



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

January 26, 2017

Charles C. Liu
Pacific Proton Therapy Regional Center, also known as Beverly Medical Regional Center – **Designation Terminated**
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Notice of Termination

This letter shall serve as notification that U.S. Citizenship and Immigration Services (“USCIS”) has terminated the designation of Pacific Proton Therapy Regional Center, LLC, now known as Pacific Medical Regional Center, LLC¹ (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 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 pilot program 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

¹ In December 2014, the regional center entity--Pacific Proton Therapy Regional Center, LLC---changed its name with the California Secretary of State to Pacific Medical Regional Center, LLC. Despite the legal name change of the regional center entity, this document will refer to the Regional Center as Pacific Proton Therapy Regional Center, LLC, as that is the name the Regional Center used in its most recent Form I-924A filing, dated December 29, 2015 and it has not provided USCIS with notification or other documentation reflecting a change to its original designation name.

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 Pilot 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.

Procedural History

(b)(4)

(b)(4) On June 28, 2012, USCIS designated and authorized the Regional Center's participation in the Program. USCIS has received a total of [REDACTED] Forms I-526, Immigrant Petition by Alien Entrepreneur, filed by petitioners associated with the Regional Center based on investments in Pacific Proton EB-5 Fund, LLC, the only New Commercial Enterprise ("NCE") associated with the Regional Center. The NCE planned to pool [REDACTED] in capital investments from [REDACTED] EB-5 investors, and lend the funds to a job creating entity - Los Angeles County Proton Therapy, LLC (the "JCE").² The JCE planned to use the funds to develop and operate a proton therapy treatment center for cancer and other diseases in Los Angeles County, California.

On May 26, 2016, the United States Securities and Exchange Commission (the "SEC") brought a civil action against the Regional Center, the NCE, the JCE, Charles Liu and his wife, Xin Wang (also known as Lisa Wang).

The SEC's complaint (the "Complaint") asserts that Mr. Liu and his wife, Ms. Wang, have defrauded at least 50 Chinese investors of almost \$27,000,000 by falsely claiming that their monies would be invested in a project that met the requirements of the EB-5 program, and would be used to build and operate a proton therapy cancer treatment center in Southern California.³

The Complaint goes on to allege that

rather than invest the investors' Capital Contributions as promised—and as required for the investors to meet the EB-5 program requirements—the defendants misappropriated or diverted approximately \$17,400,000 from the accounts where the contributions were deposited. Liu misappropriated at least \$6,285,000 for himself, and his wife and co-defendant, Wang, misappropriated at least \$1,400,000. Liu also transferred over \$11,845,000 to three marketing firms in China, including \$3,500,000 to a firm of which Wang is CEO and chairman of the board. Liu also allowed most of the Administrative Fees to be used for undisclosed purposes. As a result,

² On March 24, 2015, the JCE changed its name to Beverly Proton Center, LLC.

³ *SEC vs. Charles C. Liu, et al.* Complaint ¶ 3. Civil Action No. 8:16-cv-00974. (C.D. Cal. filed May 26, 2016).

the EB-5 eligible cancer treatment center that the defendants represented would be constructed with investor funds has not been built.⁴

On July 11, 2016, the U.S. District Court for the Central District of California (the “District Court”) entered an order for a preliminary injunction that enjoined the Regional Center, the NCE, and Mr. Liu and Ms. Wang from directly or indirectly participating in the offer or sale of any security that constitutes an investment in a “commercial enterprise” under the EB-5 visa program, including engaging in activities with a broker, dealer, or issuer, or a Regional Center designated by the USCIS, for purposes of issuing, offering, trading, or inducing or attempting to induce the purchase or sale of any such EB-5 investment.⁵

The District Court also entered a series of orders freezing the assets and accounts of the Regional Center, the NCE, and Mr. Liu and Ms. Wang, and other associated entities, including but not limited to monies held in accounts located in the United States, the People’s Republic of China, the Hong Kong Special Administrative Region, and Grenada.⁶ Additionally, the District Court ordered Mr. Liu, Ms. Wang, and Ms. Wang’s company, United Damei Group, to repatriate foreign funds and property. The District Court also ordered the corporate defendants and Mr. Liu and Ms. Wang to provide an accounting of all their respective assets, including a description of the source of each asset.

