

COPY



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

TO:

DATE: JUL 23 2012

Samuel Sutton
C/O EB-5 Management LLC
1725 University Drive, Suite 420
Coral Gables, Florida 33071

RE: Lake Buena Vista Regional Center

File: RCW1031910135
(Formerly W08001250)

Unique Identifier: ID1031910135

NOTICE OF TERMINATION

Pursuant to title 8 Code of Federal Regulations (CFR) section 204.6(m)(6), U.S. Citizenship and Immigration Services (USCIS) hereby terminates the previously approved regional center status of the Lake Buena Vista Regional Center (LBV Regional Center). Upon a review of the record, USCIS finds that the LBV Regional Center is unqualified for continued participation in the Immigrant Investor Pilot Program as enacted by section 610(a) of the Appropriations Act of 1993. See Public Law 102-395.

USCIS is taking action to terminate LBV Regional Center's designation, because LBV Regional Center has failed to establish continuing eligibility and compliance with program requirements. Action by USCIS to terminate the regional center designation follows several opportunities which have been provided to LBV Regional Center for the purpose of establishing compliance with the regional center program. Among the opportunities afforded LBV Regional Center include: (1) a Request for Evidence for the third amendment; (2) a Notice of Intent to Terminate; and (3) an interview with USCIS EB-5 staff at the California Service Center. Despite these numerous opportunities, LBV Regional Center consistently provided inapplicable and opaque responses which neither established continued eligibility, nor satisfied the concerns identified by USCIS. Consequently, fundamental questions of eligibility remain related to the economic impact methodologies employed, their applicability to the business plans, and the various business plan permutations presented by LBV Regional Center. In the absence of evidence establishing compliance, USCIS must regrettably terminate the regional center designation.

Index of Names and Abbreviations

Entity/Project Name	Abbreviation	Description
Lake Buena Vista Regional Center	LBV Regional Center	Regional Center Entity
Lake Buena Vista Resort, LLC	Developer	Lake Buena Vista Resort Developer/Seller
Lake Buena Vista Resort Village and Spa Project	Project #1	Project Approved in Current Regional Center Designation
Lake Buena Vista Resort Village and Spa	Resort	Luxury Condominium/Hotel Resort
EB-5/LBV LLC	LBV NCE	New Commercial Enterprise in which EB-5 investors will directly invest to participate in Project #1
Sky Mgmt, LLC	Sky PEO	Professional Employer Organization (provides contract employees to operate the resort – Project #1)

Lake Buena Vista Resort and Spa Mgmt, LLC	Resort PEO	Professional Employer Organization (provides contract employees to operate the resort – Project #1)
Lake Buena Vista Vacation Club Project	Project #2	Project Presented in Pending Regional Center Amendment Proposal
LBV Vacation Club, LLC	Vacation Club NCE	New Commercial Enterprise in which EB-5 investors will directly invest to participate in Project #1
StaySKY Vacation Club Development, LLC	StaySky	EB-5 Borrower in Project #2 - to Purchase 18 Condos from Developer
StayVacations, LLC	StayVacation	EB-5 Borrower in Project #2 - to Purchase and Develop Commercial Space in Building IV
StayVacation Finance, LLC	Finance	EB-5 Borrower in Project #2 – Will Use Funds to Provide 10 year to Buyers of Timeshare Units
Club Trust LLC	Trust	Trust that is 100% owner of StaySKY, Stay Vacation, and Finance

I. PROCEDURAL HISTORY AND DECISION

A. Initial Proposal

The initial regional center proposal¹ (RCW1031910135) was filed on April 18, 2008. USCIS approved the proposal to designate LBV Regional Center² for participation in the Immigrant Investor Pilot Program on September 18, 2008. With this approved designation, LBV Regional Center was approved to engage in certain capital investment projects falling within the scope of the following specified code sections of the North American Industry Classification System (NAICS).

Pursuant to the proposal for LBV Regional Center, USCIS authorized the use of the following industry categories and/or NAICS codes:

1. Food Preparation & Serving Related Occupations
2. Building & Grounds Cleaning & Maintenance Operations
3. Personal Care & Service Occupations
4. Retail – Sales & Related Occupations
5. Office & Administrative Support Occupations
6. Construction Occupations

¹ The original request to qualify Lake Buena Vista as a “regional center” authorized for participation in the Immigrant Investor Pilot Program predates the introduction of the “Application for Regional Center Under the Immigrant Investor Pilot Program” (Form I-924). As such, USCIS refers to the initial request and subsequent amendments merely as “proposal” or “proposal amendment,” as otherwise described by the applicable regulations.

² In the initial proposal, the stated purpose of LBV Regional Center 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 projects: Luxury Condominium Hotel Units (including an associated mall, parking facilities, transportation infrastructure (roads and parking lots), spa, pools, restaurants and other amenities.

7. Installation, Maintenance & Repair Occupations
8. Leisure and Hospitality: Accommodation & Food Services

B. LBV Regional Center Proposal: Amendment #1

The first amendment (Amendment #1) to LBV Regional Center was filed on June 17, 2009.³ USCIS approved Amendment #1 on September 25, 2009. This approval found that the LBV Regional Center qualified as a “troubled business⁴” as defined by 8 CFR § 204.6(e)⁵. Consistent with the approval of Amendment #1 and the “troubled business” designation, immigrant investors relying upon the “troubled business” designation remained subject to certain evidentiary requirements. For example, participating immigrant investors must still submit evidence that the commercial enterprise, for which their capital funds have been or will be invested, remains qualified as a troubled business at the time of filing the Immigrant Petition by Alien Entrepreneur (Form I-526). The Amendment #1 approval notice indicated that ultimately the troubled business determination would be made based upon the filing of the Form I-526 and the commercial enterprise receiving the investment.

C. LBV Regional Center Proposal: Amendment #2

The second amendment (Amendment #2) to LBV Regional Center was filed on January 15, 2010.⁶ USCIS approved Amendment #2 on January 28, 2010. The approval of Amendment #2 recognized LBV Regional Center as a state designated targeted area of employment (TEA) in addition to being a “troubled business,” as set forth in Amendment #1. Consistent with the TEA designation, any immigrant investors requesting the reduced investment threshold of \$500,000 based upon an investment in a TEA, must establish at the time of filing of their Form I-526 that the investment either (a) will be made into a TEA designated area or (b) was made in a TEA designated area at the time of the alien’s initial investment. Further, any such immigrant investors remained obligated to establish that the commercial enterprise for which their capital had or would be invested, remains a troubled business at the time of the filing of their Form I-526.

