



U.S. Citizenship  
and Immigration  
Services

HOOPRD 70/6.2.8

**MAR 19 2007**

**Kevin L. Dorn**

Secretary of the Vermont Agency of Commerce and Community Development  
National Life Building  
Montpelier, VT 05620-0501

John W. Kessler

General Counsel

Vermont Agency of Commerce and Community Development  
National Life Building, Drawer 20  
Montpelier, VT 05620-0501

Re: Vermont Agency of Commerce and Community Development (VACCD) Regional Center  
Amendment

Pursuant to Section 610 of the Appropriations Act of 1993, on June 26, 1997, the Vermont Agency of Commerce and Community Development (VACCD) was initially approved and designated by the former Immigration and Naturalization Service (INS) as a regional center to participate in the Immigrant Investor Pilot Program for the purpose of attracting immigrant investor capital into the State of Vermont.

In a letter from U.S. Citizenship and Immigration Services (USCIS) dated July 14, 2006, the VACCD Regional Center was asked to provide an update on the activities and present status of its regional center since its designation by the former INS in 1997. In a August 23, 2006 response to USCIS, it was explained that Vermont's regional center program had not successfully solicited EB-5 immigrant investor capital primarily because of problems which occurred in the EB-5 program overall at the time of the Vermont designation with respect to the legacy INS' suspension of the program to address practices by various agent/attorneys and immigrant investors to apparently circumvent the capital and job creation requirements intended both in the statute and the regulations governing the program. The August 23<sup>rd</sup> response further stated the state's firm intent to resurrect and restart its regional center, and that it desired to amend its regional center designation to recognize that job creation need not be based on export sales (as provided by the 2000 and 2002 amendments to the statute) and to accommodate a broader focus by the regional center on multiple business sectors of the state such as dairy farming, specialty foods processing, environmental research and its technical applications, incubator businesses, manufacturing in all sectors, as well as its initial focus on Hospitality Lodging, Restaurants, Retail and Commercial Resort activities.

Towards this end, in a subsequent letter dated November 16, 2006, the Governor of Vermont:

1. Designated the Secretary of the VACCD to serve as the principal representative of the VACCD in its capacity as a regional center;
2. Designated the General Counsel of the VACCD to function as the principal administrator of the VACCD Regional Center; and
3. Authorized that Jay Peak Hotel Suites L.P., which had been identified as a possible major commercial enterprise at the time of Vermont's 1997 regional center application, now assist in the management, administration and overall compliance of the immigrant investor initiative for the Jay Peak Luxury Suites Hotel commercial resort improvement project.

On January 31, 2007 VACCD requested approval to amend its regional center designation as follows:

1. That USCIS review and approve, for purposes of the restarted operation of the VACCD Regional Center, the executed Memorandum of Understanding between the State of Vermont Agency of Commerce and Community Development and Jay Peak Hotel Suites, L.P. by which Jay Peak Hotel Suites, L.P. will carry out its development project and is authorized:
  - a. To create an EB-5 Alien Entrepreneur investment project within the VACCD Regional Center focused on the development and operation of a resort hotel suite project.
  - b. Managing and operating this hotel suite investment enterprise; and
  - c. To identify and recruit viable foreign investors for the hotel suite investment enterprise.
2. To augment the original VACCD Regional Center's economic impact and job creation analysis and model, replacing it with a December 1, 2006 Job Impact Analysis for the Jay Peak Resort Expansion based on the Regional Dynamics Economic Analysis Model, commonly referred to as REDYN.
3. To replace the Jay Peak Resort initial business plan which had been a supplement to the VACCD Regional Center's initial request as reflected in its initial June 1997 designation by the former INS, with a business plan that is current, more detailed and focused on a Jay Peak Resort Hotel Suites Project to include:
  - a. A luxury hotel comprised of 57 exclusive suites;
  - b. 25,000 square feet of commercial space on two floors which will contain a wide range of commercial and recreational activities as follows: ski rental facilities; children's nursery school facilities; supermarket and delicatessen; hair and beauty salon; a full service restaurant; a bar and lounge; a coffee shop and snack bar; a fast food carry-out facility; and retail units for stores and shops to lease out to vendors.

