

A #	Application/Petition I924, Application for Regional Center under Immigrant Investor Pilot Program	
Receipt # RCW1031910135	Application/Petitioner Lake Buena Vista Regional Center	
Notice Date December 19, 2011	Page 1 of 37	Beneficiary

Larry Behar
Larry J. Behar P.A.
Re: Lake Buena Vista Regional Center
888 S.E. Third Avenue, Suite #400
Fort Lauderdale, FL 33316

Intent to Terminate Processing
Coversheet

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**RETURN THIS BLUE PROCESSING COVERSHEET ON TOP OF YOUR
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**For non-US Postal Service
Attn: EB 5 RC Proposal
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677**

CSC3700 WS22141 DIV III tb

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RCW1031910135

Please see additional information on the reverse side.

COPY

This Notice of Intent to Terminate effects the Lake Buena Vista Regional Center (LBVRC) which was initially approved and designated as a qualifying regional center by the U.S. Citizenship and Immigration Services' (USCIS) on September 18, 2008.¹

The original LBVRC proposal and all subsequent amendments have been filed seeking benefits pursuant to Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended (Public Law 102-395). The initial LBVRC proposal (RCW1031910135) was filed on April 18, 2008 and approved five months later on September 18, 2008. The approval of the LBVRC proposal by USCIS granted LBVRC status as a qualifying regional center capable of participating as set forth by Public Law 102-395. Here, the stated purpose of LBVRC was attracting immigrant investor capital into Orlando-Kissimmee Standard Metropolitan Statistical Area (SMSA No. 32801) which is comprised of Orange, Osceola, Lake and Seminole Counties, Florida, focusing on the expansion of the Lake Buena Vista Resort Village and Spa to include the following capital investment project:

- Luxury Condominium Hotel Units (including an associated mall, parking facilities, transportation infrastructure (roads and parking lots), spa, pools, restaurants and other amenities.

In support of this capital investment project, the following industry categories and NAICS codes were approved:

NAICS 72	Leisure and Hospitality: Accommodation and Food Services (primary focus)
NAICS 35	Food Preparation and Serving Related Occupations
NAICS 37	Building and Grounds Cleaning and Maintenance Operations
NAICS 39	Personal Care and Service Occupations
NAICS 41	Retail – Sales and Related Occupations
NAICS 43	Office and Administrative Support Occupations
NAICS 47	Construction Operations
NAICS 49	Installation, Maintenance and Repair Occupations

On June 17, 2009, LBVRC submitted a request for amendment (RCW1031910275) (Amendment #1) and on September 25, 2009, USCIS approved Amendment #1. The approval of Amendment #1 recognized LBVRC as a troubled business on the condition that any commercial enterprise which is participating in the Immigrant Investor Pilot Program in the LBVRC is a troubled business as defined by 8 CFR § 204.6(e). EB-5 immigrant investors were required to submit evidence that the commercial enterprise, for which capital funds have been or will be invested, is a troubled business as of the filing of the Form I-526. Otherwise, the enterprise will not qualify as a troubled business for the purpose of capital investment and job creation.

¹ USCIS notes that subsequent amendments to LBVRC were approved on September 25, 2009, January 28, 2010 and October 6, 2011. Furthermore, a fourth amendment was filed on November 22, 2010 which USCIS addresses herein as part of the larger Notice of Intent to Terminate.

On January 25, 2010, LBVRC submitted a second amendment (RCW1031910283) (Amendment #2) which USCIS approved on January 28, 2010. The approval of Amendment #2 recognized LBVRC as a targeted area of employment (TEA) in addition to being a troubled business on the condition that the commercial enterprise was located in a TEA at the time of the EB-5 immigrant investor's investment as defined by 8 CFR § 204.6(e). For any aliens requesting the reduced threshold of \$500,000 based upon an investment in a TEA, the alien must establish at the time of filing of the Form I-526 that either the investment will be made into a TEA designated area or was in a TEA designated area at the time of the alien's initial investment. Further, EB-5 immigrant investors were required to also submit evidence to show that the commercial enterprise, for which capital funds have been or will be invested, is a troubled business as of the filing of the Form I-526.

On November 1, 2010, LBVRC submitted a third amendment (RCW1031910267) (Amendment #3) which was approved by USCIS on November 1, 2010. The approved amendment recognized revised exemplar and organizational documents to be EB-5 compliant such as a Subscription Agreement, a revised Operating Agreement, and a revised Offering Memorandum.

On November 22, 2010, Lake Buena Vista Regional Center filed a fourth amendment (RCW1034150045) (Amendment #4) to include a new capital investment project, Lake Buena Vista Vacation Club ("LBVV-Club"), in which \$35 million from 70 EB-5 investors will be loaned to three (3) subsidiary companies (StaySky Vacation Club Development, LLC, StayVacations, LLC and StayVacation Finance, LLC) of Club Trust, LLC to purchase eighteen (18) two-bedroom condominium units at Lake Buena Vista Resort Village and Spa and devise a timeshare structure based on selling timeshare usage contracts at those condominium units; finance the end-users' purchase of the timeshare units; and market the timeshare concept to prospective purchasers. A fourth company, StaySky Club Management, LLC will not be receiving EB-5 funds but will be created to manage the timeshare entities, units and administration.

The amendment also requested to expand the geographic focus of the regional center to include the following industry categories and NAICS codes:

NAICS 55	Management
NAICS 5611	Office Administration
NAICS 5614	Sales and Telemarketing
NAICS 5411	Legal
NAICS 5412	Accounting
NAICS 518	Information Technology
NAICS 722	Food and Beverage Service

A review of the LBVRC proposal, the three (3) approved amendments and one (1) current amendment filed on behalf of the LBVRC and a recent Administrative Appeals Office decision regarding an individual Form I-526 petition (see attached enclosure) reveals that the approved capital investment projects noted above are not viable capital investment projects.

The purpose of this letter is to notify the LBVRC that USCIS intends to (a) deny the requested amendment and to (b) terminate the existing designation as a regional center for participation in the Pilot Program pursuant to 8 CFR § 204.6(m)(6). USCIS finds that the initial decision to grant the regional center designation to LBVRC and the subsequently filed regional center amendments were in gross error. An explanation follows.

