

JAN 16 2009



U.S. Citizenship
and Immigration
Services

CO 703.2342

The Honorable John Cornyn
United States Senate
Washington, DC 20510

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Dear Senator Cornyn:

This is to acknowledge your letter to Acting Director Aytes dated December 10, 2008, requesting information about the job creation requirement for immigrant investors. You ask for U.S. Citizenship and Immigration Services view on the job creation requirement as it applies to Regional Centers generally and the construction industry specifically, especially for multi-year, large scale construction projects.

As most "construction jobs" are intermittent, temporary, seasonal, transient, and filled by subcontractors, they usually will not be credited for employment creation immigration purposes, *Spencer Enterprises, Inc., Chang et al v. United States of America, et al* United States District Court, Eastern District of California (CIV-F-99-6117) March 28, 2001, aff'd and adopted in the Ninth Circuit 2003. However, certain circumstances will allow for counting certain construction jobs. At the Form I-526, "Immigrant Petition by Alien Entrepreneur," comprehensive business plan stage, construction jobs predicted to be of at least 2 years duration as "continuous, full time employment," rather than intermittent, seasonal employment, may be credited. At the Form I-829, "Petition by Entrepreneur to Remove Conditions," stage, those construction jobs that have been "continuous, permanent employment," rather than intermittent, seasonal employment, having lasted a full 2 years and that continue in existence through adjudication of the I-829 petition, may be counted in the job creation total.

An example of a project that may employ craftsmen for a full 2 years might be a masonry structure requiring masons in a full time capacity for the duration of the project as well as the architects and engineers while other trades would generally be ineligible short term subcontractors. Another example might be the construction of a massive suspension bridge such as the Golden Gate Bridge that employed the same people for the long term riveting and stringing the cables.

Indirect and induced jobs created as a result of construction jobs whether counted or not may be included in the job count. Even when the construction jobs may not be counted towards the job creation requirement, they do have indirect and induced impacts that are eligible to be included in the final job count because they are "continuous, permanent employment."

In your letter you also inquire as to the number of Texas businesses that have requested EB-5 Regional Center certification in the past fiscal year. There is currently one in Houston, Global Century Regional Center as you noted but Texas is also covered by another Regional Center that crosses state lines into Oklahoma, Southwest Bio-fuels Regional Center. Currently there is one additional proposal pending adjudication for the city of Dallas. One proposal was denied in March 2008.

Thank you for your continuing interest in and support of the Immigrant Investor Pilot Program.

We hope the information provided is helpful. If we may be of assistance in the future, please let us know.

Sincerely,

FOR THE DIRECTOR



James W. McCament
Chief