³ (RCW1031910275)

⁴ Title 8, CFR § 204.6(e) defines “troubled business” as: a business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve- or twenty-four month period prior to the priority date on the alien entrepreneur’s Form I-526, and the loss for such period is at least equal to twenty percent of the troubled business’s net worth prior to such loss. For purposes of determining whether or not the troubled business has been in existence for two years, successors in interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.

⁵ The basis for the approval of the proposal amendment was the submission of financial documentation that showed that the Developer qualified as a “troubled business” at the time of filing of the regional center amendment proposal. USCIS has determined that the approval of the LBV Regional Center as a “troubled business” was in error as such determinations are made at the Form I-526 petition stage, and in the regional center context are made for the new commercial enterprise (NCE) or the entity that will be the job creating entity (JCE), which in most cases is not the LBV Regional Center.

⁶ (RCW1031910283)

D. LBV Regional Center Proposal: Amendment #3

The third amendment (Amendment #3) to LBV Regional Center was filed on November 1, 2010.⁷ USCIS approved Amendment #3 on February 11, 2011. The approval of Amendment #3 recognized a revised "exemplar" Form I-526 (Exemplar #2) as qualifying for the Immigrant Investor Pilot Program. Exemplar #2 included a variety of evidence, including organizational documents such as a revised Subscription Agreement, a revised Operating Agreement, and a revised Offering Memorandum.

E. LBV Regional Center Proposal: Amendment #4

The fourth amendment (Amendment #4) to LBV Regional Center was filed on November 22, 2010⁸ – just three weeks after the preceding amendment; this fourth request remains pending. Again, as with all prior amendments, Amendment #4 preceded the introduction of the Form I-924, upon which any similar change to the original proposal would be required. Amendment #4 sought to include a new capital investment project: the Lake Buena Vista Vacation Club Project ("Project #2") in which \$35 million from 70 participating immigrant investors was to be loaned to three subsidiary companies⁹ of an entity known as Club Trust, LLC. As explained by the record, Club Trust, LLC intended to purchase eighteen (18) two-bedroom condominium units at Lake Buena Vista Resort Village and Spa ("Resort") 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.¹⁰

Amendment #4 also requested to expand the industry focus of LBV Regional Center to include seven (7) additional industry categories and NAICS codes, which have been sequentially added to the original eight (8) codes, bringing the total number to fifteen (15) if the amendment is approved:

9. Management
10. Office Administration
11. Sales & Telemarketing
12. Legal
13. Accounting
14. Information Technology
15. Food & Beverage Service

A review of the original LBV Regional Center proposal, requested Amendments #1-4, and a decision from the Administrative Appeals Office (USCIS-AAO) dated July 18, 2011 regarding a Form I-526 filed by an investor who invested in a new commercial enterprise associated with the LBV Regional Center, (Attachment A), provides evidence that LBV Regional Center is not in compliance with the requirements of the Immigrant Investor Pilot Program. That is to say, LBV Regional Center does not (continue to) serve, "the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment."

⁷ (RCW1031910267)

⁸ (RCW1034150045)

⁹ (1) StaySKY Vacation Club Development, LLC; (2) StayVacations, LLC; and (3) StayVacation Finance, LLC.

¹⁰ 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.

In response to this evidence, USCIS issued a Notice of Intent to Terminate (ITT) LBV Regional Center's designation on December 19, 2011. LBV Regional Center responded to the ITT on January 20, 2012. The ITT set forth many concerns about the continued status of LBV Regional Center as a qualifying regional center under the Immigrant Investor Pilot Program. LBV Regional Center was responsive to many of the concerns that were raised in the ITT.

Upon review of the record after the response to the ITT was received, USCIS still could not conclude that LBV Regional Center remained eligible for designation as a regional center, authorized for participation in the Immigrant Investor Pilot Program. Although the response to the ITT had been inadequate to resolve the many eligibility issues raised in the ITT, USCIS elected to exercise its discretion in scheduling an interview for the principals of the LBV Regional Center. The purpose of the interview was to provide LBV Regional Center with an opportunity to clarify its response to the ITT, to draw the attention of USCIS to specific information in the record purporting to establish eligibility, and to allow LBV Regional Center to identify certain core areas which were susceptible to misinterpretation or misunderstanding by USCIS. USCIS conducted this interview on March 28, 2012. In addition, USCIS provided LBV Regional Center with a seven-day period following the interview within which further evidence could be provided in support of arguments made during the interview, or which might otherwise establish (continued) eligibility. On April 4, 2012, LBV Regional Center communicated to USCIS that no further information would be submitted, and that LBV Regional Center desired a decision on the existing record.

USCIS has reviewed the existing record, including the original LBV Regional Center proposal, the four proffered amendments, the ITT response, and the information provided at the interview. Following this review, USCIS finds that the evidence of record fails to establish that LBV Regional Center has served or will continue to serve the purpose of the Immigrant Investor Pilot Program. As the authorizing statute set forth, it is incumbent upon each approved and designated regional center to promote economic growth, including improved regional productivity, job creation, or increased domestic capital investment. USCIS finds that LBV Regional Center does not comply with this statutory mandate.

For the sake of clarity, this notice will first discuss the concerns raised within the context of LBV Regional Center's current regional center designation, and will then address concerns raised within the context of the pending regional center designation amendment proposal, Amendment #4.

II. CURRENT REGIONAL CENTER DESIGNATION

LBV Regional Center is currently approved for the geographic area comprised of the Counties of Orange, Osceola, Lake, and Seminole in the State of Florida.