Furthermore, the District Court appointed a monitor to oversee the activities of the Regional Center, the NCE, and the JCE, with full access to corporate records. The court-appointed monitor is tasked with conducting an investigation and reporting to the District Court on the location and accounting of all of the assets and liabilities of the Regional Center, NCE, and JCE.⁷

On August 22, 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 September 23, 2016, USCIS received a response to the NOIT (the “NOIT Response”). The NOIT Response contains a cover letter from Mr. Liu, the managing member of the Regional Center as identified on the most recent I-924A, and several attachments. The following documents were submitted with the NOIT Response:

- A letter purporting to be from Donald K. Wise, a certified public accountant;⁸
- A schedule of assets other than cash for Beverly Proton Center, LLC;

⁴ *Id.* at ¶ 6. Defined terms have the meaning assigned in the source.

⁵ *SEC vs. Charles C. Liu, et al.* Preliminary Injunction Against All Defendants ¶ V. Civil Action No. 8:16-cv-00974. (C.D. Cal. filed July 11, 2016).

⁶ *Id.* at ¶ VII.

⁷ *SEC vs. Charles C. Liu, et al.* Order Appointing a Monitor ¶ II. Civil Action No. 8:16-cv-00974. (C.D. Cal. filed July 11, 2016).

⁸ The letter was not signed and is not on official letterhead.

- A schedule of assets other than cash for the Regional Center;
- A System Purchase Agreement between Mevion Medical Systems and Beverly Proton Center, dated November 9, 2015, with supporting documentation;
- Letter from Mevion Medical Systems, dated November 9, 2015;
- Excerpt of a Chase Bank account statement for the NCE account -5152, showing transactions between November 2, 2015, and November 30, 2015;
- An agreement between the JCE and Skanska USA Building, Inc., dated April 15, 2013, with supporting documentation;
- A list of transactions for Skanska USA Building;
- Five excerpts of Chase Bank account statements from 2013 and 2014 for the NCE account -5152, showing transfers to Skanska USA Building;
- A list of transactions for R. Alan Construction; and
- A statement from Charles Liu.

The NOIT Response did not sufficiently overcome the grounds alleged in the NOIT and as set forth below, USCIS has determined that the Regional Center's participation in the Program should be terminated. Through this Notice of Termination, USCIS terminates the Regional Center's participation in the Program.

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 CFR § 204.6(m)(6).

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 following designation. *See, e.g.,* 8 C.F.R. § 204.6(m)(6). 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) ("USCIS will issue a notice of intent to terminate . . . 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 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. Factors Impacting the Regional Center’s Ability to Serve the Purpose of Promoting Economic Growth

As detailed in the NOIT, in May 2016, the United States Securities and Exchange Commission (the “SEC”) brought a civil action against the Regional Center, related EB-5 entities,⁹ Charles C. Liu and Xin Wang, aka Lisa Wang, among other defendants (collectively referred to herein as “Defendants”). The evidence cited in the NOIT includes references to the SEC’s allegations that rather than promoting economic growth, the evidence reflects that the Regional Center management, including Mr. Liu and Ms. Wang, engaged in acts, practices, and courses of business that defrauded and deceived investors, prospective investors, and other persons.

Specifically, the SEC alleges that Mr. Liu and Ms. Wang:

rather than invest the investors’ Capital Contributions as promised—and as required for the investors to meet the EB-5 program requirements—the defendants misappropriated or diverted approximately \$17,400,000 from the accounts where the contributions were deposited. Liu misappropriated at least \$6,285,000 for himself, and his wife and co-defendant, Wang,

⁹ Including Pacific Proton Fund LLC, the new commercial enterprise associated with the Regional Center.

misappropriated at least \$1,400,000. Liu also transferred over \$11,845,000 to three marketing firms in China, including \$3,500,000 to a firm of which Wang is CEO and chairman of the board. Liu also allowed most of the Administrative Fees to be used for undisclosed purposes. As a result, the EB-5 eligible cancer treatment center that the defendants represented would be constructed with investor funds has not been built.¹⁰

The SEC allegations that the management of the Regional Center, including Mr. Liu and Ms. Wang, engaged in improper or illegal behavior, coupled with the District Court's orders, undermine the Regional Center's credibility and cast considerable doubt on the credibility of all of its representations before the agency, and thus also, its ability to continue to demonstrate that it promotes economic growth in compliance with the Program.

