



U.S. Citizenship
and Immigration
Services

March 23, 2016

Path America KingCo LLC– **Designation Terminated**
PO Box 13261
Everett WA 98206

Notice of Termination

This letter shall serve as notification that U.S. Citizenship and Immigration Services (“USCIS”) has terminated the designation of Path America KingCo 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 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 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

On August 6, 2013, USCIS designated and authorized the Regional Center's participation in the Program. On December 24, 2015, 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 January 28, 2015, 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. Through this Notice of Termination, USCIS hereby 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).

A. Failure to Demonstrate Promotion of Economic Growth

Under 8 CFR § 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."

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 Credibility Impacting Regional Center's Ability to Promote Economic Growth

As detailed in the NOIT, on August 24, 2015, the United States Securities and Exchange Commission (the "SEC") brought a civil action against the Regional Center, some of its related EB-5 entities¹, and Lobsang Dargey, among other named defendants (collectively referred to herein as "Defendants"). The

¹ Path America Tower, LP, Path Tower Seattle, LP and Potala Tower Seattle, LLC are named as Defendants and Potala Shoreline, LLC is named as a Relief Defendant in the referenced complaint. Note that Path Shoreline, LP was not listed in the SEC's complaint; however at the time the complaint was filed, Path Shoreline, LP had not received any EB-5 funds.

evidence cited in the NOIT includes the SEC's allegations that the management of the Regional Center, including Mr. Dargey, engaged in improper or illegal behavior. The NOIT also details the District Court's orders restraining the Regional Center and some of its related EB-5 entities, including certain associated new commercial enterprises ("NCEs")² and job creating entities ("JCEs"),³ from issuing, offering or selling any securities, as well as a series of orders which freeze the assets of the Regional Center, the NCEs and JCEs, and the related escrow accounts and effectively prevent any assets of the Regional Center, the NCEs and JCEs, and the related escrow accounts from being used to facilitate the necessary day-to-day business operations of the Regional Center.

In response to the NOIT, the Regional Center did not provide any evidence in opposition to the allegation of improper or illegal behavior of the Regional Center's principal, Mr. Dargey. Nor did the NOIT Response provide sufficient evidence of how the Regional Center would be able to carry on day-to-day business operations, operate financially or continue to serve the purpose of promoting economic growth in light of the asset freeze, the preliminary injunction prohibiting the issuing, offering or selling of any securities, and the appointment of a court ordered receiver⁴.

The Receiver's statement accompanying the NOIT Response dated December 28, 2015 (the "Receiver NOIT Response"), failed to provide any evidence in opposition to the allegation of improper or illegal behavior of the Regional Center principal; nor did it indicate if the Regional Center would be able to operate financially. Rather, the Receiver NOIT Response merely stated that no final determination has been made with respect to the allegations that Mr. Dargey violated federal securities laws.

The NOIT Response indicated that the Receiver will be in charge of Regional Center operations, however receiverships are by their nature temporary.⁵ There was no evidence in the NOIT Response providing any long-term or permanent solution to questions raised by USCIS as to how the Regional Center would be

² Path America Tower, LP and Path Tower Seattle, LP.

³ Potala Tower Seattle, LLC and Potala Shoreline, LLC. According to filings submitted to USCIS, both NCEs (Path America Tower, LP and Path Tower Seattle, LP) planned to pool capital from EB-5 investors to invest into a JCE, Potala Tower Seattle, LLC, to fund the development and operation of a mixed-use property called Potala Tower (the "Potala Tower Project"). As part of a July 13, 2015 amendment request filed by the Regional Center, a third proposed new commercial enterprise Path Shoreline, LP planned to pool capital from EB-5 investors to invest into a proposed JCE, Potala Shoreline, LLC, which would finance a multifamily residential development in Shoreline Washington (the "Potala Shoreline Project"). The July 13, 2015 amendment request has not yet been adjudicated and no Form I-526 petitions associated with Path Shoreline, LP have been filed with USCIS.

⁴ According to a court order dated October 22, 2015, Michael A. Grassmuck was named the court-appointed Receiver for Path America LLC; Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC; Path America Tower LP; Path Tower Seattle, LP; Potala Tower Seattle, LLC; Potala Shoreline, LLC and Potala Kirkland, LLC.

⁵ The October 22, 2015 court order granted the SEC's motion to appoint a "temporary" receiver over the Regional Center and some of its related entities. Page 15 of that order states that the Receiver must submit Quarterly Status Reports to the Court including the Receiver's recommendation for a continuation or discontinuation of the receivership and the reasons for the recommendations.

able to carry on day-to-day business operations. Although the Receiver stated in his letter that he is required to perform all acts necessary or advisable to preserve the value of the Regional Center and any other related businesses and all of their assets, this requirement is provisional while the SEC's civil action is pending.⁶ Moreover, as noted in the NOIT and confirmed on the Receiver's website⁷, the Receiver has been placed in charge of the Regional Center's operations for the purpose of marshalling and preserving the assets of the Defendants rather than for the purpose of promoting economic growth.