LBV Regional Center is currently authorized the use of the following industry categories and/or NAICS codes:

1. Food Preparation & Serving Related Occupations
2. Building & Grounds Cleaning & Maintenance Operations
3. Personal Care & Service Occupations
4. Retail – Sales & Related Occupations
5. Office & Administrative Support Occupations
6. Construction Occupations
7. Installation, Maintenance & Repair Occupations
8. Leisure and Hospitality: Accommodation & Food Services

In focusing investment activity on Project #1, the following Form I-526 supporting documentation submitted on January 11, 2011, were determined to be EB-5 compliant:

1. Subscription Agreement: Sample effective January 1, 2011
2. Operating Agreement: Sample effective [no month given] 2011
3. Confidential Offering Memorandum: Dated January 1, 2011
4. Escrow Agreement : Dated January 1, 2011

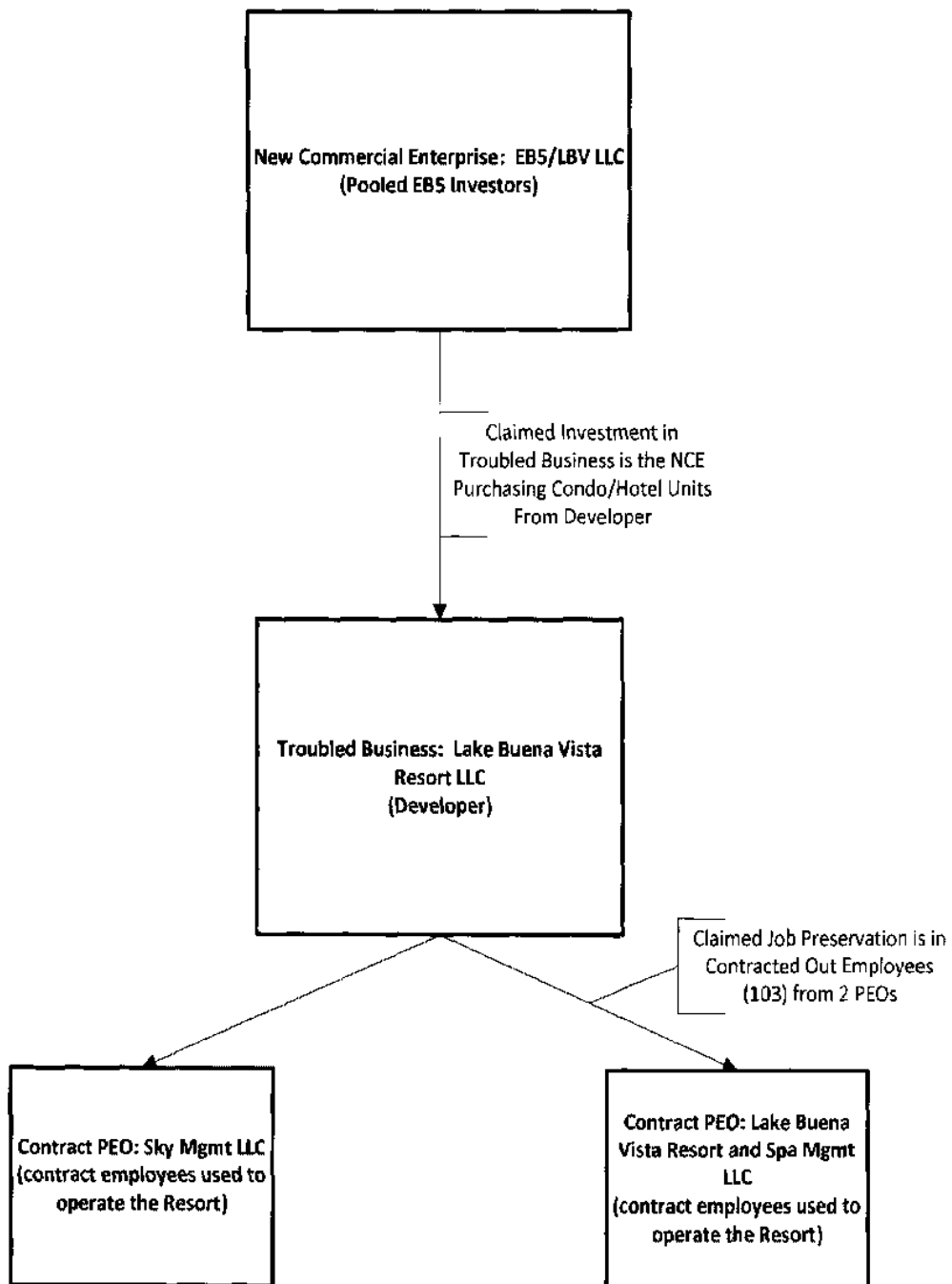
USCIS accepted the application of the REDYN economic model for the purpose of estimating job creation in Project #1.

III. CAPITAL INVESTMENT PROJECT #1; LAKE BUENA VISTA RESORT VILLAGE AND SPA RESORT

Project #1 involves a plan to obtain funds from a maximum of 100 investors at a minimum capital investment of \$500,000 each based upon investments into a TEA. The EB-5 investors will invest into LBV NCE which in turn will use the funds to purchase already built condominium hotel units in the Resort (a luxury condominium resort) in Orlando, Florida. The Developer received government development approvals for the construction of up to 1,875 condominium hotel units, of which over 496 units have been constructed as of January 2011. LBV NCE has been organized to acquire, own and operate condominium hotel units in the Resort. LBV NCE will execute purchase agreements to purchase the Units in fully completed buildings. The Units will consist of a combination of two bedroom/two bathroom Units and three bedroom/two or three bathroom Units.

The LBV Regional Center is claiming that the Developer is a "troubled business" and that investors in LBV NCE should be credited with job preservation for the two professional employer organizations that have contracts with the Developer to provide employees to operate the Resort.

