

POTENTIAL BENEFITS OF AN OBSCENELY HUGE REGIONAL CENTER APPLICATION FEE

By Joseph P. Whalen (Wednesday, November 2, 2016)

Regular readers may recall my *near*-obsession with expounding upon what *knowledge, skills, and abilities* (KSAs) I believe are necessary for success as an EB-5 Regional Center.¹ The severe increase in this form's filing fee from \$6,230⁰⁰ to \$17,795⁰⁰ will likely force intending Regional Center applicants to think longer and harder on their decision to file USCIS Form [I-924, Application For Regional Center Under the Immigrant Investor Pilot Program](#). While considering whether or not to pursue USCIS designation as a Regional Center, potential applicants will need to take stock of their own KSAs and those of their potential partners. Have you got what it takes?

The **evidence** in support of their I-924 that an applicant needs to provide to USCIS *depends* on a wide variety of *factors, including, but not limited to*, the following:

- 1) the type of application (i.e., initial, update-amendment, expansion-amendment or “exemplar” I-526 petition);
- 2) the kinds of commercial enterprises that will receive capital from aliens;
- 3) the volume and types of jobs that will likely be created directly or indirectly as a result of anticipated capital investments;
- 4) the other expected positive economic effects of the proposed Regional Center's intended activities;
- 5) the applicant's experience with large pooled investments;
- 6) the collective *knowledge, skills, and abilities* (KSAs):
 - a) already present,
 - b) those readily obtainable,
 - c) those that still must be sought, and;
- 7) the applicant's current status within the EB-5 Regional Center Program, *if any*.

¹ See: <http://www.slideshare.net/BigJoe5/amicus-brief-to-uscisipo-rc-ksas>; <http://www.slideshare.net/BigJoe5/ksas-for-regional-centers-10062012>; <http://www.slideshare.net/BigJoe5/ksas-and-the-math-wiz-rc-dismissal>; and <http://www.slideshare.net/BigJoe5/role-of-the-regional-center-in-eb5>

AAO has addressed *knowledge, skills, and abilities* (KSAs) relating to an I-924 application, to a degree, in a July 9, 2015, Appeal Dismissal after first declining to reach the issue in a February 21, 2014, Appeal Dismissal. In the earlier decision there were other grounds for denial so AAO stated the following:

“Finally, with respect to the director's conclusion that the regional center proposal does not demonstrate that if USCIS approves and designates the applicant as a regional center, the regional center will provide administrative oversight, counsel notes that the applicant has submitted a "pro forma" Form I- 924A Supplement and asserts that this submission demonstrates its ability to update USCIS on its activities in the future. The director determined that the proposal was deficient because it did not demonstrate how the regional center would maintain its approval by demonstrating its administration, oversight and monitoring of investment activities under its sponsorship. See 8 C.F.R. § 204.6(m)(6) (requiring that a regional center annually update USCIS with information demonstrating that it continues to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area). As the application may not be approved on the other grounds the director identified, the AAO need not determine whether 8 C.F.R. § 204.6(m)(6) imposes evidentiary requirements on an applicant when it applies for designation as a regional center.”

[FEB212014_01K1610.pdf](#) at p. 10

Nearly one and one-half year later, AAO was called upon to meaningfully tackle the issue of some of the required *knowledge, skills, and abilities* (KSAs) relating to an I-924 application by examining the necessity for a Regional Center Proposal in the form of a business plan for itself, apart from the *Matter of Ho*-compliant business plan for the investment vehicle. In that case, the chief denied the application, because the applicant did not submit a business plan for its own operation or provide any evidence of, or plans for, the Regional Center's administrative oversight. AAO justified the need for, as well as the elements of, a Regional Center's Business or Operational Plan as follows.

“The regulation at 8 C.F.R. § 204.6(m)(3) requires the regional center applicant to submit a detailed proposal for the regional center rather than a general or hypothetical proposal. For instance, the proposal must clearly describe how the regional center focuses on a geographical region of the United States and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment. 8 C.F.R. § 204.6(m)(3)(i). In addition, the proposal must provide in verifiable detail how jobs will be created directly through increased exports. 8 C.F.R. § 204.6(m)(3)(ii). Furthermore, the proposal must provide a comprehensive 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. 8 C.F.R. § 204.6(m)(3)(iii). Moreover, the proposal must contain a thorough prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general. 8 C.F.R. § 204.6(m)(3)(iv). Finally, the proposal must be supported by economically or statistically valid forecasting tools. 8 C.F.R. § 204.6(m)(3)(v).”

“.... [T]he Director, California Service Center, issued a request for evidence (RFE), in part, notifying the applicant that a request for regional center designation should contain at least two business plans - one for the regional center's operational plan and one for a hypothetical, actual, or

exemplar business plan for a project in each of the defined target industries in the proposal. The director requested the applicant to submit an operational plan for the regional center showing the amount of funds that have been dedicated to the regional center; the source of those funds and how the amount of funds is sufficient to sustain the regional center; and the past, current, and future promotional activities for the regional center including a description of the budget and source of funds for those activities. In addition, the director informed the applicant that a regional center must have sufficient capital to operate in the manner outlined in the proposal from sources apart from the immigrant investors' required capital investment.

In response to the RFE, the applicant submitted a revised dated July 11, 2013, that also pertained to the spa and resort project of the regional center but did not reflect a specific business plan for the regional center.”