I. REGIONAL CENTER STATUTORY AND REGULATORY FRAMEWORK

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

- (a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.
- (b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Secretary of Homeland Security, shall set aside 3000 visas annually until September 30, 2012 to include such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act, to accompany or follow to join such aliens.
- (c) In determining compliance with section 203(b)(5)(A)(iii) of the Immigration and Nationality Act, and notwithstanding the requirements of 8 CFR § 204.6, the Secretary of Homeland Security shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.
- (d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.

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

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

(i) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;

(ii) Provides in verifiable detail how jobs will be created indirectly through increased exports;

(iii) Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;

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

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

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

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

(6) Termination of participation of regional centers. To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, the Assistant Commissioner for Adjudications shall issue a notice of intent to terminate the participation of a regional center in the pilot program upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be

made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided thirty days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If the Assistant Commissioner for Adjudications determines that the regional center's participation in the Pilot Program should be terminated, the Assistant Commissioner for Adjudications shall notify the regional center of the decision and of the reasons for termination. The regional center may appeal the decision within thirty days after the service of notice to the Associate Commissioner for Examinations as provided in 8 CFR § 103.3.

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

II. ANALYSIS

To ensure that LBVRC continues to meet the requirements of the regional center pilot program set forth by Public Law 102-395, as amended, USCIS must be assured that the terms and conditions of the operation of a regional center remain valid and unchanged after the regional center receives designation for the pilot program. This includes the scope and nature of the capital investment projects that were used as the basis for the job creation methodologies approved in the regional center's initial designation or amendment request. It is also important that the promotional activities of the regional center accurately reflect current facts regarding the scope, nature, terms and conditions of capital investment opportunities available for EB-5 capital investments affiliated with the regional center.

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

Viability of EB-5 Capital Investment Opportunities:

a. Luxury Condominium Hotel Units at the Lake Buena Vista Resort Village and Spa

According to the initial regional center proposal approved on September 18, 2008, a new limited liability entity, "EB5/LBV LLC" was initially created to benefit three (3) groups of thirty-five (35) EB-5 immigrant investors (or a total of 105 EB-5 immigrant investors) to acquire, own and operate at least 105 but no more than 210 condominium units totaling \$105 million. This development project would create 107 direct full-time jobs, 1,043 indirect full-time jobs within the four-county area of the geographic region of the regional center and 313 indirect full-time jobs within the State of Florida for a total of 1,463 full-time jobs in the following industry categories: Leisure and Hospitality (NAICS 72), Food Preparation and Service Related Occupations (NAICS 35), Building and Grounds Cleaning and Maintenance Operations (NAICS 37), Personal Care and Service Occupations (NAICS 39), Retail - Sales and Related Occupations (NAICS 41), Office and Administrative Support Operations (NAICS 43), Construction Operations (NAICS 47) and Installation, Maintenance and Repair Operations (NAICS 49).

A de novo review of the entire record of proceeding in the regional center proposal file, as well as a recent Administrative Appeals Office decision of July 18, 2011 indicates that the regional center project is essentially a real estate transaction as opposed to a job creating capital investment vehicle. EB-5 immigrant investors, through EB5/LBV LLC will purchase developed real estate from developers for residential use by the owners (investors) or renters. In essence, the capital investment project (promoted in the initial proposal and subsequently approved amendments) is simply a transfer of real estate (a passive investment) from the current owner to EB5/LBV LLC. This renders EB5/LBV LLC as a mere intermediary for the capital investment because it will subsequently deed the property to EB-5 immigrant investors once the conditions are removed from the investor's visa. In sum, the transaction is more akin to a contract to purchase a personal home, with a simple delay in the transfer in property ownership. Such real estate transactions do not appear to meet the requirements of the regional center pilot program set forth by Public Law 102-395, as amended, to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment.

Investment of Capital

Organizational documents submitted with the initial proposal and subsequently approved amendments reveal the following with respect to the description, marketing, sale, ownership, rental, management and disposal of condominium units:

Page 10 of Lake Buena Vista Resort Economic Impact Analysis dated April 8, 2008 states:

A total of 210 hotel-condominium units will be offered to foreign investors through the USCIS EB-5 program at \$1.0 million per 1/35th share in 3 investor blocks of 35 investors (70 units).

Page 15, Section 2.8 **Exit Strategy Options** of Lake Buena Vista Resort Business Plan dated April 8, 2008 states:

Exit strategies and options include:

- Selling to another potential investor after a specific LLC has been closed to additional investment.
- Selling to a real estate trust.

Page 38, Section 5.3 **Marketing Strategy Overview**, Marketing the Real Estate Appeal of the Market of the Lake Buena Vista Resort Business Plan dated April 8, 2008 discusses the interest in foreigners investing in real estate.

Page 101, Section 10.6 **A More Positive Outlook for Mid-Term Future** of the Lake Buena Vista Resort Business Plan dated April 8, 2008 states:

Here, investors have access to a vacation spot in Orlando, and because of the project's offering of hotel rental income of the foreign investor's space when not in use, both parties have an increased economic benefit by investing in Lake Buena Vista Resort Village.

Page 2, in the introduction of the EB5/LBV LLC Confidential Offering Memorandum dated January 1, 2011 (Document Reference Number RM: 7172633:14) states:

The Company has been organized to acquire, own and operate condominium hotel units in the Resorts (the "Units").² The Company³ will acquire the Units from the Developer⁴ pursuant to the purchase agreements, substantially in the forms attached thereto as Exhibit D. The Units which the Company will acquire are located in fully completed buildings and will consist of a combination of two bedroom/two bathroom Units and three bedroom/two or three bathroom Units.⁵

The exact number of Units the Company will acquire will depend on the amount of Net Proceeds raised in this Offering. From each Subscriber's investment, the sum of Thirty Thousand Dollars (\$30,000) will go into an Expense Escrow Account to be used for payment of certain expenses as described later in this Offering Memorandum. The balance of each Subscriber's investment will be deemed Net Proceeds and deposited into a Project Escrow Account to be used to purchase Units.

Lake Buena Vista Resort & Spa Management, LLC, an independent management company (the "Management Company"), will manage the Units.⁶

Page 7 of the EB5/LBV LLC Confidential Offering Memorandum dated January 1, 2011 (Document Reference Number RM: 7172633:14) states:

The exact number of Units the Company will acquire will depend on the amount raised in this Offering.

Page 11, **Exit Strategies** of the EB5/LBV LLC Confidential Offering Memorandum dated January 1, 2011 (Document Reference Number RM: 7172633:14) states:

Approximately four to six years after the date of the initial acquisition of the Units, provided all conditions have been removed under the EB-5 Program described under "Immigration Matters" for all Members, the Manager may determine to dissolve the Company, sell, for fair market value, all the Company's Units and distribute the net proceeds of such sale to the Members in final liquidation of the Company.

