



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

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

MATTER OF B-G-R-C- LLC

DATE: JULY 22, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

APPLICATION: FORM I-924, APPLICATION FOR REGIONAL CENTER UNDER
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

[REDACTED] (the "Applicant"), seeks authorization to participate as a regional center in the EB-5 program. In November 2017, the Chief of the Immigrant Investor Program Office issued the Applicant a notice of intent to deny (NOID) its initial application, identifying deficiencies related to the regional center operational plan (the operational plan), a business plan relating to its proposed project (the project plan), and the economic methodology. The Chief subsequently denied this application, concluding that the Applicant's timely response did not overcome her concerns.

On appeal, the Applicant submits a brief and additional evidence and asserts that it has established eligibility for the designation sought.

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

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.

I. LAW

USCIS may designate an entity as a regional center based on a general proposal for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. Appropriations Act § 610, as amended. The showing that a regional center will more likely than not promote economic growth may be based on general predictions concerning the kinds of commercial enterprises that will receive capital from immigrant 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 on the area. *Id.*

The implementing regulation at 8 C.F.R. § 204.6(m)(3) indicates that an entity that wishes to apply for regional center designation shall submit a proposal that:

- (i) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;
- (ii) Provides in verifiable detail how jobs will be created indirectly through increased exports;
- (iii) Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;
- (iv) Contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and
- (v) Is supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables.

To show that the regional center will promote economic growth, applicants may submit proposals for hypothetical or actual projects. The amount of verifiable detail required depends on the type of project proposed. For approval as a hypothetical project, a regional center must meet a more lenient standard, namely, it must show in verifiable detail how it will positively impact economic growth. Hypothetical projects do not require business plans compliant with *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r. 1998).⁵ If approved, a hypothetical project will not receive deference in future filings.

⁵A *Matter of Ho*-compliant business plan must include the following components: (1) a description of the business; (2) business structure and objectives; (3) a marketing plan with target market analysis; (4) personnel experience; (5) competitive analysis; (6) required licenses and permits; (7) a staffing timetable for hiring; (8) job descriptions; and (9)

In contrast, actual project proposals require the submission of a *Matter of Ho*-compliant business plan. Applicants submitting these proposals may also choose to file an exemplar Form I-526, Immigrant Petition by Alien Entrepreneur (investor petition), with additional project documents. If approved, both the actual project and the exemplar filing will be accorded deference in subsequent related filings, barring mistake of law or fact, fraud, or material misrepresentation.

II. ANALYSIS

The Applicant filed its initial application in December 2015 based upon an exemplar Form I-526 filing for a single project involving the rehabilitation and expansion of a facility for commercial herbal medicine plant production, manufacturing, distribution, and research and development. In support of this application, the Applicant provided the operational plan, project plan, and economic analysis,⁶ and other related documentation. In November 2017, the Chief issued a NOID relating to deficiencies in both the operational and project plans. Specifically, she notified the Applicant that the record did not provide sufficient detail regarding its source of and amount of funding, or of its sponsors' promotional and marketing activities as required under 8 C.F.R. § 204.6(m)(3)(iii). The Chief further advised the Applicant of deficiencies in the project plan, pointing to a lack of clarity on products to be produced, evidence of permits acquired, and the bases for financial projections. As the inputs used in the economic model to predict job creation were based on the deficient project plan, the Chief found that the record did not establish that the job estimates were supported by reasonable economic methodologies.

In December 2017, the Applicant responded to this NOID requesting the Chief review the application based upon an actual project or, in the alternative, that she consider it under the lesser requirements of a hypothetical project. Its response included an updated 2017 project plan and economic impact analysis, additional evidence regarding the source of its funding and its sponsors' promotional activities and an updated 2017 operational plan, among other materials. In August 2018, the Chief denied the application, determining that the Applicant failed to overcome the concerns identified in her NOID, and concluding that it had not established eligibility for designation based upon either an actual or a hypothetical project.

On appeal, the Applicant asserts that it meets the qualifications for the requested designation. It submits statements and documentation regarding the amount and source of capital committed and its promotional activities. It also provides additional evidence relating to discrepancies in its operational plans, as well as project-specific documentation such as payroll and expenditures, an updated 2018 project plan overview, and revised financial projections. For the reasons discussed below, we will dismiss the appeal.

budget and financial projections. Additionally, the overriding requirement of *Matter of Ho* is that the business plan must be credible.

