

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
5900 Capital Gateway Drive, Mail Stop 2090
Camp Springs, MD 20588-0009



U.S. Citizenship
and Immigration
Services

ATTN JOAN GOLDSTEIN
COMMISSIONER
AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT
1 NATIONAL LIFE DR 6TH FL
MONTPELIER VT 05620

DATE: MAR. 25, 2021

FILE #: RCW 10 319 10148
I-290B RECEIPT #: AAO 20 900 00186

IN RE: VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT
REGIONAL CENTER

ON BEHALF OF APPELLANT:

ROBERT DIVINE, ESQUIRE
BAKER DONELSON BEARMAN CALDWELL
& BERKOWITZ, P.C.
633 CHESTNUT ST STE 1900
CHATTANOOGA TN 37450

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Please direct any further inquiries to that office.

Sincerely,

A handwritten signature in black ink, appearing to read "SD", followed by a horizontal line.

Susan Dibbins
Chief, Administrative Appeals Office



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

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8721171

Date: MAR. 25, 2021

Motion on Administrative Appeals Office Decision

PROPOSAL FOR DESIGNATION AS A REGIONAL CENTER PURSUANT TO SECTION 610(C) OF THE DEPARTMENTS OF COMMERCE, JUSTICE AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT OF 1993, PUB. L. NO. 103-121, 106 STAT. 1874 (1992)

The Appellant, the Vermont Agency of Commerce and Community Development (VACCD),¹ applied for designation as a regional center to participate in the EB-5 program.² See Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5); see also Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (the “Appropriations Act”), 1993, Pub. L. No. 102-395, 106 Stat. 1828, 1874 (Oct. 6, 1992), as amended. U.S. Citizenship and Immigration Services (USCIS) granted the application in 1997. The designated regional center is called Vermont Agency of Commerce and Community Development Regional Center (VRC).³

The Chief of the Immigrant Investor Program Office terminated the VRC’s designation in July 2018, finding that it no longer served the purpose of promoting economic growth. See 8 C.F.R. § 204.6(m)(6)(i), (ii) (2018). We dismissed the subsequent appeal.⁴

The matter is now before us on combined motions to reconsider and reopen the proceeding. The Appellant submits additional evidence on motion, claiming that the submission establishes it is continuing to promote economic growth, and that it should retain its designation as a regional center to participate in the EB-5 program. Upon review, we will grant the motions, withdraw the Chief’s decision, and remand the matter for further action and consideration.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located

¹ The record indicates that the VACCD is a Vermont State government agency that is responsible, in part, for marketing Vermont to businesses and individuals.

² The EB-5 program, as it is commonly called, issues employment-based fifth preference visas to qualified foreign national investors.

³ A Memorandum of Understanding shows that beginning in December 2014, the VACCD and the Vermont Department of Financial Regulation (VDFR), another Vermont State government agency, jointly administer the VRC.

⁴ *Matter of V-A-O-C-A-C-D-R-C-*, ID# 1982072 (AAO Sept. 25, 2019).

at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements.

Congress enacted the EB-5 program that set aside visas for foreign national investors who invest in a new commercial enterprise associated with a USCIS-designated regional center. To obtain USCIS designation to participate in the program, a regional center must provide a general proposal showing how it will concentrate pooled investments in defined economic zones, thereby promoting economic growth. *See* Section 610(a) of the Appropriations Act.

Once designated, the regional center must “[p]rovide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area.” 8 C.F.R. § 204.6(m)(6)(i)(B). If the regional center does not submit the required information or if USCIS determines that the regional center is no longer serving the purpose of promoting economic growth, USCIS will issue a notice of intent to terminate (NOIT) the designation. Subsequently, USCIS may issue a notice of termination (NOT), if the regional center does not sufficiently rebut the grounds for termination specified in the NOIT. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(v).

