

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:

Patrick J. Barber
Encore S CA Regional Center LLC
5005 LBJ Freeway, Suite 1200
Dallas, TX 75244

DATE: April 18, 2018

Application: Form I-924

File Number: RCW1222950734

RCID: 1222950734

NOTICE OF TERMINATION

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of Encore S CA Regional Center LLC (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
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

Encore S CA Regional Center – **Designation Terminated**
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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 'Julia L. Harrison', followed by a long horizontal flourish.

Julia L. Harrison
Acting Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on June 28, 2016

cc: Chad Cormier
Encore Enterprises Inc.
5005 LBJ Freeway, Suite 1200
Dallas, TX 75244

NOTICE OF TERMINATION

**Termination of Regional Center Designation Under the Immigrant Investor Program
Encore S CA 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 July 15, 2013 USCIS designated and authorized the Regional Center's participation in the Program. On June 28, 2016 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 August 2, 2016, 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).

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. 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.

1. Lack of Regional Center Activity

As noted in the NOIT, the Regional Center’s Form I-924A filings for fiscal years 2013, 2014, 2015 do not report any EB-5 capital investment or job creation¹. In addition, although USCIS designated the Regional Center on July 12, 2013, 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.

On August 2, 2016, the Regional Center submitted a response to the NOIT dated June 28, 2016. That response contained the following evidence:

- Statement of Patrick J. Barber;
- Regional Center designation letter;
- Excerpts from the Regional Center’s website;
- Heritage Square Project Summary Report;
- The Orchard-Stonecreek Project Summary Report;
- Five Guys Burger Restaurant Project Summary Report;
- IIUSA, EB5 Industry Forum Invoice;
- Berkadia flyer; and
- Memorandum of Understanding with Berkadia

¹ The Regional Center submitted Forms I-924A for fiscal years 2016 and 2017 on December 22, 2016 and December 29, 2017 which shows no EB-5 capital investment or job creation.

In the statement from Patrick J. Barber, submitted as part of the NOIT response, Mr. Barber indicated the Regional Center previously focused on the “development of a Five Guys Burger restaurant portfolio” but that non EB-5 financing was used to fund the project. Mr. Barber also stated that the Regional Center “considered sponsoring” two shopping center development (Orchard-Stonecreek and Heritage Square). Both projects were not located in a targeted employment area. Mr. Barber also noted that the Regional Center has “exhibited at the national IIUSA Conference in order to develop project interest” and “has strategically aligned itself with Berkadia Capital.” In support of this, the Regional Center provided a flyer from the IIUSA Conference along with a Memorandum of Understanding with Berkadia Capital.

The statement of Mr. Barber and the evidence submitted relate only to potential projects and future aspiration goals of the Regional Center. For instance, the three projects that were cited in Mr. Barber’s statement were not actually pursued. Thus, these projects are not relevant examples of the Regional Center’s ability to continue to promote economic growth.

Mr. Barber points to the strategic alliance and Memorandum of Understanding with Berkadia Capital. However, the Memorandum of Understanding is dated December 3, 2015 and indicates that it “does not constitute a binding agreement in any respect.” Even if the Memorandum of Understanding were binding, it would only demonstrate a future desire to find projects and would not demonstrate that the Regional Center has actually engaged in the promotion of economic growth.

As of the date of this notice, USCIS records indicate that the Regional Center has not provided evidence to support (and 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 Act². The Regional Center has not provided any evidence of economic activity. And as of the date of the Notice, USCIS has no record of any other projects under sponsorship or development by the Regional Center.

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.

² USCIS Policy Manual, Volume 6, Part 6, Chapter 3.

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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