



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF CMBS-R-C-, LLC

DATE: AUG. 22, 2016

APPEAL OF IMMIGRANT INVESTOR PROGRAM DECISION

**APPLICATION: FORM I-924, APPLICATION FOR REGIONAL CENTER UNDER THE
IMMIGRANT INVESTOR PILOT PROGRAM**

In 1990, Congress established an immigrant investor program to attract foreign investment capital and thereby create jobs for U.S. workers.¹ This program is commonly called “EB-5” because the investors receive immigration benefits under the fifth preference classification of employment-based immigration. Such investors initially receive conditional permanent resident status in the United States for two years, and U.S. Citizenship and Immigration Services (USCIS) may ultimately remove the conditions if the immigrants satisfy the eligibility criteria. Foreign investors may invest either in their own projects or through established “regional centers” that offer investment opportunities to foreign investors.² USCIS adjudicates EB-5 petitions and applications of both individual investors and regional centers.

In September 2013, USCIS designated the Applicant as a regional center based on a proposed construction project with a geographic area of Florida and Georgia. Three months later, the Applicant submitted an amendment to expand the geographic scope to include the entire State of Tennessee.

In September 2015, the Chief of the Immigrant Investor Program denied the amendment application. Specifically, the Chief determined that the Applicant did not demonstrate that its request to expand the geographic area to the entire State of Tennessee would significantly improve economic growth throughout its existing geographic area of the State of Florida and the State of Georgia.

The matter is now before us on appeal. In its appeal, the Applicant submits a brief, along with additional evidence, and states that it provided substantial, reliable evidence establishing that it would promote and significantly enhance economic growth in Tennessee.

Upon *de novo* review, we will dismiss the appeal.

¹ See Immigration Act of 1990 section 121(b)(5).

² See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Appropriations Act) section 610, as amended.

I. ANALYSIS

A. Exemplar Petition

In addition to the Applicant's request to expand its geographic scope, the Applicant sought approval of an exemplar Form I-526, Immigrant Petition by Alien Entrepreneur, for a new commercial enterprise, [REDACTED] in order to fund the construction of a mixed-use development in [REDACTED] Tennessee. The term "exemplar" refers to a sample Form I-526 petition, filed with a Form I-924 actual project proposal that contains copies of the commercial enterprise's organizational and transactional documents, which USCIS will review to determine if they are in compliance with established EB-5 eligibility requirements. USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 14 (May 30, ' 2013), <https://www.uscis.gov/laws/policy-memoranda>.

An "actual" project must be supported by a "comprehensive, credible business plan," which is one "sufficiently detailed to permit the Service to draw reasonable inferences about the job-creation potential." In *Matter of Ho*³, we stated that "at a minimum, [such a plan should include] a description of the business, its products and/or services, and its objectives." The plan should also indicate: a market analysis, including the names of competing businesses and their relative strengths and weaknesses; a description of the target market and prospective customers of the new commercial enterprise; any contracts executed for the supply of materials and/or the distribution of products; and the business' staffing requirements, including a timetable for hiring, as well as job descriptions for all positions. Generally, an actual project is at a more advanced stage of development than a hypothetical project, and thus there is more concrete information with which we may evaluate the geographic area requested by the regional center. A "hypothetical project" only needs to contain "general proposals and general predictions."⁴ Thus, it is particularly challenging to define the geographical scope for a regional center that has only proposed hypothetical projects.

The Chief issued a request for evidence (RFE) and informed the Applicant that the exemplar documentation reflected that the Applicant and another USCIS designated regional center, [REDACTED] were seeking approval for the same project. Specifically, although the Applicant submitted the amendment application, the supporting documents, such as the sample subscription and escrow agreements, referred to [REDACTED] As such, the Chief indicated that it could not make a decision if the supporting documents were associated with another regional center and requested the Applicant to either present supporting documents that related to the Applicant or

³ 22 I&N Dec. 206 (Assoc. Comm'r 1998)

⁴ USCIS Policy Memorandum PM-602-0083, *supra*, at 14.

