U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 03133889

Date: DEC. 3, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program

In 1990, Congress established the EB-5 program[1] to promote economic growth in the United States through foreign investment. *See* Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5). Foreign national 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.[2] Investors may fund their own projects, or invest through a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (the "Appropriations Act"), 1993, Pub. L. No. 102-395, 106 Stat. 1828, 1874 (Oct. 6, 1992), as amended.

USCIS designated the Applicant as a regional center to participate in the program in May 2014. The Chief of the Immigrant Investor Program Office terminated the Applicant's designation in [redacted] 2018, finding it no longer served the purpose of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6).

On appeal, the Applicant provides additional evidence and requests reinstatement of the regional center designation. It asserts that it is part of a group of 22 regional centers managed and operated by [redacted], and states that some of these regional centers have successfully completed EB-5 projects, including "hotel and resort developments" in California, and "mixed use developments" in New Jersey, New York, and Colorado. In addition, it maintains that [redacted] continually, on an ongoing basis, reviews potential projects throughout [key markets in the United States], including within the market of [the Applicant]."

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

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

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

I. LAW

Congress enacted the EB-5 program that set aside visas for foreign national investors who invest in a new commercial enterprise associated with a USCIS designated regional center. To obtain USCIS designation to participate in the program, a regional center must provide a general proposal showing how it will concentrate pooled investments in defined economic zones, thereby promoting economic growth. *See* Section 610(a) of the Appropriations Act. The desired economic growth may be in the form of increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *Id.*

Once designated, the regional center must "[p]rovide 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 that it no longer serves the purpose of promoting economic growth, USCIS will issue a notice of intent to terminate (NOIT) the designation. Subsequently, USCIS may issue a notice of termination (NOT), if the regional center does not sufficiently rebut the grounds for termination specified in the NOIT. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(v).

II. ANALYSIS

USCIS granted the Applicant regional center designation based upon a hypothetical project.[3] The approval specified that the Applicant's approved geographic area encompassed [redacted] in Texas. In March 2018, the Chief issued a NOIT, finding that the Applicant did not appear to continue to serve the purpose of promoting economic growth. Upon reviewing the Applicant's NOIT response, the Chief terminated the regional center designation in September 2018..

A. Promoting Economic Growth

On appeal, the Applicant argues that [redacted] "affiliated regional centers operate as a collective enterprise, enjoying a symbiotic relationship with one another," and urges us to consider the activities of [redacted] and its regional centers – with varying proposed industries and geographic areas – to find that the Applicant has continued to serve the purpose of promoting economic growth. This position, however, is not supported by the applicable law. Specifically, under 8 C.F.R. § 204.6(m)(6)(i)(B), the Applicant, as a designed regional center, must provide evidence that it "is continuing to promote economic growth . . . in the approved geographic area." While the Applicant has offered documentation relating to the involvement of affiliated businesses in EB-5 projects, in our adjudication of this appeal, pursuant to 8 C.F.R. § 204.6(m)(6), we must focus on the Applicant's activities, not those of [redacted] and affiliated entities, to determine if the Chief's termination is proper. For the reasons we will explain below, we conclude that it is.

[3] To demonstrate that the regional center will promote economic growth, an applicant may submit a proposal for a hypothetical or actual project. 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. 6 *USCIS Policy Manual* G.6, https://www.uscis.gov/policymanual/HTML/PolicyManual.html; *see also* USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 14 n.2 (May 30, 2013), https://www.uscis.gov/laws/policy-memoranda.

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.

As relating to the positive factors, it appears that the Applicant has attempted to secure EB-5 projects. The Applicant states that it has been "conducting due diligence and engaging with developers about specific potential projects." It offers a number of confidential letters of intent, showing that [redacted] (which is affiliated with [redacted]), and other companies, including [redacted], and [redacted] intend to collaborate in real estate development projects. The documents reveal that some projects will be in Texas, but not within the Applicant's approved geographic area, while others will be in the United States, which the appellate brief states, will "ha[ve] significant potential to complement the economic development efforts of [the Applicant]." The Applicant, however, has not shown that it is committed to any of these projects or that they are located within its approved geographic area.

