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**Agency of Commerce and
Community Development**

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:

Michael Sullivan Peciak and Joan Goldstein
Vermont Agency of Commerce and Community
Development Regional Center
One National Life Dr./Deane C. Davis Bldg./6th Floor
Montpelier, VT 05620

DATE: July 3, 2018

Application: Form I-924
File Number: RCW1031910148
RCID: ID1031910148

NOTICE OF TERMINATION

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of Vermont Agency of Commerce and Community Development Regional Center (the "Regional Center" or VACCD RC) 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

Vermont Agency of Commerce and Community Development Regional Center – Designation Terminated
ID (formerly # ID1031910148)
RCW1031910148
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Washington, DC 20529-2090

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,



Julia L. Harrison
Acting Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on August 14, 2017

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

NOTICE OF TERMINATION

Termination of Regional Center Designation Under the Immigrant Investor Program Vermont Agency of Commerce and Community Development Regional Center

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 June 26, 1997, USCIS designated and authorized the Regional Center's participation in the Program. On July 8, 2016, USCIS issued a Request for Information (RFI) to the Regional Center. The Regional Center submitted its response to the RFI on August 25, 2016. On August 14, 2017, 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 September 18, 2017, 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.

The Regional Center Deficiencies Cited in the NOIT

The NOIT specified four reasons for its issuance:

1. Failure by VACCD RC to provide adequate and proper oversight, monitoring, and management of its projects.
2. Diversion of EB-5 investor funds from intended job creating projects to other purposes, including for Ariel Quiros's¹ personal use. This (a) caused some project funding shortages, and (b) jeopardized the eligibility of some EB-5 investors to have the conditions on their permanent residence status lifted via their Form I-829 petitions, due to insufficient job creation.

¹ Ariel Quiros is a key defendant in separate civil complaints brought by the U.S. Securities and Exchange Commission (the SEC) and the state of Vermont concerning allegations of diversion of EB-5 investment funds. Mr. Quiros was involved in operating the New Commercial Enterprises (each an NCE) associated with most of VACCD RC's projects charged in those complaints.

The "SEC complaint" refers to a civil action brought by the SEC on April 12, 2016 against 7 EB-5 entities associated with the VACCD RC, among 10 other named Defendants. See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>.

The "Vermont State complaint" refers to a civil complaint filed by the State of Vermont on April 14, 2016 against the same 17 Defendants as in the SEC complaint, regarding activities relating to the Regional Center. The allegations in the SEC and Vermont State complaints are similar. (The SEC and Vermont's Department of Financial Regulation, which handled the state's investigation, coordinated their investigations.) See <http://www.dfr.vermont.gov/sites/default/files/jaypeak/Amended%20Complaint%20%28State%20v.%20Quiros%29%20FILED.PDF> for the June, 2016 amended complaint.

3. Misrepresentations to USCIS and the EB-5 investors with regards to sponsored job-creating projects' funding and prospects for success.
4. Adverse effects on future projects and job creation. The resulting negative publicity from the SEC and Vermont State complaints has led developers which had been associated with two VACCD RC projects to drop their participation with the Regional Center for future projects.

This Notice will discuss these in further detail below, as well as the VACCD RC NOIT response.

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.

I. Negative Factors identified in the NOIT

1. Lack of Administrative Oversight (8 CFR 204.6(m)(6))

The NOIT provided detail as to how the Regional Center did not carry out sufficient monitoring, oversight, and management of its projects and, in contrast, how if it had done so, the alleged malfeasance related to the projects, might have been prevented. This lack of oversight was consequential, as diversion of investor capital negatively impacted the regional center’s ability to continue to promote economic growth. At the time of the regional center’s designation, USCIS regulations provided for termination of a regional center when it was not continuing to meet program requirements and upon a Service determination that the regional center no longer was promoting economic growth. 8 C.F.R. 204.6(m)(6) (1997). Additionally, at that time participation of a regional center in the Immigrant Investor Program required a “detailed statement regarding the amount and source of capital which has been committed to the regional center” and agency policy in the Adjudicator’s Field Manual (AFM). AFM 22.4(a)(2)(B)(iv) interpreted this to include in part, “A description of the plans to administer, oversee, and manage the proposed Regional Center, including but not limited to how the regional center will:

- Oversee all investment activities affiliated with, through or under the sponsorship of the proposed Regional Center.”

Further, at the time of the Regional Center designation, the regulations stated:

To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, the Assistant Commissioner for Adjudications shall issue a notice of intent to terminate the participation of a regional center in the pilot program 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. 8 C.F.R. 204.6(m)(6) (1997).

In addition, USCIS reminded VACCD of this responsibility in its I-924 approval notice and subsequent amendment approvals. As highlighted in the NOIT, multiple USCIS approval letters sent to VACCD RC for its designation and amendments (i.e., for Form I-924 applications) conveyed its monitoring responsibilities. For instance, the Regional Center's letter reaffirming its designation, dated June 11, 2007, clarifies the management and oversight responsibilities stating:

“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...”²

That letter also indicates that the Regional Center must be prepared to explain,

“How the VACCD-RC is administering its regional center”³, and...

“How the VACCD-RC is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the State of Vermont.”⁴

The NOIT also mentions that “the USCIS amendment approval letters (sent to the Regional Center) dated October 6, 2009 and August 12, 2010 convey VACCD-RC's administration, oversight, and management responsibilities, as described immediately above.”⁵

In response to the concern raised, the Regional Center provided three main arguments. First, that “A regional center's responsibilities for the oversight of day-to-day operations of the separate and unaffiliated NCEs are not established in any law, regulation, or published policy, and are not defined anywhere.”⁶ However, as explained above, at the time of the regional center's designation, participation in the program required that a regional center provide the agency with a detailed statement regarding the amount and source of capital committed to the regional center, and agency policy reflected in the AFM interpreted that to mean oversight of all investment activity affiliated with, through, or under the sponsorship of the proposed regional center. This policy has remained unchanged and is currently in the Policy Manual at Volume 6, Part G, Chapter 3, Section A.

Second the Regional Center argued that “the NOIT fails to identify any legal standard for measuring the adequacy of the VRC's (i.e., VACCD RC's) monitoring and oversight”.⁷ Again, as indicated above,

² See page 17 of the NOIT.

³ Ibid., page 17.

⁴ Ibid., page 17.

⁵ Ibid., page 17.

⁶ See page 5 of the response.

⁷ Ibid., page 8.

USICS clarified the policy requirement in numerous letters to the Regional Center over multiple years. And, these oversight responsibilities clearly involved the projects themselves, which turned out to be the problem area for the widespread misuse and misappropriation of EB-5 funds, as well as misrepresentations to USCIS and the EB-5 investors, according to the SEC and Vermont State complaints.

Third, the Regional Center argued that because the VACCD RC did indeed timely report the required information to the agency, it had met its monitoring and oversight requirement.⁸ However, timely filing the I-924A is only part of the annual requirement for regional centers. The form I-924A instructions clearly indicate the requirement to “Answer all questions fully and accurately.” As well as a notification that “By signing this form, you have stated under penalty of perjury (28 USC section 1746) that all information and documentation submitted with this form is complete, true, and correct.” Therefore it is not sufficient to timely file the I-924A, but the information contained in that filing must be complete, true and correct. The NOIT Response seems to argue that VACCD RC’s only oversight responsibility was reporting its activities to USCIS. But, such reporting must be accurate and without effectively monitoring its projects, a regional center cannot accurately carry out its reporting requirements and responsibilities to USCIS. This is the case for any regional center.

Although the MOUs between the Regional Center and project developers seemed to require quarterly reports, the NOIT pointed to reports that this did not happen. The NOIT Response did not address this or provide any other evidence that the Regional Center had engaged in monitoring and oversight.

Therefore after considering all of the information in the record, the agency concludes by a preponderance of the evidence that the VACCD RC did not adequately fulfill its project oversight and monitoring responsibilities, which are integral to satisfying obligations set forth in the EB-5 regulations. As noted previously, 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.

2. Diversion of EB-5 Funds

As addressed in the NOIT, the SEC and Vermont State complaints indicate that EB-5 funds were used for purposes that are inconsistent with the business plans and Private Placement Memoranda (each, a PPM) submitted to USCIS by the Regional Center and in furtherance of job creation. As noted in the NOIT, “according to the Vermont (State) complaint, EB-5 ‘investors were not informed through the (PPMs’) Source and Use of Investor Funds or in any other part of any offering document that their funds would be used in any other way than for the purposes specifically identified in the PPMs, including, for example, that their funds would be:

⁸ Ibid., page 5.

- (a) Misused to purchase T-bills;
- (b) Pledged as collateral for loans for non-project purposes;
- (c) Misappropriated for the personal benefit of Quiros;
- (d) Misused to pay for other EB-5 Projects' costs or other non-disclosed costs; or
- (e) Commingled with funds invested in other projects⁹,¹⁰

In addition, the NOIT stated that, "as for further specifics regarding the diversion and misuse of EB-5 funds, the Vermont (State) complaint also notes that 'since 2008, Quiros has misappropriated at least \$50 million of investor funds to, among other things: (1) purchase Jay Peak Resort; (2) purchase Burke Mountain Resort; (3) back a personal line of credit to pay his personal income taxes; (4) pay taxes for an unrelated company Quiros owns; and (5) purchase a luxury condominium in Trump Place New York. Quiros also improperly used investor funds to pay for margin loan interest and fees (\$2.5 million) and to pay down and off margin loan debts'¹¹."¹²

The NOIT details how the diversion of funds from the Jay Peak Hotel Suites Stateside, Jay Peak Biomedical, and Q Burke Mountain Resort projects contributed to budget shortfalls and an inability to complete the intended project work on time -- or complete almost no work at all, in the case of Jay Peak Biomedical. Also, the NOIT describes how these diversions led to many contractors not being paid on time for their work, causing financial problems. For instance, the Receiver's \$150 million settlement with Raymond James & Associates reportedly does not cover the contractors owed for previously completed work on the Jay Peak Biomedical project.¹³

Further, as explained in the NOIT, using EB-5 funds for purposes unrelated to the proposed projects and job creating activities not only casts doubt on the legitimacy of the projects' representations on the use of EB-5 funds in furtherance of job creation and economic growth, but may also impact the Regional Center's investors whose petitions rely on the job creation for Program eligibility.

The NOIT Response did not address the NOIT's points about the diversion of funds, and thus did not overcome its concerns. Therefore, after reviewing the evidence in the record, including all that was submitted in response to the NOIT, it appears that EB-5 funds invested in activities sponsored by the Regional Center were used for purposes unrelated to the business activities of the JCEs. These diversions may have also jeopardized the EB-5 investors' eligibility for lawful permanent resident status in the United States through their investments in projects sponsored by the Regional Center. Based on this apparent diversion and the seriousness of its consequences, USCIS has determined by a preponderance of

⁹ For the citation from the Vermont State complaint, see page 27 of that document.

¹⁰ See pages 20-21 of the NOIT.

¹¹ For the citation from the Vermont State complaint, see pages 3-4 of that document.

¹² See page 21 of the NOIT.

¹³ See http://www.stowetoday.com/news_and_citizen/news/local_news/better-late-than-never-percy-gets-eb--pay/article_b1ed7fc8-3be9-11e7-9ce7-e7ba214b9d6a.html -- Andrew Martin, *News and Citizen*, "Better late than never – Percy gets EB-5 pay", May 18, 2017, and the Receiver's website: https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf.

the evidence that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

3. Material Misrepresentations Involving the Projects

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

For example, the NOIT described how the Jay Peak Biomedical PPM states that a certain ANC Bio Product was, “currently in the process of FDA approval”, but that, in reality, as noted in the Vermont State complaint, the, “...Defendants had not, and, upon information and belief, have never, applied for FDA approval for the ANC Bio Products. The PPM further states that the project is set to commence in October, 2014, without also including the material contingency that commencement of the project was dependent on FDA approval, and without disclosing the risk that the FDA might not approve the ANC Bio Products”.¹⁴ This was a misrepresentation which made the project’s prospects appear much more favorable than the facts warranted. The Regional Center’s NOIT Response did not address the NOIT’s points about these misrepresentations.

USCIS concerns regarding material representations submitted in filings associated with VACCD to USCIS were raised previously in the Request for Information (RFI) that was issued to the Regional Center on July 8, 2016. In that RFI, USCIS noted that it had received petitioner filings for the ANC Bio project as recently as April 2016 and asked when the Regional Center became aware of the alleged diversion of investors' funds, as relevant to (1) any investigative action(s) taken, and (2) the Regional Center's marketing activities for the projects.

According to the RFI response to questions about the ANC Bio documents the Regional Center responded that, “ACCD directed significant attention to the offering documents and the manner in which the Jay Peak Biomedical project was marketed. ACCD paid particular attention to the accuracy of marketing materials, which led to a focus on the Private Placement Memoranda (“PPM”), as well as the Business and Marketing Plans, and the Job Creation analysis. By late 2013, ACCD began having concerns about whether all material information about the Jay Peak Biomedical project was being disclosed to investors.” Yet these concerns were not shared with USCIS, rather VACCD remained silent in their concerns and took no action as over 83 petitions for this NCE that were approved in 2014 and 2015.

Therefore, taking into account all of the information in the record it appears that there were misrepresentations consisting of false or misleading information about Regional Center-sponsored capital investment activity in materials submitted to USCIS and that when VACCD became aware of these misrepresentations, it took no corrective action. These discrepancies and misrepresentations cast doubt

¹⁴ See page 25 of the NOIT. This quotation was originally in pages 39-40 of the amended Vermont State complaint.

on the credibility of VACCD RC'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.

