



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

February 13, 2015

Martin Angiulli

Kentucky Regional Center DBA Midwest EB-5 Regional Center – **Designation Terminated**
2612 Vine Street
Cincinnati, OH 45129

Notice of Termination

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of Kentucky Regional Center DBA Midwest EB-5 Regional Center ("MERC") as a regional center under the Immigrant Investor Program ("Program") pursuant to Title 8 of the Code of Federal Regulations ("8 C.F.R.") section 204.6(m)(6).

The regulation at 8 C.F.R. § 204.6(m)(6) provides:

Termination of participation of regional centers. To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of a regional center in the pilot program if a regional center fails to submit the required information or upon a determination 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 notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided 30 days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or

grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot Program¹ should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. As provided in 8 C.F.R. 103.3, the regional center may appeal the decision to USCIS within 30 days after the service of notice.

On September 17, 2014, USCIS issued a Notice of Intent to Terminate (“NOIT”) to MERC, which afforded MERC 30 calendar days from receipt of the notice to offer evidence in opposition to the grounds alleged in the NOIT. On October 22, 2014, USCIS received a response from MERC to the NOIT (the “NOIT Response”), which did not sufficiently address the grounds alleged in the NOIT. Accordingly, USCIS has determined that MERC’s participation in the Program should be terminated. Through this Notice of Termination, USCIS hereby terminates MERC’s participation in the Program.

Reasons for Termination

USCIS has determined that MERC no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. Evidence provided in the NOIT Response also supports USCIS’ determination that MERC failed to submit information as required by 8 C.F.R. 204.6(m)(6).

A. MERC no longer serves the purpose of promoting economic growth through the two commercial enterprises under its sponsorship.

i. *MH Entertainment I Regional Center Partnership*

The NOIT outlined why USCIS believed MERC would not realize its stated objective to facilitate EB-5 capital investment in the Manhattan Harbour Project and the associated MH Entertainment I Regional Center Partnership’s efforts to create jobs through residential-commercial development of the Dayton, Kentucky riverfront. In the NOIT Response, MERC acknowledged that there has been no activity promoting economic growth through the Manhattan Harbour project, stating that the project “couldn’t get all of its financing in place” and was suspended in 2010. MERC states that some meetings

¹ On September 28, 2012, President Obama signed Public Law 112-176 which amended section 610 of Public Law 102-395. Public Law 112-176 struck the word “pilot” from section 610 of Public Law 102-395 and extended the Immigrant Investor Program until September 30, 2015. See Pub. L. No. 112-176, 126 Stat. 1325 (Sept. 28, 2012). The regulations have not been updated to reflect this statutory amendment.

took place in the early summer of 2014 but offers no evidence suggesting how MERC will enable the Manhattan Harbour Project to achieve its goals. Based on this and all evidence in the record, USCIS has determined that MERC no longer serves the purpose of promoting economic growth through the MH Entertainment I Regional Center Partnership.

ii. KRC Fund I, LP

On January 13, 2014, USCIS approved nine I-526 petitions associated with KRC Fund I, LP, a new commercial enterprise sponsored by MERC. Two additional I-526 petitions associated with KRC Fund I, LP are pending USCIS adjudication, one filed on December 16, 2013 and one filed on January 22, 2015. USCIS has not received any other petitions associated with KRC Fund I, LP.

(b)(4) According to the November 2013 Comprehensive Business Plan, KRC Fund I, LP would loan money to SV ARX, LLC to develop and operate eight restaurants in the Short Vine Entertainment District in Cincinnati, Ohio (the “SV ARX Project”). In the NOIT Response cover letter, current-MERC principal Martin Angiulli states “[m]y separate company, SVARX, LLC, is the borrower of the EB-5 capital at issue collected by the ‘new commercial enterprise,’ KRC Fund I, LP.” According to the SV ARX Project Economic Impact Study, the project would create a total of [REDACTED] jobs, including [REDACTED] jobs from construction and [REDACTED] jobs from operations, of which [REDACTED] jobs would be direct jobs from restaurant operations.

Based on a lack of demonstrated progress with the SV ARX Project, the NOIT requested that MERC provide evidence showing that MERC continues to serve the purpose of promoting economic growth through the project. The NOIT Response states that the SV ARX Project remains viable and is still projected to meet job creation targets. However, the evidence provided in the NOIT Response does not demonstrate that MERC continues to promote economic growth through KRC Fund I, LP.

