



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF USA-R- [REDACTED]

DATE: MAY 9, 2018

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

BENEFIT: REGIONAL CENTER DESIGNATION

In 1990, Congress established the EB-5 program¹ to promote economic growth in the United States through foreign investment.² Investors who comply with the program's requirements first receive conditional status, followed by the opportunity for the removal of conditions and permanent resident status. Investors may fund their own projects, or invest through a US Citizenship and Immigration Services (USCIS) designated regional center.³

In May 2014, USCIS designated the Applicant, a limited liability corporation, as a regional center to participate in the program. The Chief of the Immigrant Investor Program Office terminated the Applicant's designation in May 2017, finding that it no longer served the purpose of promoting economic growth.

On appeal, the Applicant requests that we reinstate the regional center's designation as it continues to serve the purpose of promoting economic growth, and provides evidence in support of this assertion.

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

I. LAW

To obtain USCIS designation, a regional center must provide a general proposal showing how it will concentrate pooled investments in defined geographic areas, thereby promoting economic growth. Section 610(a) of the Appropriations Act. Evidence of economic growth may include increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *Id.*; 8 C.F.R. § 204.6(m)(6). The proposal for a regional center must contain information concerning the types of commercial enterprises that will receive capital from EB-5 investors, the jobs that will be created directly or indirectly as a result of the investment, and the other positive economic effects

¹ The EB-5 program, (program), as it is commonly called, issues employment-based fifth preference visas.

² See section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5).

³ See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (the "Judiciary Appropriations Act"), 1993, Pub. L. No. 102-395, 106 Stat. 1828, 1874 (Oct. 6, 1992), as amended.

such investment will have. See 8 C.F.R. § 204.6(m)(3)(i)-(v); section 610(a) of the Appropriations Act.

Once a regional center is designated, the regulation at 8 C.F.R. § 204.6(m)(6)(i)(B) requires it to “[p]rovide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area” Regional centers are required to file a Form I-924A, Annual Certification of Regional Center, to show their continued eligibility to participate in the EB-5 program.⁴ If a regional center does not submit the required information or no longer serves the purpose of the program, its designation will be terminated. 8 C.F.R. § 204.6(m)(6)(ii)-(v).

We determine whether a regional center serves the purpose of promoting economic growth by evaluating the totality of the evidence, including documentation submitted on appeal. We consider both positive and negative indicators to reach a conclusion regarding whether, on balance, the regional center is continuing to promote economic growth. Positive indicators for consideration include the extent of any job creation, the amount of investment, and the overall economic impact. Examples of negative indicators include inaction, mismanagement, theft, or fraud by the regional center or related entities, any resulting damage, and the risk imposed to investors or the economy by continued designation. An evaluation of any negative factors should take into consideration mitigating or corrective actions taken by the regional center. The requirement that a regional center demonstrate it is continuing to promote economic growth implies that we must consider whether these factors existed in the past, as well as the likelihood of their presence in the future.

II. ANALYSIS

The Applicant submitted an application in December 2012 for an initial regional center designation. In May 2014, USCIS granted the Applicant its initial designation based upon a hypothetical⁵ project, the [REDACTED]. The Applicant anticipated sponsoring a new commercial enterprise which would raise up to \$32,000,000 from 64 foreign investors to partially fund the development and construction of a 376-unit live-work residential building in [REDACTED] California. In November of 2016, the Chief issued the Applicant a notice of intent to terminate (NOIT) its regional center designation on grounds that it no longer served the purpose of promoting economic growth. The Chief terminated its regional center designation in May of 2017 because the Applicant did not file a response to his NOIT; thus, it failed to overcome the grounds alleged therein.⁶

⁴ USCIS changed the name of this form in 2016. The record contains a prior version of the form, entitled “Supplement to Form I-924.”

⁵ A “hypothetical project” proposal is one not supported by a comprehensive business plan, as opposed to an “actual project” proposal that is supported by a detailed plan. USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 14 n.2 (May 30, 2013), <https://www.uscis.gov/laws/policy-memoranda>; see also 6 *USCIS Policy Manual* G.3(B)(1)-(2), <https://www.uscis.gov/policymanual>.

⁶ A regional center is required annually to submit information demonstrating that it continues to serve the purpose of

A. Timely Response to the NOIT

On appeal, the Applicant notes that it did not receive the Chief's NOIT, thus was not aware of it and unable to respond. However, the record establishes that the Chief sent this notification to the Applicant's address of record, which remains unchanged, and at which it has received subsequent notifications, such as the notice of termination.

