

Matter of A-C-R-C-, LLC, ID# 16195 (AAO Apr. 28, 2016)



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-C-R-C-, LLC

DATE: APR. 28, 2016

APPEAL OF IMMIGRANT INVESTOR PROGRAM DECISION

APPLICATION: FORM I-924, APPLICATION FOR REGIONAL CENTER UNDER THE
IMMIGRANT INVESTOR PILOT PROGRAM

REMAND

The Applicant, a limited liability company, seeks United States Citizenship and Immigration Services (USCIS) designation under the immigrant investor program. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Appropriations Act) § 610, as amended. This designation allows the Applicant to offer immigrant investors expanded opportunities to invest capital and promote economic growth in limited geographic area through job creation.

The Chief, Immigrant Investor Program (IPO), denied the application. Specifically, the Chief concluded that the Applicant's regional center proposal did not demonstrate in verifiable detail how the requisite jobs will be created.

The matter is now before us on appeal. In its appeal, the Applicant submits a brief, along with additional evidence, and claims that it submitted evidence of the feasibility of each of the retail and commercial ventures within the development area.

Upon *de novo* review, we will remand the application.

I. LAW

Congress enacted the immigrant investor program to encourage immigrant investment in a range of business and economic development prospects within designated regional centers. This regional center model can offer an immigrant investor already-defined investment opportunities, thereby reducing the immigrant investor's responsibility to identify acceptable investment vehicles.

Specifically, section 610(a) of the Appropriations Act, as amended, provides in pertinent part:

Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. § 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a program to implement the provisions of such section. Such program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a

general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

In applying for USCIS designation, a regional center applicant must submit a proposal in accordance with the regulation at 8 C.F.R. § 204.6(m)(3) that:

- (i) Clearly describes 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;
- (ii) Provides in verifiable detail how jobs will be created indirectly through increased exports;
- (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; and
- (v) Is supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables.

II. ANALYSIS

A. Procedural History

On July 22, 2013, the Applicant filed Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program, seeking USCIS designation as a regional center. The Applicant

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presented a proposed actual project, [REDACTED]
and two hypothetical projects, [REDACTED]
[REDACTED]

On July 3, 2014, the Chief issued a request for evidence (RFE), which he reissued on August 5, 2014, regarding: (1) deficiencies with the promotion of economic growth within the geographic area for all three projects; (2) issues with indirect job creation for all three projects; and (3) insufficiencies with the [REDACTED] business plan and economic analysis. On October 31, 2014, the Applicant responded to the Chief's RFE and submitted additional documentation.

On April 15, 2015, the Chief issued a notice of intent to deny (NOID) the application regarding: (1) the promotion of economic growth within the geographic area for all three projects, and (2) the Applicant's request for approval of the [REDACTED]. Specifically, the Chief found that "the RFE response should have provided evidence of demand for the commercial and retail leasing activity that will generate the revenue used as inputs into the economic model," and "the evidence submitted [is not] sufficient to demonstrate demand for the commercial and leasing activity needed to generate these revenues." Moreover, the Chief provided a detailed chart of the "Demand for Commercial and Retail Services" deficiencies from three prospective tenants [REDACTED]

[REDACTED] In addition, the Chief found that although there were deficiencies in the hypothetical business plan for [REDACTED] and economic impact analysis for [REDACTED] they were provided solely for the Applicant's information, and the Chief informed the Applicant that the [REDACTED] and [REDACTED] hypothetical projects would not receive deference.

On May 21, 2015, the Applicant responded to the Chief's NOID and submitted additional documentation. On August 4, 2015, the Chief denied the application determining that the Applicant did not provide sufficient information regarding [REDACTED] to determine that the commercial and retail leasing activities would be realized as demonstrated by the services provided.

