



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

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

MATTER OF A-L-V- LLC

DATE: JUNE 20, 2016

APPEAL OF IMMIGRANT INVESTOR PROGRAM DECISION

BENEFIT: REGIONAL CENTER DESIGNATION

In 1990, Congress established an immigrant investor program to attract foreign investment capital and thereby create jobs for U.S. workers.¹ This program is commonly called "EB-5" because the investors receive immigration benefits under the fifth preference classification of employment-based immigration. Such investors initially receive conditional status in the United States; after two years, United States Citizenship and Immigration Services (USCIS) may remove the conditions and grant lawful permanent residence if the immigrants satisfy the program conditions and other eligibility criteria. Foreign investors may invest either in their own projects or through established "regional centers" that offer investment opportunities to foreign investors. USCIS adjudicates EB-5 applications of both individual investors and prospective regional centers.

USCIS initially designated the Applicant as a regional center for the geographic area of [REDACTED] Washington. The Chief, Immigrant Investor Program (IPO), terminated the Applicant's designation determining that the Applicant no longer served the purpose of promoting economic growth.

The matter is now before us on appeal. In its appeal, the Applicant submits a brief along with additional evidence, as well as evidence previously submitted, and states that it presented credible and substantive evidence reflecting that it is engaged in promoting economic growth by pursuing projects that will create jobs.

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

I. THE LAW

The regional center model offers an immigrant investor an already-defined investment opportunity, thereby reducing the investor's responsibility to identify acceptable investment vehicles. Specifically, section 610(a) of the Appropriations Act, as amended, provides in pertinent part:

¹ See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Appropriations Act) section 610, as amended.

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Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. § 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a program to implement the provisions of such section. Such program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of 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 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. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, 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.

Once the regional center is designated, the regulation at 8 C.F.R. § 204.6(m)(6) requires it to “provide USCIS with updated information to demonstrate that the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area.” If the regional center does not submit the required information or it no longer serves the purposes of the program, the regional center’s participation in the immigrant investor program will be terminated. *Id.*

II. ANALYSIS

A. Procedural History

In June 2008, USCIS designated the Applicant as a regional center based on proposed hypothetical projects,² which involved the renovation of obsolete industrial facilities and new construction projects to be leased to business tenants engaged in light manufacturing, warehousing, or retail sales activities in a geographic area of [REDACTED] Washington. Between December 2011 and December 2013, the Applicant filed Form I-924A, Supplement to Form I-924, each year to comply with the

² A “hypothetical project” proposal is one not supported by a comprehensive business plan, as opposed to an “actual project” proposal that is supported with a detailed plan. USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 14 n.2 (May 30, 2013), <https://www.uscis.gov/laws/policy-memoranda>. In *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm’r 1998), we held a “comprehensive business plan” is one that is “sufficiently detailed to permit the Service to draw reasonable inferences about the job-creation potential.” We stated that “at a minimum, the plan should include a description of the business, its products and/or services, and its objectives.” We described specific details that should be part of a comprehensive plan, e.g, a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a description of the target market and prospective customers of the new commercial enterprise, and the marketing strategies of the business. We found that “[m]ost importantly, the business plan must be credible.”

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fiscal year filing requirements. See 8 C.F.R. § 204.6(m)(6). Based on Applicant's responses to the questions on Form I-924A, the Chief determined that the Applicant no longer served the purpose of promoting economic growth and issued a notice of intent to terminate (NOIT) the Applicant's regional center designation.

In response, the Applicant submitted a letter from its president [REDACTED] who indicated that the Applicant was designated prior to "the worst economic downturn," and it "struggled to get its development projects off the ground." Moreover, [REDACTED] stated that since 2008 the Applicant "has continuously pursued its mission to develop qualifying EB-5 investment opportunities in the Regional Center." [REDACTED] also summarized nine "potential development projects . . . [that] have not yet come to fruition" and submitted documentation regarding its pursuit of the ventures from 2007 to 2014.

The Chief determined that the Applicant did not overcome the grounds outlined in the NOIT and subsequently terminated the Applicant's designation. Specifically, the Chief acknowledged the Applicant's work on the projects but concluded that the Applicant did not show that it has been promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. Moreover, the Chief found that the Applicant did not establish that it is currently ready to sponsor a project. The Chief stated that the Applicant has not marketed itself to prospective investors. In fact, according to the Chief, IPO found only one website that mentioned the Applicant, and that site simply reflected the Applicant's existence. Ultimately, the Chief concluded that as the Applicant has had more than seven years to find a suitable actual project and has not done so, the Applicant no longer served the purpose of promoting economic growth.

On appeal, the Applicant submits a declaration from [REDACTED] one of the Applicant's principals, who states that the Applicant was in recent discussions about four additional projects. The Applicant also provides background information and supporting documentation for the prospective properties.