The Applicant also claims the Chief erred by issuing notifications to the prior attorney of record.⁷ The record reflects that in March 2014, the Applicant informed USCIS of its change in representation. On appeal, the Applicant contends it notified USCIS of the change of firm and address for the attorney of record in Part 5 of the Form I-924A filed in December 2014, where the preparer of the form signs; no Form G-28 accompanied that submission. Under 8 C.F.R. § 292.4(a), an appearance must be filed on the appropriate form and will be recognized until the conclusion of the matter for which it was entered. The Applicant refers to a Form G-28 that specifically identifies an appearance for "I-924 – RFE RESPONSE." USCIS approved the Form I-924 in May 2014, concluding the matter. Since that time, the Applicant has not submitted another Form G-28 notifying USCIS of representation in any matter, including this appeal. As any notices sent using information on the Form G-28 to which the Applicant refers would have gone to an outdated address, we find the Chief's error in sending notices to the prior attorney of record to be harmless.

Furthermore, even if the Chief had committed a harmful error, it is not clear what remedy would be appropriate beyond the appeal process itself. The Applicant has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford it the opportunity to supplement the record with the additional evidence we have accepted into the record already.

A. Promotion of Economic Growth

Upon a review of the record in its entirety, we conclude that the Applicant has not shown, by a preponderance of the evidence, that it serves the purpose of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6). On appeal, the Applicant acknowledges that since its designation in May 2014, it has not secured any foreign investors, received any EB-5 investment, or created any jobs directly or indirectly. Its most recent Form I-924A, filed in January 2018, confirms its lack of EB-5 funds and job creation. The Applicant explains that, with respect to the lack of sponsored

promoting economic growth. If it does not, it will be issued a NOIT, and will then have 30 days to rebut the grounds alleged therein. Failure to provide information overcoming these grounds will result in termination of the regional center's designation. *See* 8 C.F.R. § 204.6(m)(6).

⁷ An attorney or accredited representative seeking recognition by DHS as the new representative for an applicant, petitioner, requestor, or respondent must file a properly completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with the DHS office with jurisdiction over the pending matter. The Form G-28 is used only by attorneys and accredited representatives as defined in 8 CFR § 1.2 and 292.1(a)(4).

petitions, it advised waiting investors that it wished to ensure that these projects were “shovel-ready,” “fully permitted,” and “fully financed” prior to filing applications, so that these investors could use alternative projects to meet their needs.

It asserts that it is actively moving forward with the completion of [REDACTED] and thus continues to serve the purpose of promoting economic growth. However, the record does not support the claims of progress in the development, construction, and operation of [REDACTED]. The Applicant asserts that it has obtained building permits, but provides no corroborative documentation.⁸ The construction timeline submitted on appeal lacks supporting evidence, such as construction contracts or expenditures that would demonstrate its feasibility. Furthermore, we note that while the Applicant has submitted letters from various utilities confirming that natural gas, electric, and sewer utilities are available at the [REDACTED] project site, no documentation shows that it has activated these utilities. Thus, the record does not demonstrate that the Applicant’s work on the [REDACTED] project has increased export sales, improved regional productivity, job creation, and increased domestic capital investment in its approved geographic area.

The Applicant also contends that it will promote economic growth through its sponsorship of a new project, referred to as [REDACTED] “prior to the end of this 2017 year.” It provides a brochure and a copy of the construction timeline, but the record lacks corroborative materials such as permits, construction contracts, expenditures in construction activities, or other evidence. The record does not demonstrate that the Applicant is able to begin this project by the end of 2017. Thus, the record does not substantiate the Applicant’s claim that this project has or will promote economic growth.

As noted, when determining whether a regional center continues to promote economic growth, we consider the totality of the evidence, weighing positive and negative factors. Positive factors supported by the record include the Applicant’s consistent work on one project and its anticipation of involvement in a second project. Additionally, its concern that it not involve EB-5 investors in projects placing them needlessly at risk serves as a positive equity. Negative factors include a four-year-long history of inactivity and a lack of substantial evidence demonstrating the Applicant’s involvement in projects likely to promote economic growth in the future. While casting a favorable light on the Applicant, the positive factors are not sufficient to overcome the negative factors in the record. Accordingly, we cannot conclude that the Applicant continues to serve the purpose of promoting economic growth.

⁸ Evidence such as copies of issued permits, a property activity report, or other documentation might support this assertion. While the record did include an undated [REDACTED] for [REDACTED] indicating receipt of multiple permit applications, none of these permits had been approved. See Exhibit 21 of the Applicant’s initial Form I-924.

III. CONCLUSION

The Applicant has not demonstrated that it continues to serve the purpose of promoting economic growth. Accordingly, we find the Chief properly terminated the Applicant's regional center designation.

ORDER: The appeal is dismissed.

Cite as *Matter of USA-R- [REDACTED]* ID# 1076389 (AAO May 9, 2018)