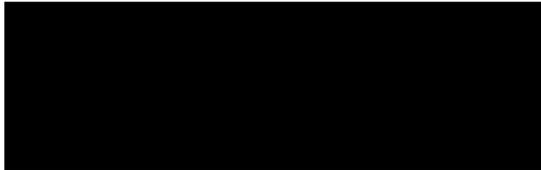


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



K2

DATE: JUL 23 2012

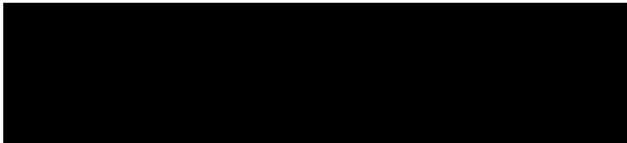
Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Proposal for Designation as a Regional Center Pursuant to Section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 103-121, 106 Stat. 1874 (1992).

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Chief, Service Center Operations, approved the proposal for designation as a regional center and a subsequent amendment request. The Director, California Service Center, issued a notice of intent to terminate and subsequently terminated the applicant's designation as a regional center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On June 5, 2008, the applicant, ██████████ sought designation as the ██████████ pursuant to section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1874 (1992), as amended by section 116 of Pub. L. No. 105-119, 111 Stat. 2440 (1997); section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000) and section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002).

At the outset it is necessary to identify the affected party in this matter. ██████████ filed the initial proposal, claiming on page 2 of the Executive Summary that the '██████████ will establish a number of LLCs . . . that will serve as the investment entities" and that "TV, LLC will act as the President and Managing Member of all LLCs." The chief addressed the July 25, 2008 approval notice to ██████████ as the applicant, designating the regional center as the ██████████. In 2010, the applicant submitted a report on the ██████████ project, stating on page 6, that the ██████████ "was formed to work with ██████████ as a co-General Partner." The record contains no evidence that ██████████ existed as an organized or incorporated entity at the time of filing.¹ For purposes of this decision, "the applicant" in this decision refers to ██████████ despite the regional center's designation as the '██████████

The director terminated the applicant's designation after determining that the applicant no longer served the purpose of promoting economic growth. The applicant filed the instant appeal.

The AAO will dismiss the appeal. Specifically, the AAO finds that the director incorrectly rejected the G-28, Notice of Appearance as Attorney or Accredited Representative, that ██████████ signed on August 30, 2011. Regarding the director's decision not to grant an extension of time to respond to the notice of intent to terminate, there is no legal authority that would require or even allow the director to provide such an extension. Since the applicant failed to respond within the required time, USCIS will not consider new evidence on appeal.

Ultimately, based on continuing litigation, including bankruptcy proceedings and a lawsuit against the City of El Monte, the AAO will affirm the director's finding that the applicant has not demonstrated that it is still in a position to promote economic growth.

¹ The organizers of ██████████ filed with the State of California on August 22, 2008, after ██████████ filed the regional center proposal seeking designation as the ██████████ and after the director approved the proposal. See <http://kepler.sos.ca.gov/cbs.aspx>, accessed January 17, 2012 and incorporated into the record of proceeding.

I. THE LAW

Section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5), as amended by Pub. L. No. 107-273, 116 Stat. 1758 (2002), provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise in which the alien has invested or is actively investing the requisite amount of capital and which will benefit the United States economy and created full-time employment for no fewer than 10 qualified workers.

Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Public Law), as amended, provides for a specific number of visas to implement a pilot program involving regional centers in the United States. Subparagraph (a) of this section provides for designation of regional centers 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.” A regional center applicant must explain how the regional center “shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones.” Subparagraph (c) provides that aliens admitted under the pilot program may rely on “reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.”

The regulation at 8 C.F.R. § 204.6(m)(3) addresses requirements for regional center proposals, including a clear description of how the regional center will promote economic growth and verifiable detail on how jobs will be created indirectly. *Id.* at (ii), (iv). The proposal must also provide a detailed statement regarding the amount and source of funds. *Id.* at (iii). Applicants must support proposals with economically or statistically valid forecasting tools. *Id.* at (v).

To ensure that regional centers continue to meet the requirements of the Public Law, legacy Immigration and Naturalization Service (INS) (now USCIS) issued an implementing regulation providing legacy INS with the authority to terminate the participation of a regional center “should it fail to satisfy these requirements.” 58 Fed. Reg. 44606, 44607 (Aug. 24, 1993). Specifically, the regulation at 8 C.F.R. § 204.6(m)(6) relates to the termination of regional center status and provides, in pertinent part:

USCIS will issue a notice of intent to terminate the participation of a regional center in the pilot program . . . upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided 30 days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot

Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. As provided in 8 CFR 103.3, the regional center may appeal the decision to USCIS within 30 days after the service of notice.