Flowchart Diagram Based on Claims made by the Regional Center for Project #1:



The ITT set forth the following concerns about the continued status of the LBV Regional Center as a qualifying regional center under the Immigrant Investor Pilot Program based upon Project #1:

Issue #	ITT Page	ITT Issue	ITT Cited Document
1	Page 7 for Issue Page 11 for Cited Document	The regional center project is essentially a real estate transaction as opposed to a job creating capital investment vehicle because the NCE is an intermediary that will subsequently deed the property to the EB5 immigrant investors.	February 2010 EB5/LBV LLC Confidential Offering Memorandum (COM) page 2, 3) (Document Ref# RM:7172663:5)
2	Page 9 for Unit Purchase Agreement Page 10 for Operating Agreement	The AAO 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).	Page 34 of Unit Purchase Agreements of the 2011 COM (Document Ref.# RM: 7172633:14) Describing Company acquiring units from Developer Page 13 of 2011 EB5/LBV, LLC Operating Agreement (Document Ref. # RM:5313400:18) describing Developer agreeing to sell units to Company
3	Page 11 for investors receiving deeded title of the Units; Page 9 for use of the rental unit	Redemption Agreements are impermissible per Matter of Izummi	February 2010 COM page 2, 3, 35, describing selecting and redeeming for deed upon closing, and members usage rights Exhibit 5, Management Agreement of the EB5/LBV, LLC Member Interest Subscription Agreement within the COM dated January 1, 2011 portion discussing owner's use and rental of the unit
4	Page 12 a valid economic analysis would be needed	A statistically valid economic analysis of the appropriate data would need to be provided that would be incorporated into a viable job creation methodology for the project.	Economic and Policy Resources, Inc economic impact (EPR) analysis submitted with initial proposal

Issue #	ITT Page	ITT Issue	ITT Cited Document
5	Page 13 Unsupported Spending Assumption	There is an unsupported spending assumption that visitors who would stay in the condo unit would not visit the area and hence, would not create an increase in local visitor spending if the condominium-hotel is not constructed.	EPR economic impact analysis submitted with initial proposal
6	Page 13	There is an unsupported weighted average spending estimate.	EPR analysis does not provide spending data or data used to estimate the origin of visitors and support for the estimates of the average expenditures per day by overnight visitors.
7	Page 14	Unsupported weighted average utilization/occupancy rate estimate	EPR analysis uses a 72.2 % occupancy rate
8	Page 14	Unsupported calculation of the increase in visitor days.	EPR analysis
9	Page 14	Unsupported Margin Adjustment	EPR analysis
10	Page 15	Unknown NAICS/industries used in REDYN	EPR analysis
11	Page 15	Unsupported employment impact timing	Must describe the job creation schedule in detail so that USCIS can be confident that the jobs created by the project are within a reasonable range
12	Page 15	Inconsistency regarding proposed project between Attorney Letter and Economic Impact Analysis; and also as previously stated the purchase of units is a passive investment	Clarification on which project is the actual project EPR analysis; Attorney Letter (dated April 9, 2008)
13	Page 16	In 2 nd Amendment the funds required for subsequent construction do not match those in the initial LBV Regional Center application	EPR analysis not updated in Amendment #2 proposal now has different costs (LBVRC Business Plan)
14	Page 16	Additional Incorrect and Inconsistent Employment Impacts	EPR analysis

Following a review of the entire record of evidence including the LBV Regional Center's response to the ITT and the interview, USCIS found that the LBV Regional Center had adequately addressed the first, second, third, seventh, ninth, tenth, eleventh, twelfth, and thirteenth concerns raised in the ITT concerning Project #1.

Issue # 1, ITT Page 7	
Issue	The regional center project is essentially a real estate transaction as opposed to a job creating capital investment vehicle because LBV NCE is an intermediary that will subsequently deed the property to the EB5 immigrant investors.
ITT Evidence Request	No specific request for evidence.
ITT Response	An explanation and reference to revised business plan and COM submitted in the 3 rd amendment (Exhibit 2). The Condominium Documents recorded in the Official Records of Orange County, Florida (Exhibit 9).
Issue Overcome	The issue of individual EB5 investors receiving a hotel/condo unit has been overcome. The units will be owned by the EB5/LBV LLC and there is no guarantee that the investors will receive the units upon closing. Further, the units may not be occupied and used as a permanent residence.

Issue # 2, ITT Page 9 for Unit Purchase Agreement Page 10 for Operating Agreement	
Issue	The AAO 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).
ITT / RFE	Nothing Specific.
ITT Response	Applicant asserted through counsel that the issue raised is misplaced because of a misreading of the project documents; in essence the units will not be deeded back to the investors and the project is not zoned for permanent residence.
Issue Overcome	LBV NCE is purchasing real estate from Developer as a customer and not the individual investors. In addition, the individual investors will no longer receive the units later as part of the exit strategy for their investment. Therefore, technically this issue is overcome.

Issue # 3, ITT Page 11 for investors receiving deeded title of the Units; Page 9 for use of the rental unit	
Issue	Redemption Agreements are impermissible per <u>Matter of Izummi</u> .
ITT / RFE	Nothing Specific.
ITT Response	COM, dated January 2011, removed the clause providing for the redemption of units to the investors upon closing. However, the usage rights clauses referenced therein have not changed. The ITT response indicated that the usage rights applied to the Company but not the individual investors Exhibit E, "Form of Management Agreement" attached to the COM identifies Unit Owner Name(s) as "EB5/LBV, LLC (jointly and individually referred to "Owner").
Issue Overcome	The redemption of the individual units to the investors has been removed.

	Note: The usage rights of the condo units have not been removed and the documentation of record does not transparently show whether ownership by LBV NCE will allow for investors to use the condominiums based upon the language in the documents. It is USCIS's contention that usage rights given to LBV NCE to use the condominium units for up to 14 days per annum, could still be interpreted as a redemption agreement. However, USCIS will no longer consider this an outstanding issue based upon counsel's statements in the interview attesting that such usage rights are solely to allow for access to the units for maintenance and repairs.
--	---

Issue #7, Page 14	
Issue	Unsupported weighted average utilization/occupancy rate estimate in the economic analysis. EPR analysis uses a 72.2 % occupancy rate.
ITT / RFE	Explanatory details regarding the weighted average utilization/occupancy rate estimates were requested, including the input data and weights used.
ITT Response	New EPR analysis.
Issue Overcome	The new EPR analysis resolved the issue.

Issue #9, Page 14	
Issue	Unsupported Margin Adjustment in the EPR analysis.
ITT / RFE	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.
ITT Response	New EPR analysis
Issue Overcome	New EPR analysis resolved the issue.

Issue #10, Page 15	
Issue	Unknown NAICS/industries used in REDYN
ITT / RFE	The economic analysis must 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.
ITT Response	New EPR analysis
Issue Overcome	New EPR analysis resolved the issue.

