

Liberty West Regional Center, LLC – **Designation Terminated**  
ID (formerly ID# ID1031910021)  
RCW1031910021  
Page 1

U.S. Department of Homeland Security

Immigrant Investor Program



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

April 19, 2017

David C. Keller  
Liberty West Regional Center, LLC – **Designation Terminated**  
23150 North Pima Road, Suite 2B  
Scottsdale, AZ 85255

#### **NOTICE OF TERMINATION**

This letter shall serve as notification that U.S. Citizenship and Immigration Services (“USCIS”) has terminated the designation of Liberty West Regional 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 CFR”) section 204.6(m)(6).

The regulation at 8 CFR § 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 21, 2011, USCIS designated and authorized the Regional Center's participation in the Program. On October 14, 2016, 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. To date, USCIS has not received a response from the Regional Center to the NOIT and the Regional Center has offered no evidence in opposition to 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 CFR § 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 failed to submit the required information and 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 CFR § 204.6(m)(6).

**A. Failure to Submit Required Information to USCIS**

As indicated in the NOIT, the Regional Center provided inaccurate or incomplete information to USCIS on its annual Form I-924A filing for fiscal years 2014 and 2015, and also failed to file its annual Form I-924A filing for 2016. Under 8 CFR § 204.6(m)(6)(i)(B), a regional center must:

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.

**1. Failure to Submit Form I-924A**

The Form I-924A instructions state that each designated regional center must file a Form I-924A for each fiscal year (October 1 through September 30) within 90 days after the end of the fiscal year (on or before December 29 of the calendar year in which the fiscal year ended). The form instructions further state that failure to timely file a Form I-924A for each fiscal year in which the regional center has been designated for participation in the Program will result in the issuance of an intent to terminate the participation of the regional center in the Program, which may ultimately result in the termination of the approval and designation of the regional center.

As of the date of this notice, USCIS records indicate that the Regional Center has not filed a Form I-924A for fiscal year 2016. Due to the Regional Center's failure to file Form I-924A, as required by the regulations and the Form I-924A instructions, USCIS terminates the Regional Center's participation in the Program.

**2. Failure to Provide Required Information**

In addition to the annual filing requirements in the Form I-924A, USCIS requires information be communicated to the agency upon certain changes of ownership and/or organization. The Form I-924 instructions specify these other reporting requirements. As indicated in the NOIT, the Form I-924A instructions direct the Regional Center to provide a detailed statement for the last fiscal year which addresses topics including:

- The aggregate amount of EB-5 alien capital invested through your regional center;
- The aggregate number of new direct and/or indirect jobs created by EB-5 investors through your regional center;

In its latest I-924A filing, which USCIS received on January 5, 2016 (RCW1600654205), the Regional Center stated in Part 3(1) of the form that for the fiscal year ending September 30, 2015 it reported no

aggregate EB-5 capital investment; aggregate direct and indirect job creation, and/or no aggregate jobs maintained.

However, the Regional Center also stated that it had raised [REDACTED] through its NCE, Generations Lifestyles of Globe Development Fund, LLC in Part 3(3).

(b)(4)

The fact that the Regional Center continued to show [REDACTED] in EB-5 investment funds as available to Generations Lifestyles of Globe Development Fund, LLC even after disclosing in the U.S. District Court for the District of Arizona<sup>1</sup> that the funds were missing indicates that the Regional Center failed to submit to USCIS “updated information” regarding the missing funds to demonstrate that the Regional Center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in its geographic area.

#### **B. 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

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<sup>1</sup> Liberty West Regional Center, LLC v. Salvatore Carpanzano, et al. Complaint, Case No. 2:13-cv-02021-JJT, ¶ 37 at p. 9.

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 “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 2011 through 2014 do not report any EB-5 capital investment or job creation. In addition, although USCIS designated the Regional Center on March 21, 2011, 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. Of the ten Forms I-526 submitted to USCIS, seven petitions were withdrawn by petitioners and three were denied by USCIS.

As is detailed below, the Regional Center entity has been administratively dissolved by the Arizona Corporation Commission. It is therefore unlikely that more petitions will be filed. The Regional Center’s

filings do not otherwise indicate that it has conducted activity that serves the purposes of the Program, including the “purpose of concentrating pooled investment” as required by section 610(a) of the Appropriations Act.<sup>2</sup>

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.

## ***2. Material Misrepresentations***

As indicated in the NOIT during the course of its adjudications, and the verification of information submitted by the Regional Center and individual Form I-526 petitioners, USCIS has discovered significant discrepancies between what the Regional Center represented in its filings and in documents provided to individual Form I-526 petitioners, and what USCIS was able to determine independently.