[JUL092015_01K1610.pdf](#) at pp. 3-4

It makes perfect sense to me that whoever is seeking USCIS-Designation as a Regional Center would be expected to describe “how” they intended to conduct their EB-5 business activities. Among the subjects they should be prepared to discuss are: (1.) how they will identify, assess, and evaluate proposed EB-5 investment vehicles, activities, and enterprises; (2.) whether the regional center has sufficient capital to operate; and (3.) how they will finance and conduct the promotional activities for the Regional Center. *Id.* I would like to see even more information in the proposal including: (a.) plans for investment project due diligence; (b.) project partner vetting; (c.) investor vetting (preferably to meet USCIS standards); (d.) plans for project monitoring; and (e.) plans for gathering data and collecting evidence to support EB-5 investors’ I-829 petitions.

AAO shied away from the view of the Director who relied upon 8 C.F.R. § 204.6(m)(6) due to its **reporting requirements**. AAO later opted to expand upon the Chief’s reliance on 8 C.F.R. § 204.6(m)(3) because of its requirement for a **detailed proposal** in order to support the need for a Regional Center to present an **operational plan** for its own operation and/or a **business plan** to explain how it will conduct its own business.

As indicated in the title, I see at least one major potential benefit of an increase in filing fee. The best benefit ought to be a much better Regional Center Proposal in support of the I-924. I figure that an additional \$11,565⁰⁰ will scare off the small time operators who would not be able to sustain the operations of a start-up Regional Center. The new Regional Center will not have “administrative” or “subscription” fees from investors until it is designated by USCIS as a Regional Center, has a marketable EB-5 suitable investment vehicle (project), and has willing investors. It is likely to take a minimum of two (2) years (probably longer) before a Regional Center applicant begins to recoup their initial start-up costs.

While on this topic, how much would it take to start-up a Regional Center? Lets' see. Of course, there is the filing fee, but more must be spent and kept in reserve before filing an I-924. It will also be necessary to prepare a Regional Center Operating Plan. The wise applicant whose day job is **not** Professional Technical Writer² will hire one. In support of the application it will be necessary to demonstrate the ability to present a Business Plan (BP) for a project along with a "reasonable methodology" for determining jobs to be created. An Economic Impact Analysis (EIA) utilizing an input-output (I-O) model has become the EB-5 industry standard "reasonable methodology". Unless the applicant is a professional economist (preferably with at least a Master's Degree), funds will need to be allocated to this task. Although, technically, the I-O based EIA is not a legal requirement, nobody has come up with anything better, or anything else that would be acceptable by USCIS.

Also, even though it has been acceptable through the present that a "hypothetical" BP can suffice in securing USCIS designation, I think its days are numbered. It is better to present a *Matter of Ho*³ compliant BP, even if it is really based on a "hypothetical" project, just to demonstrate the applicant's understanding of it, and the ability to produce or procure one. In today's world, any business of any notable size, and nearly universally among EB-5 Regional Centers, there will be an internet presence as a key component of the marketing strategy. Unless the applicant is a web designer, this will cost money as well. Probably the biggest expense is likely to be travel to EB-5 events, some domestically and others internationally.

Another concern is: "Where will the Regional Center physically exist?" If the applicant is an established business, they can likely just set aside some office space to house it-with all the essentials readymade, with personnel to staff it. Others may need to procure sufficient premises and hire at least one person to answer phones, do the filing, and various other tasks. However, there might still be additional expertise required. There are a growing number of EB-5 service providers that have grown out of other businesses. In order to fulfill its obligations and responsibilities, Regional Centers must track data and collect evidence during the years-long life of each EB-5 offering. Some fund managers have devoted parts of their business to meet the needs of EB-5 clients.

² This profession is often marketed as "Business Plan Writer".

³ 19 I&N Dec. 5 82 (BIA 1988).

As indicated above, EB-5 interests are usually sold as securities offerings. Here is another highly technical area that must be handled properly or else there can be huge consequences. The Regional Center will need legal help to stay within the bounds of various laws. Can you say “securities attorney” and “contracts attorney” and “immigration attorney”?

Let’s try to add up these start-up costs. Remember, you get what you pay for, quality costs!

EXPENSE	ESTIMATED COST (\$\$\$)	
I-924 Form Preparer’s Fee [Skip At Your Own Risk]	~5,000	~2,500
Filing Fee [The <u>ONLY</u> Fixed Cost]	17,795	17,795
Regional Center’s Operation/Business Plan	~5,000	~2,500
<i>Matter of Ho</i> -compliant Business Plan	~5,000	~2,500
Economic Impact Analysis	~5,000	~2,500
SEC-compliant PPM (Offering Instrument)	~15,000	~5,000
Due Diligence Activities	~5,000	~2,500
Web Design and Servicing/Marketing	~5,000	~2,500
Travel	~30,000	~10,000
Immigration Attorney Compliance Review	~15,000	~5,000
Office Space-Clerical Staff [Highly Variable]	~35,000	~2,500
Miscellaneous Expenses [¿Foreign Agents?]	~5,000	~2,500
Cash Reserve	~60,000	~5,000
Estimated Totals	~217,795	~62,795

As you can see, there is a vast gulf between my guesstimated high and low end costs. Please realize that my *high end* guesses might be *too low*! Yes, these are only my suppositions. However, with the initial costs increasing and by removing the *chaff* from the *wheat*⁴, *the folks still in the running* will most likely incur all of these expense, and more, *but can likely afford them*.

That’s My Two-Cents, For Now!

⁴ It’s a play on an agrarian metaphor, look it up—google it!