To determine whether a regional center serves the purpose of promoting economic growth, the Chief should consider a variety of factors, both positive and negative, that encompass past, present, and likely future actions. Positive factors may include the extent of any job creation, the amount of investment, and the overall economic impact. Negative factors may include inaction, mismanagement, theft, or fraud by or otherwise affecting the regional center, any resulting damage, and the risk imposed on investors or the economy. An evaluation of any negative factors should take into consideration of any mitigating or corrective actions taken by the regional center. *See Path America KingCo LLC v. U.S. Department of Homeland Security*, 426 F. Supp. 3d 770, 778 (W.D. Wash. 2019).

II. ANALYSIS

Since its designation in 1997, the VRC has been associated with a number of EB-5 projects, including a group of projects that Ariel Quiros and others managed, known as “the Jay Peak EB-5 Projects.” According to the U.S. Securities and Exchange Commission (SEC), U.S. Department of Justice (DOJ), and the Vermont State government, Mr. Quiros and others, through various businesses, engaged in a massive fraudulent scheme that misappropriated and misused EB-5 capital.⁵ The Appellant offers on motion an August 2020 plea agreement, in which Mr. Quiros pled guilty to several federal criminal

⁵ The named corporate defendants in the SEC civil lawsuit include: Jay Peak, Inc.; Q Resorts, Inc.; Jay Peak Hotel Suites L.P.; Jay Peak Hotel Suites Phase II, L.P.; Jay Peak Management, Inc.; Jay Peak Penthouse Suites, L.P.; Jay Peak GP Services, Inc.; Jay Peak Golf and Mountain Suites L.P.; Jay Peak GP Services Golf, Inc.; Jay Peak Lodge and Townhouses L.P.; Jay Peak GP Services Lodge, Inc.; Jay Peak Hotel Suites Stateside L.P.; Jay Peak GP Services Stateside, Inc.; Jay Peak Biomedical Research Park L.P.; and AnC Bio Vermont GP Services, LLC. *SEC v. Quiros*, No. 16-21301 cv-DPG, 2016 WL 1521288 (S.D. Fla. Apr. 12, 2016) (Compl. ¶¶ 1, 3); *see also* U.S. Department of Justice, U.S. Attorney’s Office, District of Vermont, *Four Men Indicted on Fraud Charges Related to the Jay Peak EB-5 AnC Vermont Project in Northeast Vermont*, <https://www.justice.gov/usao-vt/pr/four-men-indicted-fraud-charges-related-jay-peak-eb-5-anc-vermont-project-northeast>, accessed on September 10, 2019, a copy of the article has been incorporated into the record of proceedings; *Vermont v. Quiros*, No. 217-4-16 Wncv, 2016 WL 10860920 (Super. Ct. Vt. Dec. 13, 2016) (citing the Plaintiff’s Amended Complaint).

charges, and admitted, among other wrongdoings, that he used EB-5 funds to pay personal expenses, paid expenses of one EB-5 project with funds investors invested in another EB-5 project, and misled investors on the status of the EB-5 projects. The plea agreement and other documents in the record indicate that in April 2016, a federal court appointed a receiver, Michael Goldberg, to administer and manage the affairs of the businesses associated with the Jay Peak EB-5 Projects.

The record includes evidence showing that before the SEC and DOJ actions, the Appellant attempted to oversee the Jay Peak EB-5 Projects to ensure that the projects and their offering documents complied with applicable securities laws. *See* 8 C.F.R. § 204.6(m)(6)(i), (ii); *see also* 6 USCIS Policy Manual G.3(A), <https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-3> (requiring a regional center to explain how it “[w]ill oversee all investment activities affiliated with, through, or under the sponsorship of the proposed regional center”). As acknowledged on page 13 of the Chief’s decision terminating the VRC’s designation to participate in the EB-5 program, “Vermont State government has taken or claims to have taken [actions] to improve their monitoring and oversight of the [VRC’s] projects” upon learning Mr. Quiros and others’ wrongdoings. Indeed, documents show that the State of Vermont sued Mr. Quiros in state court, alleging that he and others had orchestrated a large-scale investment scheme to defraud EB-5 investors. *See Vermont v. Quiros*, No. 217-4-16 Wncv, 2016 WL 10860920 (Super. Ct. Vt. Dec. 13, 2016).

