

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Immigrant Investor Program
131 M Street, NE, MS 2235
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

TO:

Mahnaz Khazen
California Development Regional Center
170 South Spruce Ave., Suite 110
South San Francisco, CA 94080

DATE: October 23, 2017

Application: Form I-924

File: RCW1202050578

RCID: ID1202050578

NOTICE OF TERMINATION

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of California Development Regional Center (the "Regional Center") as a regional center under the Immigrant Investor Program (the "Program") pursuant to Title 8 of the Code of Federal Regulations ("8 C.F.R.") section 204.6(m)(6). The reasons for the termination are explained, below:

(SEE ATTACHED)

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

The Regional Center must send the completed Form I-290B and supporting documentation with the appropriate filing fee to the address indicated below.

If using the U.S. Postal Service:

USCIS
P.O. Box 660168
Dallas, TX 75266

If using USPS Express Main/Courier:

USCIS
Attn: I-290B
2501 S. State Highway 121 Business
Suite 400
Lewisville, TX 75067

For an appeal, the Regional Center may request additional time to submit a brief within 30 calendar days of filing the appeal. Any brief, written statement, or evidence in support of an appeal that is not filed with Form I-290B must be directly sent within 30 days of filing the appeal to:

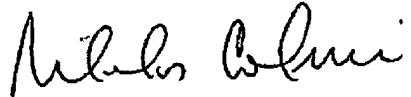
USCIS Administrative Appeals Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS 2090

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For more information about the filing requirements for appeals and motions, please see 8 C.F.R. § 103.3 or 103.5, or visit the USCIS website at www.uscis.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Colucci".

Nicholas Colucci
Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on March 10, 2017

cc: H. Ronald Klasko
1601 Market Street, Ste. 2600
Philadelphia, PA 19103

NOTICE OF TERMINATION
Termination of Regional Center Designation Under the Immigrant Investor Program
California Development Regional Center

The regulation at 8 C.F.R. § 204.6(m)(6) (*Continued participation requirements for regional centers*) provides:

(i) Regional centers approved for participation in the program must:

(A) Continue to meet the requirements of section 610(a) of the Appropriations Act.

(B) Provide 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, using a form designated for this purpose; and

(C) Pay the fee provided by 8 CFR 103.7(b)(1)(i)(XX).

(ii) USCIS will issue a notice of intent to terminate the designation of a regional center in the program if:

(A) A regional center fails to submit the information required in paragraph (m)(6)(i)(B) of this section, or pay the associated fee; or

(B) USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

(iii) A notice of intent to terminate the designation of a regional center will be sent to the regional center and set forth the reasons for termination.

(iv) The regional center will be provided 30 days from receipt of the notice of intent to terminate to rebut the ground or grounds stated in the notice of intent to terminate.

(v) USCIS will notify the regional center of the final decision. If USCIS determines that the regional center's participation in the program should be terminated, USCIS will state the reasons for termination. The regional center may appeal the final termination decision in accordance with 8 CFR 103.3.

(vi) A regional center may elect to withdraw from the program and request a termination of the regional center designation. The regional center must notify USCIS of such

election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its decision regarding the withdrawal request in writing.

I. Procedural History

On July 10, 2013, USCIS designated and authorized the Regional Center's participation in the Program. On March 10, 2017, USCIS issued a Notice of Intent to Terminate ("NOIT") to the Regional Center which afforded the Regional Center 30 days from receipt of the NOIT to offer evidence in opposition to the grounds alleged in the NOIT. On April 13, 2017, USCIS received a response to the NOIT (the "NOIT Response"), which did not sufficiently address the grounds alleged in the NOIT. Accordingly, USCIS has determined that the Regional Center's participation in the Program should be terminated. Pursuant to 8 C.F.R. § 204.6(m)(6)(v) and through this Notice of Termination, USCIS hereby terminates the Regional Center's participation in the Program.

II. Reasons for Termination

USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment as required by 8 C.F.R. § 204.6(m)(6).