The potential reasons for the termination of a regional center extend beyond inactivity on the part of a regional center. 75 Fed. Reg. 58962, 58980 (Sep. 24, 2010).

II. PROCEDURAL AND FACTUAL HISTORY

The original proposal describes the regional center's geographic area as the City of El Monte, California. In section 1.5-4 of the original submission, the applicant advised that the City of El Monte "had granted [REDACTED] the exclusive right to negotiate for the redevelopment of the [REDACTED] site" and that the applicant and city were negotiating a Disposition and Development Agreement (DDA).

The initial filing included a January 1, 2008, Confidential Offering Memorandum for [REDACTED] [REDACTED] pertaining to the development of a hotel at [REDACTED] in El Monte, California.² The Confidential Offering Memorandum contains the following notable provisions:

- Section V(f) references a memorandum of understanding with the City of El Monte.
- Section VI (page 10) states that [REDACTED] had "acquired" [REDACTED] which the regional center would rehabilitate into a hotel with a \$2.45 million grant from the Economic Development Agency (EDA) of the U.S. Department of Commerce.
- Section IX(b) indicates that the site has multiple owners, including the City of El Monte and the Los Angeles County Metropolitan Transit Authority. Accordingly, any development would require "concurrence of all owners and in the case of the governmental entities, compliance with various legal rectories." The same section states: "the City has authorized the entry of a formal Development and Disposition Agreement (DDA) with [REDACTED] covering the disposition of City property within the Site and the necessary City actions to facilitate acquisition by [REDACTED] of portions of the Site under [REDACTED] and [REDACTED] ownership." Thus, the Memorandum indicated that the DDA will facilitate at least some of the government concurrences discussion in this same section.

On July 25, 2008, the Chief of Service Center Operations, a component office of U.S. Citizenship and Immigration Services (USCIS) approved the proposal. On July 31, 2008, the applicant submitted additional documentation regarding the unemployment rate in the geographic area covered by the regional center. On September 9, 2008, Service Center Operations issued an amended approval notice.

The applicant subsequently submitted annual reports dated September 8, 2009 and September 24, 2010. In the 2009 annual report, the applicant identified a single investor and in the 2010 report the applicant identified a second investor. The record contains an April 2009 Business Plan for [REDACTED]

² There is no record of [REDACTED] with the California Secretary of State pursuant to a search at <http://kepler.sos.ca.gov>, accessed July 20, 2012. Copy of search incorporated into the record of proceeding.

LP describing the development of 3629 Santa Anita Avenue as a “business incubator” rather than a hotel.³ The April 2009 Business Plan further indicates that [REDACTED] would serve as the sole general partner while the immigrant investors would be limited partners.

The 2010 annual report identified the first project as the development of an “environmental incubator” at [REDACTED]. On page 4 of the project description, the applicant stated that [REDACTED] would own the property. On the same page, the applicant projects that the immigrant investors will hold a 45 percent interest in the limited partnership (five percent each) while [REDACTED] and [REDACTED] would hold the remaining 55 percent interest.⁴ On page 6 of the project description, the applicant stated that [REDACTED] was the “operator” of the regional center, but that [REDACTED] “was formed to work with [REDACTED] as a co-General Partner.” On the same page, the applicant explains that GTIV provides supporting assistance. The applicant does not explain the relationship between these three entities. The applicant identifies [REDACTED] as “the” manager of [REDACTED] and [REDACTED].

The record contains the April 1, 2011 docket for a bankruptcy proceeding listing [REDACTED] as the debtor. The docket indicates that on March 24, 2011, the court denied [REDACTED] motion for an order declaring that the property at [REDACTED] is property of the estate entitled to bankruptcy protection.

On July 11, 2011, the director issued a notice of intent to terminate listing the following reasons why the applicant was not promoting economic growth:

- The applicant had recruited only two investors;
- The applicant, [REDACTED] was in bankruptcy proceedings and had insufficient financial resources; and
- The September 2010 Annual Report indicates that the regional center still did not own the property to be developed and the ownership of this property was in dispute in bankruptcy proceedings.

