

Form I-924A, Supplement to Form I-924; Request for Information

I. Background

Vermont Agency of Commerce and Community Development (VACCD) (“the Regional Center”) applied for designation as a regional center on June 26, 1997 pursuant to section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395.¹ On June 11, 2007, USCIS designated VACCD as a regional center and authorized its participation in the Immigrant Investor Program (the “Program”).

According to 8 C.F.R. § 204.6(m)(6), regional centers must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. The form that is used to demonstrate a regional center’s continued eligibility for regional center designation is the Form I-924A, Supplement to Form I-924 (“Form I-924A”).

On December 24, 2015, the Regional Center submitted the Form I-924A for fiscal year 2015 (RCW1536353984).

In the course of reviewing your FY 2015 I-924A and through publicly available information which has come out since that form was filed, issues have come to our attention that require additional information or evidence in order to demonstrate that your Regional Center is continuing to promote economic growth pursuant to 8 C.F.R. § 204.6(m)(6), including the ability to effectively administer the Regional Center.

We have reviewed the April 12, 2016 complaint² filed by the U.S. Securities and Exchange Commission (the “SEC complaint”) and the April 14, 2016 complaint³ filed by the State of Vermont (the “Vermont complaint”), regarding activities relating to the Regional Center. The 17 defendants in each complaint are:

¹ Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, as amended by section 116 of Pub. L. No. 105-119, 111 Stat. 2440 (1997); section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000); section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002); section 4 of Pub. L. No. 108-156, 117 Stat. 1944 (2003); section 1 of Pub. L. No. 112-176, 126 Stat. 1325 (2012); and section 575 of Pub. L. No. 114-113 (2015) (hereinafter “Appropriations Act”).

² See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>.

³ See

<http://www.dfr.vermont.gov/sites/default/ext/sl/dev/docs/State%20v.%20Quiros%20et.%20al.%20COMPLAINT%20SIGNED%20&%20FILED.pdf>.

Ariel Quiros; William Stenger; Jay Peak, Inc.; Q Resorts, Inc.; Jay Peak Hotel Suites, L.P.; Jay Peak Hotel Suites Phase II, L.P.; Jay Peak Management, Inc.; Jay Peak Penthouse Suites, L.P.; Jay Peak GP Services, Inc.; Jay Peak Golf and Mountain Suites, L.P.; Jay Peak GP Services Golf, Inc.; Jay Peak Lodge and Townhouses, L.P.; Jay Peak GP Services Lodge, Inc.; Jay Peak Hotel Suites Stateside, L.P.; Jay Peak GP Services Stateside, Inc.; Jay Peak Biomedical Research Park, L.P.; and ANC Bio Vermont GP Services, LLC.⁴

The SEC complaint alleges that “among other things, Quiros, Stenger, and the companies they run that have overseen the development and construction of the Jay Peak resort have misused more than \$200 million – more than half of all money raised by investors.”⁵ The Vermont complaint notes that “since 2008, Quiros has misappropriated at least \$50 million of investor funds to, among other things: (1) purchase Jay Peak Resort; (2) purchase Burke Mountain Resort; (3) back a personal line of credit to pay his personal income taxes; (4) pay taxes for an unrelated company Quiros owns; and (5) purchase a luxury condominium in Trump Place New York. Quiros also improperly used investor funds to pay for margin loan interest and fees (\$2.5 million) and to pay down and off margin loan debts.”⁶ In addition, funds originally earmarked for certain projects were allegedly improperly used for other projects.⁷

With regards to the biomedical facility project associated with Jay Peak Biomedical Research Park L.P. (JPBRP), the SEC and Vermont complaints allege that (1) JPBRP had raised \$83 million from 166 investors and seeks to raise an additional \$27 million from 54 investors⁸, (2) at least some of the funds raised had been diverted for other purposes unrelated to this project⁹, and (3) the Private Placement Memorandum for this project states that the ANC Bio Products were ‘currently in the process of FDA approval’ but that, in reality, Defendants had never applied for FDA approval for the ANC Bio Products despite stating the project was set to commence in October, 2014, without also including the material contingency that commencement of the project was dependent on FDA approval, and without disclosing the risk that the FDA might not approve the ANC Bio Products.¹⁰ In addition, the SEC complaint alleges that “although the Defendants have raised almost three-quarters of the money for the research facility, they have done almost no work on it other than site

⁴ See page 1 of the SEC and Vermont complaints.

⁵ See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>, p. 2.

⁶ See

<http://www.dfr.vermont.gov/sites/default/ext/sl/dev/docs/State%20v.%20Quiros%20et.%20al.%20COMPLAINT%20SIGNED%20&%20FILED.pdf>, p. 3-4.

⁷ This is noted throughout the SEC and Vermont complaints.

