

## **CHAPTER 7: LEARNING FROM THE HISTORY OF RISK AND FRAUD IN THE EB-5 REGIONAL CENTER CONTEXT<sup>1</sup>**

The EB-5 program was designed to stimulate the U.S. economy through foreign-sourced investments of capital leading to U.S. job creation. This process can be a “win-win” for developers, who obtain access to low-interest capital, as well as for the foreign investor who may be principally seeking the non-monetary return of lawful permanent residency in the United States. However, given the potentially distorting mix of immigration regulations and competing interests, situations arise where the needs of the developer and the needs of the foreign investor do not always align. Developers and dealmakers considering the use of an EB-5 Regional Center program as a means of raising capital should be aware of recent Regional Center terminations in order to better understand the representations that they, or their agents, may make to foreign investors and the variety of risks and expectations that exist. This chapter includes a summary of several Regional Centers which lost or are in danger of losing Regional Center designation, and the lessons developers can learn from these failures.

Inevitable changes over time may interfere with the long term viability of a Regional Center project, and may ultimately lead to failure. Under current immigration procedures and timelines, investors and Regional Center developers should expect a relationship of no less than five years. The national economic picture, industry performance, and even family relationships can evolve dramatically in half a decade. Because **USCIS** approval is required for significant amendments to a previously approved project or business plan, Regional Centers may lack the adaptability for projects that require modification at some point in the project’s lifespan. Accordingly, expectations, rights and legal recourses should be spelled out contractually, understood and memorialized by developers and investors. Miscommunication or mismanagement of investor expectations can in extreme cases lead to disaster as exemplified by the cases highlighted below.

Other causes of failure or loss of Regional Center designation are attributed to lack of due diligence or regulatory compliance. **USCIS** has exercised its ability to terminate participation of EB-5 Regional Centers four times in the past three years (from 2011 to 2013). The reasons for these terminations were generally based on either a lack of expected economic growth, or determinations of perceived fraud. Owners and developers should be aware of **USCIS**’ ability to terminate Regional Centers and adjust their practices to document ongoing viability.

Careful planning is crucial as it can reduce economic loss and litigation for potential investors. Additionally, it may give developers the opportunity to adjust their practices to structure and operate current or future Regional Centers in compliance with applicable regulations. Valuable lessons can be learned from previous Regional Center failures outlined in this chapter.

### **A. USCIS Revocations of Regional Center Designations for Non-Compliance**

The agency’s rationales for the revocation of four Regional Centers from December 2011 to December 2013 have varied, but often relate to project viability and economic growth. For example, **USCIS** may revoke a Regional Center’s designation due to lack of job creation. When undertaking a project, the jobs created *before* the investor’s investment cannot be counted towards job *creation*. In order to count the jobs from a project that existed before the investor’s

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<sup>1</sup> This section was prepared by **Robert F. Loughran**.

investment, the Regional Center must show that investors were investing in a *troubled business* and that the project *preserved* jobs.

In evaluating whether the project continues to promote economic growth, **USCIS** will rely upon several factors. Examples of the issues that **USCIS** will use to evaluate economic growth include which include (but are not limited to) the following:

1. How many investors have invested into the Regional Center in the last few years?
2. Has the Regional Center or the General Partner of the Regional Center filed for bankruptcy, or otherwise manifested economic weakness?
3. Are the representations made in previous filings factual and have they been realized?

If the Regional Center is not promoting economic growth, then the **USCIS** may revoke the designation, thereby potentially stranding any foreign investors whose cases are in progress. Furthermore, previously approved cases may be reopened and denied if it is determined that previous approvals were based on false statements.

The **USCIS** may also revoke a Regional Center's designation on the basis that it has failed to demonstrate that the projects will create jobs in verifiable detail based upon a business plan and economic analysis that employs reasonable methodologies for estimating job creating through an EB-5 capital investment. Finally, **USCIS** may revoke a Regional Center's designation if it no longer promotes economic growth, if the Regional Center's projects are no longer viable, and if the Regional Center is no longer overseeing the projects and investments that were outlined in the original request for Regional Center designation.

## **B. Current Immigration Law Regarding Revocation of USCIS Designation**

Pursuant to 8 CFR Section 204.6(m)(6), the **USCIS** may terminate a Regional Center's designation for various reasons, including:

1. If the Regional Center fails to submit required information; or
2. If the **USCIS** determines that the Regional Center no longer promotes economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

If the Regional Center is issued a Notice of Intent to Terminate (**NOIT**), then the Regional Center "must be provided 30 days, from receipt of the **NOIT**, in which to submit evidence in opposition to the ground or grounds alleged in the **NOIT**. Furthermore, if the **USCIS** determines that the Regional Center's participation in the Program should be terminated, the **USCIS** shall notify the Regional Center of the decision and of the reasons for termination." Several examples of the Regional Center revocations, along with a brief history of the bases for the revocation, are listed below.

### **1. Regional Center of Victorville Development, Inc.**

**HISTORY:** **USCIS** terminated the Regional Center of Victorville Development, Inc. ("Victorville") designation on May 24, 2011, a decisions which was affirmed by the **AAO** on

December 21, 2011.<sup>2</sup> **USCIS**' stated rationale for terminating Victorville's designation was that the Regional Center failed to promote economic growth through job creation. According to the decision adjudicated by the **AAO**, Victorville sought to invest EB-5 capital only *after* the jobs in question had already been created.

**BASIS FOR TERMINATION:** According to the record, the Victorville undertook an Industrial Waste Water Treatment Facility project (**IWWTF**) which involved bridge financing (see Chapter 4 for a discussion about bridge financing). Due to the structure of the bridge financing, the **IWWTF** began hiring employees and construction of the project reached 90% completion before the investors had contributed and invested their EB-5 capital. Therefore, according to **USCIS**, Victorville improperly calculated immigrant investor job creation credit by including jobs that existed before the EB-5 capital was invested into the project.