On July 11, 2016, the United States District Court for the Central District of California ("the District Court") restrained the Defendants from issuing, offering or selling any securities. The District Court also entered a series of orders which freeze the assets of the Regional Center, the NCE, and the JCE, and their related escrow accounts and appointed a monitor to oversee their activities.

The District Court's orders appointing a monitor, freezing the assets of the Regional Center and its associated entities, and enjoining those entities from directly or indirectly participating in the offering or sale of securities in any EB-5 related commercial enterprise cast considerable doubt on the Regional Center's ability to operate according to Program requirements. Moreover, this evidence calls into question whether the Regional Center, the NCE, and the JCE can continue to operate financially or serve the purpose of promoting economic growth.

In the NOIT Response, the principal of the Regional Center, Charles Liu, acknowledges the District Court's orders appointing a monitor, enjoining further issuance of securities, and freezing assets, then goes on to state:

...[T]he key issue is not credibility of the Regional Center or its principals, or likelihood of future action, but instead the demonstrated past action and job-creating expenditures that have already occurred...¹¹

Mr. Liu then cites to the documents attached to the cover letter as evidence of job-creating expenditures made by the JCE.¹² Additionally, in a separate section of the cover letter related to the Regional Center's use of EB-5 funds, Mr. Liu claims that Regional Center's expenditures created sufficient jobs for at least [REDACTED] investors using the approved economic methodology.¹³

(b)(4)

¹⁰ *SEC vs. Charles C. Liu, et al.* Complaint ¶ 6. Civil Action No. 8:16-cv-00974. (C.D. Cal. filed May 26, 2016). Defined terms have the meaning assigned in the source.

¹¹ NOIT Response Cover Letter, p. 3-4

¹² *Id.*

¹³ *Id.*

USCIS disagrees with Mr. Liu's claim that the credibility of the Regional Center and its management and the likelihood of future action is not a key issue. While the Regional Center may have incidentally promoted some economic growth in the past, the ongoing litigation, serious allegations of financial misconduct, and the court orders prevent the Regional Center and its affiliated companies from performing required business functions, in addition to casting serious doubt on the Regional Center's apparent ability to serve the purpose for which it was designated.

Under 8 CFR § 204.6(m)(6), USCIS may terminate a regional center upon a determination that the regional center no longer serves the purpose of promoting economic growth. The NOIT Response focuses on select past actions by Regional Center, but fails to address the concerns USCIS identified in the NOIT about how the Regional Center will continue to operate with the restrictions the District Court has placed on it. Thus, the Regional Center has failed to establish its ability to continue to serve the purpose of promoting economic growth in compliance with the Program. For these reasons, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth.

2. No Viable Projects for EB-5 Investors

Based on the existing record, USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth because its only capital investment project is unlikely to be a viable project for EB-5 investors. Additionally, there is no evidence in the record indicating that the Regional Center is undertaking any other capital investment projects within its jurisdiction.

In general, capital investment projects sponsored by a regional center demonstrate its promotion of economic growth through the pooling of investment capital from EB-5 investors and resulting job creation. These capital investment projects and resulting job creation form the basis of Program eligibility throughout the entire period of a regional center's participation in the Program—from the point of initial designation and beyond. In order to be designated as a USCIS-approved regional center, the applicant must provide a proposal which, among other things, describes "in verifiable detail how jobs will be created." 8 C.F.R. § 204.6(m)(3)(ii). Relatedly, USCIS must be able to verify that an investor seeking an immigrant visa under the Program will be able to demonstrate that his or her qualifying investment will create jobs indirectly, including through revenues generated by a new commercial enterprise. *See* 204.6(m)(7).

The NCE, Pacific Proton EB-5 Fund, LLC, represents the ^{(b)(4)}Regional Center's only job-creating project. According to its business plan, the NCE planned to pool ^{(b)(4)} in capital investments from ^{(b)(4)} EB-5 investors, and lend the funds to the JCE, Los Angeles County Proton Therapy, LLC, for the construction and operation of a proton therapy cancer treatment center in Montebello, California. ^{(b)(4)}

To invest in the NCE, investors purchase membership units for \$500,000 per unit. The NCE identifies its membership units as securities throughout its Private Offering Memorandum. The NCE currently has ^{(b)(4)} investors, representing ^{(b)(4)} in EB-5 capital.