The Applicant states on appeal that the Chief "act[ed] arbitrarily and impos[ed] hurdles that are outside of the intended scope." Specifically, the Applicant indicates that the regulations do not expressly state that a regional center must be ready to sponsor a project within a particular timeframe and provide marketing related information. Furthermore, the Applicant states that its "efforts in actively and continuously pursuing EB-5 projects" demonstrate that it is promoting economic growth.

B. The Promotion of Economic Growth

The regulation at 8 C.F.R. § 204.6(e) defines a regional center as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." In order for the regional center to demonstrate such economic growth, it "must provide updated information

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to demonstrate the center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area . . . on an annual basis,” through the filing of its annual Form I-924A. USCIS Policy Memorandum PM-602-0083, *supra*, at 23; 8 C.F.R. § 204.6(m)(6). The phrase “continuing to promote economic growth” indicates that the regional center has previously promoted economic growth and is presently doing so. In determining whether the regional center has promoted economic growth and is continuing to do so, several factors should be collectively considered. These aspects include the amount of aggregate immigrant capital and aggregate direct and indirect job creation or preservation; the number of industries that have been the focus of immigrant investment capital investments; the total new commercial enterprises (NCEs) or job creating enterprises (JCEs); and the quantity of Forms I-526, Immigrant Petition by Alien Entrepreneur, and Forms I-829, Petition by Entrepreneur to Remove Conditions, that have been filed reflecting capital investments sponsored by the Applicant.³

The EB-5 Program provides for flexibility in the types and amounts of capital that can be invested, the types of commercial enterprises into which the capital can be invested, and how the resulting jobs can be created. This flexibility serves the promotion of investment and job creation and recognizes the dynamics of the business world in which the EB-5 Program exists. USCIS Policy Memorandum PM-602-0083, *supra*, at 27. Application of this flexibility will vary based on circumstances. For example, it is reasonable to provide greater flexibility to a regional center with a more recent USCIS designation whereas a regional center with a longer period of designation that has not shown any economic growth to the geographic area, may receive less flexibility. In addition, the regional center’s progress in developing actual projects should be taken into account, including the steps taken to identify and pursue developmental projects, how the projects have progressed in the pipeline, and the likelihood of those projects promoting economic growth in the immediate future. Moreover, USCIS may consider any reasonable, temporary delays, such as natural disasters or litigation, which may have prevented the regional center from promoting economic growth in a timely manner, and any alternative plans or actions taken as a result of unexpected delays. This flexibility, however, is not an open-ended allowance in which the regional center can indefinitely explore potential projects or remain stagnant on either a hypothetical or actual plan.

Despite the Applicant’s USCIS designation in 2008, the Applicant’s Forms I-924A do not reflect any economic activity. Specifically, the Applicant stated that it did not have any aggregate capital investment, cumulative direct and indirect job creation or preservation, industry categories, NCEs and JCEs, and filings for Forms I-526 and Forms I-829. As indicated above, the Applicant has submitted documentation regarding 13 projects that it has researched or is currently researching. The majority of the Applicant’s documentation reflects inquiries into the purchase of possible properties without actually securing any. The Applicant’s NOIT response indicated that it entered into an agreement with [REDACTED] in 2010 to provide \$22 million in financial support for the development and construction of a [REDACTED]. Although the Applicant stated that it formed an NCE – [REDACTED]

³ This information is collected on Form I-924A.

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██████████ in November 2010, “traditional financing for new hotel construction dried up due to the recession,” and the Applicant “finally had to withdraw from the project.” The Applicant’s subsequent Form I-924A filings confirmed that ██████████ is not viable.

The Applicant had been designated as a USCIS regional center for seven years. In that time, the Applicant did not have any immigrant investor capital investment, it did not have any direct or indirect job creation, it did not establish any JCEs, and it did not have any immigrant investors making capital investments. Furthermore, the Applicant created one NCE in 2010 that was never operational. Moreover, although the Applicant established that it has explored the potential of purchasing properties, the Applicant did not demonstrate how this constitutes the promotion of economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area consistent with the regulation at 8 C.F.R. § 204.6(m)(6).

An applicant’s past achievements or activities can be considered indicative of its future achievements or activities. The record indicates the Applicant’s actions in developing actual projects have been limited to inquiring about properties and meeting with possible developers. Furthermore, based on its history and current position, there is no indication that the Applicant is ready to promote future economic activity. Although the Applicant claimed that it “struggled to get its development projects off the ground” due to the economy, it submitted no documentation to support its statements. Regardless, these allegations do not explain the lack of any activity to promote economic growth through the development of actual projects after 2010. While the Chief indicated that the Applicant has not promoted any of its projects and was not prepared to do so, the record does not establish that the Applicant has any actual projects to promote, and therefore cannot promote projects that have yet to be realized.

Accordingly, considering all of the factors in the aggregate, the Applicant has not established that it has continued to promote economic growth. 8 C.F.R. § 204.6(m)(6).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. It is the applicant’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of A-L-V- LLC*, ID# 15160 (AAO June 20, 2016)