The **USCIS** interpreted Victorville as a case of job *preservation* which does not meet the statutory requirement of job *creation*. Under 8 CFR 204.6 (j)(4)(ii), investors can be credited with preserving jobs, but only for investments in a troubled business. However, Victorville Regional Center did not claim, document or attempt to meet the additional evidentiary burden that the investors would be investing in a troubled business. The **USCIS** denied Victorville Regional Center's job creation arguments and terminated its Regional Center designation.

**LESSON LEARNED:** When undertaking a project, the jobs created *before* the investor's investment, cannot be credited towards job *creation*. In order to count existing jobs, the Regional Center would need to show that the project *preserved* these jobs, and that the investors were investing in a troubled business. For job *creation* counting purposes, the **USCIS** determined that the Regional Center may only count those jobs created *after* the investor made the investment.

## 2. El Monte Regional Center

**HISTORY:** In the case of El Monte Regional Center, **USCIS** terminated the Regional Center's designation on September 19, 2011 and the Administrative Appeals Office affirmed the Director's decision to terminate the Regional Center on July 23, 2012.<sup>3</sup>

**BASIS FOR TERMINATION:** El Monte Regional Center was terminated because the **USCIS**, and subsequently the **AAO**, determined that the Regional Center had not demonstrated that it remained in a position to promote economic growth.

El Monte Regional Center submitted annual reports in 2009 and 2010. In the 2009 annual report, El Monte Regional Center identified a single investor, and in the 2010 report, it identified a second investor. On July 11, 2011, the **USCIS** issued a **NOIT** to El Monte Regional Center citing as factors that:

- a. The center had only recruited 2 investors;

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<sup>2</sup> Matter of Regional Center of Victorville Development, Inc., RCW1-3 1910251, Dec. 21, 2011 available at [http://www.uscis.gov.edgesuite-staging.net/err/K2%20-%20Regional%20Center%20Termination/Decisions\\_Issued\\_in\\_2011/Dec212011\\_01K2610.pdf](http://www.uscis.gov.edgesuite-staging.net/err/K2%20-%20Regional%20Center%20Termination/Decisions_Issued_in_2011/Dec212011_01K2610.pdf).

<sup>3</sup> Matter of El Monte Regional Center, RCW 1031910138, July 23, 2012.

- b. It had insufficient financial resources to deliver on its representations as evidenced by its bankruptcy proceedings; and,
- c. The Regional Center did not have title to the property it purported to own.

The **AAO** concurred with the Director that the recruitment of only two investors during the 26-month period from El Monte Regional Center's approval date was indicative that the Regional Center was not promoting economic growth. Furthermore, upon filing for bankruptcy, El Monte Regional Center was no longer in a position to promote economic growth because bankruptcy serves as a remedy for companies with significant debt or liquidity problems. Lastly, El Monte Regional Center failed to demonstrate that it owned interest in the property, which was the purported site for the project.

**LESSON LEARNED:** Regional Centers must demonstrate promotion of economic growth. Failure to recruit investors, filing for bankruptcy, and failure to own the propriety for the project site triggered the termination of El Monte's designation.

### **3. Lake Buena Vista Resort Village and Spa Regional Center**

**HISTORY:** In the case of Lake Buena Vista Resort Village and Spa Regional Center (LBV Regional Center), the Regional Center was terminated by the **USCIS** on July 23, 2012 and affirmed by the **AAO** on September 5, 2013<sup>4</sup>.

**BASIS FOR TERMINATION:** LBV Regional Center was terminated by **USCIS** because the Regional Center failed to establish continuing eligibility and compliance with program requirements. The **USCIS** ruled that LBV Regional Center did not serve "the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment."

In a detailed termination notice, the **USCIS** claimed that a statistically valid job creation analysis was not submitted. The agency concluded that this error in submission was due to errors in data sources and methodologies used to estimate the economic impacts of the project. The **USCIS** found the statistical trends referenced by the economic impact report to be incredible and inconclusive. Additionally, LBV Regional Center presented a competitor analysis which showed that within the LBV region and market, there was a significant excess capacity in accommodation services. According to the **USCIS**, LBV Regional Center's ability to meet the requisite EB-5 job creation requirements cannot be predicated on a claim of increase in visitor spending based upon the given occupancy rates for the market.

**LESSON LEARNED:** The **USCIS** concluded that LBV Regional Center had failed to demonstrate its projects would create jobs in verifiable detail, based upon a business plan and economic analysis that employed reasonable methodologies for estimating job creation through EB-5 capital investment.

### **4. Mamtek Regional Center**

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<sup>4</sup> Matter of Lake Buena Vista Regional Center, September 5, 2013, available at [http://www.uscis.gov/sites/default/files/err/B7%20-%20Form%20I-526%20and%20I-829/Decisions\\_Issued\\_in\\_2013/SEP052013\\_03B7203.pdf](http://www.uscis.gov/sites/default/files/err/B7%20-%20Form%20I-526%20and%20I-829/Decisions_Issued_in_2013/SEP052013_03B7203.pdf).

**HISTORY:** USCIS terminated the designation of the Mamtek Regional Center, on April 11, 2012.<sup>5</sup> Subsequent to Mamtek Regional Center's designation, USCIS received several I-526s for a project undertaken by the Mamtek Regional Center. Upon closer inspection, it was determined that the four capital investment projects were not in fact, viable. However, Mamtek Regional Center continued to promote the projects.

