

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:

E Development Corporation, DBA EDC
Attn. Vanessa L. Williams
414 W Soledad Avenue, Suite 500
Hagatna, GU 96910

DATE: October 15, 2018

Application: Form I-924
File Number: RCW1223650739
RCID: ID1223650739

NOTICE OF TERMINATION

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of E Development Corporation (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
Washington, DC 20529-2090

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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 "SMKendall", with a stylized, cursive script.

Sarah M. Kendall
Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on June 18, 2018

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

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 January 13, 2014, USCIS designated and authorized the Regional Center's participation in the Program. On June 18, 2018, 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 August 6, 2018, 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 2014, 2015, 2016, and 2017 do not report any EB-5 capital investment or job creation. In addition, although USCIS designated the Regional Center on January 13, 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.

The Regional Center provided the following evidence as attachments to the NOIT Response:

- (b)(6)
- Undated PowerPoint presentation reportedly given to trade missions marketing potential EB-5 project investments by a prospective Job-Creating Entity (“JCE”), Northern Market LLC, and its Managing Director Carlos Camacho
- Revised business plan of North Gate Commercial Center, dated December 2015
- Feasibility Study of Proposed North Gate Commercial Center, dated March 2016
- Econometric Study for North Gate Market Place project to support a future actual or exemplar I-526 petition, dated July 19, 2018
- Undated proposed business plan and econometric study of Pago Bay Marina Resort project

In the NOIT Response, the Regional Center claims that its delay in supporting I-526 applications is justified by:

- Uncertainty of its status due to change of ownership, with Form I-924 Amendment filed December 30, 2014 and approved on October 7, 2015;

(b)(6)

-
- “External market forces” affecting conditions in Guam, including changes in planned construction by the U.S. Navy, labor shortages for construction workers, and security threats by North Korea.

The Regional Center claims that despite transitions in its own management and surrounding conditions, it has been actively identifying and evaluating proposed projects and generating interest from investors since its designation in 2014. The NOIT Response includes evidence related to two projects that the Regional Center claims it is in the process of developing: North Gate Market Place and Pago Bay Marina Resort. However, in the case of the two projects cited, both their own status and their connection to the Regional Center are unclear. Additionally, a shortage of construction workers within Guam suggests that employment created by these projects would not be qualifying jobs for purposes of the Program.

1. North Gate Market Place

The North Gate Market Place project is being developed by Northern Market LLC, and the business plan provided is authored by its Managing Member,¹ Carlos Camacho. The business plan, dated December 2015, contains no mention of the Regional Center or the use of EB-5 capital, and there is nothing in the NOIT Response to confirm any business relationship between Northern Market LLC and the Regional Center. Press coverage of the project makes no mention of the Regional Center, the EB-5 Program, or Ms. Williams.

The business plan provided does anticipate funding through the Department of Housing and Urban Development (“HUD”). An April 16, 2018 article in the Guam Daily Post observes that this funding later fell through when Mr. Camacho “was not able to secure standard risk mitigation measures, such as preleasing at least 50 percent of the space, or obtaining a letter of commitment from a company that could serve as an anchor tenant.”² A January 26, 2017 article later recorded that Mr. Camacho had asked the lessor of the land parcel intended for the North Gate Marketplace project, the Guam Ancestral Lands Commission, for reduced rent.³ According to Mr. Camacho, approximately 3,000 square meters had been subtracted from the total proposed acreage of the project site “because the rights to that portion of land haven’t been resolved.”

¹ Subsequently, co-owner.

² https://www.postguam.com/news/local/mall-project-loses-federal-funds/article_7107cf2c-4048-11e8-9059-5f8461eb6741.html, “Mall project loses federal funds,” The Guam Daily Post, April 16, 2018, last accessed October 10, 2018.

³ https://www.postguam.com/news/local/shopping-center-developer-seeks-reduced-rent/article_8c75bea4-e2e6-11e6-8156-dfb4f9e87a17.html, “Shopping center developer seeks reduced rent,” The Guam Daily Post, January 26, 2017, last accessed October 10, 2018.

The feasibility study on this project provided by the Regional Center is dated March 2016, and could not consider these significant developments or others in the larger climate of the island. Furthermore, the econometric study commissioned by the Regional Center principal relies on figures from the outdated business plan. Given the lack of critical information regarding the feasibility of this project or the Regional Center's role in it, this cannot be considered as credible evidence of promoting economic growth.

2. Pago Bay Marina Resort

The only specific activity that the Regional Center claims to have undertaken since 2016 is identifying and evaluating a new proposed project, Pago Bay Marina Resort. The business plan provided clearly states that it was prepared for the "Guam Strategic Development Regional Center," a separate regional center that was terminated in July 2017 for failure to promote economic growth. While the business plan is undated, the economic impact analysis provided as an addendum is dated November 4, 2015. Furthermore, the business plan fails to provide substantive detail on the project, its construction timeline, or evidence of any progress on its construction or operation. Once again, there is no evidence provided of a business relationship between the Regional Center and the developer, Liaoning Wanfang Real Estate Develop Ltd. Without evidence to demonstrate that this is an active, viable project for this Regional Center, this does not establish that the Regional Center is promoting economic growth.

3. Labor Conditions within Guam

Lastly, the NOIT Response itself acknowledges the shortage of construction workers in Guam, and that construction projects significantly slowed down and increased in cost during a period of reduced H-1B and H-2B visas. The labor shortage suggests that hires for a future project sponsored by this Regional Center may not be qualifying U.S. workers. Indeed, the econometric analysis provided for the North Gate Market Place project concedes that new hires in Guam would come primarily from the Freely Associated States—including the Federated States of Micronesia, Republic of Palau, and Republic of the Marshall Islands—and incorrectly assumes that workers from those countries would be qualifying jobs for purposes of the EB-5 program.⁴ Because the Regional Center has not established that it would be likely to create qualifying employment in light of the labor conditions within its geographic area, it does not serve the purpose of promoting economic growth in accordance with the Program.

⁴ 8 C.F.R. § 204.6 defines a "qualifying employee" as a "United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien." [Emphasis added.] The H-1B and H-2B visas frequently used in Guam are nonimmigrant work authorizations.

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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