Issue #11, Page 15	
Issue	Unsupported employment impact timing in the EPR analysis.
ITT / RFE	EPR analysis must describe the job creation schedule in detail so that USCIS can be confident that the jobs created by the project are within a reasonable range.
ITT Response	New EPR analysis

Issue Overcome	New EPR analysis resolved the issue.
----------------	--------------------------------------

Issue #12, Page 15

Issue	Inconsistency regarding proposed project between Attorney Letter and Economic Impact Analysis; and also as previously stated the purchase of units is a passive investment.
ITT / RFE	Clarification on which project is the actual project EPR analysis; Attorney Letter (dated April 9, 2008).
ITT Response	Applicant responded through counsel's letter, dated January 19, 2012 that the project went from \$1,000,000 per investor to TEA investment amount and the project as defined by the amendment changes.
Issue Overcome	Explanation resolved inconsistency in attorney letter and EPR analysis.

Issue #13, Page 16

Issue	In the documentation provided in Amendment #2, the funds required for subsequent construction do not match the funds required as presented in the initial RC application.
ITT / RFE	Provide detailed information regarding the costs of the expansion project.
ITT Response	New EPR analysis states that these funds are no longer part of the project.
Issue Overcome	Inconsistency resolved due to change in business plan.

Following a review of the entire record of evidence including LBV Regional Center's response to the ITT and the interview, USCIS found that LBV Regional Center ultimately did not adequately address the fourth, fifth, sixth, eighth, and fourteenth issues concerning Project #1.

Issue 4: Overarching Issue: A Statistically Valid Job Creation Economic Methodology; Data and Viable Job Creation Methodology

Upon reviewing the ITT response and the responses to the interview questions, a statistically valid job creation analysis was not submitted and will be discussed in further detail in the following sections that provide a more detailed breakdown of the job creation issues. Issues numbered 5, 6, 8 and 14 specifically address errors in the data sources and methodologies used to estimate the economic impacts of Project #1.

Issue 5: Unsupported Spending Assumption that Visitors (Tourists) Who Would Stay in the Condominium Units Would Not Visit the Area and Hence Create an Increase in Local Visitor Spending

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 expansion does not proceed. The applicant should have submitted data or statistical justification regarding the appropriateness of this assumption.

Response to ITT

The applicant does not submit a satisfactory response in its response to the ITT. EPR first attempts to illustrate an increasing demand for visitor services by showing an increase in the employment rate for the following industries from 1998 through 2009: NAICS 44: Retail Trade; NAICS 445: Food and Beverage Stores; NAICS 44711: Gas Stations with Convenience Stores; NAICS 48: Transportation and Warehousing; NAICS 7139: Other Amusement and Recreation; NAICS 72111: Hotels (excluding Casino Hotels) and Motels; and NAICS 722: Food Services and Drinking places. The statistical trends referenced by EPR are considered to be incredible and inconclusive. The number of establishments and the employment rates for these industries fluctuate significantly, which casts significant doubt on the EPR's conclusions. EPR also presents data describing the year-over-year change in the number of visitors to Orlando. Again, the number of visitors varies significantly from year-to-year.

EPR attempts to demonstrate a restricted supply in visitor accommodations by referencing occupancy rates and average room rates over time. These data cover varying timeframes that do not match those referenced for the demand data noted above (i.e., 1998 through 2009). Like the demand data noted above, the statistical trends highlighted by these data are inconclusive and again cast doubt on the applicant's claim that there is an insufficient supply of accommodation services to meet the current demand. Moreover, in its interview with USCIS at CSC, the applicant presented a competitor analysis that highlights the occupancy rates for seven condominium-hotels—which includes Lake Buena Vista Resort Village & Spa—that show the following occupancy rates for 2011: 79 percent, 78 percent, 58 percent, 63 percent, 73 percent, 76 percent, and 74 percent. These data certainly do not illustrate a limited supply of accommodation services. This is important because these data clearly show that within the LBV region and market, as defined by the applicant, there is significant excess capacity in accommodation services. Ultimately, the LBV Regional Center's claimed ability to meet the requisite EB-5 job creation requirements cannot be predicated on a claim of an increase in visitor spending based upon the given occupancy rates for the market.

Thus, the data presented by EPR do not illustrate an excess demand or reasonable capacity constraints for accommodation services to support the applicant's assumption that visitors to the condominium-hotel development would not have visited the Orlando area if the proposed condominium-hotel development was not built.

Beyond the issues raised above, USCIS notes that any planned expansion of capacity in Project #1 appears to be tentative at best, as the LBV Regional Center has indicated that expansion plans will not go forward in the foreseeable future.

Issue 6: 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 failures 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. The applicant must describe in detail the derivation of the percentage of foreign and domestic overnight visitors—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. The applicant should have submitted clarification regarding this statement and describe any modifications to the underlying data.

Response to ITT

The LBV Regional Center has not submitted a satisfactory response to the ITT. USCIS thoroughly addressed the concerns with the LBV Regional Center’s reliance on increases in visitor spending in Issue #5 above and need not repeat those concerns within Issue #6. The EPR narrative submitted in response to the ITT stated “EPR modeled all of the visitation spending at the domestic spending level”. However, this statement appears to be inaccurate as the model did not actually rely solely on domestic spending. The most recent EPR analysis argues that “...the 64 percent foreign visitors and 36 percent domestic visitors ratio was only used to determine what amount of increased visitor spending should be modeled as national growth and what amount of increased visitor spending should be modeled as national proportional.” This response does not address the concern of USCIS, which is the lack of reasonable and verifiable data showing that the

ratio of foreign visitors to domestic visitors to the condominium-hotel is accurate. As previously noted, the data from which the assumptions were derived are based upon a data source that USCIS cannot verify. Moreover, EPR does not provide sufficient evidence illustrating that the breakdown of national growth versus national proportional spending is reasonable or a justification explaining why this modeling methodology is appropriate. The LBV Regional Center did not transparently describe in detail the methodology or data used to calculate the spending of foreign and/or domestic overnight visitors. This is important because the spending assumption used is one of the inputs into the economic analysis and any upward bias in the visitor spending estimate will result in an upward bias in the estimate of the number of jobs that will be created in Project #1.

