



U.S. Citizenship
and Immigration
Services

First of all, Congratulations!
Thanks for sharing this Approval Notice and please do not take offense at any comments added.
Comments are meant to be instructive to others seeking Regional Center Designation and potential investors.
Comments by Joseph P. Whalen on 8/9/ 2012.
e-mail: joseph.whelen774@gmail.com

Date: JUN 28 2012

Pacific Proton Therapy Regional Center, LLC
200 E. Beverly Blvd, Suite 200
Montebello, CA 90640

Application: Regional Center Proposal
Applicant(s): Charles Liu

Re: Pacific Proton Therapy Regional Center
RCW [REDACTED] / ID [REDACTED]

Pursuant to Section 610 of the Appropriations Act of 1993, as amended, on November 22, 2010, Charles Liu submitted a Regional Center proposal with U.S. Citizenship and Immigration Services (USCIS) seeking to designate the entity, Pacific Proton Therapy Regional Center as a Regional Center under the Immigrant Investor Pilot Program.

USCIS hereby designates Pacific Proton Therapy Regional Center as a Regional Center within the Immigrant Investor Pilot Program as described below:

I. Geographic Area

The Pacific Proton Therapy Regional Center shall have a geographic scope which includes the four counties of Los Angeles, Orange, Riverside and San Bernardino within the State of California.

II. Focus of Investment Activity

The Regional Center request intends to offer EB-5 capital investment opportunities to investors. USCIS has reviewed the business plan and associated economic analysis and has determined that the documentation meets the general requirements for participation in the Immigrant Investor Pilot Program in principle. As depicted in the business plan and associated economic analysis that was submitted in support of the application, the Regional Center will engage in the following economic activity: loans to 3rd party enterprises.

The Regional Center shall focus on offering EB-5 compliant capital investment opportunities in the following three (03) target industry economic categories:

- 1. NAICS 23 Construction
- 2. NAICS 33 Manufacturing
- 3. NAICS 62 Healthcare and Social Assistance

Two-digit NAICS codes offer too little detail to get a specific project "vetted" to the point of instilling much confidence. On the other hand, nobody has been painted into a corner without an escape route. They have much flexibility to "find" a suitable project in a broad category and fine-tune it later.

The I-526 Exemplar filed as an I-924 Amendment will allow for a deeper vetting of a "specific" or "actual" EB-5 Regional Center Affiliated Project/Investment Vehicle as the finer details become clearer to the developers. Such an approach will FOCUS on SPECIFIC DETAILS as late in the process as feasible. Such an Amendment/Exemplar Provisional APPROVAL won't go stale too fast.

A "last stage" vetting and USCIS "Provisional Approval" [which is the best you can get] would boost my confidence if I were investing in the project. How about you???

Note: If any investment opportunities arise that are beyond the scope of the approved industry categories, then an amendment would be required to add that category.

Aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual Form I-526 Immigrant Petitions by Alien Entrepreneur (Form I-526 Petitions) with USCIS for capital investments in new commercial enterprises located within the approved geographic area and affiliated with the Regional Center.

The regional center may focus on economic activities in an area that is ultimately determined to qualify as a Targeted Employment Area (TEA), either as a rural area or an area of high unemployment as defined in Title 8 Code of Federal Regulations (8 CFR) 204.6(e). ~~The area must qualify as a TEA at the time of the individual alien investor's capital investment or at the time of filing of his or her Form I-526 Petition.~~ TEA determinations are part of the adjudication of the individual I-526 Petition, not in the adjudication of regional center proposals.

Timing is critical to obtaining TEA reduced rate for the investment.

The minimum capital investment threshold for any EB-5 capital investment into an approved commercial enterprise throughout the regional center shall be not less than \$500,000, if the investment target is located within a TEA, or \$1,000,000 if it is located outside of a TEA. ~~No debt arrangement will be acceptable unless it is secured by assets owned by the alien entrepreneur. A full capital investment must be made and placed at risk.~~

~~For any alien requesting the reduced threshold of \$500,000 based upon an investment in a TEA, the alien must establish at the time of filing of the I-526 petition that either the investment will be made in a TEA designated area or was made in a TEA designated area at the time of the alien's initial investment into the enterprise.~~

III. Employment Creation

Immigrant investors who file petitions for capital investments in new commercial enterprises located within and affiliated with the Regional Center area must fulfill all of the requirements set forth in section 203(b)(5) of the Immigration and Nationality Act, 8 CFR 204.6, and 8 CFR 216.6, except that the petition need not show that the new commercial enterprises created ten new jobs directly as a result of the immigrant investor's investment. The determination whether the alien investor has met the job creation requirements will be established by a review of the required initial evidence at 8 CFR 204.6(j) and 8 CFR 216.6(a)(4) for the Form I-526 Petition and Form I-829, Petition by Entrepreneur to Remove Conditions (Form I-829 Petition), respectively. The capital investment and job creation activities outlined in the individual petitions must fall within the bounds of the final economic analysis that is contained as part of the approved Regional Center proposal and its indirect job creation model and multipliers contained within the final approved Regional Center proposal package. The immigrant investor must show at the time of removal of conditions that they performed the activities described in Form I-526 Petition, and the activities must be based on the approved regional center methodology for demonstrating job creation.

The regional center proposal is approved based on a business plan and associated economic analysis which utilizes RIMS II to establish indirect job creation that ~~appears in principle to utilize reasonable methodologies to estimate employment creation.~~ As such, this documentation ~~meets the general requirements for participation in the Immigrant Investor Pilot Program.~~ It is noted that the applicant submitted a business plan requesting review and approval of an "actual" capital investment project, within a Form I-526 exemplar petition.

