



December 30, 2016

Colin P Behring  
C/O Berkeley Regional Center Fund, LLC  
3820 Blackhawk Road  
Danville CA 94506

Application: Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program

Regional Center: Berkeley Regional Center Fund, LLC  
1316551161

Re: Request to Amend Regional Center Designation  
NCE: BRC Partners II, LP  
RCW1526752983

This notice is in reference to the Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program, that was filed by the applicant with the U.S. Citizenship and Immigration Services (USCIS) on September 24, 2015. The applicant filed the Form I-924 to request approval of an amendment to a previously approved regional center designation under the Immigrant Investor Program. The Immigrant Investor Program was established under section 610 of the Department of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Pub. L. 102-395, Oct. 6, 1992, 106 Stat. 1874).

In addition to the Form I-924, the applicant submitted a completed exemplar Form I-526, Immigrant Petition by Alien Entrepreneur, seeking USCIS review and approval of an actual project supported by a comprehensive business plan as contemplated in *Matter of Ho*, 22 I. & N. Dec. 206 (Assoc. Comm'r 1998).

### **I. Executive Summary of Adjudication**

Effective the date of this notice, USCIS approves the BRC Partners II, LP project based on the evidence submitted with the above referenced Form I-924 and exemplar Form I-526. The applicant has shown by a preponderance of the evidence that the BRC Partners II, LP will be a new commercial enterprise (NCE) and that the project is likely to result in the creation of at least 1208.9 jobs. USCIS will give deference to the applicant's estimates of actual job creation and economic analysis, the business plan, and the organizational documents, offering memorandum, and investment agreements in subsequent related filings of any Form I-526 filed by an individual investor associated with the BRC Partners II, LP project. Deference, however, will not apply if the underlying facts have materially changed, there is evidence of

fraud or misrepresentation in the record of proceeding, or the previously favorable decision is determined to be legally deficient (involved an objective mistake of fact or law).

**II. Procedural History**

On June 2, 2014, USCIS approved the Berkeley Regional Center Fund, LLC (BRFC) for participation in the Immigrant Investor Program as a designated regional center with an approved geographical scope of:

**Geographic Area**

State	Counties
Texas	Dallas, Tarrant, Collins, Denton, Ellis, Kaufman and Rockwell

BRFC now seeks to amend its previously approved regional center designation to include an actual project that will be managed by BRC Partners II, LP, an NCE established on July 31, 2015.

**III. The Project**

Effective the date of this notice, USCIS approves the applicant’s amendment request to include the following actual capital investment project supported by an exemplar Form I-526:

Project	Type of Project	Organization Documents	Date of Document
Parkview Towers  Geographic Location: California Counties: Alameda, Contra Costa, San Mateo, Santa Clara, Santa Cruz and Solano  Exemplar of Form I-526	Development, construction and operations of a mixed-use development	Business Plan	08/2015
		Economic Analysis	07/2015
	Investment: Equity	Confidential Private Placement Memorandum	v4 09/17/2015
		Subscription Agreement	09/15/2015 v1
		Limited Partnership Agreement	v2 09/16/2015

**Note:** If material changes to this project and its supporting documents are found in a subsequent Form I-526 petition or Form I-829, Petition by Entrepreneur to Remove Conditions, USCIS will review the supporting documents once more to ensure continued compliance with EB-5 program requirements.

The requested amendment identifies the NCE of the proposed project as BRC Partners II, LP which was formed in the State of Delaware on July 31, 2015. BRC Partners II, LP project is located within a targeted employment area (TEA) in the City of San Jos, California Texas. Approximately 71 EB-5 investors will subscribe to the NCE as limited partners in exchange for capital contributions of \$500,000 each and an aggregate of \$35.5 million.



The NCE will loan the \$35.5 million of EB-5 capital to a third-party entity, Parkview Towers. The EB-5 capital loan proceeds will be used to Development, construction and operations of a mixed-use development in San Jose, California and within the BRCF. The project will receive additional funding from a Senior Loan (\$72,172,585) and from Owner Equity (\$35,067,822). The projected total cost of the project is \$142,740,407. The project will take more than 2 years to complete and will generate approximately 1,208.9 jobs.

Specifically, the project is predicted to create at least 1,208.9 direct and indirect jobs in construction. The construction phase of the project will last approximately 31 months.

#### **IV. Job Creation**

The job creation methodology presented in the economic impact analysis and underlying business plan is found to be reasonable based on the following inputs, when applying the RIMS II economic model:

<b>NAICS <sup>1</sup></b>	<b>Industry Name</b>	<b>Input</b>	<b>Multiplier</b>	<b>Jobs</b>
2361/2	Construction	\$84.19	14.3589	1208.9
<b>Total Jobs:</b>				<b>1208.9</b>

The approval of this Form I-924 application, supported by the exemplar Form I-526 petition, is based upon the assumptions and estimates used as inputs in the business plan for job creation. Please refer to the input and multiplier analysis table above.