**BASIS FOR TERMINATION:** Mamtek Regional Center was a single member LLC with Mamtek, U.S., Inc. According to the initial business plan, Mamtek U.S., Inc. was the operating company and full owner of the Mamtek Regional Center. However, the USCIS later discovered that the Mamtek Regional Center was no longer overseeing the projects and investments that Mamtek Regional Center had outlined in its original request for Regional Center designation. Instead, Mamtek Regional Center was being controlled by a new company and supervised by the City of Moberly. Therefore, the USCIS determined that the Mamtek Regional Center could no longer claim credit for the job creation related to the projects.

In its decision, the USCIS noted that even though an Involuntary Petition for Bankruptcy was filed against Mamtek U.S., Inc., Mamtek Regional Center was a separate entity. Thus, the existence of bankruptcy proceedings against Mamtek U.S., Inc. did not preclude the USCIS from exercising its power to ensure that Mamtek Regional Center had fulfilled its statutory and regulatory obligations as a Regional Center.

**LESSON LEARNED:** The USCIS terminated the approval of the Mamtek Regional Center because it determined that the Regional Center no longer served the purpose of promoting economic growth.

### **C. History of Fraud in Regional Centers**

EB-5 developers should be aware of the penumbra of fraud and embezzlement that surrounds the program, and therefore should include in their presentations to investors and adjudicators sufficient verifiable detail to establish viability and authenticity. When an EB-5 case appears to contain fraudulent or material misrepresentation, USCIS refers the case to the Fraud Detection and National Security Directorate (FDNS). Members of the public, disgruntled investors, former employees and competitors may also report cases of suspected fraud to USCIS. Included below are summaries of one of the first cases of identified fraud committed by the directors of EB-5 Regional Centers, as well as four recent and ongoing cases. These cases illustrate the origins of USCIS' strict scrutiny when adjudicating EB-5 cases. Developers should therefore be prepared to rise to the documentary challenge.

#### **1. Interbank Group, Virginia 1996**

**HISTORY:** In 2001, James F. O'Connor, the president and founder of InterBank, and James A. Geisler were found guilty of 24 counts of immigration fraud.<sup>6</sup> The court found that in 1996 the defendants had concocted an elaborate scheme to defraud foreign nationals interested in

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<sup>5</sup> Matter of Mamtek Regional Center, RCW 1105950169, April 11, 2012, NOIT available at <http://www.scribd.com/doc/71974778/USCIS-notice-of-intent-to-terminate>.

<sup>6</sup> *United States v. O'Connor*, 158 F. Supp. 2d 697, E.D. Va., (2001).

obtaining EB-5 visas, and they had attempted to defraud the INS through falsifications made on EB-5 applications. Some of the charges under which the defendants were found guilty included:

- a. Defrauding the United States by impairing, obstructing and impeding the lawful function of the INS by obtaining immigration benefits for aliens through the use of false statements and fraud;
- b. Knowingly and unlawfully obtaining, accepting, and receiving visas and alien registration receipt cards, knowing them to have been procured by means of false claims and statements and to have been otherwise procured by fraud; and
- c. Knowingly and unlawfully, under penalty of perjury, subscribe as true, false statements with respect to material facts in applications, affidavits, and other documents required by the immigration laws and regulations prescribed thereunder.

The defendants began to recruit foreign investors to apply for admission to the United States through the EB-5 visa program. The court found InterBank had set up a system of sham loans in order to defraud investors of their statutorily insufficient \$120,000 to \$170,000 investments, by simultaneously placing \$500,000 in a bank account reflecting “for the benefit of investor # \_” for a short period of time in order to create false evidence that would appear to demonstrate to the INS that the investor had made the requisite investment to qualify for an EB-5 visa.

The court found that the defendants devised a scheme to create false evidence that the purported \$500,000 investments had generated, or would generate within two years, at least ten new American jobs. Interbank opened small offices throughout the country, submitted false W-4 forms for employees that did not exist, and created a telephone answering service that made it appear as though a large scale and legitimate business operation was being conducted.

**FRAUDULENT ACTION:** From 1996 to 2000, InterBank filed, under oath, approximately 335 EB-5 falsified visa applications on behalf of their investor clients with the INS. The court also found that none of the EB-5 visa applicants had invested the required \$500,000, and that none of the money which had been invested was used to create the requisite number of 10 jobs. The court found that the false statements made by the defendants were material in that had O'Connor and Geisler provided truthful and complete information to the INS on the EB-5 applications filed, none would have been approved. Most of the EB-5 applications were denied by INS, but the few investors that were approved faced deportation.<sup>7</sup>

**CONSEQUENCES:** The record states that O'Connor admitted at trial that the escrow promise made to the alien investors was a misrepresentation and that "we deceived our clients by not doing what we said we were going to do."<sup>8</sup> At the conclusion of the trial, both defendants were each ordered to serve close to ten years in prison, and jointly ordered to pay restitution in the amount of \$17,600,000 for the \$21,000,000 they stole from investors. According to the record, very little of this amount is expected to be repaid.<sup>9</sup> The discovery of this massive fraud had the

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

effect of suspending adjudications of EB-5 Regional Center Cases for almost a decade from the late 1990s to the mid 2000s.

