



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

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

MATTER OF A-G-C-R-C-

DATE: AUG. 30, 2019

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. *See* Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5). Foreign national 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.² Investors may fund their own projects, or invest through a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (the "Appropriations Act"), 1993, Pub. L. No. 102-395, 106 Stat. 1828, 1874 (Oct. 6, 1992), as amended.

USCIS designated the Applicant as a regional center to participate in the EB-5 program in January 2016. The Chief of the Immigrant Investor Program Office terminated the Applicant's designation in 2018, finding it did not submit the required Form I-924A, Annual Certification of Regional Center, for fiscal year 2017, and it no longer served the purpose of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6). On appeal, the Applicant provides additional evidence and requests reinstatement of its regional center designation. It asserts that it had timely filed the 2017 Form I-924A and that it has been actively pursuing viable EB-5 projects.

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

I. LAW

Congress enacted the EB-5 program that set aside visas for foreign national investors who invest in a new commercial enterprise associated with a USCIS designated regional center. To obtain USCIS

¹ The EB-5 program, as it is commonly called, issues employment-based fifth preference visas to qualified foreign national investors.

² A foreign national investor files a Form I-526, Immigrant Petition by Alien Entrepreneur, attesting that he or she meets the criteria for conditional resident status, which includes showing that his or her investment (at least \$500,000 or \$1,000,000, depending on the geographic area) creates at least 10 jobs for qualified United States workers. After two years, the investor may file a Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, which, if granted, affords the investor full lawful permanent resident status in the United States. As part of the petition, the investor must show that his or her initial investment is still creating the requisite number of qualifying jobs.

designation to participate in the program, a regional center must provide a general proposal showing how it will concentrate pooled investments in defined economic zones, thereby promoting economic growth. *See* Section 610(a) of the Appropriations Act. The desired economic growth may be in the form of increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *Id.*

Once designated, the regional center must “[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.” 8 C.F.R. § 204.6(m)(6)(i)(B). If the regional center does not submit the required information or upon a determination that it no longer serves the purpose of promoting economic growth, USCIS will issue a notice of intent to terminate (NOIT) the designation. Subsequently, USCIS may issue a notice of termination (NOT), if the regional center does not sufficiently rebut the grounds for termination specified in the NOIT. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(v).

II. ANALYSIS

USCIS granted the Applicant regional center designation based upon a hypothetical project.³ The approval specified that the Applicant’s approved geographic area encompassed several counties in Massachusetts, Maine, and New Hampshire. In January 2018, the Chief issued a NOIT, finding that the Applicant did not submit the required Form I-924A or show that it was continuing to promote economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i)-(ii). Upon reviewing the Applicant’s response, the Chief terminated its regional center designation in July 2018.

A. Submission of Form I-924A

As noted, the regulation at 8 C.F.R. § 204.6(m)(6)(i)(B) requires a regional center to “[p]rovide USCIS with updated information annually . . . to demonstrate that the regional center is continuing to promote economic growth” Subsection (C) of the same provision states that to be eligible for continued participation in the EB-5 program, a regional center must “[p]ay the fee provided by 8 C.F.R. § 103.7(b)(1)(i)(XX),” which is \$3,035.

In addition, the Form I-924A instructions provide:

This form is used by approved regional centers to certify and demonstrate their continued eligibility for the regional center designation. Each approved regional center must file Form I-924A . . . for each Federal fiscal year (October 1 through September 30) on or before December 29 of the calendar year in which the Federal fiscal year ended.

³ To demonstrate that the regional center will promote economic growth, an applicant may submit a proposal for a hypothetical or actual project. 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. 6 *USCIS Policy Manual* G.6, <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>; *see also* USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 14 n.2 (May 30, 2013), <https://www.uscis.gov/laws/policy-memoranda>.

The form instructions explain that “[e]ach form must be accompanied by the appropriate filing fee,” and state in bold that “USCIS will reject your Form I-924A if you submit the incorrect fee.”

Moreover, the regulation at 8 C.F.R. § 103.2(a)(1) states that “[a] form’s instructions are hereby incorporated into the regulations requiring its submission” and that “[e]ach form . . . must be filed with the fee(s) required by regulation.” Subsection (7)(ii)(D) of the same provision indicates that a form is rejected if it is not “[s]ubmitted with the correct fee(s).”

