



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

(b)(4)



DATE: **JUN 12 2013** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Amendment to Proposal for Designation as a Regional Center Pursuant to Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1874 (1992)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the applicant's most recent proposal to amend a designation as a regional center on June 12, 2012.¹ The matter is now before the Administrative Appeals Office (AAO) on certification pursuant to the regulation at 8 C.F.R. § 103.4. The director's decision will be withdrawn and the request for an amendment will be approved. The matter is returned to the director for issuance of a formal letter to the applicant consistent with this decision.

On March 5, 2009, United States Citizenship and Immigration Services (USCIS) approved the applicant's proposal to be designated as a regional center under the name [REDACTED] pursuant to section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended by section 116 of Pub. L. No. 105-119, 111 Stat. 2440 (1997); section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000), section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002); section 4 of Pub. L. No. 108-156, 117 Stat. 1944 (2003); section 144 of Pub. L. No. 110-329, 122 Stat. 6574 (2008); section 101 of Pub. L. 111-8, 123 Stat. 524 (2009); and section 548 of Pub. L. No. 111-83, 123 Stat. 2142 (2009).

On November 19, 2010, the applicant filed a request to amend the terms of the approval, requesting the expansion of "its defined geographic region to include the states of Illinois, Indiana, Michigan, Minnesota, and Wisconsin in their entirety," and the expansion of "the focus of [its] investment activity by adding the industry clusters of: (1) Administrative and waste management services; (2) Information; (3) Professional and Technical Services; and (4) Wholesale trade."

On June 12, 2012, the director found that the applicant failed to: (1) clearly describe how [REDACTED] will promote economic growth in the expanded geographic area; (2) provide sufficient details regarding how jobs would be created in the expanded industries and geographic area; (3) provide a detailed prediction regarding the manner in which [REDACTED] requested expansion will have a positive impact on the regional or national economy using economically and statistically valid forecasting tools; and (4) provide a detailed statement regarding the promotional efforts and funds that [REDACTED] will use to expand its geographic and industrial scope. The director denied the amendment request accordingly and certified the matter to the AAO. The director afforded the applicant 30 days to supplement the record. The applicant's response is part of the record.

For the reasons discussed below, the AAO withdraws the director's denial of the amendment proposal.

I. THE LAW

Section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5), as amended by Pub. L. No. 107-273, 116 Stat. 1758 (2002), provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

¹ While the applicant titled the filing as a "Motion to Amend," the matter is not a motion pursuant to 8 C.F.R. § 103.5. Rather, the filing is a request to amend the geographic boundaries and covered industry clusters for a designated regional center.

- (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
- (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, as amended, provides:

- (a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. § 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

II. FACTUAL AND PROCEDURAL HISTORY

On March 5, 2009, USCIS approved the applicant's proposal to be designated as a regional center, with a geographic area focusing on the Illinois counties of Boone, Cook, DeKalb, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, Ogle, Stephenson, Will, and Winnebago. USCIS also approved the applicant's proposal to have an investment focus in the following industry clusters: (1) Accommodation, (2) Agriculture, (3) Education, (4) Entertainment, (5) Health Care, and (6) Manufacturing.

On April 21, 2009, USCIS approved the applicant's request for an amendment (Amendment 1) to change the industry clusters from an abbreviated form to the full RIMS II names: (1) Accommodation and Food Service, (2) Agriculture, Forestry, Fishing, and Hunting, (3) Education Services, (4) Arts, Entertainment, and Recreation, (5) Health Care and Social Assistance, and (6) Manufacturing.

On October 16, 2009, USCIS approved the applicant's request for a second amendment (Amendment 2) to expand [redacted] geographic area and to include additional industry clusters as its

investment focus. Specifically, after the approval of Amendment 2, [REDACTED] geographic area was expanded to include the Indiana counties of Jasper, Lake, La Porte, Newton and Porter, and the industry clusters of Transportation, Retail Trade and Utilities.

On April 20, 2010, USCIS approved the applicant's request for a third amendment (Amendment 3) to expand [REDACTED] geographic area. Specifically, after the approval of Amendment 3, [REDACTED] geographic area was expanded to include the Wisconsin counties of Adams, Columbia, Crawford, Dane, Grant, Green, Iowa, Jefferson, Juneau, Lafayette, Rock and Sauk. In its approval notices, USCIS advised the applicant that if any investment opportunities were to arise beyond the scope of the approved focus and industry clusters, then the regional center would be required to file an amendment.

