



U.S. Citizenship
and Immigration
Services

DATE: **OCT 20 2010**

TO:

Keith C. Meltzer
C/O Victorville Regional Center
14343 Civic Drive
Victorville, California 92392

Re: Victorville Regional Center

File: W09000160

Notice of Final Termination

This letter shall serve as notification that U.S. Citizenship and Immigration Service, (USCIS) has terminated the Victorville Regional Center's designation as a regional center under the Pilot Program pursuant to Title 8 Code of Federal Regulations (8 CFR) 204.6(m)(6).

See Attachment

If you desire to appeal this decision to terminate the Victorville Regional Center designation under the Pilot Program pursuant to 8 CFR 103.3(a)(2), you may do so. Your notice of appeal must be filed with this office at the address at the top of this page within 33 days of the date of this notice. Your appeal must be filed on Form I-290B. A fee of \$585.00 is required, payable to U. S. Citizenship and Immigration Services with a check or money order from a bank or other institution located in the United States. If no appeal is filed within the time allowed, this decision will be the final decision in this matter.

In support of your appeal, you may submit a brief or other written statement for consideration by the reviewing authority. You may, if necessary, request additional time to submit a brief. Any brief, written statement, or other evidence not filed with Form I-290B, or any request for additional time for the submission of a brief or other material must be sent directly to:

U. S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, D.C. 20529-2090.

Any request for additional time for the submission of a brief or other statement must be made directly to the Administrative Appeals Office (AAO), and must be accompanied by a written explanation for the need for additional time. An extension of time to file the appeal may not be granted. **The appeal may not be filed directly with the AAO. The appeal must be filed at the address at the top of this page.**

Sincerely,

Rosemary Langley Melville
Director
California Service Center

cc: Mitch Wexler, Esq.

Enclosure: Form I-290B

This Notice of Termination is in reference to Victorville Regional Center which was previously approved and designated as a regional center by U.S. Citizenship and Immigration Services (USCIS) on June 19, 2009. As approved, the Victorville Regional Center was to participate in the Immigrant Investor Pilot Program "Pilot Program" for the purpose of attracting immigrant investor capital into Victorville, California, focusing on four specific capital investment projects:

- Southern California Logistics Airport Wastewater Treatment Facility
- Southern California Logistics Airport Electrical Generation
- Intermodal Rail Improvements
- Southern California Logistics Airport Infrastructure Improvements

On May 4, 2010, USCIS issued a Notice of Intent to Terminate (NOIT #1) the Regional Center designation. On June 30, 2010, the Victorville Regional Center submitted a response to the NOIT #1. Following a review of the entire record of proceeding including the response, USCIS could not conclude that the Victorville Regional Center remained eligible for the Regional Center designation as several issues remained unresolved with respect to the underlying viability and EB-5 compliance of the Victorville Regional Center's capital investment projects. USCIS issued a second Notice of Intent to Terminate (NOIT #2) on August 10, 2010 in order to provide an additional opportunity for the Victorville Regional Center to establish eligibility and to allow for a meaningful opportunity to address the concerns raised by the response to the NOIT #1.

USCIS has reviewed the entire record, including the evidence provided in response to NOIT #1 and to NOIT #2. Following this review, USCIS finds that the evidence of record fails to establish that the Victorville Regional Center has or will continue to serve the purpose of the Pilot Program in the manner required by Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended. As these statutes set forth, it is incumbent up on each approved and designated regional center to promote economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment.

I. REGIONAL CENTER STATUTORY AND REGULATORY FRAMEWORK

Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended, provides:

- (a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be

created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

- (b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Secretary of Homeland Security, shall set aside 3000 visas annually until September 30, 2012 to include such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act, to accompany or follow to join such aliens.
- (c) In determining compliance with section 203(b)(5)(A)(iii) of the Immigration and Nationality Act, and notwithstanding the requirements of 8 CFR 204.6, the Secretary of Homeland Security shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.
- (d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.

