

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Immigrant Investor Program
131 M Street, NE, MS 2235
Washington, DC 20529



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

TO:

EB5 Express LLC
Thomas Tam
2127 Ringwood Ave.
San Jose, CA 95131

DATE: May 18, 2017

Application: Form I-924

A-Number:

File: RCW1118250239 / ID1118250239

NOTICE OF TERMINATION

This letter shall serve as notification that U.S. Citizenship and Immigration Services (“USCIS”) has terminated the designation of EB5 Express LLC (the “Regional Center”) as a regional center under the Immigrant Investor Program (the “Program”) pursuant to Title 8 of the Code of Federal Regulations (“8 C.F.R.”) section 204.6(m)(6). The reasons for the termination are explained, below:

(SEE ATTACHED)

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

The Regional Center must send the completed Form I-290B and supporting documentation with the appropriate filing fee to the address indicated below.

If using the U.S. Postal Service:

USCIS
P.O. Box 660168
Dallas, TX 75266

If using USPS Express Main/Courier:

USCIS
Attn: I-290B
2501 S. State Highway 121 Business
Suite 400
Lewisville, TX 75067

For an appeal, the Regional Center may request additional time to submit a brief within 30 calendar days of filing the appeal. Any brief, written statement, or evidence in support of an appeal that is not filed with Form I-290B must be directly sent within 30 days of filing the appeal to:

USCIS Administrative Appeals Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

EB5 Express LLC – **Designation Terminated**

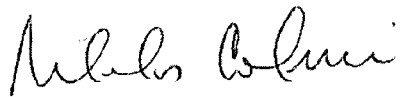
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For more information about the filing requirements for appeals and motions, please see 8 C.F.R. § 103.3 or 103.5, or visit the USCIS website at www.uscis.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Colucci". The signature is written in a cursive style with a large initial "N".

Nicholas Colucci
Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on June 6, 2016

cc: Ann Koo Esq.
Law Office of Ann Koo
2127 Ringwood Ave.
San Jose, CA 95131

NOTICE OF TERMINATION
Termination of Regional Center Designation Under the Immigrant Investor Program
EB5 Express LLC

The regulation at 8 C.F.R. § 204.6(m)(6) (*Continued participation requirements for regional centers*) provides:

(i) Regional centers approved for participation in the program must:

(A) Continue to meet the requirements of section 610(a) of the Appropriations Act.

(B) Provide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area, using a form designated for this purpose; and

(C) Pay the fee provided by 8 CFR 103.7(b)(1)(i)(XX).

(ii) USCIS will issue a notice of intent to terminate the designation of a regional center in the program if:

(A) A regional center fails to submit the information required in paragraph (m)(6)(i)(B) of this section, or pay the associated fee; or

(B) USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

(iii) A notice of intent to terminate the designation of a regional center will be sent to the regional center and set forth the reasons for termination.

(iv) The regional center will be provided 30 days from receipt of the notice of intent to terminate to rebut the ground or grounds stated in the notice of intent to terminate.

(v) USCIS will notify the regional center of the final decision. If USCIS determines that the regional center's participation in the program should be terminated, USCIS will state the reasons for termination. The regional center may appeal the final termination decision in accordance with 8 CFR 103.3.

(vi) A regional center may elect to withdraw from the program and request a termination of the regional center designation. The regional center must notify USCIS of such

election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its decision regarding the withdrawal request in writing.

I. Procedural History

On July 18, 2013, USCIS designated and authorized the Regional Center’s participation in the Program. On June 6, 2016, USCIS issued a Notice of Intent to Terminate (“NOIT”) to the Regional Center which afforded the Regional Center 30 days from receipt of the NOIT to offer evidence in opposition to the grounds alleged in the NOIT. On July 11, 2016, USCIS received a response to the NOIT (the “NOIT Response”), which did not sufficiently address the grounds alleged in the NOIT. Accordingly, USCIS has determined that the Regional Center’s participation in the Program should be terminated. Pursuant to 8 C.F.R. § 204.6(m)(6)(v) and through this Notice of Termination, USCIS hereby terminates the Regional Center’s participation in the Program.

II. Reasons for Termination

USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment as required by 8 C.F.R. § 204.6(m)(6).

A. Failure to Continue to Serve the Purpose of Promoting Economic Growth

Regional centers are designated for the promotion of economic growth and must continue to meet the requirements of section 610(a) of the Appropriations Act as amended, and promote economic growth in a manner that does not conflict with requirements for classification under section 203(b)(5) of the Immigration and Nationality Act (“INA”), removal of conditions on lawful permanent residence under section 216A of the INA, and implementing regulations following their designation. According to section 610(a) of the Appropriations Act, economic growth includes increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *See also* 8 C.F.R. § 204.6(m)(6)(ii) (“USCIS will issue a notice of intent to terminate the designation of a regional center in the program if . . . USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.”).

The reasons why a regional center may no longer serve the purpose of promoting economic growth are varied and “extend beyond inactivity on the part of a regional center.” 75 FR 58962. For example, depending on the facts, a regional center that takes actions that undermine investors’ ability to comply with EB-5 statutory and regulatory requirements such that investors cannot obtain EB-5 classification through investment in the regional center may no longer serve the purpose of promoting economic growth. *See* Section 610(a)-(b) of the Appropriations Act (stating that one purpose of a regional center is to concentrate pooled investment in defined economic zones and accomplishing such pooled investment by setting aside visas for aliens classified under INA 203(b)(5)). Likewise, a regional center that fails to

engage in proper monitoring and oversight of the capital investment activities and jobs created or maintained under the sponsorship of the regional center may no longer serve the purpose of promoting economic growth in compliance with the Program and its authorities.

