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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

[REDACTED]

DATE: FEB 21 2014 Office: CALIFORNIA SERVICE CENTER [REDACTED]

IN RE: [REDACTED]

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, 1993, Pub. L. No. 102-395, 106 Stat. 1874 (1992).

ON BEHALF OF APPLICANT:

[REDACTED]

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg  
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 as [REDACTED] pursuant to section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 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 director denied the application, determining the following:

1. The applicant was not an economic unit on the date it filed the proposal;
2. The proposal failed to sufficiently project job creation through the submission of business plans and an economic impact analysis;
3. The proposal did not explain how the applicant would promote economic growth within the selected geographic area or have a positive impact on the regional or national economy;
4. The record lacked a sufficient promotional and recruitment plan, and evidence that the regional center would perform adequate administrative oversight.

On appeal, counsel asserts that the director required more detail than necessary at the regional center stage, and submits additional supporting documentation. Much of the documentation was already contained in the record of proceeding. In response to the AAO's June 6, 2013 notice of derogatory information advising that the applicant was not in good standing, counsel provided new evidence demonstrating that the applicant is now a limited liability company in good standing. The AAO has incorporated the new evidence into the record of proceedings. Subsequently, the applicant submitted a copy of a recent U.S. Citizenship and Immigration Services (USCIS) memorandum, asserting that the memorandum supports approval of the proposal. For the reasons discussed below, the appeal is dismissed.

At the outset, it is noted that counsel for the regional center, [REDACTED] is also one of four managing principals for the applicant. Where [REDACTED] made statements on the applicant's letterhead, the AAO will attribute his statements to the applicant. Where [REDACTED] made statements on his law firm's letterhead, the AAO will attribute his statements to him in his capacity as counsel for the applicant.

## 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(a) of the Departments of Justice and Related Agencies Appropriations Act, 1993, as amended, provides:

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 program to implement the provisions of such section. Such 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.

## II. FACTUAL AND PROCEDURAL HISTORY

On November 23, 2010, the applicant filed the proposal for designation as a regional center along with supporting documentation. The applicant identified the geographic area as including the states of Georgia, South Carolina, North Carolina, and Virginia as well as Washington, DC. The applicant originally identified 14 North American Industry Classification System (NAICS) industries, but revised that number to the following 10 industries:

On July 7, 2011, the director issued a request for evidence (RFE), including a request for business plans and econometric models. On September 29, 2011, the applicant responded and submitted additional documentation. On July 9, 2012, the director denied the proposal, determining that the documentation failed to provide sufficient detail for designation as a regional center pursuant to the provisions at 8 C.F.R. §§ 204.6(m)(3)(i), (ii), and (iv). On August 1, 2012, counsel filed an appeal with USCIS. On appeal, counsel claims that the director's decision was in error and submits additional

documentation. On June 6, 2013, the AAO issued a notice of derogatory information regarding the applicant's status in North Carolina. The applicant filed a timely response.

### III. ANALYSIS

#### A. Oral Argument

On appeal, counsel requests oral argument "to bring regional center program parameters back into compliance with the goals and objectives of the Pilot Program." The regulations provide that the requesting party must explain in writing why oral argument is necessary. See 8 C.F.R. § 103.3(b)(1). Furthermore, USCIS has the sole authority to grant or deny a request for oral argument. See 8 C.F.R. § 103.3(b)(2). The applicant has not adequately explained why oral argument is necessary in this case. The request for oral argument is denied.

#### B. Established Economic Unit

Regarding the director's first concern, the regulation at 8 C.F.R. § 1.2 provides the following definition:

*Benefit request* means any application, petition, motion, appeal, or other request relating to an immigration or naturalization benefit, whether such request is filed on a paper form or submitted in an electronic format, provided such request is submitted in a manner prescribed by DHS for such purpose.

The regulation at 8 C.F.R. § 103.2(b)(1) provides:

*Demonstrating eligibility.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.