(b)(4) The record shows that many expenditures to-date are inconsistent with the SV ARX Project business plan and with job-creating purposes generally. According to the NOIT Response cover letter from Martin Angiulli, “so far our construction expenditures have included [REDACTED] soft costs of architecture, engineering, management, etc. (admittedly, more broadly interpreted than what an economist might use to predict job creation) and [REDACTED] hard costs, as shown on our attached chart at Exhibit 9.” As Exhibit 9 to the NOIT Response, MERC provided a chart of expenditures for the SV ARX Project which shows deposits and withdrawals for project accounts with [REDACTED] between October 1, 2011 and September 22, 2014. Many of the expenditures categorized as hard

(b)(4)

construction costs or soft construction costs in this chart do not appear to be legitimate SV ARX Project expenditures. For example, a transfer in the amount of [REDACTED] to then-MERC principal Terry Chan on October 11, 2011 with the memo “Tech Fund” is listed as a hard cost. A November 9, 2011 expenditure in the amount of [REDACTED] at IKEA with the memo “Office Furniture tech fund” is listed as a hard cost. The soft construction cost category also includes expenses which do not appear to be legitimate SV ARX Project expenses. For example, a November 14, 2011 expenditure in the amount of [REDACTED] at an Apple Store with the memo “Tech Fund supplies” is listed as a soft cost. Expenditures for furniture, fixtures, and equipment such as these typically occur near the end of a construction project when the facility is completed and undergoing final outfitting for operations. The items associated with the above expenditures appear to be purchased for the benefit of the regional center rather than as part of the SV ARX Project.

Furthermore, based on evidence in the record, including the NOIT Response, it appears that EB-5 capital was used to cover regional center expenses such as payments for “organizing and marketing expenses, including trips to China”, rather than in furtherance of job creation via the SV ARX Project. In the NOIT Response cover letter, Martin Angiulli acknowledges this and states, “I recognize now that some of the expenditures by SVARX were made for certain organizing and marketing expenses that USCIS prohibits for use of minimum EB-5 capital investment funds.”

(b)(4)

In the NOIT, USCIS indicated that there did not appear to be active permits associated with the SV ARX Project. In the NOIT Response, MERC acknowledged that any permits received have expired: “[w]e have been waiting for new investor transfers to come in before we submit the drawings, so that we can get a realistic construction schedule put in place. We don’t want to submit drawings for a permit until we have funds available to complete the construction.” In Exhibit 17 to the NOIT Response, MERC provided a letter from architects [REDACTED] asserting the feasibility of obtaining building permits once applications are submitted. The letter discusses permits needed for future work, but does not provide evidence of construction progress to-date.

In the NOIT Response cover letter, Martin Angiulli states that waiting for USCIS adjudication of I-526 petitions “crippled our investor marketing, and the resulting unavailability of capital crippled our development progress.” Exhibit 8 to the NOIT Response – chart from prior MERC owners – shows that [REDACTED] in EB-5 capital was disbursed to the SV ARX Project account by August 2, 2012. Additionally, the November 2013 business plan states, “[a]s a fallback option, in case the requisite amount of capital is not raised through EB-5, SV ARX also has the ability to borrow funds from a number of local, regional and national banks in the area.” The record does not reflect progress in the

construction and operation of new restaurants consistent with the [REDACTED] EB-5 investment into KRC Fund I, LP.

The NOIT Response cover letter states that progress to-date includes utility work, interior demolition, and roof work. While the SV ARX Project chart of expenditures includes disbursements that appear to be related to this work, categories for recent expenditures also include “Jeff China Trip”, “Las Vegas EB5 conference”, “London trip”, and “Project offering documents.” As Exhibit 20 to the NOIT Response, MERC provided an updated version of the November 2013 Comprehensive Business Plan for KRC Fund I, LP. Page 9 of the business plan includes a “Uses of Capital” table which categorizes all uses of capital into different restaurant concepts and project overhead. The records for the SV ARX Project accounts demonstrate that EB-5 funds invested in 2011 and 2012 were not disbursed in a manner consistent with the job-creating purposes described in the business plan.

Based on the evidence in the record related to the SV ARX Project, including the evidence that MERC provided in the NOIT Response, USCIS has determined that MERC no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment through the KRC Fund I, LP.

B. By failing to meet the monitoring and oversight responsibilities set forth in its designation letter, MERC no longer serves the purpose of promoting economic growth.

The NOIT asserted that MERC has failed to fulfill the monitoring and oversight responsibilities detailed in MERC’s initial regional center designation approval letter dated April 29, 2010. USCIS noted that MERC’s responsibilities were reinforced by its fiduciary role as general partner of KRC Fund I, LP, which, as was previously noted, is the only active new commercial enterprise in the regional center. The record, including the NOIT Response, indicates that MERC has not met its management and oversight responsibilities.

i. Investment inconsistent with statements of regional center principals to USCIS and not tied to promotion of economic growth

The NOIT referenced a statement from MERC’s then-managing principals Terry Chan and Gary Chan dated March 7, 2012 and accompanying several I-526 petitions, indicating:

KRC Fund I, LP has begun advancing loan payments to SV ARX, LLC to begin development portions of the project pursuant to the business plan.