## 2. Intercontinental Trust Center of Chicago

**HISTORY:** In February 2013, the SEC announced that it had filed a complaint against Anshoo R. Sethi, A Chicago Convention Center LLC (ACCC), and Intercontinental Trust Center of Chicago for violation of the Securities Act, Sections 17(a)(1) and (2), and the Exchange Act, Section 10(b) in *SEC v. A Chicago Convention Center, LLC*.<sup>10</sup>

The Securities Act, Sec. 17(a)(1) & (2) states:

*(a) It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 3(a)(78) of the Securities Exchange Act) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—*

*(1) to employ any device, scheme, or artifice to defraud, or*

*(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.*

Exchange Act Section 10(b) states:

*It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange--To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.*

Sethi created, and is a managing member and agent, of both ACCC and IRCTC. The case is currently in the U.S. Federal Court for the Northern District of Illinois.<sup>11</sup>

**FRAUDULENT ACTION:** The SEC claims that Sethi, the ACCC, and the IRCTC, were involved in a large-scale investment scheme to exploit the EB-5 visa program as a means to

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<sup>10</sup> [\*United States Securities and Exchange Commission v. A Chicago Convention Center, LLC, Anshoo Sethi, and Intercontinental Regional Center Trust of Chicago, LLC\*, United States District Court for the Northern District of Illinois Eastern Division. 13-cv-982.](#)

<sup>11</sup> *Id.*

defraud investors and steal their investments.<sup>12</sup> It was alleged that since November 2011, over \$145,000,000 in securities was fraudulently sold,<sup>13</sup> and an additional \$41,400 in administrative fees per investor was collected.<sup>14</sup> These administrative fees amounted to \$11,000,000 collected by the defendants.<sup>15</sup> The complaint states that the defendants conducted fraudulent, misleading, and deceptive activities through a variety of actions that involved the marketing of a project to finance and build the “World’s First Zero Carbon Emission Platinum LEED certified” hotel and conference center in the Chicago area.<sup>16</sup> The complaint also states that these misrepresentations were made to investors in order to attract them to the projects.<sup>17</sup>

The **SEC** alleged that the defendants submitted an **ACCC** Offering Memorandum (**OM**) in order to secure preliminary approval from **USCIS**.<sup>18</sup> The complaint states that this **OM** was laden with fraud and misrepresentations, including assentation’s and forged support letters confirming that the project was progressing with several hotel chains (Starwood, Intercontinental Hotel Group, and Hyatt) and included letters of support.<sup>19</sup>

The **SEC** claims that in order to prove financing to the **USCIS**, the defendants submitted a letter from the Qatar Investment Authority stating they were, “prepared to move forward with the funding of \$340,000,000 for the defendants’ project”.<sup>20</sup> The Qatar Investment Authority, however, purportedly notified the **SEC** that the letter is a fake. It was also later determined that the \$177,000,000 worth of real estate to be contributed by the defendants was worth less than \$10,000,000. The **SEC** claims the defendants’ inflated costs listed in the business plan and economic studies submitted to the **USCIS** in order to artificially increase projected revenues and job creation. The **OM** also stated all necessary permits and approvals to construct the project were secured, but defendants had only acquired minor permits, such as a permit for a tent for a groundbreaking ceremony, and a minor electrical wiring permit. It is also alleged that the project’s developers had overstated their 35 years of experience in the **OM**.

In addition to the falsified statements in the **OM**, the **SEC** claims that the defendants also failed to comply in their agreements with investors. According to the complaint, the **OM** stated that the \$41,400 in administrative fees collected per investor were fully refundable if the investor’s I-526

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<sup>12</sup> SEC Press Release, *Investors to Receive Their Entire Investments Back After SEC Halted Scheme Exploiting Immigration Program*, 2013-70, available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171513998>.

<sup>13</sup> *Id.*

<sup>14</sup> *United States Securities and Exchange Commission v. A Chicago Convention Center, LLC, Anshoo Sethi, and Intercontinental Regional Center Trust of Chicago, LLC, supra.*

<sup>15</sup> SEC Press Release, *SEC Halts \$150 Million Investment Scheme to Dupe Foreign Investors and Exploit Immigration Program*, 2013-20, available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171512748>.

<sup>16</sup> *United States Securities and Exchange Commission v. A Chicago Convention Center, LLC, Anshoo Sethi, and Intercontinental Regional Center Trust of Chicago, LLC*, Complaint, United States District Court for the Northern District of Illinois Eastern Division, 13-cv-982, available at <http://www.sec.gov/litigation/complaints/2013/comp-pr2013-20.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Sethi falsely claimed to investors that he had interest from major hotel chains and that he had obtained all of the necessary building permits for the project. *Id.*

<sup>20</sup> *United States Securities and Exchange Commission v. A Chicago Convention Center, LLC, Anshoo Sethi, and Intercontinental Regional Center Trust of Chicago, LLC*, Complaint, *supra*.



application is denied. The **SEC**, however, claims that over 90% of the \$11,000,000 in fees collected were transferred to Sethi's personal account in Hong Kong, and that \$35,000 were used by the defendants to settle a prior lawsuit with Wyndham Hotels.<sup>21</sup>

**CONSEQUENCES:** A federal judge has ordered that the defendants return \$147,000,000 to the Chinese investors they defrauded.<sup>22</sup>

### 3. City of New Orleans Regional Center

**HISTORY:** On March 15, 2012, 27 EB-5 investors, who are limited partners in the Noble Real Estate Fund, L.P. (the Fund), sued William B. Hungerford, Jr. and Timothy O. Milbrath for gross mismanagement, breach of fiduciary duty, intentional interference with contract, conversion of the Fund's assets, and unjust enrichment in *Sumpter et al v. Hungerford et al.*<sup>23</sup> The defendants, Maryland businessmen Hungerford and Milbrath of Noble-Real Estate-GP, LLC, are general partners of the Fund.<sup>24</sup>

Former New Orleans Mayor Ray Nagin hired both Hungerford and Milbrath, and in 2006 the parties signed an exclusive 30-year deal to run the city's EB-5 operation.<sup>25</sup> Both Hungerford and Milbrath are the principals of the New Orleans Regional Center under which they created the development firm NobleOutReach. According to their website, NobleOutReach was created in order to improve economic activity in New Orleans under the *New Orleans Regional Center*.<sup>26</sup>

**FRAUDULENT ACTION:** The complaint states that since 2006, Hungerford and Milbrath have recruited 31 investors and collected \$15,500,000.<sup>27</sup> To these investors the defendants submitted a private placement memorandum in which stated the purpose of the Regional Center and its entities was to invest in multiple projects to help rebuild New Orleans after Hurricanes Katrina and Rita. It is also claimed that the defendants attracted investors by claiming to have opened five restaurants and also claiming to have large hotels under construction. It is alleged the defendants claimed their projects would create 1,500 jobs.

