



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

December 22, 2016

Brendan Bryans Heafey
Bay Area Regional Center, LLC – **Designation Terminated**
38 Webster Street, Second Floor
Oakland, CA 94607

Notice of Termination

This letter shall serve as notification that U.S. Citizenship and Immigration Services (USCIS) has terminated the designation of Bay Area Regional Center, LLC (“BARC”) as a regional center under the Immigrant Investor Program (Program) pursuant to Title 8 of the Code of Federal Regulations (8 CFR) section 204.6(m)(6).

The regulation at 8 CFR § 204.6(m)(6) provides:

Termination of participation of regional centers. To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of a regional center in the . . . [P]rogram if a regional center fails to submit the required information or upon a determination 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 notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided 30 days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the . . . Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. As provided in 8 CFR 103.3, the regional center may appeal the decision to USCIS within 30 days after the service of notice.

Reasons for Termination

On April 20, 2016, USCIS issued to BARC a Notice of Intent to Terminate (NOIT) BARC's participation as a regional center in the Program because it no longer serves the purpose of promoting economic growth. BARC's I-924A filings do not report any EB-5 capital investment or job creation for

fiscal years 2011, 2012, 2013, 2014, or 2015. In addition, although USCIS designated BARC as a regional center on June 23, 2009, the I-924A filings do not report any approved Form I-526s, Immigrant Petitions by Alien Entrepreneurs, or I-829s, Petition by Entrepreneur to Remove Conditions. Finally, as of the date of this termination, USCIS records indicate that no I-526 or I-829 petitions are pending for investments associated with BARC.

Pursuant to the NOIT, BARC had 30 calendar days from receipt of the NOIT to offer evidence in opposition to the grounds alleged in the NOIT. BARC replied to our NOIT on May 20, 2016, offering the following evidence: (a) mentioning several projects it had attempted unsuccessfully to consummate, e.g., the Chow Piedmont project and the Hayward, CA home development project, and (b) that waiting for USCIS to review BARC's 2 prior NOIT responses (pursuant to USCIS's January 22, 2015 and June 18, 2015 NOITs) limited the time period(s) when BARC could search the marketplace for possible EB-5 projects. The May 20, 2016 NOIT reply also noted that in 2015 a developer with whom BARC had discussed funding the building of some senior housing facilities, decided to obtain alternative financing due to a concern about possible termination of the EB-5 program, which at the time might occur later that year.

Nonetheless, BARC offered no convincing evidence in opposition to the grounds alleged in the NOIT. For instance, in the over 7 years since BARC's regional center designation, it still has not consummated an EB-5 project yet. For the reasons noted above, BARC explained that it had not yet finalized an EB-5 project for a minor portion of this period. However, it has still been unable to do so for a lengthy period, as the Regional Center actually had about 5 ¼ years to consummate a project from the time of its initial USCIS designation to the first NOIT issued in January, 2015. It has also had some additional time since then, when it was not waiting to hear from USCIS pursuant to BARC's NOIT replies. In addition, the latest NOIT response noted BARC was "in contact" with another party, Koelsch Senior Communities, about funding a project for a senior memory care facility in Elk Grove, CA. However, based on the evidence supplied in the NOIT reply and other information, it does not appear this project is far along (or may be beyond the initial discussion stage). For example, we found no information on this project on either the Koelsch website¹ or BARC's website. In fact, the Regional Center website did not mention any projects at all. Thus, pursuant to 8 CFR § 204.6(m)(6), and for the reasons set forth above, USCIS hereby terminates BARC's participation in the Program.

Procedure to Appeal the Decision to Terminate

If you disagree with this decision, or if you have additional evidence that shows this decision is incorrect, you 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. You may also include a brief or other written statement and additional evidence in support of your motion or appeal. The Form I-290B must be filed within 33 calendar days from the date of this notice. If a motion or appeal is not filed within 33 calendar days, this decision is final.

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

¹ See <https://www.koelschseniorcommunities.com/our-communities?search=CA>.

If using U.S. Postal Service:

USCIS
P.O. Box 660168
Dallas, TX 75266

If using USPS Express Mail/Courier:

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

Your motion or appeal must be filed on Form I-290B and must be accompanied by a fee of \$675.00. (Note: This is a new fee; all Forms I-290-B submitted on or after December 23, 2016 must include this fee or USCIS will reject your submission. The enclosed instructions mention the old fee of \$630, but also that fees change periodically. As noted on the USCIS website, \$675 is the new fee for all Forms I-290-B submitted on or after December 23, 2016.) The check or money order used for the Form I-290B filing fee must be drawn from a bank or other financial institution located in the United States and must be payable to U.S. Department of Homeland Security.

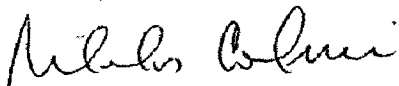
In support of your appeal, you may submit a brief or other written statement for consideration at the time of initial filing of the Form I-290B or within 30 calendar days of filing. If you are filing an appeal of this decision, you may, if necessary and for good cause, request additional time to submit a brief or other statement by submitting a written explanation for the need for additional time. Any brief, written statement or other evidence in support of an appeal that is not filed concurrently with Form I-290B, including any request for additional time for the submission of a brief must be sent directly to the Administrative Appeals Office (AAO) at:

USCIS
Administrative Appeals Office
20 Massachusetts Avenue, NW
Mail Stop 2090
Washington DC 20529-2090

The appeal of the termination may not be filed directly with the AAO. The appeal of the termination must be filed in accordance with the Form I-290B instructions and at the address indicated above.

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,



Nicholas Colucci
Chief, Immigrant Investor Program

Enclosures: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on April 20, 2016

cc: Linda Lau
Global Law Group

Bay Area Regional Center, LLC – **Designation Terminated**

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