Furthermore, on January 20, 2016 the Receiver filed a recovery plan with the District Court that states that the Receiver had "completed much of his analysis of the business and financial activities" of the Regional Center and related entities, including the two projects associated with the Regional Center, the Potala Tower Project and the Potala Shoreline Project.⁸ For the Potala Tower Project, the Receiver states in the recovery plan that the Potala Tower was funded primarily by a combination of EB-5 investments and a \$30 million equity contribution from [a Binjiang Tower Corp]."⁹ In addition, "substantially less than the amount of EB-5 investment required to complete the [Potala Tower] Project" was raised and while a loan commitment was negotiated, a loan was never actually closed, so the Receiver recommended that the Potala Tower Project should be sold in its 'as is' condition."¹⁰ According to the recovery plan, the Receiver intends to file a Motion for Authority to Sell Receivership Assets.¹¹ In regards to the Potala Shoreline Project, the proposed project submitted to USCIS in the Regional Center's July 13, 2015 amendment request, the Receiver's recovery plan notes "[t]he Potala Shoreline project is comprised of a small number of tax lots with four (4) abandoned commercial buildings on the site. No development or demolition has been completed, although some preliminary architectural plans were developed prior to the Receiver's appointment. The Court has approved the engagement of a demolition company to remove the structures currently on the Project property as well as the site clean-up.... Based upon his analysis, the Receiver believes that the entitlements for the Potala Shoreline project should be pursued and the project should be sold once the demolition and clean-up work are completed. The Receiver anticipates filing a motion for authority to sell the [Potala Shoreline] project in the next 60 days."¹² Accordingly, it does not appear that either of the current projects associated with the Regional Center will continue since the Receiver has recommended in the recovery plan that these be sold.

⁶ The Receiver NOIT Response provides that the Receiver is in control of the Regional Center and other related businesses and all of their assets "[w]hile the litigation is pending".

⁷ <http://www.grassmueckgroup.com/pathamerica-faqs.php>

⁸ *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

⁹ *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

¹⁰ *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

¹¹ According to the recovery plan, the Motion for Authority to Sell Receivership Assets seeks approval of a process for marketing and selling the Potala Tower Project.

¹² *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

Moreover, we note that the recovery plan does not include any indication of future projects for the Regional Center or any future plans for the promotion of economic growth. Similarly, the NOIT Response states that the Regional Center does not intend to sponsor any additional projects. Therefore, the Regional Center is not likely to promote economic growth in the future. Specifically, the cover letter from the attorney of record accompanying the NOIT Response dated January 20, 2016 (the “Attorney Cover Letter”) indicated:

It is not likely that the Regional Center will sponsor any additional projects...

Therefore since insufficient evidence was provided in opposition to the grounds alleged in the NOIT, and as those issues outlined above cast considerable doubt on the credibility of the Regional Center, all of its operations, and its ability to promote economic growth in compliance with the Program, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth.

2. Diversion of EB-5 funds

The NOIT asserted that EB-5 funds were used for purposes that were inconsistent with the business plans submitted to USCIS by the Regional Center and in furtherance of job creation. Specifically, based on the allegations set forth in the SEC’s complaint and the court’s findings in the order granting the motion for preliminary injunction and denying the motion to modify the temporary restraining order, it appears that EB-5 funds were diverted and used for purposes unrelated to the business activities of the JCEs.¹³

In response to the NOIT, the Regional Center did not provide any evidence in opposition to the allegation of diversion of EB-5 funds. Rather the evidence provided in the NOIT response as well as in the public record indicates that the Regional Center concedes that EB-5 funds were diverted from job creating purposes, and therefore support USCIS’ determination that the Regional Center does not serve the purpose of promoting economic growth.

The Attorney Cover Letter indicated:

The receiver is currently reviewing its options **to seek to restore the diverted funds** through recovery or replacement by other funds and to complete the Potala Tower project. (Emphasis Added)

Further, on the Receiver’s website it states:

¹³ *SEC vs. Path America LLC, et al.* Complaint. Civil Action No. 2:15-cv-01350. (W.D. Wash. filed Aug. 24, 2015) (alleging that “Defendants engaged in the scheme to defraud through the misappropriation of investor funds knowingly or recklessly.”). *SEC vs. Path America, LLC, et al.* Order Granting Motion for Preliminary Injunction and Denying Motion to Modify the Temporary Restraining Order. Civil Action No. 2:15-cv-01350. (W.D. Wash. filed Oct. 6, 2015).

Among these issues identified by the Receiver which adversely impact the prospects for approval of any applications are **the fact that funds were dissipated from the Farmer’s Market project and the Potala Tower project.**¹⁴ (Emphasis Added)

Based on the existing record, including evidence provided in response to the NOIT, USCIS has determined that the Regional Center does not serve the purpose of promoting economic growth.