The complaint alleges the defendants failed to adhere to their commitment to use the investments to further the mission of the Fund. The plaintiffs claim that around 30 sham investment companies that were created by Hungerford and Milbrath with millions of the Fund's dollars. They further claim that these sham companies, which are owned and operated by Hungerford and Milbrath, do not generate any revenues or provide any legitimate services, instead they are a breach of the fiduciary duties owed to the fund; and unjustly enriched Hungerford and Milbrath to the detriment of the fund.<sup>28</sup> It is alleged that while the defendants did purchase various businesses and make investments with the Fund's money, it was not done in the interest of the Fund or the investors. The plaintiffs allege that the defendants' purchases include three PJ's

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Terrence K. Sumpter, et al., v. William B. Hunferford Jr., et al.*, United States District Court for the Eastern District of Louisiana, Complaint, 12-cv-00717-LMA-ALC.

<sup>24</sup> *Id.*

<sup>25</sup> New Orleans CityBusiness, *Developers to Use Visa Program to Builds Algiers Hotel*, Dec. 03, 2009.

<sup>26</sup> [http://www.nobleoutreach.com/en/nor\\_index.shtml](http://www.nobleoutreach.com/en/nor_index.shtml)

<sup>27</sup> *Terrence K. Sumpter, et al., v. William B. Hunferford Jr., et al., supra.*

<sup>28</sup> *Id.*

coffee houses, a bar located on Bourbon Street, and a restaurant and cocktail bar. It is alleged that these purchased have been successful ventures. However, when purchased, the restaurants, coffee shops, and bars were ongoing businesses, not new business which created jobs, therefore the **USCIS** will not count the jobs they maintained toward the number needed for the investors' to retain their green cards.<sup>29</sup>

Additionally, the plaintiffs claim that the defendants diverted at least \$6,000,000 to themselves for excessive and unwarranted consulting services.<sup>30</sup> It is alleged that the **USCIS** has since told the Fund that this Bay-NOLA-Mgmt consulting firm was not a qualified job-creating entity, and therefore for the investor's sake would not count towards the requirements to obtain conditional green cards. The suit also alleges Hungerford and Milbrath formed NobleReach-NOLA and the entities through which they own, operate, and control NobleReach-NOLA for the sole purpose of creating a vehicle through which to perpetrate fraudulent schemes to divert Fund assets and convert such assets for their own ultimate personal benefit.

The plaintiffs also claim that the defendants diverted approximately \$3,000,000 that was specifically dedicated and reserved for investment into job-creating enterprises to pay excessive and unwarranted operating expenses of the New Orleans Regional Center's operations. It is alleged the defendants diverted the money by financing the purchase of real estate in Maryland for their personal benefit; grossly mismanaging the construction of certain projects situated in New Orleans; and by grossly mismanaging the fund's investments by causing the fund to pay exorbitant fees for minority ownership interests in the 30 sham companies.

It is alleged that the only legitimate business the Fund created in furtherance of the investors' needs was the Value Place Hotel and World of Wings Café. As the only new business to be created by the Fund, **USCIS** will only count the jobs created at the Value Place Hotel and World of Wings Cafe project. However, it is alleged that in 2012 the site was still an empty lot. If there in-fact has been no work on the two projects, the job creation number the **USCIS** will consider is zero. This alleged mismanagement and fraud may result in some investors facing deportation. It is alleged that as of the date of the complaint, 10 plaintiffs submitted I-829 petitions, none of which have been approved. It is also alleged that 17 other plaintiffs needed to submit their I-829 petitions prior to the end of 2012.

**CONSEQUENCES:** In all, the plaintiff's causes of action against Hungerford and Milbrath are derivative actions for: intentional interference with contract on behalf of the Fund; and conversion and misappropriation on behalf of the Fund. The plaintiff's causes of action against Hungerford, Milbrath, and Noble-RealEstate-GP are derivative actions for breach of fiduciary duty on behalf of the Fund and gross mismanagement on behalf of the Fund as well as unjust enrichment.

The complaint requests that a temporary and permanent receiver be appointed to run the Regional Center and the sham companies in order to protect and/or preserve the plaintiff's

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<sup>29</sup> USCIS Policy Memorandum (PM-602-083) May 30, 2013, *supra*.

<sup>30</sup> *Terrence K. Sumpter, et al., v. William B. Hunferford Jr., et al., supra*.

immigration benefits that are dependent on those entities.<sup>31</sup> At the time of this publication, the case was ongoing and the plaintiffs were searching for new counsel.

#### 4. USA Now, McAllen, Texas

**HISTORY:** Texas based EB-5 Regional Center *USA Now* opened in McAllen, Texas in 2010. USA Now is not to be confused with the *McAllen EB-5 Regional Center* also located in McAllen, Texas. The two Regional Centers are not affiliated in any way. The McAllen EB-5 Regional Center also works on the construction and operation of the Rio Grande Valley E-Beam Facility which uses Electronic-Cold Pasteurization for the treatment of fruits and vegetables entering the United States from Mexico as well as other real estate projects. Unlike USA Now, which is privately owned, the McAllen EB-5 Regional Center, is owned by the City and is not under any federal investigation or scrutiny. USA Now's Owner and Director is Bebe Ramirez.<sup>32</sup> Bebe is in charge of overseeing the accounts payable and receivable.<sup>33</sup> Her husband, Marco Ramirez is the Director of Operations for USA Now.<sup>34</sup>

**FRAUDULENT ACTION:** In the last year, USA Now has come under FBI investigation for suspicion of money laundering, wire fraud, the transportation of stolen property, and overall for operating a scheme intended to defraud wealthy Mexican nationals of their EB-5 investments.<sup>35</sup> In the search warrant, the FBI claims USA Now began advertising for EB-5 investors in 2010, yet were not granted EB-5 Regional Center designation until 2011.<sup>36</sup> These facts if proven could amount to charges of The FBI's records claim that Mexican investors' funds were transferred into bank accounts controlled by the principals Bebe and Marco Ramirez to pay off personal debts, purchase luxury automobiles and other personal property, and to work as a Ponzi scheme by paying returns to investors from funds brought in by new investors.

The FBI warrant affidavit states that one investor from Nuevo Leon, Mexico, told FBI investigators that he gave USA Now his \$500,000 investment. The FBI claims that bank records indicate this \$500,000 was soon transferred by Bebe Ramirez into the account of another company which she ran, Now Co. Loan Services. The FBI also claims that other bank records they obtained show that on the same days investors transferred their \$500,000 payments to USA Now, the money was routed to other business and personal bank accounts.

According to federal court documents filed on July 18, 2013, those accounts were used to pay \$54,000 towards a **Mercedes Benz** GL 550 for the company's owner.<sup>37</sup> Court documents also

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<sup>31</sup> *Id.*

<sup>32</sup> USA NOW Private Placement Memorandum; *See also* "Valley Company Scrutinized in investor Visa Program" *Houston Chronicle*

<sup>33</sup> *Id.*

<sup>34</sup> Roebuck, Jeremy. *Valley Company Scrutinized in investor Visa Program*, *Houston Chronicle*. August 1, 2013 available at <http://www.houstonchronicle.com/news/houston-texas/houston/article/Valley-company-scrutinized-in-investor-visa-4699707.php>.

<sup>35</sup> *In the Matter of the Search of The Office of USA Now*, Application for Search Warrant, United States District Court for the Southern District of Texas, M-13-1303-M, 18 July 2013.

<sup>36</sup> *In the Matter of the Search of The Office Building Located at 3700 N. 10<sup>th</sup> Street Suite 210, McAllen Texas 78501 The Residence Located at 9124 N. 23<sup>rd</sup> Street McAllen Texas 78504*, Affidavit in Support of Application for Search Warrant, United States District Court for the Southern District of Texas McAllen Division, 7:13-mj-01303 Document 1, July 18, 2013.

<sup>37</sup> *Id.*

state that the investment funds were used to satisfy a settlement from a previous civil lawsuit, and were used at least once to repay an investor (Investor #5) who wanted out.<sup>38</sup>

Investor #5 claims he was told by Marco Ramirez that his investment would be used to purchase real estate Investor #5 has previously lost through bank foreclosure.<sup>39</sup> Investor #5 claims to have given Ramirez \$470,000 but Ramirez never purchased the real estate. The FBI claims that instead Ramirez moved the money into another account and bought a Dodge Ram 3500 with \$50,000.<sup>40</sup> The court documents state that Investor #5 requested to be repaid his \$470,000 investment, but as of the time of the filing has only received \$325,000.

The FBI also claims that USA Now was operating a Ponzi scheme. Court documents state that Investors #2 and #3 were contacted by USA Now and told their investments had earned a 5% return. The court documents state that each investor received a financial statement from USA Now saying their investment had earned around \$20,000, or 5% of their \$500,000 investment. The FBI claims these purported returns are fraudulent as their evidence previously showed Investor #2 & #3's investments were used to purchase the Mercedes Benz and to fund an unapproved investment projects, therefore there was no money from which a return to could made.

The FBI also claims that documentation which USA Now provided to Investor #4 was fraudulent.<sup>41</sup> The FBI claims the documentation was a fake dividend statement which stated Investor #4 had a capital account balance of \$500,000.<sup>42</sup> The FBI claims the capital account balance is false because Investor #4's investment was used to repay above mentioned Investor #5.<sup>43</sup>

**CONSEQUENCES:** The Mercedes Benz and a Dodge Ram 3500 were seized by Federal Agents on July 19, 2013.<sup>44</sup> In all, five USA Now employees are named in the federal warrants, they are Bebe and Marco Ramirez, David Perez, Head of Research and Corporate Development, Gabriel Garcia Guzman, Chief of Investor Relations, and Efrain Arce, who is described as an

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<sup>38</sup> The FBI states wealth Mexican investors are at risk of increased violence in Mexico and for that reason the affidavit does not use the names of the investors. Instead the investors are known as Investors #1 - #5. *See In the Matter of the Search of The Office Building Located at 3700 N. 10<sup>th</sup> Street Suite 210, McAllen Texas 78501 The Residence Located at 9124 N. 23<sup>rd</sup> Street McAllen Texas 78504*, Affidavit in Support of Application for Search Warrant, United States District Court for the Southern District of Texas McAllen Division, 7:13-mj-01303 Document 1, 18 July 2013.

<sup>39</sup> *In the Matter of the Search of The Office Building Located at 3700 N. 10<sup>th</sup> Street Suite 210, McAllen Texas 78501 The Residence Located at 9124 N. 23<sup>rd</sup> Street McAllen Texas 78504*, *supra*.

