

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Immigrant Investor Program
131 M Street, NE, MS 2235
Washington, DC 20529



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

TO:

Hank Schaffeld
Diamond City Montana EB-5 Regional Center
PO Box 1587
3768 Dudley St.
East Helena, MT 59635

DATE: May 10, 2017

Application: Form I-924

A-Number:

File: ID1324951208 / RCW1324951208

NOTICE OF TERMINATION

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of Diamond City Montana EB-5 Regional Center (the "Regional Center") as a regional center under the Immigrant Investor Program (the "Program") pursuant to Title 8 of the Code of Federal Regulations ("8 C.F.R.") section 204.6(m)(6). The reasons for the termination are explained, below:

(SEE ATTACHED)

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

The Regional Center must send the completed Form I-290B and supporting documentation with the appropriate filing fee to the address indicated below.

If using the U.S. Postal Service:

USCIS
P.O. Box 660168
Dallas, TX 75266

If using USPS Express Main/Courier:

USCIS
Attn: I-290B
2501 S. State Highway 121 Business
Suite 400
Lewisville, TX 75067

For an appeal, the Regional Center may request additional time to submit a brief within 30 calendar days of filing the appeal. Any brief, written statement, or evidence in support of an appeal that is not filed with Form I-290B must be directly sent within 30 days of filing the appeal to:

USCIS Administrative Appeals Office

Diamond City Montana EB-5 Regional Center– **Designation Terminated**

ID1324951208

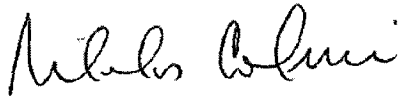
RCW1324951208

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U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

For more information about the filing requirements for appeals and motions, please see 8 C.F.R. § 103.3 or 103.5, or visit the USCIS website at www.uscis.gov.

Sincerely,



Nicholas Colucci
Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on November 4, 2016

cc: David Derrico
5163 Deerhurst Crescent Cir.
Boca Raton, FL 33486

NOTICE OF TERMINATION
Termination of Regional Center Designation Under the Immigrant Investor Program
Diamond City Montana EB-5 Regional Center

The regulation at 8 C.F.R. § 204.6(m)(6) (*Continued participation requirements for regional centers*) provides:

(i) Regional centers approved for participation in the program must:

(A) Continue to meet the requirements of section 610(a) of the Appropriations Act.

(B) 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, using a form designated for this purpose; and

(C) Pay the fee provided by 8 CFR 103.7(b)(1)(i)(XX).

(ii) USCIS will issue a notice of intent to terminate the designation of a regional center in the program if:

(A) A regional center fails to submit the information required in paragraph (m)(6)(i)(B) of this section, or pay the associated fee; or

(B) USCIS determines 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.

(iii) A notice of intent to terminate the designation of a regional center will be sent to the regional center and set forth the reasons for termination.

(iv) The regional center will be provided 30 days from receipt of the notice of intent to terminate to rebut the ground or grounds stated in the notice of intent to terminate.

(v) USCIS will notify the regional center of the final decision. If USCIS determines that the regional center's participation in the program should be terminated, USCIS will state the reasons for termination. The regional center may appeal the final termination decision in accordance with 8 CFR 103.3.

(vi) A regional center may elect to withdraw from the program and request a termination of the regional center designation. The regional center must notify USCIS of such

election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its decision regarding the withdrawal request in writing.

I. Procedural History

On June 3, 2014, USCIS designated and authorized the Regional Center’s participation in the Program. On November 4, 2016, USCIS issued a Notice of Intent to Terminate (“NOIT”) to the Regional Center which afforded the Regional Center 30 days from receipt of the NOIT to offer evidence in opposition to the grounds alleged in the NOIT. On December 6, 2016, USCIS received a response to the NOIT (the “NOIT Response”) and the Regional Center submitted additional information on March 9, 2017 (the “supplemental NOIT Response”), which did not sufficiently address the grounds alleged in the NOIT. Accordingly, USCIS has determined that the Regional Center’s participation in the Program should be terminated. Pursuant to 8 C.F.R. § 204.6(m)(6)(v) and through this Notice of Termination, USCIS hereby terminates the Regional Center’s participation in the Program.

II. Reasons for Termination

USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment as required by 8 C.F.R. § 204.6(m)(6).