4. *Adverse Effects on Future Projects and Job Creation*

While the NOIT acknowledged that VACCD RC has completed a number of projects and created jobs, it raised concerns that the SEC and Vermont State complaints and the resulting extensive adverse publicity have negatively affected the Regional Center's ability in the future to sponsor projects and create new jobs.¹⁵ In particular, it mentioned two NCEs which have participated in job creating projects sponsored by VACCD RC but recently said they will not be doing so in the future. First, as explained in the NOIT¹⁶, "Stowe Aviation has ended its relationship with the VACCD RC to carry out a project expanding the Morrisville-Stowe State Airport. Russell Barr, Stowe Aviation's owner, said that marketing for the project was hampered by allegations of fraud at Jay Peak Resort."¹⁷ Second, Peak Resorts Inc. has partnered with the Regional Center to develop the Mount Snow project, which has expanded its snow-making capacity and will build a new Carinthia ski lodge. "However, Peak Resort's next EB-5 project will build new residential units at Mount Snow, but it will not work with the VACCD RC, but instead..."¹⁸ has formed its own regional center for this, the Great North Regional Center.¹⁹ Peak Resorts Vice President, Dick Deutsch, reportedly "...told investors that he wanted to divorce Mount Snow's projects from the state's EB-5 troubles", which he thought led to a delay in getting their EB-5 funds released for the first phase of the Mount Snow project.²⁰ Thus, the NOIT noted, "the SEC and Vermont (State) complaints and the resultant publicity appear to have dampened the future ability of the VACCD RC to sponsor projects and promote economic growth".²¹

The NOIT asserts that the negative publicity and fallout from the SEC and Vermont State complaints hurt the ability of VACCD RC to sponsor future projects; the NOIT Response did not refute that. Rather, the Regional Center noted that it will not sponsor any new projects and that the Vermont State government wants to wind down operations of the Regional Center. The Regional Center stated, "The State and USCIS have a common interest in ultimately closing the VRC." Further, the Regional Center submitted a document dated August 18, 2017 from the Vermont Department of Financial Regulation ("DFR") which states, "Fundamentally, we believe operating a regional center is not a function that is best performed by the State and the need for a State-run regional center has passed." Here, the Regional Center and the

¹⁵ See page 26 of the NOIT.

¹⁶ *Ibid.*, page 26.

¹⁷ See <https://vtdigger.org/2017/04/03/stowe-aviation-withdraws-vermont-eb-5-regional-center/>; *VTDigger*, Anne Galloway, "Stowe Aviation Withdraws from Vermont EB-5 Regional Center", April 3, 2017, p. 2.

¹⁸ See page 26 of the NOIT.

¹⁹ USCIS designated this as an EB-5 regional center on November 9, 2017.

²⁰ See <https://vtdigger.org/2017/03/10/mount-snow-split-state-plans-eb-5-fueled-expansion/>; *VTDigger*, Mike Faher, "Mount Snow to Split with State, Plans EB-5-Fueled Expansion", March 10, 2017. This is also mentioned on page 26 of the NOIT.

²¹ See page 26 of the NOIT.

State of Vermont acknowledge that the Regional Center will no longer sponsor any new projects and that it should be closed. Thus, by these statements, we can conclude that the Regional Center will not continue to promote economic growth in the future. Also, while the regulations do allow a regional center to withdraw from the EB-5 Program, they do not provide for a regional center to withdraw or wind down on its own timeline. The regulations specifically provide that USCIS should terminate a regional center when it determines that it no longer continues to promote economic growth, regardless of any timeline. Here, USCIS has determined at this present time that the Regional Center no longer serves the purpose of promoting economic growth required by 8 C.F.R. § 204.6(m)(6) and that the Regional Center should be terminated based on negative factors relating to the Regional Center. As explained in more detail below, the positive factors contained in the record as a whole are outweighed by negative factors, warranting termination of the Regional Center's designation.

II. Positive Factors

While this Notice has so far generally focused on negative factors involving VACCD RC, in reaching its determination, USCIS also considered the positive factors as they relate to the Regional Center's promotion of economic growth. The following are some of the positive equities that were considered. First, the VACCD RC has completed a number of projects and in the process has created many jobs. Also, some projects are ongoing, such as the Mount Snow project, and will create additional jobs in the future. For example the NOIT Response stated, "In fact, prior to receipt of the NOIT, Mt. Snow had begun discussions with the [VACCD RC] about affiliating for its next phase, which would produce an estimated nearly 1,400 additional jobs.²² The success of both Trapp (i.e., the Von Trapp NCE) and Mt. Snow shows that the [VACCD RC] is currently promoting economic growth, and will continue to do so, unless it is terminated by USCIS."²³ (However, as explained in more detail below, the accomplishment of job creation and project completion is severely undermined and outweighed by the diversion of funds that occurred while the Regional Center failed to conduct adequate monitoring and oversight. This is especially true considering that the diversion of funds affected multiple projects and continued over a period of eight years.)

USCIS notes that problems with the projects are not alleged to have been perpetrated by any Vermont State or VACCD RC employee; instead, the main defendants in the SEC and Vermont State complaints are Ariel Quiros and William Stenger. A positive equity considered by USCIS included the support that the State of Vermont provided in the investigation. For example, in the Receiver's press statement about the settlement announced on April 13, 2017 between the Receiver, Michael Goldberg, and Raymond James & Associates, Goldberg was very thankful of Vermont State government officials helping to structure the settlement and protect, "the defrauded investors and creditors since the very beginning of the

²² USCIS notes that Mount Snow applied for designation of a separate regional center, Great Northern Regional Center, which was approved on November, 2017.

²³ See page 3 of the NOIT Response.

case”.²⁴ (Here, however, the cooperation is outweighed by the lax oversight that the Regional Center provided which allowed the fraud to occur in the first place.)

Also among the positive equities considered by USCIS are the actions that the Vermont State government has taken or claims to have taken to improve their monitoring and oversight of the Regional Center projects. Since a MOU was signed by the VACCD and the DFR in December, 2014, the DFR has been involved in what appears to be a rigorous compliance program for all Regional Center projects. This includes the DFR setting standards with which new EB-5 projects must comply before associating with VACCD RC, and performing comprehensive monitoring and oversight activities for current projects (such as (1) physically visiting and inspecting all EB-5 projects in active construction, (2) requiring annual certified project audits by independent accountants that are to be given to DFR, and (3) enacting stricter requirements surrounding the existence of escrow and the release of escrowed funds). While it is a good first step that the Regional Center signed an MOU with DFR and is creating a more “rigorous” compliance program, we must weight this against the fact that the State failed to monitor and oversee the activities of VACCD (allowing it to divert millions of dollars of EB-5 funds). The latter undermines the claim that the Regional Center is able to conduct monitoring and oversight now. While the MOU and the plan are a step in the right direction, these new procedures have been in effect for four years and it is unclear that this new framework will actually allow the State to conduct adequate monitoring and oversight of EB-5 investment activities it sponsors. For example, the Receiver is still unable to account for all the money that was misappropriated, and the State was unable to answer many project-related questions raised in the RFI issued in July 2016 and NOIT issued in August 2017, 3 years after this new process was supposedly put into place.

USCIS, in making its decision, considered remedial efforts undertaken. For example, the \$150 million settlement announced April 13, 2017 between the Receiver, Michael Goldberg, and Raymond James & Associates may mitigate the financial harm caused by the fraudulent use of funds. The Receiver has indicated that these recovered funds may be used to reimburse some of the defrauded investors, to pay off some contractor liens for project work already completed, and allow completion of the construction for the Jay Peak Hotel Suites Stateside project.²⁵ Again, while there may be some positive outcomes related to this settlement agreement, this factor does not support the Regional Center’s claim that it continues to promote economic growth. Rather, this factor underscores the primary negative factor: that settlement was necessary because the Regional Center failed to conduct monitoring and oversight of the EB-5 capital investment activity it sponsored, resulting in the diversion of EB-5 funds. Here again, the negative factors outweigh the positive factors.

III. Other Considerations

USCIS also considered the fact that not all of the NCEs or projects were involved in the alleged fraud.

²⁴ Ibid, p.1.

²⁵ See, the Receiver’s website: https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf.

For example, the NOIT Response noted that, “terminating the VRC (quickly) may either leave Trapp and/or Mt. Snow investors with no immigration benefits, or obligate Trapp and/or Mt. Snow to undertake efforts to refund those investors. The latter would be costly and harmful to those businesses, as it would likely require the businesses to access capital at potentially high costs to accomplish refunds and result in the loss of jobs in the region. Such an outcome would conflict with the goals of the Program by eliminating jobs and putting unnecessary financial strain on otherwise successful projects.”²⁶ The NOIT Response provided letters from Dick Deutsch and Johannes von Trapp, President of Trapp Family Lodge, in support of VACCD RC and in opposition to a quick termination. Both letters said that their NCEs had nothing to do with and were not defendants in the SEC and Vermont State complaints, and thus they and their EB-5 investors did not deserve to be hurt by an immediate termination. USCIS agrees that the repercussions of the lack of management and oversight on the part of the regional center have far reaching effects, which may include harm to businesses that did not invest in projects which were mentioned in the SEC or State complaint. However, the ultimate responsibility for compliance with the relevant statutes and regulations in the EB-5 Program, remains with the regional center entity. Here, it is the Regional Center itself which has failed to engage in effective management and oversight, allowing EB-5 funds to be diverted away from job creation and away from promotion of economic growth. It is with respect to these diverted funds where the Regional Center has failed to promote economic growth. Therefore, it is the Regional Center itself which has failed to comply with the requirements of 8 C.F.R. § 204.6(m)(6) (to continue to promote economic growth) leading to its termination. Thus, any harm to businesses which were not listed in the SEC or State complaint is attributable to the Regional Center’s lack of management and oversight which resulted in the diversion of EB-5 funds.

As indicated above, the NOIT also raised the potential harm to investors that may come from termination. Deutsch’s letter, raised the concern that USCIS should allow, “Vermont to fulfill existing commitments to EB-5 shareholders who relied on USCIS adjudications for benefits administered by virtue of an affiliation with the Regional Center”. Von Trapp’s letter described how a quick termination would harm many of its EB-5 investors, inter alia, since (1) they would be unable to enter the U.S. with conditional residence status, and (2) their investments could not be refunded, as their funds had already been irrevocably spent on the project. In this case, the Regional Center’s lack of actions regarding management and oversight allowed the diversion of funds and misrepresentations to USCIS across multiple projects and over many years has jeopardized their petitioners’ eligibility for EB-5 classification. The diversion of EB-5 investment funds away from job creating activities is contrary to the intent of the Program as it undermined investors’ ability to comply with EB-5 statutory and regulatory requirements and jeopardized their eligibility for EB-5 classification. The actions of a regional center and all of its related entities must be considered when evaluating the regional center’s continued promotion of economic growth. The fact that some investors’ immigration status may be jeopardized who did not invest in those projects or whose funds were not diverted is not enough to overcome the problems associated with the Regional Center’s diversion of EB-5 investments funds.

²⁶ Ibid., page 3.

IV. Balancing of the Positive and Negative Equities

After considering all evidence in the record and balancing all of the positive and negative equities, USCIS has determined that the Regional Center's participation in the Program should be terminated. As explained in more detail below, the positive factors contained in the record as a whole are outweighed by the severity of the negative factors regarding whether the Regional Center continues to promote economic growth.

First, the extent, severity, and duration of the alleged malfeasance and diversion of funds are weighed heavily in considering if the regional center continues to promote economic growth. It is important to highlight here that the overall purpose of a regional center is to pool EB-5 investor capital so that it may be deployed to new commercial enterprise(s) for the purpose of promoting economic growth and job creation. Each immigrant investor who invests \$500,000 (or \$1,000,000 outside a "Targeted Employment Area") must demonstrate that their investment will create 10 jobs for qualifying individuals (regional center-sponsored investments may receive credit for indirect job creation). 8 C.F.R. § 204.6(m)(7). In addition, in situations where the NCE is not the job-creating entity, *Matter of Izummi*, as well as USCIS policy, requires that, in order to be considered properly at-risk, "the full amount of money must be made available to the business(es) most closely responsible for creating the jobs upon which EB-5 eligibility is based."²⁷

Therefore, capital investment projects sponsored by a regional center demonstrate its promotion of economic growth through the pooling of investment capital from EB-5 investors made available for, and resulting in, job creation. Here, however, the Regional Center allowed EB-5 capital to be diverted, thus, the diverted funds were not made available to the business most closely related to job creation and were similarly not utilized for the promotion of economic growth. This factor is weighted heavily because it has resulted in harm on various levels.

First, the diversion of EB-5 funds harmed the specific investors who were victims of fraud, resulting in the loss of their investment funds. Moreover, the harm caused by the improper diversion of funds not only harms the investors whose funds were misused, but extends beyond the EB-5 investors. For instance, the diversion of EB-5 funds harms the workers (U.S. citizens and other qualifying workers) who would have received jobs had the funds been properly invested. It results in a loss of overall economic growth in the area where the diverted funds would have been invested. The diversion of funds damages the integrity of the EB-5 Program and causes loss of public trust in the Federal and State agencies that oversee the use of EB-5 funds. These various levels of harm are the result of the Regional Center's failure to properly monitor and oversee the EB-5 investment activities under its sponsorship.

In this case, the SEC complaint alleged that over \$200 million of EB-5 investor funds were misused, including at least \$50 million being misappropriated by Quiros for unpermitted purposes, including personal use. All in all, the SEC complaint filed 52 counts against Quiros, Stenger and 7 VACCD RC

²⁷ *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998).

NCEs (New Commercial Enterprises). According to the SEC and Vermont State complaints, the alleged malfeasance went on from 2008 through the filing of the complaints in April, 2016 – *a total of 8 years*.²⁸ Eight NCEs were involved in the alleged wide-ranging impropriety mentioned in the SEC and Vermont State complaints, involving about half of the Regional Center’s approved projects.²⁹ All this describes malfeasance on a large scale. Evidence in the record indicates that VACCD RC’s failure to provide adequate oversight and monitoring of its projects allowed the alleged impropriety by Quiros and Stenger to occur and jeopardize the Regional Center’s ability to promote economic growth within EB-5 Program requirements, as well as the EB-5 investors’ investments and immigration benefits. A regional center must continue to demonstrate ongoing active engagement in monitoring, oversight, and due diligence of all investment activities under its sponsorship. This is essential for USCIS to determine that VACCD RC is in compliance with 8 CFR 204.6.

Second, as noted above, 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)). In this case, the regional center’s lack of management and oversight has jeopardized their petitioners’ ability to obtain EB-5 classification through their initial investment. For example, even if some of the investors recoup their investments, as noted above per the Receiver’s settlement, some of them have had their funds tied up unproductively for years. Certain other investors whose investments are not reimbursed are also unduly at risk of not achieving permanent residence status. For instance, 186 petitioners filed Forms I-526 with USCIS for the Jay Peak Biomedical NCE, representing \$94 million dollars. However, reports indicate that work has stopped on this project,³⁰ and almost nothing on it was done. Again, when the Regional Center first became aware of the concerns with this project, it is unclear what action if any was taken to inform investors or USCIS of their concerns.³¹ The Regional Center’s inaction placed its investors’ immigration status in jeopardy, and in tying up funds for a project that would not be completed, it undermined the dual purpose of the regional center program, job creation and economic growth. In this case, the regional center’s lax oversight provided an environment in which this fraud was not only perpetrated, but continued for eight

²⁸ This is detailed throughout the SEC and Vermont State complaints.