On appeal, the Applicant claims that the business plan shows evidence of the feasibility of each of the retail and commercial ventures and submits additional market and demand analyses to establish approval of [REDACTED]. As an alternative, the Applicant states that if the additional documentation submitted on appeal is still insufficient, it requests that the commercial and retail services portion be withdrawn from the projected jobs as it accounts for only [REDACTED] out of the [REDACTED] jobs, thereby leaving [REDACTED] jobs, which would support 80 immigrant investors investing \$500,000. Furthermore, the Applicant proposes a second alternative: approve the application based on hypothetical projects of [REDACTED]

¹ An "actual project" refers to a specific project proposal that is supported by a *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998) compliant business plan. A "hypothetical project" refers to a project proposal that is not supported by a *Matter of Ho* compliant business plan. USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 14 n.2 (May 30, 2013), <http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB5%20Adjudications%20PM%20%28Approved%20as%20final%205-30-13%29.pdf>. Some applicants may choose to file a Form I-526 exemplar in order to obtain a favorable determination which will be accorded deference in subsequent related filings, absent material change, fraud, willful misrepresentation, or a legally deficient determination. *Id.* at 15.

B. Grounds for Denial

In his NOID, the Chief informed the Applicant that it did not submit sufficient evidence demonstrating the demand for the commercial and leasing activity needed to generate the revenues and explained the deficiencies for each prospective tenant. For instance, the Chief indicated that the Applicant should provide evidence supporting the estimates for retail costs and sales used in estimating revenues, such as feasibility studies and market analysis studies. Specifically, regarding [REDACTED] the Chief stated that the plan did not reference a study and support claims regarding the [REDACTED] campus. Moreover, with respect to [REDACTED] the Chief indicated that the plan did not discuss the relevant competitors in the market place, provide citations for the research, and support the evidence on estimated profit for restaurants. In addition, regarding [REDACTED] the Chief pointed out that there was insufficient evidence demonstrating the demand for the services provided.

In response to the NOID, the Applicant addressed each of the Chief's concerns and submitted a revised economic impact analysis for [REDACTED] and submitted revised hypothetical business plans for the prospective tenants. Although the Chief's decision denying the application found that the Applicant did not provide sufficient documentation in response to the NOID, the Chief did not articulate the deficiencies in the Applicant's response. The Chief did not explain why the Applicant's response did not overcome the issues raised in the NOID, or if the revised business plans raised additional issues or concerns.

In addition, while not addressed by the Chief in his decision, a review of the record of proceedings reflects that the Applicant submitted a subscription agreement and confidential offering memorandum for [REDACTED] reflecting that each investor will be required to submit a \$50,000 administrative fee in addition to the \$500,000 capital contribution.² According to the Applicant's marketing plan, the regional center will collect \$4,000,000 in administrative fees during the first year (80 investors X \$500,000). The Applicant indicates that it plans to use these administrative fees to finance the regional center's activities and pay back a loan to one of the principals. However, [REDACTED] business plan also factors in the \$4,000,000 in administrative fees (plus \$1,035,000 in interest) in the first year. Further, [REDACTED] business plan shows that it will have \$2,800,000 in administrative fees and \$690,000 in management expenses during the first year for direct cost of sales. Therefore, the Applicant appears to be double-counting the administrative fees for use by both the regional center and [REDACTED]

If the administrative fees will be allocated entirely to the regional center, then they are not available as a factor in [REDACTED] sales forecast. According to the projected profit and loss, [REDACTED] will earn a net profit of \$788,400 after year one; however this takes into account the \$4,000,000 in sales (the administrative fees) and \$3,490,000 in cost of sales resulting in a gross margin of \$1,545,000.

² The full amount of each \$500,000 capital contribution must be made as an investment for purpose of job creation and not used as administrative fees for either the regional center or the new commercial enterprise.

Removing the administrative fees and interest income on those fees would reduce the gross and net profit margins. If the administrative fees will be allocated to [REDACTED] then the Applicant has not sufficiently established how it will market, manage, and run the regional center without the administrative fees.