The petitioner’s attorney of record responded only to indicate that she had withdrawn as counsel. On July 21, 2011, the director reissued the notice of intent to terminate directly to the applicant and afforded the applicant 30 days to respond. On August 2, 2011, the director reissued the notice for a

³ A business incubator is a facility established to nurture young (startup) firms during their early months or years. See <http://www.businessdictionary.com/definition/business-incubator.html>. It usually provides affordable space, shared offices and services, hand-on management training, marketing support and, often, access to some form of financing. *Id.*

⁴ [REDACTED] is currently dissolved as a corporate entity, according to the California Secretary of State. See <http://kepler.sos.ca.gov>, accessed July 20, 2012 and incorporated into the record of proceeding.

third time in order to include a copy of the bankruptcy docket and the 2010 Annual Report. Each version of the director's notice contained the following detailed admonitions:

You have 30 days from the date of this notice in which to offer evidence in opposition to the grounds for termination cited herein. Any response to this notice must demonstrate that the [REDACTED] will maintain a regional center within which aliens seeking to obtain permanent resident status under section 203(b)(5) of the Act will be able to successfully invest in a new commercial enterprise . . . with a qualifying investment that will benefit the United States economy and create 10 jobs, including jobs indirectly created through the new commercial enterprise.

* * *

In the event you do not respond within the timeframe noted above, the [REDACTED] designation as a regional center will be terminated and you will receive written notification of the final decisions to terminate the [REDACTED] Center's regional center designation.

In a letter mailed to USCIS on September 1, 2011, counsel advised the director that the applicant had "just hired" him and requested additional time in which to respond. The director declined to recognize counsel because the petitioner failed to establish that the person listed on the Form G-28, Notice of Appearance as Attorney or Representative was authorized to represent the regional center. The director separately found no basis to extend the amount of time to respond. Thus, on September 19, 2011, the director issued a final notice terminating the applicant's designation as a regional center for the reasons stated in the notice of intent to terminate.

On October 21, 2011, the applicant filed the instant appeal supported by new documentation, including agreements, contracts, court documents from the bankruptcy proceedings and an unresolved breach of contract complaint [REDACTED] filed against the City of El Monte. While new to the record, the documentation predates the director's final decision.

III. ANALYSIS

A. Recognition Of Counsel

The regulation at 8 C.F.R. § 292.4 provides that an applicant may substitute its representative through notification of the new attorney and that a notice of appearance must be signed by "the applicant or petitioner." The 2010 annual report the applicant filed lists [REDACTED] signed the Form G-28 consenting to [REDACTED] representation. Thus, the director erred in not recognizing [REDACTED]. The AAO now recognizes [REDACTED] as the applicant's counsel and will consider his assertions on appeal.

B. Consideration of New Evidence on Appeal

As an independent basis for denying the requested extension, the regulation at 8 C.F.R. § 204.6(m)(6) states that USCIS must provide 30 days in which to respond to a notice of intent to terminate. The regulation does not state that USCIS may provide an extension of time in which to respond. Cf. 8 C.F.R. § 103.2(b)(8)(iv) (USCIS may not permit additional time to respond to a request for additional evidence or a notice of intent to deny). The applicant provides no legal authority suggesting that the director erred in fact or law by not allowing additional time in which to respond.

Assuming regulatory requirements [for a notice of intent to revoke] have been satisfied, the decision to revoke approval of a visa petition will be sustained, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke.

Matter of Arias, 19 I&N Dec. 568, 570 (BIA 1988) (footnote omitted). Under the circumstances, the AAO will not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be adjudicated based on the record before the director.

C. Promotion of Economic Growth

In order to demonstrate compliance with the Public Law requirements, a regional center must describe how it will promote economic growth, detail the amount and source of committed capital and provide verifiable detail how it will create jobs indirectly. 8 C.F.R. §§ 204.6(m)(3)(i), (ii). The authority to terminate the participation of a regional center when it no longer serves the purpose of promoting economic growth, 8 C.F.R. § 204.6(m)(6), ensures that a regional center continues to meet those requirements. 58 Fed. Reg. at 44607.