The regulation at 8 CFR 204.6(m) provides:

(3) Requirements for regional centers. Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the Assistant Commissioner for Adjudications, which:

- (i) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;
- (ii) Provides in verifiable detail how jobs will be created indirectly through increased exports;
- (iii) Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;

(iv) Contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and

(v) Is supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables.

(4) Submission of proposals to participate in the Immigrant Investor Pilot Program. On August 24, 1993, the Service will accept proposals from regional centers seeking approval to participate in the Immigrant Investor Pilot Program. Regional centers that have been approved by the Assistant Commissioner for Adjudications will be eligible to participate in the Immigrant Investor Pilot Program.

(5) Decision to participate in the Immigrant Investor Pilot Program. The Assistant Commissioner for Adjudications shall notify the regional center of his or her decision on the request for approval to participate in the Immigrant Investor Pilot Program, and, if the petition is denied, of the reasons for the denial and of the regional center's right of appeal to the Associate Commissioner for Examinations. Notification of denial and appeal rights, and the procedure for appeal shall be the same as those contained in 8 CFR 103.3.

(6) Termination of participation of regional centers. To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, the Assistant Commissioner for Adjudications shall issue a notice of intent to terminate the participation of a regional center in the pilot program 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 thirty 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 the Assistant Commissioner for Adjudications determines that the regional center's participation in the Pilot Program should be terminated, the Assistant Commissioner for Adjudications shall notify the regional center of the decision and of the reasons for termination. The regional center may appeal the decision within thirty days after the service of notice to the Associate Commissioner for Examinations as provided in 8 CFR 103.3.

(7) Requirements for alien entrepreneurs. An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a regional center approved pursuant to paragraph (m)(4) of this section and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise.

II. ANALYSIS

To ensure that a regional center continues to meet the requirements of section 610(a) of the Appropriations Act, USCIS must be assured that the terms and conditions of the operation of the regional center remain valid and unchanged after the regional center receives designation for the pilot program.

This includes the scope and nature of the capital investment projects that were used as the basis for the job creation methodologies approved in the regional center's initial designation or amendment request. It is also important that the promotional activities of the regional center accurately reflect current facts regarding the scope, nature, terms and conditions of capital investment opportunities available for EB-5 capital investments affiliated with the regional center.

All designated regional centers must meet the EB-5 statutory and regulatory criteria in order to maintain a regional center within which aliens seeking to obtain permanent resident status under section 203(b)(5) of the Immigration and Nationality Act (INA) will be able to successfully invest in a new commercial enterprise (as described in 8 CFR 204.6(h)) with a qualifying investment that will benefit the United States economy and create 10 jobs, including jobs indirectly created through the new commercial enterprise.

Viability of Approved EB-5 Capital Investment Opportunities:

a. Southern California Logistics Airport Wastewater Treatment Facility

(b)(4) The economic analysis that was submitted in response to the NOIT #1 stated that the purpose of the EB-5 investments is to allow for the building of a [REDACTED] gallon per day wastewater treatment facility in Victorville (see Page 6 of the Exhibit A-A-1 of the Economic Analysis submitted with the response). The evidence within the record suggests that [REDACTED] EB-5 investors will be offered the opportunity to contribute a total of [REDACTED] dollars into this capital investment project, thus requiring the creation of no less than [REDACTED] direct and/or indirect jobs.

(b)(4) In this case, the Victorville Regional Center relies upon an IMPLAN¹ econometric model to establish direct, indirect, and induced job creation. The evidence provided supports the assertion that upon completion of this facility, a total of [REDACTED] jobs will be created. Furthermore, USCIS concludes that these [REDACTED] jobs will be "direct jobs" within the meaning of 8 C.F.R. 204.6(j). However, the IMPLAN analysis predominantly relies upon [REDACTED] jobs directly created by two unrelated organizations (Dr. Pepper/Snapple and Plastipak) in order to derive an estimate of the indirect and induced jobs to be created through the EB-5 capital investment in the wastewater treatment facility. Only by crediting the wastewater treatment facility with [REDACTED] jobs that are actually directly attributable to Dr. Pepper/Snapple and Plastipak can the Victorville Regional Center achieve the total number of jobs [REDACTED] that is set forth in the IMPLAN econometric analysis.