²⁹ These were the Jay Peak Hotel Suites LP, Jay Peak Hotel Suites Phase II LP, Jay Peak Penthouse Suites LP, Jay Peak Golf and Mountain Suites LP, Jay Peak Lodge and Townhouses LP, Jay Peak Hotel Suites Stateside LP, Jay Peak Biomedical Research Park LP, and Q Burke Mountain Resort, Hotel & Conference Center LP.

³⁰ See http://www.stowetoday.com/news_and_citizen/news/local_news/better-late-than-never-percy-gets-eb-5-pay/article_b1ed7fc8-3be9-11e7-9cc7-e7ba214b9d6a.html -- Andrew Martin, *News and Citizen*, “Better late than never – Percy gets EB-5 pay”, May 18, 2017, and the Receiver’s website: https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf.

³¹ As noted previously, in response to the NOIT issued on August 14, 2017 VACCD acknowledged that four year ago VACCD began having concerns about whether all material information about the Jay Peak Biomedical project was being disclosed to investors.” Yet these concerns were never shared with USCIS.

Vermont Agency of Commerce and Community Development Regional Center – Designation Terminated
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years. Also, the misrepresentations contained in documents that the Regional Center submitted to USCIS (as detailed above) are additional factors which cast significant doubt upon the Regional Center's ability to monitor and oversee its operations and promote economic growth. Finally, for a regional center to continue to promote economic growth it must continue to have projects for new EB-5 investors to invest in for the purpose of job creation. Here, however, the Regional Center has indicated that it does not plan to sponsor any new projects.

USCIS has considered the positive factors for the VACCD RC. However, in summary USCIS believes the concerns conveyed in the preceding paragraphs and NOIT outweigh those positive factors, leading to the decision in this Notice.

V. 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.

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, DC 20529-2090

Vermont Agency of Commerce and Community Development Regional Center – **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.

USCIS has completed the review process for the RCW1031910148. However, in January 2014, USCIS issued the decision to terminate the designation for the RCW1031910148. The decision was based on the information provided in the RCW1031910148. The decision was issued on January 15, 2014.

The decision was based on the information provided in the RCW1031910148. The decision was issued on January 15, 2014. The decision was based on the information provided in the RCW1031910148. The decision was issued on January 15, 2014.

In the event you wish to appeal the decision, you must file a motion to reconsider or a motion to reopen within 60 days of the date of the decision. The motion must be filed with the Vermont Agency of Commerce and Community Development Regional Center. The motion must be filed with the Vermont Agency of Commerce and Community Development Regional Center. The motion must be filed with the Vermont Agency of Commerce and Community Development Regional Center.

The Vermont Agency of Commerce and Community Development Regional Center is located at 100 State Street, Montpelier, Vermont 05602. The Vermont Agency of Commerce and Community Development Regional Center is located at 100 State Street, Montpelier, Vermont 05602.

For more information, please contact the Vermont Agency of Commerce and Community Development Regional Center at 802-241-3000. For more information, please contact the Vermont Agency of Commerce and Community Development Regional Center at 802-241-3000. For more information, please contact the Vermont Agency of Commerce and Community Development Regional Center at 802-241-3000.

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Notice of Appeal or Motion
 Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS
Form I-290B
 OMB No. 1615-0095
 Expires 12/31/2018

To be completed by an attorney or accredited representative (if any).	<input type="checkbox"/> Select this box if Form G-28 or Form G-28I is attached.	Attorney State Bar Number (if applicable) <input type="text"/>	Attorney or Accredited Representative USCIS Online Account Number (if any) <input type="text"/>
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Please see the USCIS Website at www.uscis.gov/i-290b to view appeal and/or motion eligibility by form type.

▶ **START HERE - Type or print in black ink.**

Part 1. Information About the Applicant or Petitioner

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. Complete Name of Business/Organization (if applicable)

3. Alien Registration Number (A-Number, if any)
▶ A-

4. Receipt Number

5. USCIS Online Account Number (if any)
▶

Mailing Address (or Military APO/FPO Address, if applicable)

6.a. In Care Of Name (if any)

6.b. Street Number and Name

6.c. Apt. Ste. Flr.

6.d. City or Town

6.e. State 6.f. ZIP Code

6.g. Province

6.h. Postal Code

6.i. Country

Part 2. Information About the Appeal or Motion

You must select only one box indicating that you are filing an appeal or a motion, not both. **If more than one box is selected, your filing may be rejected.**

NOTE: DO NOT use this form if you are filing an appeal of a denial or a revocation of an approved Form I-130, Petition for Alien Relative, or a Form I-360, Petition for Widow(er). Those appeals must be filed with the BIA using Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of an Immigration Officer.

1.a. I am filing an **appeal** to the Administrative Appeals Office (AAO). My brief and/or additional evidence is attached.

1.b. I am filing an **appeal** to the AAO. My brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing the appeal.

1.c. I am filing an **appeal** to the AAO. No supplemental brief and/or additional evidence will be submitted.

1.d. I am filing a **motion to reopen** a decision. My brief and/or additional evidence is attached.

1.e. I am filing a **motion to reconsider** a decision. My brief is attached.

1.f. I am filing a **motion to reopen** and a **motion to reconsider a decision**. My brief and/or additional evidence is attached.

2. USCIS Form for Which You Are Filing an Appeal or Motion to Reopen/Reconsider (for example, Form I-140, I-360, I-129, I-485, I-601)

3. Specific Classification Requested (for example, H-1B, R-1, O-1, EB-1, EB-2, EB-3, if applicable)

4. Date of Adverse Decision (mm/dd/yyyy)

5. Office Where Last Decision Was Issued

Part 3. Basis for Appeal or Motion

In **Part 7. Additional Information**, or on a separate sheet of paper, you must provide a statement regarding the basis for the appeal or motion. Type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.

Appeal: Provide a statement that specifically identifies an erroneous conclusion of law or fact in the decision being appealed.

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence that establish eligibility at the time the underlying application or petition was filed.

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions and must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of decision.

Part 4. Applicant's or Petitioner's Statement, Contact Information, Certification, and Signature

NOTE: Read the **Penalties** section of the Form I-290B Instructions before completing this part.

Section A

If you are filing an appeal or motion based on an **APPLICATION or PETITION FILED BY AN INDIVIDUAL (NOT AN ENTITY SUCH AS A COMPANY OR BUSINESS)**, complete this section:

Applicant's or Petitioner's Statement

NOTE: Select the box for either **Item Number 1.a.** or **1.b.** If applicable, select the box for **Item Number 2.**

- 1.a. I can read and understand English, and I have read and understand every question and instruction on this form and my answer to every question.
- 1.b. The interpreter named in **Part 5.** has read to me every question and instruction on this form, and my answer to every question, in a language in which I am fluent. I understood all of this information as interpreted.
2. At my request, the preparer named in **Part 6.** prepared this form for me based only upon information I provided or authorized.

Applicant's or Petitioner's Contact Information

3. Applicant's or Petitioner's Daytime Telephone Number
4. Applicant's or Petitioner's Mobile Telephone Number (if any)
5. Applicant's or Petitioner's Email Address (if any)

Applicant's or Petitioner's Certification

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any of my records that USCIS may need to determine my eligibility for the immigration benefit I seek.

I further authorize release of information contained in this form, in supporting documents, and in my USCIS records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws.

I certify, under penalty of perjury, that I provided or authorized all of the information in my form, I understand all of the information contained in, and submitted with, my form, and that all of this information is complete, true, and correct.

Applicant's or Petitioner's Signature

- 6.a. Applicant's or Petitioner's Signature (sign in ink)
- 6.b. Date of Signature (mm/dd/yyyy)

Section B

If you are filing an appeal or motion for a **PETITION FILED BY AN ENTITY**, complete this section:

Petitioner's Statement

NOTE: Select the box for either **Item Number 1.a.** or **1.b.** If applicable, select the box for **Item Number 2.**

- 1.a. I can read and understand English, and I have read and understand every question and instruction on this form and my answer to every question.
- 1.b. The interpreter named in **Part 5.** has read to me every question and instruction on this form, and my answer to every question, in a language in which I am fluent. I understood all of this information as interpreted.

Part 4. Applicant's or Petitioner's Statement, Contact Information, Certification, and Signature (continued)

2. At my request, the preparer named in **Part 6.** prepared this form for me based only upon information I provided or authorized.

Petitioner's Contact Information

3. Petitioner's Daytime Telephone Number
4. Petitioner's Mobile Telephone Number (if any)
5. Petitioner's Email Address (if any)

Petitioner's Certification

Copies of any documents submitted are exact photocopies of unaltered, original documents, and I understand that, as the petitioner, I may be required to submit original documents to USCIS at a later date.

I authorize the release of any information from my records, or from the petitioning organization's records, to USCIS or other entities and persons where necessary to determine eligibility for the immigration benefit sought or where authorized by law. I recognize the authority of USCIS to conduct audits of this form using publicly available open source information. I also recognize that any supporting evidence submitted in support of this form may be verified by USCIS through any means determined appropriate by USCIS, including but not limited to, on-site compliance reviews.

If filing this form on behalf of an organization, I certify that I am authorized to do so by the organization.

I certify, under penalty of perjury, that I have reviewed this form, I understand all of the information contained in, and submitted with, my appeal or motion, and all of this information is complete, true, and correct.

Petitioner's Signature

- 6.a. Petitioner's Signature (sign in ink)
- 6.b. Date of Signature (mm/dd/yyyy)

NOTE TO ALL APPLICANTS/PETITIONERS: If you do not completely fill out this form or fail to submit required documents listed in the Instructions, USCIS may dismiss, deny, or reject your appeal or motion.

Part 5. Interpreter's Contact Information, Certification, and Signature

Provide the following information about the interpreter.

Interpreter's Full Name

- 1.a. Interpreter's Family Name (Last Name)
- 1.b. Interpreter's Given Name (First Name)
2. Interpreter's Business or Organization Name (if any)

Interpreter's Mailing Address

- 3.a. Street Number and Name
- 3.b. Apt. Ste. Flr.
- 3.c. City or Town
- 3.d. State 3.e. ZIP Code
- 3.f. Province
- 3.g. Postal Code
- 3.h. Country

Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number
5. Interpreter's Mobile Telephone Number (if any)
6. Interpreter's Email Address (if any)

Interpreter's Certification

I certify, under penalty of perjury, that:

I am fluent in English and , which is the same language specified in **Part 4., Item Number 1.b.** in **Section A** or **Section B**, and I have read to this applicant or petitioner in the identified language every question and instruction on this form and his or her answer to every question. The applicant or petitioner informed me that he or she understands every instruction, question, and answer on the form, including the **Applicant's or Petitioner's Certification**, and has verified the accuracy of every answer.

Part 5. Interpreter's Contact Information, Certification, and Signature (continued)

Interpreter's Signature

7.a. Interpreter's Signature (sign in ink)

7.b. Date of Signature (mm/dd/yyyy)

Part 6. Contact Information, Statement, Certification, and Signature of the Person Preparing This Form, if Other Than the Applicant or Petitioner

Provide the following information about the preparer.

Preparer's Full Name

1.a. Preparer's Family Name (Last Name)

1.b. Preparer's Given Name (First Name)

2. Preparer's Business or Organization Name (if any)

Preparer's Mailing Address

3.a. Street Number and Name

3.b. Apt. Ste. Flr.

3.c. City or Town

3.d. State

3.e. ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Preparer's Contact Information

4. Preparer's Daytime Telephone Number

5. Preparer's Mobile Telephone Number (if any)

6. Preparer's Email Address (if any)

Preparer's Statement

7.a. I am not an attorney or accredited representative but have prepared this form on behalf of the applicant or petitioner and with the applicant's or petitioner's consent.

7.b. I am an attorney or accredited representative and have prepared this form on behalf of the applicant or petitioner and with the applicant's or petitioner's consent.

Preparer's Certification

By my signature, I certify, under penalty of perjury, that I prepared this form at the request of the applicant or petitioner. The applicant or petitioner then reviewed this completed form and informed me that he or she understands all of the information contained in, and submitted with, his or her form, including the **Applicant's or Petitioner's Certification**, and that all of this information is complete, true, and correct. I completed this form based only on information that the applicant or petitioner provided to me or authorized me to obtain or use.

Preparer's Signature

8.a. Preparer's Signature (sign in ink)

8.b. Date of Signature (mm/dd/yyyy)

Part 7. Additional Information

If you need extra space to provide any additional information within this form, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this form or attach a separate sheet of paper. Type or print your name and A-Number at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. A-Number (if any) ▶ A-

3.a. Page Number 3.b. Part Number 3.c. Item Number

3.d. _____

4.a. Page Number 4.b. Part Number 4.c. Item Number

4.d. _____

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d. _____

6.a. Page Number 6.b. Part Number 6.c. Item Number

6.d. _____

7.a. Page Number 7.b. Part Number 7.c. Item Number

7.d. _____

NOTE: Make sure your appeal or motion is complete before filing.

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:

Vermont Agency of Commerce and Community
Development Regional Center
attn.: Joan Goldstein
One National Life Dr./Deane C. Davis Bldg./6th Floor
Montpelier, VT 05620

DATE: August 14, 2017

Application: Form I-924

A-Number:

File: ID1031910148/RCW1031910148

NOTICE OF INTENT TO TERMINATE

This notice is in reference to the approved designation of Vermont Agency of Commerce and Community Development Regional Center (the "Regional Center"), as a regional center in the Immigrant Investor Program (the "Program"). The purpose of this notice is to notify the Regional Center that, pursuant to 8 C.F.R. § 204.6(m)(6), U.S. Citizenship and Immigration Services ("USCIS") intends to terminate the participation of the Regional Center in the Program because it no longer serves the purpose of promoting economic growth.

(SEE ATTACHED)

Pursuant to 8 C.F.R. 204.6(m)(6), you are provided thirty (30) days from receipt of this notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged.