The record shows that the Applicant considers itself uniquely positioned to address its geographic region's high priority economic development due to the high levels of poverty in [redacted] According to page 3 of the November 8, 2018, economic report concerning the Regional Center, "the [Applicant] covers an area that is in need of increased economic development to raise worker income and reduce poverty... [and] Regional Center termination would unnecessarily hamper development efforts and harm residents." However, the Applicant has not submitted evidence showing that it has planned or engaged in any economic development to achieve these goals.

We agree with the Applicant that it is not "a completely dormant regional center enterprise" that has engaged in no business activities. Rather, the evidence demonstrates that the Applicant, through [redacted] has pursued potential EB-5 projects, which is a positive factor in determining whether it is continuing to promote economic growth. *See* Section 610(a) of the Appropriations Act. However, the record does not establish that these actions have led to "increased export sales, improved regional productivity, job creation, and increased domestic capital investment," or other positive indicia of promotion of economic growth in the approved geographic area. *See* 8 C.F.R. § 204.6(m)(6)(i)(B).

Significantly, as discussed in the Chief's NOIT, the Applicant submitted Forms I-924A, Annual Certification of Regional Center, for the fiscal years 2014 through 2017. In them, the Applicant acknowledged that during each of the four years since it was designated a regional center, it did not receive any EB-5 capital investment, create any jobs, or maintain any created jobs, and that it was not associated with any new commercial enterprises that would facilitate job creation through EB-5 capital. In a letter accompanying its latest Form I-924A filing, the Applicant stated that [redacted] continues to review potential . . . investment opportunities [for the Applicant] according to its rigorous guidelines," but that "[n]o capital investment was made through [the regional center] in fiscal year 2017, and there is no job creation activity to report at this time." In addition to this self-reported

information, USCIS records indicate that since 2014, there have been no Forms I-526 or Forms I-829 filed for investments associated with the Applicant.[4]

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 we explained above, the record shows the Applicant's pursuit of potential EB-5 projects, which is a positive indicator. The record, however, does not establish that the Applicant's actions have led to 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. *See* 8 C.F.R. § 204.6(m)(6). On the other hand, the negative factors include, since its designation as a regional center over four years ago, the Applicant has not been involved with or committed to a project that uses EB-5 funds to create jobs or otherwise serves the purpose of promoting economic growth. The negative indicia here outweigh the positive and, thus, we conclude that the Applicant no longer continues to promote economic growth and does not warrant preservation of its regional center designation pursuant to 8 C.F.R. § 204.6(m)(6).

B. Other Affiliated Regional Centers

The Applicant indicates on appeal that USCIS has terminated its regional center designation as well as the designation of 10 other [redacted] entities. It argues that "[t]he termination, *en masse*, of eleven [redacted] regional center designations causes [redacted] considerable reputational injury and has significant potential to impair its ability to raise EB-5 capital and to attract new EB-5 development partners."

We note that terminations of other regional centers affiliated with [redacted] are separate proceedings, based on different facts than those presented here. Each regional center approved for participation in the program must continue to meet the requirements of Section 610(a) of the Appropriations Act and provide USCIS with updated information, annually or as otherwise requested, to demonstrate it is continuing to promote economic growth.[5] 8 C.F.R. § 204.6(m)(6)(i). In turn, USCIS, charged with administering the EB-5 program pursuant to statutory and regulatory authorities, must determine whether a designated regional center "is continuing to promote economic growth . . . in the approved geographic area." 8 C.F.R. § 204.6(m)(6)(i).

The applicable law mandates that we consider each regional center's designation separately from that of another entity. As such, actions of [redacted] and affiliated entities that do not show the Applicant "is continuing to promote economic growth . . . in the approved geographic area" are insufficient to establish the Applicant's eligibility. In other words, the Applicant must demonstrate, through its evidence, its eligibility to continue to participate in the program, and we must focus our review on the Applicant's actions, not those of [redacted] or affiliated businesses, or the impact of the termination on these entities. As discussed, upon a consideration of the totality of the circumstances, and after weighing both the positive and negative factors, we conclude that the Applicant has not shown it serves the purpose of promoting economic growth within the approved geographic area.

[4] *See supra* note 2.

[5] Additionally, each regional center must pay the fee required for submitting its Form I-924A. 8 C.F.R. § 204.6(m)(6)(i)(C).

III. CONCLUSION

The Applicant has not submitted sufficient evidence demonstrating that it continues to serve the purpose of promoting economic growth. Accordingly, we find the Chief properly terminated the Applicant's regional center designation.

ORDER: The appeal is dismissed.