A. Failure to Continue to Serve the Purpose of Promoting Economic Growth

Regional centers are designated for the promotion of economic growth and must continue to meet the requirements of section 610(a) of the Appropriations Act as amended, and promote economic growth in a manner that does not conflict with requirements for classification under section 203(b)(5) of the Immigration and Nationality Act (“INA”), removal of conditions on lawful permanent residence under section 216A of the INA, and implementing regulations following their designation. According to section 610(a) of the Appropriations Act, economic growth includes increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *See also* 8 C.F.R. § 204.6(m)(6)(ii) (“USCIS will issue a notice of intent to terminate the designation of a regional center in the program if. . . USCIS determines 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 reasons why a regional center may no longer serve the purpose of promoting economic growth are varied and “extend beyond inactivity on the part of a regional center.” 75 FR 58962. For example, depending on the facts, a regional center that takes actions that undermine investors’ ability to comply with EB-5 statutory and regulatory requirements such that investors cannot obtain EB-5 classification through investment in the regional center may no longer serve the purpose of promoting economic growth. *See* Section 610(a)-(b) of the Appropriations Act (stating that one purpose of a regional center is to concentrate pooled investment in defined economic zones and accomplishing such pooled investment

by setting aside visas for aliens classified under INA 203(b)(5)). Likewise, a regional center that fails to engage in proper monitoring and oversight of the capital investment activities and jobs created or maintained under the sponsorship of the regional center may no longer serve the purpose of promoting economic growth in compliance with the Program and its authorities.

When derogatory information arises (such as evidence of inaction, mismanagement, theft, or fraud by the regional center or related entities), USCIS weighs all relevant factors in the totality of the circumstances to determine whether the regional center is continuing to serve the purpose of promoting economic growth. Such factors may include the seriousness of the derogatory information, the degree of regional center involvement in the activities described in the derogatory information, any resulting damage or risk imposed on investors and the economy, as well as any mitigating, corrective, or restorative actions taken or forthcoming to redress the situation.

USCIS has considered all evidence in the record including evidence provided in response to the NOIT “for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence,” in determining whether the Regional Center’s continued participation is justified under the regulations by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). For the reasons set forth below, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

1. Lack of Regional Center Activity

As noted in the NOIT, the Regional Center’s Form I-924A filings for fiscal years 2014, 2015, and 2016 do not report any EB-5 capital investment or job creation. In addition, although USCIS designated the Regional Center on June 3, 2014, the Form I-924A filings do not report any pending or approved Forms I-526 filed by petitioners who have made or are actively in the process of making investments associated with the Regional Center.

In the NOIT Response, the Regional Center stated that it had taken concrete steps toward promoting economic growth.

In support of its claim, the Regional Center provided the following evidence in the NOIT Response:

- Response for Notice of Intent to Terminate from Robert V. Rule, CEO of Diamond Hills Project, LLC;
- Copy of a Buy-Sell Agreement (Land) between Diamond City Development, LLC and (b)(6) (b)(6) dated March 25, 2016;
- Copy of a Declaration of Restrictive Covenants from (b)(6) dated March 25, 2016;

(b)(6)

- Copy of a Memorandum of Understanding between Diamond Hills Project, LLC and Dave Roskelley of Diamond City Millwork and Cabinetry (DCMC), dated May 2, 2016;
- Copies of invoices and letters related to attendance at an IIUSA conference in October 2016; and
- Letter from Bob Mullen, Chair of the Jefferson County Commission, dated November 30, 2016.

Additionally, the Regional Center submitted the following evidence in the supplemental NOIT Response:

- Letter from Robert V. Rule, dated March 6, 2017, titled “Revised Information for Notice of Intent to Terminate”;
- Letter from Michael Gibson, Managing Director, USAdvisors.org, dated March 7, 2017;
- Letter from Michael G. Homeier to Robert V. Rule, dated November 23, 2016; and
- Letter from Coleen Danaher, Vice President, Business Development, NES Financial, dated December 14, 2016.

Upon review of the evidence submitted in response to the NOIT, the Regional Center has not overcome the grounds for termination set forth in the NOIT.

(b)(4)

According to the original exemplar project proposal included in the Regional Center’s initial I-924 application, the Regional Center would pool approximately [REDACTED] from up to [REDACTED] immigrant investors and loan those funds to Diamond City Development, LLC¹, a job-creating entity (JCE), that would, over the course of thirty months, develop as many as [REDACTED] separate manufacturing businesses in Lewis & Clark and Jefferson Counties, Montana.

(b)(4)

In the NOIT Response, the Regional Center provided information indicating that it had experienced delays in developing projects due to the termination of contracts and relationships with partner companies, inability to acquire property for the intended location of the project, changes in legal representation and marketing support.

The Regional Center asserts that it has now obtained a new location for its project and has entered into new agreements with business partners to begin to promote economic growth.

In support of that assertion, the Regional Center provided a copy of a Buy-Sell Agreement for a property located in Boulder, Montana. The agreement dated March 25, 2016 indicates that Diamond City Development, LLC²/Robert V. Rule had agreed to purchase a property for [REDACTED]. The agreement notes

(b)(4)

¹ Diamond City Development, LLC is another entity that appears to be owned and controlled by Robert V. Rule.

