

EXHIBIT D TO AMENDED COMPLAINT



IDAHO STATE REGIONAL CENTER
VISAS through new VISTAS

Date: September 25, 2013

To: U.S. Citizenship and Immigration Services
California Service Center
Attn: EB-5 Processing Unit
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677

From: Sima Muroff, CEO, Idaho State Regional Center, LLC
and Managing Member, ISR Capital, LLC, General
Partner of Quartzburg Gold, L.P.

Re: Clarifications Regarding Capital At Risk Issues Raised
In Notices of Intent to Deny Issued to I-526 Petitioners
Investing In Quartzburg Gold, L.P.

Dear USCIS:

I write in my capacity as Chief Executive Officer of Idaho State Regional Center, LLC ("ISRC") and as the General Partner of Quartzburg Gold, L.P. (the "New Commercial Enterprise" or "NCE").

Many of the NCE's Limited Partners have recently received Notices of Intent to Deny (NOID) from USCIS regarding their I-526 petitions that contain many identical evidentiary requests regarding the NCE. I would like to address and clarify some specific issues that have been raised in the Notices of Intent to Deny.

Licensing Fee Payments to ISRC Pursuant to Non-Exclusive License Agreement

I confirm that none of the fees to be paid by the NCE to ISRC shall originate from capital contributions paid by the NCE's EB-5 investors. As shown in the final, signed version of the Non-Exclusive License Agreement attached to this correspondence, Article 3 states in unequivocal terms that licensing fees must not originate from EB-5 investors' capital contributions: Article 3.1 states:

3.1 LICENSEE shall pay to ISRC the sum of Eight Hundred Thousand Dollars (\$800,000.00), or 20% of profits ("Fee"), whichever is greater, from Cash Flow. Quartzburg Gold, LP, the New Commercial Enterprise (NCE), will not pay fees to the Idaho State Regional Center, LLC from investors' capital contributions.

The Non-Exclusive License Agreement unequivocally states that fee payments to ISRC must not originate from capital contributions made by any of the NCE's EB-5 investors. It also states that in the event the NCE lacks sufficient funds to make timely payments to ISRC from its Cash Flow, a defined in the NCE's Limited Partnership Agreement, the NCE will be obligated to make additional interest payments to ISRC originating from its future Cash Flow.

It should be noted that Section 1.12 of the Limited Partnership Agreement defines "Cash Flow" as follows (emphasis added):

the total cash receipts of the Partnership, plus any other funds (including amounts designated as reserves by the General Partner, where and to the extent it no longer regards such reserves as reasonably necessary to the efficient conduct of the Partnership's business) deemed available for distribution and designated as Cash Flow by the General Partner less (a) any operating expenses of the Partnership, excluding any expense not involving a cash expenditure, such as amounts charged for depreciation or depletion; (b) all payments of principal and interest on account of any Loans secured by Partnership property or any other Partnership obligations or loans, including loans made to the Partnership by any Limited Partners; (c) expenditures for capital expenditures or improvements (except to the extent financed through mortgages on Partnership property or any other Partnership borrowing or loans, or reserves previously set aside by the Partnership for such purposes); and (d) reserves for working capital and anticipated expenditures in such amounts as may be determined from time to time by the General Partner, including the acquisition of replacement Properties. Cash

Flow shall be determined separately for each fiscal year of the Partnership.

While the part marked in bold above states that the term "Cash Flow" may also include reserves, the Non-Exclusive License Agreement itself clarifies that no funds used to make payments of fees to ISRC may originate from EB-5 investors' capital contributions.

As of today, the NCE has not received any operational income from the mining operations, the NCE has not paid fees of any kind to ISRC. The NCE shall pay all fees to ISRC, including any interest obligations associated with late fee payments, solely out of cash receipts that are expected to come in to the NCE following commencement of mining operations funded by the NCE and not from capital contributions originating from the NCE's EB-5 investors.

This fact is also confirmed in the attached letter from the NCE's Chief Financial Officer, which reaffirms that fees paid to ISRC shall originate solely from the NCE's revenues expected to be received after the NCE begins financing mining projects pursuant to its business plan. This was the purpose of the reference to such fee being paid only from "Cash Flow."

Apparently it is quite common for limited partnership agreements to include reserves (once deemed no longer necessary to hold in reserve) in the definition of "Cash Flow." The definition was definitely not intended to create a loophole through which EB-5 capital contributions could be siphoned out to pay the regional center. The reserve mentioned in the original business plan merely recognized that the allocation of all of the funds raised in the offering had not yet been allocated to specific job creating projects, as the investors were "in the process of investing" their capital in this regard.