3. Lack of Regional Center due diligence, monitoring and oversight

As detailed in the NOIT, the Regional Center, both in its approval letter from USCIS and in the organizational documents of the limited partnerships that it sponsored, bears responsibility for the actions of the limited partnerships (the NCEs). Accordingly, the diversion of NCE funds as well as the alleged violation of federal security laws indicate a lack of management and oversight by the Regional Center. In the NOIT, USCIS questioned the Regional Center ability to properly engage in future management, monitoring and oversight as required by the Program because of the court’s orders, which result in the Regional Center having insufficient control over its own operations.

The NOIT Response did not provide any evidence in opposition to the allegation of the lack of due diligence, monitoring and oversight by the Regional Center. Rather, the Attorney Cover Letter concedes that there were misdeeds and lack of due diligence, monitoring and oversight by the Regional Center in the past; the letter asserts that “it is not likely that there will be further problems or additional harm” but it neither refutes nor denies any allegations about past misdeeds of the Regional Center or its management, including Mr. Dargey.

Furthermore, while the Receiver is currently in charge of the Regional Center’s operations, as noted above, receiverships are by their nature temporary.¹⁵ There was no evidence in the NOIT Response which provided any long-term or permanent solutions to the management and oversight issues raised by USCIS.

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 lack of due diligence, monitoring and oversight.

Both the Attorney Cover Letter dated January 20, 2016 and the Receiver NOIT Response dated December 28, 2015 requested that USCIS grant more time to the Regional Center to permit the Receiver to continue his investigation and consider viable next steps. On January 20, 2016, however, the Receiver filed a recovery plan with the court which stated that the Receiver had “completed much of his analysis of the business and financial activities” of the Regional Center and related entities and that “[a]fter evaluating the projects both on an individual and collective basis, the Receiver has concluded that three of the four

¹⁴ See “Update to Investors as of December 18, 2015” available at <http://www.grassmueckgroup.com/pathamerica-eb5.php>

¹⁵ See note 3.

projects should be sold in orderly public or private sale,” including two of the projects associated with the Regional Center. Due to the Receiver’s recommendations to sell the Potala Tower Project and the Potala Shoreline Project and the lack of any future projects contemplated by the Regional Center, and coupled with the alleged diversion of EB-5 funds and the lack of Regional Center due diligence, monitoring and oversight, USCIS has determined that the Regional Center is not likely to promote economic growth, and the NOIT Response has not outlined sufficient reasons for USCIS to delay terminating the Regional Center pursuant to 8 CFR § 204.6(m)(6).

Conclusion

For 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,

Path America KingCo LLC – **Designation Terminated**
ID (formerly ID1031910033)
RCW 1031910033
Page 8

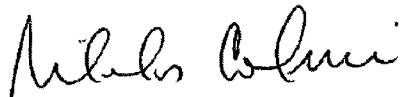
including any request for additional time for the submission of a brief must be sent directly to the Administrative Appeals Office (AAO) at:

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 December 24, 2015

cc: Robert Divine
cc: Michael A. Grassmueck



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

March 23, 2016

Robert Divine

Re: Path America KingCo LLC– **Designation Terminated**

1800 Republic Centre

633 Chestnut Street

Chattanooga TN 37450

Notice of Termination

This letter shall serve as notification that U.S. Citizenship and Immigration Services (“USCIS”) has terminated the designation of Path America KingCo 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 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 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

On August 6, 2013, USCIS designated and authorized the Regional Center's participation in the Program. On December 24, 2015, 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 January 28, 2015, 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. Through this Notice of Termination, USCIS hereby 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).

A. Failure to Demonstrate Promotion of Economic Growth

Under 8 CFR § 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."

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 Credibility Impacting Regional Center's Ability to Promote Economic Growth

As detailed in the NOIT, on August 24, 2015, the United States Securities and Exchange Commission (the "SEC") brought a civil action against the Regional Center, some of its related EB-5 entities¹, and

¹ Path America Tower, LP, Path Tower Seattle, LP and Potala Tower Seattle, LLC are named as Defendants and Potala Shoreline, LLC is named as a Relief Defendant in the referenced complaint. Note that Path Shoreline, LP was not listed in the SEC's complaint; however at the time the complaint was filed, Path Shoreline, LP had not received any EB-5 funds.

Lobsang Dargey, among other named defendants (collectively referred to herein as “Defendants”). The evidence cited in the NOIT includes the SEC’s allegations that the management of the Regional Center, including Mr. Dargey, engaged in improper or illegal behavior. The NOIT also details the District Court’s orders restraining the Regional Center and some of its related EB-5 entities, including certain associated new commercial enterprises (“NCEs”)² and job creating entities (“JCEs”),³ from issuing, offering or selling any securities, as well as a series of orders which freeze the assets of the Regional Center, the NCEs and JCEs, and the related escrow accounts and effectively prevent any assets of the Regional Center, the NCEs and JCEs, and the related escrow accounts from being used to facilitate the necessary day-to-day business operations of the Regional Center.

