



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

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

MATTER OF W-S-R-C-

DATE: OCT. 10, 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 program<sup>1</sup> 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.<sup>2</sup> 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 Appellant as a regional center to participate in the EB-5 program in March 2013. The Chief of the Immigrant Investor Program Office terminated the Appellant's designation in [ ] 2018, finding it no longer served the purpose of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6). On appeal, the Appellant provides additional documentation and requests reinstatement of its regional center designation. It asserts that it has been actively pursuing 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 designation to participate in the program, a regional center must provide a general proposal showing

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

<sup>2</sup> 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.

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 Appellant regional center designation based upon a hypothetical project.<sup>3</sup> The designation specified that the Appellant’s approved industry category is “Elementary and Secondary Schools,” and its geographic area encompassed several counties in the State of [redacted]. The approval stated that the Appellant must submit an amendment request if the EB-5 investment opportunities arise outside the approved industry category or geographic area. In June 2018, the Chief issued a NOIT, finding that the Appellant was not continuing to promote economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i)-(ii).<sup>4</sup> The Appellant did not timely respond to the NOIT.<sup>5</sup> Upon reviewing the record, the Chief terminated its regional center designation in [redacted] 2018.

We have reviewed the record – including documents the Appellant offers on appeal – and we agree with the Chief’s determination to terminate its 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). 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.

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<sup>3</sup> To demonstrate that the regional center will promote economic growth, an Appellant 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>.

<sup>4</sup> Previously, the Chief issued a NOIT, but reaffirmed the Appellant’s regional center designation in February 2017 upon reviewing its NOIT response.

<sup>5</sup> On appeal, the Appellant claims that it did not timely respond to the June 2018 NOIT because its managing director was outside of the United States.

In this case, as relating to the positive factors, it appears that the Appellant has attempted to secure EB-5 projects. On appeal, it lists three past projects that it no longer pursues for various reasons. It claims that they show its “efforts to attract capital investment and promote local economic growth.” It, however, has not provided corroborating evidence confirming that these past, incomplete projects have resulted in the Appellant or associated businesses receiving any EB-5 funds, creating any jobs, or maintaining any created jobs, or otherwise led to “increased export sales, improved regional productivity, job creation, and increased domestic capital investment.” See 8 C.F.R. § 204.6(m)(6)(i)(B).

The Appellant also asserts that it has a “Currently Active EB5 Project,” which involves the development of a self-storage facility in [REDACTED]. The Appellant has submitted evidence showing that [REDACTED] purchased the project site in 2014, obtained site development and demolition permits, and has nearly completed demolition of previous structures on the site. In addition, it has presented architectural rendering of the project, a list of businesses that would develop and construct the facility, the project’s pro-forma and construction budget, as well as a document on the project’s job creation potential, noting that it would raise \$3,000,000 EB-5 funds and create 73 jobs.

The submitted documents demonstrate that [REDACTED] owns the project site and has been facilitating the demolition of existing structures, but the Appellant has not established its involvement or association with either the project or [REDACTED].<sup>6</sup> Regardless, while the Appellant has presented some evidence on the project’s progress, it has not offered sufficient documents confirming that the project has 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 Appellant submitted Forms I-924A, Annual Certification of Regional Center, for fiscal years 2013 through 2017, indicating that between March 2013, when USCIS designated it as a regional center, and September 2017, 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. In addition to this self-reported information, USCIS records indicate that since 2013, there have been no Forms I-526 or Forms I-829 filed for investments associated with the Appellant.<sup>7</sup>

As we have explained above, the record shows the Appellant’s pursuit of potential EB-5 projects, which is a positive indicator. The record, however, does not demonstrate that the Appellant’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 March 2013, the Appellant 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

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<sup>6</sup> Documents in the record indicate that [REDACTED] the principal of the Appellant, is affiliated with [REDACTED] but no evidence has been submitted, such as contracts or agreements, demonstrating a relationship between the corporate entities.

<sup>7</sup> See *supra* note 2.

growth. The negative indicia here outweigh the positive and, thus, we conclude that the Appellant no longer continues to promote economic growth and does not warrant reinstatement of its regional center designation. *See id.*

### III. CONCLUSION

The Appellant has not submitted sufficient evidence demonstrating that it continues to serve the purpose of promoting economic growth. Accordingly, we find the Chief properly terminated the Appellant's regional center designation.

**ORDER:** The appeal is dismissed.

Cite as *Matter of W-S-R-C-*, ID# 4884645 (AAO Oct. 10, 2019)