U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-R-C-, LLC

DATE: AUG. 19, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

BENEFIT: REGIONAL CENTER DESIGNATION

In 1990, Congress established the EB-5 program[1] to promote economic growth in the United States through foreign investment.[2] Investors who comply with the program's requirements first receive conditional status, followed by the opportunity for the removal of conditions and permanent resident status.[3] Investors may fund their own projects, or invest through a United States Citizenship and Immigration Services (USCIS) designated regional center.[4]

USCIS designated the Applicant as a regional center to participate in the program in May 2016. The Chief of the Immigrant Investor Program Office terminated the Applicant's designation in [redacted] 2018, finding it had not properly filed a Form I-924A, Annual Certification of Regional Center, for Federal fiscal year 2017 as required, and that it failed to show that it was continuing to serve the purpose of promoting economic growth.

On appeal, the Applicant submits additional evidence and asserts that it maintains eligibility for continued participation in the EB-5 program. It requests that its designation be reinstated.

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

I. LAW

In 1992, Congress enacted the Immigrant Investor Program which set aside visas for foreign investors who invest in a new commercial enterprise associated with a regional center designated by USCIS.

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[1] The EB-5 program, as it is commonly called, issues employment-based fifth preference visas.

[2] *See* Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5).

[3] An immigrant investor files a Form I-526, Immigrant Petition by Alien Entrepreneur, attesting that the investor meets the criteria for conditional resident status, which includes showing that their investment (of either $500,000 or $1,000,000, depending on the geographical area) creates at least 10 jobs for qualified U.S. workers. After two years, the investor may file Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, which, if granted, affords the investor full lawful permanent residence in the United States. As part of the petition, the investor must show that their initial investment is still creating the requisite number of qualifying jobs.

[4] *See* Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (the "Judiciary Appropriations Act"), 1993, Pub. L. No. 102-395, 106 Stat. 1828, 1874 (Oct. 6, 1992), as amended.

To obtain USCIS designation for participation in the Immigrant Investor Program, a regional center must provide a general proposal showing how it will concentrate pooled investments in defined economic zones, thereby promoting economic growth. Section 610(a) of the Appropriations Act, as amended. The desired economic growth may be in the form of increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *Id.*

The proposal for a regional center must contain information concerning the kinds of commercial enterprises that will receive capital from investors, 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. *Id.*

Once the regional center is designated, in order to continue to participate in the Immigrant Investor Program it must "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." 8 C.F.R. § 204.6(m)(6)(i)(B). If the regional center does not submit the required information or upon a determination it no longer serves the purposes of promoting economic growth, USCIS will issue a NOIT the regional center's designation allowing participation in the immigrant investor program. 8 C.F.R. § 204.6(m)(6)(ii).

II. ANALYSIS

A. Procedural History

USCIS granted the Applicant its initial designation in May 2016 based upon a hypothetical project.[5] In March 2017, the Chief issued a notice of intent to terminate (NOIT) on the grounds that the Applicant failed to file its Form I-924A for fiscal year 2016. The Applicant filed this Form I-924A in the same month, and then in April 2017 responded to the Chief's NOIT. Finding that the Applicant's response overcame her concerns, the Chief reaffirmed the Applicant's designation as a regional center.

In January 2018, the Chief issued a second NOIT finding that the Applicant failed to file its Form I-924A and the associated fee for fiscal year 2017. Upon review of the Applicant's timely February 2018 NOIT response, the Chief advised the Applicant via email in March 2018 that USCIS records showed that the Applicant's Form I-924A was delivered to the California Service Center but was rejected for "errors or omissions" and returned for correction. She afforded the Applicant an opportunity to provide additional evidence that it had properly filed its Form I-924A for fiscal year 2017. Following a review of the Applicant's response both to her NOIT and email, the Chief determined that the Applicant had not properly filed its fiscal year 2017 Form I-924A and terminated its participation in the EB-5 program, pursuant to 8 C.F.R. § 204.6(m)(6).

[5] To show that the regional center will promote economic growth, applicants may submit proposals for hypothetical or actual projects. 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 (Policy Memo), EB-5 Adjudications Policy 14 n.2 (May 30, 2013), https://www.uscis.gov/laws/policy-memoranda.

On appeal, the Applicant asserts that it filed its Form I-924A for fiscal year 2017 with the appropriate fee, and that it continues to serve the purpose of promoting economic growth.

A. Failure to File Form I-924A

As discussed above, the Chief concluded that the Applicant failed to properly file its Form I-924A for fiscal year 2017 pursuant to 8 C.F.R. § 204.6(m)(6). On appeal, the Applicant asserts that the Chief improperly terminated its designation on this ground and that "USCIS may not deny the instant Annual Certification of a Regional Center on the basis of failure to submit Form I-924A, if Form I-924A was properly submitted... with no further correspondence from USCIS regarding any alleged rejection of the instant certification." It contends that while it was in receipt of the Chief's email advising it of errors and omissions on its Form I-924A, it did not receive the rejected form from CSC and thus was provided "no clear indication of any precise issue with Form I-924A" from USCIS. As it was unable to correct these deficiencies, the Applicant argues that the "submission of U.S. Postal Service receipts and certified mail receipts...shows a proper and timely submission of the Form I-924A." In support of this argument, it provides a copy of its Form I-924A dated December 29, 2017, and copies of a U.S. Postal Service Certified Mail receipt and transaction receipt, and a printout indicated that a package with a tracking number corresponding to that on the transaction receipt was delivered on January 2, 2018, all documents already extant in the record and considered by the Chief.

