



U.S. Citizenship
and Immigration
Services

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

MATTER OF LIGHTT-R-C-LLC

DATE: MAR. 12, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

BENEFIT: REGIONAL CENTER DESIGNATION

The Acting Chief of the Immigrant Investor Program Office (IPO) issued a notice of intent to terminate (NOIT), and subsequently terminated the Applicant's designation, concluding that it failed to show that it was continuing to serve the purpose of promoting economic growth.

On appeal, the Applicant asserts that it maintains eligibility for continued participation in the EB-5 program and requests that its designation be reinstated.

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

I. LAW

In 1992, Congress enacted the Immigrant Investor Program which set aside visas for foreign investors who invest in a new commercial enterprise associated with a regional center designated by USCIS. To obtain USCIS designation for participation in the Immigrant Investor Program, a regional center must provide a general proposal showing how it will concentrate 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, in order to continue to participate in the Immigrant Investor Program it must "provide 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 it no longer serves the purposes of promoting economic growth, USCIS will issue a notice of intent to terminate (NOIT)

the regional center's designation allowing participation in the immigrant investor program. 8 C.F.R. § 204.6(m)(6)(ii).

II. ANALYSIS

USCIS granted the Applicant its initial designation in October 2013 based upon a hypothetical project.¹ In February 2018, the Acting Chief issued a NOIT², finding that the Applicant failed to file its Form I-924A, Annual Certification of Regional Center, for fiscal year 2017, that it had not paid the associated fee, and that it no longer served the purpose of promoting economic growth. Following a review of the Applicant's NOIT response, the Acting Chief found that the Applicant had not overcome the grounds alleged therein. Accordingly, she terminated its regional center designation pursuant to 8 C.F.R. § 204.6(m)(6).

On appeal, the Applicant asserts both that it filed its Form I-924A for fiscal year 2017, and that it continues to serve the purpose of promoting economic growth. The Applicant indicates that it "will provide a brief and extensive info and evidence on the legal and compelling economic reasons for [the Applicant] to be restored under existing USCIS law and regulation." We note that the record does not demonstrate the Applicant's submission of these materials.

A. Failure to File Form I-924A

The Acting Chief determined that the Applicant had not properly filed a Form I-924A for fiscal year 2017, or paid the associated fee, as required at 8 C.F.R. § 204.6(m)(6). On appeal, the Applicant asserts that it has done so. However, the record does not support this assertion. The record establishes that the Applicant included a Form I-924A for fiscal year 2017 and cashier's check with its response to the Acting Chief's NOIT. Here, however, the Applicant did not file the Form I-924A in accordance with the form instructions, as required. *See* 8 C.F.R. § 103.2(a)(1). The procedure set out in the instructions directs filing the Form I-924A and any supporting documents with the California Service Center in Laguna Niguel, CA, but the Applicant failed to follow them.³

We therefore find that the Applicant improperly filed its Form I-924A and failed to satisfy the requirements for continued participation in the program. As the Applicant failed to submit the required information or pay the associated fee, we agree with the Acting Chief that its participation in the program should be terminated. *See* 8 C.F.R. § 204.6(m)(6)(i)(B)-(C).

B. Promotion of Economic Growth

¹ To show that the regional center will promote economic growth, applicants may submit proposals for hypothetical or actual projects. 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 (Policy Memo), EB-5 Adjudications Policy 14 n.2 (May 30, 2013), <https://www.uscis.gov/laws/policy-memoranda>.

² USCIS previously issued the Applicant NOITs for failure to file its Forms I-924A for fiscal years 2014 and 2016. The Applicant subsequently cured these deficiencies.

³ The postal address for the filing of a Form I-924A, both currently and at the time the Applicant responded to the NOIT, is: U.S. Citizenship and Immigration Services, California Service Center, Attn: EB-5 Processing Unit, P.O. Box 10526, Laguna Niguel, CA, 92607-0526. Additional information may be found at <https://www.uscis.gov/i-924a>.

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 the regional center or related entities, 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.

On appeal, the Applicant asserts that it continues to serve the purpose of promoting economic growth. It states that “its mega port terminal, is an active ongoing concern that has contributed significantly to the local and regional economy.” The Applicant also contends that its [REDACTED] project “will definitely have a profound and extensive future contribution on many levels, as the development of its numerous phases continues.” The Applicant provides little evidence supporting these statements. The record includes a draft business plan for a proposed [REDACTED] project, as well as a letter of intent to enter into a joint venture to fund it, submitted with the Applicant’s response to the Acting Chief’s NOIT. This evidence demonstrates the Applicant’s pursuit of a new project, an action which in and of itself serves as a positive factor in determining whether the regional center continues to promote economic growth. However, it does not show that this action resulted in increased export sales, improved regional productivity, job creation, increased domestic capital investment, or other positive indicia of promotion of economic growth. The Applicant provides no additional evidence demonstrating that it entered into this joint venture agreement or that its efforts have promoted economic growth.

We now examine the Applicant’s previously filed Forms I-924A 2014 through 2016 for evidence of other positive factors, including information submitted on the improperly filed form discussed above. The Form I-924A requests information on a regional center’s activities, such as the amount of EB-5 capital investment, the amount of job creation, and the number of Forms I-526, Immigrant Petitioner by Alien Entrepreneur, and Forms I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, that have been approved, denied, and revoked. For fiscal year 2014, the Applicant reported no capital investment, no job creation, and no approved petitions. In fiscal year 2015, the Applicant reported \$ [REDACTED] in aggregate EB-5 investment, but no job creation or approved petitions.⁴ The Applicant reported no capital investment, job creation, or approved petitions on its Form I-924A for fiscal year 2016 or its improperly filed Form I-924A for fiscal year 2017. The Applicant has filed no additional Amendments to its designation that might be indicative of the promotion of economic growth in the future.

When determining whether a regional center continues to promote economic growth, we consider the totality of the circumstances, weighing positive and negative factors to reach a conclusion. As

⁴ USCIS records reflect that two Forms I-526 were filed for an Applicant-sponsored project in July 2015, but that both were subsequently withdrawn. The record lacks evidence demonstrating that a third petition was filed, or otherwise explaining the discrepancy in investment amounts.

noted above, we find that the record establishes the Applicant's active pursuit of new opportunities, which is, in and of itself, a positive indicator. However, the record does not demonstrate that 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, resulted from these activities. *See* 8 C.F.R. § 204.6(m)(6). The negative factors include a four-year-long history of inactivity and a lack of evidence of the Applicant's involvement in any project which may serve the purpose of promoting economic growth in the future. We find that the negative indicia here outweigh the positive and, thus, conclude that the Applicant no longer continues to promote economic growth and that its participation in the regional center should be terminated pursuant to 8 C.F.R. § 204.6(m)(6)(ii)(B).

III. CONCLUSION

The Applicant has not submitted sufficient evidence demonstrating that it properly filed its Form I-924A for fiscal year 2017 or 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 Matter of LIGTT-R-C-LLC*, ID# 1846664 (AAO Mar. 12, 2019)