

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:

Washington Foreign Investment Management Group LLC
C/O Mr. Ahmad Farrokhi
10101 SE 3rd Street, Apt 108
Bellevue, WA 98004

DATE: April 26, 2018

Application: Form I-924

File Number: RCW1334751341

RCID: ID1334751341

NOTICE OF TERMINATION

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of Washington Foreign Investment Management Group 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
20 Massachusetts Avenue, NW, MS 2090

Washington Foreign Investment Management Group LLC – **Designation Terminated**

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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 "Julia L. Harrison", with a horizontal line extending to the right.

Julia L. Harrison

Acting Chief, Immigrant Investor Program

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

(2) Notice of Intent to Terminate issued on March 14, 2018

cc: Robert C. Divine
Baker Donelson Bearman Caldwell & Berkowitz, P.C.
633 Chestnut St., Suite 1900
Chattanooga, TN 37450

NOTICE OF TERMINATION
Termination of Regional Center Designation Under the Immigrant Investor Program
Washington Foreign Investment Management Group 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 May 21, 2015, USCIS designated and authorized the Regional Center's participation in the Program. On March 14, 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 April 17, 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

(b)(4)

(b)(4) As noted in the NOIT, the Regional Center’s Form I-924A filings for fiscal years 2015, 2016, and 2017 reported [REDACTED] in EB-5 investment and the creation of [REDACTED] jobs in each filing. However, the NOIT Response states that “the RC manager did not understand how to complete forms I-924A and erroneously and without malice indicated the planned project instead of the zero activity that has been the reality.” Therefore, the Regional Center acknowledges that it has not had any EB-5 capital investment or job creation for fiscal years 2015, 2016, and 2017. In addition, although USCIS designated the Regional Center on May 21, 2015, 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:

- Letter from Robert C. Divine, attorney for the Washington Foreign Investment Management Group, LLC Regional Center, dated April 13, 2018;
- Declaration of Ahmad Farrokhi, the Regional Center principal, dated April 13, 2018;
- Statement of Tobin Butcher of Bridge Capital in Seattle, Washington; and
- Email from Robert C. Divine, dated March 26, 2018, requesting correction of the Regional Center’s geographic area.

In the declaration of Ahmad Farrokhi, Mr. Farrokhi states that “no NCE sponsored by the RC has raised any EB-5 capital or created any jobs.” Therefore, the Regional Center concedes that it has failed to promote economic growth and job creation since receiving its initial designation on May 21, 2015.

In responding to the lack of Regional Center activity, the Declaration of Ahmad Farrokhi and Statement of Tobin Butcher mention a potential Tacoma, Washington housing project known as HQC Tacoma Apartments. However, because the project resides outside of the Regional Center’s geographic area, the Regional Center is unable to sponsor the project until USCIS approves an additional six counties within the State of Washington. The Regional Center is now asserting that USCIS incorrectly limited the Regional Center’s geographic scope in its initial approval letter, which is currently hindering the Regional Center’s ability to promote economic growth using the EB-5 program. However, neither Mr. Farrokhi nor the Regional Center’s attorney raised objections to USCIS’s designation of the Regional Center’s geographic area at the time of initial approval.

After reviewing the entirety of the Regional Center’s initial application and economic analysis, as well as all documents included in the Regional Center’s RFE Response from March 2015, USCIS authorized the Regional Center’s participation in the EB-5 Program. The approval letter, dated May 21, 2015, clearly identifies only Snohomish County in Washington State as the Regional Center’s approved geographic area.

On June 29, 2015, the Regional Center filed a Form I-290B, Notice of Appeal or Motion, seeking a motion to reopen or reconsider the approval of the Regional Center’s designation. Specifically, the Regional Center sought to obtain exemplar status for a proposed project, and submitted a revised Private Placement Memorandum to USCIS in hopes that USCIS would grant deference for that document and approve the exemplar status of the project. A June 16, 2015 letter from Anthony B. Ravani, then counsel for Washington Foreign Investment Management Group, LLC, included in support of the motion, states “I am making a motion to reopen/reconsider the decision regarding section IV: Decision to Disallow Certain Requested Offering Document; specifically the Private Placement Memorandum.” No other issues were raised in the evidence and brief associated with the Regional Center’s motion and the attorney’s letter does not mention any objections to the Regional Center’s approved geographic area.

USCIS subsequently approved a revised Private Placement Memorandum and issued a second approval notice for the Regional Center, dated August 13, 2015. The second approval notice once again clearly listed only Snohomish County as the Regional Center’s approved geographic area. The Regional Center did not file another motion to reopen or reconsider the approval or otherwise raise objections for over two and a half years.

