



**U.S. Citizenship
and Immigration
Services**

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services
Immigrant Investor Program
131 M Street, NE, Mailstop 2235
Washington, DC 20529

Date: November 9, 2023

EB5AN Non-Continental Regional Center, LLC
c/o Michael Schoenfeld
954 Avenida Ponce de Leon, Suite 205
San Juan, PR 00907-3648

Application: Form I-956
Application for Regional Center Designation

Applicant(s): EB5AN Non-Continental Regional Center, LLC

Re: Amendment to an Approved Regional Center
INF2300001545 / RC2300001545

On December 20, 2022, EB5 Affiliate Network Commonwealth of Puerto Rico (“the Regional Center”) filed a Form I-956 with U.S. Citizenship and Immigration Services (“USCIS”) to request amendment to an approved regional center in accordance with section 203(b)(5)(E) of the Immigration and Nationality Act (“INA”). Specifically, the Form I-956 requested the following:

- Approval to change to the regional center’s name;
- Approval to change the regional center’s ownership, organizational structure, or administration, including the sale of the regional center, or other arrangements that would result in individuals not previously subject to the requirements under INA § 203(b)(5)(H) becoming involved with the regional center; and
- Approval to change the geographic area of the regional center.

The Regional Center entity was established on February 9, 2018, in Florida and is structured as a Limited Liability Company. The Regional Center was initially approved for designation on February 14, 2021. Based on the initial designation and any subsequently approved amendments, the Regional Center has jurisdiction over the following geographic area:

State	Counties/Cities
Puerto Rico	Entire Commonwealth

Based upon a review of the initial record of evidence, U.S. Citizenship and Immigration Services (“USCIS”) could not conclude that the Regional Center has demonstrated that it meets the relevant requirements for the changes requested. On August 4, 2023, USCIS issued a Notice of Intent to Deny (NOID) which identified deficiencies in the record with regard to the following:

- Geographic Area of the Regional Center; and
- Identities and Attestations of Persons Involved with the Regional Center.

On September 6, 2023, the applicant responded to the NOID with the submission of additional evidence.

Effective as of the date of this notice, USCIS approves the Regional Center’s request *with limitations* as discussed further below.

I. Regional Center Designation

A. Change to Name

Under INA § 203(b)(5)(E)(vi)(I), a regional center must file an amendment not later than 120 days before the implementation of the significant proposed changes to its organizational structure, ownership, or administration, including the sale of the regional center or other arrangements which would result in individuals not previously subject to the eligibility requirements under 203(b)(5)(H) becoming involved in the regional center. If exigent circumstances are present, regional centers must provide notice to USCIS not later than five (5) business days after a change.

USCIS’s Instructions to the Form I-956 require the applicant to file an amendment to seek approval for changes to the regional center’s name.

The Regional Center requested approval to change its name from EB5 Affiliate Network Commonwealth of Puerto Rico, LLC to EB5AN Non-Continental Regional Center, LLC.

After reviewing the submission, USCIS determined that the documents submitted by the Regional Center are sufficient to justify approval of the amendment to change the Regional Center’s name.

B. Changes to Ownership, Organizational Structure, Administration

Under INA § 203(b)(5)(E)(vi)(I), a regional center must file an amendment not later than 120 days before the implementation of the significant proposed changes to its organizational structure, ownership, or administration, including the sale of the regional center or other arrangements which would result in individuals not previously subject to the eligibility requirements under 203(b)(5)(H) becoming involved in the regional center. If exigent circumstances are present, regional centers must provide notice to USCIS not later than five (5) business days after a change.

The Regional Center requested approval of changes made to include Samuel Brookner Silverman and Michael Benjamin Schoenfeld as the sole owners and managers of EB5 Affiliate Network Regional Center Application, LLC, which is the sole member and manager of EB5AN Non-Continental Regional Center, LLC.

After reviewing the submission, USCIS has determined that the documents submitted by the Regional Center are sufficient to justify approval of the amendment.

C. Geographic Area

Under INA § 203(b)(5)(E)(iii), “[a] regional center shall operate within a defined, contiguous, and limited geographic area, which shall be described in the proposal and be consistent with the purpose of concentrating pooled investment within such area.”