In response to the NOIT, the Regional Center did not provide any evidence in opposition to the allegation of improper or illegal behavior of the Regional Center’s principal, Mr. Dargey. Nor did the NOIT Response provide sufficient evidence of how the Regional Center would be able to carry on day-to-day business operations, operate financially or continue to serve the purpose of promoting economic growth in light of the asset freeze, the preliminary injunction prohibiting the issuing, offering or selling of any securities, and the appointment of a court ordered receiver⁴.

The Receiver’s statement accompanying the NOIT Response dated December 28, 2015 (the “Receiver NOIT Response”), failed to provide any evidence in opposition to the allegation of improper or illegal behavior of the Regional Center principal; nor did it indicate if the Regional Center would be able to operate financially. Rather, the Receiver NOIT Response merely stated that no final determination has been made with respect to the allegations that Mr. Dargey violated federal securities laws.

The NOIT Response indicated that the Receiver will be in charge of Regional Center operations, however receiverships are by their nature temporary.⁵ There was no evidence in the NOIT Response providing any

² Path America Tower, LP and Path Tower Seattle, LP.

³ Potala Tower Seattle, LLC and Potala Shoreline, LLC. According to filings submitted to USCIS, both NCEs (Path America Tower, LP and Path Tower Seattle, LP) planned to pool capital from EB-5 investors to invest into a JCE, Potala Tower Seattle, LLC, to fund the development and operation of a mixed-use property called Potala Tower (the “Potala Tower Project”). As part of a July 13, 2015 amendment request filed by the Regional Center, a third proposed new commercial enterprise Path Shoreline, LP planned to pool capital from EB-5 investors to invest into a proposed JCE, Potala Shoreline, LLC, which would finance a multifamily residential development in Shoreline Washington (the “Potala Shoreline Project”). The July 13, 2015 amendment request has not yet been adjudicated and no Form I-526 petitions associated with Path Shoreline, LP have been filed with USCIS.

⁴ According to a court order dated October 22, 2015, Michael A. Grassmueck was named the court-appointed Receiver for Path America LLC; Path America SnoCo LLC; Path America Farmer’s Market, LP; Path America KingCo LLC; Path America Tower LP; Path Tower Seattle, LP; Potala Tower Seattle, LLC; Potala Shoreline, LLC and Potala Kirkland, LLC.

⁵ The October 22, 2015 court order granted the SEC’s motion to appoint a “temporary” receiver over the Regional Center and some of its related entities. Page 15 of that order states that the Receiver must submit Quarterly Status

long-term or permanent solution to questions raised by USCIS as to how the Regional Center would be able to carry on day-to-day business operations. Although the Receiver stated in his letter that he is required to perform all acts necessary or advisable to preserve the value of the Regional Center and any other related businesses and all of their assets, this requirement is provisional while the SEC's civil action is pending.⁶ Moreover, as noted in the NOIT and confirmed on the Receiver's website⁷, the Receiver has been placed in charge of the Regional Center's operations for the purpose of marshalling and preserving the assets of the Defendants rather than for the purpose of promoting economic growth.

Furthermore, on January 20, 2016 the Receiver filed a recovery plan with the District Court that states that the Receiver had "completed much of his analysis of the business and financial activities" of the Regional Center and related entities, including the two projects associated with the Regional Center, the Potala Tower Project and the Potala Shoreline Project.⁸ For the Potala Tower Project, the Receiver states in the recovery plan that the Potala Tower was funded primarily by a combination of EB-5 investments and a \$30 million equity contribution from [a Binjiang Tower Corp]."⁹ In addition, "substantially less than the amount of EB-5 investment required to complete the [Potala Tower] Project" was raised and while a loan commitment was negotiated, a loan was never actually closed, so the Receiver recommended that the Potala Tower Project should be sold in its 'as is' condition."¹⁰ According to the recovery plan, the Receiver intends to file a Motion for Authority to Sell Receivership Assets.¹¹ In regards to the Potala Shoreline Project, the proposed project submitted to USCIS in the Regional Center's July 13, 2015 amendment request, the Receiver's recovery plan notes "[t]he Potala Shoreline project is comprised of a small number of tax lots with four (4) abandoned commercial buildings on the site. No development or demolition has been completed, although some preliminary architectural plans were developed prior to the Receiver's appointment. The Court has approved the engagement of a demolition company to remove the structures currently on the Project property as well as the site clean-up.... Based upon his analysis, the Receiver believes that the entitlements for the Potala Shoreline project should be pursued and the project should be sold once the demolition and clean-up work are completed. The Receiver anticipates filing a motion for authority to sell the [Potala Shoreline] project in the next 60 days."¹² Accordingly, it

Reports to the Court including the Receiver's recommendation for a continuation or discontinuation of the receivership and the reasons for the recommendations.

