

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Immigrant Investor Program
131 M Street, NE, MS 2235
Washington, DC 20529



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

TO:

Joseph Charlton McCarthy
American Dream Fund San Francisco Regional Center
LLC
7755 Center Ave, Suite 1100
Huntington Beach, CA 92647

DATE: October 3, 2018

Application: Form I-924
File Number: RCW1334351326
RCID: ID1334351326

NOTICE OF TERMINATION

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of American Dream Fund San Francisco Regional Center (the "Regional Center") as a regional center under the Immigrant Investor Program (the "Program") pursuant to Title 8 of the Code of Federal Regulations ("8 C.F.R.") section 204.6(m)(6). The reasons for the termination are explained, below:

(SEE ATTACHED)

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

The Regional Center must send the completed Form I-290B and supporting documentation with the appropriate filing fee to the address indicated below.

If using the U.S. Postal Service:

USCIS
P.O. Box 660168
Dallas, TX 75266

If using USPS Express Main/Courier:

USCIS
Attn: I-290B
2501 S. State Highway 121 Business
Suite 400
Lewisville, TX 75067

For an appeal, the Regional Center may request additional time to submit a brief within 30 calendar days of filing the appeal. Any brief, written statement, or evidence in support of an appeal that is not filed with Form I-290B must be directly sent within 30 days of filing the appeal to:

USCIS Administrative Appeals Office
U.S. Citizenship and Immigration Services

American Dream Fund San Francisco Regional Center – **Designation Terminated**

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20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

For more information about the filing requirements for appeals and motions, please see 8 C.F.R. § 103.3 or 103.5, or visit the USCIS website at www.uscis.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "SMKendall", written in a cursive style.

Sarah M. Kendall
Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on July 31, 2018

cc: Troy Robert Nehring
McAdam and McCarthy LLP
40 Lake Bellevue Drive, Suite 100
Bellevue, WA 98005

NOTICE OF TERMINATION
Termination of Regional Center Designation Under the Immigrant Investor Program
American Dream Fund San Francisco Regional Center

The regulation at 8 C.F.R. § 204.6(m)(6) (*Continued participation requirements for regional centers*) provides:

(i) Regional centers approved for participation in the program must:

(A) Continue to meet the requirements of section 610(a) of the Appropriations Act.

(B) Provide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area, using a form designated for this purpose; and

(C) Pay the fee provided by 8 CFR 103.7(b)(1)(i)(XX).

(ii) USCIS will issue a notice of intent to terminate the designation of a regional center in the program if:

(A) A regional center fails to submit the information required in paragraph (m)(6)(i)(B) of this section, or pay the associated fee; or

(B) USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

(iii) A notice of intent to terminate the designation of a regional center will be sent to the regional center and set forth the reasons for termination.

(iv) The regional center will be provided 30 days from receipt of the notice of intent to terminate to rebut the ground or grounds stated in the notice of intent to terminate.

(v) USCIS will notify the regional center of the final decision. If USCIS determines that the regional center's participation in the program should be terminated, USCIS will state the reasons for termination. The regional center may appeal the final termination decision in accordance with 8 CFR 103.3.

(vi) A regional center may elect to withdraw from the program and request a termination of the regional center designation. The regional center must notify USCIS of such

election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its decision regarding the withdrawal request in writing.

I. Procedural History

On March 7, 2014, USCIS designated and authorized the Regional Center's participation in the Program. On July 31, 2018, USCIS issued a Notice of Intent to Terminate ("NOIT") to the Regional Center which afforded the Regional Center 30 days from receipt of the NOIT to offer evidence in opposition to the grounds alleged in the NOIT. On September 6, 2018, USCIS received a response to the NOIT (the "NOIT Response"), which did not sufficiently address the grounds alleged in the NOIT. Accordingly, USCIS has determined that the Regional Center's participation in the Program should be terminated. Pursuant to 8 C.F.R. § 204.6(m)(6)(v) and through this Notice of Termination, USCIS hereby terminates the Regional Center's participation in the Program.

II. Reasons for Termination

USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment as required by 8 C.F.R. § 204.6(m)(6).

1. Failure to Continue to Serve the Purpose of Promoting Economic Growth

Regional centers are designated for the promotion of economic growth and must continue to meet the requirements of section 610(a) of the Appropriations Act as amended, and promote economic growth in a manner that does not conflict with requirements for classification under section 203(b)(5) of the Immigration and Nationality Act ("INA"), removal of conditions on lawful permanent residence under section 216A of the INA, and implementing regulations following their designation. According to section 610(a) of the Appropriations Act, economic growth includes increased export sales, improved regional productivity, job creation, or increased domestic capital investment. See also 8 C.F.R. § 204.6(m)(6)(ii) ("USCIS will issue a notice of intent to terminate the designation of a regional center in the program if . . . USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.").