(b)(4)

On July 11, 2016, the District Court issued a preliminary injunction that prevents the NCE from participating in the offer or sale of any security which constitutes an investment in a commercial enterprise in the EB-5 program.¹⁴ This order prevents the NCE from soliciting any new EB-5 investors and, thus, attracting the additional [REDACTED] in EB-5 financing upon which the project is predicated.¹⁵
(b)(4)

Additionally, the District Court enjoined the NCE and JCE from transferring any funds or assets.¹⁶ This restriction prevents the NCE from lending funds to the JCE, and prevents the JCE from deploying any funds it has into job-creating activity.

In the NOIT Response, Mr. Liu states:

Even if USCIS is correct in its assertion that the Regional Center has no other projects and can not raise any further EB-5 funding, this does not mean that the current project is not “viable” for the purpose of creating at least 10 jobs per investor.

...Clearly the Regional Center should remain active at least for the limited purpose of completing the EB-5 process for investors in the midst of that process, to allow them to submit their I-829 petitions at the statutorily prescribed time in order to get credit for the job creation that has already occurred.¹⁷

(b)(4)

The NCE’s business plan indicated a total cost of [REDACTED] to build the proton therapy center. The Regional Center intended to seek [REDACTED] in EB-5 funding for the project. The Regional Center only (b)(4) received [REDACTED] in EB-5 funds prior to the court orders freezing the assets of the Regional Center and its associated corporate entities and enjoining them from seeking additional investors. The NOIT Response contained no evidence demonstrating how the Regional Center intended to obtain the necessary financing to move forward with the project. Neither did the NOIT Response include evidence demonstrating how the Regional Center intended to overcome the restrictions on its business operations imposed by the District Court’s preliminary injunction.

Thus, the NOIT Response fails to demonstrate how the NCE and the JCE, lacking the required financing to complete the proton therapy center project and encumbered by the restrictions from the District Court, would be able to meet the employment creation requirements of the EB-5 program.

Additionally, Mr. Liu’s response to the NOIT states:

¹⁴ *SEC vs. Charles C. Liu, et al.* Preliminary Injunction Against All Defendants ¶ V. Civil Action No. 8:16-cv-00974. (C.D. Cal. filed July 11, 2016).

¹⁵ On October 17, 2016, the District Court modified its preliminary injunction. The orders pertaining to the corporate defendants were unchanged. See *SEC vs. Charles C. Liu, et al.* Amended and Restated Preliminary Injunction. Civil Action No. 8:16-cv-00974. (C.D. Cal. filed October 17, 2016).

¹⁶ *Id.* at ¶ VI.

¹⁷ NOIT Response Cover Letter, p. 4

... Dr. Thropay has expressed interest (through the court-appointed monitor) in proceeding with the proton center project in some form, and Charles Liu has said he is willing to give up management or control of the project in order to allow it to go forward for the benefit of the investors.¹⁸

The NOIT Response indicates that the proton therapy center project could move forward under the direction of others, such as Dr. John Thropay¹⁹ or the court-appointed monitor. Mr. Liu provides no evidence to support his claims that other individuals could continue the project. Furthermore, he provides no evidence demonstrating that any possible future project would conform to EB-5 program requirements. Thus, the NOIT Response fails to demonstrate that a future version of the project under new management would be viable.

Based on the undermined viability of the capital investment project sponsored by the Regional Center and its inability to sponsor future projects, 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.

3. Diversion of EB-5 Funds

The allegations in the SEC's filings indicate that EB-5 funds were used for purposes that are inconsistent with the business plans submitted to USCIS by the Regional Center and in furtherance of job creation. Specifically, as detailed to USCIS, the job creation relating to the Pacific Proton EB-5 Fund Project was based on construction expenditures, equipment manufacturing, and business operations. The use of EB-5 funds for purposes unrelated to construction, equipment purchase, business operations, and the furtherance of job creation not only casts considerable doubt on the legitimacy of the Regional Center's operations predicated upon the use of EB-5 funds in furtherance of job creation, but may also potentially impact the Regional Center's investors whose petitions rely on the job creation for program eligibility. Diversion of EB-5 funds away from EB-5 compliant job creating projects is counter to a regional center's purpose of pooling capital investment and the promotion of economic growth.

