



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF P-A-K-, LLC

DATE: JUNE 9, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-924, APPLICATION FOR REGIONAL CENTER UNDER THE  
IMMIGRANT INVESTOR PILOT PROGRAM

The Applicant, an entity designated as a “regional center” under the EB-5 visa program, seeks to maintain its designation. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Appropriations Act) section 610, as amended.

The Chief of the Immigrant Investor Program Office (Chief) terminated the Applicant’s designation, concluding that it failed to show that it was continuing to serve the purpose of promoting economic growth. The Applicant appealed that decision to this office and we dismissed the appeal, finding that the Chief correctly terminated the Applicant’s designation.

On motion to reconsider and motion to reopen, the Applicant challenges our findings and submits new evidence regarding its plans for the promotion of economic growth.

Upon review, we will deny the motions.

I. LAW

Once a regional center is designated, the regulation at 8 C.F.R. § 204.6(m)(6) requires it to “provide USCIS [U.S. Citizenship and Immigration Services] with updated information to demonstrate that the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area.” If the regional center does not submit the required information or it no longer serves the purposes of the program, the regional center’s participation in the immigrant investor program will be terminated. *Id.*

In our decision dismissing the Applicant’s appeal, we noted that we must balance all the factors, both positive and negative, to determine whether a regional center is continuing to promote economic growth. Positive factors include job creation, capital investment, and other signs of positive economic impact. Negative factors include mismanagement, theft, or fraud by the regional center or related entities, which impinge on a regional center’s ability to promote economic growth. Relevant to our consideration of negative factors is the seriousness of the derogatory information, the degree of regional center involvement, and any resulting damage or risk imposed on investors and the economy. We in turn weigh countervailing equities, such as mitigating, corrective, or restorative actions that have been taken or are forthcoming to redress the situation.

As for the standards regarding motions, a motion to reconsider is based on a claim of an incorrect application of law or policy in the prior decision, making it erroneous at that time. 8 C.F.R. § 103.5(a)(3). A motion to reopen, on the other hand, serves a different purpose and is based on a claim that newly adduced facts demonstrate eligibility for the underlying benefit request. 8 C.F.R. § 103.5(a)(2).

## II. BACKGROUND

In August 2013, the Chief approved the Applicant's designation as a regional center. In July and August of 2015, the Applicant submitted applications for two exemplar projects involving the construction of multi-use facilities in ██████████ Washington. Foreign nationals then began submitting petitions (Forms I-526, Petition for Alien Entrepreneur) based on their investments in these projects.

Before the Chief adjudicated these exemplar projects or investor petitions, however, the U.S. Securities and Exchange Commission (SEC) filed charges in federal district court against the Applicant and its principal, ██████████. The SEC alleged, among other things, that ██████████ had misappropriated EB-5 investor funds. The court froze assets belonging to the Applicant and its affiliated entities, and placed them under receivership.

In November 2016, the Chief issued a notice of intent to terminate the Applicant's regional center designation based on the SEC's allegations. In response, the Applicant's court-appointed receiver submitted documents showing its intention to continue with the proposed projects. The Chief was not persuaded, however, and terminated the Applicant's designation, finding that it was not continuing to serve the purpose of promoting economic growth.

The Applicant appealed the termination and submitted additional evidence to us showing new developments regarding the proposed projects. After considering the totality of the record, we dismissed the appeal, finding that the Chief correctly determined that the Applicant was not continuing to promote economic growth. We noted that this question requires a weighing and balancing of all positive and negative factors, and ultimately concluded that termination was appropriate.

On motion to reconsider, the Applicant claims we overlooked or neglected evidence of its economic activities that occurred prior to our dismissal of its appeal, that we took improper considerations into account, and that we engaged in circular logic. In its motion to reopen, the Applicant urges us to reinstate its designation as a regional center, arguing that it has shown progress in its proposed project and is continuing to promote economic growth.

### III. ANALYSIS

#### A. Motion to Reconsider

The first issue the Applicant asks us to reconsider is our earlier finding that it had not, up to the point of the appeal's dismissal, used EB-5 funds for promotion of economic growth. The Applicant claims that this is inaccurate, and provides new documentation regarding project-related expenditures.

For purposes of a motion to reconsider, the question is whether our decision was correct based on the record that existed at the time of adjudication. The documentation in the record before us on appeal did not show that EB-5 investor funds were used for project expenditures that promoted economic growth. Accordingly, we find no error in our earlier decision. As for any new documentation the Applicant has submitted (whether relating to events that occurred before or after our earlier decision), we will consider that in its proper context of the motion to reopen. A timeline for the project the Applicant submits on motion shows activity was largely stalled prior to the Applicant's termination.

The Applicant also argues that we should not have used its past misappropriations of investor funds as part of our analysis when determining whether it was continuing to promote economic growth. The Applicant maintains that the regulation's use of the word "continuing" places the focus on future action. It does, in part. But we disagree that this term makes [REDACTED] past criminal actions "irrelevant" to our determination of whether the Applicant's designation should be terminated. Quite to the contrary; as we explained in our dismissal and reiterate here, the question of whether to terminate a regional center's status is not limited solely to prospects for future economic growth. Rather, we take into account a variety of factors, both positive and negative, that encompass past, present, and likely future actions. Engaging in fraud and other criminal activity is clearly among the weightiest of negative factors in assessing a regional center's continuing designation. In addition to issues of basic public policy, these criminal activities may, as was the case here, imperil the immigrant investors' ability to petition for that lawful status, since the regional center funds are being diverted away from economic activity and job creation. A regional center cannot absolve itself of responsibility for a principal's crimes or other misdeeds simply by removing that principal. We accordingly find no error in our earlier decision that took into consideration [REDACTED] actions.