Every form, benefit request, or other document must be submitted to DHS and executed in accordance with the form instructions. *See* 8 C.F.R. § 103.2(a)(1). [6] The record shows that the Applicant mailed the Form I-924A in a timely manner in December 2017. However, it has not provided evidence that the form was received as properly filed, such as a receipt notice or a canceled check showing acceptance of the filing fee. Accordingly the Applicant has not demonstrated that it properly filed a Form I-924A for fiscal year 2017, as required for continued participation in the program. *See* 8 C.F.R. § 204.6(m)(6).

B. Promotion of Economic Growth

To determine whether a regional center serves the purpose of promoting economic growth, we take into account a variety of factors, both positive and negative, that encompass past, present, and likely future actions. Positive factors include the extent of any job creation, the amount of investment, and the overall economic impact. Negative factors include inaction, mismanagement, theft, or fraud by the regional center or related entities, any resulting damage, and the risk imposed on investors or the economy. An evaluation of any negative factors should take into consideration mitigating or corrective actions taken by the regional center.

In its appellate brief, the Applicant references several developments in progress that demonstrate its promotion of economic growth, including "a secured and existing land lease agreement with the University of [redacted], an agreement with The [redacted] servicing the University of

[6] The procedure set out in the Form I-924A instructions details the requirements for properly filing the form along with the associated fee. To comply with the filing instructions, the Form I-924A and supporting documentation must be mailed, along with the applicable fee, to the California Service Center. *See* I-924A, Annual Certification of Regional Center, https://www.uscis.gov/i-924a.

[redacted] as well as investment into The [redacted], a senior-living center on the outskirts of [redacted], Texas." It also asserts that it has partnered with consultants and lawyers in ongoing projects such as "economic feasibility studies, operating agreements, and business plans." However, while the Applicant indicates that it "maintains evidence of the aforementioned economic plans for expansion," it did not submit such evidence with the appeal, stating that it "can be supplied upon request."

Due to the scarcity of information submitted with the appeal, it is unclear if the land lease agreement the Applicant refers to in its brief relates to the proposed project submitted with its Form I-924 when it initially sought to participate in the EB-5 program, or to another project.[7] No information related to a land lease was submitted with the appeal. Similarly, beyond its reference in the brief, the Applicant provided no information about the [redacted] project with which it claims involvement. The record contains significantly more information about the [redacted], including a sample Form I-526 and assorted offering documents, indicating that the Applicant sought to raise $5 million of EB-5 capital for completion of the project. A one page information sheet about the project was submitted with the appeal.[8] However, to date, neither the record nor USCIS databases show that any foreign investors have contributed capital to the project through the Applicant. Most importantly, the Applicant has not shown how its involvement with any of these project has resulted in the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. *See* 8 C.F.R. § 204.6(m)(6).

The Applicant also provides financial document as evidence of its investments in 2017, listing expenditures related to its operations, such as payments for website development and legal expenses. The financial document also includes line item expenditures for consultants such as economists, lawyers, and business plan writers, as well as project deposits for three projects— the [redacted] and [redacted] projects referenced above, and a [redacted] project not previously mentioned. However the document is undated and the record lacks documentation, such as bank records or other materials, corroborating the expenditures or demonstrating that they occurred in 2017 as claimed. Furthermore, the Applicant has not indicated how its expenditures have resulted in its promotion of economic growth, such as increased export sales, improved regional productivity, job creation, or increased domestic capital investment.

Review of the Applicant's previously filed Forms I-924A, including information submitted on the improperly filed form discussed above, does not indicate any positive factors for consideration. The Form I-924A requests information on a regional center's activities, such as the amount of EB-5 capital investment, the amount of job creation, and the number of Forms I-526, Immigrant Petitioner by Alien Entrepreneur, and Forms I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, that have been approved, denied, and revoked. The Applicant reported no capital investment, job creation, or approved petitions on its Form I-924A for fiscal year 2016 or the form

[7] The Applicant submitted a news release discussing a deal between it and the University of [redacted] to commercialize technologies created by faculty, including development of a new building to house laboratories and start-up businesses. The news release appears in draft form, with no publication date but noting an embargo for May 15, 2014, and makes no reference to a land lease.

[8] We note that construction on the [redacted] appears to be complete, as its website, [redacted] (last accessed August 9, 2019), indicates that the facility is open and leasing apartments.

submitted for fiscal year 2017. Nor has it filed additional amendments to its designation that might be indicative of the promotion of economic growth in the future.

When determining whether a regional center continues to promote economic growth, we consider the totality of the circumstances, weighing positive and negative factors to reach a conclusion. As noted above, we find that the record establishes the Applicant's active pursuit of new opportunities, which is, in and of itself, a positive indicator. However, the record does not demonstrate that other positive factors, such as increased export sales, improved regional productivity, job creation, increased domestic capital investment, or other positive indicia of promotion of economic growth, resulted from these activities. See 8 C.F.R. § 204.6(m)(6). The negative factors include a three year history of inactivity and a lack of evidence of the Applicant's involvement in any project which may serve the purpose of promoting economic growth in the future. We find that the negative indicia here outweigh the positive and, thus, conclude that the Applicant no longer continues to promote economic growth and that its participation in the regional center should be terminated pursuant to 8 C.F.R. § 204.6(m)(6)(ii)(B).

III. CONCLUSION

The Applicant improperly filed its Form I-924A for fiscal year 2017, and did not establish its eligibility for continued participation in the program as a regional center. Accordingly, we find the Chief correctly terminated the Applicant's regional center designation.

ORDER: The appeal is dismissed.

Cite as Matter of C-R-C-, LLC, ID# 2001210 (AAO Aug. 19, 2019)