The reasons why a regional center may no longer serve the purpose of promoting economic growth are varied and "extend beyond inactivity on the part of a regional center." 75 FR 58962. For example, depending on the facts, a regional center that takes actions that undermine investors' ability to comply with EB-5 statutory and regulatory requirements such that investors cannot obtain EB-5 classification through investment in the regional center may no longer serve the purpose of promoting economic growth. See Section 610(a)-(b) of the Appropriations Act (stating that one purpose of a regional center is to concentrate pooled investment in defined economic zones and accomplishing such pooled investment by setting aside visas for aliens classified under INA 203(b)(5)). Likewise, a regional center that fails to

engage in proper monitoring and oversight of the capital investment activities and jobs created or maintained under the sponsorship of the regional center may no longer serve the purpose of promoting economic growth in compliance with the Program and its authorities.

When derogatory information arises (such as evidence of inaction, mismanagement, theft, or fraud by the regional center or related entities), USCIS weighs all relevant factors in the totality of the circumstances to determine whether the regional center is continuing to serve the purpose of promoting economic growth. Such factors may include the seriousness of the derogatory information, the degree of regional center involvement in the activities described in the derogatory information, any resulting damage or risk imposed on investors and the economy, as well as any mitigating, corrective, or restorative actions taken or forthcoming to redress the situation.

USCIS has considered all evidence in the record, including evidence provided in response to the NOIT, “for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence,” in determining whether the Regional Center’s continued participation is justified under the regulations by a preponderance of the evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). For the reasons set forth below, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

A. *Lack of Regional Center Activity*

As noted in the NOIT, the Regional Center’s Form I-924A filings for fiscal years 2014, 2015, 2016 and 2017 do not report any EB-5 capital investment or job creation. In addition, although USCIS designated the Regional Center on March 7, 2014, the Form I-924A filings do not report any pending or approved Forms I-526 filed by petitioners who have made or are actively in the process of making investments associated with the Regional Center.

In the NOIT Response, the Regional Center claims that it has taken concrete steps toward promoting economic growth.

In support of its claim, the Regional Center provided the following evidence:

1. The letter from Joseph C. McCarthy, MS JD, Principal of the Regional Center and attached exhibits submitted in response to the Notice of Intent to Terminate (“NOIT”) dated July 31, 2018 for the American Dream Fund (ADF) San Francisco Regional Center, LLC (“Regional Center”);
2. Exhibit A - Operational Business Plan for San Francisco EB-5 Regional Center (submitted with the Regional Center’s Form I-924 and initial request for designation);
3. Exhibit B - Selected background information on potential EB-5 projects for sponsorship by Regional Center:
 - Brooklyn Basin Mixed Use Development Infrastructure Project

- San Francisco Embassy Suites
 - Bayside Assisted Living Community
4. Exhibit C - Resumes and background information on the Principals of American Dream Fund/Regional Center and their team, including:
- Resume for Mr. Joe McCarthy
 - Resume for Mr. George Ekins and List of Events Attended Globally
 - Printout of ADF's website and background information on ADF/Regional Center team
5. Exhibit D – “The Overlooked Role of the USCIS in EB-5 Future,” an article written by Joseph McCarthy.

The NOIT response failed to demonstrate that the Regional Center is promoting economic growth and job creation within its designated geographic area. Mr. McCarthy's letter in opposition to the NOIT suggests that American Dream Fund San Francisco Regional Center LLC is a part of a larger ADF network of more successful regional centers:

“USCIS should also take into consideration ADF's nation-wide EB-5 efforts to promote economic growth... The partitioning of EB-5 economic entities is a practice that is commonly supported by corporate and securities lawyers actively involved in EB-5, to show that each EB-5 offering is discretely organized under the respective economic entity. The problem with this practice, however, is that an organization such as American Dream Fund will have projects active under other economic entities that are not reflected in other EB-5 entities, such as the San Francisco Regional Center in the instant case, even though the operators are the same.”