⁸ See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>, p. 7.

⁹ See

<http://www.dfr.vermont.gov/sites/default/ext/sl/dev/docs/State%20v.%20Quiros%20et.%20al.%20COMPLAINT%20SIGNED%20&%20FILED.pdf>, p. 33.

¹⁰ *Ibid.*, p. 34.

preparation and ground-breaking, and are years behind their original construction and revenue schedule”.¹¹

Additionally, according to the SEC complaint, “between October 2011 and December 2012, Stateside Phase VI (i.e., the NCE, Jay Peak Hotel Suites Stateside L.P.) raised \$67 million from 134 investors through an EB-5 offering of limited partnership interests to build an 84-unit hotel, 84 vacation rental cottages, a guest recreation center, and a medical center. Although the Stateside Phase VI offering was fully subscribed, the Defendants have only built the hotel. A small amount of work has been done on building the cottages and work has not yet begun on the recreation and medical centers.”¹²

In addition, a recent press report mentioned that on May 19, 2016 a Plainfield, VT “woman (Linda West) obtained a default judgement against her former employer, Seldon Technologies, in a lawsuit she filed alleging that the Windsor water filtration device maker fired her over objecting to financial irregularities stemming from the company’s participation in a federal government’s program awarding visas to foreign investors in exchange for helping to bankroll job creation.”¹³ The article also noted that Ms. West, “who worked as an accountant at Seldon from 2003 to 2012, sued the company in Vermont Superior Court in Woodstock (in) 2013, alleging that she was fired after she complained that Seldon used EB-5 funds to pay for a company officer’s purchase of Seldon stock in addition to his federal and state income taxes and deferred income allocation.”¹⁴ The judge ruled Seldon liable with damages to be determined by a jury at a later date.¹⁵ In fact, according to another article, on June 30, 2016 a Vermont state superior court jury awarded West \$400,000 in compensatory damages against Seldon, comprised of \$325,623 in lost back pay and \$74,377 in lost future pay.¹⁶

After conducting our review, USCIS has determined that additional information is required to ensure that the Regional Center is continuing to promote economic growth pursuant to 8 C.F.R. § 204.6(m)(6).

II. Request for Information

According to 8 C.F.R. § 204.6(m)(6),

¹¹See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>, p. 3.

¹²Ibid., p. 7.

¹³ See <http://www.vnews.com/Seldon-Technologies-lawsuit-claims-EB-5-via-program-financial-mismanagement-at-former-water-filtration-device-maker-2468881>.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ See [http://www.vnews.com/Jury-awards-former-Seldon-Technologies-employee-\\$400-000-in-malfeasance-lawsuit-3201629](http://www.vnews.com/Jury-awards-former-Seldon-Technologies-employee-$400-000-in-malfeasance-lawsuit-3201629).

[t]o ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of a regional center in the [Program] if a regional center fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

As explained in the Form I-924A instructions, the information collected through the Form I-924A permits USCIS to determine whether a regional center continues to serve the purposes of the Program. The regulations, as well as the I-924A form instructions, further indicate that USCIS may request more information or evidence. Accordingly, USCIS issues this request. In response to this notice, while not required, it may be helpful to provide a cover letter that acts as an executive summary, followed by a table of contents with sections that are tabbed at the bottom of the page.

Thus, please provide the following information and responses to these questions:

- In light of the new information that has come out since your FY2015 I-924A was submitted, please provide corrections, if needed, to the information supplied on that form by submitting a new FY2015 I-924A with the corrected information. (The corrected information should be highlighted and anything previously incorrect should be identified.) For example, your I-924A states that EB-5 investors invested \$17.5 million in ANC Bio Vermont GP Services, LLC. However, the Vermont complaint claims that EB-5 funds were transferred away from this entity for other purposes, including Ariel Quiros misusing and misappropriating some funds.¹⁷ Thus, should this \$17.5 million figure be corrected, and is any explanation needed in the I-924A with regards to this?

In addition, if any of the I-924A Forms prior to FY2015 need to be corrected, please supply them in a similar fashion.

- In light of the new information that has come out since your FY2015 I-924A was submitted, please provide an interim I-924A *for the period from December 24, 2015 (i.e., when that form was supplied to us) – Present.*

¹⁷ See

<http://www.dfr.vermont.gov/sites/default/ext/sl/dev/docs/State%20v.%20Quiros%20et.%20al.%20COMPLAINT%20SIGNED%20&%20FILED.pdf>, p. 33.