(b)(4)

Until the pending amendment is approved, MERC has allocated the investment funds of these [REDACTED] immigrant investors solely towards job creation activities in the approved restaurant industry. These investor funds have been segregated into a separate pool of EB-5 investor capital. These funds will only go towards the acquisition and renovation of buildings to house restaurants, along with the associated tenant improvements and incentives in the restaurant industry.

(b)(4)

Contrary to this statement, the November 2013 business plan included a reference to an investment in Zipscene, LLC and the NOIT Response indicates that there were additional investments in technology companies that were inconsistent with the statement of the regional center principals. The chart of expenditures for the SV ARX Project, in Exhibit 9 of MERC's NOIT Response, shows a [REDACTED] payment to Source LLC (also referred to as The Source) on November 18, 2011 with the memo "Tech Fund" and a [REDACTED] payment to an entity called Wearcast on November 23, 2011 with the memo "Tech Fund investment." The chart lists additional payments to Source LLC on January 26, 2012 and February 15, 2012 totaling [REDACTED] and these payments are categorized as "Investment – The Source Labs." The investments in Wearcast and Source LLC were not included in the November 2013 Comprehensive Business Plan for KRC Fund I, LP and were not disclosed in MERC's I-924A filings with USCIS. As noted in Section A.ii. above, many of the transactions listed in the chart of expenditures for the SV ARX Project are also inconsistent with the statement that the first seven investors' funds would go solely towards job creation activities in the approved restaurant industry.

(b)(4)

Additionally, from financial records provided by MERC in its NOIT Response, USCIS believes that the purchase of MERC by Mr. Angiulli from Messrs. Terry and Gary Chan was funded with EB-5 capital. In Exhibit 9 of the NOIT Response, the chart of expenditures for the SV ARX Project shows that SV ARX purchased the "Colonade" for [REDACTED] on December 21, 2011 using EB-5 capital contributions. Based on an earlier February 2012 Comprehensive Business Plan for KRC Fund I, LP included with I-526 petitions, USCIS understands the Colonade to be a property located at 2718 Vine Street in Cincinnati, Ohio. The expenditure chart shows a deposit to the SV ARX Project account of [REDACTED] on January 24, 2014 from proceeds of the subsequent sale of the Colonade. The chart indicates that [REDACTED] was transferred from the SV ARX Project account to Angiulli, Inc. on January 24, 2014. Since the SV ARX Project account balance was [REDACTED] prior to the deposit of proceeds from the Colonade sale, the majority of the funds for the [REDACTED] payment to Angiulli, Inc. came from the proceeds of the Colonade sale and, consequently, from EB-5 capital contributions. A Letter of Intent included as Exhibit 13 to the NOIT Response shows that Martin Angiulli is the president and owner of Angiulli, Inc. As Exhibit 6 to the NOIT Response, MERC provided a purchase agreement showing that

Martin Angiulli purchased MERC from the Chans for \$300,000 on January 21, 2014. Based on the timing and dollar amounts of the transactions related to the sale of the Colonade and the purchase of MERC in January 2014, USCIS believes that Martin Angiulli improperly used EB-5 investor funds from the SV ARX Project to purchase MERC from the Chans.

(b)(4) The financial records provided by MERC in its NOIT Response also clearly demonstrate disbursements made to individual principals of MERC that do not relate to the professed business plan as disclosed to investors and do not relate to the creation of jobs. For example, the SV ARX Project chart of expenditures shows that [REDACTED] was transferred from the SV ARX Project account to then-principal Terry Chan in October 2011.

The way investment funds were allocated was inconsistent with MERC statements provided to USCIS and demonstrates MERC's inability to monitor and oversee investment activities under its sponsorship and, by extension, its failure to promote economic growth.

ii. Failure to fully account for EB-5 capital investments

The NOIT alleged that MERC has not fully accounted for EB-5 capital investments under its sponsorship. In its I-924A filing for the fiscal year ending September 30, 2012, MERC indicated that it sponsored [REDACTED] in aggregate capital investment through KRC Fund I, LP. In the same filing, MERC indicated that KRC Fund I, LP served as a vehicle for investment into two job-creating businesses: [REDACTED] in SV ARX, LLC and [REDACTED] in Zipscene, LLC. The sum of investments in the two job-creating businesses is [REDACTED] leaving [REDACTED] unaccounted for in the filing.