USCIS has determined that the direct jobs created by the Dr. Pepper/Snapple and Plastipak organizations cannot be directly attributed to the prospective EB-5 capital investment into the wastewater treatment facility. Neither the Dr. Pepper/Snapple facility nor the Plastipak facility, which were recently established in Victorville, California, appear to have any relationship with the wastewater treatment facility other than by being parties to agreements to be consumers of the services of the wastewater treatment facility. Consequently, the economic analysis proffered by the Victorville Regional Center appears to rely in large part upon counting the jobs directly created by these unrelated organizations in order to satisfy the requirements of the EB-5 capital investment. Because of this reliance upon the direct job creation of

¹ **IMPLAN** is a micro-computer-based, input-output modeling system. With IMPLAN, one can estimate I-O models of up to 528 sectors for any region consisting of one or more counties. IMPLAN includes procedures for generating multipliers and estimating impacts by applying final demand changes to the model. See <http://corpslakes.usace.army.mil/employees/economic/glossary.cfm>

unrelated organizations, the Victorville Regional Center's IMPLAN economic analysis does not appear to be credible.

USCIS noted the following regarding the economic analysis discussed above in the NOIT #2:

Following this assumption to its logical conclusion, it would appear that your regional center asserts that any newly created public or private entity that provides a commodity or service to commercial consumers, such as a wastewater treatment plant, power plant, solid waste disposal center, etc., would in effect be able to claim credit for the jobs created by the commercial consumers of its services. For example, it does not seem reasonable to assume that a newly constructed power plant can be credited with the jobs created by the commercial consumers of its power. Likewise, it does not seem reasonable that the jobs created by the commercial consumers of the services provided by the wastewater treatment plant can be credited to EB-5 investors as direct jobs created through their investment in the wastewater treatment plant.

(b)(4)

Thus, it is not clear as to how the creation of [REDACTED] full-time jobs at the South California Logistics Airport Wastewater Treatment Facility will result in the creation of approximately [REDACTED] jobs within the bounds of the regional center. Please provide documentary evidence that shows that the allocation of direct jobs created by the consumers of a given product or service to an unrelated entity (that provides the product or service) is a recognized and established industry practice used in determining inputs into economic analyses that focus on job creation. Please also provide documentary evidence that would demonstrate the nexus between the [REDACTED] direct jobs to be created by the wastewater treatment plant and the estimated [REDACTED] number of jobs to be created within the bounds of the regional center as a result of the EB-5 capital investment in the wastewater treatment plant.

In response, you have provided letters of support from officials of the Dr. Pepper/Snapple and Plastipak organizations in which they attest to the fact that the construction of the wastewater treatment facility was a deciding factor in each organization's decision to build manufacturing facilities in Victorville, California.² In addition, USCIS notes that a number of organizations and individuals have provided letters of endorsement for the Victorville Regional Center to include:

- **Kendall L. Yorn, SVP Engineering, Dr. Pepper Snapple Group, Inc., dated August 30, 2010**
- **Edward V. Morgan, Vice President of Operations, Plastipak Packaging, Inc., dated August 30, 2010**
- **Mike Rothschild, Mayor, Council Member, City of Victorville, dated August 18, 2010**
- **Terry Caldwell, Chairman, Southern California Logistics Airport Authority, Council Member, City of Victorville, dated August 16, 2010**
- **Andre de Bortnowsky, Attorney, Victorville, and General Counsel to Southern California Logistics Airport Authority, dated August 19, 2010**
- **Paul Virtue, Baker & McKenzie, LLP, dated August 17, 2010**
- **Douglas, B. Robertson, Deputy City Manager/Director of Administrative Services/City Treasurer, dated August 19, 2010**
- **Michael L. Meyer, Managing Principal, Twin Rock Partners, dated August 16, 2010**
- **Brian Parno, Chief Operations Officer, Stirling Development, dated August 17, 2010**
- **K.Y. Cheng, Executive Vice President, East West Bank, dated August 16, 2010**
- **J. Jeffrey Kinsell, Executive Vice President, Kinsell, Newcomb & De Dios, dated August 19, 2010**
- **Edward C. Sledge, Hogan Lovells US, LLP, dated August 20, 2010**

