

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:

Build America Capital Partners Regional Center
ATTN: Graeme A. Rael
14850 Montfort Dr., Suite 185
Dallas, TX 75254

DATE: June 8, 2018

Application: Form I-924

File Number: RCW1127650325

RCID: ID1127650325

NOTICE OF INTENT TO TERMINATE

This notice is in reference to the approved designation of Build America Capital Partners Regional Center (the "Regional Center"), as a regional center in the Immigrant Investor Program (the "Program"). The purpose of this notice is to notify the Regional Center that, pursuant to 8 C.F.R. § 204.6(m)(6), U.S. Citizenship and Immigration Services ("USCIS") intends to terminate the participation of the Regional Center in the Program because it no longer serves the purpose of promoting economic growth.

(SEE ATTACHED)

Pursuant to 8 C.F.R. 204.6(m)(6), you are provided thirty (30) days from receipt of this notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged.

Failure to respond within the time allotted may result in the termination of your designation for participation as a regional center in the Immigrant Investor Program.

Your deadline for submitting a response is: **July 11, 2018**

Keep a photocopy of this notice for your records. If you otherwise write to us about your case, please provide a copy of this notice.

You will be notified separately about any other applications or petitions you have filed.

Please send your response to this address:

U.S. Citizenship and Immigration Services
Immigrant Investor Program Office
131 M Street, NE
Mailstop 2235
Washington, DC 20529

IMPORTANT: RETURN THIS ORIGINAL NOTICE ON TOP OF YOUR RESPONSE.

cc: Shayda Naeim
David Hirson & Partners, LLP
1122 Bristol St.
Costa Mesa, CA 92626

NOTICE OF INTENT TO TERMINATE

Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program Build America Capital Partners Regional Center

This notice is in reference to the approved designation of Build America Capital Partners Regional Center (the "Regional Center"), as a regional center in the Immigrant Investor Program (the "Program").¹ The purpose of this notice is to notify the Regional Center that, pursuant to 8 C.F.R. § 204.6(m)(6), U.S. Citizenship and Immigration Services ("USCIS") intends to terminate the designation of the Regional Center in the Program because:

- 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, and increased domestic capital investment.

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

¹ Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended (hereinafter "Appropriations Act").

(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

A. Initial Designation

On August 1, 2013, USCIS designated the Regional Center following approval of its application to participate in the Program (RCW1127650325). Based on the initial designation, the Regional Center obtained approval to promote economic growth under the Program in the following geographic regions:

Name of State	Counties
California	Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura

B. Amendments

The Regional Center has not filed any amendments to its designation.

C. Regional Center Projects

USCIS has received no Forms I-526, Immigrant Petition by Alien Entrepreneur, associated with the Regional Center.

D. Annual Reports (Forms I-924A)

The Regional Center has filed 6 Forms I-924A, Annual Certification of Regional Center. The table below summarizes the information that the Regional Center provided to USCIS in those forms regarding the claimed aggregate amount of capital investment from EB-5 petitioners associated with the Regional Center and the new direct, indirect, and/or induced jobs created through the regional center per year.

Fiscal Year	Receipt No.	Date Received	Aggregate EB-5 Capital Investment	Aggregate Direct/ Indirect Job Creation	Aggregate Jobs Maintained
2013	RCW1333651312	11/29/13			
2013	RCW1336051482	12/24/13			
2014	RCW1511052641	3/25/15			
2015	RCW1535753878	12/23/15			
2016	RCW1700355156	12/23/16			
2017	RCW1800556209	1/5/2018			

(b)(4)

II. Analysis**A. 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. *See, e.g.*, 8 C.F.R. § 204.6(m)(6)(i)(A). 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 and may subvert a purpose of Section 610(a)-(b) of the Appropriations Act, which provides for regional centers as a vehicle to concentrate pooled investment in defined economic zones 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.

USCIS has considered all evidence provided “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 that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program’s requirements.

1. Lack of Regional Center Activity

The Regional Center’s Form I-924A filings for fiscal years 2013, 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 August 1, 2013, the Regional Center’s 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. The Regional Center’s filings do not otherwise indicate that it has conducted activity that serves the purposes of the Program, including the “purpose of concentrating pooled investment” as required by section 610(a) of the Appropriations Act.²

(b)(4)

A letter from Graeme Rael, principal of the Build America Capital Partners Regional Center, submitted with the Regional Center’s I-924A for fiscal year 2017, states that the Regional Center “has been selected by Walbern Developments USA to fund a NCE...for the construction, development, and operations of numerous multifamily residential buildings as well as commercial buildings.” The letter also states that the Regional Center was selected to sponsor a senior living housing community project in Riverside County, California, and is actively pursuing projects at the University of California Riverside and the University of California Los Angeles. However, all of these projects were also mentioned in the Regional Centers I-924A filings for fiscal years 2015 and 2016, as well as in the Regional Center’s response to a previous NOIT from June 2, 2016. As of the date of this notice, the Regional Center has not submitted any new evidence to show that these projects have progressed beyond the planning phases. Further, the Regional Center has not filed any amendments with USCIS for these projects or any project since receiving its initial designation on August 1, 2013. Simply conducting due diligence on possible

² *Id.*

projects is not sufficient for demonstrating the Regional Center's ability to promote economic growth or develop viable projects in the future.

Mr. Rael's letter also mentions several potential projects that the Regional Center identified, but were unsuccessful in sponsoring. These projects include the Andaz (Hyatt) Hotel Project in Palm Springs and four student housing development projects located across the country. However, the Regional Center acknowledges that the hotel project was ultimately sponsored by the California Real Estate Regional Center. Additionally, Build America also acknowledges that the four student housing project projects were outside of its designated geographic area and thus relied upon third-party sponsorship from two other regional centers, America's Center for Foreign Investment Regional Center and EB-5 Affiliate Network State of North Carolina Regional Center.

Build America Capital Partners Regional Center has not provided any evidence of its role in the development of these projects nor provided an explanation as to why the economic activity of other regional centers should be considered as evidence in determining Build America's promotion of economic growth and job creation.

Finally, publicly-available information³ shows that Build America Capital Partners Regional Center is currently suspended by the California Secretary of State. Due to the apparent suspension of the Regional Center entity, it appears that the Regional Center is not authorized to conduct business in its designated geographical area.

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

USCIS has determined that the Regional Center does not serve the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. Therefore, USCIS intends to terminate the designation of the Regional Center in the Program.

In accordance with 8 C.F.R. § 204.6(m)(6)(iv), the Regional Center will be provided 30 days from receipt of this notice to rebut the grounds alleged above. Failure to respond to this notice of intent to terminate will result in termination of the regional center designation based on the above stated reasons.

Please mail any evidence you wish to provide in opposition to the grounds alleged in this notice of intent to terminate to the address noted below and include a copy of this letter on top of your submission.

³ <https://businesssearch.sos.ca.gov/>

U.S. Citizenship and Immigration Services
Immigrant Investor Program Office
131 M Street NE, Mailstop 2235
Washington, DC 20529