



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

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

MATTER OF P-C-F-R-C- LLC

DATE: JUNE 22, 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, U.S. 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 encompassing six Florida counties.² 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 letter, along with additional evidence, and states that it will promote economic growth by pursuing an active project.

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

I. 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.

² The six Florida counties are: [REDACTED]

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 2009, USCIS designated the Applicant as a regional center based on two hypothetical projects in real estate construction that involved shopping and retail centers, light industrial centers, hospitals, hotels, medical offices, and nursing homes.³ A year later, the Applicant submitted an

³ 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, *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.”

Matter of P-C-F-R-C- LLC

amendment seeking approval of a Form I-526, Immigrant Petition by Alien Entrepreneur, exemplar⁴ regarding [REDACTED]. The Applicant, however, shortly thereafter withdrew the exemplar petition request.

For fiscal years 2011 and 2012, the Applicant filed Form I-924A, Supplement to Form I-924, in order to comply with the filing requirements. *See* 8 C.F.R. § 204.6(m)(6). The Applicant, however, did not file Form I-924A for fiscal year 2013. Therefore, in June 2014, the Chief issued a notice of intent to terminate (NOIT) the Applicant's regional center designation in accordance with the regulation at 8 C.F.R. § 204.6(m)(6). In response, the Applicant submitted Form I-924A, and the Chief reaffirmed the Applicant's regional center designation in September 2014.

In December 2014, the Chief issued another NOIT to notify the Applicant that it appeared the regional center no longer served the purpose of promoting economic growth. In response, the Applicant submitted Form I-924A for fiscal year 2014. In March 2015, the Chief terminated the Applicant's regional center designation, determining that the Applicant did not overcome the grounds outlined in the NOIT. Specifically, the Chief concluded that the Applicant did not present sufficient evidence of EB-5 capital investment or job creation, such that it has been promoting economic growth.

On appeal, the Applicant does not claim to have promoted economic growth. Instead, the Applicant submits a letter from [REDACTED] the Applicant's managing member, who states that there have been difficulties and litigation caused by the recession and the actions of his former business partner, [REDACTED] and the personal problems with a family illness distracted his EB-5 efforts. In addition, [REDACTED] indicates that there is an active project, [REDACTED] ready to market to EB-5 investors. The Applicant also presents background information and supporting documentation regarding the [REDACTED].

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 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

⁴ An exemplar is a common investment structure and job-creation activity promoted by a regional center to attract immigrant investors for the purpose of concentrating pooled investment and promoting economic growth. Some applicants may choose to file a Form I-526 exemplar in order to obtain a favorable determination, which will be accorded deference in subsequent related filings, absent material change, fraud, willful misrepresentation, or a legally deficient determination. USCIS Policy Memorandum PM-602-0083, *supra*, at 15.

Matter of P-C-F-R-C- LLC

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, we consider several factors cumulatively, including: 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.⁵

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.

The Applicant’s annual supplement Forms I-924A do not show any economic activity since the regional center’s designation in 2009. Specifically, the Applicant’s supplement filings reflect 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. On appeal, the Applicant asserts additional regional center activities, some predating the Chief’s March 2015 termination but not contained in the record before the Chief, and some postdating the Chief’s termination. As indicated above, [REDACTED] letter states that shortly after the Applicant’s designation, it began processing three separate projects: (1) construction of a medical office in [REDACTED] (2) construction of a flex industrial building in [REDACTED] and (3) exploration with [REDACTED] a company in [REDACTED]. According to [REDACTED] the Applicant had to “walk away” from the [REDACTED] and [REDACTED] projects due to the recession and in the process lost over \$300,000 in deposits, studies, and fees to lawyers, engineers, and architects. Regarding [REDACTED] [REDACTED] claims that [REDACTED] an original regional center principal, circumvented his partnership for personal gain. As a result, the Applicant requested [REDACTED] to leave, and “legal action was started against [REDACTED] its CEO, inventor, and marketing officer.” Further, [REDACTED]

⁵ This information is collected on Form I-924A.

Matter of P-C-F-R-C- LLC

█ indicates that the Applicant received a favorable final judgment in its lawsuit against █ in November 2011.

The Applicant, however, did not submit documentation to substantiate █ claims. Unsubstantiated assertions are insufficient to satisfy the Applicant's burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). More importantly, the Applicant did not establish that it promoted economic growth through the pursuit of these three projects.

Moreover, █ states that, since 2012, the Applicant has been pursuing a potential independent living, assisted living, and memory care community called █ █ describes difficulties with purchasing the property due to a contested foreclosure/bankruptcy between the mortgagee and land owner. The Applicant submits: (1) a letter from █ indicating that it has been actively engaging in finding a suitable construction site since March 2013; and (2) a letter from █ stating that it has been involved with acquiring and developing property since November 2013. But the Applicant did not submit documentation to support its claim regarding the contested foreclosure or bankruptcy of the property. See *Matter of Soffici*, 22 I&N Dec. at 165.

Furthermore, to show that the Applicant was actively pursuing the █ the Applicant submits on appeal: (1) a letter from █ indicating that it was approached by the Applicant to bid on the project in May 2013; and (2) a letter from █ stating that it has been dealing with the Applicant since May 2014, in pricing preliminary budgets. In addition, the Applicant submits several documents that postdate the Applicant's regional center termination designation: (1) a May 2015 letter from the █ indicating that the location of the property is a targeted employment area; (2) an unsigned real estate sale agreement for the possible property purchase; (3) an unsigned April 2015 term letter from █ regarding the potential property purchase; (4) a May 2015 business plan and economic analysis for the █ and (5) an April 2015 square foot cost estimate report. According to █ the purchase of the property is still being negotiated, and "no licenses and permits have been acquired at this time."

Even were we to accept these newly raised developments as evidence of regional center activity, the Applicant had not demonstrated the promotion of economic growth during the more than five years since it was first designated as a USCIS regional center. Since 2009, the Applicant did not attract immigrant investor capital investment, create direct or indirect jobs, or establish NCEs or JCEs. The Applicant has not demonstrated that exploratory steps to purchase property constitute 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).

We consider evidence of an applicant's past achievements or activities in determining the likelihood 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 obtaining preliminary budgets.

Matter of P-C-F-R-C- LLC

To date, the Applicant has not secured property for the [REDACTED] or obtained licenses or permits demonstrating that the Applicant is “ready to market” an actual project. Further, in the event that the property cannot be purchased, the Applicant has not demonstrated alternative plans to relocate the project or pursue other projects.

III. CONCLUSION

In sum, we conclude that the Chief’s termination of the Applicant regional center, based upon the record of evidence before him, was proper. The Chief accurately determined that the Applicant has not established that it “is continuing to” promote economic growth, improved regional productivity, job creation, or increased capital investment. 8 C.F.R. § 204.6(m)(6). On appeal, we carefully considered the Applicant’s arguments and additional evidence but find that the Applicant “no longer serves the purpose of promoting economic growth” and thus has not overcome the basis for termination. *Id.*

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 P-C-F-R-C- LLC*, ID# 14717 (AAO June 22, 2016)