⁶ The Receiver NOIT Response provides that the Receiver is in control of the Regional Center and other related businesses and all of their assets "[w]hile the litigation is pending".

⁷ <http://www.grassmueckgroup.com/pathamerica-faqs.php>

⁸ *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

⁹ *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

¹⁰ *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

¹¹ According to the recovery plan, the Motion for Authority to Sell Receivership Assets seeks approval of a process for marketing and selling the Potala Tower Project.

¹² *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

does not appear that either of the current projects associated with the Regional Center will continue since the Receiver has recommended in the recovery plan that these be sold.

Moreover, we note that the recovery plan does not include any indication of future projects for the Regional Center or any future plans for the promotion of economic growth. Similarly, the NOIT Response states that the Regional Center does not intend to sponsor any additional projects. Therefore, the Regional Center is not likely to promote economic growth in the future. Specifically, the cover letter from the attorney of record accompanying the NOIT Response dated January 20, 2016 (the “Attorney Cover Letter”) indicated:

It is not likely that the Regional Center will sponsor any additional projects...

Therefore since insufficient evidence was provided in opposition to the grounds alleged in the NOIT, and as those issues outlined above cast considerable doubt on the credibility of the Regional Center, all of its operations, and its ability to promote economic growth in compliance with the Program, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth.

2. Diversion of EB-5 funds

The NOIT asserted that EB-5 funds were used for purposes that were inconsistent with the business plans submitted to USCIS by the Regional Center and in furtherance of job creation. Specifically, based on the allegations set forth in the SEC’s complaint and the court’s findings in the order granting the motion for preliminary injunction and denying the motion to modify the temporary restraining order, it appears that EB-5 funds were diverted and used for purposes unrelated to the business activities of the JCEs.¹³

In response to the NOIT, the Regional Center did not provide any evidence in opposition to the allegation of diversion of EB-5 funds. Rather the evidence provided in the NOIT response as well as in the public record indicates that the Regional Center concedes that EB-5 funds were diverted from job creating purposes, and therefore support USCIS’ determination that the Regional Center does not serve the purpose of promoting economic growth.

The Attorney Cover Letter indicated:

The receiver is currently reviewing its options **to seek to restore the diverted funds** through recovery or replacement by other funds and to complete the Potlatch Tower project. (Emphasis Added)

¹³ *SEC vs. Path America LLC, et al.* Complaint. Civil Action No. 2:15-cv-01350. (W.D. Wash. filed Aug. 24, 2015) (alleging that “Defendants engaged in the scheme to defraud through the misappropriation of investor funds knowingly or recklessly.”). *SEC vs. Path America, LLC, et al.* Order Granting Motion for Preliminary Injunction and Denying Motion to Modify the Temporary Restraining Order. Civil Action No. 2:15-cv-01350. (W.D. Wash. filed Oct. 6, 2015).

Further, on the Receiver's website it states:

Among these issues identified by the Receiver which adversely impact the prospects for approval of any applications are **the fact that funds were dissipated from the Farmer's Market project and the Potala Tower project.**¹⁴ (Emphasis Added)

Based on the existing record, including evidence provided in response to the NOIT, USCIS has determined that the Regional Center does not serve the purpose of promoting economic growth.

3. Lack of Regional Center due diligence, monitoring and oversight

As detailed in the NOIT, the Regional Center, both in its approval letter from USCIS and in the organizational documents of the limited partnerships that it sponsored, bears responsibility for the actions of the limited partnerships (the NCEs). Accordingly, the diversion of NCE funds as well as the alleged violation of federal security laws indicate a lack of management and oversight by the Regional Center. In the NOIT, USCIS questioned the Regional Center ability to properly engage in future management, monitoring and oversight as required by the Program because of the court's orders, which result in the Regional Center having insufficient control over its own operations.

The NOIT Response did not provide any evidence in opposition to the allegation of the lack of due diligence, monitoring and oversight by the Regional Center. Rather, the Attorney Cover Letter concedes that there were misdeeds and lack of due diligence, monitoring and oversight by the Regional Center in the past; the letter asserts that "it is not likely that there will be further problems or additional harm" but it neither refutes nor denies any allegations about past misdeeds of the Regional Center or its management, including Mr. Dargey.

Furthermore, while the Receiver is currently in charge of the Regional Center's operations, as noted above, receiverships are by their nature temporary.¹⁵ There was no evidence in the NOIT Response which provided any long-term or permanent solutions to the management and oversight issues raised by USCIS.

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 lack of due diligence, monitoring and oversight.