At issue is whether the VRC is continuing to promote economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i)(B). The Appellant alleges on motion that despite Mr. Quiros and others’ wrongdoings, the VRC has continued to promote economic growth. As supporting evidence, it presents new documentation regarding EB-5 projects not previously under Mr. Quiros’ control – including the Trapp Family Lodge EB-5 Project and projects associated with the Mount Snow Ski Resort. According to an October 2019 “Review of Activities – Summary of Past and On-Going Economic Impacts,” the Trapp Family Lodge EB-5 Project comprises of the construction of a brewery and restaurant, as well as the operation of the brewery. The document claims that the project “has likely created a total of 653 EB-5 program eligible jobs – and up to an additional 346 economically direct and economically indirect jobs.” The Appellant also presents Peak Resorts, Inc.’s SEC filing for the fiscal year ending in April 2019, indicating that the Mount Snow Ski Resort used EB-5 capital to complete two projects: (1) the West Lake Water Project, completed during fiscal 2018, included the construction of a new water storage reservoir for snowmaking; and (2) the Carinthia Ski Lodge Project, completed during fiscal 2019, included the construction of a new skier service building. In addition, the August 2017 “Review of the EB-5 Program in Vermont and the Vermont Regional Center [VRC],” prepared by the Vermont Department of Financial Regulation (VDFR), in consultation with the VACCD, alleges that “the VRC-affiliated [EB-5] projects have resulted in the deployment of hundreds of millions of dollars in foreign capital in Vermont” and “the creation of at least 3,700 jobs as a result.”

The Appellant alleges on page 7 of its motion brief that “[c]ertain Jay Peak EB-5 projects also continue to operate, create jobs, and promote economic growth.” Mr. Goldberg stated in an October 2019 letter that “[f]rom May 2018 to September 2020, . . . [he has] continued to oversee the completion of construction related to Jay Peak Hotel Suites Stateside, LP (“Stateside”) or Phase VI and the general operations of Jay Peak Resort and Burke Mountain Resort.” He further indicates that “[t]he Stateside construction . . . was substantially completed” during the fiscal year ending in April 2019, and that

“[c]apital expenditures for Stateside construction in fiscal year 2019 included \$1,025,281 for the Stateside condominiums, \$118,121 for the Recreation Center and \$2,552,786 for the Athletic Fields.”

In light of the new evidence regarding promotion of economic growth that the Appellant offers on motion, which the Chief has not had an opportunity to consider, we will withdraw the Chief’s decision and remand the matter for further action and consideration. Upon remand, the Chief should consider all facts and documentary evidence relevant to the issue of whether the VRC “is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area,” as required under 8 C.F.R. § 204.6(m)(6)(i)(B). *See also* 8 C.F.R. § 204.6(m)(6)(ii)(B) (noting that a regional center must “serve[] the purpose of promoting economic growth”).

Furthermore, while the decision does not bind us in the present case, the Appellant notes that intervening caselaw speaks to the question that is before us. Shortly after we issued our last decision, the United States District Court for the Western District of Washington issued a decision in *Path America KingCo LLC v. U.S. Department of Homeland Security*, 426 F. Supp. 3d at 778. The Court noted that, “[j]ust because a regional center failed to promote economic growth for a short period while management changed hands does not mean that the regional center has not continued to promote economic growth after that point, when it in fact provided jobs on a successful construction project.” *Id.* at 777. Recognizing the persuasive value of this decision, the Chief should consider whether the VRC has “rectified [its] failed oversight [of wrongdoings] and made further progress in creating jobs and investing capital” in EB-5 projects. *See id.* at 778 (noting that USCIS’ failure to properly consider a regional center’s remedial efforts “appears to run contrary to the purposes of the EB-5 program”).

III. CONCLUSION

Based on the reasons we have discussed, we will remand the matter to the Chief for further action in accordance with this decision.

ORDER: The motions are granted and the decision of the Chief is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.