



U.S. Citizenship
and Immigration
Services

Date: 07/17/2014

Benjamin B. Cummings
C/O Birch Capital LLC
11117 Bothwell Street
Richmond, VA 23233

Application: Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program

Applicant(s): Birch North Carolina Regional Center

Re: Initial Regional Center Designation
Birch North Carolina Regional Center
RCW1217850697 / ID1217850697

On 12/05/2013, USCIS approved the Birch North Carolina Regional Center (BNCRC) for participation in the Immigrant Investor Program as a designated Regional Center without mentioning a project by name in the approval letter. BNCRC submitted electronic correspondence on 12/12/2013 to USCIS disagreeing with the approved decision, maintaining that it was seeking the review and approval of Initial Regional Center Designation with an Actual project¹.

U.S. Citizenship and Immigration Services (USCIS) has decided to reconsider the approval decision of the Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program that was filed by the applicant with the U.S. Citizenship and Immigration Services ("USCIS") on 06/26/2012. After consideration of the law, regulations and policy guiding USCIS, it is concluded that the decision dated, 12/05/2013, was made in error. This has prompted USCIS to reconsider the decision on your Form I-924.

¹ An actual project is a project that the applicant feels certain will meet established EB-5 eligibility requirements outlined in 8 CFR 204.6(j) and Matter of Ho, 22 I. & N. Dec. 206, (Assoc. Comm'r 1998). Generally, this would be a project that has advanced to the stage where work may begin immediately upon approval of the project.

USCIS has reopened and issued an amended approval to your Form I-924 as followed:

The Form I-924 application was filed to request approval of initial regional center designation under the Immigrant Investor Program. The Immigrant Investor Program was established under § 610 of the Department of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Pub. L. 102-395, Oct. 6, 1992, 106 Stat. 1874).

In addition to the Form I-924, the applicant is seeking USCIS review and approval of an actual project supported by a comprehensive business plan as contemplated in Matter of Ho, 22 I. & N. Dec. 206 (Assoc. Comm'r 1998).

I. Executive Summary of Adjudication

Effective the date of this notice, USCIS approves the Form I-924 request to designate Birch North Carolina Regional Center as a qualifying participant in the Immigrant Investor Program.

1. Effective the date of this notice, USCIS approves the Birch Wilmington Fund, LP project based on the evidence submitted with the exemplar Form I-526.

II. Regional Center Designation

USCIS approves the applicant's request to focus, promote economic growth, and offer capital investment opportunities in the following geographic area and industry categories:

A. Geographic Area

State
North Carolina

B. Industry Categories²

NAICS	Industry Name
7211	Traveler Accommodation
7222	Full Service Restaurant

² USCIS issued a Policy Memorandum (PM-602-0083) on the subject of "EB-5 Adjudication Policy," dated May 30, 2013, stating that formal amendments to the regional center designation are no longer required when a regional center changes its industries of focus or geographic boundaries. A regional center may still elect to pursue a formal amendment by filing Form I-924 if it seeks certainty in advance that changes in the industries or the geographic area will be permissible prior to filing Form I-526 petitions.

2362	Non-residential Building Construction
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III. The Project

Effective the date of this notice, USCIS approves the applicant's request to include the following actual capital investment project.

Project	Type of Project	Organization Documents	Date of Document
<u>Birch Wilmington Fund, LP</u> Geographic Location: Wilmington, North Carolina Focus of Investment: Loan and equity.	Actual Project	Business Plan	Revised November 2013
		Economic Analysis	November 2012

Note: If changes to this project and its supporting documents are found in subsequent Form I-526 or Form I-829 petitions, USCIS will review the supporting documents once more to ensure compliance with EB-5 program requirements.³

(b)(4) The proposal identifies the new commercial enterprise ("NCE") of the project as Birch Wilmington Fund, LP. The project is located at 515 Nutt Street in the City of Wilmington, North Carolina. [redacted] immigrant investors will subscribe to the NCE as limited partners in exchange for capital contributions of \$500,000 each and an aggregate of [redacted] of EB-5 capital from all investors. (b)(4) (b)(4)

The NCE will loan the [redacted] EB-5 capital to a third-party entity, Wilmington Convention Hotel, LLC. The EB-5 capital loan proceeds will be used to finance the construction of a Hilton Embassy Suites full service conference center hotel in Wilmington, North Carolina. The development involves the construction of a 194-room, full service hotel as well as meeting/conference space, a full-service restaurant and ancillary convenience retail facilities on a site that is approximately 33,000 square feet. The projected total cost of the project is [redacted]. The project will take less than two (2) years to complete and will generate approximately [redacted] jobs.

