U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9709405

Date: MAR. 2, 2021

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 Appellant as a regional center to participate in the EB-5 program in April 2016, listing on page 2 of the approval the geographic region where the Appellant may promote economic growth, including District of Columbia as well as a number of counties and cities in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia. *See* 8 C.F.R. § 204.6(m)(3)(i) (2017).

In December 2017, the Appellant filed a Form I-924 (version: 12/23/16), Application for Regional Center Designation Under the Immigrant Investor Program, to add a new commercial enterprise and to submit an actual project Form I-526 exemplar for a [redacted] project located in [redacted] New York. *See* 6 *USCIS Policy Manual* G.3(b)(2), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-3. In an August 2018 supplemental filing, the Appellant requested a name change from [redacted] to [redacted] and expansion of the geographic region where it may promote economic growth. *See* 6 *USCIS Policy Manual*, *supra*, at G.3(A). Specifically, it noted in its August 20, 2018, letter to the Chief that its geographic area should

[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 include showing that his or her investment 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.

include additional "counties in Vermont, New Hampshire, Massachusetts, New York, Pennsylvania, New Jersey, Delaware, Maryland, and Virginia."

The Chief approved the Appellant's Form I-924, granting its request to change its name and to add a new commercial enterprise, as well as finding that its actual project Form I-526 exemplar complies with EB-5 requirements. The Chief, however, did not approve the Appellant's request to expand the geographic area where it may promote economic growth. The Chief noted that the Appellant had "not demonstrated its ability to concentrate pooled investment anywhere in its current geographic area" and "question[ed] the ability of the [Appellant] to concentrate pooled investment in its current geographic area, much less an expanded area."

The Appellant appeals this adverse finding in the Chief's decision. *See* 8 C.F.R. § 103.3(a)(1)(iii). On appeal, the Appellant submits additional evidence, including: (1) a "Regional Center Sponsorship Agreement," indicating that the Appellant is sponsoring a technology services project headquartered in [redacted] (2) a business plan for the technology services project; (3) a second "Regional Center Sponsorship Agreement," noting that the Appellant is sponsoring a [redacted] project in Massachusetts; (4) two letters from the president of the Appellant discussing potential projects in the proposed expanded geographic area; and (5) Form I-526 filing receipts that the Appellant claims demonstrate its ability to promote economic growth in its current approved geographic area. Upon review, we will withdraw the Chief's decision as relating to the Appellant's geographic area expansion request and remand the matter for further action and consideration.

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, an entity 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.*

To demonstrate its eligibility to participate in the EB-5 program as a regional center, the Appellant must satisfy a number of requirements, including "[c]learly describe[] how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(m)(3)(i).

When a regional center requests to expand its geographic area, the proposed geographic area must be limited, contiguous, and consistent with the purpose of concentrating pooled investment in defined economic zones. *See* 6 *USCIS Policy Manual*, *supra*, at G.3(D). The Instructions for Form I-924 (version: 12/23/16) explains on page 6: "If filing an amendment to expand the geographic area of the regional center, you [the Appellant] must describe both the currently approved geographic area and the area of requested expansion, as well as provide documentation that explains the justifying economic rationale for the expansion." Page 6 of the Instructions further specifies that the Appellant must "Confirm that [it] ha[s] demonstrated that the regional center focuses on a limited, contiguous

geographic area, and that the boundaries of the regional center are reasonable based on evidence that the proposed area is contributing significantly to the supply chain and labor pool of the proposed new commercial enterprises." *See also* 6 *USCIS Policy Manual*, *supra*, at G.3(D) (noting "requests for geographic area expansion . . . are adjudicated under the current guidance in the Form I-924 instructions"); 8 C.F.R. § 103.2(a)(1) (stating "[t]he form's instructions are hereby incorporated into the regulations requiring its submission").

II. ANALYSIS

In the decision, the Chief did not appear to have followed the adjudicative guidance specified in the USCIS Policy Manual and Form I-924 Instructions. Specifically, the decision does not include a discussion on whether the Appellant has demonstrated it is "focus[ing] on a limited, contiguous geographic area, and that the boundaries of the regional center are reasonable based on evidence that the proposed area is contributing significantly to the supply chain and labor pool of the proposed new commercial enterprises," or whether the Appellant has presented documentation that "explains the justifying economic rationale for the expansion." In addition, on appeal, the Appellant submits additional documents that might be relevant to the geographic area expansion adjudication which the Chief did not have an opportunity to review.

In light of the above, we will withdraw the Chief's decision as relating to the Appellant's geographic area expansion request and remand the matter for further action and consideration. Upon remand, the Chief should consider all facts and documentary evidence relevant to the issues of whether the Appellant's proposed expanded geographic area is a limited, contiguous geographic area; whether the Appellant has presented documentation that "explains the justifying economic rationale for the expansion"; whether the proposed geographic area's boundaries are reasonable based on evidence relating to supply chain and labor pool of the proposed new commercial enterprises; and whether the Appellant will likely promote economic growth in the proposed expanded geographic area. *See* 8 C.F.R. § 204.6(m)(3)(i).

III. CONCLUSION

Based on the reasons we have discussed, we will remand the matter to the Chief for further action in accordance with this decision.

ORDER: The decision of the Chief is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.