The regulation at 8 C.F.R. § 103.2(b)(12) provides:

*Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* An [sic] benefit request shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the benefit request was filed. An [sic] benefit request shall be denied where any benefit request upon which it was based was filed subsequently.

The regulation at 8 C.F.R. § 204.6(e) defines a regional center as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." Accordingly, the regional center must establish that it was an economic unit within the meaning of 8 C.F.R. § 204.6(e) as

of the filing date of the application through the adjudication of any subsequent motion or appeal. 8 C.F.R. §§ 103.2(b)(1), (12). In the initial cover letter dated November 22, 2010, [REDACTED] stated that the applicant was “a North Carolina Limited Liability Company, in good standing with the Secretary of State of North Carolina.” As this statement appears on the applicant’s letterhead and Mr. [REDACTED] made this statement in his capacity as manager of the applicant, it is the applicant’s assertion. The applicant submitted a copy of its articles of organization with no indicia of filing with the State of North Carolina.

In response to the director’s RFE, the applicant submitted evidence that it filed its articles of organization with the state on December 21, 2010, nearly one month after it filed the regional center proposal. [REDACTED] again in his capacity as the applicant’s manager, then claimed that the applicant was a North Carolina general partnership at the time it filed the proposal and, thus, did exist as an economic unit at the time of filing. [REDACTED] states: “No additional corporate documents were required to establish [REDACTED] or to convert the entity from a Partnership to a Limited Liability Company, taxed and treated as a partnership.”

First, [REDACTED]’s new assertion that the applicant was a general partnership at the time of filing is inconsistent with his initial assertion that the applicant was a limited liability company in good standing. 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.* Second, the applicant failed to submit any corroborating evidence to support the new and inconsistent assertion that it was initially a general partnership, such as a written partnership agreement or a corroborating statement from all of the partners. Finally, the applicant failed to submit any corroborating evidence to support [REDACTED]’s assertion that the State of North Carolina would not require any additional organizational documents to convert the claimed general partnership to a limited liability company.

The director determined that the applicant was not an economic unit and, thus, did not meet the definition of a regional center under the regulation at 8 C.F.R. § 204.6(e) at the time it filed for such designation.

On appeal, counsel again claims that prior to its formation as a limited liability company, the applicant existed as a general partnership. Counsel asserts that formation as a general partnership did not require registration with any government entity in the same manner as a limited liability company. However, again, the applicant fails to submit any corroborating evidence to support the assertion that the applicant existed as a general partnership at the time it filed the application. In addition, neither counsel nor the applicant provides an explanation as to why the applicant initially claimed to be a limited liability company in good standing if it was actually a general partnership that had not yet converted to a limited liability company. Finally, while counsel asserts that general partnerships are not required to register their existence with the State of North Carolina, a general partnership that converts to a limited liability company must approve a written plan of conversion in accordance with the applicable law and file the articles of organization that contain specified articles of conversion to the North Carolina Secretary of State. N.C. Gen. Stat. §§ 57C-9A-02 (eff. 2006), 57C-9A-03 (eff. 2002), 59-73.21 (eff.

2005), 59-73.22 (eff. 2002). The applicant does not submit either its written plan of conversion or articles of organization containing the specified articles of conversion. 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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, the applicant must resolve the inconsistencies between the initial claim and the response to the RFE and again on appeal with competent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. USCIS will not accept a contradictory assertion relating to the applicant's business type at the time of filing without sufficient corroborating evidence.

With respect to the applicant's current status, [REDACTED], in his capacity as counsel, submitted an August 30, 2012 appellate brief in which he states that the applicant "is currently a North Carolina Limited Liability Company, in good standing with the Secretary of State of North Carolina." In seeking to verify this assertion, the AAO reviewed the online records database of the North Carolina Secretary of State's Office and discovered that the Secretary of State had issued a Certificate of Administrative Dissolution to the applicant on April 16, 2012, after a December 9, 2011 notice. The result of the administrative dissolution meant that the applicant did not, in fact, validly exist; nor was it in good standing under the laws of State of North Carolina at the time counsel made his August 30, 2012 statement, nor at the time when the applicant filed the appeal. This constitutes the second instance in which [REDACTED] has presented incorrect information relating to the status and standing of the applicant.

