U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5823874

Date: MAR. 23, 2020

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.

The Chief of the Immigrant Investor Program Office denied this application, concluding that the Applicant did not establish that it had met the requirements for the benefit sought.

An applicant must establish that it is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1). Upon *de novo* review, we will withdraw the Chief's decision and remand the matter for further action and consideration.

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. 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

[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 Fom1 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.

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.*

II. ANALYSIS

In July 2012, USCIS designated the Applicant as a regional center authorized to participate in the Immigrant Investor Program and approved a geographic scope of [redacted] Counties in New York, and [redacted] Counties in Pennsylvania. The Applicant filed the instant application in December 2015, requesting an amendment to its regional center designation based upon a proposed project located in the County of [redacted].

The Chief denied the application, finding "the evidence submitted by [the Applicant] does not confirm the submission of the geographic expansion amendment as well as justification for the requested expansion of the [Applicant's] approved geographic area." She stated, "the proposed project is expected to be developed in [redacted] County, which is not contiguous to the previously approved areas." The Chief noted that, although it claimed to have previously submitted an amendment to expand its geographic area to include [redacted] County, USCIS records do not show any amendment filed by the Applicant, other than the instant application. Therefore, she concluded that the Applicant is "ineligible for the requested changes."

In reaching her decision, the Chief incorrectly relied on instructions from the December 2016 version of the Form I-924, Application for Regional Center Under the Immigrant Investor Program which state that applicants must file an amendment to request a change to their approved geographic area.[3] Per current USCIS policy, any requests for geographic area expansion made on or after February 22, 2017 are adjudicated under this guidance.[4] However, at the time the instant application was filed the associated form instructions provided that applicants "may" file an amendment requesting a change to their geographic scope, but did not require them to do so.[5]

We further note that USCIS records indicate that the Chief has approved projects affiliated with the Applicant outside of the geographic scope identified in her decision, such as [redacted] and [redacted] counties in New York. The Chief therefore should review all filings associated with the Applicant and its investors to determine its actual geographic scope. If the Chief determines that the project lies within the Applicant's approved geographic scope, she should review the evidence submitted with the instant application to determine if it complies with EB-5 program requirements. Alternatively, the Chief should determine if the evidence in the record justifies the expansion of the Applicant's geographic scope to include the proposed project.

III. CONCLUSION

The appeal will be remanded to the Chief for further action in accordance with this decision.

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[3] *See* https://www.uscis.gov/i-924; *see also* 6 USCIS Policy Manual G.3(D), https://www.uscis.gov/policy-manual

[4] *Id.*

[5] Policy in effect at that time also permitted applicants to file the Form I-526, prior to approval of the geographic area amendment. *See* 6 USCIS Policy Manual G.3(D), https://www.uscis.gov/policy-manual.

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