



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

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

MATTER OF R-T-E-R-C-, LLC

DATE: JULY 15, 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 June 2014, USCIS designated the Applicant as a regional center based on a proposed project regarding a [REDACTED] facility with a geographic area of 18 Texas counties focusing on seven industry categories. Five weeks later, the Applicant submitted an amendment seeking approval, based on seven proposed hotel and multi-family projects: (1) to expand the geographic scope to include the entire State of Texas (236 additional counties) and one county in New Mexico [REDACTED] and (2) to increase the industry categories.

In July 2015, the Chief issued a decision, approving in part and denying in part the Applicant's requested amendment. The Chief approved six of the 236 requested additional Texas counties, all additional industry categories, and one of the seven projects. The Chief denied the requested geographic expansion to the remaining 230 Texas counties, determining that six of the seven projects were not contiguous to the Applicant regional center's current geographic area, and that the Applicant did not "provide evidence how an individual hypothetical project in one corner of Texas would affect the economy hundreds of miles away in another corner in Texas."³

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.

³ The Chief approved the hotel project in [REDACTED] Texas because it was contiguous to the previously approved geographic area.

Despite partially denying the requested amendment, the Chief instructed the Applicant that it could not appeal its decision to the AAO. On appeal, the Applicant submits a brief and additional evidence, contending that the Chief erred in curtailing its administrative appeal rights and in denying the full extent of the requested amendment. The Applicant maintains that in approving regional centers, “USCIS cannot and need not designate a bunch of little areas”; instead “it can designate the entire State based on the general proposal to use EB-5 capital all over Texas with general predictions of indirect job creation throughout the state.”

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

I. RIGHT TO APPEAL

First, we must address whether the Chief’s partial grant of a benefit request forecloses the Applicant’s right to seek redress through an administrative appeal.⁴ This question reveals a tension between two terms – “denial” and “unfavorable decision” – in pertinent DHS regulations relating to administrative appeals:

(a) *Denials and appeals*—(1) *General*—(i) *Denial of application or petition*. When a Service officer *denies* an application or petition filed under §103.2 of this part, the officer shall explain in writing the specific reasons for denial. If Form I-292 (a *denial form including notification of the right of appeal*) is used to notify the applicant or petitioner, the duplicate of Form I-292 constitutes the denial order.

(ii) *Appealable decisions*. Certain *unfavorable* decisions on applications, petitions, and other types of cases may be appealed. ...

(iii) *Appeal*—(A) *Jurisdiction*. When an *unfavorable* decision may be appealed, the official making the decision shall state the appellate jurisdiction and shall furnish the appropriate appeal form.

8 C.F.R. § 103.3(a)(1) (emphasis added). The Chief’s decision to restrict the right to appeal appears to rely, in subsection (i), upon the term “denial” and its connection to the notification of appeal rights. In most cases, USCIS grants or denies a benefit request in whole. Were that the case here, we would end our inquiry with the plain language of subsection (i) and decline appellate review of a fully approved application.

But here we have a mixed decision on the same application. Although he “approved” parts of the application, the Chief also denied much larger parts of the Applicant’s request pertaining to the geographic area and hypothetical projects. We have jurisdiction under 8 C.F.R. § 103.3(a)(1)(ii) to review those “unfavorable” aspects of the Chief’s decision: the denial of the requested geographic expansion to the 230 of the requested Texas counties and of the six additional projects. A mixed

⁴ Our appellate jurisdiction over regional center applications is not in question.

decision contains “unfavorable” elements, so USCIS cannot foreclose the right to appeal simply by styling a mixed decision as an approval. When a decision is mixed, USCIS must provide notice of appeal rights, if available for the underlying benefit category.

The Chief erred by instructing the Applicant that it could not appeal the decision. We have appellate jurisdiction over the unfavorable decisions reflected in the approval.

II. REGIONAL CENTER’S LIMITED GEOGRAPHIC AREA

The central issue here is how to delineate the cognizable 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 the 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.”⁵ 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.⁶ Further, a May 2013 USCIS Policy Memorandum on EB-5 provides:

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

⁵ 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/files/form/i-924instr.pdf>. Form instructions are incorporated into the regulations. 8 C.F.R. § 103.2(a)(1).

⁶ 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>.

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contributing significantly to the supply chain, as well as the labor pool, of the proposed projects.⁷

The probity of such evidence – both of and on the project(s) – depends upon whether the project(s) are “actual” or “hypothetical.” These EB-5 terms of art roughly describe a project’s stage of development. 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*⁸, 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.” USCIS Policy Memorandum PM-602-0083, *supra*, at 14. Thus, it is particularly challenging to define the geographical scope for a regional center that has only proposed hypothetical projects.

Here, the Chief found that the Applicant’s analyses – for the seven hypothetical projects in seven different cities – did not support the claimed statewide economic impact to substantiate an expanded regional center geographic area covering all of Texas (and a neighboring county in New Mexico). Specifically, in its initial application, the Applicant submitted an economic impact analysis that only utilized 47 of Texas’ 254 counties to project regional industrial multipliers (RIMS II) for each hypothetical project.⁹ As such, the Chief determined that the economic impact would be restricted to only those counties surrounding the hypothetical projects rather than transcending the entire State of Texas (and into [REDACTED] New Mexico). Because the hotel project in [REDACTED] Texas included six counties that were contiguous to the Applicant’s originally approved geographic scope, the Chief approved that hotel project and those six additional counties. In contrast, he disallowed all other hypothetical projects and counties as they were not contiguous to the Applicant’s originally approved geographic area.