A. Failure to Continue to Serve the Purpose of Promoting Economic Growth

Regional centers are designated for the promotion of economic growth and must continue to meet the requirements of section 610(a) of the Appropriations Act as amended, and promote economic growth in a manner that does not conflict with requirements for classification under section 203(b)(5) of the Immigration and Nationality Act ("INA"), removal of conditions on lawful permanent residence under section 216A of the INA, and implementing regulations following their designation. According to section 610(a) of the Appropriations Act, economic growth includes increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *See also* 8 C.F.R. § 204.6(m)(6)(ii) ("USCIS will issue a notice of intent to terminate the designation of a regional center in the program if . . . USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.").

The reasons why a regional center may no longer serve the purpose of promoting economic growth are varied and "extend beyond inactivity on the part of a regional center." 75 FR 58962. For example, depending on the facts, a regional center that takes actions that undermine investors' ability to comply with EB-5 statutory and regulatory requirements such that investors cannot obtain EB-5 classification through investment in the regional center may no longer serve the purpose of promoting economic growth. *See* Section 610(a)-(b) of the Appropriations Act (stating that one purpose of a regional center is to concentrate pooled investment in defined economic zones and accomplishing such pooled investment by setting aside visas for aliens classified under INA 203(b)(5)). Likewise, a regional center that fails to

engage in proper monitoring and oversight of the capital investment activities and jobs created or maintained under the sponsorship of the regional center may no longer serve the purpose of promoting economic growth in compliance with the Program and its authorities.

When derogatory information arises (such as evidence of inaction, mismanagement, theft, or fraud by the regional center or related entities), USCIS weighs all relevant factors in the totality of the circumstances to determine whether the regional center is continuing to serve the purpose of promoting economic growth. Such factors may include the seriousness of the derogatory information, the degree of regional center involvement in the activities described in the derogatory information, any resulting damage or risk imposed on investors and the economy, as well as any mitigating, corrective, or restorative actions taken or forthcoming to redress the situation.

USCIS has considered all evidence provided including evidence provided in response to the NOIT “for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence,” in determining whether the Regional Center’s continued participation is justified under the regulations by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). For the reasons set forth below, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

1. Lack of Regional Center Activity

As noted in the NOIT, the Regional Center’s Form I-924A filings for fiscal years 2013, 2014, and 2015 do not report any EB-5 capital investment or job creation. Likewise, the Form I-924A for fiscal year 2016 supplied in response to the NOIT and signed on April 6, 2017 also does not report any EB-5 capital investment or job creation. In addition, although USCIS designated the Regional Center on July 10, 2013, the Form I-924A filings do not report any pending or approved Forms I-526 filed by petitioners who have made or are actively in the process of making investments associated with the Regional Center.

In the NOIT Response, the Regional Center provided the following evidence:

- Statement from Mahnaz Khazen, Principal of California Development Regional Center
- Copy of Form I-924A, Supplement to Form I-924 for the Fiscal Year Ending September 2016

In the NOIT Response, the Regional Center provided only a statement from its new principal, Mahnaz Khazen. In her statement, Ms. Khazen indicated that the Regional Center was involved in several proposed projects, including the EB5-SAFE Fund, 143 Bay Street, Spring Mansion Project, and 1470 West San Carlos. Although no I-526 petitions have been filed, the Regional Center claimed it was actively seeking qualified, EB-5 appropriate projects since its approval. The Regional Center was focused on promoting economic growth, improving regional productivity, creating jobs and increasing domestic capital investment within its approved geographic territory and in its approved industry categories. The Regional Center did not provide any evidence of the past promotion of economic growth.

(b)(4)

According to Ms. Khazen's statement, the Regional Center was "considering reviewing" the EB5-SAFE Fund project, which involved investment in the State Assistance Fund for Enterprise, Business and Industrial Development Corporation (the "SAFE-BIDCO"). Such investment, the Regional Center claimed, would allow SAFE-BIDCO to expand its operations and was under lease/purchase negotiations at the time of the NOIT Response. The project would be managed by Regional Center and SAFE-BIDCO as the Co-General Partner of the new commercial enterprise, EB5-SAFE Fund (the "NCE"), which was seeking [REDACTED] from EB-5 investors to maintain operations as well as to provide for growth activities.