Page 13, **Description of Units** of the EB5/LBV LLC Confidential Offering Memorandum dated January 1, 2011 (Document Reference Number RM: 7172633:14) states:

The Units are located in fully completed buildings and will consist of a combination of two bedroom/two bathroom Units and three bedroom/two or three bathroom Units.

² "Units" is defined as condominium hotel units in the Resort acquired by the Company from a substantial portion of the proceeds of the Offering, and owned by the Company according to page 12, Section 1.02 Definitions, Article 1 Incorporation; Definitions, (III) units of the EB5/LBV, LLC Operating Agreement (Document Reference Number RM: 5313400:18).

³ "Company" is defined as EB5/LBV, LLC, a Florida limited liability company, and any successor limited liability company, according to page 5, Section 1.02 Definitions, Article 1 Incorporation; Definitions, (m) Company of the EB5/LBV, LLC Operating Agreement (Document Reference Number RM: 5313400:18).

⁴ "Developer" is defined as Lake Buena Vista Resort, LLC, a Florida limited liability company that develops and owns the resort according to page 5, Section 1.02 Definitions, Article 1 Incorporation; Definitions, (q) Developer of the EB5/LBV, LLC Operating Agreement (Document Reference Number RM: 5313400:18).

⁵ This paragraph is also stated on page 7 of the EB5/LBV LLC Confidential Offering Memorandum dated January 1, 2011 (Document Reference Number RM: 7172633:14).

⁶ This paragraph is also stated on page 7 of the EB5/LBV LLC Confidential Offering Memorandum dated January 1, 2011 (Document Reference Number RM: 7172633:14).

Page 14, **Sales to Investors** of the EB5/LBV LLC Confidential Offering Memorandum dated January 1, 2011 (Document Reference Number RM: 7172633:14) states:

The Offering of the Member Interests is limited to only individual persons (not legal entities) who are not "U.S. Persons," as such term is defined in Rule 902(k) of the Securities Act of 1933, as amended (the "Securities Act") and who are "Accredited Investors," as such term is defined in Rule 501(a) under the Securities Act.

Page 19, **Exit Strategies** of the EB5/LBV LLC Confidential Offering Memorandum dated January 1, 2011 (Document Reference Number RM: 7172633:14) states:

Approximately four to six years after the date of the initial acquisition of the Units, provided all conditions have been removed under the EB-5 Program described under "Immigration Matters" for all qualified investors who have invested in the Company, the Manager may determine to dissolve the Company, sell the Units, and distribute the net proceeds of such sale in final liquidation of the Company.

Page 34, **Unit Purchase Agreements** of the EB5/LBV LLC Confidential Offering Memorandum dated January 1, 2011 (Document Reference Number RM: 7172633:14) states:

The Company will acquire the Units from the Developer pursuant to Purchase Agreements substantially in the forms attached hereto as Exhibit D. The Units which the Company will acquire are located in fully completed buildings and will consist of a combination of two bedroom/two bathroom Units and three bedroom/two or three bathroom Units.

Page 47, Determination of the Offering Price under **General Risk Factors** of the EB5/LBV LLC Confidential Offering Memorandum dated January 1, 2011 (Document Reference Number RM: 7172633:14) states:

The price of the Member Interests was determined by the Company. We cannot be assure you that the value we placed on the Member Interests in connection with this offering accurately reflects the fair value of the Company or the Member Interests or that you will realize amounts near or equal to such values on the liquidation of the Company.

Exhibit D-2, "Purchase Agreement" of the EB5/LBV, LLC Member Interest Subscription Agreement within the Confidential Offering Memorandum dated January 1, 2011, contains agreement in which the seller, Lake Buena Vista Resort, LLC will agree to sell Units.

Exhibit E-1, Management Agreement of the EB5/LBV, LLC Member Interest Subscription Agreement within the Confidential Offering Memorandum dated January 1, 2011, identifies Unit Owners as "EB5/LBV, LLC."

Exhibit E-2, Management Agreement of the EB5/LBV, LLC Member Interest Subscription Agreement within the Confidential Offering Memorandum dated January 1, 2011, defines "Units":

"Units" means all the residential condominium apartments at the Resort for which [the] COMPANY serves as the exclusive rental agent.

Exhibit E-5, Management Agreement of the EB5/LBV, LLC Member Interest Subscription Agreement within the Confidential Offering Memorandum dated January 1, 2011, states:

9. Owner's Use and Rental of the Unit. Owner and COMPANY agree that:

a. Owner and "Friends of Owner" shall have right to occupy the Unit subject to the terms and conditions of this Agreement and Owner will not occupy or permit the use of this Unit at any time without reserving such periods of occupancy through COMPANY. Availability shall be at the sole discretion of the COMPANY.

b. If Owner or "Friend of Owner" wishes to use the Unit, Owner or Friend of Owner shall be permitted to use the Unit without either the payment of any rental income to Owner, or the payment of any fees or commission to COMPANY; provided, however, Owner will be responsible for paying to COMPANY the standard departure fee; and

c. In the event Owner rents the Unit to others, the Owner shall pay to Company all fees, commissions, dues, costs, or the like Company would have been entitled to receive had the Owner placed the rental through Company.

d. Owner usage is limited to 14 days annually per Unit.

Page 13, 2.04 Purposes of the Company of EB5/LBV, LLC Operating Agreement dated 2011 (Document Reference Number RM: 5313400:18) states:

The Developer agreed to sell the Company a combination of 2 bedroom/2 bathroom units and 3 bedroom/2 or 3 bathroom units. The exact number of Units to be acquired by the Company will depend upon the amount raised in the Offering, with the aggregate of all Members' Final Installments being used by the Company to acquire Units, with any excess to be used as working capital.

On page 14, 2.08 Interested Transactions with the Company of EB5/LBV, LLC Operating Agreement dated 2011 (Document Reference Number RM: 5313400:18) allows EB5/LBV, LLC to sell property to members.

Page 35, 9.01. Dissolution of the EB5/LBV, LLC Operating Agreement dated 2011 (Document Reference Number RM: 5313400:18) allows the manager to elect to dissolve the company after October 15, 2015:

(b) The election by the Manager at any time after October 15, 2015 that the Company should be dissolved.