As stated above, doubt cast on any aspect of an individual's testimony or evidence may lead to a reevaluation of the reliability and sufficiency of the remaining testimony or evidence offered in support of the requested benefit. See *Matter of Ho*, 19 I&N Dec. at 591. False, contradictory, or unverifiable claims inherently prevent a finding that the applicant's claims are true. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988). As [REDACTED] has made false, contradictory, and unverifiable claims as both a representative of the applicant within the initial filing, and as the applicant's counsel within the appellate brief, his statements within these proceedings carry diminished evidentiary weight.

On June 6, 2013, the AAO issued a notice of derogatory information relating to the applicant's standing with the Secretary of State of North Carolina. The notice advised the applicant that it had been administratively dissolved as of April 16, 2012 and remained so as of June 6, 2013. In response, the applicant remedied this deficiency and the North Carolina Secretary of State issued an Administrative Reinstatement of the applicant on June 20, 2013. The applicant has not provided an explanation as to why it claimed that the regional center was a limited liability company in good standing on November 22, 2010, the date of the initial letter accompanying the proposal, or why counsel again misrepresented the status of the regional center on appeal.

The applicant has not established that it was an economic unit as of the filing date of the benefit request. On that basis alone, the application may not be approved. 8 C.F.R. §§ 204.6(e), 103.2(b)(1), (12). While the applicant has demonstrated that it is now a limited liability company in good standing such

that it constitutes an existing economic unit, it has not supported its contradictory claims that it was an economic unit at the time of filing with evidence.

C. Eligibility as a Regional Center with a Sufficiently Detailed Proposal.

A regional center shall be “designated . . . on the basis of a general proposal.” Further, “[t]he 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 Departments Justice and Related Agencies Appropriations Act, 1993, § 610(a), 106 Stat. 1828, as amended.

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.

As noted by the applicant, a recent USCIS memorandum 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.

*EB-5 Adjudications Policy*, PM-602-0083, p. 14 (May 30, 2013) (emphasis added) (footnote omitted).

A hypothetical project is one that lacks a business plan that complies with *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm’r 1998) and is based upon a general proposal and general predictions describing how the regional center will promote economic growth, improved regional productivity, job creation and increased domestic capital investment. *Id.*

1. Sufficiency of Detail Projecting How Jobs Will Be Created through the Submission of Business Plans and an Economic Impact Analysis

Regarding the submission of business plans and economic impact analyses, the applicant seeks regional center designation based on its plans [redacted] located in the geographic area of Georgia, North Carolina, South Carolina, Virginia, and Washington, DC. Despite counsel’s claims within the appellate brief that the appellate submission includes “several actual (yet, for purposes of this application, exemplar to [redacted] a new company) impact analyses at Tab 13,” the regional center proposal is not based on any actual projects and does not include an exemplar Form I-526 petition. The appellate submission does not include a Tab 13. The applicant used the same language in response to the RFE. Tab 13 of that response, however, did not include information on any projects, either actual or hypothetical. Nor did it include a Form I-526 petition exemplar. Rather, that exhibit included information about companies operating in the region with no economic impact analyses explaining how the regional center might [redacted] and the impact of such an investment. Ultimately, the applicant has merely identified industries and the input-output model that the applicant will utilize to calculate indirect job creation in the future.

Within the RFE response, the applicant’s representative stated: “[redacted] does not currently have any actual projects. Job creation estimates are, of course, only as good as the model and its inputs. [redacted] has no intention of ‘reinventing the wheel;’ and intends to rely on the RIMS II Modeling System.” Page 19 of the September 28, 2011 regional center business plan also states:

[redacted] does not presently possess any projects in any of the above industry categories. [redacted] is, however, aware of a number of potential projects in its geographic region. Once granted Regional Center status, [redacted] will immediately solicit detailed project information from within the above NAICS code clusters.