Issue 8: 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 the failure to provide a detailed description of the calculation of the occupancy rate (as noted above), EPR fails to 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 failures, USCIS cannot be confident that the estimate of the increase in visitor days is reasonable. The LBV Regional Center must submit a detailed description—including the input data, assumptions, and sources—of the methodology used to calculate 400,000 (rounded) visitor days per year.

Response to ITT

The LBV Regional Center has not submitted a satisfactory response to the ITT. USCIS thoroughly addressed the concerns with the regional center's reliance on increases in visitor spending in Issue #5 above and need not repeat those concerns within Issue #8. As previously noted, any planned expansion of capacity in Project #1 appears to be tentative at best, as the regional center has indicated that expansion plans will not go forward in the foreseeable future.

One of USCIS's other primary concerns was the failure of the LBV Regional Center to justify the assumption used to estimate the number of visitors per room per day. In its Response to the ITT, EPR uses the assumption of 3.4 visitors per suite but again fails to provide supporting data to justify this assumption. In addition, the cumulative addition in visitor days shows the increase in approximately 400,000 visitor days being realized as of 2012. This is important because the increase in visitor days, which is calculated using the assumption of 3.4 visitors per suite, is one of the inputs into the economic analysis and any upward bias in this calculation will result in an upward bias in the estimate of the number of jobs that will be created in Project #1.

Issue 14: Additional Incorrect and Inconsistent Employment Impacts

In RCW1031910283 (Amendment #2), that the LBV Regional Center presents the same employment impact (1,461 total jobs) for the project as it is currently presented, which is focused on job preservation in a "troubled business". The employment impacts presented for Project #1 that was presented in the initial

LBV Regional Center proposal focused on job creation through the Developer's expansion of capacity for accommodation services. These two distinct project strategies involve varying amounts of capital that would be allocated to different economic activities. The LBV Regional Center must 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.

Response to ITT

The LBV Regional Center has not submitted a satisfactory response to the ITT. As previously noted, any planned expansion of capacity by the Developer appears to be tentative at best, as the LBV Regional Center has indicated that expansion plans will not go forward in the foreseeable future. Additionally, the LBV Regional Center is claiming that the Developer is a troubled business and that investors in LBV NCE should be credited with job preservation for the two professional employer organizations that have contracts with the Developer to provide employees to operate the Resort.

The LBV Regional Center noted in response to the ITT, dated January 19, 2012:

As will be described in further detail in Section II below, the preservation of jobs that qualifies foreign investors' investment as eligible for "troubled business" approval is based on [the Developer's] direct employment of 103 full time positions, as well as indirect job preservation in excess of 1,000 jobs derived from the employment multiplier methodology contained in the economic analysis dated April 2008 which has also been approved by USCIS.

The LBV Regional Center did not adequately address why the employment impacts that were presented in the initial proposal based upon an expanded capacity in accommodation services in the amount of 1,461 jobs has remained unchanged since Project #1's business plan was changed from an expansion strategy for the LBV property to one that involves job preservation through a "troubled business". Nonetheless, the LBV Regional Center has not provided an updated economic analysis that uses a "reasonable methodology" that would demonstrate that sufficient jobs will be preserved or created based upon Project #1, as the April 2008 EPR analysis referenced by the LBV Regional Center did not contain an analysis of job preservation in the "troubled business" context. Project #1's expansion plans are no longer viable. Further, it appears that USCIS's approval of the Developer as a "troubled business" within the LBV Regional Center proposal was in error¹¹, as such determinations can only be made at the Form I-526 individual investor stage.

Conclusion: Project #1

The evidence of record including the documentation presented in the initial proposal, Amendments #1 – #3, and the response to the ITT including the evidence presented during the interview, fails to demonstrate that Project #1 will create jobs in verifiable detail based upon a business plan and economic analysis that employs reasonable methodologies for estimating job creation through EB-5 capital investment. In light of the above, USCIS concludes that the LBV Regional Center is no longer eligible for designation for

¹¹ In the LBV Regional Center's response to the ITT, the LBV Regional Center explains that—because the Developer was now qualified as a troubled business—the investment of EB-5 capital would be earmarked solely to the job preservation phase of Project #1, which includes investing a 30 percent stake in the Developer. It is noted that the LBV NCE is not investing a 30 percent stake in the Developer. Rather, the LBV NCE is acquiring condominium units from the Developer. Essentially, LBV NCE is a customer of the Developer, not an investor in the Developer.

participation in the Immigrant Pilot Program as a regional center, based upon the scope of its approved regional center designation.