² USCIS agrees that the addition of these manufacturing facilities to the local economy will undoubtedly be economically beneficial to the region, but the benefit to the region remains a distinct analysis from the Victorville Regional Center's compliance with the EB-5 statutory and regulatory job creation requirements.

The record shows that the Victorville Regional Center has garnered the support of a number of individuals and organizations. However, the evidence of record does not demonstrate that any jobs created by Dr. Pepper/Snapple and Plastipak can reasonably be credited as direct jobs to EB-5 investors who will make an investment in the wastewater treatment facility (through medium term bridge financing). In NOIT #2, USCIS specifically requested that the Victorville Regional Center provide evidence that its particular economic analysis comports with recognized and established industry practices; that the Victorville Regional Center's reliance on the jobs created by the consumers of a given product or service originating from an unrelated organization (in this case, Dr. Pepper/Snapple and Plastipak) is a recognized and established industry practice used in determining inputs into economic analyses focusing on job creation.

In response, you have provided a statement from Dr. John Husing, in which he states that "economists are clear on the fact that infrastructure projects are often directly and indirectly responsible for creating permanent private jobs within the areas in which they are built." USCIS concurs with this statement. However, Dr. Husing's statement does not address the appropriateness of classifying the jobs created by the unrelated Dr. Pepper/Snapple and Plastipak organizations as "direct jobs" for the purpose of the inputs into the IMPLAN model when determining the number of jobs indirectly created by the EB-5 capital investment in the wastewater treatment facility. Dr. Husing's statement and supporting evidence does not establish, let alone support that it is an acceptable recognized, and established industry practice to allocate jobs created by a consumer of a product or service from unrelated entities, as direct jobs for the purpose of determining indirect job creation through an input-output model such as IMPLAN.

The expansive definition of "direct jobs" discussed by Dr. Husing and relied upon by the Victorville Regional Center appears to be contrary to the definition of "direct jobs" utilized by others engaged in similar analysis. For example, a recent report published by the Congressional Research Service (CRS), entitled *Job Loss and Infrastructure Job Creation Spending During the Recession*, dated October 2, 2009³, provides the following definitions of direct, indirect and induced jobs for the purposes of determining job creation:

The Multiplier Effect

A more comprehensive estimate of the number of jobs created by a particular type of economic activity has three components, namely,

- *the number of jobs directly attributable to the activity,*
- *the number of jobs indirectly attributable to the activity, and*
- *the number of jobs induced throughout the economy as a result of the activity.*

Induced jobs are those dependent upon the purchases of persons in direct and indirect jobs. For example, workers who are directly or indirectly employed as the result of a highway construction program might spend some portion of their wages in their communities at grocery stores, auto repair shops, and movie theaters.

(b)(4)

As previously noted, Dr. Husing's analysis relies upon [REDACTED] jobs allocated from three sources as the direct job inputs into the IMPLAN model in order to derive his indirect and induced jobs creation estimate of [REDACTED] jobs. Only by relying on direct jobs created by these sources, i.e., the wastewater treatment facility ([REDACTED] jobs), the Dr. Pepper/Snapple facility ([REDACTED] jobs), and the Plastipak facility ([REDACTED] jobs) is his IMPLAN analysis able to attribute [REDACTED] indirect and induced jobs to the wastewater treatment facility. The wastewater treatment facility business plan proposes to use [REDACTED] in EB-5 investment capital from [REDACTED] EB-5 investors; thus it must be demonstrated that at least [REDACTED] jobs will be created as a result of this investment. Dr. Husing asserts in his statement that only "[REDACTED] jobs that must come from the indirect

³ http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1686&context=key_workplace, page 6.

and induced result of having adding the [REDACTED] jobs into the Victorville area's economic base" in order to meet the minimum of [REDACTED] jobs for EB-5 purposes. USCIS disagrees with the findings of this analysis as this novel approach to estimating job creation has not been shown to be a recognized and established industry practice.