(b)(4) Evidence obtained by USCIS indicates that between October 2014 and March 2016 approximately [REDACTED] of EB-5 capital²⁰ was diverted from bank accounts belonging to the Regional Center, the NCE, and the JCE into accounts belonging to Mr. Liu and Ms. Wang, companies closely affiliated with

¹⁸ *Id.*

¹⁹ Dr. Thropay is a radiation oncologist and co-founder of the Regional Center and JCE.

²⁰ *SEC vs. Charles C. Liu, et al.* Declaration of Lorraine Pearson in Support of Plaintiff Securities and Exchange Commission's Ex Parte Application for a Temporary Restraining Order, Order to Show Cause Why a Preliminary Injunction Should Not Be Granted, and Orders (1) Freezing Assets; (2) Repatriating Assets; (3) Requiring Accountings; (4) Prohibiting the Destruction of Documents, ¶ 34. Civil Action No. 8:16-cv-00974. (C.D. Cal. filed July 11, 2016).

them, or companies involved in investor recruitment. The evidence also suggests that Mr. Liu diverted approximately [REDACTED] worth of administrative fees for his personal use.²¹

(b)(4)

In the NOIT Response, Mr. Liu does not address the concerns raised regarding the alleged diversion of EB-5 funds. Rather, Mr. Liu states:

Of course funds not spent in accordance with the business plan or that do not create jobs as described in the approved economic analysis do not have to be accepted by USCIS when investors file I-829 petitions for removal of conditions based on creation of 10 jobs per investor. However, the appropriate time for that analysis is at the time of individual I-829 adjudication, where evidence of expenditures and job creation activity will be reviewed by USCIS for each investor.²²

Mr. Liu then goes on to reference the attached exhibits as evidence of job creating expenditures.

USCIS disagrees with Mr. Liu's assertion that it is premature to analyze if EB-5 funds were diverted. The diversion of EB-5 investment funds away from job creating activities is contrary to the intent of the Program as it undermines investors' ability to comply with EB-5 statutory and regulatory requirements and jeopardizes their eligibility for EB-5 classification.

While the individual analysis he suggests is also appropriate for the adjudication of an investor's Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, determining whether a regional center has complied with its essential responsibilities for promoting economic growth is not necessarily confined to come after the adjudication of each of its investors' petitions. The regional center has an ongoing and independent obligation to continue to serve the purpose of promoting economic growth in a manner consistent with the Program outside of the eventual adjudicative determinations made on each of its associated investors' petitions. Accordingly, actions taken by a regional center that are contrary to the intent of the Program by undermining its investors' ability to comply with EB-5 statutory and regulatory requirements and jeopardizing their eligibility for EB-5 classification, such as diversion of investor funds away from EB-5 compliant activities, may be appropriately addressed in advance of the adjudication of investor petitions.

In the NOIT Response, Mr. Liu cites to a number of job-creating expenditures made by the Regional Center, totaling at least [REDACTED] (b)(4)

The project has already spent funds on job-creating activities (as planned in the business plan and economic analysis approved by USCIS). For example:

²¹ *Id.* at ¶ 30. See also *SEC vs. Charles C. Liu, et al.* Order Granting the SEC's Motions for a Preliminary Injunction, Repatriation of Assets, and the Appointment of a Monitor, p. 7. Civil Action No. 8:16-cv-00974. (C.D. Cal. filed July 11, 2016).

²² NOIT Response Cover Letter, p. 4

(b)(4)



Mr. Liu further states:

The evidence attached hereto, at a minimum, shows that it is more probable than not that millions of dollars have been spent on job-creating expenditures, in accordance with the approved business plan and economic analysis. According to the approved methodology in the economic analysis, it appears that, at a minimum, enough jobs have been created for the successful adjudication of [REDACTED] investor's I-829 petitions, and potentially more....²⁴

(b)(4)

(b)(4)

USCIS notes that the NCE, controlled by the Regional Center, received [REDACTED] in EB-5 capital from [REDACTED] immigrant investors. Mr. Liu has claimed that at least [REDACTED] of those funds were properly expended on approved job-creating activity. Even viewing Mr. Liu's claims in a light most favorable to the Regional Center, over [REDACTED] of EB-5 capital remains unaccounted for. While the Regional Center may have expended some funds in accordance with the business plan and incidentally created some employment, the NOIT Response fails to demonstrate by a preponderance of the evidence that EB-5 funds were not diverted. (b)(4)

The NOIT Response contains no evidence addressing the alleged diversion of EB-5 capital or demonstrating that all EB-5 funds were expended in accordance with the approved business plan.