Based on the initial designation and any subsequently approved amendments, the Regional Center has jurisdiction over the following geographic area:

State(s)	Cities/Counties/Census Tracts
Puerto Rico	Entire commonwealth

The Regional Center requested expansion of its geographic area to include the locations below.

State(s)	Cities/Counties/Census Tracts
United States Virgin Islands	Entire territory

The Regional Center originally requested expansion of its geographic area to include Alaska, Hawaii, United States Virgin Islands (USVI), Guam, American Samoa, and the Northern Mariana Islands.

As stated in the Notice of Intent to Deny (NOID), USCIS determined that the documents submitted by the Regional Center did not justify the requested expansion of the Regional Center’s approved geographic area because the areas requested were not contiguous. Puerto Rico is not contiguous with either Alaska, American Samoa, Guam, Hawaii, the Northern Mariana Islands, or the Virgin Islands.

In response to the NOID, the Regional Center adjusted its request for expansion to now only include the USVI. To support its request, the Regional Center submitted the following:

- Response to Notice of Intent to Deny;
- Map of its proposed geographic area to show only Puerto Rico and the USVI, Response to Notice of Intent to Deny-Exhibit B.

After reviewing the evidence, USCIS determined that the evidence submitted by the Regional Center still did not justify the requested expansion of the Regional Center's approved geographic area.

The Regional Center stated that the "Regional Center contends that the Commonwealth of Puerto Rico ("Puerto Rico" and the United States Virgin Islands ("USVI") are contiguous territories." The Regional Center provided an image, published on the web site of the U.S. Geological Survey, that shows the proximity of Puerto Rico and the USVI.

The Regional Center further stated:

Puerto Rico is comprised of multiple islands, including a large main island and the major islands of Vieques, Culebra, and Mona, and several smaller islands. The easternmost island of Puerto Rico, called Culebrita, is approximately nine miles from the westernmost island of the USVI, called Savana Island. This is shorter than the distances between Puerto Rico's main island and either Mona or Culebra – both of which are in the Regional Center's current geographic area – and shorter than the distances between the USVI major islands of Charlotte Amalie and Saint Croix. With these facts in mind, the Regional Center does not consider that the water between Puerto Rico and the USVI represents a break in contiguity.

The Regional Center argued that the mere distance of water separation did not undermine contiguity.

However, the Regional Center incorrectly conflates the issue of "contiguity" with "proximity." By its plain language definition, contiguous means sharing a common border. Although Puerto Rico and the USVI may only be separated by nine miles at their narrowest point, neither Puerto Rico or USVI share a common border as both are separated by parts of the Atlantic Ocean and the Caribbean Sea, a fact confirmed by the image provided by the Regional Center own NOID Response. Both Puerto Rico and the USVIs also are operated as two distinct territories with their own individual governing bodies.

Additionally, the Regional Center did not meet its burden to establish that the proposed area would be limited or defined. If the Regional Center's application to expand its approved geographic area to include parts of the Atlantic Ocean and Caribbean Sea between Puerto Rico and USVI, it is unclear what the boundaries of the new geographic area would be. By its very nature, the Atlantic Ocean and Caribbean Sea do not have definite boundaries within its waters. Any attempt by the Regional Center to draw a boundary for the Regional Center's proposed geographic area would be arbitrary lines cut through the area between these islands. The Regional Center did not provide any indication of what the proposed boundary would be. Therefore, USCIS found that the proposed area comprising Puerto Rico, USVI, and unidentified areas of the Atlantic Ocean and Caribbean Sea would not be defined or limited as required under the statute.

To support its expansion request, the Regional Center's NOID Response also argued that Puerto Rico and the USVI have strong economic ties. The Regional Center stated:

As the only two U.S. territories in the Caribbean, the islands have significant commercial relationships. Supply chains that end in the USVI often begin in, or pass through, Puerto Rico. Additionally, multiple domestic flights and ferries operate regularly between Puerto Rico and the USVI. There exists a degree of codependency between these territories that may not even exist between contiguous states in the U.S. mainland.