² Diamond Hills Project, LLC is identified in the Regional Center’s original I-924 application as the managing company and 100% owner of the Regional Center.

that the funds for purchasing the property would come from EB-5 investor funds and that those funds would be remitted in no more than 180 days. The 180-day period for releasing funds for the purchase would have expired on or about September 21, 2016. As of the date of this notice, there is no evidence that the sale has been completed. The Regional Center's Form I-924A for fiscal year 2016, filed on October 21, 2016, indicates that the Regional Center has received no EB-5 investment capital. The Jefferson County Clerk's Office³ does not have record of any deed or other filing showing the completion of the sale.

The Regional Center also provided a copy of a Memorandum of Understanding (MOU) between Diamond Hills Project, LLC and Dave Roskelley of Diamond City Millwork and Cabinetry (DCMC), dated May 2, 2016. The MOU includes a number of commitments and agreements by both parties regarding the development of a manufacturing business. None of the clauses appear to be specifically binding and there are no apparent contractual obligations built into the MOU. Rather, this document is only a preliminary agreement to begin negotiations to enter into a contractual relationship.

In the supplemental NOIT Response, received on March 9, 2017, Robert V. Rule stated that DCMC had "ordered equipment for startup in an existing temporary building...that will allow [the Regional Center] to hit and exceed the anticipated revenues reflected in the USCIS EB-5 Approved Business Plan for year 1 while we build the new facility." Mr. Rule went on to state that DCMC had received orders for production due in September 2017 and that the Regional Center was working with potential EB-5 investors from around the world, naming [REDACTED] potential investor. The Regional Center did not provide any evidence to support these assertions.

(b)(4)

Additionally, the Regional Center's initial project proposal in 2013 indicated that Diamond City Development, LLC had already begun such negotiations, and identified Diamond City Millworks JV, LLC as an "affiliate." Despite the various setbacks described in the NOIT Response, it does not seem credible that those events should have had any impact on the Regional Center's ability to promote the partnership with DCMC during that period. Instead, the Regional Center did not enter into the MOU with DCMC until almost two years after USCIS designated the Regional Center as a participant in the EB-5 Program.

The other evidence submitted in the NOIT Response and supplemental NOIT Response does not add further credibility to the Regional Center's activities related to promoting economic growth. The Regional Center provided evidence that it paid for and attended an IIUSA conference and participated in a "global Livestream Event" sponsored by USAdvisors.org. However, the costs associated with attending an IIUSA conference or similar event were contemplated in the original I-924 application and proposal, and the Regional Center did not begin to engage in that activity until October 2016—over two years after its

³ Public records available through the Jefferson County, Montana government website: <http://www.jeffersoncountymt.gov/>, last accessed May 9, 2017. USCIS found that the Declaration of Restricted Covenants had been filed by the sellers, but could not find any record of the sale of the property in the grantor-grantee index, based on searches related to the names of the sellers, the buyers, or any other entity associated with the Regional Center.

designation as a regional center in the EB-5 Program. While Mr. Rule’s participation in a “global Livestream Event” shows that he is actively promoting his project to potential investors, it does not show that the promotion of economic growth has actually occurred.

Further, the Regional Center did not take steps to engage with new legal representation and marketing support until after the NOIT was issued in November 2016. The letter from Coleen Danaher of NES Financial states that the Regional Center has engaged with that company for “EB-5 Administration Solutions,” but the letter references only a proposal for services, and is incomplete, including only one of apparently several appendices⁴. The Regional Center did not provide a copy of the proposal itself. Rather, the Regional Center provided only the cover letter and Appendix C to the letter, which bears only Mr. Rule’s signature and another reference to a proposal and details of an initial acceptance fee and invoicing. The lack of substantive detail and the timing of these actions do not lend credibility to the assertion that the delays and setbacks for the Regional Center’s projects were out of its control.

In conclusion, the Regional Center has not provided sufficient evidence to show that it has, since its designation as a regional center in the EB-5 Program, promoted economic growth by means of increased export sales, improved regional productivity, job creation, or increased domestic capital investment. Further, it has not provided sufficient evidence to show that such economic growth is imminent or will occur within a reasonable time.

In the absence of evidence of increased export sales, improved regional productivity, job creation, or increased domestic capital investment, USCIS concludes that the Regional Center no longer serves the purpose of promoting economic growth.

III. Conclusion

For the reasons described above and set forth in the NOIT and pursuant to 8 C.F.R. 204.6(m)(6), USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth and hereby terminates the Regional Center’s participation in the Program.

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

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⁴ The Regional Center submitted only Appendix C, with no reference to Appendices A, B, or any other following appendices.

Diamond City Montana EB-5 Regional Center– **Designation Terminated**

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