



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

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

MATTER OF I-V-R-C-, LLC

DATE: MAY 11, 2018

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

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

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.³ Investors may fund their own projects, or invest through a United States Citizenship and Immigration Services (USCIS) designated regional center.⁴

USCIS designated the Applicant as a regional center to participate in the program in December 2013. The Chief of the Immigrant Investor Program Office terminated the Applicant's designation in August 2017, finding it had not properly filed a Form I-924A, Annual Certification of Regional Center, for Federal fiscal year 2016 as required.

On appeal, the Applicant asserts that the Chief erred in his decision and contends it had filed the Form I-924A in December 2016.

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

I. LAW

In 1992, Congress added the concept of the regional center to the EB-5 program. To obtain USCIS designation, a regional center must provide a general proposal showing how it will concentrate

¹ The EB-5 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 An immigrant investor files a Form I-526, Immigrant Petition by Alien Entrepreneur, attesting that the investor meets the criteria for conditional resident status, which includes showing that their investment (of either \$500,000 or \$1,000,000, depending on the geographical area) creates at least 10 jobs for qualified U.S. workers. After two years, the investor may file Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, which, if granted, affords the investor full lawful permanent residence in the United States. As part of the petition, the investor must show that their initial investment is still creating the requisite number of qualifying jobs.

⁴ 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.

pooled investments in defined economic zones, thereby promoting economic growth. Section 610(a) of the Appropriations Act, as amended. The desired economic growth may be in the form of increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *Id.*

The proposal for a regional center must contain information concerning the kinds of commercial enterprises that will receive capital from investors, 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. *Id.*

Once the regional center is designated, the regulation at 8 C.F.R. § 204.6(m)(6) requires it to “provide USCIS with updated information to demonstrate that the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area, using a form designated for this purpose.” Specifically, regional centers must annually file the Form I-924A to demonstrate their continued eligibility for participation in the EB-5 program. If the regional center does not submit the required information or upon a determination it no longer serves the purposes of the program, the regional center’s designation allowing participation in the immigrant investor program will be terminated. *Id.*

II. ANALYSIS

The Applicant, through its principal, submitted an application in October 2012 for an initial regional center designation. In December 2013, the Chief approved this application. He then issued a notice of intent to terminate (NOIT) in April 2017, finding that the Applicant failed to submit a Form I-924A for fiscal year 2016, as required pursuant to 8 C.F.R. § 204.6(m)(6). In August 2017, the Chief determined that the Applicant had not properly filed the Form I-924A nor paid the associated fee, and terminated the Applicant’s regional center designation.

On appeal, the Applicant asserts that it had filed a timely Form I-924A, that USCIS failed to promptly acknowledge receipt of the form or issue a “receipt notice”, and the Chief incorrectly applied the law by terminating the regional center’s designation without balancing the positive equities related to the promotion of economic growth.⁵ In support of these assertions, the Applicant submits an unsworn statement from [REDACTED] who is affiliated with the regional center, documentation already in the record, and a copy of the Form I-924A for fiscal year 2016, filed in October 2017.

The record does not demonstrate that the Applicant’s submission to the Immigrant Investor Program Office satisfied the Form I-924A filing requirement for fiscal year 2016. Every form, benefit

⁵ As the record does not demonstrate that USCIS received the Applicant’s Form I-924A, no receipt notice would have been issued. Although it claims it has not received receipt notices for previous Form I-924A filings and was thus unaware USCIS had not received its submission, the Chief’s correspondence indicates he would have accepted any credible evidence demonstrating that the form had been timely filed.

request, or other document must be submitted to DHS and executed in accordance with the form instructions. *See* 8 C.F.R. § 103.2(a)(1). The procedure set out in the Form I-924A instructions details the requirements for properly filing the form along with the associated fee.⁶

In his statement, [REDACTED] asserts that he filed the Form I-924A on behalf of the Applicant via regular mail on December 9, 2016, and assumed USCIS received the form. Upon receiving the Chief's NOIT, he states that he could not locate a copy of the original certification due to an office move. For the response, [REDACTED] completed a second Form I-924A, using the new form version from the USCIS website, with information he believed was consistent with the form he claims he submitted. He states that he did not think it was necessary to send the new filing fee.

In June 2017, the Chief notified the Applicant via email that its NOIT response lacked evidence demonstrating its Form I-924A had been mailed on December 9th, and provided it with another chance to submit documentation establishing the earlier mailing date or payment of the filing fee. Despite the additional opportunity to submit evidence of the 2016 filing, the Applicant failed to do so. The Applicant asserts that its principal, [REDACTED] was not aware of the email until after the Chief terminated the regional center's designation.⁷

Beyond [REDACTED] unsworn statement, the record does not contain evidence, such as a United States Postal Service return receipt or delivery confirmation, that demonstrates the Applicant filed the Form I-924A in December 2016 as claimed. The Applicant's unsupported testimonial evidence does not establish that it filed a Form I-924A before December 23, 2016, the implementation date of the new version of the form requiring a filing fee. Without evidence of an earlier filing, the Form I-924A submitted in response to the NOIT, using the December 2016 version but without the required fee, was not properly filed. *See* 8 C.F.R. § 103.2(a)(1).

The Applicant also states on appeal that it filed another Form I-924A for fiscal year 2016 in October 2017 "as an act of good faith and in an effort to show USCIS its commitment to comply with [the regulations]", and provides a copy of the submitted form and check issued for the associated fee. However, this does not satisfy the Applicant's Form I-924A filing requirement for fiscal year 2016. As specified in the Form I-924A instructions, "[e]ach approved regional center must file Form I-924A for each Federal fiscal year on or before December 29 of the calendar year in which the Federal fiscal year ended."

With respect to the Applicant's assertion that the Chief erred in not balancing the positive equities related to the regional center's promotion of economic growth before terminating its designation, we disagree. A regional center's obligation to properly submit updated annual information on the

⁶ To comply with the filing instructions, the Form I-924A and supporting documentation must be mailed, along with the applicable fee, to the California Service Center. *See* I-924A, Annual Certification of Regional Center, <https://www.uscis.gov/i-924a>.

⁷ [REDACTED] statement indicates that after the Chief terminated the regional center's designation, he and [REDACTED] assistant discovered the June 2017 email was inadvertently delivered to [REDACTED] spam folder.

required form (in this instance, the Form I-924A) and pay the associated fee are distinct regulatory requirements for continued participation in the EB-5 program. See 8 C.F.R. § 204.6(m)(6)(i)(B), (C). Furthermore, the failure to timely submit the Form I-924 or pay the requisite fee presents an independent ground for termination, separate from USCIS' determination that a regional center no longer serves the purpose of promoting economic growth. See 8 C.F.R. § 204.6(m)(6)(ii)(A), (B). Thus, the Applicant's termination does not require USCIS to conduct an examination its promotion of economic growth.

III. CONCLUSION

The Applicant improperly filed its Form I-924A for fiscal year 2016, and did not establish its eligibility for continued participation in the program as a regional center. Accordingly, we find the Chief correctly terminated the Applicant's regional center designation.

ORDER: The appeal is dismissed.

Cite as *Matter of I-V-R-C-, LLC*, ID# 1004434 (AAO May 11, 2018)