



U.S. Citizenship
and Immigration
Services

February 2, 2016 (Corrected)

Luca Energy Fund, LLC
Luca Energy Fund, LLC– **Designation Terminated**
233 La Rue France
Lafayette LA 70508

Notice of Termination

This letter shall serve as notification that U.S. Citizenship and Immigration Services (“USCIS”) has terminated the designation of Luca Energy Fund, LLC (the “Regional Center”) as a regional center under the Immigrant Investor Program (the “Program”) pursuant to Title 8 of the Code of Federal Regulations (“8 CFR”) section 204.6(m)(6).

The regulation at 8 CFR § 204.6(m)(6) provides:

Termination of participation of regional centers. To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of a regional center in the pilot program if a regional center fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided 30 days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. As provided in 8 CFR 103.3, the regional center may appeal the decision to USCIS within 30 days after the service of notice.

Procedural History

On August 4, 2011, USCIS designated and authorized the Regional Center’s participation in the Program. On October 27, 2015 and again on December 9, 2015, USCIS issued a Notice of Intent to Terminate (“NOIT”) to the Regional Center which afforded the Regional Center 30 days from receipt of the NOIT to offer evidence in opposition to the grounds alleged in the NOIT. To date, USCIS has not received a response from the Regional Center to the NOIT and the Regional Center has offered no evidence in opposition to the grounds alleged in the NOIT. Accordingly, USCIS has determined that the Regional Center’s participation in the Program should be terminated. Through this Notice of Termination, USCIS hereby terminates the Regional Center’s participation in the Program.

Reasons for Termination

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

A. Failure to Demonstrate Promotion of Economic Growth

Under 8 CFR § 204.6(m)(6), “USCIS will issue a notice of intent to terminate . . . upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.”

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

1. Lack of Credibility Impacting Regional Center’s Ability to Promote Economic Growth

As detailed in the NOIT, on July 6, 2015, the United States Securities and Exchange Commission (“SEC”) brought a civil action against the Regional Center, Bingqing Yang (Managing Member and agent for the Regional Center), and several other individuals and entities (collectively, the “Defendants”) and named Luca I Limited Partnership, the new commercial enterprise (“NCE”), and Luca Operations, LLC, the job creating entity (“JCE”), among several other individuals and entities, as relief defendants in order to protect investors from potentially millions of dollars of losses as a result of Defendants’ violations of

federal securities laws.¹ The SEC charged the Regional Center and Regional Center principals with running a Ponzi-like scheme and with affinity fraud.

In a series of court orders entered in July and August of 2015, the U.S. District Court for the Northern District of California (the “District Court”) preliminarily prohibited the Regional Center, some of its subordinate EB-5 entities, and principals, officers, agents, servants, employees, and attorneys from participating in the routine business activities required for the Regional Center to promote economic growth. Specifically, the Chief Executive Officer and Managing Member of the Regional Center as well as the Regional Center itself are restrained from issuing, offering or selling any securities of entities controlled by, or under joint control with, Bingqing Yang, which includes the NCEs associated with the Regional Center.

The fact that on August 6, 2015 the Regional Center, the NCE and the JCE filed for bankruptcy calls into question whether the Regional Center and its associated organizations can continue to operate financially.

The issues outlined above cast considerable doubt on the credibility of the Regional Center, all of its operations, and its ability to promote economic growth in compliance with the Program. For these reasons, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth.

2. No Viable Projects For EB-5 Investors

The Luca I Limited Partnership is the only new commercial enterprise (NCE) listed on the FY2014 I-924A . However, it does not appear that this project is economically viable. As noted above, on August 6, 2015 both the NCE and the JCE filed for Chapter 11 bankruptcy. Furthermore, the EB-5 viability and job creation aspect of the project have been called into question. The Affidavit that accompanied the bankruptcy petitions noted that the JCE has “reduced and continue to reduce the number of employees as operations are curtailed.”² As of August 6, 2015 when the Affidavit was filed, the JCE maintained a staff of 6 individuals, which is not sufficient to support the 26 investors that have filed petitions associated with this project, much less the 50 envisioned by the business plan.

Accordingly, USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth because its capital investment projects lack credibility as viable projects for EB-5 investors.

3. Misappropriation of EB-5 funds

As indicated in the NOIT, during the course of its adjudications, and the verification of information submitted by the Regional Center and individual Form I-526 petitioners, USCIS has discovered that EB-5

¹ *Securities and Exchange Commission v. Luca International Group, LLC, et al.*, Civil Action No. 3:15-CV-03101 (N.D. Cal. filed July 6, 2015).

² Cross Aff. ¶ 27, Aug. 6, 2015.

funds were used for purposes that are inconsistent with the business plans submitted to USCIS by the Regional Center and the furtherance of job creation.

Based on the allegations of the SEC and in the absence of any evidence to the contrary, it appears that the Regional Center and its principal Bingqing Yang either knowingly or recklessly allowed EB-5 funds to be used for purposes unrelated to the business activities of the JCE. The SEC complaint alleges that the regional center principal diverted EB-5 funds to purchase a \$2.5 million home, pay for a family vacation to Hawaii and a golf junket, pool and gardening services, and three luxury vehicles.

By engaging in or failing to stop diversion of investor funds, the Regional Center failed to ensure that the EB-5 funds were made available for job creation purposes. The misappropriation of EB-5 funds cast considerable doubt on the credibility of the Regional Center and its operations and USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

Conclusion

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

Procedure to Appeal the Decision to Terminate

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

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

If using the U.S. Postal Service:
USCIS
P.O. Box 21100
Phoenix, AZ 85036

If using USPS Express Main/Courier:
USCIS
Attn: 290B
1820 E. Skyharbor Circle S
Suite 100
Phoenix, AZ 85034

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Your motion or appeal must be filed on Form I-290B and must be accompanied by a fee of \$630.00. The check or money order used for the Form I-290B filing fee must be drawn from a bank or other financial institution located in the United States and must be payable to U.S. Department of Homeland Security.

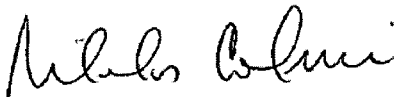
In support of your appeal, you may submit a brief or other written statement for consideration at the time of initial filing of the Form I-290B or within 30 calendar days of filing. If you are filing an appeal of this decision, you may, if necessary and for good cause, request additional time to submit a brief or other statement by submitting a written explanation for the need for additional time. Any brief, written statement or other evidence in support of an appeal that is not filed concurrently with Form I-290B, including any request for additional time for the submission of a brief must be sent directly to the Administrative Appeals Office (AAO) at:

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

The appeal of the termination may not be filed directly with the AAO. The appeal of the termination must be filed in accordance with the Form I-290B instructions and at the address indicated above.

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

Sincerely,



Nicholas Colucci
Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions
(2) Notice of Intent to Terminate issued on October 27, 2015 and on December 9, 2015

cc: Joseph C. Mccarthy
Kathy Karam