Now the NCE's updated and operational business plan allocates all \$80,000,000 in capital contributions made by 160 EB-5 investors to specific capital needs of specific mining requirements, and does not allocate any of the EB-5 investors' capital contributions toward making payments of any kind to ISRC.

Reserves

The NOID states that page 3 of the NCE's Confidential Private Offering Memorandum (the "PPM") allocated \$27,921,298 originating from EB-5 investors' capital contributions to be held in reserve, which could not be considered capital placed at risk pursuant to *Matter of Izummi*.

The PPM stated that the NCE would loan funds to Mining Companies for the purpose of carrying out several mining projects at different locations, including three definite initial projects, one likely fourth initial project, and approximately zero to three additional projects that would be determined by the General Partner following a process of due diligence review and evaluation. The PPM stated that based on plans in place at the time the PPM was prepared, the General Partner intended to use the \$27,921,298 for investments in these additional projects, for which a list of candidates was presented starting on page 20 of the PPM, and that it was also possible that all of these funds would instead be used for the other initial projects if budget requirements were to change based on practical conditions.

I believe that the PPM's wording may have caused some unintended confusion in that USCIS has gotten the impression that \$27,921,298 originating from EB-5 investors' capital contributions will simply be placed into a reserve and never used to invest in job-creating business activities. This was not the intent, and in fact we have already completed the due diligence review and evaluation process described in the PPM, and a budget showing the specific investments to be made with all \$80,000,000 contributed by the NCE's 160 EB-5 investors, including the \$27,921,298 referred to in the NOID, is presented in the Updated Business Plan.

As shown in those documents, the NCE shall in fact not maintain any reserves, and all \$80,000,000 originating from the capital contributions of the NCE's 160 EB-5 investors shall be irrevocably committed and invested directly into the NCE, which in turn will loan all of those funds to the "Mining Companies" as defined in the NCE's Limited Partnership Agreement, and which shall fully deploy all capital into job-creating mining operations described in the Updated Business Plan. All capital contributions made by the NCE's EB-5 investors shall therefore be 100 percent "at risk" as that term is defined in 8 CFR §204.6(j)(2), and there are no redemptions or guarantees.

Loan/Equity Fee

The NOID stated that a chart presented on page 24 of the PPM titled "Sources and Uses of Funds by Mining Companies" showed that \$3,857,681 taken from funds loaned by the NCE would be used for paying loan/equity fees to ISGC.¹

The Updated Business Plan presented here includes an updated chart showing sources and uses of funds at section 2.1 (page 10-12) with more detail in the Capital Expenditure Financials section of each mining operation's discussion in Section 2.1 and in the highly detailed financials for each project at Section 5.4 (Exhibit D) of the Updated Business Plan. These figures have been calculated based on the final results of the due diligence review and evaluation process described in the NCE's PPM. As shown in the updated chart, no loan or equity fees of any kind will be paid to ISGC. No such fee has been paid, and none will be paid.

Call Option/ Redemption

The NOID states that the "call option" defined in the PPM (the "Call Option") appeared to be a guaranteed return or redemption agreement prohibited pursuant to *Matter of Izummi*.

To ensure there is no doubt or confusion about the Call Option, I hereby certify that the NCE shall not, under any circumstances, exercise the Call Option provision contained in Section 12.11 of the NCE's Limited Partnership Agreement and described in the NCE's PPM.

As an initial matter, I would like to point out that the Call Option contained in the NCE's Limited Partnership Agreement was a right that solely belonged to the General Partner. EB-5 investors, in their capacity as Limited Partners of the NCE, never had the right to compel the General Partner to exercise the Call Option. The Call Option was a one-sided right that belonged solely to the General Partner, not the EB-5 investors.

Section 12.11(3) of the Limited Partnership Agreement specifically stated that the General Partner was under no obligation to exercise its Call Option and that there was no guarantee that the General Partner would ever do so. In addition, Section 12.11(1) stated that even if the General Partner eventually did exercise its Call Option on an individual EB-5 investor in the future, it could only do so after such investor's I-829 petition removing conditions on permanent residency had been approved by USCIS. This section specifically stated that the purpose of this limitation was to ensure that each individual EB-5 investor's capital contribution would remain fully invested in the NCE for the full statutory period required under the EB-5 Program.

As a practical matter, the General Partner would not be able to exercise its Call Option unless the value of the interest of an EB-5 investor equaled or exceeded the amount of the call option purchase price. If the mining operations turn out to perform poorly and an EB-5 investor's interest ends up being less than the call price, the General Partner would have no reason to exercise the Call Option, since doing so would cause a loss to the NCE. Thus, the Call Option was not a redemption agreement or guaranteed return. Since the Call Option did not prevent EB-5 investors from losing some or even all of their capital contributions, those capital contributions are in fact at risk.