⁶ These documents were titled [redacted] and Economic Impact Analysis of the [redacted] respectively.

A. Amount and Source of Committed Capital and Applicant's Promotional Activities

Regardless of whether the request is based on an actual or a hypothetical project, an entity seeking designation to participate in the EB-5 program must provide a detailed statement regarding the amount and source of capital which has been committed to the regional center. *See* 8 C.F.R. § 204.6(m)(3)(iii). Here, the record does not include sufficient or consistent information regarding the amount of funds committed to the Applicant. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Ho*, 19 I&N Dec. 582, 591-92.

The record includes a 2015 operational plan with a \$152,895 operations budget and an unsigned copy of the Applicant's operating agreement indicating that the Applicant's sole member agreed to make an initial \$200,000 contribution to the Applicant by March 8, 2016 in order to "fund the operating expenses with cash, including the expenses for the extensive marketing program for the EB-5 investors."⁷ The first page of the document identified the Applicant's member as [REDACTED],⁸ while the third page identifies [REDACTED] as the member and the entity making the initial capital contribution.

In November 2017, the Chief issued a NOID notifying the Applicant that the record lacked evidence demonstrating that funding was made available to it for operations. In its December 2017 NOID response, the Applicant provided an operational plan containing the same \$152,895 operational budget, bank records documenting a \$90,000 deposit into its [REDACTED] bank account, and a sworn statement from the Applicant's principal guaranteeing the availability of an additional \$70,000. The Applicant did not provide additional evidence of the \$200,000 initial contribution from its sole member described in the unsigned operating agreement, or clarify the discrepancy between this amount and the \$160,000 it agreed to commit in its NOID response. In denying the application, the Chief found that while this evidence corroborated a \$90,000 capital commitment, "[n]o evidence [had] been provided of the additional \$62,895 required for operating [the Applicant]" beyond the Principal's sworn statement guaranteeing that the funds would be available.

On appeal, the Applicant asserts that there are sufficient funds available for its operation from sources "apart from the immigrant investors' required capital investment." The appellate brief indicates that the Applicant's sponsor "has a shareholders loan in excess of \$2 million and subordinates and postpones that loan to support the [Applicant] in excess of the current budget that is now fully funded." However, the Applicant does not provide evidence corroborating this assertion, such as loan documentation, statements from the sponsor, or other materials.

The Applicant also provides [REDACTED]'s September 2018 bank statement and October 2018 consolidated balance sheet on appeal. In its appellate brief, the Applicant states that [REDACTED] "allocates an additional \$250,000 for future promotional and marketing activity." The submitted balance sheet appears to list several entities, including the Applicant and [REDACTED] as subsidiaries of [REDACTED]. The document indicates that the Applicant's assets total \$250,000, and that the same amount of funds are "due to Shareholder

⁷ In addition to being unsigned, this operating agreement contains discrepancies with regard to the date of the agreement, alternatively referring to it as December 8, 2015 and March 8, 2016.

⁸ [REDACTED] is identified in the 2015 project plan as "An EB-5 shovel-ready project being sponsored by [the Applicant]."

– [the Applicant’s principal].” However, the record lacks documentation corroborating this commitment, such as a statement from [redacted] or the Applicant’s bank records confirming a deposit in this amount. Further, as the Applicant indicates this amount is to be used in “future promotional and marketing activity,” it is unclear how this amount relates to the operational budget, which the Applicant asserts on appeal “is now fully funded.” The record does not clearly indicate which amount(s) have been committed for its operations amongst those indicated in the unsigned operating agreement, the remainder of the \$160,000 discussed in its NOID response, and the \$250,000 now indicated on appeal. The Applicant must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 22 I&N Dec. 206 at 582, 591-92. Here the Applicant has not done so and therefore has not established in sufficient detail the amount of capital committed to it, as required.