In this case, USCIS records indicate that the Applicant attempted to submit its 2017 Form I-924A in December 2017, but that USCIS rejected the filing because it did not include a check or money order with a correct written guarantee amount. A photocopy of a December 2017 check lists the written guarantee amount as “three thousand three hundred thirty-five” dollars, not three thousand and thirty-five dollars, the appropriate Form I-924A filing fee.⁴

As the Chief discussed in the NOT, the Applicant “did not provide evidence – such as a USCIS receipt notice or cancelled check – to demonstrate that [it] properly filed a Form I-924A for fiscal year 2017.” On appeal, the Applicant submits a copy of a June 2018 check, listing the correct written guarantee amount of “three thousand and thirty five dollars.” It, however, has not provided evidence confirming that it had submitted the check to USCIS or that it had timely refiled the Form I-924A. Accordingly, the Chief properly terminated the Applicant’s regional center designation for failure to submit “updated information annually,” as required under 8 C.F.R. § 204.6(m)(6)(i)(B)-(C).

B. Promoting Economic Growth

In the alternative, the Chief properly terminated the Applicant’s regional center designation for failing to demonstrate it “is continuing to promote economic growth” See 8 C.F.R. § 204.6(m)(6)(i)(B). In the NOIT, the Chief explained that the Applicant must demonstrate that it was continuing to promote economic growth. In its NOIT response, the Applicant did not submit sufficient evidence confirming its promotion of economic growth. Now on appeal, it maintains and offers documentation showing that it has been pursuing possible EB-5 projects.

To determine whether a regional center serves the purpose of promoting economic growth, we take into account a variety of factors, both positive and negative, that encompass past, present, and likely future actions. Positive factors include the extent of any job creation, the amount of investment, and the overall economic impact. Negative factors include inaction, mismanagement, theft, or fraud by or otherwise affecting the regional center, any resulting damage, and the risk imposed on investors or the economy. An evaluation of any negative factors should take into consideration mitigating or corrective actions taken by the regional center.

As relating to the positive factors, it appears that the Applicant has attempted to secure EB-5 projects. Its evidence on appeal includes site drawings for a proposed project in [redacted] Massachusetts; documents relating to proposed projects in [redacted] Massachusetts; and letters from

⁴ The check is issued by [redacted], which, according to documents in the record, is the corporate name under which the Applicant is doing business.

Massachusetts state government concerning census tracts that qualify as targeted employment areas. *See* 8 C.F.R. § 204.6(e) (defining “targeted employment area”). These materials demonstrate that the Applicant has pursued potential EB-5 projects, which is a positive factor in determining whether it is continuing to promote economic growth. *See* Section 610(a) of the Appropriations Act. However, the record does not establish that these actions have led to “increased export sales, improved regional productivity, job creation, and increased domestic capital investment,” or other positive indicia of promotion of economic growth in the approved geographic area. *See* 8 C.F.R. § 204.6(m)(6)(i)(B).

Significantly, as discussed in the Chief’s NOIT, the Applicant submitted a Form I-924A for fiscal year 2016, indicating that between January 2016, when USCIS designated it as a regional center, and September 2016, it did not receive any EB-5 capital investment, create any jobs, or maintain any created jobs, and that it was not associated with any new commercial enterprises that would facilitate job creation through EB-5 capital. Similarly, according to a copy of the 2017 Form I-924A that the Applicant had attempted to, but did not successfully, file, it did not receive any EB-5 funds, create or maintain any jobs, or form association with any new commercial enterprises. In addition to this self-reported information, USCIS records indicate that since 2016, there have been no Forms I-526 or Forms I-829 filed for investments associated with the Applicant.⁵

As we have explained above, the record shows the Applicant’s pursuit of potential EB-5 projects, which is a positive indicator. The record, however, does not demonstrate that the Applicant’s actions have led to other positive factors, such as increased export sales, improved regional productivity, job creation, increased domestic capital investment, or other positive indicia of promotion of economic growth. *See* 8 C.F.R. § 204.6(m)(6). On the other hand, the negative factors include, since its designation as a regional center in January 2016, the Applicant has not been involved with or committed to a project that uses EB-5 funds to create jobs or otherwise serves the purpose of promoting economic growth. The negative indicia here outweigh the positive and, thus, we conclude that the Applicant no longer continues to promote economic growth and does not warrant reinstatement of its regional center designation. *See id.*

III. CONCLUSION

The Applicant has not timely submitted the required Form I-924A or sufficient evidence demonstrating 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 A-G-C-R-C-*, ID# 2289776 (AAO Aug. 30, 2019)

⁵ *See supra* note 2.