IV. CAPITAL INVESTMENT PROJECT #2; LAKE BUENA VISTA VACATION CLUB PROJECT

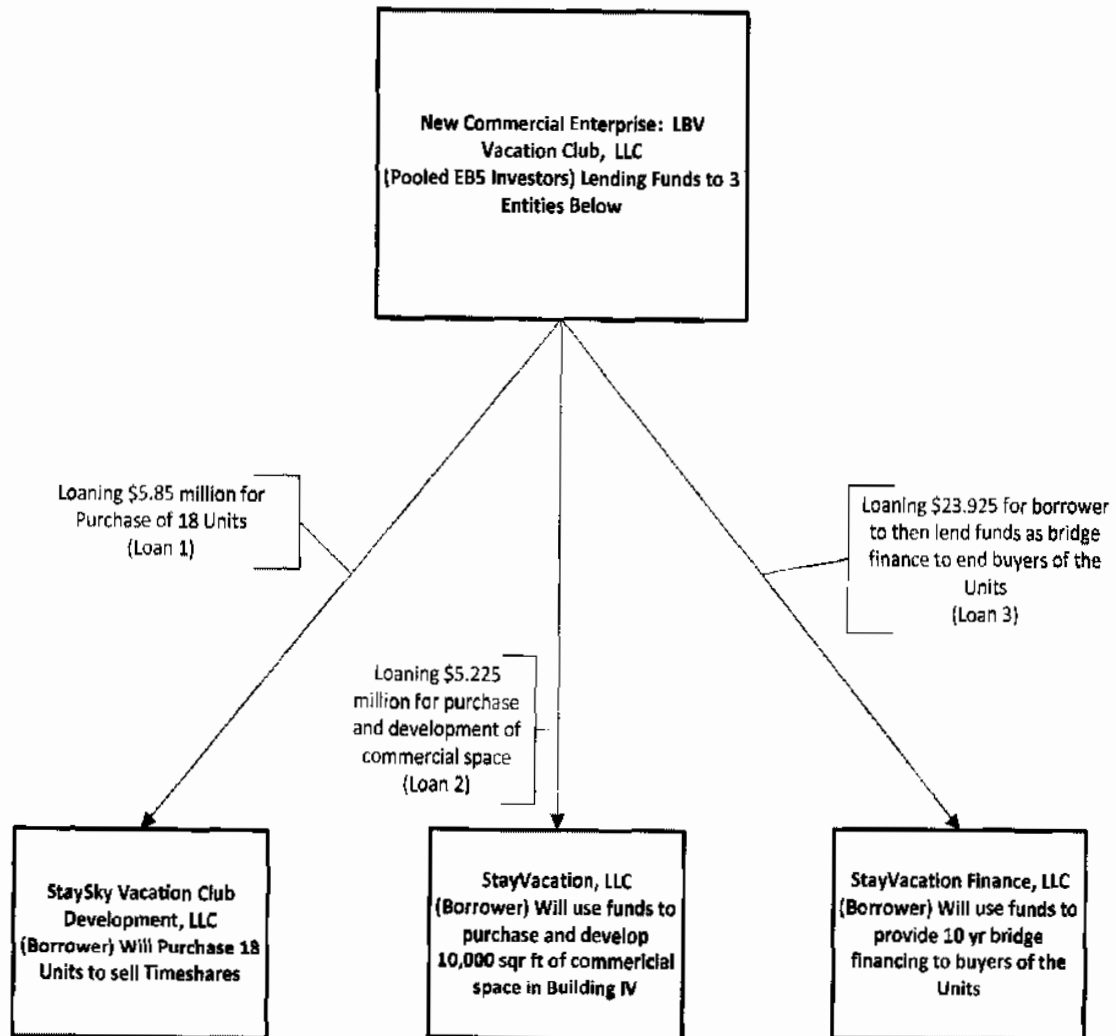
On November 22, 2010, the LBV Regional Center filed a fourth amendment (RCW1034150045) to include a new capital investment project, Lake Buena Vista Vacation Club ("Vacation Club NCE"), in which \$35 million from 70 EB-5 investors will be loaned to three subsidiary companies—StaySKY Vacation Club Development, LLC ("StaySKY"); StayVacations, LLC ("Stay Vacation"); and StayVacation Finance, LLC ("Finance").

Loan 1: Vacation Club NCE will loan \$5.85 million to StaySKY for the purpose of purchasing 18 two bedroom condominium units from the Developer at a price of \$325,000 for each unit. Vacation Club NCE will charge 5% interest rate per annum for the loans. The units will serve as collateral for the loans. The units will be held in a Florida Land Trust owned 100% by Club Trust LLC ("Trust"). Trust also has 100% membership (ownership) of the borrowing entity, StaySKY. There are no representations to indicate that Trust is related to the LBV Regional Center or Vacation Club NCE. StaySKY will sell timeshare usage contracts on those condominium units as its business objective.

Loan 2: Vacation Club NCE will loan \$5.225 million to StayVacation for the purpose of purchasing and developing 10,000 square feet of commercial space in the first and second floor of Building #4 of the Resort (Lake Buena Vista Resort and Spa). \$3,150,000 will be used to purchase the commercial space with the rest of the funds used for closing costs, development costs, and marketing costs. The space will be pledged as collateral for the loan and StayVacation will pay 5% for five years to Vacation Club NCE for the loan with the principal due at the end of five years. The development of this space is related to Loan 1 since it is being developed to market and showcase the timeshare units to prospective buyers. Trust has 100% membership (ownership) of StayVacation. It is unclear if the property is also held in the Trust as in Loan 1.

Loan 3: Vacation Club NCE will loan \$23.925 million to Finance at 5% interest rate. Finance will use the funds to make ten year loans to prospective purchasers of the condominium units at the resort at a 12% to 16% interest rate for the purposes of providing bridge financing until traditional financing becomes available. It is not clear what will happen to the funds if they do not find buyers willing to take the bridge financing. The Confidential Private Placement Memorandum states that Finance will pledge all financing collateral to Vacation Club NCE to secure the payment of the loan. Trust owns 50% of Finance.

Flowchart Diagram Based Upon Claims Made by Regional Center for Project #2:



The ITT sets forth the following concerns about the continued status of the LBV Regional Center as a qualifying regional center under the Immigrant Investor Pilot Program related to Project #2:

Issue #	ITT Page	ITT Issue	ITT Cited Document
1	Page 21	Unsupported direct employment estimates	Evans, Carroll & Associates (Evans) analysis, dated November 2010, submitted in Amendment #4
2	Page 21	No IMPLAN industry sectors provided	Evans analysis
3	Page 21	Employment Density Estimates: explanation needed on how 412 direct jobs will fit into 10,000 sq ft of office space since it would normally require 82,400 to 94,266 sq ft.	Updated business plan; timeframes; feasibility of project; inputs in plan; identification of inputs in model; and explanation of issue.

Following a review of the entire record of evidence including the LBV Regional Center's response to the ITT and the interview, USCIS found that the Regional Center has adequately addressed the second issue related to Project #2. In response to the ITT, the LBV Regional Center provided the IMPLAN industry sectors. However, USCIS found that the LBV Regional Center ultimately did not adequately address the first and the third issues concerning Project #2.

Issues 1 and 3: Unsupported Direct Employment Estimates and Employment Density Estimates:

Issues # 1 and #3 are interrelated. The business plan for Project #2 involves the purchase of 18 condominium units from the Developer, 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. The Evans analysis estimates indirect and induced job creation based upon Project #2's direct employment staffing requirements (direct employment values). The analysis appears to rely principally on the metering of the square footage that is available at the Developer's facilities by the various categories of staffing positions to derive direct employment values. This analysis does not seem to take into account the actual staffing required to perform the duties to conduct the business activities cited in Project #2's business plan.