Failure to respond within the time allotted may result in the termination of your designation for participation as a regional center in the Immigrant Investor Program.

Your deadline for submitting a response is: **September 16, 2017.**

Keep a photocopy of this notice for your records. If you otherwise write to us about your case, please provide a copy of this notice.

You will be notified separately about any other applications or petitions you have filed.

Please send your response to this address:

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

IMPORTANT: RETURN THIS ORIGINAL NOTICE ON TOP OF YOUR RESPONSE.

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

NOTICE OF INTENT TO PURCHASE

The notice is in reference to the proposed acquisition of Vermont Agency of Commerce and Community Development Regional Center (the "Regional Center") as a regional center in the Vermont Investor Program (the "Program"). The purpose of this notice is to advise the Regional Center and its owners of the Vermont Agency of Commerce and Community Development's (VACCD) intent to purchase the Regional Center in the Regional Center in the Program because it is being used for purposes of providing economic growth.

PLEASE ATTACH

Please refer to V.C.R. 204 (b)(1)(v) for the details of the notice. You are invited to provide comments to the extent you wish.

Comments received will be reviewed and will be taken into consideration in the final decision to purchase the Regional Center.

PLEASE ATTACH

Keep a copy of this notice for your records. If you have any questions or comments, please contact the office at the address below.

You will be notified separately if you are selected to purchase the Regional Center.

Please send your response to the address below.

Vermont Agency of Commerce and Community Development
Investor Program Office
131-44 Street, NE
Building 133
Washington, DC 20028

IMPORTANT: REPLY TO THIS ORIGINAL NOTICE FOR YOUR RESPONSE

NOTICE OF INTENT TO TERMINATE

Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program Vermont Agency of Commerce and Community Development Regional Center

This notice is in reference to the approved designation of Vermont Agency of Commerce and Community Development Regional Center (“VACCD RC” or the “Regional Center”), as a regional center in the Immigrant Investor Program (the “Program”).¹ The purpose of this notice is to notify the Regional Center that, pursuant to 8 C.F.R. § 204.6(m)(6), U.S. Citizenship and Immigration Services (“USCIS”) intends to terminate the designation of the Regional Center in the Program because:

- 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, and increased domestic capital investment.

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

¹ 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”).

(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

A. Initial Designation

On June 26, 1997, USCIS designated the Regional Center following approval of its application to participate in the Program (RCW1031910148). Based on the initial designation, the Regional Center obtained approval to promote economic growth under the Program in the following geographic regions:

Name of State	Counties
Vermont	Entire state

B. Amendments

On August 17, 2009, the Regional Center filed an amendment to its designation to expand the list of approved industries, add new economic activities involved in these industry categories, and allow both loans to and equity investments in the Job Creating Enterprises (RCW1031910276). USCIS approved the amendment on October 6, 2009.

On March 16, 2010, the Regional Center filed a second amendment to its designation to add Mixed-use Commercial Development to its list of approved industries (RCW1031910291). USCIS approved the amendment on June 28, 2010.

On August 13, 2010, the Regional Center filed a third amendment to its designation to add Electric Power

Generation (using biomass) to its list of approved industries (RCW1031910255). USCIS approved the amendment on January 20, 2011.

On November 6, 2014, the Regional Center filed a fourth amendment to its designation. This is an exemplar project to construct a new snow-making facility and a ski-lodge at Mount Snow in West Dover, VT. (RCW1431051959). USCIS approved the amendment on May 18, 2016.

On November 6, 2014, the Regional Center filed a fifth amendment to its designation. This is an exemplar project to construct a new snow-making facility and a ski-lodge at Mount Snow in West Dover, VT. (RCW1431051960). USCIS approved the amendment on May 18, 2016.

On December 16, 2014, the Regional Center filed a sixth amendment to its designation. This is an exemplar project to redevelop the Morrisville-Stowe State Airport, construct an aircraft hangar with an aircraft maintenance facility, establish a flight academy, introduce regional charter air transportation services, and build a café. (RCW1435052109). USCIS received VACCD RC's May 8, 2017 request to withdraw this amendment, and USCIS issued an Acknowledgement of Withdrawal of this request on May 23, 2017.

On April 17, 2015, the Regional Center filed a seventh amendment to its designation for an exemplar project. The South Face Village at Okemo Project consists of the development and construction of 14 duplex units, 44 condominium units, 9 single family homes, a base lodge, related infrastructure such as roads, water, and sewer, one ski lift, and trails at Okemo Mountain Resort in Ludlow, Vermont. (RCW1510751763). USCIS denied this amendment on June 14, 2017.

On August 4, 2015, the Regional Center filed an eighth amendment to its designation. This is an exemplar project amendment to acquire, construct, and operate an expanded brewery and restaurant at the Trapp Family Lodge Resort in Stowe, VT (RCW1521652841). This amendment has yet to be adjudicated.

C. Regional Center Projects

USCIS has received a total of 1,100 Forms I-526, Immigrant Petition by Alien Entrepreneur, filed by petitioners asserting that they have invested capital in 21 new commercial enterprises ("NCEs"), associated with the Regional Center as shown in the table below. USCIS has approved 754 of these Form I-526 petitions.

New Commercial Enterprise	Job-Creating Entity	Number of I-526 Petitions Filed	Number of I-526 Petitions Approved to Date
America-Sugarbush Fund LLP806	Summit Ventures NE LLC	2	1
Carinthia Group 1 LP	West Lake Water Project LLC, Carinthia Ski Lodge LLC	94	0
Carinthia Group 2 LP	West Lake Water Project LLC, Carinthia Ski Lodge LLC	9	4
CHP Opportunity Partners I, LP	Country Home Products Inc.	24	24
EB-5 America Sugarbush LP	N/A	26	25
EB5 America Sugarbush Fund LP	Summit Ventures NE LLC	13	13
Jay Peak Biomedical Research Park LP	N/A	186	83
Jay Peak Golf and Mountain Suites LP	N/A	91	90
Jay Peak Hotel Suites LP	N/A	31	31
Jay Peak Hotel Suites Phase II LP	N/A	151	143
Jay Peak Hotel Suites Stateside LP	N/A	139	133
Jay Peak Lodge and Townhouses LP	N/A	93	89
Jay Peak Penthouse Suites LP	N/A	70	67
Q Burke Mountain Resort, Hotel & Conference Center LP	Q Burke Mountain Resort GP Services LLC	118	47
Burke Mountain Resort, Hotel & Conference Center LP	N/A	1	0
Seldon Clean Water Products (Asia) LP	Seldon Technologies Inc.	10	9
South Face Village Development Fund LP	South Face Village at Okemo Development Company, LLC	2	0
Vermont Opportunity Partners I LP	CHP Holdings Inc.	1	1
Von Trapp Enterprises LP	Trapp Family Lodge Inc.	35	14
Stowe Airport Investment LP	N/A	3	0
Stowe Aviation LLC	N/A	1	0
Totals	--	1,100	754

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed Form I-526 exemplars and related organizational and transactional documents for America-Sugarbush Fund LLP806, an NCE. The NCE planned to pool \$20 million in capital investments from 40 EB-5 investors to provide financing for a job creating entity ("JCE") – Summit Ventures NE LLC. The JCE planned to invest these funds in a real estate resort project.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for CHP Opportunity Partners I LP, an NCE. The NCE planned to pool \$12 million in capital investments from 24 EB-5 investors to provide financing for a JCE – Country Home Products Inc. The JCE planned to invest these funds in a manufacturing project. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Carinthia Group 1 LP and Carinthia Group 2 LP, NCEs. The NCEs planned to pool \$52 million in capital investments from 104 EB-5 investors, and loan the funds to two JCEs – West Lake Water Project LLC and Carinthia Ski Lodge LLC. The JCEs planned to construct a new snow-making facility and ski-lodge at Mount Snow in West Dover, VT.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for EB-5 America Sugarbush LP, an NCE. The NCE planned to pool \$20 million in capital investments from 40 EB-5 investors to finance a hospitality development project.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for EB5 America Sugarbush Fund LP, an NCE. The NCE planned to pool \$20 million in capital investments from 40 EB-5 investors to provide financing for a JCE – Summit Ventures NE LLC. The JCE planned to invest these funds in a resort construction and expansion project.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Biomedical Research Park LP, an NCE. The NCE planned to pool \$110 million in capital investments from 220 EB-5 investors to finance a biomedical project.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Golf and Mountain Suites LP, an NCE. The NCE planned to pool \$45 million in capital investments from 90 EB-5 investors to finance construction of a resort development. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Hotel Suites LP, an NCE. The NCE planned to pool \$17.5 million in capital investments from 35 EB-5 investors to finance construction of a ski resort hotel. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Hotel Suites Phase II LP, an NCE. The NCE planned to pool \$75 million in capital investments from 150 EB-5 investors to finance the construction and operation of a ski resort. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Hotel Suites Stateside LP, an NCE. The NCE originally planned to pool \$80 million in capital investments from 160 EB-5 investors to finance the development of ski resorts.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Lodge and Townhouses LP, an NCE. The NCE planned to pool \$45 million in capital investments from 90 EB-5 investors to finance the development of a resort project. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Penthouse Suites LP, an NCE. The NCE planned to pool \$35 million in capital investments from 70 EB-5 investors to finance the development of a hotel project. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Q Burke Mountain Resort, Hotel & Conference Center LP, an NCE. The NCE planned to pool an estimated \$98 million in capital investments from 196 EB-5 investors to provide finance for a JCE – Q Burke Mountain Resort GP Services LLC. The JCE planned to develop and operate a ski resort (with other facilities). According to the latest information submitted by VACCD, the hotel had been built, but the aquatic facility, tennis center, and upgraded mountain bike facility had yet to be completed.²

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Seldon Clean Water Products (Asia) LP, an NCE. The NCE originally planned to pool \$20 million in capital investments from 40 EB-5 investors to provide

² See VACCD's August 25, 2016 reply to USCIS's July 8, 2016 Request for Information, p. 11-12.

financing for a JCE – Seldon Technologies Inc. The JCE developed a facility to manufacture water filtration devices. However, Seldon Technologies Inc. ceased its operations in September, 2015.³

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for South Face Village Development Fund, LP, an NCE. The NCE planned to pool \$34 million in capital investments from 68 EB-5 investors and loan the funds to a JCE – South Face Village at Okemo Development Company, LLC. The JCE planned to develop and construct the Okemo Mountain Resort in Ludlow, VT. As noted above, USCIS denied the I-924 Amendment (RCW1510751763) associated with this I-526 on June 14, 2017.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Von Trapp Enterprises LP, an NCE. The NCE originally planned to pool \$20 million in capital investments from 40 EB-5 investors, and loan the funds to a JCE – Trapp Family Lodge Inc. The JCE planned to expand an existing brewery and construct and operate a restaurant in Stowe, VT.

As part of USCIS's adjudication of a Regional Center amendment, USCIS reviewed organizational and transactional documents for Stowe Airport Investment LP and Stowe Aviation LLC, NCEs. These NCEs originally planned to pool \$20 million in capital investments from 40 EB-5 investors, to finance the re-development of the Morrisville-Stowe State Airport. As noted above, USCIS received VACCD RC's May 8, 2017 request to withdraw this amendment, and USCIS issued an Acknowledgement of Withdrawal of this request on May 23, 2017. (As part of this request, the Regional Center also notified USCIS that Stowe Aviation has terminated its participation in this project with VACCD RC, which the Regional Center accepts.)

The number of approved Form I-526 petitions by Federal fiscal year (October 1 through September 30) is shown below, along with the total number of Form I-526 approvals and EB-5 capital received by each NCE associated with the Regional Center.

³ Ibid., p. 16.

USCIS has received a total of 630 Forms I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status filed by petitioners associated with the Regional Center.

New Commercial Enterprise	I-829s Denied	I-829s Approved to Date
America-Sugarbush Fund LLP806	0	0
Carinthia Group 1 LP	0	0
Carinthia Group 2 LP	0	0
CHP Opportunity Partners I, LP	0	14
EB-5 America Sugarbush LP	0	22
EB5 America Sugarbush Fund LP	0	5
Jay Peak Biomedical Research Park LP	0	0
Jay Peak Golf and Mountain Suites LP	0	66
Jay Peak Hotel Suites LP	0	11
Jay Peak Hotel Suites Phase II LP	0	118
Jay Peak Hotel Suites Stateside LP	0	1
Jay Peak Lodge and Townhouses LP	0	44
Jay Peak Penthouse Suites LP	0	47
Q Burke Mountain Resort, Hotel & Conference Center LP	0	0
Burke Mountain Resort, Hotel & Conference Center LP	0	0
Seldon Clean Water Products (Asia) LP	0	9
Vermont Opportunity Partners I LP	0	0
Von Trapp Enterprises LP	0	0
Stowe Airport Investment LP	0	0
Stowe Aviation LLC	0	0
Totals	0	337

D. Annual Reports (Forms I-924A)

The Regional Center has filed six Forms I-924A, Supplement to Form I-924. The table below summarizes the information that the Regional Center provided to USCIS in those forms regarding the

claimed aggregate amount of capital investment from EB-5 petitioners associated with the Regional Center and the aggregate number of direct and indirect jobs created and maintained as a result of those investments per year/to date.

Fiscal Year	Receipt No.	Date Received	Aggregate EB-5 Capital Investment (millions \$)	Aggregate Direct/ Indirect Job Creation	Aggregate Jobs Maintained
2011	RCW1136450475	12/30/2011	99.5	2,057	384
2012	RCW1236350972	12/28/2012	77	1,805	768
2013	RCW1400251588	12/30/2013	44	3,571	908
2014	RCW1500552393	12/31/2014	58	1,240	789
2015	RCW1536353984	12/24/2015	96.5	1,726	642
2016	RCW1700555430	12/23/2016	23.875	287	621
	TOTAL		\$398.875	10,686	4,112

E. United States Securities and Exchange Commission Complaint

On April 12, 2016 the United States Securities and Exchange Commission (“SEC”) brought a civil action (the “SEC complaint”)⁴ against 7 EB-5 entities associated with the VACCD RC, among other named Defendants (collectively referred to here as “Defendants”). This complaint notes that the SEC brought this action “to stop an ongoing, massive eight-year fraudulent scheme in which the Miami owner (i.e., Ariel Quiros) and chief executive of a Vermont ski resort (i.e., William Stenger) have systematically looted more than \$50 million of the more than \$350 million that has been raised from hundreds of foreign investors through the U.S. Citizenship and Immigration Service’s EB-5 Immigrant Investor Program.”⁵ The SEC complaint further alleges that “among other things, Quiros, Stenger, and the companies they run that have overseen the development and construction of the Jay Peak resort have misused more than \$200 million – more than half of all money raised from investors. Quiros orchestrated and Stenger facilitated an intricate web of transfers between the various Defendants and Relief Defendants to disguise the fact that the majority of the seven projects were

⁴ See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>.

