

Suggested changes to 8 CFR § 204.6(m): Regional Center Regulations.

[(m)(1) has no change, (2) has a minor edit, and (3) has a series of edits and add one new subsection]

(m) Requirements for Regional Centers.....

(1) *Scope* [No Changes]

(2) *Number of immigrant visas allocated.* The annual allocation of the visas available under the Immigrant Investor Pilot Program is set at [CHANGE TO: “3000”] for each [DELETE: “of the five”] fiscal year [DELETE: “s” AND ADD: “authorized”] [DELETE: “commencing on October 1, 1993”].

(3) *Requirements for Regional Centers.* Each Regional Center wishing to participate in the Immigrant Investor Pilot Program shall submit [ADD “a form designated for the purpose, supported by,”] a proposal to the [DELETE: “Assistant Commissioner for Adjudications” CHANGE TO: “Service Center Director”], which:

- (i) Clearly describes how the Regional Center focuses on a geographical region of the United States, and how it will promote economic growth through [DELETE: “increased export sales,”] improved regional productivity, job creation, and increased domestic capital investment;
- (ii) Provides in verifiable detail how jobs will be created indirectly [DELETE: “through increased exports” AND ADD: “through submission of a viable job creation prediction based on a credible comprehensive business plan(s)”];
- (iii) Provides a detailed statement regarding the amount and source of capital which has been committed to the Regional Center, as well as a description of the promotional efforts taken and planned by the sponsors of the Regional Center;
- (iv) Contains a detailed prediction regarding the manner in which the Regional Center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the Regional Center; [DELETE: “and”]
- (v) Is supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, [ADD: “sound economic” analyses of [DELETE: “foreign

and domestic”] markets for the goods or services [DELETE: “to be exported, and/or”
AND ADD: “and may include”] multiplier tables [DELETE “.” AND ADD: “and;”]

[ADD:

(vi) Explains in detail the method(s) and mechanism(s), and written instruments for investment and include standard business documentation anticipated to be submitted by individual investors with their individual petitions such as, but not limited to any draft/exemplar: operating agreement, partnership agreement, subscription agreement, stock purchase agreement, offering letter or memorandum, confidential private placement memorandum, and/or any similar offering made in writing to an immigrant investor through the Regional Center; any draft memorandum of understanding, interagency agreement, contract, letter of intent, advisory agreement, or similar agreement to be entered into with any other party, agency or organization to engage in activities on behalf of or in the name of the Regional Center.]

[(m)(4) is a wholesale rewrite and significant expansion- DELETE ALL AND REPLACE WITH:]

(4) Submission of proposals to participate in the Immigrant Investor Pilot Program.

[An entity seeking approval to participate in the Immigrant Investor Pilot Program shall submit a form I-924, Application For Regional Center Under the Immigrant Investor Pilot Program, as per the form instructions with the specified fee and required initial evidence. Regional Centers that have been approved by the Service Center Director will be eligible to participate in the Immigrant Investor Pilot Program.

(i) *Entity means:* Any legal entity, including, but not limited to, a corporation, partnership, joint venture, governmental body, agency, public-private cooperative, or association, including an authorized principal, officer or employee of such entity, or a qualified individual acting directly in the interest thereof, upon submission of a properly executed form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative*. Such an entity must actually exist in accordance with applicable law including but not limited to: authorized by statute, governmental rule, regulation, ordinance, by-law, or constitutional or charter provision; incorporation; registration; licensure; or any legal means of filing for status afforded under law of the place of its existence within the United States, *as defined in INA § 101 (a) (38)*.

(ii) *Form.* The initial and/or amendment application form, supplemental form, associated instructions and current filing and fee information, as well as any updates to them will be available on the agency website or through the National Customer Service Center.

(iii) *Initial required evidence shall consist* of proof of the entity's lawful authority to file as such entity such as, but not limited to: articles or certificate of incorporation, registration, license or a statement of authority under a charter, ordinance or any other lawful authority; and the proposal with the basic supporting documentation described in subparagraph (3) of this paragraph (m).

(iv) *Perfection of Submission*. Initial evidence beyond the bare minimum required by clause (4)(i), above, shall be subject to supplementation, modification, and change after submission through any USCIS issued Request for Evidence (RFE) or a Notice of Intent to Deny (NOID) and the applicant's reply and/or rebuttal thereto.

(v) *Prima Facie Ineligibility*. Initial submissions that appear not to be credible or viable, or based on flawed assumptions or information *may* be issued a NOID with an opportunity to rebut in the same manner as in (iv); or *may* be allowed to withdraw rather than be issued a formal denial. *Provided that:* If a finding of fraud is made, the application is subject to referral to FDNS, ICE, IRS, OFAC, SEC, the Department of Justice, or any appropriate law enforcement agency for further investigation on any matter of concern.

(vi) *Effect of Withdrawal; Authorized Late Motion*. Such a withdrawn application shall be retained on hand and readily available to USCIS for a period of *at least* one year. Following *authorized withdrawal*, the same entity shall be afforded the opportunity to reopen and reconsider, and to further supplement the prior submission, within one year, by submitting an authorized late Motion accompanied by a form I-290B, *Notice of Appeal or Motion* with current fee as of the date of such filing, and a copy of the *withdrawal acknowledgement authorizing such Motion*. The filing of such a Motion will be afforded priority in processing based on the filing date of the prior application. Any Motion filed beyond one year from the date of *authorized withdrawal* will be summarily dismissed as untimely filed, without refund of fee.

(vii) *New Application*. A completely new application apart and separate from any prior submission from the same entity may be filed based on a different investment scheme, vehicle, and/or premise by filing a new application with full fee. No processing priority will be given to such an application. *Provided that:* No evidence from the prior filing in possession of USCIS may, or will, be considered or incorporated into the new filing or considered by USCIS in its decision-making *except* as it may indicate evidence of willful fraud, misrepresentation, or concealment of a material fact.]

[(m)(5) is a wholesale rewrite and significant expansion DELETE all and REPLACE with:

(5) Decision to Participate in the Immigrant Investor Pilot Program.

(i) Prompt Decision on Initial Application. The Service Center Director shall notify the Regional Center applicant of his or her decision on the request for approval to participate in the Immigrant Investor Pilot Program under subparagraph (3) of this paragraph (m) and § 103.2 of this chapter.

(A) If approved, the Approval Notice will describe the geographic area covered, the specific industries or types of businesses approved for investment and will make specific reference to the job projection and economic impact model and/or methodology that was submitted and reviewed for acceptability. The written Approval Notice will inform the Regional Center of its recordkeeping and reporting responsibilities and prohibition against making substantive material changes to previously submitted-and-reviewed standard written business documents and/or business plans and/or investment instruments anticipated to be submitted with individual investor petitions.

(B) An applicant can withdraw an application in accordance with, and under the same conditions as described in subparagraph (4) of this paragraph (m).

(C) If the application is denied, the applicant will be informed of the reason(s) for the denial and of the applicant's right of appeal to the Administrative Appeals Office (AAO). The Service Center Director will issue a detailed analysis of the law and facts of the case in support of its decision as contemplated by 5 USC § 557(c). The written Denial Notice will inform the applicant of the reasons for denial along with notification of motion and appeal rights. The procedures for appeal may be the same as those contained in § 103.3 of this chapter, *or as modified herein*, while motions may be treated as described in § 103.5 of this chapter, *or as modified herein, as applicable*.

(ii) Prompt Decision on Amendment Application. The Service Center Director shall notify the Regional Center applicant of his or her decision on the request to amend or modify its participation in the Immigrant Investor Pilot Program under subparagraph (3) of this paragraph (m) and § 103.2 of this chapter.

(A) If approved, the Approval Notice will add to, subtract from, or otherwise modify the prior Approval Notice and include the specific changes made by the

amendment to the Regional Center's previously authorized participation in the Immigrant Investor Program.

(B) An applicant can withdraw an application in accordance with, and under the same conditions as described in subparagraph (4) of this paragraph (m).

