

Don't End Up on a USCIS List of Terminated EB-5 Regional Centers: Be Creative and on Time with your I-924A Filing

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USCIS updated its online [list of terminated EB-5 regional centers](#) on October 22, 2015. In the coming two months, regional centers are required to comply with the requirement to file their Forms I-924A in order to update USCIS on relevant job creating activity over the past year. We expect that USCIS will terminate more regional centers in the next six months where there are credibility issues over data supplied by regional centers in these filings, or where regional centers simply fail to update the agency through filing a Form I-924A. It would be fully within the realm of reasonable expectations to see at least 100 or more terminations initiated within the coming year. As USCIS uses more resources to tighten up administration of the EB-5 regional center program, and with lawmakers looking closely at the program, dormant or non-compliant regional centers may find their designations revoked.

On what basis may USCIS revoke or terminate a USCIS regional center designation?

From a legal standpoint, USCIS is limited by the law with respect to terminating regional centers. The agency has no legal basis to issue a notice of intent to revoke a regional center designation for any reason. Rather, the two reasons would be either: (1) a failure of a regional center to file a Form I-924A; or (2) a failure of the regional center to promote economic growth. Under current law, USCIS does not have any blanket authority to initiate proceedings to terminate a regional center designation on other grounds, such as concerns of fraud or criminal activity. In fact, a [recently issued report on EB-5 issued by the United States General Accountability Office](#) (GAO) highlighted the issue of some regional centers continuing to operate “despite concerns of fraud or associations with criminal activity.” The GAO Report specifically pointed to one scenario where a regional center was permitted to continue operating where a regional center principal was indicted for wire fraud, and who was, at the time, in custody of a foreign country. According to the GAO Report, USCIS terminated the regional center only when the principal failed to file a Form I-924A (See GAO Report, pp. 32-33).

Fraud is a concern, but USCIS should be balanced in how regional center designations are terminated

Swinging the pendulum too far in the direction of enforcement can backfire, with otherwise law abiding regional centers potentially being swept up inadvertently into a USCIS enforcement net. Regional centers need to provide USCIS with adequate information to explain inactivity that may be justifiable. Carefully crafting and documenting a Form I-924A is especially important for new regional centers, or for those regional centers with less activity. Proactively scaling down the geographic scope of a regional center could, in certain cases, bolster a regional center's credibility with USCIS in the event that there is simply no business case to make for EB-5 projects in large swaths of a regional center's territory. The point is be strategic and use the I-924A as a reporting opportunity.



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USCIS will be under pressure to terminate regional centers with little or no activity to promote economic growth

In previous years, an annual Form I-924A filing was viewed as ministerial, or as a data collection activity requiring minimal efforts. Nothing could be further from the truth with respect to the current climate at USCIS. We think weakly supported I-924As will be a red flag to USCIS and trigger, potentially, site visits or further inquiries. This would be in line with how USCIS routinely approaches anti-fraud efforts. When you complete a Form I-924A even with strong evidence, think outside the box — literally. Don't just limit your responses to a literal reading of the questions on Form I-924A, but give USCIS as much solid evidence of your regional center's activities to promote economic growth. Be realistic about the scope of what your regional center can do. And file your I-924A on time.

Credibility is key

If you have exemplars on file with USCIS for projects that are simply not feasible, consult with counsel about withdrawing those cases. Hastily prepared pre-September 30th I-924 exemplar petitions may not serve you well in the long term. Coordinate such an effort with your I-924A filing. The best way to do business with USCIS is to be credible. Poorly documented or clumsily prepared project materials with infeasible or inaccurate deal terms for exemplars can trigger questions about a regional center's ability to conduct credible business. The I-924A process can be an opportunity to announce to USCIS that you have the right controls and processes in place to run a strong regional center, even if you have new projects in the pipeline and few investors.

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