

# **“No Deference” Regional Center Game Plans: Obtaining Post-Approval Deference**

*By Joseph P. Whalen (September 7, 2014)*

## **I. INTRODUCTION**

1 On the one hand, you were thrilled to obtain your USCIS Regional Center  
2 Designation Letter, but on the other hand, *after reading it*, you realized that you  
3 don't have much in the way of marketability. This is so because you got extremely  
4 little or no *deference* for anything in particular. You apparently *at least* demonstrated  
5 *the least* competency possible to still get a chance to prove yourself later. In reality,  
6 you may have demonstrated a great deal of the required knowledge, skills, and  
7 abilities (KSAs) or core competencies necessary to have great success, unfortunately,  
8 that is not what it says in your USCIS Regional Center Designation Letter, or I-924  
9 Approval Notice. Are those two things the same thing? Maybe and maybe not.

## **II. Deciphering Your I-924 Approval Notice**

10 That correspondence that you got in the mail from USCIS about your I-924  
11 Application can have different meanings. You need to be able to figure out what  
12 yours actually means in a practical sense. This has become much more of an issue  
13 due to the huge influx in the number of *USCIS-Designated Regional Centers* and  
14 the growing number of EB-5 projects competing for a finite number of annual EB-5  
15 investor slots and associated investment dollars. I will attempt to list all of the  
16 variations I can fathom as to the character of the I-924 Approval Notices. Here goes:

17 A) **Initial Regional Center Designation** with *no deference* because it was based  
18 on a “hypothetical” business plan (BP) that was **not** *Matter of Ho-*  
19 *compliant* and/or a “mock-up” economic impact analysis (EIA) that did  
20 **not** contain sufficient “verifiable details”. Even if transactional documents  
21 were submitted, USCIS will not review them for “hypothetical” cases.

22 B) *Initial Regional Center Designation* with *limited deference* because it was  
23 based on an “actual” business plan (BP) that was *Matter of Ho*-compliant  
24 and a “real” economic impact analysis (EIA) that did contain sufficient  
25 “verifiable details”. However, the package did not contain organizational  
26 and transactional documents intended for actual use in the anticipated  
27 offering (*or they were so woefully inadequate—and did not get corrected,*  
28 *thus USCIS did not view them favorably so did not even mention them in*  
29 *the approval notice*).

30 C) *Initial Regional Center Designation* with *a high amount of deference*  
31 because it was based on an “actual” business plan (BP) that was *Matter of*  
32 *Ho*-compliant and a “real” economic impact analysis (EIA) that did  
33 contain sufficient “verifiable details”. Also, the package contained very  
34 well-written organizational and transactional documents intended for actual  
35 use in the anticipated offering that were deemed “EB-5 Compliant” (this  
36 does NOT address any other laws for which compliance is required by  
37 some other body of law or any other government agency at the federal or  
38 state or any other levels). This is the I-526 Exemplar **Provisional Approval**  
39 level of deference which is the highest available.

40 D) *Regional Center Amendment Approval* with *no deference* because it was  
41 based on a “hypothetical” business plan (BP) that was not *Matter of Ho*-  
42 compliant and/or a “mock-up” economic impact analysis (EIA) that did  
43 not contain sufficient “verifiable details”.

- 44 i. This might have been intended to be an I-526 Exemplar filing but  
45 was deemed inadequate for that level, **but** was good enough for this  
46 level. If transactional documents were submitted they would not  
47 even have been reviewed once the BP and/or EIA was deemed  
48 inadequate.

49           ii. This might have merely been an early and/or exploratory expansion  
50           amendment based on geography, industry, or both.

51   E) ***Regional Center Amendment Approval*** with *limited deference* because it  
52   was based on an “actual” business plan (BP) that you believed **was** *Matter*  
53   *of Ho*-compliant and/or a “real” economic impact analysis (EIA) that you  
54   believed **did** contain sufficient “verifiable details”. However, the package  
55   did **not** contain organizational and transactional documents intended for  
56   actual use in the anticipated offering. Alternatively, perhaps just portions of  
57   the documentation fell short (BP, or EIA, or transactional documents) and  
58   you may have elected to take what you could get for expediency.

59           i. This might have been intended to be an I-526 Exemplar filing but  
60           was deemed inadequate for that but was good enough for this level.

61           ii. This might have merely been an early and/or exploratory expansion  
62           amendment based on *geography, industry, deal structure, economic*  
63           *methodology*, any one of these issues *or combination* of them.

64   F) ***Regional Center Amendment Approval*** with *a high amount of deference*  
65   because it was based on an “actual” business plan (BP) that **was** *Matter of*  
66   *Ho*-compliant and an “mock-up” economic impact analysis (EIA) that **did**  
67   contain sufficient “verifiable details”. Also, the package contained very  
68   well-written organizational and transactional documents intended for actual  
69   use in the anticipated offering that were deemed “EB-5 Compliant” (this  
70   does **NOT** address any other laws for which compliance is required by  
71   some other body of law or any other government agency at the federal or  
72   state levels). This is the **I-526 Exemplar *Provisional Approval*** level of  
73   deference which is the highest available.