The economic analysis accurately portrays the assumptions stated in the business plan, and the calculations using RIMS II multipliers are verifiable. The applicant has shown by a preponderance of the evidence that the project is expected to result in the creation of approximately 1209.9 direct and indirect jobs from construction associated with the BRC Partners II, LP project.

USCIS will give deference to the job creation methodology when adjudicating Forms I-526 and I-829 associated with BRC Partners II, LP. Deference, however, will not apply if the underlying facts have materially changed, there is evidence of fraud or misrepresentation in the record of proceeding, or the previously favorable decision is determined to be legally deficient (involved an objective mistake of fact or law).

It will be the responsibility of the individual investor to demonstrate that the assumptions and estimates presented as inputs to the job creation methodology remain materially unchanged when he or she files a Form I-526. When filing Form I-829 for removal of conditional status, the individual investor has the burden of demonstrating that the assumptions and estimates presented as inputs to the job creation methodology have not materially changed and have been realized (or can be expected to be realized within a reasonable time). If the assumptions and estimates presented as inputs to the job creation methodology have materially changed, an updated business plan and economic analysis may need to be submitted to establish eligibility.

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<sup>1</sup> These industry codes are used for informational purposes in estimating job creation and do not limit the economic or job creating activity of an approved regional center or its investors. Jobs created in industries not previously identified in the economic methodology may still be credited to the investors in subsequent Form I-526 and Form I-829 filings, as long as the evidence in the record establishes that it is probably true that the requisite jobs are estimated to be created, or have been created, in those additional industries.

If the job creation estimated in the business plan and economic analysis will not be realized, then it will be the responsibility of the EB-5 investor to notify USCIS of an agreed upon methodology to allocate job creation among eligible investors.

#### **V. Guidelines for Filing Form I-526 Petitions based on the BRC Partners II, LP project**

Each individual petition, in order to demonstrate that it is affiliated with the Berkeley Regional Center Fund, LLC, in conjunction with addressing all the requirements for an individual immigrant investor petition, shall also contain the following:

1. A copy of this regional center approval notice and designation letter including all subsequent amendment approval letters (if applicable).
2. An economic impact analysis which reflects a job creation methodology required at 8 CFR § 204.6(j)(4)(iii) and shows how the capital investment by the individual immigrant investor will more likely than not create ten (10) jobs.
3. A comprehensive, detailed and credible business plan for an actual project that contains the factual details necessary to be in compliance with the requirements described in *Matter of Ho*.
4. Legally executed organizational documents of the commercial enterprise. The documents may be the same documents noted in Section III of this approval notice.
5. If the project timeline has changed significantly from the original business plan, a narrative that explains the changes in the project timeline, along with a timeline that realistically reflects the status of the project should be submitted.

#### **VI. Designee's Responsibilities in the Operations of the Regional Center**

As provided in 8 CFR § 204.6(m)(6), to ensure that the regional center continues 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, and increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis or as otherwise requested by USCIS. The applicant must monitor all investment activities under the sponsorship of the regional center and to maintain records in order to provide the information required on the Form I-924A, Supplement to Form I-924. Form I-924A is available in the "Forms" section on the USCIS website at [www.uscis.gov](http://www.uscis.gov).

Regional centers that remain designated for participation in the Immigrant Investor Program as of September 30th of a calendar year are required to file Form I-924A in that year. The Form I-924A with the required supporting documentation must be filed on or before December 29th of the same calendar year.

The failure to timely file a Form I-924A for each fiscal year in which the regional center has been designated for participation in the Immigrant Investor Program will result in the issuance of an intent to terminate the participation of the regional center in the Immigrant Investor Program, which may ultimately result in the termination of the designation of the regional center.



The regional center designation is non-transferable.

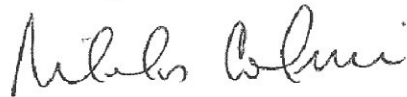
**VII. Legal Notice**

This approval and designation of a Regional Center under the Immigrant Investor Program does not constitute or imply an endorsement or recommendation by USCIS, the United States Government or any instrumentality thereof, of the investment opportunities, projects or other business activities related to or undertaken by such Regional Center. Except as expressly set forth in this approval and designation, USCIS has not reviewed any information provided in connection with or otherwise related to the Regional Center for compliance with relevant securities laws or any other laws unrelated to eligibility for designation as a Regional Center. Accordingly USCIS makes no determination or representation whatsoever regarding the compliance of either the Regional Center or associated New Commercial Enterprises with such laws.

Each Regional Center designated by USCIS must monitor and oversee all investment offerings and activities associated with, through or under the sponsorship of the Regional Center. The failure of an associated New Commercial Enterprise to comply with all laws and regulations related to such investment offerings and activities may result in the issuance by USCIS of a notice of intent to terminate the Regional Center designation.

If the applicant has any questions concerning the regional center designation under the Immigrant Investor Program, please contact USCIS by email at [USCIS.ImmigrantInvestorProgram@uscis.dhs.gov](mailto:USCIS.ImmigrantInvestorProgram@uscis.dhs.gov).

Sincerely,



Nicholas Colucci  
Chief, Immigrant Investor Program

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