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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: **MAR 14 2013** Office: CALIFORNIA SERVICE CENTER 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 APPLICANT:

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,

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 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 indicated that the regional center will operate and create opportunities within and in California. The applicant does not specify employees instead providing examples such as

The director determined that the applicant had failed to submit the necessary economic analysis and that the explanation of job creation was "speculative and not supported by valid analysis to give credence to any of the claims made."

On appeal, the applicant asserted that the director failed to understand the applicant's business model, which "does not require complicated and complex calculation methods or economic analysis." The applicant submitted an amended business plan.

In supplemental correspondence submitted on appeal, managing partner of the applicant, requested "to meet in person to explain in detail why my case should be allowed." The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant oral argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, identified no unique factors or issues of law to be resolved. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

On December 24, 2012, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the AAO issued a notice advising the applicant of derogatory information. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), the applicant was afforded 30 days in which to respond to the AAO's notice. On January 8, 2013, the notice was returned to the AAO by the United States Postal Service indicating "unable to forward." It is noted that the AAO addressed the notice to the address listed on the applicant's Form I-290B, Notice of Appeal or Motion. Moreover, the AAO received a case status inquiry from the applicant on June 7, 2012, reflecting an identical address listed on the appeal. A review of the record of proceeding fails to reflect that the applicant informed USCIS of any change of address. As such, this decision will also be mailed to the address listed on the appeal. For the reasons discussed below, the regional center proposal may not be approved.

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 created full-time employment for no fewer than 10 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) 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.

Finally, 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. PROCEDURAL AND FACTUAL BACKGROUND

On November 1, 2010, the applicant filed the regional center proposal and submitted a business plan proposing that the regional center would

The business plan asserted t

The applicant did not submit a separate economic analysis with the initial application.

On May 17, 2011, the director issued a request for evidence (RFE) and advised that the applicant’s business plan did not contain sufficient detail as to the type of industry and why the industry required investments of the size proposed. Thus, the director requested an economic analysis and model. The director also requested a more specific business plan, including a list of the North American Industry Classification System (NAICS) codes.

In response, the applicant submitted a document entitled “Details of How the Investment Funds are Used.” In the director’s decision denying the proposal on October 17, 2011, the director noted that the applicant had not provided the requested NAICS code in response to a specific request but concluded the relevant code was . The director further concluded that the applicant had failed to submit the necessary economic analysis and that the explanation of job creation was “speculative and not supported by valid analysis to give credence to any of the claims made.”

On December 24, 2012, the AAO issued a Notice of Intent to Dismiss Appeal with derogatory information the AAO incorporated into the record of proceeding. That notice, sent to the applicant’s address of record, was returned by the United States Postal Service as unknown and unable to forward. The AAO will issue a decision on the record.

III. ISSUES ON APPEAL

A. Derogatory Information

As stated in the December 24, 2012 notice, according to the business plan that the applicant submitted on appeal, based in has been established as a

’ However, according to the Nevada Secretary of State’s public

website, the proposed regional center entity, [REDACTED] currently has a “revoked” status.² The applicant claims that the regional center will operate in California; however, the applicant has not submitted sufficient information to establish that [REDACTED] is authorized to do business in California. A review of the California Secretary of State’s online California Business Search database fails to reveal the existence of a limited liability company or a corporation named [REDACTED].³ Before transacting intrastate business in California, a foreign limited liability company must register with the California Secretary of State. California Corporations Code 17451(a). California Corporations Code section 17001(ap) defines “transacting intrastate business” as entering into repeated and successive transactions of its business in California, other than interstate or foreign commerce.

Regarding the instant proposal, the applicant’s failure to submit independent and objective evidence to overcome the derogatory information seriously compromises the credibility of the proposal and the applicant and the documentation submitted in support of the benefit request. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent, objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner or applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Doubt cast on any aspect of the applicant’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the benefit request. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhahai v. INS*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As the applicant has not overcome the evidence that the entity seeking designation as a regional center has a revoked status in Nevada and no status in California, there appears to be no entity in existence which USCIS could designate as a regional center.