74   G) **A Special Note on I-924s**: In reality, all “deference” and “approvals”  
75   obtained via Form I-924 is *Provisional*. The reality is that if something

76 goes wrong in the future, it can undermine any “approval” or “deference”  
77 that came before it. Don’t dwell on the fact that it can happen, just be  
78 aware of it and take steps to prevent it from happening. There is nothing  
79 more that you can do.

### III. *Baby-Steps To a Better Tomorrow and Some Deference*

80 Now that you have a better idea of what your *Form I-924 Approval Notice*  
81 means in a practical sense, where do you go from there? Taking a look back at the  
82 title of this article and I think it is a good idea to look at the worst case scenario,  
83 assume **zero deference** beyond a titular nod and a federal “license” to call your  
84 “entity” a *USCIS Designated Regional Center*. That is at least a place to start. It  
85 allows you to:

- 86 A) Advertise and market your Regional Center;
- 87 B) Enter into agreements and deals with project developers in the name  
88 of your Regional Center;
- 89 C) Allow others to market their projects through your Regional Center  
90 (*provided that you are satisfied that they are EB-5 suitable projects*) for  
91 a fee;
- 92 D) Attend trade shows as a representative of a USCIS-Designated  
93 Regional Center; and
- 94 E) Look for more EB-5 suitable projects to join and sponsor via your  
95 Regional Center.

96 Even with all that said and done, there is still the reality that you have no  
97 deference towards anything yet and are thus not very likely to get any EB-5 investors  
98 on board yet. *Once an initial project is selected, it would be a darn good idea to*  
99 *work towards assembling an I-526 Exemplar to be filed via Form I-924.* In obtaining  
100 an additional USCIS I-924 Approval Notice for a *Specifically Named Project*, you

101 will increase marketability and may be able to secure your first EB-5 investor. *Other*  
102 *possibilities do exist.* For instance, it is possible that this *No Deference Regional*  
103 *Center* is NOT your first and only Regional Center. It is possible that you have  
104 obtained previous Regional Center Designations. It may be that a successful  
105 Regional Center model is being replicated in a new geographic locale. One other  
106 possibility that I can think of is that a “newbie” Regional Center Operator might be  
107 teaming up with a project partner who has successfully navigated their way through  
108 this maze before. It is possible that a contractor, development company, or group of  
109 domestic investors who have previous been a part of a successful Regional Center  
110 Project, including collecting the required documentary evidence to support the lifting  
111 of conditions from their Prior EB-5 investor partners’ status, would be willing to take  
112 a shot at helping you get started due to location and a *low cost to become affiliated,*  
113 *since they would be showing YOU the ropes and loaning you their EB-5 reputation.*

#### IV. *Conclusion*

114 Now that you have a fairly good idea of where you stand with your *No*  
115 *Deference Regional Center* and realize that once you actually get started, things  
116 should get better quickly; *or else they will fizzle fast.* Face it, the longer you languish,  
117 the less likely it is that you’ll catch that desperately needed break UNLESS, you are  
118 *very* well funded from the start. Unfortunately, I have a bad feeling that a significant  
119 percentage of the nearly 600 currently *USCIS-Designated Regional Centers* will *not*  
120 be able to hold out for more than a year or two without getting some seriously  
121 needed momentum going on *at least an initial project.* I think that their nest eggs  
122 will have been eaten up by then. To the *Nay-Sayers* out there (and you know who  
123 you are), I am not a pessimist in this, I am instead, a realist. If you need help, ask  
124 for it but be prepared to compensate people for their professional services. I can’t  
125 understand why people on a shoe-string budget think they can qualify as millionaire  
126 investors. EB-5 is for the serious, qualified investor rather than the pipe-dreamers.

## V. ABOUT THE AUTHOR

***I tell you what you NEED to hear, not what you WANT to hear!***



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***DISCLAIMER:*** *Work is performed by a non-attorney independent business consultant and de facto paralegal. It is the client's responsibility to have any and all non-attorney work products checked by an attorney. I provide **highly-individualized training** based on consultation with my clients. I serve Regional Center Principals and their counsel, potential EB-5 investors, immigration attorneys, and project developers. I am not an attorney myself although I have trained numerous attorneys and INS/USCIS adjudicators in complex issues within immigration and nationality law when I was an adjudicator there for many years. I do not prepare forms, write business plans, or create economic analyses. **I do review them for clients prior to submission and suggest corrections and/or modifications to run by your attorney and investment advisor.***

***NOTE: I have over a decade of experience as an adjudicator for INS and USCIS and direct EB-5 Regional Center Adjudications experience having been instrumental in reviving, greatly enhancing, and expanding the EB-5 Regional Center Program for USCIS.***

*[NAICS Code: 611430 Professional and Management Development Training](#)*

### **2012 NAICS Definition**

#### **611430 Professional and Management Development Training**

This industry comprises establishments primarily engaged in offering an array of short duration courses and seminars for management and professional development. Training for career development may be provided directly to individuals or through employers' training programs; and courses may be customized or modified to meet the special needs of customers. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

***That's My Two-Cents, For Now!***