⁵ The Applicant submitted a Regional Center Service Agreement between [REDACTED] (initial USCIS regional center designation in June 2007), [REDACTED] (initial USCIS regional center designation in August 1997), and a future [REDACTED] for the construction of a mixed-use project.

withdraw its application. He also noted that [REDACTED] could file an amendment application for the exemplar petition.

In the RFE response, the Applicant withdrew the request for approval of the Form I-526 exemplar and asked for the [REDACTED] project to be treated as a hypothetical project. In addition, the Applicant stated that after its filing of the amendment application, at least three immigrant investors filed Forms I-526 under [REDACTED] based on regional center affiliation with [REDACTED]. The Applicant, therefore, requested that USCIS consider the actual, active project of another regional center, including the economic impact analysis, as the Applicant's hypothetical project. To endorse this request would permit any applicant for a regional center to appropriate the work of another applicant or established regional center as its own and thereby receive recognition as a regional center although it has presented no proposals, not even general ones, to promote economic growth in a given area. Accordingly, the economic activity of [REDACTED] will not be considered in determining the Applicant's request for geographic area expansion.

The Applicant stated that it is in discussions with a [REDACTED] firm that provides financing for hotels, predevelopment consulting, and management services for "projects around the country." However, the Applicant did not state that it was in talks with the company to develop any specific project in [REDACTED]. In addition, while the Applicant indicated [REDACTED] was collaborating with the developer of the [REDACTED] project, it provided no evidence that the project involved the Applicant rather than [REDACTED]. Accordingly, the Applicant has not shown any general proposals or predictions based on a hypothetical project in [REDACTED].

B. Regional Center's Limited Geographic Area

The central issue here is how to delineate the limited geographic area in which a regional center may offer investment opportunities under the EB-5 program. The relevant statute and regulation provide some, if not comprehensive, guideposts. Section 610(a) of the Appropriations Act provides that "[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." And DHS regulations require a regional center to submit a proposal that "[c]learly describes how the regional center focuses on a geographical region of the United States" 8 C.F.R. § 204.6(m)(3)(i).

Neither the statute nor the corresponding regulations define the term, "limited geographic area." The word "limited" suggests that the regional center function in a selected or specific geographic area, and the statute specifies that this be consistent with pooling investments in defined economic zones. A regional center therefore cannot arbitrarily choose an area without regard to its geographic boundaries and potential for economic growth. As part of an applicant's initial evidence requirements, the Form I-924 instructions state that "[t]he Regional Center must focus on a geographic area. This area must be contiguous and clearly identified in the application by providing

a detailed map of the proposed geographic area of the Regional Center.”⁶ The regional center must therefore, among other requirements: (1) propose a clearly identified, contiguous geographical area, (2) describe how investment capital will create qualifying EB-5 jobs, directly or indirectly, and (3) predict the regional or national impact.⁷ Further:

USCIS will review the proposed geographic boundaries of a new regional center and will deem them acceptable if the applicant can establish by a preponderance of the evidence that the proposed economic activity will promote economic growth in the proposed area. The question is a fact-specific one and the law does not require any particular form of evidentiary showing, such as a county-by-county analysis. In USCIS’s experience, the reasonableness of proposed regional center geographic boundaries may be demonstrated through evidence that the proposed area is contributing significantly to the supply chain, as well as the labor pool, of the proposed projects.⁸

We must first address the Chief’s issue regarding the proposed geographic area’s impact of the State of Tennessee on the existing geographic area of the State of Florida and the State of Georgia. Neither the Appropriations Act nor the regulation requires a single regional center *project* to have an economic impact over the entire jurisdiction of the regional center. Rather, the *regional center* must show that its activities will promote economic growth within the geographic area. Here, the Applicant has requested to expand its geographic scope to the State of Tennessee. Thus, the Applicant must demonstrate by a preponderance of the evidence that it will promote economic growth throughout the State of Tennessee. The Applicant, however, is not required to show that a project in Tennessee will also promote economic growth in Georgia and Florida. Likewise, the Applicant does not have to establish that a project in Georgia or Florida will promote economic growth in Tennessee.

