

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Immigrant Investor Program
131 M Street, NE, Mailstop 2235
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

May 7, 2015

Peter Medlyn
Tennessee Regional Center – **Designation Terminated**
109 S. Broadway
Knoxville, TN 37902

Notice of Termination

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of Tennessee Regional Center ("TRC") 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

www.uscis.gov

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.

Reasons for Termination

On August 11, 2010, USCIS designated TRC as a regional center and authorized its participation in the Program. On September 8, 2014, USCIS issued to TRC a Notice of Intent to Terminate TRC's participation as a regional center in the Program (the "NOIT") upon determining that TRC no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A review of TRC's I-924A filings for fiscal years 2011, 2012, 2013 and 2014 reveals that no EB-5 capital investment or job creation has been reported in connection with TRC for any of the fiscal years in which the regional center has been operating.

In addition, although USCIS designated TRC as a regional center on August 11, 2010, the I-924A filings do not report any filed or approved Form I-526s, Immigrant Petitions by Alien Entrepreneurs, or I-829s, Petitions by Entrepreneurs to Remove Conditions. Moreover, as of the date of this termination, USCIS records indicate that no I-526 or I-829 petitions are pending for investments associated with TRC. Finally, the statute which created the regional center program provides that a regional center shall be "consistent with the purpose of concentrating pooled investment."² TRC has not met that purpose as no capital investments have been pooled by TRC as evident by the absence of any I-526 petitions being filed since the regional center was initially designated in 2010.

Pursuant to the NOIT, TRC had 30 calendar days from receipt of the NOIT to offer evidence in opposition to the grounds alleged in the NOIT. On October 6, 2014, USCIS received a response from TRC. USCIS also received interfilings to the NOIT response on November 13, 2014 and November 29, 2014 (collectively, the "NOIT Response").

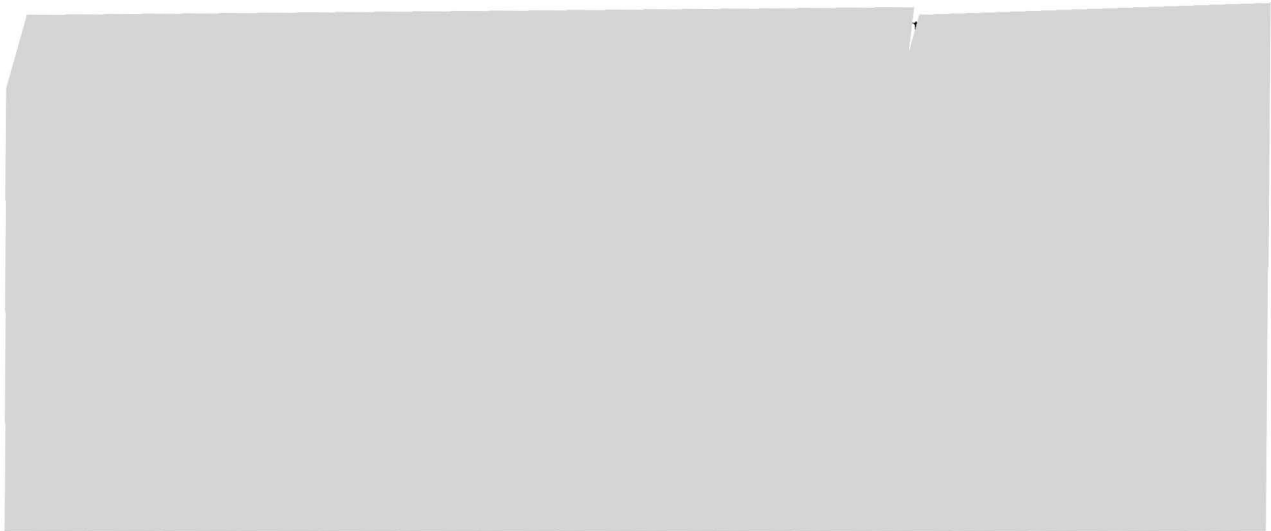
¹ On September 28, 2012, President Obama signed Public Law 112-176 which amended section 610 of Public Law 102-395. Public Law 112-176 struck the word "pilot" from section 610 of Public Law 102-395 and extended the Immigrant Investor Program until September 30, 2015. See Pub. L. No. 112-176, 126 Stat.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

² Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, Pub. L. No. 102-395, § 610, 106 Stat 1828, 1874 (1992).

(b)(4)

The NOIT Response states that TRC has “multiple project agreements nearing execution” and includes exhibits related to five projects, however TRC has presented no evidence to USCIS demonstrating that TRC has executed any agreements or completed any projects. Since the record, including the evidence provided in connection with the NOIT Response, does not provide any evidence of increased export sales, improved regional productivity, job creation, or increased domestic capital investment, USCIS has determined that TRC has failed to demonstrate that it continues to promote economic growth.