Furthermore, the regulation at 8 C.F.R. § 204.6(m)(3)(iii) also states that the Applicant shall provide proposal including a description of the promotional efforts taken and planned by its sponsors. In denying the application, the Chief concluded that the record lacked a sufficiently detailed description of these efforts. Specifically, she pointed to its 2017 operational business plan, noting that it “fails to provide any specific details about marketing efforts and promotional events that [the Applicant’s] management has attended or plans to attend in the future.” On appeal, the Applicant again asserts that it has a promotional plan, and supports this by describing activities conducted by [redacted] and that entity’s operational manager. However, the record does not establish the relationship between the Applicant and [redacted] to demonstrate that [redacted] is a sponsor of the regional center. The 2017 business plan identifies [redacted] as the new commercial enterprise (NCE) affiliated with the project, and also states that the Applicant “will serve as a general partner, affiliate, or sponsor for each NCE.” The appellate brief identifies [redacted] as the Applicant’s holding company, and the accompanying consolidated balance sheet identifies the Applicant as one of [redacted]’s subsidiaries. [redacted]’s December 2015 consolidated financial statements similarly identify the Applicant as one of its subsidiaries. The Applicant has not resolved these inconsistencies, and therefore has not demonstrated that the proposal contains a description of promotional efforts taken and planned by the “sponsors of the regional center,” as required at 8 C.F.R. § 204.6(m)(3)(iii).

B. Proposal Supported by Economically or Statistically Valid Forecasting Tool

As an additional basis for denial, the Chief concluded that the record failed to demonstrate that the Applicant’s proposal was supported by a statistically valid forecasting tool under 8 C.F.R. § 204.6(m)(3)(v), as the project plan lacked sufficiently detailed or consistent information to support the inputs and thus the projected job creation. Because we find that the Applicant has not established eligibility under 8 C.F.R. § 204.6(m)(3)(iii), we need not fully address this issue. However, we briefly observe that the record supports the Chief’s conclusion. For example, the record includes unresolved inconsistencies in the project plans with respect to types of medicinal and ornamental plants that the Applicant will produce. Specifically, while the 2015 project plan does not identify specific plants to be grown, the 2017 plan includes a list of ornamental plants and herbal materials the Applicant intends to grow.⁹ The 2015 project plan indicates that “the [NCE] will apply for permitting for research and cultivation of cannabis and hemp as part of its herbal medicinal program in conjunction with the [redacted]

⁹ This list includes Hosta, Dame’s Rocket, Borage, Nasturtium, Gingko Biloba, Echinacea, Chamomile, Ginseng, St. John’s Wort, Valerian, Dong Quai, Astragalus, and Licorice.

[redacted] University] in-house campus,” while the 2017 plan does not reference this intent. The update to the project plan presented on appeal states that the project company “has applied for a federal research permit and if successful... shall be authorized to grow plants that contain cannabis” and the updated projected financials include significant projected sales figures for “THC” products. These discrepancies are relevant as the sales revenues from these products are used as inputs into the economic forecasting tool used to support the Applicant’s proposal. The validity of these revenues, calculated using product-specific prices, depends in part upon clearly and consistently identified products. Absent consistently identified products, the validity of these inputs, and by extension the job creation projections of the economic forecasting tool, may be called into question. Future filings should address these concerns.

Further, with respect to the statements in the record regarding cannabis, the Applicant has not provided evidence to support its assertion that it has applied for a federal research permit, or that such a permit would authorize it to grow cannabis or to lawfully sell the “oil extracted from THC” as listed in its financial projections on appeal. *See, e.g.*, 21 U.S.C. § 812, 841(a)(1) (imposing restrictions on the manufacture and distribution of marijuana in the United States). Accordingly, the record does not sufficiently demonstrate that the Applicant will sponsor a “for-profit activity formed for the ongoing conduct of lawful business” pursuant to the definition of “commercial enterprise” at 8 C.F.R. § 204.6(e).

C. Oversight of Regional Center Operations

Although not addressed by the Chief in her decision, we note that both the Form I-924 and Form I-290B, Notice of Appeal or Motion, are signed by [redacted], the Applicant’s chief executive officer. [redacted] provides a copy of her Canadian passport and driver’s license with the application. The record, however, does not demonstrate that she is authorized to work in the United States, calling into question her ability to oversee the Applicant’s operations as chief executive officer. This additional eligibility concern should be addressed in any future filing.

III. CONCLUSION

It is the Applicant’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). The Applicant has not submitted a proposal including a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center. In addition, as the Applicant has not resolved material discrepancies in the project plans that call into question its job-creation projections, it has not demonstrated that its proposal is supported by a statistically or economically valid forecasting tool. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

Matter of B-G-R-C- LLC

ORDER: The appeal is dismissed.

Cite as *Matter of B-G-R-C- LLC*, ID# 3049955 (AAO July 22, 2019)