In light of the above, USCIS has determined that the use of the jobs created by the Dr. Pepper/Snapple and Plastipak manufacturing facilities may not be reasonably classified as "direct jobs" to be used as the inputs into the IMPLAN model in order to estimate the number of indirect and/or induced jobs to be created as a result of EB-5 capital investments in the wastewater treatment facility.

It is noted that Dr. Husing also spends considerable time discussing another approved EB-5 regional center, and asserts that the principles utilized in the economic analysis for the capital investment projects of the other regional center are analogous to the principles used in the wastewater treatment facility economic analysis. Dr. Husing cites to an economic study that he claims to have performed for the other regional center a decade ago (which is not present in the record), as well as various statements made by officials of organizations in which the officials appear to be authorizing the other regional center to raise EB-5 capital for certain capital investment projects. The cited letters are provided in Exhibit B of the response to the NOIT #2, dated August 10, 2010, and are dated April 1, 2010 and March 26, 2010, respectively. Though the categories of capital investment projects noted therein appear to also be related to improvements in infrastructure, the letters which were addressed to the promoter of the other regional center do not specifically describe the methodology used by the other regional center to determine the inputs into an economic model in order to estimate job creation in its EB-5 capital investment projects. Therefore, Dr. Husing's assertions that Victorville Regional Center's economic analysis methodology and the other regional center's economic analysis methodology are comparable cannot be determined based on the evidence of record.

Dr. Husing has also provided general statements regarding the job creating impacts of various capital investment initiatives within the geographic area of the Victorville Regional Center that appear to be ancillary to the wastewater treatment facility capital investment project. USCIS has long recognized that the use of capital investment dollars directly infused into a proposed capital investment project which is supported by a reasonable and feasible business plan may be used as the inputs into IMPLAN, RIMS II, or other comparable economic models to determine the jobs that will be created as a result of the investment for EB-5 purposes. This is commonly referred to as a "capital spending multiplier". The Victorville Regional Center has not provided an economic analysis that focuses on the capital investment in the wastewater treatment facility in terms of its job creation efficacy based upon a capital spending multiplier. Generalized statements on this topic cannot serve to reasonably demonstrate that there would be sufficient job creation through EB-5 capital investment in this project for all [REDACTED] of the prospective EB-5 investors.

(b)(4)
For the reasons noted above, the Victorville Regional Center has not demonstrated that EB-5 capital investments in the wastewater treatment facility will create the requisite [REDACTED] direct or indirect jobs for [REDACTED] prospective EB-5 investors. Therefore, USCIS's prior approval of this capital investment project cannot be reaffirmed and may not be included in the Victorville Regional Center's regional center designation for participation in the Pilot Program⁴.

⁴ The burden is on the applicant or petitioner to demonstrate eligibility for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

b. Other Designated Regional Center EB-5 Capital Investment Projects

1. Southern California Logistics Airport Electrical Generation: (b)(4)

This development project consists of a [REDACTED] hybrid electrical generation plant of which [REDACTED] million would be financed through [REDACTED] from EB-5 Immigrant Investors. The economic analysis provided in the proposal claimed that the hybrid electric generation plant would be completed by 2010 and would create [REDACTED] direct jobs, [REDACTED] indirect jobs and [REDACTED] induced jobs by 2011 based on an IMPLAN Econometric Model.

2. Intermodal Rail Improvements:

This development project consists of a [REDACTED] Burlington Northern Santa Fe (BNSF) Intermodal Rail Yard of which [REDACTED] would be financed through [REDACTED] from EB-5 Immigrant Investors. Once completed, the BNSF Intermodal Rail Yard would have an annual lift capacity of [REDACTED]. The economic analysis provided in the proposal claimed that the BNSF Intermodal Yard would be completed by 2010 and would create [REDACTED] direct jobs, [REDACTED] indirect jobs and [REDACTED] induced jobs by 2011 based on an IMPLAN Econometric Model.

(b)(4)

3. Southern California Logistics Airport Infrastructure Improvements:

This [REDACTED] development project [REDACTED] infrastructure development and [REDACTED] private development) consists of an airport and rail related logistics park at the South California Logistics Airport of which [REDACTED] would be financed through [REDACTED] from EB-5 Immigrant Investors. The economic analysis provided in the proposal claimed that the logistics park would be completed by 2010 and would create [REDACTED] direct jobs, [REDACTED] indirect jobs and [REDACTED] induced jobs by 2011 based on an IMPLAN Econometric Model.

Evidence submitted in response to the NOIT #1 indicated that these three projects (Southern California Logistics Airport Electrical Generation, Intermodal Rail Improvements and Southern California Logistics Infrastructure Improvements) are currently on indefinite hold for the foreseeable future as the projects cannot commence until economic conditions improve.

Based on the information above, it appeared that these projects were defunct. USCIS noted the following in the NOIT #2:

USCIS often includes prospective capital investment projects in a regional center's designation for participation in the Pilot Program. While there may be no specific timeframe for the commencement of a given project articulated within the regional center proposal, USCIS must be assured that the business plans and economic analyses that are relied upon for the approval of the capital investment projects are currently feasible and will reasonably reflect economic conditions when the projects are initiated in order to determine that the job creation estimates therein are reasonable and will be in keeping with EB-5 program requirements.

As these three projects are not feasible for the foreseeable future, USCIS does not consider the business plans, economic analyses, and the estimated job creation therein relating to the projects as a reasonable basis for a determination of prospective job creation for EB-5 purposes. In light of the above, please note that USCIS does not intend to include these three projects as approved projects in the regional center designation in the event that your regional center designation is affirmed. If you still wish to have these projects included in the regional center designation, please provide probative documentary evidence that

would show that these three projects are in fact currently feasible, along with an updated business plan and economic analysis for each project that you wish USCIS to consider.

In response, Victorville Regional Center promoter, Keith C. Metzler, indicates in his letter, dated September 1, 2010, that these three capital investment projects "should no longer be part of the Victorville Regional Center approved designation as a regional center."

c. New Capital Investment Projects to be Considered by USCIS.

USCIS noted the following in the NOIT #2:

If the response includes a request for a favorable determination by USCIS regarding changes in the terms and conditions of the operation of the regional center and the scope and nature of the capital investment project opportunities that formed the basis for the approval and designation of the regional center, then such an amendment request must provide documentation relating to the requested changes as specified in 8 CFR 204.6(m)(3), and which accurately reflect current market conditions for the viability of the capital investment projects to be considered.

The Victorville Regional Center did not include any documentation relating to prospective capital investment projects other than the wastewater treatment facility in its response to NOIT #2. In light of this fact, USCIS concludes that the Victorville Regional Center presently has no new capital investment projects to offer to EB-5 investors.

III. DECISION

This letter shall serve as notification that USCIS has terminated the Victorville Regional Center's designation as a regional center under the Pilot Program pursuant to 8 CFR 204.6(m)(6). USCIS must terminate the regional center designation for the following reasons:

- The Victorville Regional Center has no viable capital investment projects to offer to EB-5 investors that comport with the EB-5 job creation requirements of INA 203(b)(5)(A)(ii).
- The Victorville Regional Center does not meet the requirements of Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended.

You may appeal this final decision to terminate the Victorville Regional Center designation under the Pilot Program pursuant to 8 CFR 103.3(a)(2). If you choose to do so, your notice of appeal must be received within 33 days of the date of the final decision to terminate in accordance with the instructions found on Form I-290B. A copy of the appeal notice and instructions has been attached to this decision for your convenience. Pursuant to 8 CFR. 103.3(a)(2), the appeal should be filed with this office and include the required fee of \$585 and any supporting documentation or brief. This office will forward the appeal to the AAO.