On November 19, 2010, the applicant submitted its fourth amendment to the regional center proposal (Amendment 4). In its filing, the applicant requested to expand [REDACTED] geographic area to include the States of Illinois, Indiana, Michigan, Minnesota and Wisconsin in their entirety, and to expand its investment focus to include the following industry clusters: (1) Accommodations and Food Services; (2) Administrative and Waste Management Services, (3) Agriculture, Forestry, Fishing and Hunting, (4) Arts, Entertainment, and Recreation, (5) Educational Services, (6) Health Care and Social Assistance, (7) Information, (8) Manufacturing, (9) Professional and Technical Services, (10) Retail Trade, (11) Transportation, (12) Utilities, and (13) Wholesale Trade.

The applicant submitted the following types of evidence in support of its fourth amendment request: (1) prior approval notices from USCIS; (2) a description of the proposed projects; (3) documents relating to commuter trends, business connections and economic conditions in the proposed area; (4) [REDACTED]; (5) online articles from the Brookings Institute; and (6) a document entitled "RIMS II Data Analysis."

On July 25, 2011, the director requested additional evidence. Specifically, the director requested information relating to: (1) how the amended proposal will promote economic growth within the proposed five-state geographic area; (2) how the regional center, as defined in the amended proposal, will have a positive impact regionally or nationally; (3) how the regional center, as defined in the amended proposal, will create jobs indirectly; (4) specific documents, such as a business plan and economic analysis, on the regional center's hypothetical investment plans in the proposed five-state geographic area; and (5) the realistic nature of [REDACTED] recruitment and promotional efforts in light of the investment schemes outlined in the amended proposal.

In response to the director's RFE, counsel provided the following types of evidence: (1) a 28-page cover letter; (2) a map entitled "Census Regions and Divisions of the United States"; (3) a document entitled "Census Bureau Regions and Divisions with State FIPS Codes"; (4) a document entitled [REDACTED]; and (5) a document entitled "RIMS II Multipliers (2002/2007), Table 2.5 Total Multipliers for Output, Earnings, Employment, and Value Added by Industry Aggregation [REDACTED] (Type II)." The director denied the fourth amendment request and certified her decision to the AAO.

III. ANALYSIS

For the reasons set forth below, the applicant has provided sufficient evidence of a general proposal based on general predictions to establish that the amendment request is approvable.

A. Requirement to File Regional Center Amendments

The regulation at 8 C.F.R. § 204.6(m)(3) provides the evidentiary requirements for regional centers wishing to participate in the Immigrant Investor Pilot Program. Page 23 of *EB-5 Adjudications Policy*, PM-602-0083 (May 30, 2013), discusses amendments to regional center designations and states:

Such formal amendments to the regional center designation, however, are not required when a regional center changes its industries of focus, its geographic boundaries, its business plans, or its economic methodologies. A regional center may elect to pursue an amendment if it seeks certainty in advance that such changes will be permissible to USCIS before they are adjudicated at the I-526 stage, but the regional center is not required to do so.

Thus, the applicant was not required to file the instant amendment request. While not required, the applicant has, in fact, filed the request. Therefore, the merits of that request are discussed below.

B. General Proposal and General Predictions

The applicant has not filed an exemplar or a request for approval of an actual investment project. Instead, the applicant has filed an amendment request for hypothetical projects, such as a coffee company that desires to branch out into the home and office delivery business. Page 14 of *EB-5 Adjudications Policy*, PM-602-0083 (May 30, 2013), provides:

The level of verifiable detail required for a [regional center proposal] to be approved and provided deference may vary depending on the nature of the [regional center proposal]. If the [regional center proposal] projects are “hypothetical” projects, general proposals and general predictions may be sufficient to determine that the proposed regional center will more likely than not promote economic growth, improved regional productivity, job creation, and increased domestic capital investment. Determinations based on hypothetical projects, however, will not receive deference and the actual projects on which the Form I-526 petitions will be based will receive de novo review during the subsequent filing (e.g., an amended [regional center proposal] including the actual project details or the first Form I-526 petition filed by an investor under the regional center project).

The record contains a general proposal based on Census Bureau and other data and general predictions concerning the kinds of commercial enterprises that will receive capital, the direct and indirect jobs that will be created as a result of such capital investments based on RIMS II data and multipliers, and other positive economic effects. Thus, the AAO withdraws the director’s concerns.

While the amendment request is approved, it is based on hypothetical projects and, therefore, is not due any deference in future filings.

IV. CONCLUSION

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the amendment will be withdrawn and the amendment proposal approved. The matter is returned to the director for issuance of a formal approval letter consistent with this decision.

ORDER: The director's decision dated June 12, 2012 is withdrawn. The applicant's amendment proposal is approved.