As discussed in the ITT, the LBV Regional Center failed to provide a breakdown or justification regarding how the direct employment values were derived. For example, the LBV Regional Center does not provide any description about why Project #2 will require 99 sales representatives (=23 In-House Sales Representatives + 76 Other Sales Representatives) to market timeshare usage contracts for 18 condominium units. Likewise, the LBV Regional Center has given no credible justification regarding why 31 employees would be required to participate in the "Sampler Program Development", which the LBV Regional Center

states to involve 6 condominium units that are to be a “lower-cost, shorter term vacation club program.” The LBV Regional Center estimates that Project #2 will require 129 additional employees to participate in marketing activities (= 75 Marketing Department + 54 Telemarketing), beyond the 99 sales representatives that are already noted. In addition, the LBV Regional Center estimates that Project #2 will require 26 food and beverage positions, but has not described how the food and beverage-related staffing levels were determined.

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 LBV Regional Center must describe in detail how the direct employment estimate was derived.

Response to ITT

In response to the ITT, the LBV Regional Center submitted letters from various LBV Regional Center and/or Project #2 principals, along with a staffing plan for Project #2.

USCIS has reviewed the referenced staffing plan, which consists of a listing of all staffing positions and the number of prospective staff needed for each position, along with the description of the job duties entailed in each position. This staffing plan is stated to be based upon “infrastructure requirements to support a timeshare business that is generating \$50 million in annual sales”. However, these sales estimates are not transparently supported by data that would show that according to industry standards Project #2’s annual sales estimate of \$50 million is reasonable. In summary, the record does not provide a credible justification for the estimated direct staffing needed for each position category.

It is noted that John Gordon, CEO of Sky Resort Management’s letter provides the same data that was presented in the Evans analysis, the defects of which have already been addressed by USCIS. Based on the letters provided and the Evans analysis, it appears that the LBV Regional Center is combining the required direct employees for all three proposed aspects of Project #2 into one overarching economic impact analysis. Regardless, the LBV Regional Center fails to provide a cogent and reasonable argument regarding why Project #2 will require 412 direct employees. For example, the Evans analysis estimates the number of direct employees who will work in the Vanguard Building by using an employment density estimate of 250 square feet per employee. However, the logic behind this approach is faulty. It is not reasonable to assume that creating office space for the purpose of conducting sales operations will also create the demand for sales or sales positions, or that this is a reasonable estimate of the actual staffing requirements that will be needed for Project #2. In addition, the applicant does not provide a cogent and reasonable argument regarding why Project #2 will require 99 sales representative to sell timeshare usage contracts in 18 or so condominium units, for the 31 employees to participate in Sampler Program Development, the 129 employees to participate in marketing activities, or the 26 food and beverage positions. Without a detailed, reasonable, and cogent argument regarding the demand factors behind the need for these positions, USCIS cannot be confident that the direct employment estimate is reasonable. Thus, USCIS cannot be confident

that the indirect and induced employment estimate, which is based on the direct employment estimate, is reasonable.

In the case that the estimation of direct employment could be considered logical or reasonable, the analysis remains flawed because a portion of the direct employment estimate is being calculated incorrectly. For example, the Evans analysis argues that 136 employees will be located in the LBV (10,000 square feet) or Enclave (3,800 square feet) sales centers. This is an unreasonable and inaccurate calculation. Assuming that these 136 employees occupy an equivalent 250 square feet of space per employee as in the Vanguard Building, this calculation should result in a direct employment estimate of 55.2 employees [= (10,000 sq. ft. + 3,800 sq. ft.)/250 sq. ft. per employee)], and not 136 employees.

Conclusion: Project #2

The evidence of record including the documentation presented in Amendment #4, and the response to the ITT, including the evidence presented during the interview, fails to demonstrate that Project #2 will create jobs in verifiable detail based upon a business plan and economic analysis that employs reasonable methodologies for estimating job creation through EB-5 capital investment. In light of the above, USCIS concludes that the LBV Regional Center is no longer eligible for designation for participation in the Immigrant Pilot Program as a regional center, based upon the scope of this regional center proposal amendment request, which is hereby denied as part of the termination of the regional center pursuant to 8 CFR 204.6(m)(6).

V. GRANTING LICENSING OF THE REGIONAL CENTER DESIGNATION

The ITT requested legal documents or citations supporting LBV Regional Center's authority to issue a license or to otherwise delegate LBV Regional Center's responsibilities for direct oversight of the enterprises, as USCIS is not aware of a legal basis for such a delegation of authority for the LBV Regional Center's administration. The response to the ITT included revised documentation that removed the provisions to grant licensing of the LBV Regional Center designation to other entities. Therefore, this issue has been resolved.

VI. DECISION

The LBV Regional Center has not provided countervailing evidence that would overcome all of the grounds presented in the ITT. The record as it is presently constituted does not demonstrate that the LBV Regional Center has served or will serve the purpose of promoting economic growth in keeping with the provisions of 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. Therefore the LBV Regional Center's designation is terminated.

If you desire to appeal this decision to terminate the LBV Regional Center's designation under the Pilot Program pursuant to 8 CFR 103.3(a)(2), you may do so. Your notice of appeal must be filed with this office at the address at the top of Form I-292 within 33 days of the date of this notice. Your appeal must be filed on Form I-290B. A fee of \$630.00 is required, payable to U. S. Citizenship and Immigration Services with a check

or money order from a bank or other institution located in the United States. If no appeal is filed within the time allowed, this decision will be the final decision in this matter.

In support of your appeal, you may submit a brief or other written statement for consideration by the reviewing authority. You may, if necessary, request additional time to submit a brief. Any brief, written statement, or other evidence not filed with Form I-290B, or any request for additional time for the submission of a brief or other material must be sent directly to:

U. S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, D.C. 20529-2090.

Any request for additional time for the submission of a brief or other statement must be made directly to the Administrative Appeals Office (AAO), and must be accompanied by a written explanation for the need for additional time. An extension of time to file the appeal may not be granted. **The appeal may not be filed directly with the AAO. The appeal must be filed at the address at the top of Form I-292.**

Sincerely,



Rosemary Langley Melville
Director
California Service Center

Enclosure: (1) Form I-290B
(2) Notice of Intent to Terminate issued on December 19, 2011.
(3) Attachment A

CC: Bruce A. Morrison, Esq.