The fact that Puerto Rico and the USVI have commercial relationships was not relevant to support a finding that the USVI is part of a contiguous geographic area. The USVI's participation in the supply chain or its reliance on other areas for products is a normal and regular feature of the economy of any state or territory. For example, many states, such as New York and North Dakota source the majority of their strawberries, oranges, and other agricultural products from California, Florida, and other locations. These economic relationships are the product of robust interstate commerce and allow for each state or territory to specialize or diversify their economic outputs accordingly. In fact, the USVI imports almost all of its food supply.¹ The Regional Center's argument that this kind of relationship would allow the USVI to be considered contiguous with Puerto Rico would mean that USVI could be considered contiguous with virtually any location in the United States. This would undermine the requirement that the Regional Center's geographic area be limited and contiguous.

In addition, all states regularly operate domestic flights and ferries between non-contiguous areas with the United States. Thus, this argument was not relevant to support the approval of the Regional Center's request to expand its geographic scope to include the USVI as such argument could mean that any state could be considered contiguous with virtually any other location in the United States.

Finally, the Regional Center argued:

The Regional Center's principal office is in San Juan, Puerto Rico, and its management team frequently evaluates projects for potential EB-5 investment in the USVI. Many firms focused on the development of tourism, housing, manufacturing, and ventures in other industries have a regional center which encompasses both Puerto Rico and the USVI.

The mere fact that companies want to develop businesses in both Puerto Rico and the USVI does not make those areas limited or contiguous. If this argument were accepted, then the USVI would be part of a limited geographic area or defined economic zone with virtually any area where companies were based which also wanted to do business in the USVI. The inclusion of any area where companies were based that wished to develop projects in the USVI would be too broad.

Considering all of the evidence in the record, the Regional Center did not demonstrate that its proposal, which includes a geographic expansion from Puerto Rico to the USVI, would be a limited or contiguous geographic area. By its plain language definition, contiguous means sharing a common border. Due to the

¹ https://doa.vi.gov/wp-content/uploads/2022/05/Virgin-Islands-Agricultural-Plan_2021-VI-Ag-Plan-Task-Force.pdf, last accessed October 23, 2023.

physical separation between the areas being requested by parts of the Atlantic Ocean and Caribbean Sea, the proposal did not involve jurisdiction over a contiguous geographic area as is required under INA 203(b)(5)(E)(iii).

Therefore, because the Regional Center's proposal did not involve jurisdiction over a limited, contiguous, and defined geographic area as is required under INA 203(b)(5)(E)(iii), USCIS denies the Regional Center's geographic expansion request.

II. Annual Statement and Integrity Fund

Regional centers approved for participation in the Program must submit Form I-956G, Regional Center Annual Statement, to provide information and certifications regarding compliance with Program requirements in accordance with INA § 203(b)(5)(G). Regional Centers should refer to Form I-956G and Form I-956G Instructions for the specific evidentiary and filing requirements

Failure to file Form I-956G in a timely manner for each federal fiscal year in which the Regional Center has been designated will result in sanctions, and may ultimately result in the termination of the approval and designation of the Regional Center. USCIS will review each annual statement and will notify the Regional Center should the statement be inadequate.

Every year on October 1, each designated regional center with 20 or fewer total investors in the preceding fiscal year in its NCEs must pay \$10,000 to the EB-5 Integrity Fund (the "Fund"). Designated regional centers with 21 or more petitioners in the preceding fiscal year must pay \$20,000 to the Fund.

USCIS will impose a reasonable penalty, which shall be deposited into the Fund, if the Regional Center does not pay the fee required within 30 days after the date on which such fee is due. USCIS may sanction, and ultimately terminate, any regional center that does not pay the fee required within 90 days after the date on which the fee is due.

III. Record Keeping and Audits

Under INA § 203(b)(5)(E)(vii), each regional center shall make and preserve, during the 5-year period beginning on the last day of the Federal fiscal year in which any transactions occurred, books, ledgers, records, and other documentation from the Regional Center, NCEs, or JCEs used to support any claims, evidence or certifications contained in the regional center's annual statements and associated petitioners by aliens seeking classification.

USCIS shall audit each regional center not less frequently than once every 5 years. Each audit shall include a review of any documentation required to be maintained for the preceding 5 years and a review of the flow of alien investor capital into any capital investment project. USCIS may terminate the designation of a regional center that fails to consent to an audit or deliberately attempts to impede such an audit.

IV. Persons Involved with the Regional Center

Under INA § 203(b)(5)(H)(iv), a regional center may not knowingly involve a person with the regional center in violation of INA § 203(b)(5)(H)(i) or (ii). Within 14 days of acquiring knowledge that a person was involved with the regional center in violation of INA § 203(b)(5)(H)(i) or (ii), the regional center must take commercially reasonable efforts to discontinue the prohibited person's involvement and/or provide notice to the Secretary.