Page 36, 9.02, Dissolution, of the EB5/LBV, LLC Operating Agreement dated 2011 (Document Reference Number RM: 5313400:18) discusses the distribution of assets based on fair market value:

(c) If any of the assets of the Company are to be distributed in kind, such assets shall be distributed on the basis of the then fair market value thereof (after adjusting the Capital Accounts of all Members for any unrealized gain or loss inherent in such property, as set forth above).

The Administrative Appeals Office noted several deficiencies with respect to the investment of capital in this investment project in its recent decision of July 18, 2011. See the attached decision. While some of these deficiencies appear to have been corrected by submission and the approval of Amendment #3 to LBVRC, the noted deficiencies that were initially submitted in the Form I-526s filed on behalf of EB5/LBV, LLC. These documents discuss the purchasing of developed real property from the developer, the terms of occupancy of the real property and redemption or "buy-back" agreements in which investors have the

right to sell their interest (condominium unit) prior to the end of the two-year conditional residence period. The Administrative Appeals Office correctly noted that investment in developed real estate for rental purposes or occupancy does not qualify as an investment in a commercial enterprise per 8 CFR § 204.6(e). Further, the Administrative Appeals Office noted that redemption agreements are impermissible per Matter of Izummi, 22 I&N Dec. 169 (Assoc. Comm., 1998). In Matter of Izummi, the Service found that an alien "may not enter into a redemption agreement with the new commercial enterprise at any time prior to completing all of his cash payments" or "enter into a redemption agreement prior to the end of the two year period of conditional residence."

Page 2, in the introduction of the EB5/LBV LLC Confidential Offering Memorandum dated February 15, 2010 (Document Reference Number RM: 7172663:5) states:

On or before subscribing for Member Interests, a Subscriber will be contacted by the Company to select one or more specific Units within the Resort (from those offered at such time by the Developer) which will be reserved by the Developer and acquired by the Company upon such Subscriber's Net Proceeds being released from the Project Escrow Account to the Company.

To the extent that Subscribers make a Minimum Investment, the Net Proceeds from each Subscriber not used to acquire a Designated Unit (the "Non-Designated Unit Portion," i.e. the balance of \$166,666.66 remaining after using \$333,333.33 of the Subscriber's Net Proceeds for one Designated Unit) will be aggregated and used by the Company, to the extent of each whole Unit Price, to purchase additional Units ("Non-Designated Units"), with any surplus to be used by the Company as working capital.

Page 3, in the introduction of the EB5/LBV LLC Confidential Offering Memorandum dated February 15, 2010 (Document Reference Number RM: 7172663:5) states:

As described in more detail in the Operating Agreement, after a Subscriber becomes a "Redemption Eligible Member," such Subscriber will be entitled to cause the Company to purchase its Member Interest by conveying to such Subscriber its Designated Units, plus, to the extent such Subscriber's Net Proceeds included a Non-Designated Unit Portion, an amount equal to the cash proceeds generated from a sale of that Non-Designated Unit Portion of a Non-Designated Unit (the "Cash Portion").

If a Redemption Eligible Member elects to have its Member Interest redeemed by the Company, such Redemption Eligible Member will receive deeded title to its Designated Unit(s) in exchange for its Member Interests in the Company at the closing of the Member Interest redemption.

Page 35, in the introduction of the EB5/LBV LLC Confidential Offering Memorandum dated February 15, 2010 (Document Reference Number RM: 7172663:5) states:

Pursuant to the Management Agreement, the Company, as the owner of the Units, may from time to time have the right to occupy its Units on favorable terms for limited amounts of time and during specified times of each year. The Company will attempt to devise a method of making these Units available to the Members on a fair basis.

Employment Creation

In the instant proposal, LBVRC maintains that the regional center through the EB-5 new commercial enterprise, EB5/LBV, LLC, will use EB-5 capital investment to purchase and manage developed real estate property, which would create at least 1,463 direct and indirect full-time jobs in eight (8) industry categories using the REDYN Econometric Model.

The Administrative Appeals Office correctly noted in its decision of July 18, 2011 that the capital investment project contemplated by the LBVRC, in which EB-5 funds will be used to purchase, own, rent and manage developed real estate such as condominium units, constitutes a passive investment in already developed real estate rather than an investment in an ongoing commercial enterprise.

Therefore, the investment vehicle to be undertaken by EB5/LBV, LLC, the new commercial enterprise associated with the LBVRC, cannot reasonably be expected to create the requisite permanent, full-time job-creation, nor will a substantial positive economic impact ensue from the proposed passive real estate transaction by the EB-5 alien investors through investment in EB5/LBV, LLC.

Moreover, the Administrative Appeals Office also noted an additional deficiency with respect to job creation in this investment project in its decision of July 18, 2011. While technically not a regional center issue, the Administrative Appeals Office observed that it was never established that the Lake Buena Vista Resort was ever a troubled business. Furthermore, it does not appear that the EB-5 investors are actually making investments in Lake Buena Vista Resort. Rather, the EB-5 investors, through EB5/LBV, LLC, are simply purchasing real estate from Lake Buena Vista Resort. Essentially, EB5/LBV, LLC will be a real estate customer, not an investor, of Lake Buena Vista Resort.

Even if the LBVRC was able to overcome job creation issues addressed above, a statistically valid economic analysis would still need to be submitted to demonstrate the job efficacy of this project. In this respect, USCIS reviewed the economic impact analysis and observed several discrepancies with the analysis submitted with the initial proposal and subsequent amendments. A discussion follows.

Regional Center Initial Proposal (RCW1031910135)

Methodology

The economic impact analysis submitted with the initial Regional Center proposal (RCW1031910135) was prepared by Economic and Policy Resources, Inc ("EPR"). The proposed expansion plan will result in construction expenditures of \$143.1 million, \$105 million of which is from EB-5 immigrant investors.

EPR estimates the economic impact of the expansion plan by estimating the increase in visitor spending from the expected increase in visitation that would result from the operation of the condominium hotel after construction is complete. To estimate the increase in visitor spending, EPR performs the following steps:

1. *Estimate average overnight visitor expenditures.* Using data from www.VisitFlorida.org, EPR evaluated and compared the average spending patterns of domestic visitors versus foreign visitors for transportation, food, accommodations, shopping, entertainment, and miscellaneous. EPR estimates that 64 percent of historical visitors were foreign, while the remaining 36 percent of historical visitors were domestic. Using these data, EPR estimates that the average daily expenditure per visitor in 2008 dollars was \$260.05.

2. Develop an estimate of hotel utilization (i.e., occupancy rate). The resort provided to EPR an estimated weighted average occupancy rate of 72.2 percent, which EPR states is slightly higher than the 70.5 percent occupancy rate for the entire state.
3. Calculate the increase in overnight visitor days. Using the weighted average occupancy rate and the combined 439 units that will be built, EPR estimates that the resort will host an additional 400,000 (rounded) visitor days each year.
4. Calculate total annual increase in overnight visitor expenditures. EPR multiplies the total increase in visitor days by the average expenditure per visitor per day to estimate the total annual visitor expenditures on transportation, food, accommodations, shopping, entertainment, and miscellaneous.
5. Convert dollar values from 2008 dollar terms to 2002 dollar terms using historical price changes in the NIPA Chain Type GDP Price Index and the Consumer Price Index.
6. Perform a margin adjustment that converts sales values to value-added values (which are appropriate for use in REDYN) for each input industry. The margin adjustment is based on data collected by industry and published in the Census of Retail (or Wholesale) Trade.

EPR then uses the total annual visitor expenditures as inputs to the REDYN economic impact model. EPR estimates that the project will result in 1,461 permanent direct and indirect full-time jobs during the first full year of operation in calendar year 2012.

Analysis

Although the approach used by the regional center seems reasonable, the execution of that approach appears to contain several significant flaws.

Unsupported spending assumption. EPR's approach assumes that the visitors who will stay in the condominium-hotel would not visit the area—and hence, not create an increase in local visitor spending—if the condominium-hotel is not constructed. The economic analysis must include data or statistical justification regarding the appropriateness of this assumption.

Unsupported weighted average spending estimate. To derive overnight visitor spending per day, EPR estimates that 64 percent of visitors are foreign and 36 percent of visitors are domestic. EPR then uses spending patterns of foreign visitors versus domestic visitors to estimate the average expenditure per day by overnight visitors. Presumably, this is calculated by EPR using a weighted average. EPR, however, does not specify how this calculation was performed. In addition, EPR does not provide the spending data or the data used to estimate the origin of visitors. These are critical omissions because foreign visitors, on average, spend more per day than domestic visitors. Therefore, in the weighted average expenditure calculation, a higher weight on the average spending by foreigners—which is the percentage of visitors who are foreign (64 percent), in this case—imposes an upward bias on the average spending calculation. Consider the following example:

Suppose that 50 percent of visitors are foreigners who spend \$100 per day on transportation, while the remaining 50 percent of visitors are U.S. residents and spend \$50 per day on transportation. The weighted average calculation implies that average transportation spending is approximately \$75 ($=0.50*\$100+0.50*\50). Using the same spending assumptions with the foreign versus domestic assumptions used by EPR (i.e., 64 percent foreign; 36 percent domestic), the weighted average calculation implies that average transportation spending is \$82 ($=0.64*\$100+0.36*\50).

As the example illustrates, the average visitor spending calculation is highly sensitive to the values used for the percentages of foreign and domestic visitors as well as average foreign and domestic visitor spending.

Without additional details regarding the calculations used to derive these values, USCIS cannot be confident in the validity of the values used for average expenditure per day by overnight visitors, and thus, the employment impacts resulting from those expenditures.⁷ The derivation of the percentage of foreign and domestic overnight visitors should be described in detail—including the input data and source—as well as the data used to calculate the spending of foreign and domestic overnight visitors.

EPR also states:

The collected data by this organization [www.VisitFlorida.org] was robust enough ... but also compare state wide averages regional estimates appropriate for the Orlando-Kissimmee MSA.

USCIS does not understand the latter part of this statement and cannot determine what—if any—modifications to the underlying data were made. Clarification should be provided regarding this statement and describe any modifications to the underlying data.

Unsupported weighted average utilization/occupancy rate estimate. To estimate the utilization/occupancy rate, the analysis states:

... the resort provided an estimated weighted average occupancy rate which was calculated to be 72.2 percent which was slightly above the 70.5 percent projected state level.

The utilization/occupancy rate is important because EPR uses it to estimate the increase in visitor days that would be created due to the condominium-hotel. However, EPR does not provide the input data and weights used in the calculation. Because USCIS is not given this data, USCIS cannot be confident that the estimate is being derived correctly or that the comparison to the projected state-wide estimate is appropriate. Explanatory details should be submitted—including the input data and weights used—regarding the weighted average occupancy rate calculation.

Unsupported calculation of the increase in visitor days. EPR uses the occupancy rate and the combined 439 units that will be built to estimate that the resort will host an additional 400,000 (rounded) visitor days each year. In addition to not providing a detailed description of the calculation of the occupancy rate (as noted above), EPR does not justify the assumption used to estimate the number of visitors per room per day. EPR also does not describe the input data used for this calculation. Because of these omissions, USCIS cannot be confident that the estimate of the increase in visitor days is reasonable. A detailed description must be submitted—including the input data, assumptions, and sources—of the methodology used to calculate 400,000 (rounded) visitor days per year.

Unsupported margin adjustments. To adjust sales values to the value-added values that are appropriate for use in the REDYN input-output model, the economic analysis performs margin adjustments to each input industry based on data collected by industry and published in the Census of Retail (or Wholesale) Trade. EPR does not describe the individual margin adjustments made, the input industries to which they were made, or their magnitude. The margin adjustments should be described in detail, including the industries and magnitude of the adjustment, so that USCIS can be confident that the employment impacts are reasonable.

⁷ USCIS attempted to obtain similar data from www.VisitFlorida.org, but the data are behind a paywall restricted to partners of the website.

Unknown NAICS/industries used in REDYN. EPR does not specify what industries or spending values (by industry) are used as inputs into the REDYN input-output model. Because of this omission, USCIS cannot be certain that the industries and their related multipliers are appropriate. The economic analysis should specify the industry, magnitude, and category of input used for the REDYN model so that USCIS can ascertain if the employment multipliers and impact estimates are reasonable.

Unsupported employment impact timing. In the economic impact analysis, EPR presents Table S1 in which they present the following job impacts for 2008 through 2014:

Year	Total Qualified EB-5 Jobs (Construction excluded)
2008	74
2009	713
2010	1,188
2011	1,648
2012	1,461
2013	1,439
2014	1,417

The economic analysis does not clearly explain the distribution of job creation over time. The proposal, for example, claims to have not included construction jobs in the above analysis, but more jobs are created in 2011—a year before the hotel becomes fully operational—than 2012. The regional center should describe the job creation schedule in detail so that USCIS can be confident that the jobs created by the hypothetical project are within a reasonable range.

Inconsistency regarding the proposed project between Attorney Letter and Economic Impact Analysis. Please note that the comments above reflect the proposed project as specified on pages 8 and 9 of the Economic Impact Analysis prepared by EPR. The Attorney Letter; however, does not present the same proposed project. On page 3 of the Attorney Letter (dated April 9, 2008), counsel states the following:

Investment in the Limited Liability Company will be restricted to thirty five (35) Investors, each at an investment amount of one million forty thousand dollars (\$1,040,000). The Investors' funds will be applied to hard (\$1,000,000) and soft (\$40,000) costs for the acquisition of an interest in the Limited Liability Company which in turn will immediately acquire seventy (70) condominium-hotel units in Buildings 3 and 5 of the 'LBVRS' project.

This incongruence is a significant concern because the proposed project in the legal section of the application does not match the proposed project in the economic impact analysis, which means that the estimated employment impacts may be incorrect. More importantly, if the counsel's statement above is the actual proposed project, then the EB-5 funds are not being placed in an at-risk investment. The project referenced in the Attorney Letter appears to be a simple transfer of real estate from the current owner to EB5/LBV LLC—the intermediary for EB-5 capital investments—which will subsequently deed the property to the EB-5 investor once the conditions are removed from the investor's visa.

Without knowing precisely which project is the actual proposed project, USCIS cannot be confident in the accuracy of the applicant's employment impact estimates. The regional center proposal must clarify this discrepancy.

Regional Center Amendment Proposal (RCW1031910283)

In this amendment, the applicant seeks to recruit a total of 100 EB-5 investors, each of whom will invest \$500,000 each. The investor will receive one 2-bedroom condo and rights to one-half of a 3-bedroom unit via equity in the EB5/LBV LLC. The applicant defines this phase of the project the "job preservation" phase. Over the following five years, the applicant plans to recruit an additional 105 investors who will invest a total of \$52.5 million for the construction of three (3) condo/hotel buildings, which was the proposed project originally approved by USCIS. .

Similar to the initial Regional Center proposal, this proposal obtained employment impact estimates from EPR. EPR estimates that the project will result in 1,461 permanent direct and indirect full-time jobs.

Analysis

Funds required for subsequent construction do not match those in the initial Regional Center application. In the initial Regional Center proposal, the regional center presented the Lake Buena Vista Resort Village and Spa expansion project, which included the construction of two 152-unit high-rise style hotel-condominium buildings (Buildings 6 and 8) and one 135-unit building (Building 7), for a total expansion of 439 units. The proposal estimated that the proposed expansion will result in construction expenditures of \$143.1 million, \$105 million of which is from EB-5 investors. In the Regional Center amendment, however, the proposal estimates the cost of this project to be only \$52.5 million. The regional center should provide detailed information regarding the costs of the expansion project.

Incorrect employment impacts. In this amendment, the regional center presents the same employment impact (1,461 total jobs) as in the initial Regional Center proposal. However, the proposed project is a different project involving a different amount of funds allocated to different activities. The regional center should describe why the job creation estimate was not updated to reflect the contextual changes of the exemplar capital investment project or provide a revised Economic Impact Analysis.

Regional Center Amendment Proposal (RCW1031910267)

The applicant filed this Regional Center Amendment Proposal with a revised exemplar project and organizational documents. In this revised exemplar, the regional center states the following regarding the proposed project:

"A total of 35 investors, with an investment of \$1 million each, will be solicited through the first phase of the program. An additional 35 investors will be solicited through the future expansion phase within this enterprise, with a total investment of \$70 million in the project over the next two years. Additional expansions are projected to bring the total # of investment slots available to a total of 141, with construction completed by the close of 2011."

The employment impacts cited by the regional center; however, are the same as submitted in the initial Regional Center proposal. The regional center should submit an economic impact analysis that is based on

the revised business plan or provide justification regarding why USCIS should consider the employment impacts equivalent to the business plan submitted with the initial Regional Center proposal.

Submit documentation that addresses and overcomes the specific issues raised by this (Notice of Intent to Terminate or Request for Evidence) with respect to the investment of capital and employment creation. Such documentation should show that capital investment project contemplated by the LBVRC remains viable and meets the requirements of section 610(a) of the Appropriations Act. Also, submit a revised economic analysis (based on a statistically viable econometric methodology) showing direct, indirect (if any) and induced (if any) job creation both at the Lake Buena Vista Resort and within the regional center. Such an economic analysis will not only transparently show the basis for the data that will be used as the inputs to the model, including job creation multipliers, tables and calculations but also job creation by the approved industry categories and respective NAICS codes previously enumerated.

b. Lake Buena Vista Vacation Club (RCW1034150045):

The documentation submitted in support of the fourth and pending regional center proposal amendment, (RCW1034150045), indicates that seventy (70) EB-5 investors will be recruited to form a new LLC known as Lake Buena Vista Vacation Club, LLC ("LBVV-Club") and will loan (debt funding) up to \$35 million to fund three (3) projects in the regional center using the following subsidiary companies under the umbrella of Club Trust, LLC:

- (1) StaySky Vacation Club Development, LLC (subsidiary company) will be loaned \$5,850,000 to purchase 18 two bedroom vacation/timeshare units at the Lake Buena Vista Resort and Spa and devise a timeshare structure based on selling timeshare usage contracts at those condominium units;
- (2) StayVacations, LLC will be loaned \$5,225,000 to purchase/fund 10,000 square feet of commercial space (1st and 2nd floors), the construction of space, unit upgrades and marketing costs and will market the timeshare concept to prospective purchasers;
- (3) StayVacation Finance, LLC will be loaned up to \$23,925,000 to provide end loan financing for the purchase of the timeshare units.

A fourth company, StaySky Club Management, LLC will not be receiving EB-5 funds but will be created to manage the timeshare entities, units and administration.

Using the IMPLAN econometric model, the LBVRC estimates that 729 new permanent direct, indirect and induced jobs will be created in the following requested industry categories and NAICS codes: Management (NAICS 55), Office Administration (NAICS 5611), Sales and Telemarketing (NAICS 5614), Legal (NAICS 5411), Accounting (NAICS 5412), Information Technology (NAICS 518) and Food and Beverage Service (NAICS 722).

Although a review of this application appears to indicate that this project may be a viable commercial venture, the documentation provided does not show how the purchase of real property to create time share units will result in the requisite job creation for EB-5 purposes. Rather, it appears that investors in LBVV-Club will loan money to third-party entities affiliated with the regional center that will essentially purchase existing real property for the purpose of marketing those properties as time share units. In the event of a default, LBVV-Club would acquire condominium properties and commercial office space. While undoubtedly some job creation will ensue in these third party entities, a nexus between capital investment and requisite employment creation has not been established. Therefore, it is not apparent that sufficient jobs will be created as a result of these activities to meet the job creation targets for the EB-5 investors.

Investment of Capital

Organizational documents submitted with this regional center proposal reveal the following with respect to the EB-5 loan program advocated by this project:

Page 1 of the LBV Vacation Club, LLC Confidential Offering Memorandum (Document Reference Number 9274079.8) states:

LBV VACATION CLUB, LLC (the "Company") has been organized to provide financing to **STAY SKY VACATION CLUB DEVELOPMENT, LLC**, a Delaware limited liability company, and **STAY VACATIONS, LLC**, a Delaware limited liability company (the "Developer") for the acquisition of **eighteen (18) two (2) bedroom units and a first and second floor commercial space at the Lake Buena Vista Resort Village and Spa ("Lake Buena Vista") at Orlando, Florida near Disney World for the purposes of establishing a vacation club program at Lake Buena Vista, together with assisting the Developer in funding the end loan financing program for buyers of the Project ("Project").**

Project #1: Purchase 18 two bedroom vacation/timeshare units - \$5,225,000

Footnote (1) of the Financial Summary of Schedule A of the Loan Agreement as well as footnote (1) on page 14 of the Offering Summary of the Confidential Private Placement Memorandum states:

(1) The purchase price for each unit is \$325,000. StaySky Vacation Club Development, LLC will enter a sale and purchase contract with the developers of Lake Buena Vista Resort Village and Spa. The purchase of 18 units requires the Company, as the lender, to place one unencumbered unit with the Developer, to then be placed in the Vacation Club Trust. Each additional unit will be placed in the trust after the equivalent of the purchase price of a unit (\$325,000) in principal has been satisfied. The Company will be paid interest on an annual basis in the amount of 5% on the outstanding principal balance with interest accruing after the 6 months of funding. It is anticipated that first 18 units will be sold during the 24 month period.

Footnote (9) of the Regional Center Project Organization Chart (see exhibit 5) references the collateral for the EB-5 Investor loan of \$5,850,000 to purchase 18 vacation/timeshare units:

A trust will be established to hold title to the 18 vacation/timeshare units that are acquired by the Developer to enable [the] Vacation Club Plan to proceed.⁸ These units will in part serve as the collateral for the loan to be provided by the Company.⁹

The record indicates that EB-5 investor funds are secured by vacation/timeshare units.

Project #2: Purchase/fund 10,000 square feet of commercial space, construction of space, unit upgrades and marketing costs - \$5,225,000

⁸ "Developer" is defined as Stay Sky Vacation Club Development, LLC, a Delaware limited liability company according to page 2, RECITALS of the LBV Vacation Club, LLC Member Interest Subscription Agreement (Loan Program) (Document Reference Number 9275749.6).

⁹ "Company" is defined as LBV Vacation Club, LLC, a Florida limited liability company according to page 1, RECITALS of the LBV Vacation Club, LLC Member Interest Subscription Agreement (Loan Program) (Document Reference Number 9275749.6).

Footnote (2) of the Financial Summary of Schedule A of the Loan Agreement as well as footnote (2) on page 14 of the Offering Summary of the Confidential Private Placement Memorandum states:

The purchase price for the commercial space located on the first and second floor of Building IV at the Lake Buena Vista Resort Village and Spa is \$3,150,000. StayVacation, LLC, the marketing arm of the Vacation Club will enter into a sale and purchase contract with the developers of Lake Buena Vista Resort Village and Spa. Additional funds in the amount of \$2,075,000 will be financed by the Company, with total funding of \$5,225,000. These funds will be utilized for closing costs, commercial space development, unit upgrades and marketing costs. These commercial units will also be pledged as collateral. These funds will likewise accrue interest at a rate of (5%) for the five year period (after 6 month waiver of interest), with the principal payment of \$5,225,000 made at the end of the five year period.

The record appears to indicate that the EB-5 investor funds are secured by the commercial space.

Project #3: Fund end loan financing - \$23,925,000

Footnote (3) of the Financial Summary of Schedule A of the Loan Agreement as well as footnote (3) on page 15 of the Offering Summary of the Confidential Private Placement Memorandum states:

End loan financing is needed for club members. \$23,925,000 will be utilized to provide credit worthy buyer a finance option. It is estimated that the first two plus years of annual sales will be covered by this finance program and provide the necessary bridge financing until traditional finance becomes available. The terms of this program generally include 80% loan to value, approximately a 10 year term, with interest at 12% to 16%. StayVacation Finance, LLC will borrow funds from the Company and, in turn lending funds to members of the club. The Company will receive 5% interest from StayVacation Finance, LLC. StayVacation Finance, LLC will collaterally pledge all financing collateral the Company to secure the payment of the Loan.

The record appears to indicate that EB-5 investor funds are secured by StayVacation Finance, LLC. Moreover, the record is not clear how the funds will be used to create jobs if club members (purchasers of vacation/timeshare units) opt not to finance their home loans through StayVacation Finance, LLC. EB-5 capital may remain idle and therefore not infused into a new commercial enterprise for the purpose of creating jobs.

Moreover, page 13, **Section 2.8 Exit Strategy** of the Regional Center Business Plan dated November 22, 2010 states:

Each investor will hold an LLC interest in LBVV-Club. When the investment matures in 5 years from the date of the investment, LBVV-Club anticipates it will pay back the investor's principle (sic) from LBVV-Club's available funds on hand. When the investor has been repaid his or her investment principle (sic) in full, he or she will surrender his or her LLC interest in LBVV-Club free and clear of any further obligation to LBVV-Club.

As previously noted, In Matter of Izummi, the Service found that an alien "may not enter into a redemption agreement with the new commercial enterprise at any time prior to completing all of his cash payments" or "enter into a redemption agreement prior to the end of the two year period of conditional residence."

In light of the above information, provide an explanation and documentation to show how the EB-5 funds are placed at risk for the purpose of investment and employment creation.