Based on its review and analysis of the January 31, 2007, request to amend the previous VACCD Regional Center designation, USCIS approves this amendment to the designation, business plan and job creation analysis and multipliers for the VACCD Regional Center reflecting the above 3 changes. In accepting the amendment, USCIS has updated its records of the VACCD Regional Center approval and designation, business plan, and job creation methodology to encompass these amendments.

As such, aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with USCIS for the Jay Peak Resort project which is located in a rural area within the VACCD Regional Center geographic area comprised of the entire State of Vermont. Therefore, the minimum capital investment threshold for any individual immigrant investment into the Jay Peak Hotel Suite Project through the VACCD Regional Center shall be not less than \$500,000.

Alien entrepreneurs who file petitions for investments located in the VACCD regional center must fulfill all of the requirements set forth in 8 CFR 204.6, except that the petition need not show that the new commercial enterprises created ten new jobs indirectly as a result of the alien entrepreneur's investment. This determination has been established by way of the USCIS' acceptance within the approved amendment of the VACCD Regional Center's new Job Impact Analysis for the Jay Peak Resort Project utilizing the Regional Dynamics Economic Analysis Model, commonly referred to as REDYN.

However, where preservation or creation of "direct jobs" is claimed in support of an immigrant investor's individual I-526 petition affiliated with the VACCD Regional Center, then:

- To be credited for preserving/maintaining pre-existing direct jobs for "qualified employees" within the VACCD Regional Center for a "troubled business" as defined by the regulations at Part 204.6(e), the individual I-526 petition must be supported by probative evidence of the number of full time (35 hours per week) qualified employees for the 1 to 2 years prior to filing the petition whose positions shall be preserved/maintained throughout the alien's period of conditional residency. Such evidence should include copies of quarterly state employment tax reports, Forms W-2, Forms I-9, and any other pertinent employment records sufficient to demonstrate the number of "direct" qualifying pre-existing full time jobs in the enterprise preserved/maintained, and any other pertinent employment records sufficient to demonstrate the number of employees before the investment.
- To be credited with projected creation of new "direct" jobs for "qualifying employees" upon filing the I-526 petition, then the petition must be supported by a comprehensive detailed Jay Peak Luxury Hotel Suite Project business plan and supporting financial, marketing and related data and analysis providing a reasonable basis for projecting creation of the new direct jobs.

Each individual petition, to demonstrate that it is associated with the VACCD Regional Center, in conjunction with addressing all the requirements for an individual alien entrepreneur

petition, shall also contain as supporting evidence relating to this regional center designation, the following:

1. A copy of this letter of the amended approval and designation.
2. A copy of the approved regional center narrative proposal and business plan, and the approved amendments.
3. A copy of the approved job creation methodology required in 8 CFR 204.6(j)(4)(iii), as contained in the amended regional center economic analysis which has been approved by USCIS, which reflects that investment by an individual alien investor of at least \$500,000 into the Jay Peak Resort luxury hotel project will generate full-time employment positions, either directly or indirectly, for not fewer than ten U.S. workers.
4. A signed legally executed copy of the limited partnership agreement between the Jay Peak Hotel Suites L.P. and the alien investor.

The reaffirmation by the USCIS of the designation of the VACCD as a regional center does not reflect any determination on the merits of individual petitions filed by alien entrepreneurs under the Investor Pilot Program. All petitions for alien entrepreneurs who invest within the regional center will be adjudicated by the USCIS on a case-by-case basis and each petition must be fully documented. The individual petitions must be submitted to the Texas Service Center.

If you have any questions concerning the SDIBI/DEDR approval and designation under the Immigrant Investor Pilot Program, please contact Maurice Berez, Chief Adjudications Officer, Foreign Trader, Investor and Regional Center Program, at (202) 272-8413.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Allen", with a horizontal line underneath and a small mark to the right.

John M. Allen  
Acting Chief  
Service Center Operations

CC: Edward J. Carroll  
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