U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-V-E-I-, LLC

DATE: MAY 3, 2018

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] In 1992, Congress added the concept of the regional center[3] to the program.[4] A foreign national who is seeking EB-5 immigrant investor classification may invest the required amount of qualifying capital in his or her own project or in a project that is associated with a United States Citizenship and Immigration Services (USCIS) designated regional center.

In June 2011, USCIS designated the Applicant, a limited liability corporation, as a regional center to participate in the EB-5 program. Subsequently in June 2017, the Chief of the Immigrant Investor Program Office terminated the Applicant's designation, finding that it no longer served the purpose of promoting economic growth.

On appeal, the Applicant submits additional documents relating to its efforts to develop EB-5 projects, and contends that it "has demonstrated significant attempts and expenditures towards spurring EB-5 capital investment for the purposes of job creation and promoting economic growth."

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

I. LAW

To obtain USCIS designation, a regional center must provide a general proposal showing how it will concentrate pooled investments in defined geographic areas, thereby promoting economic growth. Section 610(a) of the Appropriations Act. Evidence of economic growth may include increased export sales, improved regional productivity, job creation, or increased domestic capital investment.

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

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

[3] A "regional center" is "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e).

[4] *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 (Oct. 6, 1992).

Id.; 8 C.F.R. § 204.6(m)(6). The proposal for a regional center must contain information concerning the types of commercial enterprises that will receive capital from EB-5 investors, the jobs that will be created directly or indirectly as a result of the investment, and the other positive economic effects such investment will have. *See* 8 C.F.R. § 204.6(m)(3)(i)-(v); section 610(a) of the Appropriations Act.

Once a regional center is designated, the regulation at 8 C.F.R. § 204.6(m)(6)(i)(B) requires it to "[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 . . . ." Regional centers are required to file a Form I-924A, Annual Certification of Regional Center, to show their continued eligibility to participate in the EB-5 program.[5] If a regional center does not submit the required information or no longer serves the purpose of the program, its designation will be terminated. 8 C.F.R. § 204.6(m)(6)(ii)-(v).

We determine whether a regional center serves the purpose of promoting economic growth by evaluating the totality of the evidence, including documentation submitted on appeal. We consider both positive and negative indicators to reach a conclusion regarding whether, on balance, the regional center is continuing to promote economic growth. Positive indicators for consideration include the extent of any job creation, the amount of investment, and the overall economic impact. Examples of negative indicators include inaction, mismanagement, theft, or fraud by the regional center or related entities, any resulting damage, and the risk imposed to investors or the economy by continued designation. An evaluation of any negative factors should take into consideration mitigating or corrective actions taken by the regional center. The requirement that a regional center demonstrate it is continuing to promote economic growth implies that we must consider whether these factors existed in the past, as well as the likelihood of their presence in the future.

II. ANALYSIS

A. Procedural History

The Applicant, through its principal, [redacted] submitted an application in October 2010 requesting regional center designation. In June 2011, USCIS granted the Applicant its designation based on the accompanying hypothetical projects,[6] noting that its geographic area would be [redacted] Nevada. In September 2016, the Chief issued the Applicant a notice of intent to terminate (NOIT) its regional center designation. Specifically, the Chief determined that the Applicant no

[5] USCIS changed the name of this form in 2016. The record contains a prior version of the form, entitled "Supplement to Form I-924."

[6] 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, *EB-5 Adjudications Policy* 14 n.2 (May 30, 2013), https://www.uscis.gov/laws/policy-memoranda; *see also* 6 *USCIS Policy Manual* G.3(B)(1)-(2), https://www.uscis.gov/policymanual.

longer served the purpose of promoting economic growth because it had "not reported any EB-5 capital investment or job creation" and that USCIS records did not reveal any petitions associated with the Applicant.[7] Subsequently, the Chief terminated the Applicant's regional center designation on June 14, 2017, finding its response insufficient to overcome the ground for termination.

On appeal, the Applicant acknowledges that it has not accepted any funds from investors or undertaken any EB-5 projects. It explains that it has been "evaluating and performing due diligence on EB-5 projects under consideration for participation in the EB-5 program," and urges us to "reverse [the Chief's] decision so that [it] may return to its designation as a USCIS regional center."