The Regional Center alleged that it was also "considering sponsoring" a project involving the construction of a 10-story, student housing building at 143 Bay Street, Oakland, California. Ms. Khazen indicated that the land where the project would be developed had already been purchased for [REDACTED] but also stated that the developer was only in contract to purchase the land. Ms. Khazen stated that the project would cost approximately [REDACTED] to develop (in addition to the cost of acquiring land) and that the "project is supported by the city." Ms. Khazen stated that EB-5 investment would be used to fund the development, but did not provide details regarding whether any other funding would be used.

Similarly, the Regional Center was allegedly "considering sponsoring" a mixed-use construction project titled "1470 West San Carlos," involving the construction of three new buildings in San Jose, California, using EB-5 funding. The Regional Center claimed the project was supported by "the city" and was currently under revision and review for final approval. Ms. Khazen stated that she was the consultant developing the [REDACTED] project. Ms. Khazen stated that the architect, Shad Design, had turned in preliminary plans for the project and the developer was in contract for the land, which is currently a car lot. Despite identifying herself as closely connected with the project, Ms. Khazen provided little actual detail regarding the present status or timeline for developing the project.

Other than Ms. Khazen's statement, the Regional Center did not provide any evidence related to the status or viability of any of the projects described above. USCIS has no record of any I-526 petitions filed in relation to any of the NCEs associated with those projects and there is no evidence in the record that provides any additional details related to the budget, construction timeline, or any other features of each project. Consequently, it is unclear whether the Regional Center is actually involved in promoting any of the projects described in Ms. Khazen's statement.

Credibility of the Statement from Ms. Khazen

(b)(4)

In her statement, Ms. Khazen stated, "As required, California Development Regional Center has assumed the duties inherent to the conduct of a regional center with regard to the various projects it is reviewing under the EB-5 program, including various administrative, oversight, record keeping, and compliance functions." However, the Regional Center has not provided evidence showing that, under Ms. Khazen's management, it has actually assumed those duties.

Under the new management, the Regional Center failed to file the required Form I-924A, Supplement to I-924, until prompted to do so following USCIS's issuance of the NOIT.

Further, USCIS has no record of any notifications from the Regional Center that its principal had changed until the filing of the Form I-924A for fiscal year 2016, in April 2017. USCIS has no record of the Regional Center filing an amendment to its designation to request approval of the change in management, as required under the instructions for the Form I-924, published on December 23, 2016. The previous version of the form also required USCIS notification. Specifically, page 5 of the I-924 instructions states that “[d]esignated Regional Centers **must notify USCIS within 30 days** of a change of address, contact information, regional center principal(s), contracting agents or similar changes in the operation or administration of the Regional Center. Notification can be made by sending an email to the EB-5 Program mailbox at: USCIS.ImmigrantInvestorProgram@dhs.gov.” (Emphasis added).

Since the Regional Center failed to properly notify USCIS of its change of principal and it only filed the required I-924A for fiscal year 2016 when prompted by USCIS’s issuance of a NOIT, the Regional Center has not established that it is complying with its duties under the EB-5 Program. There is considerable doubt about the credibility of the various assertions in Ms. Khazen’s statement regarding the regional centers ability to promote economic growth in compliance with Program requirements.

Since the Regional Center did not provide any evidence of the promotion of economic growth since its designation as a regional center under the EB-5 Program on July 10, 2013 and it has offered no credible evidence regarding its current and future plans to promote economic growth in the context of the EB-5 Program, the Regional Center has not established that it continues serve the purpose of promoting economic growth.

The Regional Center’s filings and response to the NOIT do not indicate that it has conducted activity that serves the purposes of the Program, including the “purpose of concentrating pooled investment” as required by 610(a) of the Appropriations Act.¹ In the absence of evidence of increased export sales, improved regional productivity, job creation, or increased domestic capital investment, USCIS concludes that the Regional Center no longer serves the purpose of promoting economic growth.

III. Conclusion

For the reasons described above and set forth in the NOIT and pursuant to 8 C.F.R. 204.6(m)(6), USCIS has determined that the Regional Center does not serve the purpose of promoting economic growth, including export sales, improved regional productivity, job creation, or increased domestic capital investment. Therefore, USCIS hereby terminates the Regional Center’s participation in the Program.

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional

¹ USCIS Policy Manual, Volume 6, Part 6, Chapter 3.

evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

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