⁵ *Ibid.*, p. 1-2.

either over budget or experiencing shortfalls. These shortfalls were due in large part to Quiros pilfering tens of millions of dollars of investor money for his own use.”⁶

The 17 Defendants in the complaint are:

Ariel Quiros; William Stenger; Jay Peak, Inc.; Q Resorts, Inc.; Jay Peak Hotel Suites, LP; Jay Peak Hotel Suites Phase II, LP; Jay Peak Management, Inc.; Jay Peak Penthouse Suites, LP; Jay Peak GP Services, Inc.; Jay Peak Golf and Mountain Suites, LP; Jay Peak GP Services Golf, Inc.; Jay Peak Lodge and Townhouses, LP; Jay Peak GP Services Lodge, Inc.; Jay Peak Hotel Suites Stateside, LP; Jay Peak GP Services Stateside, Inc.; Jay Peak Biomedical Research Park, LP; and ANC Bio Vermont GP Services, LLC.⁷

The Relief Defendants are:

Jay Construction Management, Inc. (i.e., JCM), GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC.

Ariel Quiros was the sole owner, officer, and director of Q Resorts and the chairman of Jay Peak, Inc. (Jay Peak operates the Jay Peak Resort in Jay, Vermont and six projects for which the Defendants raised money.) “Through those two companies, Quiros controlled each of the Defendant general and limited partnerships.”⁸ Quiros’s trial for the SEC charges is scheduled for September, 2018.⁹

William Stenger was the Director, President, and CEO of Jay Peak. He was the hands-on, day-to-day manager of the projects at issue in this complaint. In September, 2016 a federal judge approved a settlement in the SEC complaint’s case against Stenger¹⁰, full terms of which have not been made public.

F. State of Vermont Civil Complaint

On April 14, 2016 the State of Vermont filed a complaint (the “Vermont complaint”) against these same 17 Defendants, regarding activities relating to the Regional Center.¹¹ The allegations in the SEC and Vermont complaints are similar. (The SEC and Vermont’s Department of Financial Regulation (DFR),

⁶ Ibid., p. 2.

⁷ Ibid., p. 1.

⁸ Ibid., p. 5.

⁹ See <https://vtdigger.org/2017/02/07/quiros-eb-5-fraud-trial-set-september-2018/>.

¹⁰ See <https://vtdigger.org/2016/09/22/federal-judge-approves-stenger-settlement-sec-eb-5-fraud-allegations/>.

¹¹ See

<http://www.dfr.vermont.gov/sites/default/files/jaypeak/Amended%20Complaint%20%28State%20v.%20Quiros%29%20FILED.PDF> for the amended June, 2016 complaint.

which handled the state's investigation, coordinated their investigations.) The Vermont complaint notes that "since 2008, Defendants Ariel Quiros and William Stenger have orchestrated a large-scale investment scheme to defraud investors participating in the EB-5 Program...Quiros and Stenger used multiple limited partnerships, limited liability companies, and corporate entities they control to assist in carrying out the fraudulent scheme."¹² "As part of the fraudulent scheme, Defendants have solicited and raised at least \$350 million in (EB-5) investment funds through seven limited partnerships. Of that amount, Defendants have misused more than \$200 million and Quiros has misappropriated at least \$50 million."¹³ "Defendants treated the (EB-5) investor funds as an unrestricted pool of money that could be transferred between EB-5 Projects indiscriminately, and used for personal benefit."¹⁴ "Throughout the elaborate scheme, Quiros and Stenger employed a complex web of financial accounts to improperly commingle funds, backfill funding gaps from previous projects, and misuse investor funds. Quiros misappropriated millions in investor funds to enrich himself."¹⁵

The Vermont complaint's lawsuit against Quiros and Stenger is still pending with no date set yet for the trial.¹⁶

G. EB-5 Investor Civil Complaint

On June 12, 2017, an EB-5 investor in a Regional Center project brought a class action lawsuit (the "Investor complaint") against the Regional Center, the state of Vermont, the Vermont Department of Financial Regulation, and several other current and former state officials.¹⁷ The complaint alleges the Regional Center failed to exercise oversight over the Jay Peak projects, engaged in misrepresentations to investors, conspired to conceal fraudulent activity in Jay Peak projects, and bears responsibility for misappropriation of funds.

H. Federally Appointed Receiver

As a result of the SEC complaint and associated legal problems and in order to protect the EB-5 investors in these projects, on April 13, 2016 a Florida U.S. District Court appointed a receiver, Michael Goldberg, to control the assets involved with the projects associated with the following defendants in the SEC complaint:

¹² Ibid., p. 2.

¹³ Ibid., p. 2-3.

¹⁴ Ibid., p. 3.

¹⁵ Ibid., p. 3.

¹⁶ See <https://vtdigger.org/2016/09/22/federal-judge-approves-stenger-settlement-sec-eb-5-fraud-allegations/>.

¹⁷ See <http://mediad.publicbroadcasting.net/p/vpr/files/201706/EB-5-investor-lawsuit-SoV-20170530.pdf>.

Jay Peak, Inc.; Q Resorts, Inc.; Jay Peak Hotel Suites, LP; Jay Peak Hotel Suites Phase II, LP; Jay Peak Management, Inc.; Jay Peak Penthouse Suites, LP; Jay Peak GP Services, Inc.; Jay Peak Golf and Mountain Suites, LP; Jay Peak GP Services Golf, Inc.; Jay Peak Lodge and Townhouses, LP; Jay Peak GP Services Lodge, Inc.; Jay Peak Hotel Suites Stateside, LP; Jay Peak GP Services Stateside, Inc.; Jay Peak Biomedical Research Park, LP; and ANC Bio Vermont GP Services, LLC.¹⁸ (In addition, this includes the assets formally controlled by the Relief Defendants in the SEC complaint.)

Thus, those formerly running and owning these projects -- i.e., who were originally authorized by VACCD RC to do so -- were rid of that authority. In addition, on April 12, 2016 a Florida U.S. District Court order prohibited Quiros and Stenger from participating (a) in any issuance, sale, or offer of securities associated with the EB-5 Program, or (b) managing, administering, or controlling any commercial enterprise or project issuing securities associated with the EB-5 Program.¹⁹

A settlement was announced April 13, 2017 between Goldberg and Raymond James & Associates, with the latter to pay the receivership \$150 million.²⁰ A federal court granted final approval to the settlement on June 30, 2017; this has significant potential to mitigate some of the problems associated with this matter.²¹ For instance, this inter alia could help avoid the loss of the \$500,000 investment for numerous EB-5 investors associated with the Jay Peak Biomedical Research Park LP and Q Burke Mountain Resort, Hotel & Conference Center LP projects, pay off some contractor liens for some project work already completed, and allow completion of the construction for the Jay Peak Hotel Suites Stateside LP project.²² In the Receiver's press statement about the settlement, Goldberg was very thankful of Vermont State government officials' helping to structure the settlement and protect "the defrauded investors and creditors since the very beginning of the case".²³

II. Analysis

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

¹⁸ See <https://jaypeakreceivership.com/wp-content/uploads/2016/04/DE-13-Order-Granting-Motion-for-Appointment-of-Receiver-3.43.19-PM-2.pdf>, p.1-2.

¹⁹ See <https://jaypeakreceivership.com/wp-content/uploads/2016/04/DE-11-TRO-Order-Signed-Filed-1.pdf>.

²⁰ For instance, see the Receiver's website: https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf.

²¹ See <https://vtdigger.org/2017/06/30/judge-gives-final-ok-financial-firms-settlement-eb-5-case/>; *VT Digger*, Alan Keays, "Judge Gives Final OK to Financial Firm's Settlement in EB-5 Case", June 30, 2017.

²² See the Receiver's website: https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf.

²³ *Ibid.*, p.1.

Immigration and Nationality Act (“INA”), removal of conditions on lawful permanent residence under section 216A of the INA, and implementing regulations following their designation. *See, e.g.*, 8 C.F.R. § 204.6(m)(6)(i)(A). 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 and may subvert a purpose of Section 610(a)-(b) of the Appropriations Act, which provides for regional centers as a vehicle to concentrate pooled investment in defined economic zones 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.

USCIS has considered all evidence provided “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 that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program’s requirements.

1. Administrative Oversight (8 CFR 204.6(m)(6)):

Monitoring and Oversight is a critical responsibility 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. A Regional Center must continue to demonstrate ongoing active engagement in monitoring, oversight and due diligence of all investment activities under its sponsorship. This is essential for USCIS to determine that the Regional Center is in compliance with 8 CFR 204.6.

The Form I-924 Instructions state that, “The approval notice will provide information about the responsibilities and obligations of your USCIS designated regional center. It will also list the evidence to submit in support of regional center-associated individual EB-5 petitions, as well as details on the reporting and oversight requirements for regional centers.” The Regional Center’s letter reaffirming its designation, dated June 11, 2007, specifically stated:

“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 on a quarterly basis in order to report to USCIS upon request the following year to date” information . . .

Specifically, that letter states that the Regional Center must be prepared to explain

“How the VACCD-RC is administering its regional center and is actively engaged in supporting a due diligence screening of its alien investors’ lawful source of capital and the alien investor’s ability to fully invest the requisite amount of capital”, and

“How the VACCD-RC is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the State of Vermont.”

Similarly, the USCIS amendment approval letters dated October 6, 2009 and August 12, 2010 convey VACCD-RC’s administration, oversight, and management responsibilities, as described immediately above.

Yet the allegations noted in the SEC, Vermont, and Investor complaints, plus other information detailed below, indicate serious problems with various VACCD RC projects, suggesting inadequate monitoring, oversight, and management by the Regional Center.

As mentioned above, the SEC complaint alleges that over \$200 million of EB-5 investor funds overall were misused, including at least \$50 million being misappropriated by Quiros for unpermitted purposes, including personal use. All in all, the SEC complaint filed 52 counts against Quiros, Stenger and 7 NCEs associated with the VACCD RC. According to the SEC and VT complaints, the alleged malfeasance went on from 2008 through the filing of the complaints in April, 2016 – a total of 8 years.²⁴ Eight NCEs were involved in the alleged far-ranging impropriety mentioned in

²⁴ This is detailed throughout the SEC and Vermont complaints.

the SEC and Vermont complaints.²⁵ However, USCIS notes that not all of the Regional Center's projects are associated with the SEC and Vermont complaints – only a subset of them are – and that the alleged problems therein with the projects were not perpetrated by any Vermont State or VACCD RC employee; instead, the main defendants in the SEC and Vermont complaints are Ariel Quiros and William Stenger. Nonetheless, evidence in the record indicates that the Regional Center's failure to provide adequate oversight and monitoring of its projects allowed the alleged malfeasance by Quiros and Stenger to occur and jeopardize the Regional Center's ability to promote economic growth within EB-5 Program requirements, as well as the EB-5 investors' investments.

For instance, in terms of insufficient regional center monitoring and oversight, a November, 2016 Vermont press article notes that despite a former business partner and others raising questions about financial irregularities at Jay Peak in 2012, various high level officials, including Governor Peter Shumlin, went on to promote Jay Peak projects overseas and at press events in Vermont in 2013.²⁶ The article indicates that “during this period regional center staff did not require the Jay Peak developers to submit quarterly reports (to the State) as mandated under agreements with the State”.²⁷ As for these agreements, the Jay Peak developers signed Memoranda of Understanding (MOUs) with VACCD to obtain State approval for each project. These MOUs contain provisions that the developers would provide VACCD quarterly status reports on their projects.²⁸ If this article is correct, then VACCD RC fell short in fulfilling its monitoring and oversight responsibilities.

Further, these MOUs mainly discuss the role of the project managers from the private sector (e.g., William Stenger) in performing project monitoring, oversight, and management functions to assist VACCD in this regard. That is, the MOUs do *not* focus on the role of VACCD or the Regional Center to carry out these duties.²⁹ As seen above and in the SEC and Vermont complaints, it appears that for years

²⁵ These were the Jay Peak Hotel Suites LP, Jay Peak Hotel Suites Phase II LP, Jay Peak Penthouse Suites LP, Jay Peak Golf and Mountain Suites LP, Jay Peak Lodge and Townhouses LP, Jay Peak Hotel Suites Stateside LP, Jay Peak Biomedical Research Park LP, and Q Burke Mountain Resort, Hotel & Conference Center LP.

²⁶ See http://www.stowetoday.com/stowe_reporter/news/state_news/judge-jay-peak-developer-was-architect-of-fraud/article_fa189328-b1ba-11e6-b6f4-5bfb172cda73.html; *Stowe Reporter*, Anne Galloway and Alan Keays, “Judge: Jay Peak developer was architect of fraud”, November 23, 2016.

²⁷ *Ibid.*, p. 2.

²⁸ For example, see page 2 of the MOU between (1) the State of Vermont, and (2) Jay Peak Hotel Suites LP, Jay Peak Hotel Suites Phase II LP, Jay Peak Penthouse Suites LP, Jay Peak Golf and Mountain Suites LP, Jay Peak Lodge and Townhouses LP, and Jay Peak Hotel Suites Stateside LP, signed on November 22 and 24, 2010. It inter alia notes “Jay Peak will further support (V)ACCD's compliance with regional center requirements by providing on a quarterly basis reports on its activities, overseas meetings and other relevant efforts within and outside the United States to promote investment in the Jay Peak project through the EB-5 Alien Investor Entrepreneur Regional Center Pilot Program”.

²⁹ The MOUs focus on the project managers supporting VACCD in its compliance responsibilities. For instance, as stated on page 2 of the MOU cited in the previous footnote, “(V)ACCD desires to obtain assistance in the oversight and management of the related, intertwined and successive Jay Peak EB-5 Entrepreneur Investment projects within (V)ACCD's Regional Center and to assure these projects' compliance with U.S. immigration law and regulations

VACCD RC relied excessively – if not primarily – on the third-party project managers to perform oversight functions, rather than taking on those responsibilities itself. Even where a regional center has an outside party providing management services – as occurred here – the ultimate responsibility for compliance with the relevant statutes and regulations, remains with the regional center itself. Even though the VACCD had MOUs with their associated NCEs, VACCD RC retained ultimate responsibility for monitoring the NCEs’ fulfillment of those contracts and ensuring the NCEs and their associated projects operated in accordance with the regulations and statutes governing the Program.