Therefore, the remaining issue is whether the Applicant’s proposed expanded geographic area to the entire State of Tennessee will promote economic activity. At the initial filing of the application, the Applicant submitted an economic impact analysis utilizing regional industrial multipliers (RIMS II)⁹ exclusively for [REDACTED] project. Because we do not recognize [REDACTED] as the Applicant’s hypothetical project, the Applicant’s economic impact analysis and any supporting documentation regarding this project is moot.

⁶ This requirement appears at page 1, in the second-listed initial evidence requirement, of the instructions to Form I-924, <https://www.uscis.gov/sites/default/files/form/i-924instr.pdf>. Form instructions are incorporated into the regulations. 8 C.F.R. § 103.2(a)(1).

⁷ See USCIS Adjudicator’s Field Manual (AFM), 22.4(a)(2)(B) <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1.html>.

⁸ USCIS Policy Memorandum PM-602-0083, *supra*, at 13-14.

⁹ RIMS II is an economic model developed by the Bureau of Economic Analysis, U.S. Department of Commerce, to assist economists in analyzing the potential impacts of activities on regions. It is a common methodology for assessing the job creation and potential economic impact of the regional center’s proposed projects.

In the RFE response, the Applicant briefly identified the potential for other projects located in various metropolitan statistical areas in Tennessee such as [REDACTED] and [REDACTED]. As with the [REDACTED] projects, however, the Applicant speaks in general terms about [REDACTED] and does not specifically identify itself as the potential partner in these various projects. The Applicant indicated that these projects included distribution centers, building redevelopment, renewable energy, and closed military bases. It did not, however, describe how, using immigrant investment capital, EB-5 jobs would be created from these projects. Further, the Applicant did not predict the national or regional impact. In addition, the Applicant did not submit evidence showing that the proposed economic activity will promote economic growth in the proposed area.

On appeal, the Applicant submits a letter from [REDACTED] director of economic analysis for [REDACTED] who briefly discusses the interconnectedness of Florida, Georgia, and Tennessee as they relate to the [REDACTED] interstate highway corridor. [REDACTED] analyzed the freight transit to [REDACTED] and found that Georgia ranked 3rd in shipping goods. While referencing the [REDACTED] project, he also provided RIMS II multipliers for 63 industries regarding the [REDACTED] metropolitan statistical area, the [REDACTED] combined statistical area, the State of Tennessee, and the Tennessee-Georgia-Florida region. [REDACTED] also determined that the [REDACTED] project would create approximately 8.8 jobs within Tennessee for every million dollars in qualified construction spending, and the same project would create 10.4 jobs in the three-state region implying a project in Tennessee would create 1.6 jobs within Florida and Georgia.

Although [REDACTED] provides projections for job creation, his analysis is based on the [REDACTED] project, which is no longer viable for the Applicant. As such, the Applicant must demonstrate that the other hypothetical projects will promote economic growth throughout the state. If the Form I-924 projects are hypothetical projects, general proposals and general predictions are usually sufficient to determine that the proposed regional center will more likely than not promote economic growth, improve regional productivity, spur job creation, or increase domestic capital investment.¹⁰ In the case here, the Applicant did not present adequate general proposals and general predictions for the hypothetical projects. Rather, the Applicant offers brief background and location information for each hypothetical project(s) without generally predicting economic growth. Further, the Applicant does not propose how the project(s) will improve regional or national productivity, impact job creation, or incentivize domestic capital investment.

In addition, as discussed above, the Applicant refers to [REDACTED] but does not indicate whether the hypothetical projects will be sponsored by the Applicant or another [REDACTED] related regional center. Accordingly, the Applicant has not established which hypothetical projects it might pursue and how those projects will promote economic activity throughout Tennessee based on sufficient general proposals and general predictions.

¹⁰ USCIS Policy Memorandum PM-602-0083, *supra*, at 14.

II. CONCLUSION

On appeal, we carefully considered the Applicant's arguments and additional evidence but find that the Applicant did not establish that its request to expand its geographic area to the State of Tennessee would promote economic growth in the expanded area. 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.

Cite as *Matter of CMBS-R-C-, LLC*, ID# 16504 (AAO Aug. 22, 2016)