As such, USCIS has determined that the Regional Center misrepresented material facts to USCIS through its filings and in documents provided by the Regional Center to individual Form I-526 petitioners, particularly with regard to the NCE under its sponsorship and the job-creating activities to be facilitated by EB-5 investments.<sup>3</sup> These discrepancies and misrepresentations cast considerable doubt on the credibility of the Regional Center and its operations and USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

(b)(4)

Documents submitted by the Regional Center and EB-5 investors showed that [REDACTED] had been paid into JP Morgan Chase escrow accounts. Copies of the escrow agreement were not submitted with EB-5 investor petitions. However, a copy of the agreement with JP Morgan Chase was submitted with the

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<sup>2</sup> Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended (hereinafter “Appropriations Act”).

<sup>3</sup> USCIS may verify information submitted by the Regional Center to establish its eligibility for regional center designation at any time to ensure compliance with applicable laws and authorities, pursuant to authority granted by 8 U.S.C. sections 1103, 1155, and 1357; and the Appropriations Act.

Regional Center's lawsuit against Samba Financial and Salvatore Carpanzano, among others.<sup>4</sup> The escrow agreement stated that JP Morgan Chase could withdraw from the escrow arrangement with 90 days' notice for any reason. Similarly, there was no escrow agreement with Samba Financial included in the investor documents filed with USCIS. However, a copy of the escrow agreement with Samba Financial was submitted with the Regional Center's lawsuit against Samba Financial and Salvatore Carpanzano, among others.<sup>5</sup>

Investors did submit copies of a Subscription Agreement, which discusses the Regional Center's obligations with respect to escrowed funds. The Subscription Agreement, which incorporates by reference the terms and conditions of the Escrow Agreement, provides the following:

All subscription proceeds from this Offering will be held in the EB-5 Account pursuant to the terms of the Loan Agreement and the Escrow Agreement. By execution hereof, each Subscriber agrees to be bound to the terms and conditions of the Escrow Agreement to the same extent as if the Subscriber had separately executed the Escrow Agreement.

(b)(4)

Documents. Finally, upon satisfaction of the Initial Condition and confirmation that each Subscriber has

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<sup>4</sup> Liberty West Regional Center, LLC v. Salvatore Carpanzano, et al. Complaint. Case No. 2:13-cv-02021-JJT, at Exhibit C.

<sup>5</sup> *Id.*

received EB-5 Petition Approval (regardless of whether such Subscriber had previously agreed to a Pre-Approval Release), each such Subscriber shall become a member of the Company and be deemed to have made its required Capital Contribution. If any Closing Conditions are not satisfied within the required time periods set forth in the Memorandum, then each Member's Class A Unit will be terminated by disbursing to such member the [REDACTED] previously deposited by such member.<sup>6</sup>

(b)(4)

Based on the evidence in the record, it appears that the Closing Conditions listed in the Subscription Agreement were not satisfied. The escrow institution and the Regional Center, however, have not adhered to the instructions of the Subscription Agreement which provides that if the Subscription Agreement's Closing Conditions were not satisfied, funds were to be returned to EB-5 investors.

As such, these discrepancies and misrepresentations cast considerable doubt on the credibility of the Regional Center and its operations as well as the Regional Center's ability to promote economic growth and achieve the purposes of the EB-5 Program through its participation. Accordingly, USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

### ***3. Lack of Credibility Impacting Regional Center's Ability to Promote Economic Growth***

As explained in the NOIT, USCIS has determined that none of the new commercial enterprises with access to EB-5 capital have demonstrated meaningful business activity in spite of the fact that several years have passed since the first Form I-526 petitions were submitted to USCIS. In addition, USCIS has discovered that the Regional Center has engaged in transactions that call into question whether EB-5 capital has been made available to the businesses most closely responsible for job creation. The Regional Center also appears to have engaged in a pattern of non-disclosure of its actions with respect to escrowed funds in violation of the reporting requirements of USCIS.

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<sup>6</sup> Subscription Agreement for Generation Lifestyles of Globe Development Fund [dated January 30, 2012 p.5, Letter H]



In January and February 2014, the Regional Center's manager, Mr. David Keller, helped to prepare RFE responses to USCIS stating that Plaintiffs' funds were still on deposit at JP Morgan Chase even though in the Regional Center's complaint filed in Federal Court, the Regional Center alleged that the funds had been transferred to Samba Financial and subsequently lost.

Irrespective of the outcome of any pending criminal or civil litigation, the record shows that all or almost all of EB-5 investor funds placed in escrow have not been used for the purpose of job creation or economic growth. Moreover, the Regional Center's manager stated in Federal Court filings<sup>7</sup> the EB-5 funds placed in escrow cannot be accounted for and therefore cannot be made available to any JCE for the creation of EB-5 jobs.