When derogatory information arises (such as evidence of inaction, mismanagement, theft, or fraud by the regional center or related entities), USCIS weighs all relevant factors in the totality of the circumstances to determine whether the regional center is continuing to serve the purpose of promoting economic growth. Such factors may include the seriousness of the derogatory information, the degree of regional center involvement in the activities described in the derogatory information, any resulting damage or risk imposed on investors and the economy, as well as any mitigating, corrective, or restorative actions taken or forthcoming to redress the situation.

USCIS has considered all evidence in the record including evidence provided in response to the NOIT “for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence.” in determining whether the Regional Center’s continued participation is justified under the regulations by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). For the reasons set forth below, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

1. Lack of Regional Center Activity

As noted in the NOIT, the Regional Center’s Form I-924A filings for fiscal years 2013, 2014, and 2015¹ do not report any EB-5 capital investment or job creation. In addition, although USCIS designated the Regional Center on July 18, 2013, the Form I-924A filings do not report any pending or approved Forms I-526 filed by petitioners who have made or are actively in the process of making investments associated with the Regional Center.

In response to the NOIT, the Regional Center provided the following evidence:

- Letter from Thomas Tam, principal of the Regional Center, dated July 8, 2016;
- Copies of the Regional Center’s Form I-924A filings for fiscal years 2014 and 2015;
- Copy of a screen shot of the EB5 Express, LLC website;
- Copy of a Loan Term Sheet outlining a proposal between the Regional Center and AETO-B Systems, dated March 1, 2016;

¹ Since the issuance of the NOIT, the Regional Center submitted another Form I-924A, received on December 22, 2016, receipt number RCW1700555309. The information on the form was incomplete, did not identify the fiscal year reported, and did not report any additional job creation or capital investment in the Regional Center.

- Copy of an amended Regional Center designation letter from USCIS, dated April 23, 2014;
- Copies of a proposed Private Placement Memorandum and Subscription Agreement, undated;
- Copy of a Limited Partnership Agreement for EB5Express LPI, LP, dated March 1, 2016, signed by Thomas Tam and [REDACTED]
- Copy of a Form I-526, Immigrant Petition by Alien Entrepreneur, for [REDACTED] with attachments;
- Articles of Incorporation for AETO-TECH, dated January 10, 2012;
- Copies of portions of the business plan for AETOTECH Battery submitted with the Regional Center’s initial application, correspondence with USCIS regarding that application, and promotional materials for AETO-TECH; and
- Copy of “Projected Impacts of the EB-5 Express Regional Center” prepared by Paul Sommers, dated March 2012.

In the NOIT response, the Regional Center principal, Thomas Tam, stated that the Regional Center has identified a single investor, [REDACTED] who had begun the process of investing in a project entitled AETO-B. According to Mr. Tam’s letter, AETO-B is the same project that was included in the Regional Center’s initial application in 2011. That project, then identified as “AETOTECH Battery” was included in the Regional Center’s application as a proposed or “sample” project. The Regional Center provided an incomplete copy² of a proposed Private Placement Memorandum for EB5 Express, LP³, a Subscription Agreement for EB5 Express, LP, signed by [REDACTED] and a Limited Partnership Agreement for EB5 Express LPI, LP, also signed by [REDACTED]

According to the Subscription Agreement, an investor would be admitted to the limited partnership upon investment of \$1,000,000, but there is no evidence in the record showing that [REDACTED] has met that requirement. Exhibits attached to the unfiled Form I-526 for [REDACTED] identify him as holding “interest/debt/equity” of [REDACTED] in an NCE identified as “AETO-B Systems f/k/a AETO-TECH a/k/a AETO-B.” Another exhibit includes a copy of a check made out to “AETO-TECH” from the Regional Center, dated July 1, 2016. It is unclear whether this amount relates to [REDACTED] interest. Even if Mr. [REDACTED] has begun the process of investing in a project sponsored by the Regional Center, based on the evidence presented, it is unclear which entity he has invested in, as each document presented identifies a different partnership or organization from the others. Further, the Regional Center has not provided any

² The Table of Contents for the Private Placement Memorandum shows that the document should include at least twenty-one (21) pages, but only eleven (11) pages were provided in the NOIT response.

³ This entity appears to be distinct from the Regional Center, which is an LLC.

evidence that any of the limited partnerships identified in the Private Placement Memorandum, the Subscription Agreement, or Limited Partnership Agreement actually exist.

As of the date of this Notice, USCIS has not received any I-526 petitions filed by [REDACTED] or any other investor associated with any project or projects sponsored by the Regional Center.

The NOIT response included another exhibit attached to the unfiled I-526 petition for [REDACTED] identified as Exhibit 3. Transaction Detail by Account, for [REDACTED] [REDACTED] is listed among those persons who hold “interest/debt/equity” in AETO-B Systems in other exhibits attached to the unfiled I-526 petition. The Transaction Detail by Account appears to show a record of expenditures by [REDACTED] from January 2011 to April 2016, totaling approximately [REDACTED]. There is no indication that any of these expenditures have anything to do with the Regional Center or any of its projects or that any funds from EB-5 investors’ funds were used for these expenditures. The Regional Center has not provided any other evidence of economic activity from the period since its designation on July 18, 2013.

In the absence of evidence of increased export sales, improved regional productivity, job creation, or increased domestic capital investment, USCIS concludes that the Regional Center no longer serves the purpose of promoting economic growth.

III. Conclusion

For the reasons described above and set forth in the NOIT and pursuant to 8 C.F.R. 204.6(m)(6), USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth and hereby terminates the Regional Center’s participation in the Program.

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

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USCIS
P.O. Box 660168
Dallas, TX 75266

If using USPS Express Main/Courier:

USCIS
Attn: I-290B
2501 S. State Highway 121 Business
Suite 400
Lewisville, TX 75067

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