As the Chief did not sufficiently address the Applicant's NOID response, we will remand the matter to the Chief for the issuance of a new decision. The Chief should also review the issue of administrative fees and determine whether they would affect the operation of the regional center and how they would affect the costs of operating [REDACTED]. If the Chief finds that the response does not overcome the NOID grounds or new issues are raised, including a review of the additional evidence submitted on appeal, the Chief should articulate those reasons in a new decision.

C. Removal of Commercial and Retail Lease from [REDACTED]

As discussed above, the Applicant requests on appeal removal of the commercial and retail lease portion from the [REDACTED] economic analysis in the event that the above issues cannot be resolved in the Applicant's favor. The Applicant further states that with the elimination of the [REDACTED] jobs from the commercial and retail lease portion, there would still be [REDACTED] jobs from new construction, information and technology operation, facility engineering/maintenance, computer design/maintenance, and cloud services. The Applicant claims that the Chief should not have rejected the entire project when the commercial and retail lease activity accounted for [REDACTED] of the total estimated jobs.

On remand, the Chief should determine if the commercial and retail lease activities can be removed from the [REDACTED] economic analysis and address if such removal constitutes a material change to the original plan. Eligibility must be established at the time of filing. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998); 8 C.F.R. § 103.2(b)(1). Approval cannot occur if, after filing, eligibility exists under a new set of facts or circumstances. *Id.* If the Chief concludes that the removal of the commercial and retail lease portion would not constitute a material change, the Chief should then determine whether [REDACTED] can be approved as an actual project.

D. Hypothetical Projects

In the NOID, the Chief stated that the updated business plan for SFP, submitted in response to the RFE, provided sufficient evidence to address the deficiencies, but there were issues with the market analysis and business plan regarding population projects. Similarly, the Chief indicated that the updated economic impact analysis for [REDACTED] submitted in response to the RFE, was sufficient to overcome the deficiencies, but there was a concern regarding the economic impact analysis regarding the length of construction. In both instances, the Chief concluded that the discrepancies were for the Applicant's information, and "[n]o deference will be granted to this business plan." In

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the denial, however, the Chief does not address whether [redacted] or [redacted] was approved as hypothetical projects or why [redacted] was not considered as a hypothetical project.³

On remand, the Chief should clarify whether [redacted] and [redacted] are approved as hypothetical projects and, if not, explain why they do not qualify as hypothetical projects. In addition, in the event that the Chief finds that [redacted] cannot be approved as an actual project, the Chief should determine whether [redacted] qualifies as a hypothetical project and, if not, articulate those reasons.

?case or file or application?

III. CONCLUSION

The appeal will be remanded to the Chief for further action in accordance with this decision. If the Chief issues a new denial, the notice must contain specific findings that would afford the Applicant the opportunity to present a meaningful appeal. It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden.

ORDER: The decision of the Chief, IPO, is withdrawn. The matter is remanded to the Chief, IPO, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of A-C-R-C-, LLC*, ID# 16195 (AAO Apr. 28, 2016)

I strongly disagree with this one item in this decision:

"Eligibility must be established at the time of filing. See *Matter of Izummi*. 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998); 8 C.F.R. § 103.2(b)(1). Approval cannot occur it: after filing, eligibility exists under a new set of facts or circumstances. *Id.*"

The I-924 Application is amenable to perfection after filing, unlike a visa petition with a priority date!

³ In cases where the Form I-924 is filed based on actual projects that do not contain sufficient verifiable detail, the projects may still be approved as hypothetical projects if they contain the requisite general proposals and predictions. The projects approved as hypotheticals, however, will not receive deference. In cases where some projects are approvable as actual projects, and others are not approvable as hypothetical projects, the approval notice should contain a statement identifying which projects have been approved as actual projects and will be accorded deference and those projects that have been approved as hypothetical projects will not be accorded deference. USCIS Policy Memorandum PM-602-0083, *supra*, at 14 n.3.