Both the Attorney Cover Letter dated January 20, 2016 and the Receiver NOIT Response dated December 28, 2015 requested that USCIS grant more time to the Regional Center to permit the Receiver to continue his investigation and consider viable next steps. On January 20, 2016, however, the Receiver filed a recovery plan with the court which stated that the Receiver had "completed much of his analysis of the

¹⁴ See "Update to Investors as of December 18, 2015" available at <http://www.grassmueckgroup.com/pathamerica-eb5.php>

¹⁵ See note 3.

business and financial activities” of the Regional Center and related entities and that “[a]fter evaluating the projects both on an individual and collective basis, the Receiver has concluded that three of the four projects should be sold in orderly public or private sale,” including two of the projects associated with the Regional Center. Due to the Receiver’s recommendations to sell the Potala Tower Project and the Potala Shoreline Project and the lack of any future projects contemplated by the Regional Center, and coupled with the alleged diversion of EB-5 funds and the lack of Regional Center due diligence, monitoring and oversight, USCIS has determined that the Regional Center is not likely to promote economic growth, and the NOIT Response has not outlined sufficient reasons for USCIS to delay terminating the Regional Center pursuant to 8 CFR § 204.6(m)(6).

Conclusion

For 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

Path America KingCo LLC – **Designation Terminated**
ID (formerly ID1031910033)
RCW 1031910033
Page 8

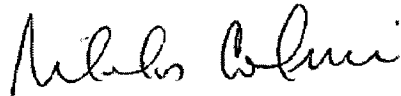
statement or other evidence in support of an appeal that is not filed concurrently with Form I-290B, including any request for additional time for the submission of a brief must be sent directly to the Administrative Appeals Office (AAO) at:

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 December 24, 2015

cc: Michael A. Grassmueck



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

March 23, 2016

Michael A. Grassmueck
Re: Path America KingCo LLC– **Designation Terminated**
P.O. Box 230091
Tigard OR 97281

Notice of Termination

This letter shall serve as notification that U.S. Citizenship and Immigration Services (“USCIS”) has terminated the designation of Path America KingCo 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 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 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

On August 6, 2013, USCIS designated and authorized the Regional Center's participation in the Program. On December 24, 2015, 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 January 28, 2015, 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. Through this Notice of Termination, USCIS hereby 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).

A. Failure to Demonstrate Promotion of Economic Growth

Under 8 CFR § 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."

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 Credibility Impacting Regional Center's Ability to Promote Economic Growth

As detailed in the NOIT, on August 24, 2015, the United States Securities and Exchange Commission (the "SEC") brought a civil action against the Regional Center, some of its related EB-5 entities¹, and

¹ Path America Tower, LP, Path Tower Seattle, LP and Potala Tower Seattle, LLC are named as Defendants and Potala Shoreline, LLC is named as a Relief Defendant in the referenced complaint. Note that Path Shoreline, LP was not listed in the SEC's complaint; however at the time the complaint was filed, Path Shoreline, LP had not received any EB-5 funds.

Lobsang Dargey, among other named defendants (collectively referred to herein as “Defendants”). The evidence cited in the NOIT includes the SEC’s allegations that the management of the Regional Center, including Mr. Dargey, engaged in improper or illegal behavior. The NOIT also details the District Court’s orders restraining the Regional Center and some of its related EB-5 entities, including certain associated new commercial enterprises (“NCEs”)² and job creating entities (“JCEs”),³ from issuing, offering or selling any securities, as well as a series of orders which freeze the assets of the Regional Center, the NCEs and JCEs, and the related escrow accounts and effectively prevent any assets of the Regional Center, the NCEs and JCEs, and the related escrow accounts from being used to facilitate the necessary day-to-day business operations of the Regional Center.

In response to the NOIT, the Regional Center did not provide any evidence in opposition to the allegation of improper or illegal behavior of the Regional Center’s principal, Mr. Dargey. Nor did the NOIT Response provide sufficient evidence of how the Regional Center would be able to carry on day-to-day business operations, operate financially or continue to serve the purpose of promoting economic growth in light of the asset freeze, the preliminary injunction prohibiting the issuing, offering or selling of any securities, and the appointment of a court ordered receiver⁴.

The Receiver’s statement accompanying the NOIT Response dated December 28, 2015 (the “Receiver NOIT Response”), failed to provide any evidence in opposition to the allegation of improper or illegal behavior of the Regional Center principal; nor did it indicate if the Regional Center would be able to operate financially. Rather, the Receiver NOIT Response merely stated that no final determination has been made with respect to the allegations that Mr. Dargey violated federal securities laws.

The NOIT Response indicated that the Receiver will be in charge of Regional Center operations, however receiverships are by their nature temporary.⁵ There was no evidence in the NOIT Response providing any

² Path America Tower, LP and Path Tower Seattle, LP.