After reviewing the evidence in the record, including all that was submitted in response to the NOIT, it appears that the Regional Center, through Mr. Liu and his wife, used EB-5 funds for purposes unrelated to the business activities of the JCE. Based on this apparent diversion and the seriousness of its consequences, 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.

4. Material Misrepresentations

As indicated in the NOIT during the course of its adjudications, and the verification of information submitted by the Regional Center and individual Form I-526 petitioners, USCIS has discovered

²³ *Id.* at p. 2

²⁴ *Id.* at p. 4

significant discrepancies between what the Regional Center represented in its filings and in documents provided to individual Form I-526 petitioners, and what USCIS was able to determine independently.

In order to comply with the requirement of 8 C.F.R. § 204.6(m)(6), the Regional Center has submitted a Form I-924A, Supplement to Form I-924, annually since 2012. In February 2015, the Regional Center submitted a second Form I-924A to amend its fiscal year 2014 filing. The table below summarizes the information provided by the Regional Center in its Form I-924A filings:

Fiscal Year	Receipt No.	Date Received	Aggregate EB-5 Capital Investment	Aggregate Direct/ Indirect Job Creation
FY2012	RCW1231950810	11/14/2012		
FY2013	RCW1335151356	12/17/2013		
FY2014	RCW1432251987	11/18/2014		
FY2014	RCW1503652587	2/5/2015		
FY2015	RCW1600554174	12/29/2015		

(b)(4)

Review of the Forms I-924A submitted by the Regional Center, in light of the Complaint and the court-ordered preliminary injunction and asset freeze, raises significant concerns regarding the representations made by the Regional Center regarding the investment of EB-5 capital. All of the Forms I-924A submitted have indicated that the full amount of aggregate EB-5 capital for that fiscal year has gone to Construction (NAICS Code 23). However, the Regional Center has not submitted any supporting documentation to support its claims.

The Form I-924A submitted by the Regional Center for FY2015 contains a continuation sheet that provides a list of expenses incurred and jobs created during the fiscal year. The chart below summarizes the representations made by the Regional Center regarding expenditures for FY2015:

Expense Description	Amount	RIMS-II Multiplier	Total Jobs
Pre-Construction Work			
Consulting work by equipment vendor			
Construction work to demolish the existing building on site			
Architectural consulting			
Shielding Consultant			
Land lease payments			
TOTAL			

(b)(4)

(b)(4) The continuation sheet also notes additional expenses that occurred after the end of the FY2015, including an additional [REDACTED] spent on construction work to demolish the existing building and a [REDACTED] deposit on a proton system.

(b)(4)

The Regional Center, in court documents submitted by the managing member of the NCE, lists expenditures the NCE has made for developing the proposed proton therapy center. According to the Regional Center, \$402,504 has been spent on design and architecture, \$315,487 has been spent to improve the property at the site of the proposed treatment center and \$838,500 was spent on rent for the property.²⁵

In the NOIT Response, Mr. Liu indicates that a certified public accountant, Donald Wise, has been hired to review the books and records of the Regional Center and its affiliated companies. Mr. Liu goes on to state that once those reviews are complete, the Regional Center will update its Form I-924A submissions.

The NOIT Response contained no documentation or evidence to rebut the Regional Center's apparent misrepresentations to USCIS in its Form I-924A filings.

The issues outlined above cast considerable doubt on the credibility of the Regional Center's filings, and call into question the legitimacy of its operations, and its ability to promote economic growth in compliance with the Program. For these reasons, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth.

5. Lack of Regional Center Due Diligence, Monitoring and Oversight

The NOIT asserted that by engaging in or failing to stop the diversion of investor funds, the Regional Center failed to ensure that the EB-5 funds were made available for job-creation purposes and in promotion of economic growth.