B. Promotion of Economic Growth

Upon a review of the record in its entirety, we conclude that the Applicant has not shown, by a preponderance of the evidence, that it serves the purpose of promoting economic growth in its approved geographic area. *See* 8 C.F.R. § 204.6(m)(6). On appeal, the Applicant acknowledges that since its designation in June 2011, it has not received any EB-5 investment or created any jobs directly or indirectly. Its most recent Form I-924A, filed in November 2016, similarly confirms its lack of EB-5 funds and job creation. The Applicant explains that it has been evaluating potential projects and offers documents showing that its principals, [redacted] and [redacted] contacted real estate development firms in their attempts to secure EB-5 projects, drafted a foreign language presentation[8] to solicit investment from foreign nationals, and hired attorneys specialized in the EB-5 program. These documents, however, do not show how the Applicant's activities have promoted economic growth, such as increased export sales, improved regional productivity, job creation, or increased domestic capital investment.

The Applicant also offers documentation that it claims to show its "principals . . . have been facilitating and learning [about] EB-5 projects." These documents reveal that [redacted] and [redacted] have formed a number of businesses in Georgia with plans to develop and construct residential dwellings in [redacted] Georgia. According to the materials that the Applicant has presented – including a business plan, a private placement memorandum, a limited liability agreement, and a subscription agreement – this project is associated with another USCIS-designated regional center, [redacted] The record does not demonstrate that this project has resulted in job creation or the Applicant's receipt of EB-5 capital. More

[7] An immigrant 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 (of at least $500,000 or $1,000,000 depending on the geographical area) creates at least 10 positions for qualifying employees. 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 him or her unconditional lawful permanent resident status.

[8] The record does not include an English translation of this foreign language presentation as required under 8 C.F.R. § 103.2(b)(3). The regulation requires that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

importantly, this project is associated with another regional center and is located outside of the Applicant's approved geographic area of [redacted] Nevada. *See* 8 C.F.R. § 204.6(m)(3)(i).

As noted, when determining whether a regional center continues to promote economic growth, we consider the totality of the evidence, weighing positive and negative factors. Positive factors supported by the record include evidence showing that the principals have remained actively engaged in seeking EB-5 projects. The Applicant, citing the Advance Notice of Proposed Rulemaking (ANPRM),[9] maintains that it has been carefully considering potential EB-5 projects to minimize foreign national investors' risk. In addition, the principals have sought to learn more about the program through conferences and working with other regional centers and professionals.

Conversely, the record does not demonstrate that the Applicant has "increased export sales, improved regional productivity, job creation, [or] increased domestic capital investment in the approved geographic area" of [redacted] Nevada. *See* 8 C.F.R. § 204.6(m)(6)(i)(B); *see also* 8 C.F.R. § 204.6(m)(6)(ii)(B). This deficiency represents a significant negative factor. Compounding the concern, the record does not show that the Applicant has pursued any projects in Nevada since late 2014. Instead, its principals have been focusing on developing real estate projects in Georgia, well outside its approved geographic area.

Upon a consideration of all the factors, we conclude that the positive ones do not outweigh the negative ones. The Applicant has not created any jobs directly or indirectly, or received any EB-5 capital since its June 2011 designation. While it has attempted to secure projects and has been carefully reviewing potential proposals, it has not offered documentation confirming that it has any active EB-5 projects or has identified foreign nationals who are willing and able to invest in a project associated with the regional center. In light of the above positive and negative indicators, the Applicant has not established that, on balance, it is continuing to promote economic growth.

III. CONCLUSION

The Applicant has not demonstrated by a preponderance of the evidence that it continues to serve the purpose of promoting economic growth.

ORDER: The appeal is dismissed.

Cite as *Matter of L-V-E-I-, LLC*, ID# 865091 (AAO May 3, 2018)

[9] While the ANPRM provides stakeholders an opportunity to share their views with the Department of Homeland, it is not binding authority that we must follow to adjudicate this appeal. *See* EB-5 Immigrant Investor Regional Center Program, 82 Fed. Reg. 3211 (Jan. 11, 2017).