However, the USCIS Policy Manual in the Volume 6, Part G, Chapter 3 – Regional Center Designation, Reporting, Amendments, and Termination,¹ instructs that the goal of the Regional Center Program is to stimulate economic growth *in a specified geographic area*... [Emphasis Added]. The statute² further provides that 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. Consequently, each regional center must provide evidence of its promotion of economic growth activity required to demonstrate continued eligibility within a designated geographic area specified in the most recently issued regional center approval letter, regardless of its affiliation with a network of other regional centers. The performance of other Regional Centers owned by ADF is not considered by USCIS as relevant evidence here, as the promotion of economic growth by other ADF regional centers would have taken place outside of the Regional Center's approved geographic area.

¹ <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartG-Chapter3.html>

² Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. 102-395, 106 Stat. 1828, 1874 (October 6, 1992), as amended.

Further, the NOIT response has failed to demonstrate that the Regional Center has begun development of any projects since receiving its designation, suggesting that its projects have not advanced past the conceptual stage. The NOIT response letter states that:

“Presently, ADF continues to endeavor to invest in a job creating projects in the San Francisco Bay Area projects. On multiple occasions, as described in the Regional Center operation plan, we have collaborated with development projects to stimulate economic development, increase local business and tax revenue, and create full time employment for qualifying employees. As shown in Exhibit B, we have vetted San Francisco commercial enterprises, including:

(b)(4)

- An infrastructure project to develop a mixed-use retail and residential facility in Oakland, CA. The project initially, and unsuccessfully, explores EB-5 capital with another regional center in 2014. After little to no progress, in 2015, ADF entered into cooperation agreements cooperation with the Brooklyn Basin Infrastructure Fund, and another company, Advantage America EB-5 group that involved five development sites (Phase I, Phase I A, Phase II, Phase III and Phase IV). Upon completion of development of all five sites, approximately [] dwelling units (a mix of [] apartments, townhomes, and lofts) is expected to be constructed. In addition, approximately [] square feet of ground floor retail/commercial space would be distributed throughout the sites and would be designed to provide a variety of active retail, restaurant, service, and small office uses to support the new residential neighborhood.
- A [] suite, full service Embassy Suites hotel located on the north side of San Francisco International Airport between the airport and downtown San Francisco. The hotel proposed total [] square feet, and was branded as an Embassy Suites hotel, which is part of the Hilton Hotels brands of hotels.
- An [] unit senior care and independent Bayside Assisted Living Community in San Mateo, CA operated³

(b)(4)

In each of the above examples, either completion of non EB-5 capital has been slower than anticipated, or the legislative reauthorization of the EB-5 Pilot Program made the actual investment of EB-5 capital and the filing of Form I-526 premature.”

Mr. McCarthy’s letter shows only that the Regional Center has not developed any projects past the mere conceptual stage. Simply actively vetting financially sound investment opportunities and being engaged in ongoing efforts to identify additional new projects is not sufficient for demonstrating the Regional Center’s ability to promote economic growth or develop viable projects in the future, in line with the program requirements. The Regional Center has not submitted any amendment to USCIS for its projects or provided any evidence that the development of any project has begun since receiving its designation, suggesting that its projects have not advanced past the conceptual stage. The argument in the NOIT

³ This sentence, as quoted from the NOIT response, is incomplete.

response letter suggesting the uncertainty of the legislative reauthorization of the EB-5 Immigrant Investor Program is irrelevant to the current proceedings. Therefore, the Regional Center has not established that it is more likely than not that its projects will create jobs and promote economic growth.

The Regional Center failed to provide relevant examples of its ability to continue to promote economic growth. The letter only describes potential projects and future aspirational goals of the Regional Center. None of the projects described have progressed beyond the mere conceptual stages. Thus, these projects are not relevant examples of the Regional Center's ability to continue to promote economic growth. The above issues cast doubt on the Regional Center's ability to identify and sponsor viable projects in the furtherance of job creation and economic growth within its respective geographic area. The letter did not contain any other evidence or any clear or credible plans for sponsoring future projects or a time frame in which the Regional Center will submit new applications.

In conclusion, the Regional Center has not provided sufficient evidence to show that it has, since its designation as a regional center in the EB-5 Program, promoted economic growth by means of increased export sales, improved regional productivity, job creation, or increased domestic capital investment. Further, it has not provided sufficient evidence to show that such economic growth is imminent or will occur within a reasonable time.

In the absence of evidence of increased export sales, improved regional productivity, job creation, or increased domestic capital investment, USCIS concludes that the Regional Center no longer serves the purpose of promoting economic growth.

III. Conclusion

For the reasons described above and set forth in the NOIT and pursuant to 8 C.F.R. 204.6(m)(6), USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth and hereby terminates the Regional Center's participation in the Program.

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

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