In order to maintain its designation, the Regional Center must monitor all investment activities under its sponsorship. Furthermore, this administration, oversight, and management of finances is required to be in compliance with EB-5 regulations. According to the Regional Center's approval letter:

The law... requires that an approved Regional Center in order to maintain the validity of its approval and designation must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether your Regional Center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated

²⁵ SEC vs. Charles C. Liu, et al. Defendant Pacific Proton EB-5 Fund, LLC's Opposition to Preliminary Injunction p. 6. Civil Action No. 8:16-cv-00974. (C.D. Cal. filed June 21, 2016).

Regional Center, your administration, oversight, and management of Regional Center shall be such as to monitor all investment activities under the sponsorship of your Regional Center and to maintain records, data and information in order to provide the information required on the Form I-924A, Supplement to Form I-924.... (emphasis added)

According to the SEC's allegations of fraud and misappropriation and based on statements from defendants acknowledging that approximately \$7 million was transferred to Mr. Liu²⁶, the Regional Center and its management seem to have actively participated in the diversion of investor funds.

Additionally, according to the operating agreement of the NCE, the Regional Center is its manager.²⁷ As noted in Article 4.2 of the operating agreement

(b)(4)

As such, the Regional Center bears responsibility for mismanagement of EB-5 funds and any failure to oversee deployment of such funds because the NCE was managed and controlled by the Regional Center.

In the NOIT Response, Mr. Liu states:

The appointment of monitor [sic] in the SEC action has actually increased the amount of monitoring and oversight of the Regional Center, as it will be monitored in an ongoing manner by the court-appointed monitor and the court itself. This should ensure that no further improper activity occurs.²⁸

While the presence of the court-appointed monitor may increase the Regional Center's oversight and management capabilities (no evidence was submitted to substantiate this claim), the fact that a court-appointed monitor is required underscores the degree to which the Regional Center has failed in this important function. Due consideration is given to all remedial measures undertaken to strengthen the Regional Center's oversight capabilities, but such measures cannot retroactively cure its past failures. Regardless of any corrective action that is being or may be attempted pursuant to a court order, the allegations of improper activity indicate that the Regional Center was acting at odds with the purpose of promoting economic growth and weigh heavily against any remedial measures that could be undertaken. Further, the NOIT Response contained no substantive evidence to demonstrate how Regional Center management and oversight would be changed after the termination of the monitor's appointment.

²⁶ *SEC vs. Charles C. Liu, et al.* Declaration of Michael Cogswell in Support of Defendant Beverly Proton Center LLC's, Opposition to Preliminary Injunction, p. 3. Civil Action No. 8:16-cv-00974. (C.D. Cal. filed June 21, 2016).

²⁷ See page 3 of the Operating Agreement of Pacific Proton EB-5 Fund, LLC, dated May 1, 2013.

²⁸ NOIT Response Cover Letter, p. 5.

Pacific Proton Therapy Regional Center – **Designation Terminated**
ID1034350098
RCW1034350098
Page 15

Based on the existing record, including evidence provided in response to the NOIT, USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth because of its failures to perform adequate due diligence, monitoring and oversight.

Conclusion

For all of the reasons described above and set forth in the NOIT and pursuant to 8 CFR 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.

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 days from the date of this notice. If a motion or appeal is not filed within 33 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.

If using the U.S. Postal Service:

USCIS
P.O. Box 21100
Phoenix, AZ 85036

If using USPS Express Main/Courier:

USCIS
Attn: 290B
1820 E. Skyharbor Circle S
Suite 100
Phoenix, AZ 85034

Your motion or appeal must be filed on Form I-290B and must be accompanied by a fee of \$630.00. 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.

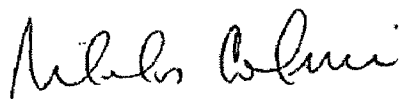
In support of your appeal, you may submit a brief or other written statement for consideration at the time of initial filing of the Form I-290B or within 30 calendar days of filing. If you are filing an appeal of this decision, you may, if necessary and for good cause, request additional time to submit 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
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS 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 CFR § 103.3 or 103.5, or visit the USCIS website at www.uscis.gov.

Sincerely,



Nicholas Colucci
Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on August 22, 2016

cc: