U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8721171

Date: MAR. 25, 2021

Motion on Administrative Appeals Office Decision

PROPOSAL FOR DESIGNATION AS A REGIONAL CENTER PURSUANT TO SECTION 610(C) OF THE DEPARTMENTS OF COMMERCE, JUSTICE AND STATE, THE JUDIDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT OF 1993, PUB. L. NO. 103-121, 106 STAT. 1874 (1992)

The Appellant, the [redacted],[1] applied for designation as a regional center to participate in the EB-5 program.[2] *See* Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5); *see also* 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. U.S. Citizenship and Immigration Services (USCIS) granted the application in 1997. The designated regional center is called [redacted][3]

The Chief of the Immigrant Investor Program Office terminated the [redacted]'s designation in [redacted] 2018, finding that it no longer served the purpose of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i), (ii) (2018). We dismissed the subsequent appeal.[4]

The matter is now before us on combined motions to reconsider and reopen the proceeding. The Appellant submits additional evidence on motion, claiming that the submission establishes it is continuing to promote economic growth, and that it should retain its designation as a regional center to participate in the EB-5 program. Upon review, we will grant the motions, withdraw the Chief's decision, and remand the matter for further action and consideration.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located

[1] The record indicates that the [redacted] is a [redacted] State government agency that is responsible, in part, for marketing [redacted] to businesses and individuals.

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

[3] A Memorandum of Understanding shows that beginning in December 2014, the [redacted] and the [redacted] another [redacted] State government agency, jointly administer the [redacted].

[4] *Matter of V-A-O-C-A-C-D-R-C-*, ID# 1982072 (AAO Sept. 25, 2019).

at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements.

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.

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 if USCIS determines that the regional center is no longer serving 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).

To determine whether a regional center serves the purpose of promoting economic growth, the Chief should consider a variety of factors, both positive and negative, that encompass past, present, and likely future actions. Positive factors may include the extent of any job creation, the amount of investment, and the overall economic impact. Negative factors may include inaction, mismanagement, theft, or fraud by or otherwise affecting the regional center, any resulting damage, and the risk imposed on investors or the economy. An evaluation of any negative factors should take into consideration of any mitigating or corrective actions taken by the regional center. *See Path America KingCo LLC v. U.S. Department of Homeland Security*, 426 F. Supp. 3d 770, 778 (W.D. Wash. 2019).

II. ANALYSIS

Since its designation in 1997, the [redacted] has been associated with a number of EB-5 projects, including a group of projects that [redacted] and others managed, known as [redacted]. According to the U.S. Securities and Exchange Commission (SEC), U.S. Department of Justice (DOJ), and the [redacted] State government, [redacted] and others, through various businesses, engaged in a massive fraudulent scheme that misappropriated and misused EB-5 capital.[5] The Appellant offers on motion an August 2020 plea agreement, in which [redacted] pled guilty to several federal criminal

[5] The named corporate defendants in the SEC civil lawsuit include: [redacted]. *SEC v.* [redacted] No. [redacted] cv-DPG, [redacted] 2016) (Compl. ¶¶ 1, 3); *see also* U.S. Department of Justice, U.S. Attorney's Office, District of [redacted] https://www.justice.gov [redacted] accessed on September 10, 2019, a copy of the article has been incorporated into the record of proceedings; [redacted]) (citing the Plaintiff's Amended Complaint).

charges, and admitted, among other wrongdoings, that he used EB-5 funds to pay personal expenses, paid expenses of one EB-5 project with funds investors invested in another EB-5 project, and misled investors on the status of the EB-5 projects. The plea agreement and other documents in the record indicate that in 2016, a federal court appointed a receiver to administer and manage the affairs of the businesses associated with the

The record includes evidence showing that before the SEC and DOJ actions, the Appellant attempted to oversee the to ensure that the projects and their offering documents complied with applicable securities laws. *See* 8 C.F.R. § 204.6(m)(6)(i), (ii); *see also* 6 *USCIS Policy Manual* G.3(A), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-3 (requiring a regional center to explain how it "[w]ill oversee all investment activities affiliated with, through, or under the sponsorship of the proposed regional center"). As acknowledged on page 13 of the Chief's decision terminating the 's designation to participate in the EB-5 program, State government has taken or claims to have taken [actions] to improve their monitoring and oversight of the projects" upon learning and others' wrongdoings. Indeed, documents show that the State of sued in state court, alleging that he and others had orchestrated a large-scale investment scheme to defraud EB-5 investors. 2016).

At issue is whether the is continuing to promote economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i)(B). The Appellant alleges on motion that despite and others' wrongdoings, the has continued to promote economic growth. As supporting evidence, it presents new documentation regarding EB-5 projects not previously under control – including the EB-5 Project and projects associated with the According to an October 2019 "Review of Activities – Summary of Past and On-Going Economic Impacts," the EB-5 Project comprises of the construction of a as well as the operation of The document claims that the project "has likely created a total of 653 EB-5 program eligible jobs – and up to an additional 346 economically direct and economically indirect jobs." The Appellant also presents 's SEC filing for the fiscal year ending in April 2019, indicating that the used EB-5 capital to complete two projects: (1) the completed during fiscal 2018, included the construction of a new water storage reservoir and (2) the Project, completed during fiscal 2019, included the construction of a new building. In addition, the August 2017 "Review of the EB-5 Program in ," prepared by the Department of Financial Regulation , in consultation with the alleges that "the [EB-5] projects have resulted in the deployment of hundreds of millions of dollars in foreign capital in and "the creation of at least 3,700 jobs as a result."

The Appellant alleges on page 7 of its motion brief that "[c]ertain EB-5 projects also continue to operate, create jobs, and promote economic growth." stated in an October 2019 letter that "[f]rom May 2018 to September 2020, . . . [he has] continued to oversee the completion of construction related to or Phase VI and the general operations of and He further indicates that "[t]he construction . . . was substantially completed" during the fiscal year ending in April 2019, and that

"[c]apital expenditures for [redacted] construction in fiscal year 2019 included $1,025,281 for the [redacted] condominiums, $118,121 for the [redacted] and $2,552,786 for the [redacted]"

In light of the new evidence regarding promotion of economic growth that the Appellant offers on motion, which the Chief has not had an opportunity to consider, we will withdraw the Chief's decision and remand the matter for further action and consideration. Upon remand, the Chief should consider all facts and documentary evidence relevant to the issue of whether the [redacted] "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," as required under 8 C.F.R. § 204.6(m)(6)(i)(B). *See also* 8 C.F.R. § 204.6(m)(6)(ii)(B) (noting that a regional center must "serve[] the purpose of promoting economic growth").

Furthermore, while the decision does not bind us in the present case, the Appellant notes that intervening caselaw speaks to the question that is before us. Shortly after we issued our last decision, the United States District Court for the Western District of Washington issued a decision in *Path America KingCo LLC v. U.S. Department of Homeland Security*, 426 F. Supp. 3d at 778. The Court noted that, "[j]ust because a regional center failed to promote economic growth for a short period while management changed hands does not mean that the regional center has not continued to promote economic growth after that point, when it in fact provided jobs on a successful construction project." *Id.* at 777. Recognizing the persuasive value of this decision, the Chief should consider whether the [redacted] has "rectified [its] failed oversight [of wrongdoings] and made further progress in creating jobs and investing capital" in EB-5 projects. *See id.* at 778 (noting that USCIS' failure to properly consider a regional center's remedial efforts "appears to run contrary to the purposes of the EB-5 program").

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 motions are granted and the decision of the Chief is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.