1. Big Elk Resort Project



³ Referring to the Big Elk Resort project, the NOIT Response cover letter states that “your office approved the restructured exemplar project,” and “we have shown we know how to organize a qualifying project with Matter of Ho detail and compliant offering documents” USCIS notes that while we may have approved the Big Elk Resort project as an exemplar project in the August 11, 2010 approval notice, USCIS subsequently issued Notices of Intent to Terminate TRC’s designation on April 25, 2012 and January 8, 2013, both finding that “the initial decision to grant the regional center designation to TRC was in error.” Accordingly, the July 30, 2013 letter reaffirming TRC’s regional center designation indicated that TRC’s approval was based on “[a] hypothetical project.” The July 30, 2013 reaffirmation letter further provided that “[t]his hypothetical project does not have the factual details necessary to be in compliance with Matter of Ho,” and therefore, USCIS’s approval of the hypothetical job creation estimates presented in the Form I-924 were not associated with an actual project. Moreover, the status of the Big Elk Resort project being approved as a hypothetical project is irrelevant as the lack of any I-526 petitions being filed in connection with the project demonstrates that TRC is not continuing to promote economic growth through the Big Elk Resort project.

⁴ In the January 8, 2013 Notice of Intent to Terminate, one of the several concerns expressed by USCIS stated that the Big Elk Resort project

As such, when USCIS reaffirmed TRC’s regional center designation, it did so based on a hypothetical project which would receive de novo review for compliance with program requirements at the time of a subsequent filing, but no Form I-526 petitions were subsequently filed in connection with TRC.

(b)(4)

The NOIT Response also includes a letter from

(b)(4)

2. Village at Little River Project

The NOIT Response does not include a description of the Village at Little River project but merely states in a conclusory fashion that the project continues to move forward.

⁵ An email exchange from July and August 2013 references a hotel in Pigeon Forge and a Gatlinburg project, and on August 1, 2013, Peter Medlyn wrote, "I think we should wait and do the Gatlinburg deal with EB-5 money." As these emails were included in the NOIT Response exhibit labeled Big Elk Resort, USCIS understands the "Gatlinburg deal" mentioned in August 2013 and the "deal on the Gatlinburg site with Wyndham" mentioned in August 2014 to refer to the Big Elk Resort project.

any projections associated with the project are any more reliable than hopeful speculation.⁶ These email exchanges provide no evidence of increased export sales, improved regional productivity, job creation, or increased domestic capital investment. Accordingly, the NOIT Response does not demonstrate that TRC is in the process of or continuing to promote economic growth through the Village at Little River project.

3. Visionaire Jets LLC

The NOIT Response states that TRC has been discussing collaborating with Visionaire Jets and includes marketing materials for the project. [REDACTED]

(b)(4)

However, there is no evidence that this project is associated with the regional center. The NOIT Response cover letter also states that the NOIT Response includes confidentiality agreement materials related to the Visionaire Jets LLC project. However, the confidentiality agreement [REDACTED]

There has been no evidence provided of increased export sales, improved regional productivity, job creation, or increased domestic capital investment in connection with this project. Accordingly, the NOIT Response does not demonstrate that TRC is continuing to promote economic growth through the Visionaire Jets LLC project.

4. Green Box NA, LLC

(b)(4)

The NOIT Response cover letter states that TRC is in discussions with Green Box NA, LLC [REDACTED] According to the business plan included in the NOIT Response, Green Box is a facility [REDACTED]

There has been no evidence provided of increased export sales, improved regional productivity, job creation, or increased domestic capital investment in connection with this project. Accordingly, the NOIT Response does not demonstrate that TRC is continuing to promote economic growth through the Green Box NA, LLC project.

5. Wilderness at the Smokies Waterpark

⁶ *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998) (noting that mere conclusory assertions in a business plan do not enable the Service to determine whether the job-creation projections are any more reliable than hopeful speculation).

According to the NOIT Response, [REDACTED]

(b)(4)

Conclusion

Tennessee Regional Center has offered insufficient evidence to demonstrate continued promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. [REDACTED]

Thus, pursuant to 8 C.F.R. 204.6(m)(6), and for the reasons set forth above, USCIS has determined that TRC's participation in the Program should be terminated and hereby terminates TRC's participation in the Program.

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.

⁷ Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, Pub. L. No. 102-395, § 610, 106 Stat 1828, 1874 (1992)

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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:

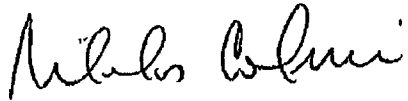
USCIS
Administrative Appeals Office
20 Massachusetts Avenue, NW
Mail Stop 2090
Washington DC 20529-2090

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.

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Sincerely,



Nicholas Colucci
Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on September 8, 2014

cc: Robert Divine
Baker Donelson Bearman Caldwell & Berkowitz, P.C.
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450