V. Securities Law Oversight and Records Requirements

Under INA § 203(b)(5)(I)(iii), each regional center shall use commercially reasonable efforts to monitor and supervise compliance with the securities laws in relations to all offers, purchases, and sales of, and investment advice relating to, securities made by parties associated with the regional center. The regional center must maintain records, data, and information relating to all such offers, purchases, sales, and investment advice during the 5-year period beginning on the date of their creation. The regional center must also make the records, data, and information available to the Secretary or to the Securities and Exchange Commission upon request.

VI. Written Agreements with Direct and Third-Party Promoters

Under INA § 203(b)(5)(K)(iii), each regional center, NCE, and affiliated JCE must maintain a written agreement between or among such entities and each direct or third-party promoter operating on behalf of such entities that outlines the rules and standards prescribed under INA § 203(b)(5)(K)(i).

VII. Fund Administration

Under INA § 203(b)(5)(Q), each NCE sponsored by the regional center shall deposit and maintain the capital investment of each alien investor in a separate account, including amounts held in escrow. The amounts may only be transferred to another separate account or a JCE; be deployed into the capital investment project for which the funds were intended; or be transferred to the alien investor who contributed the funds as a refund of that investor's capital investment, if permitted.

If amounts are transferred to an affiliated JCE, the affiliated JCE shall maintain such amounts in a separate account until deployed into the capital investment project for which they were intended; and, not later than 30 days after the amounts are deployed provide written notice to the fund administrator that a construction consultant or other individual authorized verified that the amounts have been deployed into the project.

The fund administrator shall be independent of, and not directly related to, the new commercial enterprise, the regional center associated with the new commercial enterprise, the job creating entity, or any of the principals or managers of such entities. The fund administrator shall monitor and track any transfer of amounts from the separate account; serve as a cosignatory on all separate accounts; verify that the transfer complies with all governing documents, including organizational, operational, and investment documents; and approve such transfer with a written or electronic signature.

VIII. Requirements for Regional Center Investors

A petitioner seeking to pool his or her investment with 1 or more additional petitioners seeking classification under INA § 203(b)(5) must file a Form I-526E, Petition for Classification by Regional Center Investor, for such classification under the Program in accordance with INA § 203(b)(5)(E). A petitioner filing for classification under INA § 203(b)(5)(E) may file a petition with the Secretary only after the Regional Center has filed a Form I-956F, Application for Approval of an Investment in a Commercial Enterprise, in accordance with INA § 203(b)(5)(F), and the petitioner should include the receipt notice of their associated Form I-956F with their petition for classification under INA § 203(b)(5)(E).

IX. Motion and Appeal Rights

If the Regional Center disagrees with USCIS's decision to approve only a portion of the requested amendment, it may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

The Regional Center must send the completed Form I-290B and supporting documentation with the appropriate filing fee to:

USCIS
P.O. Box 660168
Dallas, TX 75266

OR USCIS Attn: I-290B
2501 S. State Highway 121 Business Suite 400
Lewisville, TX 75067

(For Postal Service Delivery)

(For Express Mail/Courier)

For an appeal, the Regional Center may request additional time to submit a brief within 30 calendar days of filing the appeal. Any brief, written statement, or evidence in support of an appeal that is not filed with Form I-290B must be directly sent within 30 days of filing the appeal to:

U.S. Citizenship and Immigration Services
Administrative Appeals Office
5900 Capital Gateway Drive, MS 2090
Camp Springs, MD 20588-0009

However, if you are filing a motion, any supplementary arguments or evidence must be filed with the motion to reopen and/or reconsider. No additional time will be permitted.

For more information about the filing requirements for appeals and motions, please see 8 C.F.R. § 103.3 or 103.5, or visit the USCIS website at www.uscis.gov.

If the applicant has any questions concerning the regional center designation under the Program, please contact USCIS by email at:

USCIS.ImmigrantInvestorProgram@uscis.dhs.gov

Sincerely,

A handwritten signature in black ink that reads "Alissa Emmel". The signature is written in a cursive style with a large initial "A".

Alissa L. Emmel
Chief Immigrant Investor Program