect and induced jobs the operations of the [REDACTED] are projected to create, which remains at 909. In addition, the applicant asserted that it was removing all references to a license agreement between [REDACTED] and the applicant.

The director issued a second RFE on July 21, 2011. Relevant to the issues on appeal, the director requested more specific predictions and an explanation as to how the applicant arrived at the payroll prediction of \$13.4 million. The director requested that the applicant submit recent Internal Revenue Service (IRS) Forms W-3, Transmittal of Wage and Tax Statements. The director stated that if the applicant was proposing an actual plan, it should explain how jobs will be preserved and submit organizational documents with revision dates.

In response, the applicant submitted a September 25, 2011 economic report from [REDACTED]. In section 12 of the report, [REDACTED] reverts to the 145 total direct jobs projection, including 57 preserved jobs. The applicant also submitted organizational documents, 46 2010 IRS Forms W-2, Wage and Tax Statements, that [REDACTED] issued, and 52 2009 IRS Forms W-2 that [REDACTED] issued.¹ Finally, the applicant submitted 2010 quarterly tax return documents for [REDACTED].

In her October 31, 2011 decision, the director determined that [REDACTED] September 25, 2011 economic report does not sufficiently explain how a rise in employment by a factor of three would lead to an increase in payroll by more than a factor of three. The director also questioned [REDACTED] use of a scaled local ratio rather than the national ratio if salaries were projected to be at the national average level.

On appeal, the applicant asserts that the payroll for [REDACTED] and all of its subsidiaries was \$4,504,681.10 in 2009 and \$4,611,289.74 in 2010. The applicant submits more payroll documentation, a November 14, 2011 economic report from [REDACTED] and amended organizational documents. Section 12 of the economic report reiterates that the number of employees at the [REDACTED] will increase to 145 while the payroll will increase to \$13,398,750. Using the national ratio of 5.091, [REDACTED] calculates that the total number of direct, indirect and induced jobs created through the operations of the new [REDACTED] will be 712.

III. ANALYSIS

On appeal, the applicant has overcome the director's concerns regarding the multiplier by submitting an analysis using the national multiplier. The applicant has not, however, overcome the director's finding regarding the increased payroll prediction of \$13.4 million.

On appeal, [REDACTED] Chief Executive Officer of [REDACTED], asserts that the company has provided "evidence to show that the average salary for its positions in 2009 and 2010 was \$4.5 million and \$4.6 million, respectively, which corresponded to an average annual wage of \$88,733.63 and \$49,913.03." [REDACTED] asserts that these average salaries are higher than the current payroll analyzed by the director.

The proposal anticipates moving jobs from [REDACTED] North Carolina, to [REDACTED] South Carolina, the location of the planned [REDACTED]. The most recent economic report, dated November 14, 2011, is based on increasing the number of direct jobs at the [REDACTED] from 57 to 145 and payroll to \$13.4 million. The applicant has now documented, through submission of an IRS Form W-3 and Schedules K-1, that [REDACTED] had 57 employees in 2009, including five members receiving guaranteed payments represented on the Schedules K-1. These documents show

¹ According to section 3.2 of the April 2011 Regional Center Designation Application Proposal, "[a]ll activities and business conducted outside of the United States are conducted through affiliates of [REDACTED] including [REDACTED]."

payroll totaled \$3,420,534.58 in 2009, higher than the amount the director analyzed, but less than the amount discussed in letter.²

The applicant has submitted inconsistent economic reports that reduce the probative value and credibility of those reports. Specifically, in the August 2011 report, states that the direct jobs at the facility would be 145. In the March 2011 report, projects that the facility would directly employ 334 employees. In the September and November 2011 reports, reverts to projecting 145 direct employees at the facility. It is incumbent upon the applicant 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 applicant submits competent objective evidence pointing to where the truth lies. *Id.*

An increase in employment from 57 to 145 is an increase by a factor of 2.54. An increase in payroll from \$3,420,534.58 to \$13.4 million is an increase by a factor of 3.94. The applicant has not established how an increase in the number of employees by a factor of 2.54 would lead to an increase in payroll by a factor of 3.94. As the applicant has not established that \$13.4 million is a reasonable payroll amount, the applicant has not provided in verifiable detail how jobs will be created based on that unreasonable payroll amount. See 8 C.F.R. § 204.6(m)(3)(ii). As such, the AAO affirms the director's denial of the applicant's regional center designation proposal as relating to this basis.

Given the inconsistencies and the unexplained projected increase in employment by a greater factor than the increase in payroll, the use of that payroll amount in the RIMS analysis does not provide verifiable detail of indirect job creation pursuant to 8 C.F.R. § 204.6(m)(3)(ii).

IV. SUMMARY AND CONCLUSION

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.

² Form W-3 wages of \$2,364,478.58 added to \$1,056,056 in schedule K guaranteed payments (\$171,308 + \$134,542, + \$212,922 + \$243,263 + \$294,021) equals \$3,420,534.58.