A. Job Creation

USCIS approves the geographic area and industry categories noted above based on the economic impact analysis presented and reviewed in conjunction with the adjudication of

³ Please note that after a cursory review of the organizational documents in the record, it appears that the draft offering memorandum contains a discrepancy with regards to naming a developer of the project not mentioned in the business plan. Both developers appear to be subsidiaries of the same company "Harmony Hospitality, Inc."

this capital investment project. The job creation methodology presented in the economic impact analysis and underlying business plan is found to be reasonable based on the following inputs, when applying the RIMS II economic model:

NAICS	Industry Name	Input (\$Millions in 2010 dollars)	Multiplier	Jobs
2362	Non-residential Building Construction	(b)(4)	(b)(4)	(b)(4)
7211	Traveler Accommodation			
7222	Full Service Restaurant			

*indirect jobs only

The approval of this Form I-924 application is based upon the assumptions and estimates used as inputs in the business plan for job creation. Please refer to the input and multiplier analysis table above.

When an actual project is specifically named in this notice and the critical inputs remain materially unchanged, USCIS will give deference to the job creation methodology when adjudicating Forms I-526 associated with the named project. The same business plan and the same reasonable job creation methodology and projected inputs must be submitted when the individual investor's Form I-526 is filed in order to receive deference.

It will be the responsibility of the individual investor to demonstrate that the assumptions and estimates presented as inputs to the job creation methodology remain materially unchanged when he or she files a Form I-526. When filing Form I-829 for removal of conditional status, the individual investor has the burden of demonstrating that the assumptions and estimates presented as inputs to the job creation methodology have not materially changed and have been realized (or can be expected to be realized within a reasonable time).

If the job creation estimated in the business plan materially changes or will not be realized, then it will be the responsibility of the EB-5 investor to notify USCIS of an agreed upon methodology to allocate job creation among eligible investors.

IV. Guidelines for Filing Form I-526 Petitions Based on Birch Wilmington Fund, LP project

Each individual petition, in order to demonstrate that it is affiliated with the Birch North Carolina Regional Center, in conjunction with addressing all the requirements for an individual immigrant investor petition, shall also contain the following:

1. A copy of this regional center approval notice and designation letter including all subsequent amendment approval letters (if applicable).

2. An economic impact analysis which reflects a job creation methodology required at 8 CFR § 204.6 (j)(4)(iii) and shows how the capital investment by an individual immigrant investor will create not fewer than ten (10) indirect jobs for each immigrant investor.
3. A comprehensive, detailed and credible business plan for an actual project that contains the factual details necessary to be in compliance with the requirements described in Matter of Ho, 22 I&N Dec. 206 (Assoc. Comm'r 1998).
4. Legally executed organizational documents of the commercial enterprise. The documents may be the same documents noted in Section III of this approval notice.

Note: If the project timeline has changed significantly from the original business plan, a narrative that explains the changes in the project timeline, along with a timeline that realistically reflects the status of the project should be submitted.

V. Designee's Responsibilities in the Operations of the Regional Center

As provided in 8 CFR § 204.6 (m)(6), to ensure that the regional center continues 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, and increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis or as otherwise requested by USCIS. The applicant must monitor all investment activities under the sponsorship of the regional center and to maintain records in order to provide the information required on the Form I-924A Supplement to Form I-924. Form I-924A, Supplement to Form I-924 Application is available in the "Forms" section on the USCIS website at www.uscis.gov.

Regional centers that remain designated for participation in the Immigrant Investor Program as of September 30th of a calendar year are required to file Form I-924A Supplement in that year. The Form I-924A Supplement with the required supporting documentation must be filed on or before December 29th of the same calendar year.

The failure to timely file a Form I-924A Supplement for each fiscal year in which the regional center has been designated for participation in the Immigrant Investor Program will result in the issuance of an intent to terminate the participation of the regional center in the Immigrant Investor Program, which may ultimately result in the termination of the designation of the regional center.

The regional center designation is non-transferable.

VI. Legal Notice

This approval and designation of a Regional Center under the Immigrant Investor Program does not constitute or imply an endorsement or recommendation by USCIS, the United

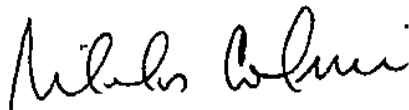
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States Government or any instrumentality thereof, of the investment opportunities, projects or other business activities related to or undertaken by such Regional Center. Except as expressly set forth in this approval and designation, USCIS has not reviewed any information provided in connection with or otherwise related to the Regional Center for compliance with relevant securities laws or any other laws unrelated to eligibility for designation as a Regional Center. Accordingly USCIS makes no determination or representation whatsoever regarding the compliance of either the Regional Center or associated New Commercial Enterprises with such laws.

Each Regional Center designated by USCIS must monitor and oversee all investment offerings and activities associated with, through or under the sponsorship of the Regional Center. The failure of an associated New Commercial Enterprise to comply with all laws and regulations related to such investment offerings and activities may result in the issuance by USCIS of a notice of intent to terminate the Regional Center designation.

If the applicant has any questions concerning the regional center designation under the Immigrant Investor Program, please contact the USCIS by email at USCIS.ImmigrantInvestorProgram@uscis.dhs.gov.

Sincerely,



Nicholas Colucci
Chief, Immigrant Investor Program

cc: Sheila deLa Cruz
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