Employment Creation

The Business Plan identified six (6) industry categories for job creation. However, business plans were not submitted for each industry category. Further, details were not provided regarding the timeframe for the commencement, implementation, and realization of each regional center project.

The Economic Impact Analysis estimates that 729 new permanent direct, indirect and induced jobs will be created in the following industry categories as a result of \$35,000,000 in EB-5 capital investment:

Job Description	# of Direct Employees	NAICS Codes	Multipliers	Total Jobs
Executive Committee	8	55	2.72	22
Senior Management	4	55	2.72	11
Operations Department	21	5611	2.4	50
Financial Department	7	5412	1.67	12
Accounting	18	5412	1.67	30
Payment Processing	27	5614	1.68	45
Information Technology	14	518	2.59	36
Legal Department	9	5411	2.04	9
Sales Managers	6	5614	1.68	10
In-House Sales Representatives	23	5614	1.68	39
Other Sales Representatives	76	5614	1.68	128
Sampler Program Development	31	5614	1.68	52
Training & Recruiting	11	5614	1.68	18
Marketing Department	75	5614	1.68	126
Telemarketing	54	5614	1.68	91
Corporate Communications	2	5611	2.40	5
Food and Beverage Service	26	722	1.40	36
Total	412			729

The regional center then sums the direct employment values by NAICS code to arrive at the following subtotals:

Job Description	Number of Employees	NAICS code
Management	12	55
Office Administration	23	5611
Sales and Telemarketing	303	5614
Legal	9	5411
Accounting	25	5412
Information Technology	14	518
Food and Beverage Service	26	722

Analysis

Although the approach used to estimate the employment impacts is common and appears reasonable, several significant flaws are observed.

Unsupported direct employment estimates. Using an Economic Analysis prepared by Evans, Carroll & Associates, the proposal does not provide a breakdown or justification regarding how the direct employment values were derived. It is not clear why 412 direct jobs are required. In fact, neither the submitted business plan nor the economic impact analysis justifies the creation of 412 direct jobs. For example, the proposal does not provide any description about why LBVV-Club will require 99 sales representatives (=23 In-House Sales Representatives + 76 Other Sales Representatives), 31 employees to participate in Sampler Program Development, and 129 employees to participate in marketing activities (= 75 Marketing Department + 54 Telemarketing). In addition, it is not clear why 26 food and beverage service personnel will be needed. Without a detailed explanation, USCIS cannot be confident that the direct employment estimate is reasonable. In addition, USCIS cannot be confident that the indirect and induced employment estimate—which is based on the direct employment estimate—is reasonable. The regional center should describe in detail how the direct employment estimate was derived. The regional center should also indicate with job creation is based on revenue generated by businesses occupying space, estimated project costs expenditures, or another job creation metric.

No IMPLAN industry sectors provided. Unlike other input-output impact assessment packages, IMPLAN does not use NAICS industry-categories for which the user can simulate an impact. Instead, IMPLAN uses unique industry codes and provides guidance on how to translate an NAICS industry code to an IMPLAN industry code. While Evans Carroll & Associates appropriately includes the IMPLAN multipliers, they do not provide a discussion regarding from which IMPLAN industries those multipliers originate. Without such details, USCIS cannot be confident that Evans, Carroll & Associates is using the proper IMPLAN industry codes. The applicant must describe in detail the IMPLAN industry codes to which the IMPLAN multipliers correspond and how the IMPLAN industry codes were derived from the specified NAICS industry codes so that USCIS can be confident that the appropriate IMPLAN sectors are being used to generate the indirect and induced employment impacts.

Employment Density Estimates. If the average national employment density estimates range from 200 to 228.8 square feet per employee, the maximum number of employees for 10,000 square feet of commercial space ranges from 43 to 50 employees. If the regional center expects to create 412 direct jobs and house them in office space, approximately 82,400 to 94,266 square feet of commercial space would be required. An explanation should be submitted on how the regional center intends to allocate the jobs by office space or the regional center intends to place all 412 direct jobs in 10,000 square feet of office space. If the regional center intends to do so, justification should be provided.

In light of the above, please provide the following:

- An updated exemplar business plan for each of the industry categories for which the LBVRC seeks designation;
- The timeframe for the commencement, implementation, and realization of each project;
- The feasibility of the project under current market conditions within the Regional Center;
- Identification of the inputs to the IMPLAN model;
- A breakdown or justification regarding how the direct employment values were derived;
- An explanation as to how 412 direct jobs were estimated and why they are required; and

- An explanation as to how 10,000 square feet of commercial space is sufficient to support a staff of 412 direct employees in light of the fact that approximately 82,400 to 94,266 square feet of commercial space would be required.

Licensing of the Regional Center

Footnote #11 of Exhibit 5 of the Regional Center Project Organization Chart references licensing:

License Holder of the EB-5 Regional Center area will grant a license to the Developer to utilize the EB-5 Regional Center designation and administer the compliance with USCIS guidelines. In consideration of receiving a payment of up to \$40,000 per year, which payment shall be paid when the Offering closes.

The Regional Center has not provided legal documents or citations supporting its authority to issue a license or to delegate the Regional Center's responsibility for direct oversight of the enterprises.

Therefore, submit the following:

- A listing of citations from statute regulations or precedent decisions showing that under the EB-5 rules such licensing is allowed;
- The legal argument supporting the interpretation of the rules; and
- A signed agreement between the parties showing the actual cost of the license.

III. DECISION

This letter shall serve as notification to the LVBRC of USCIS's intent to (a) deny the proposed amendment to LBVRC and (b) to terminate the existing LBVRC regional center designation. You have 33 days from the date of this notice in which to offer evidence in opposition to the grounds for termination cited herein. Any response to this notice must demonstrate that the LBVRC will maintain a regional center within which aliens seeking to obtain permanent resident status under INA § 203(b)(5) will be able to successfully invest in a new commercial enterprise (as described in 8 CFR § 204.6(h)) with a qualifying investment that will benefit the United States economy and create 10 jobs, including jobs indirectly created through the new commercial enterprise.

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

In the event you do not respond within the timeframe noted above, the LBVRC's designation as a regional center will be terminated and you will receive written notification of the final decision to terminate the LBVRC regional center designation.

Please mail any evidence you wish to provide in opposition to the grounds for termination to the address noted below and include a copy of this letter on top of your submission.

**USCIS California Service Center
P.O. Box 10526
Laguna Niguel, CA 92607-0526**

If your submission is more than several pages, please use fasteners to attach the documents at the top of each page, accompanied by an index of exhibits.