<sup>40</sup> *Id.*

<sup>41</sup> *In the Matter of the Seizure of 2011 Mercedes Benz GL550 Vin: 4JGBF8GE8BA718749*, Affidavit in Support of Application for Seizure Warrant, United States District Court Southern District of Texas McAllen Division, 7:13-mj-01303 Document 5, July 18, 2013.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *318B-SA-63172*, Receipt for Property Received/Returned/Released/Seized, United State Department of Justice Federal Bureau of Investigation, 7:13-mj-01303 Document 11, 23 July 2013.

investor manger and employee supervisor.<sup>45</sup> The case is currently pending in the District Court for the Southern District of Texas.<sup>46</sup>

## 5. WM GreenTech Automotive, Mississippi & Virginia

**HISTORY:** The last case study we cite has not arisen to specific allegations of fraud. The primary issues in this case related to the facts that the investors were lured to invest through the appearance of political connections, and that the project was not sustainable on its own merits. Gulf Coast Funds Management is a Regional Center located in McLean, Virginia.<sup>47</sup> The CEO and President of Gulf Coast Funds Management is Anthony Rodham, brother of former Secretary of State, Hillary Clinton.<sup>48</sup> Gulf Coast Funds Management is the investment partner of WM GreenTech Automotive (GreenTech), a car manufacturing plant based in Mississippi.<sup>49</sup> WM GreenTech Automotive was founded, and until recently, run by Terry McAuliffe.<sup>50</sup> Terry McAuliffe was sworn in as Virginia's governor in January 2014. GreenTech Automotive and Gulf Coast Funds Management share an office space in McLean, Virginia.<sup>51</sup>

The Mississippi Development Authority, loaned GreenTech \$5,000,000 for the purchase land in Mississippi on which to develop a MyCar production facility; in return, GreenTech committed to invest \$60,000,000 into the construction of the facility.<sup>52</sup> In a press release dated February 14, 2013, GreenTech states it has 376,000 square-foot production facility in Horn Lake, Mississippi and is developing a 300,000 square-foot production facility in Tunica, Mississippi.<sup>53</sup> In 2010, GreenTech submitted an application to expand in Regional Center into Tennessee and Virginia. However this application was denied by USCIS. It is alleged that in response to this denial, in December 2010 McAuliffe wrote to then Secretary of Homeland Security, Janet Napolitano, on behalf of GreenTech, requesting she expedite the company's EB-5 requests to expand the Regional Center, and reopen for consideration the denied request.<sup>54</sup> There is no evidence of her response though many were outraged at McAuliffe's direct political access to Napolitano.

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<sup>45</sup> *In the Matter of the Search of The Office Building Located at 3700 N. 10<sup>th</sup> Street Suite 210, McAllen Texas 78501 The Residence Located at 9124 N. 23<sup>rd</sup> Street McAllen Texas 78504, supra.*

<sup>46</sup> *Id.*

<sup>47</sup> Gulf Coast Funds Management, *Contact Us*, available at <http://gulfcoastfunds.com/contactus/index.html>.

<sup>48</sup> Gulf Coast Funds Management, *GCFM EB-5 Experts*, available at <http://gulfcoastfunds.com/managementteam/TonyRodham.html>.

<sup>49</sup> Gulf Coast Funds Management, *Why Are We A Good Partner*, available at <http://www.gulfcoastfunds.com/portfoliocompanies/>.

<sup>50</sup> Trip Gabriel, *Venture Threatens to Backfire in Virginia Governor's Race*, N.Y. Times, April 25, 2013, <http://www.nytimes.com/2013/04/26/us/in-virginia-governors-race-electric-cars-could-backfire-for-terry-mcauliffe.html>.

<sup>51</sup> Form I-924A, Supplement to Form I-924, United States Citizenship and Immigration Services.

<sup>52</sup> *Mississippi Incentives Reports – 2012*, Mississippi Development Authority, page 11, <http://mississippi.org/assets/docs/library/incentives-report.pdf>.

<sup>53</sup> *GreenTech Automotive Appoints European Distribution Partner*, GreenTech, available at <http://www.wmgta.com/en/news/greentech-automotive-appoints-european-distribution-partner>

<sup>54</sup> Frederick Kunkle and Tom Hamburger, *McAuliffe's Business Partners Under Scrutiny Amid Federal Inquiry into GreenTech*, *The Washington Post*, August 24, 2013, [http://www.washingtonpost.com/local/virginia-politics/mcauliffes-business-partners-receive-scrutiny-through-federal-inquiry-into-greentech/2013/08/24/885f3624-fa25-11e2-8752-b41d7ed1f685\\_story.html](http://www.washingtonpost.com/local/virginia-politics/mcauliffes-business-partners-receive-scrutiny-through-federal-inquiry-into-greentech/2013/08/24/885f3624-fa25-11e2-8752-b41d7ed1f685_story.html).