(C) The Denial of a Proposed Amendment does not void the prior Approval Notice unless that participation is officially terminated pursuant to subparagraph (6) of this paragraph (m). If the amendment application is denied, the Amendment Denial Notice shall inform the applicant of the reason(s) for the denial and of the applicant's right of appeal to the Administrative Appeals Office (AAO). The Denial Notice shall be restricted to the amendment only, and will inform the applicant of motion and appeal rights. The Service Center Director will issue a detailed analysis of the law and facts of the case in support of its decision as contemplated by 5 USC § 557(c)¹. The procedures for appeal may be the same as those contained in § 103.3 of this chapter, *or as modified herein*, while motions may be treated as described in § 103.5 of this chapter, *or as modified herein, as applicable*.

(iii) *Initial Agency Review of Appeal or Motion*. The Service Center Director shall expeditiously and thoroughly review any appeal or motion of a denied Regional Center Initial or Amendment Application. If the applicant indicates that the brief and/or additional evidence will follow submission of the I-290B, the case may set be aside until the additional submission has been received or the allotted time has passed. The applicant is only allowed the time specified for a single submission of the brief and/or additional evidence. No extensions of time shall be granted by the Service Center Director in the context of initial review of an Appeal or Motion.

(A) *Summary Dismissal Option*. If no brief or additional evidence has been submitted within the time allowed, the Service Center Director may summarily dismiss an unsupported and meritless Appeal or Motion in accordance with § 103.3 (a)(1)(v) of this chapter and *restrict further review of that summarily dismissed case to renewed right of appeal only, with no further motion option*; or make and issue a new decision based on the record as altered by any statement on the I-290B and any evidence initially submitted with the I-290B Motion *and*

¹ Paragraph following (c)(3):

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of-

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

restrict further review of that re-denied case to renewed right of appeal only, with no further motion option; or certify the decision to the AAO in accordance with § 103.4 of this chapter when the case involves an unusually complex or novel issue of law or fact, or matter of first impression. Any such subsequently filed restricted appeal shall be immediately forwarded to the AAO, without the detailed review afforded to an initial submission for agency review.

(B) *Favorable Initial Decision on Appeal or Motion.* The Service Center Director shall review any appeal or motion and if the case is approvable as submitted, shall approve the application and issue the decision; or certify the decision to the AAO in accordance with § 103.4 of this chapter when the case involves an unusually complex or novel issue of law or fact, or matter of first impression.

(C) *Unfavorable Initial Decision on Appeal.* If the initial submission for review is denoted as an appeal but is not approvable as submitted, but cannot be summarily dismissed, the appeal and complete application receipt file shall be forwarded to the AAO.

(D) *Unfavorable Initial Decision on Motion.* If the initial submission for review is denoted as a motion but is not approvable as filed, the Service Center Director may either, *dismiss the motion and restrict further review to renewed right of appeal only, with no further motion option; or certify the decision to the AAO in accordance with § 103.4 of this chapter when the case involves an unusually complex or novel issue of law or fact, or matter of first impression. The Service Center Director will issue a detailed analysis of the law and facts of the case in support of its decision but may incorporate the prior decision by reference. Any such subsequently filed restricted appeal shall be immediately forwarded to the AAO, without the detailed review afforded to an initial submission on review.*

(iv) *AAO Review of Regional Center Application.* Unless the Chief of the Administrative Appeals Office has specifically delegated authority to a different USCIS Officer than the Officer who rendered the initial decision, who is a journeyman level adjudicator or higher at the Service Center to further develop a particular case, these procedures are reserved for use by the reviewing Appeals Officer within AAO. Any such delegated Officer is prohibited from discussing the case with the initial deciding Officer.

(A) *Basic Review.* The Reviewing Officer shall have the authority and discretion to review the application for Regional Center Designation and any evidence already on record, and either to affirm the findings and determination of the

original adjudicating officer or to modify or re-determine the original decision in whole or in part.

(B) *Availability of Additional Records.* The Reviewing Officer shall also have the discretion to review any administrative record which was created as part of the adjudication procedures as well as other USCIS files and reports, including VIBE, or outside sources of information and databases, including internet sources.

(C) *Request for evidence or testimony; independent inquiry or investigation in the course of an Administrative Appeal of a denial of a benefit under the INA.*

(1) The Appeals Officer or, Service Center Officer delegated specific authority by the Chief of the AAO, may request specific evidence, receive new evidence or interview the applicant and witnesses, in-person or telephonically, and take such additional testimony as may be deemed relevant to the applicant's eligibility for Designation as a Regional Center and may consider any additional evidence that the applicant seeks to provide, within a reasonable period of time, before a decision is made. Any derogatory information, is subject to disclosure in accordance with § 103.2 (b) (16) of this chapter, or as hereafter amended, or modified in the interests of national security.