In addition, the Regional Center further demonstrated inadequacy in overseeing and managing its projects when it allowed marketing of at least the Jay Peak Biomedical project to proceed when it strongly suspected problems existed with that. According to VACCD’s August 25, 2016 reply to USCIS’s July 8, 2016 Request for Information, VACCD’s concerns with the Jay Peak Biomedical project “evolved over time, beginning in late 2013 until the SEC and Vermont fraud actions were filed in April, 2016”.³⁰ They also note they evaluated information on the Jay Peak projects brought to them by 3rd parties before late 2013, but “the (V)ACCD did not believe that there was at that time a basis to suspend or take other actions with respect to these projects”.³¹ Around or after June, 2014 “(V)ACCD then froze all future solicitations (by the project managers) of investors for the Jay Peak Biomedical project”, but then later allowed fundraising for the project to resume in April, 2015.³² As a result of the DFR and SEC investigations, VACCD “became aware in the Fall of 2015 of the likelihood that funds raised for the various Jay Peak projects (other than Burke) were diverted”.³³

Even though VACCD required any EB-5 funds invested in this project as of April, 2015 and thereafter to be put in an escrow fund – only to be released for project use pending a satisfactory financial review (which has not yet occurred)³⁴ – this still allowed the project to continue to collect funds that they knew, suspected, or should have known were in jeopardy of not being used in compliance with EB-5 Program requirements. For instance, in terms of the timing, according to USCIS records, three Form I-526 petitions for Jay Peak Biomedical were submitted between January and April, 2016, after VACCD and DFR knew of or suspected the (alleged) problems with this project. (Further, USCIS has no record that the Regional Center informed USCIS of these concerns on any of its annual filings or in any other correspondence.) Thus, VACCD may have allowed marketing to occur for a project suspected of serious malfeasance. This also allowed these funds to be invested, even though (1) they may not have been able to be used for their intended purpose for some time, due to legal concerns and other problems, and (2) it

concerning investments within a regional center in the EB-5 visa preference category and, thereby, to have greater assurance of its compliance with regional center requirements”. Thus, while the MOUs focus on the role of the project managers, they do acknowledge VACCD’s compliance responsibilities within the EB-5 Program.

³⁰ See p. 19 of the reply.

³¹ Ibid., p. 19. Some 3rd parties either made public statements through the media or alleged to the State about malfeasance associated with the Jay Peak projects before then.

³² Ibid., p. 19.

³³ Ibid., p. 21.

³⁴ Ibid., p. 19.

might jeopardize and at minimum delay investors' goal of attaining U.S. permanent residency, in line with EB-5 Program requirements.

Also, between April 21 and June 13, 2016, 3 Form I-526 petitions were submitted for the Burke Mountain Resort project, which again seems improper (and late), because the SEC and Vermont complaints allege that Quiros wrongly used about \$7 million from a margin loan backed by EB-5 investor funds to purchase Q Burke Mountain Resort, LLC.³⁵ (Quiros was the Managing Principal and sole member of Q Burke Mountain Resort, LLC, which owned the Burke hotel.) In fact, 2 of these 3 I-526s were submitted 1-2 months *after* the SEC and Vermont complaints were made public. This pattern of (in)action by the Regional Center, is contrary to the intent of the Program, as it undermined investors' ability to comply with EB-5 statutory and regulatory requirements and jeopardized their eligibility for EB-5 classification.

However, USCIS acknowledges that the Vermont State government has taken actions to improve their monitoring and oversight of the VACCD RC projects. Since the MOU was signed by the VACCD and DFR in December, 2014, the DFR has been involved in what appears to be a rigorous compliance program for all Regional Center projects. This includes the DFR apparently setting robust standards that new EB-5 projects must comply with before associating with VACCD RC, and performing comprehensive monitoring and oversight activities for current projects (such as physically visiting and inspecting all EB-5 projects in active construction, requiring annual certified project audits by independent accountants that are to be given to DFR, enacting stricter requirements surrounding the existence of escrow and the release of escrowed funds, and much more).

Nonetheless, based on the totality of the evidence detailed above, it appears that the Regional Center failed to properly engage in management, monitoring and oversight for many years, as required by the Program. Thus, USCIS has determined, by a preponderance of the evidence, that the Regional Center no longer serves the purpose of promoting economic growth.

2. Diversion of EB-5 funds

The allegations in the SEC and Vermont complaints indicate that EB-5 funds were used for purposes that are inconsistent with the business plans and Private Placement Memoranda (PPMs) submitted to USCIS by the Regional Center and in furtherance of job creation. According to the Vermont complaint, EB-5 "investors were not informed through the (PPMs') Source and Use of Investor Funds or in any other part of any offering document that their funds would be used in any other way than for the purposes specifically identified in the PPMs, including, for example, that their funds would be:

- (a) Misused to purchase T-bills;
- (b) Pledged as collateral for loans for non-project purposes;
- (c) Misappropriated for the personal benefit of Quiros;

³⁵ For example, see page 43 of the SEC complaint.

- (d) Misused to pay for other EB-5 Projects' costs or other non-disclosed costs; or
- (e) Commingled with funds invested in other projects."³⁶

As for further specifics regarding the diversion and misuse of EB-5 funds, the Vermont complaint also notes that "since 2008, Quiros has misappropriated at least \$50 million of investor funds to, among other things: (1) purchase Jay Peak Resort; (2) purchase Burke Mountain Resort; (3) back a personal line of credit to pay his personal income taxes; (4) pay taxes for an unrelated company Quiros owns; and (5) purchase a luxury condominium in Trump Place New York. Quiros also improperly used investor funds to pay for margin loan interest and fees (\$2.5 million) and to pay down and off margin loan debts".³⁷

As detailed to USCIS in the PPMs submitted by the Regional Center and petitioners it sponsors, the use of investors' funds and resulting job creation did not occur as originally intended or promised to the EB-5 investors for 7 projects. These projects are: Jay Peak Hotel Suites, LP, Jay Peak Hotel Suites Phase II, LP, Jay Peak Penthouse Suites, LP, Jay Peak Golf and Mountain Suites, LP, Jay Peak Lodge and Townhouses, LP, Jay Peak Hotel Suites Stateside LP, and Jay Peak Biomedical Research Park, LP.³⁸

For instance, the job creation for the Jay Peak Hotel Suites (or Phase I) project, was based on spending \$10.4 million on construction costs, \$1.6 million for furnishings and equipment, \$0.8 million for utilities and common areas, \$0.6 million for contingencies, and \$0.35 million for pre-opening expenses and working capital³⁹. (Other intended spending listed in the PPM included \$1.9 million for developer fees and \$1.8 million to purchase the land.⁴⁰)

Instead, the amended Vermont complaint notes that "defendants used investor money in ways that materially differed from the representations contained in the Phase I PPM, including the Source and Use of Investor Funds, and routinely exceeded their authority by borrowing and comingling partnership funds without the consent of investors. For example:

1. Quiros misappropriated \$12.4 million in Phase I investor funds to finance the Acquisition of Jay Peak Resort through Q Resorts;
2. Quiros and Phases I and II General Partner improperly took more than \$1.5 million of Phase I investor funds during the build out of Phase I; and

³⁶ See p. 27 of the amended Vermont complaint, <http://www.dfr.vermont.gov/sites/default/files/jaypeak/Amended%20Complaint%20%28State%20v.%20Quiros%29%20FILED.PDF>.

³⁷ Ibid., p. 3-4.

³⁸ Note: these are respectively the Phase I-VII Jay Peak projects.

³⁹ See p. 27 of the amended Vermont complaint, <http://www.dfr.vermont.gov/sites/default/files/jaypeak/Amended%20Complaint%20%28State%20v.%20Quiros%29%20FILED.PDF>

⁴⁰ Ibid., p. 27.

3. Quiros, assisted by Stenger, pledged Phase I funds as collateral for margin loans and used Phase I investor funds to pay off margin loan debt and interest. For example, in a series of transactions between June 23, 2008 and April 23, 2009, \$181,747 of Phase I investor funds were used to pay Phase I margin account interest, and on September 3, 2008, approximately \$160,000 of Phase I investor funds were used to pay down the Phase II margin account.

Defendants did not obtain the prior consent of the investors for any of the actions described above.”⁴¹

Likewise, the SEC and Vermont complaints’ descriptions of the diversion of funds problems involving the 6 other projects are replete with detail similar to that just given for the Jay Peak Hotel Suites project.⁴² For example, for the Jay Peak Penthouse Suites project, “Quiros, assisted by Stenger and Q Resorts, misused \$32.5 million in Penthouse Suites (EB-5) investor funds (i.e., 100% of the EB-5 investments)... by using that money to pay down margin loan debt accumulated in...(Quiros’s) Third Margin Account”.⁴³ Similarly, for the Jay Peak Hotel Suites Stateside project, “Quiros, assisted by Stenger, transferred approximately \$42.3 million in Stateside (EB-5) investor funds...to a Quiros-controlled Raymond James account, which Quiros had pledged as collateral for margin loans”.⁴⁴ Further, for the Jay Peak Biomedical project – where the greatest abuse allegedly occurred for any project – “Quiros, assisted by Stenger, transferred at least \$62 million in AnC Bio (EB-5) investor funds to a Quiros-controlled Raymond James account, which Quiros had pledged as collateral for (personal) margin loans”.⁴⁵ In addition, for that same project, “Quiros, assisted by Stenger, misused \$18.2 million in AnC Bio (EB-5) investor funds ...to pay off” one of Quiros’s personal margin loan accounts.⁴⁶ The total diversion and misuse of EB-5 funds for this project alone was over *\$80 million*.⁴⁷ In each instance, the defendants in the complaints did not obtain the prior consent of the EB-5 investors for these actions, and none of these uses was allowed in the job creation activities detailed in the PPMs associated with each project.

These diversions of funds for the Jay Peak Hotel Suites Stateside and Jay Peak Biomedical projects helped create budget shortfalls for and an inability to complete the intended project work. According to the SEC complaint, “between October 2011 and December 2012, (Jay Peak Hotel Suites) Stateside... raised \$67 million from 134 investors through an EB-5 offering of limited partnership interests to build an 84-unit hotel, 84 vacation rental cottages, a guest recreation center, and a medical center. Although the Stateside... offering was fully subscribed, the Defendants have only built the hotel. A small amount of

⁴¹ Ibid., p. 27.

⁴² For example, see pages 28-43 of the amended Vermont complaint. Given that (1) these complaints provide a very similar analysis to that just described for the Jay Peak Hotel Suites project, and (2) the VACCD RC is quite familiar with the Vermont complaint since it was issued by the State’s DFR and Attorney General, only some of the more salient examples of diverted funds for the other projects will be discussed here.

⁴³ See p. 31 of the amended Vermont complaint.

⁴⁴ Ibid., p. 37.

⁴⁵ Ibid., p. 39.

⁴⁶ Ibid., p. 39.

⁴⁷ Ibid., p. 39.

work has been done on building the cottages and work has not yet begun on the recreation and medical centers".⁴⁸ VACCD estimated that the budget shortfall to complete the project is \$17.5 million.⁴⁹ According to a press report, the \$150 million settlement between the Receiver and Raymond James & Associates may result in this project finally being completed.⁵⁰ However, even if this happens, long delays have occurred with the project work and job creation. As a result of the alleged fraud involved with these projects at issue in these two complaints, 42 contractors and 513 trade creditors have not yet been fully paid for their work or for outstanding debt.⁵¹ Some layoffs with contractors and creditors may have thus resulted from this unpaid work. This clearly hindered the economic growth process, in contravention to Program objectives. Also, this jeopardized the ability of the EB-5 investors to gain permanent U.S. residency in accord with the regulatory requirements of the Program.

Likewise, for the Jay Peak Biomedical project, the SEC complaint alleges that "although the Defendants have raised almost three-quarters of the money for the research facility, they have done almost no work on it other than site preparation and ground-breaking, and are years behind their original construction and revenue schedule".⁵² However, the Receiver's plans are that this project will never be completed, as his intention is to refund \$67 million to most, but not all, of the EB-5 investors in this project.⁵³ In addition, the settlement reportedly does not cover the contractors owed for previously completed work on this project.⁵⁴ This minimal project progress, including that the project will never be consummated, obviously obviates the Program's economic growth goal and requirement. Further, while the settlement will repay some of the EB-5 investors in this project, it will not cover them all. Moreover, for those it will cover, they will still be unable to achieve U.S. permanent residency in accordance with EB-5 regulations.

The scenario is also similar for the Q Burke Mountain Resort project, for which the hotel has been built, but the aquatic facility, tennis center, and upgraded mountain bike facility need to be completed. VACCD noted that the Receiver intended to complete the project with additional EB-5 funds.⁵⁵ In addition, \$6.6 million from the settlement would be used to satisfy customer claims against this project and to repay other debt on the Burke Hotel.⁵⁶ But, even if these two events occur, the same problems as discussed above have existed – i.e., a delay in job creation and thus a hampering of economic growth,

⁴⁸ See the SEC complaint, p. 7.

⁴⁹ See page 8 of VACCD's August 25, 2016 Reply to USCIS's July 8, 2016 Request for Information.

⁵⁰ See http://www.stowetoday.com/news_and_citizen/news/local_news/better-late-than-never-percy-gets-cb-pay/article_b1ed7fc8-3be9-11e7-9ce7-e7ba214b9d6a.html -- Andrew Martin, *News and Citizen*. "Better late than never – Percy gets EB-5 pay", May 18, 2017.

⁵¹ *Ibid.*, p.1.

⁵² See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>, p. 3.

⁵³ See http://www.stowetoday.com/news_and_citizen/news/local_news/better-late-than-never-percy-gets-cb-pay/article_b1ed7fc8-3be9-11e7-9ce7-e7ba214b9d6a.html -- Andrew Martin, *News and Citizen*. "Better late than never – Percy gets EB-5 pay", May 18, 2017, and the Receiver's website: https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf.