³ Potala Tower Seattle, LLC and Potala Shoreline, LLC. According to filings submitted to USCIS, both NCEs (Path America Tower, LP and Path Tower Seattle, LP) planned to pool capital from EB-5 investors to invest into a JCE, Potala Tower Seattle, LLC, to fund the development and operation of a mixed-use property called Potala Tower (the “Potala Tower Project”). As part of a July 13, 2015 amendment request filed by the Regional Center, a third proposed new commercial enterprise Path Shoreline, LP planned to pool capital from EB-5 investors to invest into a proposed JCE, Potala Shoreline, LLC, which would finance a multifamily residential development in Shoreline Washington (the “Potala Shoreline Project”). The July 13, 2015 amendment request has not yet been adjudicated and no Form I-526 petitions associated with Path Shoreline, LP have been filed with USCIS.

⁴ According to a court order dated October 22, 2015, Michael A. Grassmuck was named the court-appointed Receiver for Path America LLC; Path America SnoCo LLC; Path America Farmer’s Market, LP; Path America KingCo LLC; Path America Tower LP; Path Tower Seattle, LP; Potala Tower Seattle, LLC; Potala Shoreline, LLC and Potala Kirkland, LLC.

⁵ The October 22, 2015 court order granted the SEC’s motion to appoint a “temporary” receiver over the Regional Center and some of its related entities. Page 15 of that order states that the Receiver must submit Quarterly Status Reports to the Court including the Receiver’s recommendation for a continuation or discontinuation of the receivership and the reasons for the recommendations.

long-term or permanent solution to questions raised by USCIS as to how the Regional Center would be able to carry on day-to-day business operations. Although the Receiver stated in his letter that he is required to perform all acts necessary or advisable to preserve the value of the Regional Center and any other related businesses and all of their assets, this requirement is provisional while the SEC's civil action is pending.⁶ Moreover, as noted in the NOIT and confirmed on the Receiver's website⁷, the Receiver has been placed in charge of the Regional Center's operations for the purpose of marshalling and preserving the assets of the Defendants rather than for the purpose of promoting economic growth.

Furthermore, on January 20, 2016 the Receiver filed a recovery plan with the District Court that states that the Receiver had "completed much of his analysis of the business and financial activities" of the Regional Center and related entities, including the two projects associated with the Regional Center, the Potala Tower Project and the Potala Shoreline Project.⁸ For the Potala Tower Project, the Receiver states in the recovery plan that the Potala Tower was funded primarily by a combination of EB-5 investments and a \$30 million equity contribution from [a Binjiang Tower Corp]."⁹ In addition, "substantially less than the amount of EB-5 investment required to complete the [Potala Tower] Project" was raised and while a loan commitment was negotiated, a loan was never actually closed, so the Receiver recommended that the Potala Tower Project should be sold in its 'as is' condition."¹⁰ According to the recovery plan, the Receiver intends to file a Motion for Authority to Sell Receivership Assets.¹¹ In regards to the Potala Shoreline Project, the proposed project submitted to USCIS in the Regional Center's July 13, 2015 amendment request, the Receiver's recovery plan notes "[t]he Potala Shoreline project is comprised of a small number of tax lots with four (4) abandoned commercial buildings on the site. No development or demolition has been completed, although some preliminary architectural plans were developed prior to the Receiver's appointment. The Court has approved the engagement of a demolition company to remove the structures currently on the Project property as well as the site clean-up.... Based upon his analysis, the Receiver believes that the entitlements for the Potala Shoreline project should be pursued and the project should be sold once the demolition and clean-up work are completed. The Receiver anticipates filing a motion for authority to sell the [Potala Shoreline] project in the next 60 days."¹² Accordingly, it does not appear that either of the current projects associated with the Regional Center will continue since the Receiver has recommended in the recovery plan that these be sold.

⁶ The Receiver NOIT Response provides that the Receiver is in control of the Regional Center and other related businesses and all of their assets "[w]hile the litigation is pending".

⁷ <http://www.grassmueckgroup.com/pathamerica-faqs.php>

⁸ *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

⁹ *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

¹⁰ *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

¹¹ According to the recovery plan, the Motion for Authority to Sell Receivership Assets seeks approval of a process for marketing and selling the Potala Tower Project.

¹² *SEC vs. Path America, LLC, et al.* Receiver Michael A Grassmueck's Recovery Plan. Civil Action No. 2:15-cv-01350-JLR. (W.D. Wash. filed Jan. 20, 2016).

Moreover, we note that the recovery plan does not include any indication of future projects for the Regional Center or any future plans for the promotion of economic growth. Similarly, the NOIT Response states that the Regional Center does not intend to sponsor any additional projects. Therefore, the Regional Center is not likely to promote economic growth in the future. Specifically, the cover letter from the attorney of record accompanying the NOIT Response dated January 20, 2016 (the “Attorney Cover Letter”) indicated:

It is not likely that the Regional Center will sponsor any additional projects...

Therefore since insufficient evidence was provided in opposition to the grounds alleged in the NOIT, and as those issues outlined above cast considerable doubt on the credibility of the Regional Center, all of its operations, and its ability to promote economic growth in compliance with the Program, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth.

