

How Do You Define the Economic Zones for A Regional Center's Limited Geographic Area?

By Joseph P. Whalen (Sunday, May 7, 2017)

INTRODUCTION

This missive shall focus on approaches to answering the question that serves as *its* title. AAO explored this topic in [Matter of CMBS-R-C-, LLC, ID# 16504 \(AAO Aug. 22, 2016\)](#).¹ There will be more about that later but first the stage must be set. Admittedly, this subject matter is harder to grasp than it may seem at first blush. Don't let yourself be fooled or lulled into a false sense of security. The statute specifies that the geographic area must meet at least two disparate yet complimentary criteria; *size* and *composition*. The geographic area needs to be defined in terms of economic cohesiveness. Economic cohesiveness is the result of balancing multiple factors. The authorizing statute, §610(a) of the Judiciary Appropriations Act of 1993², uses the undefined term, '*economic zones*' which must have clearly defined boundaries. ([A] *limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones.*) *Id.*

SIZE MATTERS, BUT IS NOT EVERYTHING

A geographic boundary is only one type of boundary. While a Regional Center must be a **specific** '*limited geographic area*', the economic zone's boundaries need not be an exact match. In fact, I will go out on a limb here and advocate that the geographic boundaries of

¹ [https://www.uscis.gov/sites/default/files/err/K1%20-%20Request%20for%20Participation%20as%20Regional%20Center/Decisions Issued in 2016/AUG222016_01K1610.pdf](https://www.uscis.gov/sites/default/files/err/K1%20-%20Request%20for%20Participation%20as%20Regional%20Center/Decisions%20Issued%20in%202016/AUG222016_01K1610.pdf)

² (a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a program to implement the provisions of such section. Such program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a **limited geographic area**, which shall be described in the proposal and **consistent with the purpose of concentrating pooled investment in defined economic zones**. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

economic zones and the overall Regional Center's boundaries should not be the same, unless dealing with an island and even then it would depend on the size and population of the island. A Regional Center's geographic boundaries need to **encompass** at least one clearly defined economic zone, but need to take into account the bigger picture and the ripple effect of economic activities. Regional economic impacts will go further than the defined boundaries of some convenient and often arbitrary area. Defined 'economic zones' are usually defined for very specific reasons, sometimes political reasons or conforming to an area defined for another purpose.

Municipalities or counties could have blighted **neighborhoods**, or 'slums' that need **revitalization**, however, those local governments could be strapped for cash. If so, they might offer 'tax credits', 'matching funds', 'carbon credits', or any of a number of other incentives in order to spur investment and development. A Regional Center might get lucky and be handed a well-defined cohesive economic zone that has been studied and has development plans ready to go. The only thing lacking is the money to carry out those plans. An Applicant for a Regional Center might consider such a package as a gift, and rightly so but, some Regional Centers might be tempted to use this area alone as its EB-5 footprint. That would be a mistake because it is too small. As the EB-5 stakeholder community knows, EB-5 Regional Centers rely on Economic Impact Analyses (EIAs) which cover areas radiating out from the center of any economic activity. I will go back out on that limb again and say that a Regional Center **must** include some areas beyond, but adjacent to, the economic zones. For example, suppose that the Regional Center was working closely with a particular local government, in order to be awarded a piece of property for renovation. In this example it could be a currently vacant school, housing project, library, church, or even a rundown park.

"TRIED & TRUE" v. "BRAND SPANKIN' NEW" ECONOMIC ZONES

Empowerment, revitalization, historic preservation, and redevelopment areas or zones might be defined by a State redevelopment agency, a city council, a county legislature, or some other body or agency. The reasons for selecting an area as one of these zones might be purely political and not based on sound business or economic reasoning. When that happens, one of these 'gifts' could be a 'booby-prize' in disguise. If a Regional Center is considering adopting one of these, then they need to re-examine it for development viability.

USCIS is becoming more adept at evaluating proposed Regional Center geographic boundaries and the defined economic areas contained therein. I believe that the folks at the Immigrant Investor Program Office (IPO) are still in the process of wrapping their collective head around this concept. As mentioned above, AAO addressed this issue in *Matter of CMBS-R-C-, LLC*; wherein they explained that a Regional Center Applicant "... must, among other requirements- (1) **propose** a clearly identified, viable, contiguous geographical area, (2) **describe** how investment capital will create qualifying EB-5 jobs, directly or indirectly, in that area, and (3) **predict**, through reasonable methodologies, the regional or national impact." *Id.* at p. 4. (**Emphases added.**)

The tripartite description of what is expected in every Regional Center Proposal concerning the geographic boundaries clearly demonstrates that it takes some thought. Each of those three parts begins with an active verb. *Propose*, *describe*, and *predict*; all require some active deep thinking. In other words, an Applicant must **justify** their selection of geographic area and **explain** how their activities will benefit it economically. It is of critical importance that the proposal **estimate** the potential **quantity** of jobs, and types (or **quality**) of jobs that should be **created** by the expected activities.

If somebody else has gone to the trouble of figuring out what is needed in their local economy, then a large portion of the hard work **may** have been done already. I suggest using it **but only if** it will be of use in meeting all legal requirements and EB-5 goals. The area chosen must make sense and be manageable. It might require starting from scratch. Next, there is the challenge of figuring out how to get to the desired outcome; meeting those goals. In other words, what types of projects will fit into the framework that has been fleshed out so far for a particular "defined economic zone" in the "limited geographic area"? We cannot forget that these development projects, economic activities, or business plans need to meet all EB-5 eligibility requirements. Will the identified types of investment vehicles require funding in the multimillion dollar range? If yes, then will they create enough jobs for the EB-5 investors, in the allotted time period? Finally, are the investment attractive to potential EB-5 investors?

That's My Two-Cents. For Now!