- The prior section (page 3) mentioned how the SEC and Vermont complaints allege various ways in which over \$250 million of EB-5 investors' funds were misused and/or misappropriated. Thus, how much of EB-5 investors' capital (i.e., each one contributed \$500,000) is now unavailable for actual EB-5 projects? Please delineate the source/components of the total. For any such capital now unavailable for actual EB-5 projects, are there any New Commercial Enterprises (NCEs) and projects which consequently now have a shortage of funds? If so, (1) please name them, (2) what is the amount of the shortage for each, and (3) what is the total project cost for each project with such a shortage?
- Please provide financial information which demonstrates whether each of the following entities have the ability (and resources) to ensure the Regional Center can continue to promote economic growth (including effectively run its affairs), particularly in light of the information that has been made public through the SEC and Vermont complaints: (1) the VACCD, and (2) all NCEs and Job Creating Entities (JCEs) associated with any projects connected to your regional center that have not yet been completed. (This would *inter alia* include any projects that are planned, but have not yet gotten underway, such as the facility associated with Jay Peak Biomedical Research Park, L.P.) If available, your response should include financial and/or bank statements, plus any other information which will address this.
- With regards to the biomedical facility project associated with Jay Peak Biomedical Research Park, L.P., the previous section mentioned the SEC and Vermont complaints' allegations that the project had incurred various misrepresentations, funding issues, and schedule problems. (See p. 3-4 above.) Given these alleged misrepresentations and funding and schedule problems, do you realistically expect this project to proceed and be undertaken? Please provide sufficient detail with regards to your response. Also, do you still intend to raise additional funds for this project and if so, why, and how much?
- As noted above in the Background section, the SEC complaint mentioned that the Stateside Phase VI (EB-5) offering was fully subscribed, but the Defendants have only built the hotel. Given that the full EB-5 funding was obtained, but much work remains to be done (i.e., on the vacation rental cottages, a guest recreation center, and a medical center), do you realistically anticipate the hotel to open for operations and the other facilities to be built? Do you expect there to be sufficient job creation to support Form I-829 (i.e., permanent residence status) approvals for all the EB-5 investors, or if not, for how many? How many jobs do you expect this project to create (i.e., for EB-5 job creation purposes)?
- The prior section also discussed recent court judgments in favor of Linda West against Seldon Technologies. (See page 4.) If you have any further information on this beyond what is noted in the articles referred to above, please provide that. In terms of her claims and the judgments mentioned in the articles, do you believe that EB-5 funds at Seldon were indeed used for purposes other than job creation, and if so, how much? Please explain.

According to USCIS records, 7 EB-5 investors in this project are currently awaiting our adjudication of their Form I-829 petitions for permanent residence status, 2 I-829s have been

approved, and 1 EB-5 investor has not yet submitted his/her I-829 Form yet (although his/her I-526 Form was approved). Given that (1) Seldon has shut down, as noted in your FY 2015 I-924A submission¹⁸, and (2) these court decisions, how many jobs were created by this project (i.e., for EB-5 job creation purposes)? Please explain with sufficient detail so that we can understand your view.

- With regards to all EB-5 investors whose funds were alleged to be misused or misappropriated (as described in detail above), have they been informed of this by VACCD, the Receiver (Michael Goldberg), or anyone else connected to your regional center? If so, by whom and when?
- According to our records with regards to your regional center, USCIS received the most recent Form I-526 petitions filed by alien investors under Jay Peak Biomedical Research Park, L.P. and Q Burke Mountain Resort, Hotel and Conference Center, L.P. on April 18, 2016 and May 24, 2016, respectively. Please indicate when the Regional Center became aware of the alleged diversion of investors' funds in relation to (1) any investigative action(s) taken¹⁹, and (2) the Regional Center's marketing activities for the projects. Please provide evidence regarding what steps, if any, the Regional Center takes to engage in monitoring and oversight of the projects that it sponsors.
- Additionally, in light of the SEC and Vermont complaints and other information that has come out since your FY2015 I-924A was submitted, please provide evidence regarding what new steps, if any, the Regional Center has taken or plans to take in monitoring and oversight of the projects that are subject of the complaints discussed above.
- Are there any other problems and issues, in addition to those noted above, that could adversely affect your Regional Center's ability to continue to promote economic growth and create jobs, as well as effectively administer the Regional Center's affairs (including monitoring the NCEs, JCEs, and financial flows involved)?

III. Conclusion

USCIS requests that the Regional Center provide the additional information and evidence specified above. If the Regional Center fails to submit such additional information and evidence, USCIS will issue a notice of intent to terminate the Regional Center's participation in the Program.

Thank you for your time.

¹⁸ With regards to the Seldon Technologies (SWCP, LP) project, your FY15 I-924A reads, "On September 28, 2015, Seldon underwent an orderly shutdown of all its operations. Consequently, all employees were laid-off indefinitely and an auction of intellectual and personal property followed."

¹⁹ This includes, but is not limited to, actions by law enforcement and regulatory agencies, to include the Vermont Department of Financial Regulation.