The Regional Center’s first objection to the Regional Center’s geographic area was emailed to USCIS on March 26, 2018, 12 days after the Notice of Intent to Terminate the Regional Center was issued. In the email, Mr. Divine acknowledges that both approval notices sent to the Regional Center identified only Snohomish County, but states that “the limited area of approval must not have seemed so worrisome to prior counsel, given the then-effective May 2013 Policy’s generous permission for RCs to sponsor projects outside their area.” However, the changes to the Form I-924 instructions requiring regional

centers to file a Form I-924 when seeking an expansion of their geographic area became effective on December 23, 2016, following publication of the revisions in draft form in the Federal Register in May of 2016, and a period during which the public had the opportunity to comment.¹

Therefore, Washington Foreign Investment Management Group, LLC had over two and a half years since receiving its initial designation, and almost two years since the change in USCIS policy was published, to appeal USCIS's decision or otherwise file an amendment or request a change to the Regional Center's approved geographic area. The fact that no objections were raised until 12 days after the Notice of Intent to Terminate the Regional Center was issued undermines the credibility of the objection. The Regional Center has not provided any evidence indicating that it has filed a Form I-924 seeking to amend its designation by requesting a change to its approved geographic area. Therefore, the Regional Center has not established that USCIS committed any error and the argument that USCIS should not terminate the Regional Center's designation on these grounds is not persuasive.

The regional center program was established to promote economic growth within the regional centers approved geographic area. The Regional Center acknowledges that it has not promoted economic growth and job creation since receiving its initial designation in May 2015. Additionally, because the HQC Tacoma Apartments project and subsequent job creation will occur outside of Washington Foreign Investment Management Group, LLC's approved geographic area, it is not evidence of the Regional Centers future promotion of economic growth.

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. Insufficient Regional Center Activity Due to Lack of Progress

As described in the NOIT, the Regional Center's failure to adhere to its own benchmarks has resulted in considerable doubt being cast on the on the ability of its projects to result in job creation as represented.

Although the Regional Center submitted an exemplar petition on December 13, 2013 (RCW1334751341), the Regional Center has not met any of the construction milestones for the Sultan, Washington manufacturing project.

In the NOIT Response, the Regional Center provided the following evidence:

- Letter from Robert C. Divine, attorney for the Washington Foreign Investment Management Group, LLC Regional Center, dated April 13, 2018; and

¹https://www.uscis.gov/sites/default/files/USCIS/Outreach/Update_to_March_3_2017_EB-5_National_Stakeholder_Meeting_Engagement_Remarks_Regional_Center_Geographic_Area_Amendments_and_Form_I-526_Petition_Eligib.pdf

- Declaration of Ahmad Farrokhi, the Regional Center principal, dated April 13, 2018.

The letter from Mr. Divine acknowledges that “the originally planned project has not worked out.” Additionally, Mr. Farrokhi states that neither he nor the Regional Center raised “any capital for either Build Green 1 Inc. or Build Green LLC,” the entities originally established for the exemplar project for which the initial Regional Center approval was based.

As a result of the Regional Center’s failure to adhere to its own benchmarks, considerable doubt has been cast on the ability of its projects to result in job creation as represented and USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth.

3. *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.

The Regional Center’s Form I-924A filings for fiscal years 2015, 2016, and 2017 reported aggregate EB-5 capital investment sponsored through the Regional Center of (b)(4) [REDACTED]. The Regional Center also asserted that the aggregate direct and indirect job creation is [REDACTED]. However, the Regional Center provided no evidence at the time of these claims aside from the original business plan and economic analysis for the Build Green project, which, as stated above, has failed to proceed according to its original timeline. Lack of evidence of any progress in the Build Green project or any other supporting documentation of EB-5 capital investment or job creation casts doubt on the claims made by the Regional Center.

In the NOIT Response, the Regional Center provided the following evidence:

- Letter from Robert C. Divine, attorney for the Washington Foreign Investment Management Group, LLC Regional Center, dated April 13, 2018; and
- Declaration of Ahmad Farrokhi, the Regional Center principal, dated April 13, 2018.

The letter from Mr. Divine admits that “[t]he RC manager did not understand how to complete forms I-924A and erroneously and without malice” indicated incorrect EB-5 investment and job creation figures. Additionally, Mr. Farrokhi acknowledges that he “did not understand the I-924A Form and did not consult counsel in completing it.”

USCIS’s Instructions to the Form I-924 requires that the applicant submit a plan that demonstrates that there are (or will be) sufficient management, oversight and administrative functions in place to monitor all investment offerings and business activities, which is necessary for a regional center to demonstrate

promotion of economic growth in compliance with EB-5 requirements, including those that pertain to investors under the auspices of the proposed regional center.

Mr. Farrokhi's failure to properly submit accurate information on the Regional Center's Forms I-924 over multiple years, even if done without malice, casts doubt on his and the Regional Center's ability to provide sufficient management and oversight of the Regional Center's activities and EB-5 investments in compliance with EB-5 requirements.

Although Mr. Farrokhi acknowledged his errors and his misunderstanding of EB-5 requirements, these discrepancies still cast doubt on the credibility of the Regional Center's filings and call into question the legitimacy of its operations. 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 in compliance with the Program.

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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