Nonetheless, to ensure that there are no misunderstandings or misconceptions about the Call Option, I hereby certify that the NCE's General Partner has waived its right to exercise the Call Option as defined in Section 12.11 of the Limited Partnership Agreement, and that the General Partner shall not require any of the NCE's EB-5 investors to sell their interests in the NCE. This waiver is irrevocable and shall be enforceable by USCIS or any EB-5 investor in his or her capacity as a Limited Partner of the NCE. This letter has been transmitted to all of the NCE's EB-5 investors through their legal counsel, and therefore is clearly known to all of the NCE's EB-5 investors.

¹ As shown in the documentation presented with each petitioner's response to the Notice of Intent to Deny, the actual name for the business entity is "Idaho State Gold Company II, LLC."

Processing Fee

Most versions of the NOID raised the issue of a processing fee to be paid by each of the NCE's EB-5 investors (the "Processing Fee"), requesting evidence showing how much the processing fee was and that each EB-5 investor paid the fee out of funds other than his or her EB-5 capital contribution.

The issue of each EB-5 investor's Processing Fee was addressed in Section Four of each individual investor's I-526 petition. That section contained a letter issued by myself on May 30, 2012 certifying that each EB-5 investor was expected to pay a Processing Fee, which was not part of the investor's EB-5 capital contribution. Each EB-5 investor was to pay the Processing Fee directly to the overseas agent who recruited him or her, which was to be used to compensate the overseas agent for its marketing and other expenses, and the Processing Fee was not to be paid to the NCE or ISRC and would not be received or collected by the NCE or ISRC. The stated purpose of having each EB-5 investor pay his or her Processing Fee directly to the overseas agent was to ensure that these agents could continue to recruit overseas investors while also making certain that none of the capital contributions raised from EB-5 investors would ever be used to cover any marketing expenses. The letter also certified that the overseas agent was authorized to determine the final amount of the Processing Fee collected from each EB-5 investor on condition that "such amount is considered to be reasonable in terms of what is normally being charged by other EB-5 investment projects."

As stated in the letter, individual EB-5 investors were instructed to transfer the Processing Fee directly to the primary overseas agent identified as Westlead Capital, Inc. or its wholly owned subsidiary Westlink Holdings Group, Inc. (hereinafter "Westlead").

It is my understanding that the vast majority of EB-5 investors wire transferred their Processing Fees directly to Westlead Capital, Inc.'s account number 107-005076-820 at HSBC Bank (Taiwan) Limited (hereinafter "Westlead's HSBC Account"), and that documentary evidence of these transfers was presented in Section Four of each I-526 petition, including documentation issued by each investor's bank showing (i) the investor's withdrawal and transfer of the Processing Fee to Westlead's HSBC Account, (ii) documentation issued by HSBC Bank (Taiwan) Limited evidencing receipt of the Processing Fee and showing that the Processing Fee either originated from the petitioner or another individual wiring the Processing Fee on that investor's behalf, and (iii) a receipt letter issued by Westlead's principal Raymond Ku certifying that each investor's Processing Fee had been paid in full. I am told that a small number of Chinese EB-5 investors wire transferred the Processing Fee through a friend or relative due to restrictions on the exchange of China's currency for U.S. Dollars imposed by the Chinese government.

I am told that two of the EB-5 investors who have filed I-526 petitions so far paid their Processing Fees to a different overseas agent, American Immigration Fund LLC. This reflects the fact that Westlead has been the NCE's primary overseas agent as described in the May 30, 2012 letter.

To ensure there are no doubts regarding payment of the Processing Fee by individual EB-5 investors, the immigration counsel to the EB-5 investors will submit documentary evidence showing payment of the Processing Fee and that the Processing Fee shall not be deducted from capital contributions with each response to the Notices of Intent to Deny that specifically raised this issue. As of the date of this correspondence, only two of the NCE's EB-5 investors, namely Danli LI and Fengying LI, received Notices of Intent to Deny that did not raise the Processing Fee issue, while all others received after these two were requested to provide documentation regarding the Processing Fee.

I hope this provides an adequate explanation regarding the amount of capital being invested, and welcome you to contact me with any questions or concerns. I can be reached at the address listed on the first page of this correspondence, by telephone at (800) 290-4772, by facsimile at (866) 669-1760, or by electronic mail at sima@idahostateregionalcenter.com.



Sima Muroff,
Managing Member, ISR Capital, LLC
General Partner, Quartzburg Gold, L.P.

- Enclosures:
- (1) Non-Exclusive License Agreement, dated 1st June, 2012
 - (2) Letter issued by Debra Riddle, Chief Financial Officer, Quartzburg Gold, L.P.,
Dated September 20,2013
 - (3) Updated Business Plan, Quartzburg Gold, L.P., dated September 20, 2013.