(2) The Appeals Officer or, Service Center Officer delegated specific authority by the Chief of the AAO, who is or may reasonably be expected to be involved in the decisional process who receives, or who makes or knowingly causes to be made, a communication ordinarily prohibited by this 5 USC § 557 shall place within the record of the proceeding:

- (i) all such written communications;
- (ii) memoranda stating the substance of all such oral communications;
- (iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;
- (v) standardized sworn statements will suffice as documentation of in-person communication;
- (vi) telephonic interviews that may be recorded with consent of both (or all) parties; and
- (vii) non-redacted e-mail directly pertaining to the case will be incorporated into the record.

(D) *Flexibility in standard of review.* Based upon the complexity of the issues to be reviewed or determined, and upon the necessity of conducting further deliberation with respect to essential requirements, the reviewing Officer may, in his or her discretion, conduct a full de novo² review or may utilize an ad hoc³ review procedure, as he or she deems reasonable or in the interest of or furtherance of justice⁴ and/or of economic benefit to the United States.

(E) *AAO Decision.* The Appeals Officer shall follow established procedures in consultation with fellow Appeals Officers and Supervisors. Any delegated Reviewing Officer shall coordinate any consultation or outside research through the AAO. AAO may consult with the USCIS Office of Chief Counsel, other USCIS or DHS components, the Library of Congress, the State Department, or any other Government Agency as authorized by superiors at USCIS in researching legal questions and complex or novel issues concerning business practices, investments, economics, labor, or any other relevant subject. The Appeals Officer may further develop the case and facts thereof within a reasonable period of time as set by AAO and USCIS management. The Appeals Officer may approve or deny the benefit upon completion of development and review of the case. The written decision will reflect the grant or denial of the benefit with specificity. The least desirable option is to remand for correction of USCIS procedural or substantive errors.

(1) *AAO Approval of the Benefit.* This may be in the form of a sustained appeal or motion. This may be the remand of an overturned recommended denial with instructions *to approve*, as specified in the written remand order, *and notify* the applicant of rights and responsibilities. This may be an affirmance of a recommended approval, with or without modification.

(i) The AAO may either prepare an Approval Notice itself and remand it to the Service Center *to issue*, or remand to the Service

² Anew, afresh, from the beginning; without consideration of previous instances, proceedings or determinations
en.wiktionary.org/wiki/de_novo

³ Ad hoc is a Latin phrase which means "for this purpose". It generally signifies a solution designed for a specific problem or task, non-generalizable, and which cannot be adapted to other purposes.
en.wikipedia.org/wiki/Ad_hoc

⁴ As a matter of discretion, but only when required by the existence of some compelling factor, consideration or circumstance clearly demonstrating that the alternative inflexibility of rules would constitute or result in injustice and would be likely reversed as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the spirit as well as the letter of the law. Patterned after: New York Criminal Procedure Law §§ 170.40 and 210.40 and 5 USC § 706 (1) (A).

Center to prepare and issue the Approval Notice as systems capabilities and staffing dictate to ensure prompt notification.

(ii) The Approval Notice will describe the geographic area covered, the specific industries or types of businesses approved for investment and will make specific reference to the job projection and economic impact model and/or methodology that was submitted and reviewed for acceptability.

(iii) The written Approval Notice will inform the Regional Center of its recordkeeping and reporting responsibilities and prohibition against making substantive material changes to previously submitted-and-reviewed standard written business documents and/or business plans and/or investment instruments anticipated to be submitted with individual investor petitions.

(2) *AAO Denial of the Benefit.* This may be in the form of a dismissed appeal or motion. This may be an affirmance of a recommended denial, with or without modification. This may be an overturned recommended approval. The AAO will issue a detailed analysis of the law and facts of the case in support of its decision. The denial will include the *rights to submit a single optional motion to reopen and/or reconsider*, or to submit *a new application*, or to file for *judicial review* in accordance with 5 USC § 706.