2. Diversion of EB-5 funds

The NOIT asserted that EB-5 funds were used for purposes that were inconsistent with the business plans submitted to USCIS by the Regional Center and in furtherance of job creation. Specifically, based on the allegations set forth in the SEC’s complaint and the court’s findings in the order granting the motion for preliminary injunction and denying the motion to modify the temporary restraining order, it appears that EB-5 funds were diverted and used for purposes unrelated to the business activities of the JCEs.¹³

In response to the NOIT, the Regional Center did not provide any evidence in opposition to the allegation of diversion of EB-5 funds. Rather the evidence provided in the NOIT response as well as in the public record indicates that the Regional Center concedes that EB-5 funds were diverted from job creating purposes, and therefore support USCIS’ determination that the Regional Center does not serve the purpose of promoting economic growth.

The Attorney Cover Letter indicated:

The receiver is currently reviewing its options **to seek to restore the diverted funds** through recovery or replacement by other funds and to complete the Potala Tower project. (Emphasis Added)

Further, on the Receiver’s website it states:

¹³ *SEC vs. Path America LLC, et al.* Complaint. Civil Action No. 2:15-cv-01350. (W.D. Wash. filed Aug. 24, 2015) (alleging that “Defendants engaged in the scheme to defraud through the misappropriation of investor funds knowingly or recklessly.”). *SEC vs. Path America, LLC, et al.* Order Granting Motion for Preliminary Injunction and Denying Motion to Modify the Temporary Restraining Order. Civil Action No. 2:15-cv-01350. (W.D. Wash. filed Oct. 6, 2015).

Among these issues identified by the Receiver which adversely impact the prospects for approval of any applications are **the fact that funds were dissipated from the Farmer's Market project and the Potlata Tower project.**¹⁴ (Emphasis Added)

Based on the existing record, including evidence provided in response to the NOIT, USCIS has determined that the Regional Center does not serve the purpose of promoting economic growth.

3. Lack of Regional Center due diligence, monitoring and oversight

As detailed in the NOIT, the Regional Center, both in its approval letter from USCIS and in the organizational documents of the limited partnerships that it sponsored, bears responsibility for the actions of the limited partnerships (the NCEs). Accordingly, the diversion of NCE funds as well as the alleged violation of federal security laws indicate a lack of management and oversight by the Regional Center. In the NOIT, USCIS questioned the Regional Center ability to properly engage in future management, monitoring and oversight as required by the Program because of the court's orders, which result in the Regional Center having insufficient control over its own operations.

The NOIT Response did not provide any evidence in opposition to the allegation of the lack of due diligence, monitoring and oversight by the Regional Center. Rather, the Attorney Cover Letter concedes that there were misdeeds and lack of due diligence, monitoring and oversight by the Regional Center in the past; the letter asserts that "it is not likely that there will be further problems or additional harm" but it neither refutes nor denies any allegations about past misdeeds of the Regional Center or its management, including Mr. Dargey.

Furthermore, while the Receiver is currently in charge of the Regional Center's operations, as noted above, receiverships are by their nature temporary.¹⁵ There was no evidence in the NOIT Response which provided any long-term or permanent solutions to the management and oversight issues raised by USCIS.

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 lack of due diligence, monitoring and oversight.

Both the Attorney Cover Letter dated January 20, 2016 and the Receiver NOIT Response dated December 28, 2015 requested that USCIS grant more time to the Regional Center to permit the Receiver to continue his investigation and consider viable next steps. On January 20, 2016, however, the Receiver filed a recovery plan with the court which stated that the Receiver had "completed much of his analysis of the business and financial activities" of the Regional Center and related entities and that "[a]fter evaluating the projects both on an individual and collective basis, the Receiver has concluded that three of the four

¹⁴ See "Update to Investors as of December 18, 2015" available at <http://www.grassmueckgroup.com/pathamerica-eb5.php>

¹⁵ See note 3.

projects should be sold in orderly public or private sale,” including two of the projects associated with the Regional Center. Due to the Receiver’s recommendations to sell the Potala Tower Project and the Potala Shoreline Project and the lack of any future projects contemplated by the Regional Center, and coupled with the alleged diversion of EB-5 funds and the lack of Regional Center due diligence, monitoring and oversight, USCIS has determined that the Regional Center is not likely to promote economic growth, and the NOIT Response has not outlined sufficient reasons for USCIS to delay terminating the Regional Center pursuant to 8 CFR § 204.6(m)(6).

Conclusion

For 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,

Path America KingCo LLC – **Designation Terminated**
ID (formerly ID1031910033)
RCW 1031910033
Page 8

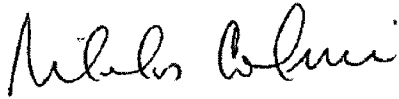
including any request for additional time for the submission of a brief must be sent directly to the Administrative Appeals Office (AAO) at:

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 December 24, 2015

cc: Robert Divine