B. Sufficiency of Business Plan and Economic Analysis

The AAO also affirms the director’s bases for denial. On appeal, the applicant submitted an updated business plan. At the outset, in the appellate brief, the applicant claims that “[t]he NAICS code for our employment creation is [REDACTED] and refers to page 2 of the business plan. It is noted that the correct NAICS industry title is [REDACTED]

In reviewing the updated business plan submitted on appeal, the applicant does not provide an adequate market analysis. A reasonable market analysis should include detailed statistical analyses that indicate a strong demand and/or limited supply for the products and/or services to be provided by the proposed project. Further, the applicant does not provide a comprehensive analysis that identifies the major competitors and their respected locations, pricing structures, or market shares.

² See [https://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=\[REDACTED\]](https://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=[REDACTED]), accessed on December 17, 2012.

³ See <http://kepler.sos.ca.gov/>.

Moreover, the applicant failed to demonstrate a market analysis that reflects the facilitation of job creation due to this project. It is insufficient for the applicant to simply suggest that the job creation requirements will be met without a detailed and sourced economic or statistical justification. 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, while the applicant provided a project milestone timeline indicating the commencement of operations in the fourth quarter of 2011, the applicant failed to provide a detailed and itemized job creation timeline.

On page two of the business plan, the applicant claims:

1. [REDACTED]
2. [REDACTED]
3. The USCIS full-time hours requirement for this investment is 350 hours per week (35 hours per week X 10 employees), which amounts to 1,517 hours for one full month of employment.
4. The [REDACTED] program results in 1.1 times the USCIS requirement of jobs created.

The applicant does not provide any statistical justification for these assumptions. The applicant failed to provide any detailed and verifiable source data, such as industry studies, in order to sufficiently support these assertions. *Matter of Soffici*, 22 I&N Dec. at 165. In addition, the applicant failed to submit any evidence to reflect that [REDACTED]. Moreover, the applicant used [REDACTED] in order to estimate the number of jobs created by the proposed project instead of a job creation methodology that complies with the regulation at 8 C.F.R. § 204.6(m)(3).

Further, page 4 of the business plan indicates that “[e]mployment is generated in [REDACTED] and related functions such as [REDACTED]. On page 2 of the petitioner’s response to the director’s RFE, the petitioner explained that [REDACTED] would provide [REDACTED] and continues:

[REDACTED]

Thus, the applicant failed to demonstrate that [REDACTED] will be full-time employees. Given the flexibility described, the applicant failed to submit detailed and verifiable evidence establishing that [REDACTED] will be full-time employees rather than part-time employees.

Moreover, beginning on page 30 of the business plan, the applicant provides financial projection tables for this project. To show the feasibility of the project, the applicant presents a five-year pro forma financial statement highlighting revenues and net income. The applicant forecasts revenues to be \$6.7 million in 2012 and \$9.12 million in 2013 through 2016. The applicant does not, however, provide a basis for the data or explain the assumptions with which the pro forma data are calculated. *Matter of Soffici*, 22 I&N Dec. 158 at 165. Further, on page 28 of the business plan, the applicant indicates that \$20 million will be needed for funding and planned allocation with \$19 million allocated for investment funding and \$1 million for operational reserve. While the applicant listed the various uses to which the \$1 million would be applied, the applicant failed to explain why \$19 million is required for investment and/or how it will be used for job creation.

The applicant failed to submit an economic impact analysis in response to the director's RFE. On that basis alone, the proposal may not be approved. 8 C.F.R. § 103.2(b)(14). Moreover, the business plan fails to contain information such as adequate data sources, industry benchmarks, and competitor-demand analysis needed to sufficiently demonstrate the claimed employment estimates, including evidence reflecting that the employment positions will be new, full-time, and/or will exist for at least two years. *Matter of Soffici*, 22 I&N Dec. at 165. Finally, because the entity for which the applicant seeks regional center designation has a "revoked" status in Nevada and no status in California, the applicant has not established that [REDACTED] is authorized to do business in California.

IV. SUMMARY

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.