(3) *Remand to the Service Center Director.* With the broad review, authority, powers and procedures afforded to the Appeals Officer or delegated Reviewing Officer in this paragraph (m)(5)(iv), *remands should be limited to:*

(i) *Remand with specific instructions*, described in (iv)(E)(1), or

(ii) *A procedural errors:* Reversible error during a proceeding sufficiently harmful to justify reversing the judgment of the prior Officer, or

(iii) *A substantive error:*

(A) mistake, inadvertence, surprise, or excusable neglect;

(B) newly discovered evidence which by due diligence could not have been discovered in time to avoid forwarding the case to AAO [such as late interfiling of mail]; it is

appropriate for AAO to *remand for a consideration of evidence* by the Service Center Director *in the first instance*,

(C) fraud, misrepresentation, or other misconduct of an adverse party (for referral to fraud investigation or OIG, if employee misconduct);

(D) a *prior rule*, whether, precedent, statute or regulation, upon which *it* is based has been reversed, modified, or otherwise vacated, or it is no longer equitable that the rule should have prospective application; or

(E) any other reason in the *interest, or furtherance, of justice* that relieves appellant from the operation of the rule.

(4) *Consideration for Publication.* Any decision, whether an Approval, Denial, or remand in which the case involves an unusually complex or novel issue of law or fact, or matter of first impression, the decision shall be referred to the appropriate parties in accordance with §§ 103.3 (c) and 103.9 (a) of this chapter.]

(6) *Termination of participation of Regional Centers.* [No Changes.]

(7) *Requirements for alien entrepreneurs.* An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a Regional Center approved pursuant to paragraph (m)(4) of this section and that such investment will create jobs indirectly through [DELETE: “revenues generated from increased exports resulting from” AND ADD: “investment in”] the new commercial enterprise.

(i) [DELETE: “*Exports.* For purposes of paragraph (m) of this section, the term “exports” means services or goods which are produced directly or indirectly through revenues generated from a new commercial enterprise and which are transported out of the United States” AND ADD: “*Regional Center Affiliation.* To establish affiliation, the petitioner shall include a copy of the Regional Center Approval Notice for the Regional Center. USCIS reserves the right to confirm any claimed affiliation by directly contacting the Regional Center.”]

(ii) *Indirect job creation.* To show that [any of the required] 10 [permanent full-time jobs,] or more[,] [DELETE: jobs] are actually created indirectly by the business, [DELETE: “reasonable methodologies may be used. Such methodologies may include multiplier tables, feasibility studies, analyses of foreign and domestic markets for the

goods or services to be exported, and other economically or statistically valid forecasting devices which indicate the likelihood that the business will result in increased employment.” AND ADD: “the investor may ask USCIS to consult its own Regional Center Files as to the approved job creation methodology previously submitted by the Regional Center to verify any Approval Notice provided to the petitioner by the Regional Center that has been submitted as evidence in support of the petition. In the alternative, USCIS shall also accept a newly prepared Job Creation Model based on a previously submitted, vetted, and approved methodology for use by that Regional Center however, any newly submitted documentation shall have to withstand full scrutiny on its own merits.”]

(8) *Time for submission of petitions for classification as an alien entrepreneur under the Immigrant Investor Pilot Program.* Commencing on October 1, 1993, petitions will be accepted for filing and adjudicated in accordance with the provisions of this section if the alien entrepreneur has invested or is actively in the process of investing within a Regional Center which has been approved by [DELETE: “the Service” AND ADD: “USCIS”] for participation in the Pilot Program. [ADD: Such claimed affiliation shall be subject to verification by USCIS.]

(9) *Effect of termination of approval of Regional Center to participate in the Immigrant Investor Pilot Program.* Upon termination of approval of a Regional Center to participate in the Immigrant Investor Pilot Program, the director shall send a formal written notice to any alien within the Regional Center who has been granted lawful permanent residence on a conditional basis under the Pilot Program, and who has not yet removed the conditional basis of such lawful permanent residence, of the termination of the alien's permanent resident status, unless the alien can establish continued eligibility for alien entrepreneur classification under section 203(b)(5) of the Act. [ADD: “Investors with pending I-526 Petitions shall be notified of the termination of the Regional Center and the mechanisms available to them for re-filing, if necessary.”]