1. Recruitment of only two investors

The original economic report projected sufficient development for 476 immigrant investors. On appeal, counsel asserts that there is no limitation in the statute or regulations pertaining to the time in which the regional center must recruit investors and that before USCIS terminated the applicant's designation it had recruited seven potential investors. The initial timeline, however, called for development of a showroom/warehouse from May to October 2008, the development of a logistics center from May to November 2008, and wholesale showrooms and an international business incubator from May through April 2009. The January 1, 2008, Confidential Offering Memorandum for [REDACTED] projects that it will raise up to \$12 million in capital. [REDACTED] project plan that the applicant submitted with the 2010 annual report states that the limited partnership has allocated nine limited partner interests for immigrant investors. The record before the director identified only two immigrant investors. The AAO concurs with the director that the recruitment of only two investors during the 26-month period from the approval date of July 25,

2008 and the September 2010 annual report is not indicative of a regional center that is promoting economic growth. 8 C.F.R. § 204.6(m)(6); *see also* 8 C.F.R. § 204.6(m)(3)(i), (ii).

2. Bankruptcy Proceedings and Financial Resources

On appeal, counsel asserts that the applicant filed for bankruptcy to assert its interest in purchasing [REDACTED] and that, through an investment from [REDACTED] has sufficient financial resources to operate a regional center. The record before the director revealed that [REDACTED] was in bankruptcy proceedings as of January 31, 2011.

Black's Law Dictionary 166-67 (9th ed. 2009) defines bankruptcy as the statutory procedure by which a usually insolvent debtor obtains financial relief and undergoes a judicially supervised reorganization or liquidation of the debtors assets for the benefit of creditors. According to the U.S. Securities and Exchange Commission (SEC): "Federal bankruptcy laws govern how companies go out of business or recover from crippling debt."⁵ While the applicant filed under Chapter 11, which allows the debtor to reorganize and attempt to become profitable again, the end result may still be liquidation.⁶ Filing for bankruptcy, a remedy for companies with significant debt or liquidity problems, raises legitimate concerns about the debtor's financial resources. The applicant declined to address this issue in response to the director's notice of intent to terminate.⁷

In light of the above, the AAO affirms the director's conclusion that, upon filing for bankruptcy, the applicant was no longer in a position to promote economic growth as contemplated under section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993 as amended. 8 C.F.R. § 204.6(m)(6); *see also* 8 C.F.R. § 204.6(m)(3)(i), (iii).

3. Ownership of Property

On appeal, counsel reaffirms that the applicant plans to remodel the property located at [REDACTED] but acknowledges past difficulties in securing the property at that location. Counsel further asserts that the applicant is "determined to develop the [REDACTED] in the City of El Monte" and references the DDA. Counsel acknowledges that the City of El Monte has moved forward with other developers, but asserts that the applicant has filed to a lawsuit to "protect its development rights." Finally, counsel asserts that the applicant plans to acquire other property.

The record before the director contained no evidence that either the applicant or [REDACTED] owned any interest in the property at [REDACTED]. Thus, the AAO affirms the director's concern that the applicant had not demonstrated how it would promote economic growth through the development of this property as either a hotel or as a business incubator.

⁵ See www.sec.gov/investor/pubs/bankrupt.htm, accessed July 20, 2012 and incorporated into the record of proceeding.

⁶ *Id.*

⁷ *See id.* for an explanation of the difference between Chapter 7 and Chapter 11 bankruptcy filings.

Even if the petitioner had acquired or were to acquire that property, the original proposal explained that the regional center would be able to develop this property because of the DDA between the applicant and the City of El Monte. The January 1, 2008 Confidential Offering Memorandum stated that government concurrence was required to move forward with any development. The record before the director lacked evidence of the necessary “concurrence of all owners and in the case of the governmental entities, compliance with various legal rectories” to develop this property, as discussed in the Confidential Offering Memorandum. The applicant acknowledges on appeal that the City of El Monte has terminated the DDA and, in fact, is seeking an alternative developer.

The applicant asserts that it has sued the City of El Monte for compensation, damages and an injunction. First, while any party may seek judicial relief in court, there is no assurance that the applicant will prevail. Reliance on a pending lawsuit is entirely speculative. Second, even if the applicant does prevail, the record is absent evidence that the court may award an injunction effectively reinstating the applicant as the developer. The only letters from officials with the City of El Monte supporting the applicant as a regional center predate the termination of the DDA. The applicant has not explained how it will be able to promote economic growth without any support from the City of El Monte. *See* 8 C.F.R. § 204.6(m)(6); *see also* 8 C.F.R. §§ 204.6(m)(3)(i), (ii).

IV. CONCLUSION

For the above stated reasons, the applicant is no longer promoting economic growth and, thus, the termination of its regional center status must be upheld.

ORDER: The appeal is dismissed.