⁵⁴ *Ibid.*

⁵⁵ See pages 7-8 of VACCD's August 25, 2016 reply to USCIS's July 8, 2016 Request for Information.

⁵⁶ See the Receiver's website: https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf.

possible past job layoffs with contractors and creditors, and jeopardizing the ability of some EB-5 investors to attain permanent residency in accord with Program regulations.

Employing EB-5 funds for purposes unrelated to the proposed job creating activities, not only casts doubt on the legitimacy of the projects' representations on the use of EB-5 funds in furtherance of job creation, but may also potentially impact the Regional Center's investors whose petitions rely on the job creation for Program eligibility.

A core requirement of the Program is that EB-5 capital must be placed at risk for the purpose of generating a return. In situations where the NCE is not the job-creating entity, *Matter of Izummi* as well as USCIS policy, requires that, in order to be considered at-risk, the full amount of EB-5 capital "must be made available to the business(es) most closely responsible for creating the jobs upon which EB-5 eligibility is based."⁵⁷ For example, the use of EB-5 capital for paying down personal margin loan debt, paying off state and federal taxes for non-project entities, and purchasing luxury condominiums for Quiros in New York City, violates this requirement because those funds are not going to the job creating activity upon which EB-5 eligibility is predicated and, consequently, the full amount of capital will not be made available to the businesses most closely related to job creation.

Furthermore, the use of EB-5 investor funds to pay for the activities noted above contradicts the terms of the project PPMs submitted to USCIS by the Regional Center. The PPMs indicate that EB-5 capital would be used for valid job creation expenses associated with the projects. The uses of the EB-5 capital indicated in the PPMs and business plans provide the basis for the economic impact analysis submitted by the petitioners or Regional Center to show how the projects will create jobs and benefit the economy.

Based on the evidence detailed above, it appears that the Regional Center's project managers used EB-5 funds for purposes unrelated to the job creating business activities of the NCEs and JCEs. Certainly, better Regional Center oversight of the projects may have prevented this. Based on this apparent diversion and the seriousness of its consequences, 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.

3. Further Misrepresentations Involving the Projects

In addition to the diversion of funds noted above that misled EB-5 investors and USCIS, there were other material misrepresentations involving these projects. Court documents indicate that several PPMs were allegedly contravened, in that some contributions Quiros and Stenger were supposed to make to various

⁵⁷ *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998). See also USCIS Memorandum, "EB-5 Adjudications Policy", PM-602-0083, p. 16 (May 30, 2013); and USCIS Policy Manual, Volume 6, Part G, Chapter 2 on "Capital, Made Available" available online at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartG-Chapter2.html>.

projects, were in fact never made. According to the amended Vermont complaint, Quiros and Stenger, through either Jay Peak, Inc. or the AnC Bio Sponsor, were supposed to contribute a total of over \$23.8 million to 4 projects, but in fact did not.⁵⁸ This included not contributing:

- at least \$3.8 million of the \$10 million they were required to contribute to the Jay Peak Golf and Mountain Suites project;⁵⁹
- over \$6.6 million of the \$15 million they were required to contribute to the Jay Peak Lodge and Townhouses project;⁶⁰
- at least \$7.4 million of the \$20 million they were required to contribute to the Jay Peak Stateside Suites project;⁶¹ and
- more than \$6 million of the \$8 million they were required to contribute to the Jay Peak Biomedical project”.⁶²

This violated the terms of the PPMs which were provided to the EB-5 investors and USCIS. Not only did this mislead these two sets of parties, but it also contributed to the budget shortfalls for the Jay Peak Biomedical and Jay Peak Stateside projects, thus harming their ability to create jobs and promote economic growth. It also risked the chances of some EB-5 investors to obtain approval of their I-526 and I-829 petitions, in accordance with Program regulations.

The Jay Peak Biomedical project incurred even further misrepresentations to the EB-5 investors and USCIS. The PPM for this project states that a “certain ANC Bio Product was ‘currently in the process of FDA approval’ but that, in reality, Defendants had not and upon information and belief, have never applied for FDA approval for the ANC Bio Products despite stating the project was set to commence in October, 2014, without also including the material contingency that commencement of the project was dependent on FDA approval, and without disclosing the risk that the FDA might not approve the ANC Bio Products”.⁶³ This was a very material misrepresentation which made the project’s prospects appear much more favorable than warranted by the facts. As above, this clearly jeopardized the EB-5 investors’ likelihood of attaining U.S. permanent residency in line with Program requirements. It also exacerbated USCIS’s ability to adjudicate EB-5 investors’ petitions associated with this project. Again, with more and better oversight from the Regional Center, this all might have been avoided.

⁵⁸ See

<http://www.dfr.vermont.gov/sites/default/files/jaypeak/Amended%20Complaint%20%28State%20v.%20Quiros%29%20FILED.PDF>, p. 31-39.

⁵⁹ Ibid., p. 33.

⁶⁰ Ibid., p. 35.

⁶¹ Ibid., p. 38.

⁶² Ibid., p. 39.

⁶³ Ibid., p. 39-40.

4. Adverse Effects on Future Projects and Job Creation

USCIS recognizes that VACCD RC has completed a number of projects in the past and in the process has created many jobs. Furthermore, some of these projects are ongoing, such as the Mount Snow project, and will likely create additional jobs in the future. However, it appears that the SEC and Vermont complaints and the resulting extensive adverse publicity have negatively affected the VACCD RC's ability in the future to sponsor projects and create new jobs. For example, two NCEs which have participated in projects with the VACCD RC have recently said they will not be doing so in the future.

First, and as noted above, Stowe Aviation has ended its relationship with the VACCD RC to carry out a project expanding the Morrisville-Stowe State Airport. Russell Barr, Stowe Aviation's owner, said that marketing for the project was hampered by allegations of fraud at Jay Peak Resort.⁶⁴ Second, Peak Resorts Inc. has partnered with the VACCD RC to develop the Mount Snow project, which will expand its snow-making capacity and build a new Carinthia ski lodge. However, Peak Resorts's next EB-5 project will build new residential units at Mount Snow, but it will not work with the VACCD RC, but instead will form its own regional center for this.⁶⁵ Peak Resorts Executive, Dick Deutsch, reportedly "told investors that he wanted to divorce Mount Snow's projects from the state's EB-5 troubles", which he thought led to a delay in getting their EB-5 funds released for the first phase of the Mount Snow project.⁶⁶ Thus, the SEC and Vermont complaints and the resultant publicity appear to have dampened the future ability of the VACCD RC to sponsor projects and promote economic growth.

III. Conclusion

USCIS has determined by a preponderance of the evidence that the Regional Center does not serve the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. Therefore, USCIS intends to terminate the designation of the Regional Center in the Program.

In accordance with 8 C.F.R. § 204.6(m)(6)(iv), the Regional Center will be provided 30 days from receipt of this notice to rebut the grounds alleged above. Failure to respond to this notice of intent to terminate will result in termination of the regional center designation based on the above stated reasons.

Please mail any evidence you wish to provide in opposition to the grounds alleged in this notice of intent to terminate to the address noted below and include a copy of this letter on top of your submission.

⁶⁴ See <https://vtdigger.org/2017/04/03/stowe-aviation-withdraws-vermont-cb-5-regional-center/>; *VTDigger*, Anne Galloway, "Stowe Aviation Withdraws from Vermont EB-5 Regional Center", April 3, 2017, p. 2.

⁶⁵ See <https://vtdigger.org/2017/03/10/mount-snow-split-state-plans-eb-5-fueled-expansion/>; *VTDigger*, Mike Faher, "Mount Snow to Split with State, Plans EB-5-Fueled Expansion", March 10, 2017.

⁶⁶ *Ibid.*, p. 4-5.

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



Instructions for Notice of Appeal or Motion

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-290B
OMB No. 1615-0095
Expires 12/31/2018

What Is the Purpose of Form I-290B?

Form I-290B, Notice of Appeal or Motion, is used to file an appeal or motion to reopen or reconsider certain decisions under the immigration laws.

When Should I Use Form I-290B?

Visit the U.S. Citizenship and Immigration Services (USCIS) website at www.uscis.gov/i-290b to view appeal and motion eligibility by form type.

For most appeals and motions, Form I-290B must be filed within 30 calendar days after personal service of the decision, 33 calendar days if the decision was mailed. An appeal relating to a revocation of an immigrant petition must be filed within 15 calendar days after personal service of the decision, 18 calendar days if the decision was mailed. The date of service is normally the date of the decision.

Late filed appeals that do not meet the requirements for a motion to reopen or reconsider will be rejected. Late filed motions may be dismissed, however, a late filed motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and beyond the applicant's or petitioner's control.

Form I-290B may be used in the following circumstances:

1. To file an appeal with the Administrative Appeals Office (AAO); or
2. To file a motion to reconsider and/or a motion to reopen with the AAO, a field office, or a service center.

Who May Not File Form I-290B?

1. Per Department of Homeland Security (DHS) regulations, the **beneficiary** of a visa petition that is denied or revoked by USCIS **MAY NOT** file an appeal or a motion of that visa petition. Only an applicant or petitioner may file an appeal or motion. Similarly, an attorney or Board of Immigration Appeals (BIA)-accredited representative **MAY NOT** file an appeal or motion on the behalf of a **beneficiary**.
2. A petitioner whose Form I-130, Petition for Alien Relative, or Form I-360, Petition for Widow(er), was denied or was revoked by USCIS **MAY NOT** use Form I-290B to file an appeal with the BIA. Instead, the petitioner or the petitioner's attorney or BIA-accredited representative must file Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of an Immigration Officer, in accordance with the instructions included in the denial or notice of revocation.

For filing instructions of Form EOIR-29, visit the USCIS website at www.uscis.gov/eoir-29 or the Department of Justice website at www.justice.gov/eoir/eoirforms/eoir29.pdf.

3. Do not use this form to appeal a Department of State overseas consular officer's denial of your visa application (for example, Form DS-160, DS-156, DS-156E, DS-156K, DS-117, DS-157, DS-230, or DS-260). For information about visa application denials, please reference the Department of State website.
4. Do not use this form to file an appeal on a Special Agricultural Worker (SAW) or Legalization Application. Appeals on these case types must be filed on Form I-694, Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act.

General Instructions

USCIS provides forms free of charge through the USCIS website. In order to view, print, or fill out our forms, you should use the latest version of Adobe Reader, which you can download for free at <http://get.adobe.com/reader/>. If you do not have Internet access, you may call the USCIS National Customer Service Center at 1-800-375-5283 and ask that we mail a form to you. For TTY (deaf or hard of hearing) call: 1-800-767-1833. If you are filing this form electronically, you must follow the instructions provided on the USCIS website at www.uscis.gov/file-online.

Signature. Each form must be properly signed and filed. For all signatures on this form, USCIS will not accept a stamped or typewritten name in place of a signature. If you are filing this form electronically, when authorized, USCIS will accept your signature in an electronic format. If you are under 14 years of age, your parent or legal guardian may sign the form on your behalf. A legal guardian may also sign for a mentally incompetent person.

Filing Fee. Each form must be accompanied by the appropriate filing fee. (See the **What Is the Filing Fee** section of these Instructions.)

Evidence. At the time of filing, you must submit all evidence and supporting documentation listed in the **Specific Instructions** and/or **What Evidence Must You Submit** sections of these Instructions. If you are electronically filing this form, you must follow the instructions provided on the USCIS online filing website, at www.uscis.gov/file-online.

Biometric Services Appointment. USCIS may require that you appear for an interview or provide fingerprints, photograph, and/or signature at any time to verify your identity, obtain additional information, and conduct background and security checks, including a check of criminal history records maintained by the Federal Bureau of Investigation (FBI), before making a decision on your appeal or motion. After USCIS receives your request and ensures it is complete, we will inform you in writing or by email notice if you e-file your form, if you need to attend a biometric services appointment. If an appointment is necessary, the notice will provide you the location of your local or designated USCIS Application Support Center (ASC) and the date and time of your appointment or, if you are currently overseas, instruct you to contact a U.S. Embassy, U.S. Consulate, or USCIS office outside the United States to set up an appointment.

If you are required to provide biometrics, at your appointment you must sign an oath reaffirming that:

1. You provided or authorized all information in the form, and
2. You reviewed and understood all of the information contained in, and submitted with, your form, and
3. All of this information was complete, true, and correct at the time of filing.

If you fail to attend your biometric services appointment, USCIS may dismiss or deny your appeal or motion.

Copies. You should submit legible **photocopies** of documents requested, unless the Instructions specifically state that you must submit an original document. USCIS may request an original document at the time of filing or at any time during processing of an application, petition, or request. If USCIS requests an original document from you, it will be returned to you after USCIS determines it no longer needs your original.

NOTE: If you submit original documents when not required or requested by USCIS, **your original documents may be immediately destroyed upon receipt.**

Translations. If you submit a document with information in a foreign language, you must also submit a full English translation. The translator must sign a certification that the English language translation is complete and accurate, and that he or she is competent to translate from the foreign language into English. The certification should also include the date, the translator's signature and printed name, and may contain the translator's contact information.

How to Fill Out Form I-290B

1. Type or print legibly in black ink.
2. If you need extra space to complete any item within this form, use the space provided in **Part 7. Additional Information** or attach a separate sheet of paper; type or print your name and Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.
3. Answer all questions fully and accurately. If a question does not apply to you (for example, if you have never been married and the question asks, "Provide the name of your current spouse"), type or print "N/A," unless otherwise directed. If your answer to a question which requires a numeric response is zero or none (for example, "How many children do you have" or "How many times have you departed the United States"), type or print "None," unless otherwise directed.

Specific Instructions

Form I-290B is divided into **Parts 1.** through **7.** The following information should help you fill out the form.

Part 1. Information About the Applicant or Petitioner

Item Numbers 1.a. - 1.c. Full Name. Provide the full legal name of the applicant or petitioner. If the applicant or petitioner has two last names, include both and use a hyphen (-) between the names, if appropriate.

Item Number 2. Complete Name of Business/Organization (if applicable). Provide the complete name of the business or organization, without abbreviations, if applicable.

Item Number 3. Alien Registration Number (A-Number, if applicable). This is the USCIS (or former Immigration and Naturalization Service (INS)) file number. It begins with an "A" and can be found on a Permanent Resident Card or on correspondence that has been received from the Department of Homeland Security (DHS) or USCIS. If the person does not have an A-Number, leave this blank.