On appeal, the Applicant submits a supplemental economic impact analysis claiming that, for several reasons, economic activity in one area of a state affects the economy in other areas. First, the analysis touts the statewide distribution of tax revenues, noting that state highway spending per county is not based upon the tax revenue generated by a specific county, but is based on the overall

⁷ USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 13-14 (May 30, 2013), <https://www.uscis.gov/laws/policy-memoranda>.

⁸ 22 I&N Dec. 206 (Assoc. Comm’r 1998)

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.

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tax revenue collected across the state. Thus, the Applicant claims, roads and other public services are funded by taxes from counties hundreds of miles away, and increased economic activity in one corner of Texas impacts the economic activity in other areas of Texas. Taxes, however, are not included as one of the inputs to the Applicant's RIMS II analysis, and the Applicant has not otherwise shown to what extent tax revenues from its projects would promote economic growth in the proposed geographic area. The record does not establish or even include estimates as to how much, if any, of the anticipated tax revenue created by its projects would be used by the state in the manner the Applicant claims. Furthermore, a regional center has no control over how the state will allocate any tax revenue generated from its projects. As the Applicant has not submitted probative evidence of the projects' statewide economic impact from taxes, we are not persuaded by this claim of qualifying economic impact.

Nor are we persuaded that the high concentration of population and existing economic activity in the projects' areas meaningfully informs how much impact the regional center's proposed projects might have. The supplemental analysis submitted with the appeal emphasizes that the Applicant's proposed projects, including the previously submitted [REDACTED] project, will occur in areas that cumulatively account for 75% of Texas' population and 80% of Texas' gross domestic product. That data may inform a regional center's business decision to invest in a given area, but it is not clear from the supplemental analysis how that is relevant to our evaluation of the economic impact of the regional center's proposed activities on the area. It may be relevant, but the Applicant does not show us how.¹⁰ The Applicant's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion, which has not been made in this instance.

Putting aside Texas' population density, gross domestic product, and tax expenditures, the record does contain other evidence to demonstrate that the regional center's proposed activities are more likely than not to promote economic growth in the proposed area of the State of Texas. The supplemental analysis points to U.S. Census Bureau data that show the full, not just localized, commuting patterns of all projects affect 249 of the 254 counties in Texas. The supplemental analysis also indicates that RIMS II guidelines suggest people spend most of their earnings near their residence, rather than near their work location. In addition, under those guidelines, the economic impact analysis calculates both localized effects and overall region-wide influences, thereby showing the applicable supply chain impacts. If an applicant can establish by a preponderance of the evidence that the proposed economic activity will promote economic growth in the proposed area, the geographic boundaries will be considered acceptable. USCIS Policy Memorandum PM-602-0083, *supra*, at 13-14. 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. *Id.* Here, the Applicant has established that the extensive commuting patterns and worker spending habits combine to demonstrate a statewide economic impact.

¹⁰ Instead, addressing the Chief's decision below, the Applicant states: "The RTERC submission assumed a certain level of economic understanding." Supplement (8/4/15), at 2.

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If the Applicant proposed a single project situated in the northern part of the state, as opposed to multiple projects located throughout the state, the Applicant would be less likely to demonstrate the promotion of economic growth in the proposed area. Here, the Applicant's hypothetical projects, which are based on general proposals and general predictions, support the requested expansion of the geographic area. Because the Applicant proposes seven additional hypothetical projects positioned in various parts in Texas, whose cumulative impacts are demonstrated in the supplemental analysis submitted on appeal, the Applicant now has established by a preponderance of the evidence that its economic activity would promote economic growth in the proposed area.

Before closing, we must address the Chief's reasoning for allowing the [REDACTED] project while disallowing the other six hypothetical projects. Specifically, the Chief indicated that as the [REDACTED] project "is the only one that is contiguous to the Regional Center's current geographic area, this limited approval is for this initial project." Thus, as the other six hypothetical projects were not contiguous to the initially approved geographic area or to the newly approved geographic area, the Chief disallowed those projects and corresponding counties. The "contiguous" requirement appears in the instruction to Form I-924 and simply requires that the proposed regional center's geographic area be contiguous, not that all of the projects are themselves contiguous to each other. Here, the State of Texas, and neighboring [REDACTED] New Mexico compose a geographic area that is contiguous and clearly identified. And, as we have determined from the record supplemented on appeal, the Applicant has demonstrated economic growth in the requested, limited geographic area. While the Form I-924 instructions require that the geographic *area* be contiguous, there is no requirement for an applicant to show contiguous – for example, county-by-county – economic growth throughout the requested geographical area.¹¹

III. CONCLUSION

The Applicant has met its burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. We withdraw the Chief's decision and approve the Applicant's requested expansion to the entire State of Texas and [REDACTED], New Mexico. As the Chief's denial of the six requested hypothetical projects rested solely on the denial of the expanded geographic area, we also approve the Applicant's remaining six hypothetical projects.¹² We return the matter to the Chief for issuance of an approval letter consistent with this decision.

ORDER: The appeal is sustained.

Cite as *Matter of R-T-E-R-C-, LLC*, ID# 16380 (AAO July 15, 2016)

¹¹ "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." USCIS Policy Memorandum PM-602-0083, *supra*, at 14.

¹² Hypothetical projects will not receive deference, and USCIS will conduct a *de novo* review on the actual projects during any subsequent Form I-526 filings. USCIS Policy Memorandum PM-602-0083, *supra*, at 14.