(b)(4) The NOIT Response indicates that MERC remains unable to account for the full [REDACTED] in EB-5 capital investment. As Exhibit 8 to the NOIT Response, MERC provided a chart from MERC's prior owners showing "funds loaned to or paid on behalf of SVARX, LLC" by KRC Fund I, LP. Notwithstanding USCIS concerns regarding the figures provided in this chart, the total of the transactions is [REDACTED]. In the NOIT Response cover letter, Martin Angiulli acknowledges that MERC remains unable to account for all EB-5 capital investments under MERC's sponsorship:

We note this totals only [REDACTED]. We have asked the former owners of MERC for an accounting of the remaining amount of \$ [REDACTED] as well as certain early transfers out of SVARX when the former owners of MERC had authority to make such transfers, but we have not yet received that accounting with supporting evidence.

(b)(4)

Additionally, the NOIT Response – in both the chart of SV ARX Project expenditures and the chart from previous MERC owners – shows that \$1,000,000 of EB-5 capital was deposited into the SV ARX Project account, all during the fiscal year ending September 30, 2012. The record demonstrates that, contrary to the SV ARX Project business plan, KRC Fund I, LP did not loan all EB-5 capital to SVARX, LLC. Furthermore, the amount of EB-5 capital that was deposited into the SV ARX Project account is not consistent with the amount that MERC reported was invested in SV ARX, LLC – [REDACTED] – in its I-924A filing for the fiscal year ending September 30, 2012.

The failure to fully account for EB-5 capital investment demonstrates MERC's inability to monitor and oversee investment activities under its sponsorship and, by extension, its failure to promote economic growth.

C. MERC failed to submit required information to USCIS by failing to account for EB-5 capital investments

(b)(4)

Based on evidence in the NOIT Response, USCIS confirms that information MERC provided in its Form I-924A for the fiscal year ending September 30, 2012 was inaccurate and that MERC remains unable to account for the full amount of EB-5 capital investment under its sponsorship. As noted in section B.ii. above, according to its Form I-924A submission for the fiscal year ending September 30, 2012, MERC sponsored [REDACTED] in aggregate capital investment through KRC Fund I, LP, including a \$1,000,000 investment in SV ARX, LLC (for the SV ARX Project). Exhibit 8 of the NOIT Response, however, indicates that only [REDACTED] in EB-5 capital contributions was directly transferred into the SV ARX Project account.

Referring to the accounting presented in Exhibit 8, Martin Angiulli states in the NOIT Response cover letter, "I report this without vouching for its accuracy." Even if one were to accept the accounting presented in Exhibit 8 of total "funds loaned to or paid on behalf of SVARX, LLC" as [REDACTED] the NOIT Response does not reconcile the inconsistencies noted and fails to account for the full [REDACTED] of EB-5 capital investment. The record, including the NOIT Response, indicates that MERC's Form I-924A submission was inaccurate and omitted required information.

Pursuant to 8 C.F.R. 204.6(m)(6), USCIS has determined that MERC failed to submit required information to USCIS.

Conclusion

For the reasons listed above and set forth in the NOIT and pursuant to 8 C.F.R. 204.6(m)(6), USCIS has determined that MERC no longer serves the purpose of promoting economic growth and has failed to submit required information to USCIS and hereby terminates MERC's participation in the Program. Since the record is clear that MERC no longer serves the purpose of promoting economic growth and has failed to submit required information to USCIS, USCIS does not believe that a personal interview with MERC's principal is necessary.

Procedure to Appeal the Decision to Terminate

If you disagree with this decision, or if you have additional evidence that shows this decision is incorrect, you 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. You may also include a brief or other written statement and additional evidence in support of your motion or appeal. The Form I-290B must be filed within 33 calendar days from the date of this notice. If a motion or appeal is not filed within 33 calendar days, this decision is final.

You must send your 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 Mail/Courier:

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

Your motion or appeal must be filed on Form I-290B and must be accompanied by a fee of \$630.00. The check or money order used for the Form I-290B filing fee must be drawn from a bank or other financial institution located in the United States and must be payable to U.S. Department of Homeland Security.

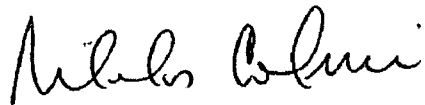
In support of your appeal, you may submit a brief or other written statement for consideration at the time of initial filing of the Form I-290B or within 30 calendar days of filing. If you are filing an appeal of this decision, you may, if necessary and for good cause, request additional time to submit a brief or other statement by submitting a written explanation for the need for additional time. Any brief, written statement or other evidence in support of an appeal that is not filed concurrently with Form I-290B, including any request for additional time for the submission of a brief, must be sent directly to the Administrative Appeals Office (AAO) at:

USCIS
Administrative Appeals Office
20 Massachusetts Avenue, NW
Mail Stop 2090
Washington DC 20529-2090

The appeal of the termination may not be filed directly with the AAO. The appeal of the termination must be filed in accordance with the Form I-290B instructions and at the address indicated above.

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,



Nicholas Colucci
Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on September 17, 2014

cc: Robert Divine
Baker Donelson
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633 Chestnut Street
Chattanooga, TN 37450