



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

**TO:**

Arkansas Regional Economic Development Center, LLC  
Attn: Gary Spackman  
c/o Timothy P. Post  
736 S. Center St.  
Reno, NV 89501

**DATE:** May 16, 2017

**Application: Form I-924**

**A-Number:**

**File: RCW1232050815 / ID1232050815**

**NOTICE OF TERMINATION**

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of Arkansas Regional Economic Development Center, LLC (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

Arkansas Regional Economic Development Center, LLC – **Designation Terminated**

ID1232050815

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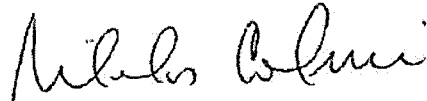
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20 Massachusetts Avenue, NW, MS 2090

Washington, DC 20529-2090

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](http://www.uscis.gov).

Sincerely,



Nicholas Colucci

Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions

(2) Notice of Intent to Terminate issued on March 28, 2017

cc: Timothy P. Post  
736 S. Center St.  
Reno, NV 89501

## NOTICE OF TERMINATION

### **Termination of Regional Center Designation Under the Immigrant Investor Program Arkansas Regional Economic Development Center, LLC**

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 March 20, 2014, USCIS designated and authorized the Regional Center's participation in the Program. On March 28, 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 May 2, 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 in the record 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, 2015, and 2016 do not report any EB-5 capital investment or job creation. In addition, although USCIS designated the Regional Center on March 20, 2014, 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:

- Memorandum regarding the Regional Center’s response to the NOIT, dated April 11, 2017, unsigned;
- Copy of a letter from Timothy Post, attorney of record for the Regional Center, dated April 5, 2017;
- NMS Capital EB-5 Client Presentation, titled “Introduction to NMS Capital Group’s EB-5 Investment Banking and Investment Advisory Services,” undated;
- Engagement letter between NMS Capital Advisors, LLC and Emerald Falls Hotel & Resort, LLLP, dated June 12, 2014;

- NMS Capital Due Diligence Summary for the Emerald Falls project, undated; and
- Memorandum from Vijay Chandran to Gary Spackman, regarding Emerald Falls Confirmation of Cash Inflows, dated February 12, 2015.

In response to the NOIT, the Regional Center provided a memorandum outlining its position regarding the allegations of the NOIT. The memorandum, apparently on the Regional Center's letterhead, was incomplete. The pages are annotated as "Page 1 of 7," "Page 2 of 7," and so on, but the memorandum ends abruptly at the end of "Page 6 of 7," and record does not include "Page 7 of 7." Therefore it is unclear who prepared the memorandum and the "Regional Center Conclusion," beginning on page 6 of the memorandum, is incomplete. USCIS has examined the entire response submitted by the Regional Center and "Page 7 of 7" does not appear to have been a part of the response to the NOIT. Despite this omission, USCIS has based its determination upon a consideration of all evidence in the record.

The Regional Center provided evidence to show that it is involved in a project titled Emerald Falls Hotel & Resort, LLLP (the "Emerald Falls project"). In support of that assertion, the Regional Center provided a copy of an Engagement Letter between the Emerald Falls project and NMS Capital Advisors, LLC ("NMS"). In that letter, NMS agreed to be the "exclusive Financial Advisor and selling agent for a capital raise undertaken by [the Emerald Falls project]...." The NMS Capital EB-5 Client Presentation indicates that NMS "provides a wide array of investment banking (broker dealer) and advisory (registered investment advisory) services" for EB-5 projects, including "conducting upfront due diligence... [and] managing all capital structuring, investment solicitation and capital placement services...." The Engagement Letter in the record is signed only by Gary Spackman—the principal of the Regional Center—on behalf of the Emerald Falls project, and includes receipts effecting a [REDACTED] to (b)(4) NMS. Other than the Engagement Letter and documents related to NMS's work on the Emerald Falls project, the Regional Center has not provided any other evidence to show that it has taken any substantial steps toward promoting or developing the Emerald Falls project.

According to the memorandum in the response to the NOIT, the Regional Center relied on advice from NMS to refrain from actively pursuing EB-5 investors until such time as the Emerald Falls project had received approval of a Form I-924 seeking an amendment to the Regional Center including an exemplar I-526 petition (the "I-924 exemplar"). The Regional Center filed an I-924 exemplar on May 10, 2014, and that application was approved by USCIS on October 26, 2015.

The memorandum asserts that the Regional Center has so far been unable to find suitable investors for its project due to "a myriad [of] issues including but not limited to vetting of an EB-5 Investors [sic] source of funds and/or SEC compliance as registered Brokers with the SEC." The memorandum states that the Regional Center, in April and May 2017, "has a representative attending various EB-5 events in China... interviewing potential EB-5 clients."

The record indicates that the Regional Center signed the Engagement Letter with NMS in June 2014 and the I-924 exemplar was approved in October 2015. As of the date of this Notice, over eighteen months have passed since the approval of the I-924 exemplar, but the Regional Center has not provided any

evidence to show that it has made any progress on developing the Emerald Falls project or engaged with potential investors. The timeline for the Emerald Falls project—included in the NMS Capital Due Diligence Summary for the Emerald Falls project—indicates that construction on the project would begin in early 2014 and would be substantially complete by the first quarter of 2017. The golf course and country club should have begun operations in early 2014, the hotel and resort would have been operational by first quarter 2016, and the senior and assisted living operations would have begun in late 2016. The document also indicates that the Emerald Falls project could seek bridge financing if EB-5 investment funds were not readily available.

Further, the Regional Center did not provide any evidence to show that any progress has been made in regards to developing the Emerald Falls project. The response to the NOIT includes a memorandum from Vijay Chandran, reflecting cash inflows to the Emerald Falls project from other sources prior to February 2015, but there is no indication that the Regional Center has taken any further steps to contribute funds, secure financing, or otherwise promote or develop the project.

As of the date of this Notice, USCIS has no record of any other projects under sponsorship or development by the Regional Center.

Based on the issues discussed, above, the Regional Center has not established that it is promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area.

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 no longer serves the purpose of promoting economic growth and 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 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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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

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