

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



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

TO:

Liberty South Regional Center
James Lee Witt
500 President Clinton Avenue, Suite RL-10
Little Rock, AR, 72201

DATE: January 19, 2018

Application: Form I-924

A-Number:

File: RCW1102850152 /ID1102850152

NOTICE OF TERMINATION

This letter shall serve as notification that U.S. Citizenship and Immigration Services (“USCIS”) has terminated the designation of Liberty South 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:

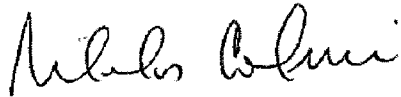
USCIS Administrative Appeals Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS 2090

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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 May 2, 2017

cc: Ronald Klasko
Klasko Immigration Law Partners
1601 Market St. Ste 2600
Philadelphia, PA 19103

NOTICE OF TERMINATION
Termination of Regional Center Designation Under the Immigrant Investor Program
Liberty South 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 May 2, 2013, USCIS designated and authorized the Regional Center's participation in the Program. On May 18, 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 June 22, 2016, the Regional Center submitted a response to the NOIT. The status of the Regional Center has remained pending until date of this instant Notice of Termination.

On May 2, 2017, USCIS issued a second NOIT to the Regional Center which afforded the Regional Center thirty (30) days from receipt of the NOIT to offer evidence in opposition to the grounds alleged in the NOIT. The due date for response was June 1, 2017. USCIS did not receive a response to the NOIT by the due date. On August 16, 2017, USCIS received an email from Rod Sweetman, a partner at Witt Global Partners. In his inquiry, Mr. Sweetman acknowledged that the Regional Center has received the second NOIT and inquired into the status of Liberty South Regional Center. The Regional Center provided no other information or evidence in response to the second 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, “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 2013, 2014, 2015, and 2016¹ do not report any EB-5 capital investment or job creation. In addition, although USCIS designated the Regional Center on May 2, 2013, 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.

¹ Although not raised in the NOIT, as of the date of this Notice, USCIS has not received a Form I-924A for fiscal year 2017, which the Regional Center was required to submit between October 1, 2017 and December 29, 2017.

On June 22, 2016, the Regional Center submitted a response to the NOIT dated May 18, 2016. That response contained the following evidence:

- Statement of James Lee Witt;
- Business Plan – Silica Technologies;
- PPM- Silica Technologies project;
- Subscription Agreement, Silica Technologies;
- Rock City Yacht Club Proposed Letter Agreement;
- Rock City Yacht Club Business Plan Service Agreement;
- Rock City Yacht Club Engagement Letter;
- Executive Summary Rock City Yacht Club and Residences;
- Rock City Yacht Club Arnstein & Lehr, Engagement Letter;
- Bentonville Hotel and Convention Center Proposal;
- Project Services Agreement for Bentonville Hotel and convention Center;
- Best Western Boutique Hotel Business Plan;
- Regional Center designation letter; and,
- Support letter form Senator Boozman.

On May 2, 2017, USCIS issued the second NOIT to the Regional Center. USCIS did not receive a response to the NOIT. However, on August 16, 2017, USCIS received an email inquiry from Rod Sweetman which acknowledged that the Regional Center received the second NOIT. Further, Mr. Sweetman inquired into the status of Liberty South Regional Center and wrote, “We have two projects that want to use our regional center for projects in Arkansas.” The Regional Center provided no other information or evidence in response to the second NOIT.

In the statement from James Lee Witt, submitted in response to the first NOIT, Mr. Witt indicated that the Regional Center previously focused on a Silica Technologies project, however, that project was completed without EB-5 funds. Mr. Witt also stated that the Regional Center is “steadily moving forward with” Rock City Yacht Club and Residences project. In support of this, the Regional Center provided a proposed letter agreement, Business Plan Service Agreement, Engagement letter, executive summary of the project, and an Arnstein & Lehr Engagement Letter. Mr. Witt also stated that the Regional Center is working to sponsor a hotel and convention center project in Bentonville, Arkansas. To support this, the Regional Center provided a proposal and services agreement for this project. Further, Mr. Witt indicated that the Regional Center is also reviewing documents to sponsor a Best Western Boutique hotel project. In support of this, the Regional Center provided a business plan for this project.

The statements of Mr. Witt and the evidence relating to these projects relate only to potential projects and future aspiration goals of the Regional Center. For instance, Mr. Witt points to a proposed letter agreement, Business Plan Service Agreement, Engagement letter, executive summary of the project, and

an Arnstein & Lehr Engagement Letter to demonstrate that the Regional Center is steadily moving forward with a Rock City Yacht Club and Residences project. However, the Proposed Letter Agreement from Economic Policy Resources refers only to “anticipated exemplar filings”. Further, this letter is not signed. Likewise, the Business Plan Services agreement with Strategic Development, the engagement letter with the EB-5 Affiliate Network, and the engagement letter from Arnstein & Lehr are not signed by the Regional Center. Even if these documents were signed, they would only demonstrate a future desire to proceed with this project and do not demonstrate that the Regional Center has actually engaged in the promotion of economic growth.

As for the hotel and convention center project in Bentonville, Arkansas and the Best Western Boutique hotel project, Mr. Witt stated that the Regional Center is “working to sponsor” and “reviewing documents to sponsor” these projects. Again, these statements and the supporting evidence show only future aspirational goals of the Regional Center and do not demonstrate actual promotion of economic growth.

Similarly, the Support Letter from Senator Boozman indicates that the Regional Center is “actively seeking opportunities to sponsor various projects” and that it is in “active discussions” regarding a project “to complete a 150-mile stretch of highway.” However, the information contained in this letter is prospective and does not support that the Regional Center is actually promoting economic growth.

Moreover, the Regional Center did not provide any evidence to support Mr. Sweetman’s statement (in his August 16, 2017 email inquiry) that, “We have two projects that want to use our regional center for projects in Arkansas.” This statement relates only to prospective projects and there is no indication or evidence that the Regional Center has taken any further steps to contribute funds, secure financing, or otherwise promote or develop any projects. Overall, the record lacks evidence to establish that the Regional Center has actually engaged in the promotion of economic growth or that it is likely to promote economic growth in the near future through any of its proposed projects or partnerships.

As of the date of this notice, USCIS records indicate that the Regional Center has not provided evidence to support (and the Regional Center’s filings do not otherwise indicate) that it has conducted activity that serves the purposes of the Program, including the “purpose of concentrating pooled investment” as required by section 610(a) of the Appropriations Act². The Regional Center has not provided any other evidence of economic activity since its designation on May 2, 2013. And as of the date of this Notice, USCIS has no record of any other projects under sponsorship or development by the Regional Center.

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.

² USCIS Policy Manual, Volume 6, Part 6, Chapter 3.

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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.

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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