#### **Corporation Dissolved Due to Failure to Maintain Statutory Agent**

According to the Arizona Corporation Commission and information downloaded from their website on April 4, 2017, Liberty West Regional Center, LLC was dissolved as of March 23, 2015 after failing to maintain a statutory agent.<sup>8</sup> Companies that have been dissolved cannot operate as a business in the state of Arizona, which casts doubt on the Regional Center's ability to promote economic growth in compliance with the program.

#### **Other Credibility Issues**

Furthermore, it appears that Mr. Keller also helped prepare petitioners' responses to two RFEs sent to USCIS on January 20, 2014, and February 11, 2014 which omitted mention of the fact that the funds had been transferred to a new escrow agent, Samba Financial, in December 2012<sup>9</sup> and that the Regional Center had reason to believe that this escrow agent had absconded with the funds and that investor funds were missing. At no point did the Regional Center alert the investors or USCIS, although the Regional

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<sup>7</sup> Liberty West Regional Center LLC v. Salvatore Carpanzano, et al. Complaint, Case No. 2:13-cv-02021-JJT, ¶ 37 at p. 9.

<sup>8</sup> See <http://ecorp.azcc.gov/Details/Corp?corpId=L15513280>, last accessed 4/4/2016.

<sup>9</sup> *Arevalo et al v. Liberty West Regional Center, LLC, et al.* Case No. 37-2014-00034154CU-FR-CTL (Ca. Super. Ct. San Diego Cnty. filed October 7, 2014). ¶ 40 at p. 14.

Center sued Samba Financial and Salvatore Carpanzano, among others, on October 4, 2013 alleging that Carpanzano and/or his associates had purloined the escrow funds.

Moreover, affected immigrant investors alleged that Mr. Keller actively concealed from them and USCIS the fact that their funds had been transferred to Samba Financial and were misappropriated. The Regional Center continually advised the investors and USCIS that "... [investor] funds continued to be held on deposit in the JP Morgan Chase escrow."<sup>10</sup> These incidents strain the Regional Center's credibility in its commitment to promoting economic growth in compliance with the requirements of the Program.

As stated in the NOIT, the issues outlined above cast considerable doubt on the credibility of the Regional Center, all of its operations, and its ability to promote economic growth in compliance with the Program, especially given its administration and oversight responsibilities as detailed in the Form I-924 Instructions and its designation approval letter. Specifically, the Form Instructions state that the "approval notice will provide information as to your responsibilities and obligations as a USCIS-designated regional center, and the evidence to submit in support of regional center-affiliated individual EB-5 petitions with USCIS, as well as details on the reporting and oversight requirements for [r]egional [c]enters." The Regional Center's letter of designation, dated March 21, 2011, specifically stated:

The law, as reflected in the regulations 8 CFR §204.6 (m)(6), requires that an approved Regional Center, in order to maintain the validity of its approval and designation, must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether your Regional Center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated Regional Center, your administration, oversight, and management of your Regional Center shall be such as to monitor all investment activities under the sponsorship of your Regional Center and to maintain records, data and information in order to provide the information required on the Form I-924A Supplement.

The record indicates that the Regional Center has failed to meet its management, monitoring and oversight responsibilities in order to ensure compliance with EB-5 regulations.

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<sup>10</sup> *Id.* at ¶ 42, p. 15.

The issues outlined above cast considerable doubt on the credibility of the Regional Center, all of its operations, and its ability to promote economic growth in compliance with the Program. For these reasons, USCIS has determined by a preponderance of the evidence 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 CFR 204.6(m)(6), USCIS has determined that the Regional Center has failed to submit the required information to USCIS and 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.

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

OR

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

(For Postal Service Delivery)

(For Express Mail/Courier)

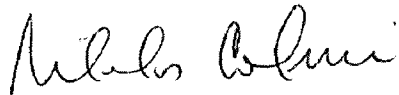
For an appeal, the Regional Center may request additional time to submit a brief within 30 calendar days of filing the appeal. Any brief, written statement, or evidence in support of an appeal that is not filed with Form I-290B must be directly sent within 30 days of filing the appeal to:

USCIS Administrative Appeals Office  
U.S. Citizenship and Immigration Services  
20 Massachusetts Avenue, NW, MS 2090  
Washington, DC 20529-2090

Liberty West Regional Center, LLC – **Designation Terminated**  
ID (formerly ID# ID1031910021)  
RCW1031910021  
Page 12

For more information about the filing requirements for appeals and motions, please see 8 CFR § 103.3 or 103.5, or visit the USCIS website at [www.uscis.gov](http://www.uscis.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Colucci". The signature is fluid and cursive, with the first name "Nicholas" and last name "Colucci" clearly distinguishable.

Nicholas Colucci  
Chief, Immigrant Investor Program

Enclosure:      (1) Form I-290B with instructions  
                      (2) Notice of Intent to Terminate issued on October 14, 2016