Item Number 4. Receipt Number. Provide the form receipt number for the application or petition that was denied by USCIS.

Item Number 5. USCIS Online Account Number (if any). If you have previously filed an application, petition, or request using the USCIS online filing system (previously called USCIS Electronic Immigration System (USCIS ELIS)), provide the USCIS Online Account Number you were issued by the system. You can find your USCIS Online Account Number by logging in to your account and going to the profile page. If you previously filed certain applications, petitions, or requests on a paper form via a USCIS Lockbox facility, you may have received a USCIS Online Account Access Notice issuing you a USCIS Online Account Number. If you received such a notice, your USCIS Online Account Number can be found at the top of the notice. If you were issued a USCIS Online Account Number, enter it in the space provided. The USCIS Online Account Number is not the same as an A-Number.

Item Numbers 6.a. - 6.i. Mailing Address. Provide the applicant's or petitioner's complete mailing address (including military APO/FPO address, if applicable).

Part 2. Information About the Appeal or Motion

Item Numbers 1.a. - 1.f. Appeal or Motion Request (Select only one box). Select a single box from **Item Numbers 1.a. - 1.f.** Do not select more than one box or make any changes to the form.

You must clearly indicate if you are filing an appeal or a motion. The adverse decision will indicate whether you may file an appeal or a motion. Although the adverse decision may indicate that you can file an appeal and a motion, you can only file one or the other using a single Form I-290B. The requirements for motions to reopen and motions to reconsider are located at 8 CFR 103.5. If you file an appeal, the reviewing office will either take favorable action or forward the appeal to the AAO. See 8 CFR 103.3. The reviewing office is the USCIS office that denied the application or petition.

NOTE: An adverse decision from the AAO may not be further **appealed** to the AAO. However, you may file a motion to reopen and/or reconsider an AAO decision with the AAO.

Item Number 2. USCIS Form for Which You Are Filing an Appeal or Motion to Reopen/Reconsider. Provide the form number for the denied application or petition (for example, Form I-140, Form I-360, Form I-129, Form I-485, Form I-601.) If you use the dropdown menu and the form number is not listed, select “other” in the dropdown menu.

Item Number 3. Specific Classification Requested. Provide the specific classification requested (for example, H-1B, R-1, O-1, EB-1, EB-2, EB-3, if applicable.) If you use the dropdown menu and the status is not listed, select “other” in the dropdown menu.

Item Number 4. Date of Adverse Decision. Provide the date of the decision that is the basis for your appeal or motion, in mm/dd/yyyy format.

Item Number 5. Office Where Last Decision Was Issued. Provide the name of the DHS office that denied or revoked the application or petition. If you are filing a motion on an adverse AAO decision, the correct office is “Administrative Appeals Office (AAO).” If you are using the dropdown menu and the office name is not listed, select “Other” in the dropdown menu.

Part 3. Basis for Appeal or Motion

Type or print the basis for the appeal or motion in **Part 7. Additional Information** or on a separate sheet of paper. You must provide your name and A-Number (if any) on the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.

Appeal: Provide a statement that specifically identifies an erroneous conclusion of law or fact in the decision being appealed. If you need extra space to complete this section, use the space provided in **Part 7. Additional Information**.

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence demonstrating eligibility at the time the underlying application or petition was filed.

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions when filed and must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of decision.

Part 4. Applicant’s or Petitioner’s Statement, Contact Information, Certification, and Signature

Complete **Section A** if you are filing an appeal or motion based on an application or petition filed by an individual.

Complete **Section B** if you are filing an appeal or motion based on an application or petition filed by an entity such as a company or business.

Item Numbers 1.a. - 6.b. Select the appropriate box to indicate whether you read this form yourself or whether you had an interpreter assist you. If someone assisted you in completing the form, select the box indicating that you used a preparer. Further, you must sign and date your form and provide your daytime telephone number, mobile telephone number (if any), and email address (if any). Every form **MUST** contain the signature of the applicant or petitioner (or parent or legal guardian, if applicable). A stamped or typewritten name in place of a signature is not acceptable.

Part 5. Interpreter's Contact Information, Certification, and Signature

Item Numbers 1.a. - 7.b. If you used anyone as an interpreter to read the Instructions and questions on this form to you in a language in which you are fluent, the interpreter must fill out this section, provide his or her name, the name and address of his or her business or organization (if any), his or her daytime telephone number, his or her mobile telephone number (if any), and his or her email address (if any). The interpreter must sign and date the form.

Part 6. Contact Information, Declaration, and Signature of the Person Preparing This Form, if Other Than the Applicant or Petitioner

Item Numbers 1.a. - 8.b. This section must contain the signature of the person who completed your form, if other than you, the applicant or petitioner. If the same individual acted as your interpreter **and** your preparer, that person should complete both **Part 5.** and **Part 6.** If the person who completed this form is associated with a business or organization, that person should complete the business or organization name and address information. Anyone who helped you complete this form **MUST** sign and date the form. A stamped or typewritten name in place of a signature is not acceptable. If the person who helped you prepare your form is an attorney or accredited representative whose representation extends beyond preparation of this form, he or she may be obliged to also submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative along with your form.

Part 7. Additional Information

Item Numbers 1.a. - 7.d. If you need extra space to provide any additional information within this form, use the space provided in **Part 7. Additional Information.** If you need more space than what is provided in **Part 7.**, you may make copies of **Part 7.** to complete and file with your form, or attach a separate sheet of paper. Type or print your name and A-Number or USCIS Online Account Number (if any) at the top of each sheet; indicate the **Page Number, Part Number,** and **Item Number** to which your answer refers, and sign and date each sheet.

**We recommend that you print or save a copy of your completed form to review in the future
and for your records.**

What Evidence Must You Submit?

You must submit all evidence requested in these Instructions with your form. If you fail to submit required evidence, USCIS may dismiss or deny your appeal or motion for failure to submit requested evidence or supporting documents in accordance with 8 CFR 103.2(b)(1) and these Instructions.

Evidence

Motion:

1. If you file a motion to reopen, the motion must be accompanied by new facts and/or documentary evidence that establish eligibility at the time of filing the initial application or petition.
2. If you file a motion to reconsider, you must provide the citations to the statute, regulation, or precedent decisions that serve as the basis for your motion to reconsider. The motion must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of the decision.

Appeals:

1. Brief

You do not need to submit a brief in support of your appeal. If you do submit a brief and/or additional evidence, you may submit these materials at the time of initial filing of Form I-290B or within 30 days of filing.

Any brief and/or additional evidence submitted after the initial filing of Form I-290B must be submitted directly to the AAO. The AAO's mailing address is available at www.uscis.gov/aaq. **DO NOT FILE FORM I-290B DIRECTLY WITH THE AAO.**

Any brief and additional evidence must specifically reference the appeal for which it is being submitted. If an affected party has filed multiple appeals with the AAO, separate copies of the brief and evidence must be provided for each individual appeal. Failure to do so may result in the return of the brief or evidence to the individual or entity that submitted it and preclude such material from consideration.

If you need more than 30 calendar days to submit a brief, you must make a written request to the AAO within 30 calendar days of filing the appeal. The AAO may grant more time to submit a brief for good cause.

2. Oral Argument

You may request an oral argument before the AAO in Washington, D.C. in a letter attached to Form I-290B. The letter must explain specifically why an oral argument is necessary (for example, why your argument cannot be adequately addressed in writing.) If your request is granted, the AAO will contact you about setting the date and time. The U.S. Government does not provide interpreters for oral arguments.

What Is the Filing Fee?

The filing fee for Form I-290B is **\$675**.

NOTE: The filing fee is not refundable, regardless of any action USCIS takes on this form. **DO NOT MAIL CASH.** You must submit all fees in the exact amounts.

Use the following guidelines when you prepare your check or money order for the Form I-290B fee:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; **and**
2. Make the check or money order payable to **U.S. Department of Homeland Security**.

NOTE: Spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

3. If you live outside the United States, contact the nearest U.S. Embassy or U.S. Consulate for instructions on the method of payment.

Notice to Those Making Payment by Check. If you send us a check, USCIS will convert it into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but will keep a copy of it. If USCIS cannot process the EFT for technical reasons, you authorize us to process the copy in place of your original check. If your check is returned as unpayable, USCIS will re-submit the payment to the financial institution one time. If the check is returned as unpayable a second time, we will reject your form and charge you a returned check fee.

How to Check If the Fees Are Correct

Form I-290B's filing fee is current as of the edition date in the lower left corner of this page. However, because USCIS fees change periodically, you can verify if the fees are correct by following one of the steps below:

1. Visit the USCIS website at www.uscis.gov, select "FORMS" and check the appropriate fee; or
2. Call the USCIS National Customer Service Center at **1-800-375-5283** and ask for fee information. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

NOTE: The fee will be the same when either an appeal or motion is filed from the denial of an application or petition with one or multiple beneficiaries, provided that they are all covered by the same application or petition, and therefore, the same decision.

Fee Waiver

The fee for Form I-290B may be waived under 8 CFR 103.7(c) if the applicant or petitioner can show an inability to pay and:

1. The appeal or motion is from a denial of an immigration benefit request where the applicant or petitioner was not required to pay a fee; or
2. The fee for the underlying application or petition could have been waived.

If you believe you are eligible for a fee waiver, complete Form I-912, Request for Fee Waiver (or a written request) and submit it and any required evidence of your inability to pay the filing fee with this form. You can review the fee waiver guidance at www.uscis.gov/feewaiver.

No fee is required when Form I-290B is filed to appeal a denial of a petition for a special immigrant visa by a Special Immigrant Iraqi or Afghan national who worked for or on behalf of the U.S. Government in Iraq or Afghanistan.

Where to File?

File the appeal or motion as indicated on the USCIS Web page Direct Filing Addresses for Form I-290B, Notice of Appeal or Motion, at www.uscis.gov/i-290b-addresses.

Form I-290B is not considered received by USCIS unless and until it is filed at the proper location.

If you are filing a motion to reopen/reconsider an AAO decision, file the motion with the address as indicated on the chart located at www.uscis.gov/i-290b-addresses.

DO NOT FILE FORM I-290B DIRECTLY WITH THE AAO.

Your form will be rejected if you improperly file it.

Please see our website at www.uscis.gov/I-290B or call our National Customer Service Center at 1-800-375-5283 for the most current information about where to file this form. For TTY (deaf or hard of hearing) call: 1-800-767-1833.

Address Change

An applicant or petitioner who is not a U.S. citizen must notify USCIS of his or her new address within 10 days of moving from his or her previous residence. For information on filing a change of address, go to the USCIS website at www.uscis.gov/addresschange or contact the USCIS National Customer Service Center at 1-800-375-5283. For TTY (deaf or hard of hearing) call: 1-800-767-1833.

NOTE: Do not submit a change of address request to the USCIS Lockbox facilities because the Lockbox does not process change of address requests. If you have an online account, you may also change your address in the USCIS online filing system by logging into your user account and updating your Account Profile.

If you change your address while your **appeal** is pending, you should also send a written notice of your change of address to the AAO to ensure that you receive the decision. Include the type of case that was denied and any available tracking number (receipt number and/or A-Number). The AAO's mailing address is available at www.uscis.gov/ao or by calling the USCIS National Customer Service Center at the number below.

If you change your address after you file a **motion**, the address where you should send your notice depends on where your motion is pending. If your motion has been forwarded to the AAO, send a written notice of your change of address to the AAO. If your motion has remained with the office where you submitted it, send the notice to that office. Include the type of case that was denied and any available tracking number (receipt number and/or A-Number).

To find out where your case is currently located, call the USCIS National Customer Service Center number at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

To find out the status of your case, visit the USCIS website at: <https://egov.uscis.gov/casestatus/landing.do>.

Processing Information

Initial Processing. Once USCIS accepts your form we will check it for completeness. If you do not completely fill out this form, you will not establish a basis for your eligibility and USCIS may reject, dismiss, or deny your appeal or motion.

Requests for More Information. We may request that you provide more information or evidence to support your appeal or motion. We may also request that you provide the originals of any copies you submit. If USCIS requests an original document from you, it will be returned to you after USCIS determines it no longer needs your original.

Decision. The decision on Form I-290B involves a determination of whether you have established eligibility for the immigration benefit you are seeking. USCIS will notify you of the decision in writing or, for forms filed electronically, through an electronic notice.

USCIS Forms and Information

To ensure you are using the latest version of this form, visit the USCIS website at www.uscis.gov where you can obtain the latest USCIS forms and immigration-related information. If you do not have Internet access, you may order USCIS forms by calling the Forms Request Line at **1-800-870-3676**. You may also obtain forms and information by calling the USCIS National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Instead of waiting in line for assistance at your local USCIS office, you can schedule an appointment online at www.uscis.gov. Select "Schedule an appointment online" and follow the screen prompts to set up your appointment. Once you finish scheduling an appointment, the system will generate an appointment notice for you.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-290B, we will deny your motion or dismiss your appeal, and may deny (or revoke the approval of) any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

USCIS Privacy Act Statement

AUTHORITIES: The information and evidence requested on this form is collected under section 103 of the Immigration and Nationality Act, as amended, and 8 CFR sections 103.3 and 103.5.

PURPOSE: The primary purpose for providing the requested information on this form is to enable you to file an appeal or motion to reopen or motion to reconsider certain decisions by USCIS or a bond breach determination issued by U.S. Immigration and Customs Enforcement. USCIS will use the information you provide on this form to adjudicate your appeal or motion.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, and any requested evidence, may delay a final decision or result in dismissal of your appeal or denial of your motion.

ROUTINE USES: DHS may share the information you provide on this form with other Federal, state, local, and foreign government agencies and authorized organizations. DHS follows approved routine uses described in the associated published system of records forms [DHS/USCIS-007 - Benefits Information System and DHS/USCIS-001 - Alien File, Index, and National File Tracking System of Records, and DHS/USCIS-015 Electronic Immigration System - 2 Account and Case Management System of Records] which you can find at www.dhs.gov/privacy. DHS may also share the information, as appropriate, for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The public reporting burden for this collection of information is estimated at 90 minutes per response in paper format, and 1 hour and 30 minutes when submitted electronically, including the time for reviewing, gathering the required documentation and information, completing the form, preparing statements, attaching necessary documentation, and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No. 1615-0095. **Do not mail your completed Form I-290B to this address.**