An "actual" business plan for an EB-5 capital investment project describes a tangible project that will be the focus of EB-5 capital investments throughout the regional center in each of the NAICS industry categories in order to meet job creation requirements. ~~An "actual" business plan may be contained in a Form I-526 exemplar petition request or may be presented alone, and must meet established EB-5 eligibility requirements for the filing of Form I-526 Petitions by individual EB-5 investors. The business plan for such a project must be~~

~~Matter of Ho compliant.~~ Generally, this would be a project that has advanced to the stage where work may begin once the project is specifically approved within a Regional Center Proposal.

After careful review, USCIS has determined that the business plan presented in the Form I-526 exemplar petition is not Matter of Ho¹ compliant due to lack of construction permits and a specific project timeline. ~~Therefore, the regional center proposal approval must be limited to granting the regional center designation without a specific approval of the capital investment project presented in the application for which deference would be given should these same documents be presented in individual Form I-526 petitions².~~

According to the business plan, indirect creation is claimed based on multipliers rooted in construction expenditures, proton equipment purchase and operational revenues of the proton therapy center.

At the time of filing the individual immigrant investor Form I-526 Petition(s), the RIMS II model should be used to establish indirect job creation methodology must be submitted with each Form I-526 Petition, and must utilize the Matter of Ho compliant business plan submitted with an investor's Form I-526 petition as the basis for the economic analysis. Whether the RIMS II model is used or a new economic model is used in analyzing indirect job creation based upon the Matter of Ho compliant business plan submitted in support of individual immigrant investor's Form I-526 Petition(s) USCIS will review the new evidence to determine its compliance with the EB-5 statute and regulations.

IV. Guidelines for individual Immigrant Investors Visa Petition (Form I-526 Petition)

Each individual immigrant investor Form I-526 Petition, in order to demonstrate that it is associated with the Regional Center, in conjunction with addressing all the requirements for an individual immigrant investor petition, shall also contain as supporting evidence relating to this Regional Center designation, the following:

1. A copy of this letter, the Regional Center approval and designation.
2. A Matter of Ho-compliant business plan for the capital investment opportunity described in the Form I-526 Petition.
 - A comprehensive detailed business plan with supporting financial, marketing and related data and analysis providing a reasonable basis for projecting creation of indirect and/or induced jobs to be achieved/realized within two years pursuant to 8 CFR 204.6(j)(4)(B) and reasonable methodologies pursuant to 8 CFR 204.6(m)(7)(ii).
 - An economic analysis employing the job creation methodology required in 8 CFR 204.6(j)(4)(iii), based upon the Matter of Ho-compliant business plan that utilizes the reasonable economic methodologies contained in the final Regional Center economic analysis which has been generally approved by USCIS in its regional center designation, which reflects that investment by an individual immigrant investor will create not fewer than ten (10) full-time employment positions, either directly or indirectly, per immigrant investor.
3. USCIS has reviewed the following organizational documents and has found them to be EB-5 compliant in principle:

Generally Approved →

- Private Placement Memorandum (Draft dated September 2011)
- Subscription Agreement; (Draft dated September 2011)
- Operating Agreement; and (Draft dated September 2011)

¹ Matter of Ho, 22 I&N Dec. 206 (AAO)

² Guidance on Adjudications Involving the Tenant-Occupancy Methodology, Dated May 8, 2012

Remember the real issue in *Izummi* was "material changes" in "hypertechnical" matters as to agreements and money pathways.

- Escrow Agreement.

(Draft dated September 2011)

The regional center may elect to use this organizational documentation for the capital investment opportunities that it chooses to promote.

V. Designee's Responsibilities Inherent in Conduct of the Regional Center

The law, as reflected in the regulations at 8 CFR 204.6(m)(6), requires that an approved Regional Center in order to maintain the validity of its approval and designation must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, 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 in order to provide the information required on the Form I-924A, Supplement to Form I-924 (Form I-924A Supplement). Form I-924A, Supplement is available in the "Forms" section on the USCIS website at www.uscis.gov.

Effective November 23, 2010, the failure to timely file a Form I-924A Supplement for each fiscal year in which the regional center has been designated for participation in the Immigrant Investor Pilot Program will result in the issuance of an intent to terminate the participation of the regional center in the Pilot Program, which may ultimately result in the termination of the designation allowing the regional center to participate in the Pilot Program.

Note: USCIS requires the filing of a Form I-924A Supplement by each regional center that remains designated for participation in the pilot program of September 30th of a calendar year. The Form I-924A Supplement with the required supporting documentation must be filed on or before December 29th of the same calendar year.

If you have any questions concerning the Regional Center designation under the Immigrant Investor Pilot Program, please contact USCIS by Email at USCIS.ImmigrantInvestorProgram@dhs.gov.

Sincerely,

Rosemary Langley Melville
Director
California Service Center

Cc: Stephen Yale-Loehr, Esq.

Subsequent Regional Center Designation Notices are likely to generally follow this style of approach. Refinement in the wording and format of these Notices will likely grow incrementally.

Lessons to take away:

TWO-Digit NAICS Codes may suffice for a "General or Provisional Approval" but you should anticipate following up with I-526 Exemplars as I-924 Amendments in such cases.

If you want the desired "Deference" then the Business Plan must be **Matter of Ho-Compliant**.

That Business Plan serves as the basis for the Economic Analysis which must use the approved "reasonable methodologies" already presented in principle.

The Regional Center Applicant builds its own "scope" or "operating parameters" in its application and proposal.