Lastly, the Applicant argues that we should not have relied on the fact that the Chief denied the immigrant investor petitions filed with the Applicant's exemplar project as a reason to support its termination. In this regard, the Applicant states that the Chief denied the petitions based on the termination of its designation (which is true), but then claims we pointed to those denials as a supporting factor in the termination. This is not the case. We referenced the denials of Forms I-526 in only two places in our decision—the first was in a paragraph reporting all filings that had occurred at the time we adjudicated the appeal. This was a factual statement; no conclusions were drawn based on that paragraph. In the second instance, we replied to the Applicant's claim that it

was continuing to pursue a “USCIS-approved business plan” by pointing out that its two proposed exemplar projects were never approved, but rather denied due to the Applicant’s termination. We affirmed the regional center termination after weighing and balancing the factors relevant to a determination of whether the Applicant is continuing to promote economic growth; however, these factors did not include the Chief’s denial of associated investor petitions. For all the above reasons, the Applicant’s motion to reconsider will be denied.

#### B. Motion to Reopen

On motion, the Applicant submits evidence of new management and project plans. The Applicant describes the progress recently made, stating:

[T]he project has moved out of receivership, ownership and control of the Regional Center has been permanently transferred to competent entities with a proven track record, financing for the project has been secured, and the [REDACTED] construction is moving forward at full speed. An updated economic analysis reflects that the Regional Center-sponsored project is on track to generate nearly 2,000 new jobs for U.S. workers.

The Applicant states that the previously identified overarching project problems have been resolved and provides documentation of a \$100 million construction loan; the release of the previously frozen assets of the Applicant and its related entities; and the replacement of diverted investor funds with additional funding from equity partners. The Applicant also notes in this regard that [REDACTED] has been formally removed from all association with its activities, and that project management is now overseen by individuals with successful track records in the immigrant investor program. Further, the Applicant offers new documentation regarding its project-related expenditures.

We are not persuaded that these developments are sufficient to outweigh the negative considerations in this case. First, that [REDACTED] is now removed from involvement with the Applicant and is in the criminal justice system does not outweigh the significance of his misdeeds perpetrated through the Applicant. Those criminal activities earned him two felony convictions and up to 10 years of imprisonment.<sup>1</sup> We would expect the Applicant to take corrective steps to disassociate and move forward, but the negative factors do not thereby disappear. Second and similarly, that some projects may be or become viable does not outweigh the scope and seriousness of the prior fraud and mismanagement by the Applicant’s former principal. Even if the Applicant’s exemplar projects were to be approved and move forward as outlined, the Applicant has not shown that the possibility of future benefit outweighs the extensive and confirmed negative factors. Here, we find that the progress the Applicant may have accomplished to date, or may later accomplish, does not outweigh its recent and significant fraud and mismanagement.

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<sup>1</sup> Sentencing is scheduled for [REDACTED] 2017. See [REDACTED] sentencing set for [REDACTED] in EB-5 fraud case, [REDACTED] Times ( [REDACTED] [http://www.\[REDACTED\].sentencing-set-for-\[REDACTED\]](http://www.[REDACTED].sentencing-set-for-[REDACTED])

The Applicant's former designation was used to collect investment funds from trusting investors, and those funds were then used to personally enrich its former principal and put at risk immigration benefits for the immigrant investors and investment returns for all concerned. In order to identify and prosecute these crimes, several different law enforcement and related agencies expended significant government resources over the past years. The delay and uncertainty caused by the SEC investigation, the court-ordered receivership, and [REDACTED] subsequent prosecution and conviction, undoubtedly had a negative impact on the Applicant's efforts to promote economic growth. In contrast, the positive considerations urged by the Applicant are almost entirely prospective. While the Applicant has provided an updated economic analysis for the project, we are not satisfied that the potential benefits outweigh the demonstrable adverse implications of its actions such that we can conclude the Applicant continues to promote economic growth.

As noted previously, when considering whether termination is appropriate, we look to see if the totality of the circumstances indicates that, on the whole, the Applicant is serving the purpose of the program to continue to promote economic growth. Here, approximately two years after the Applicant's designation, the SEC filed charges against it, the bases of which led to two federal felony convictions. The Applicant has spent an approximate year and a half since that time dealing with the fallout from the underlying criminal actions of those first two years. Although the Applicant now presents documentation showing a path forward for one of its projects, and claims it has generated some economic growth to date notwithstanding its difficulties, we do not consider this evidence in a vacuum. The Applicant's corrective efforts and future plans are insufficient to outweigh its past fraudulent activity such that we can conclude the Applicant is serving the regional center program's purpose.

As a final consideration, we appreciate the unfortunate position of individual investors who may find their petitions jeopardized. They may have causes of action against the regional center or those responsible for its operations, particularly if their funds have been subjected to fraudulent misappropriation. But the question of whether a regional center merits continued designation is not contingent on its investors' immigration statuses, but whether the regional center's activities continue to serve the EB-5 program's purpose of creating U.S. jobs and promoting economic growth. For the reasons above, we conclude that the Applicant has not made this showing. The Applicant's motion to reopen will therefore be denied.

IV. CONCLUSION

After considering the Applicant's arguments and evidence presented in its motions to reconsider and reopen, we affirm our earlier decision to terminate its regional center designation.

**ORDER:** The motion to reconsider is denied.

**FURTHER ORDER:** The motion to reopen is denied.

Cite as *Matter of P-A-K-, LLC*, ID# 285976 (AAO June 9, 2017)