[REDACTED]'s assurance that it is aware of potential projects does not provide sufficient detail on how it will create jobs. The regulations at 8 C.F.R. §§ 204.6(m)(3)(ii) and (v) require that a regional center must submit a proposal that “[p]rovides in verifiable detail how jobs will be created indirectly” and that “[i]s 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 May 30, 2013 memorandum states that general proposals may be sufficient; however, the applicant has not provided sufficient details for a conclusion that the general proposal is reasonable. While USCIS does not define the level of detail required for a general proposal, merely identifying the NAICS industry categories and the eventual input-output model without analyzing how the model would apply to a hypothetical project that falls under the industry categories is insufficient to meet the applicant’s burden within these proceedings. Counsel implies on appeal that the applicant can meet the requirement that it must support its model with an economically or statistically valid forecasting tool by identifying RIMS II as its input-output model and providing assurances that it will “utilize third parties familiar” with RIMS II. Counsel does not cite to any legal or policy source in support of this implication. Simply submitting the RIMS II Handbook without any economic analysis as to how that tool might work in the industries identified does not meet the applicant’s burden of supporting its proposal with an economically or statistically valid tool.

Footnote 2 on page 14 of the May 31, 2013, memorandum defines a hypothetical project as one that lacks a business plan that complies with *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm’r 1998). In this case, however, the applicant has not identified a hypothetical project. The proposal does not need to include a business plan that complies with *Matter of Ho*; however, nothing in the May 30, 2013 memorandum suggests that merely identifying industries and the input-output model is sufficient.

Based on the foregoing, the applicant has not provided sufficient verifiable detail relating to the regulatory requirements of 8 C.F.R. §§ 204.6(m)(3)(ii), (iv), and (v) for purposes of a general proposal.

## 2. Promotion of Economic Growth within the Selected Geographic Area and Positive Impact on the Regional or National Economy

Regarding projected economic impact, the applicant has not resolved these issues as the applicant has failed to provide hypothetical projects and he has failed to directly address these reasons for the director’s denial. Specifically, the director concluded, “[b]eyond vague assertions, the proposal contains virtually no analysis to demonstrate how the regional center will promote regional or economic growth within the selected geographic area of the regional center” and that the petitioner did not provide “a prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general.” Without at least hypothetical projects, the applicant has not established the regional center will promote economic growth or have a positive impact on the proposed region or nationally pursuant to 8 C.F.R. §§ 204.6(m)(3)(i) and (iv).

3. Sufficient Promotional and Recruitment Plan, and Evidence that the Regional Center Would Provide the Required Updates on an Annual Basis

Counsel only briefly addresses the director's concerns about the applicant's promotional plans and ability to provide administrative oversight. With respect to its promotional plans, counsel asserts the applicant will maintain a website for marketing purposes. Previously, the applicant has also referenced the "rolodex contacts" of its managers. These brief references to a website and the contacts of the managers do not constitute a sufficiently detailed description of the promotional efforts taken and planned by the sponsors of the regional center as required under 8 C.F.R. § 204.6(m)(3)(iii).

Finally, with respect to the director's conclusion that the regional center proposal does not demonstrate that if USCIS approves and designates the applicant as a regional center, the regional center will provide administrative oversight, counsel notes that the applicant has submitted a "pro forma" Form I-924A Supplement and asserts that this submission demonstrates its ability to update USCIS on its activities in the future. The director determined that the proposal was deficient because it did not demonstrate how the regional center would maintain its approval by demonstrating its administration, oversight and monitoring of investment activities under its sponsorship. *See* 8 C.F.R. § 204.6(m)(6) (requiring that a regional center annually update USCIS with information demonstrating that it continues to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area). As the application may not be approved on the other grounds the director identified, the AAO need not determine whether 8 C.F.R. § 204.6(m)(6) imposes evidentiary requirements on an applicant when it applies for designation as a regional center.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

**ORDER:** The appeal is dismissed.