An additional concern involving GreenTech's political connections involves former USCIS Director and current Deputy Secretary of Homeland Security, Alejandro Mayorkas. While USCIS Director, Mayorkas, along with other officials at USCIS, was investigated for potentially obstructing an audit of the EB-5 investor visa program by the Securities and Exchange Commission. Mayorkas is also being investigated by the Department of Homeland Security's Office of Inspector General because of his alleged involvement in helping secure a visa for a Chinese executive. Specifically, Mayorkas is under investigation for his alleged role in arranging for an "investor visa" for Gulf Coast Funds Management.<sup>55</sup>

**ALLEGATIONS:** It is alleged that GreenTech submitted an I-526 petition on behalf of one of their Chinese investors. Allegedly, an issue that arose in the petition was whether the investor's investment capital was at-risk throughout the investment period, as required by law. It is alleged that in January 2013, Rodham wrote to Mayorkas directly, requesting he expedite approval of GreenTech's EB-5 visa applications. It is alleged that in response to this request, Mayorkas held the "at-risk" issue fell into a gray area and therefore required further determination.<sup>56</sup> It is further alleged that on September 1, 2011 the USCIS, at the direction of Mayorkas, issued a new policy memorandum clarifying the issue so as to allow for the GreenTech visa applications to proceed. Mayorkas is said to have overruled career Department of Homeland Security officials by making a broader decision that was specifically helpful to GreenTech.<sup>57</sup>

It is then alleged that \$25,000,000 in EB-5 investments was made by 50 Chinese nationals subsequent to Mayorkas' decision.<sup>58</sup> In response to the decision, a permanent residency application was submitted and supported by Gulf Coast Funds Management for the Vice-President of a Chinese telecommunications firm, Huawei Technologies. This telecommunications firm had previously been the subject of a House Intelligence Committee investigation regarding ties to Chinese intelligence services.<sup>59</sup> Therefore under investigation is the whether Mayorkas may have used his influence to interpret the EB-5 statutes in a way that helped Gulf Coast Funds Management obtain a foreign investor visa for this Chinese executive.

**CONSEQUENCES:** It was reported that the Securities and Exchange Commission is investigating GreenTech over agreements made in the solicitation of foreign investors. The Washington Post reported that, "the investigation is focused, at least in part, on alleged claims that the company 'guarantees returns' to the investors, according to government documents."<sup>60</sup> This is problematic as the USCIS may deny petitions where the investor's money is not at risk.

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<sup>55</sup> Letter available at <http://www.grassley.senate.gov/judiciary/upload/Immigration-07-24-13-letter-to-HSGAC-Intelligence-EB-5-for-release.pdf>

<sup>56</sup> Letter available at <http://www.grassley.senate.gov/judiciary/upload/EB-5-07-31-13-Grassley-letter-to-Mayorkas-preferential-treatment.pdf>

<sup>57</sup> Trip Gabriel, *Hopeful's Connections Jolt Bitter Virginia Race*, N.Y. Times, August 9, 2013, [http://nytimes.com/2013/08/10/us/politics/hopefuls-connections-jolt-bitter-virginia-race.html?pagewanted=1&\\_r=2&hp&](http://nytimes.com/2013/08/10/us/politics/hopefuls-connections-jolt-bitter-virginia-race.html?pagewanted=1&_r=2&hp&)

<sup>58</sup> *Id.*

<sup>59</sup> Letter available at <http://www.grassley.senate.gov/judiciary/upload/Immigration-07-24-13-letter-to-HSGAC-Intelligence-EB-5-for-release.pdf>

<sup>60</sup> [http://www.washingtonpost.com/politics/company-with-ties-to-terry-mcauliffe-is-under-sec-investigation/2013/08/02/da483b36-f956-11e2-b018-5b8251f0c56e\\_story.html?wpisrc=al\\_lclpolitics](http://www.washingtonpost.com/politics/company-with-ties-to-terry-mcauliffe-is-under-sec-investigation/2013/08/02/da483b36-f956-11e2-b018-5b8251f0c56e_story.html?wpisrc=al_lclpolitics)

GreenTech's alleged guarantee would go against the spirit of the EB-5 program as a regional center's capital investment projects are not guaranteed by the government.<sup>61</sup>

#### **D. Best Practices and Tips to Avoid Common Pitfalls and USCIS Requests for Additional Evidence (RFEs)**

Developers can learn much from the failures of Regional Centers. In particular:

- The financial projections must make sense;
- The financial arrangements, including all fees, parties, and agents participating and receiving fees should be disclosed and memorialized;
- Developers cannot allow a Regional Center designation to lie fallow; they must attract investors, and begin activity or the approval may be revoked;
- **USCIS** can gather contradictory or negative financial information from a variety of public, private and intra- and inter-agency sources which may trigger revocation;
- The experience and track record of the managers of the Regional Center and the developers of the projects are relevant to the long term success of the investments;
- The economic projections need to be realistic, and perhaps conservative to survive the five or more years when a developer could be dependent on **USCIS** review and approval;
- Just because a Regional Center can project significant job creation, does not mean it should rely on the most optimistic projections and take in as many investors as that optimistic projection would "support";
- Do unto others as you would have them do unto you and don't be greedy -- Karma bites back;
- Be prepared to exhaustively document every aspect of the Regional Center and its projects; and,
- Do not skimp on professional guidance since every investor is a potential litigant.

#### **CONCLUSION**

The EB-5 regional Center program fulfills an important need in matching willing immigrant investors to employment creating enterprises in search of necessary development capital. There are many reputable developers with the best of intentions in creating jobs and providing a return on investment. Some of those EB-5 projects will innocently fail, whether through changed business conditions, overly optimistic planning or mismanagement.

There are also predators swimming in the RB-5 Regional Center waters. Some have outright fraudulent intent and are seeking to fleece gullible investors while others have no specific intent

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<sup>61</sup> EB-5 Regional Center, United State Citizenship and Immigration Services, <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-regional-center>

to defraud, but are cavalier in their representations and preparation. USCIS has demonstrated that it will revoke the designation of poorly conceived and documented entities as well as those that do not move to a development stage in a timely manner. The SEC and U.S. Attorneys' office will move against fraud feasons.

A coming wave of USCIS revocations/terminations and failures will likely spook the investor market and may dry up capital from well-prepared projects. Developers and their attorneys should be aware of where we are in relation to the bell curve of the Regional Center bubble, and be prepared to differentiate themselves from the cases outlined in this chapter.