



Agency of Commerce and Community Development
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acd.vermont.gov

[phone] 802-828-3211

June 30, 2016

Jeh Johnson
Secretary of Homeland Security
U.S. Department of Homeland Security
Mailstop 0525
Washington, D.C. 20528-0075
dhsexecsec@hq.dhs.gov

Dear Secretary Johnson:

The Vermont Regional Center, along with the court appointed Receiver of Jay Peak and related projects, are writing this letter to request your active participation in resolving a matter of national interest and equitable treatment for immigrant EB-5 investors facing deportation in the alleged Jay Peak fraud case.

The State of Vermont in coordination with the U.S. Securities and Exchange Commission (SEC) initiated respective actions alleging investor fraud at EB-5 projects run by Jay Peak. The State of Vermont civil action is pending in the Vermont Superior Court, Civil Division, Washington Unit. The SEC action was filed in the United States District Court for the Southern District of Florida (the "U.S. District Court") on April 11, 2016. Filings in these cases are available at www.dfr.vermont.gov and www.jaypeakreceivership.com

The complaints allege that the defendants organized and executed an eight-year-long fraudulent scheme in which more than \$55M in funds raised from some 700 investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program was systematically stolen. The further allegations are the general partners misused approximately \$200M of the more than \$350M raised from investors in the eight limited partnership offerings connected to the Jay Peak ski resort.

Attached for your review are the most recent May 24 and June 29 letters addressed to Nicholas Colucci, Chief of the Immigrant Investor Program. To date, USCIS has been non-responsive to voluntarily working with the Vermont Regional Center and the Receiver to resolve outstanding issues in a manner that allows investors the opportunity to achieve green card status. Importantly, these victims are completely innocent of any wrongdoing and have fully attempted to comply with the law, yet they are in jeopardy of being further victimized by the inaction of the USCIS. Our outreach to work with USCIS is solely motivated by our strong desire to resolve issues for the benefit of the investors, Vermont jobs, and the EB-5 program generally.



Jeh Johnson
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We are respectfully requesting an in-person meeting with Mr. Colucci and yourself to address the urgent issues facing the innocent victims of the Jay Peak fraud.

We look forward to hearing from you.

Sincerely,



Patricia Moulton, Secretary
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May 24, 2016

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Washington, DC 20529
USCIS.ImmigrantInvestorProgram@uscis.dhs.gov

Office of Public Engagement
131 M Street, NE
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Re: Urgent Policy Level Questions – Jay Peak Resorts

To Whom It Concerns:

The Vermont Regional Center, along with the court appointed Receiver of Jay Peak and related projects, are writing this letter to advocate for all Jay Peak EB-5 investors currently in the immigration petitioning process (whether I526 or I829) for Jay Peak Phases I through VIII.

As you are well aware, the State of Vermont initiated a civil action alleging investor fraud at EB-5 projects run by Jay Peak. The State of Vermont action is taken in coordination with the U.S. Securities and Exchange Commission (SEC), which filed a similar action in the United States District Court for the Southern District of Florida (the “U.S District Court”) on April 11, 2016. Filings in these cases are available at www.dfr.vermont.gov and www.jaypeakreceivership.com

Since December 2014, Vermont’s EB-5 Regional Center, in partnership with the Vermont Department of Financial Regulation, has been conducting an in-depth financial review of the aforementioned projects. The U.S. District Court appointed a receiver who has assumed control of all Jay Peak assets and is in the early stages of seeking to stabilize the business operations, coordinate with the EB-5 investors, and develop a plan to meet the investors’ immigration requirements and protect their investment.

Given the unique circumstances of this particular alleged fraud, we trust USCIS will acknowledge the verifiable job creation that exists in several of the Jay Peak projects as well as the associated quality of the underlying assets and income streams. Taken together, these tangible and definable measures provide Jay Peak EB-5 investors and, ultimately the USCIS, the optionality to formulate favorable investor outcomes.



In an effort to find solutions that permit Jay Peak investors the opportunity to achieve green card status, we respectfully submit for your review several reasoned proposals that can be taken individually and / or collectively. For example:

- i. **Public Policy Concerns:** Reflecting public policy concerns, especially the possible deportation of EB-5 investors facing 1829 “timing out” issues, we recommend that USCIS designate “extraordinary exemption status” to all Jay Peak EB-5 investors given that the fraud perpetuated upon these investors, which was implemented by the projects’ principals, was not of their doing. Since USCIS legislation nor regulations appear to prohibit this suggestion, USCIS could conceivably choose to make policy in this extraordinary situation, especially if the business plan is executed and job creation is achieved or progressing as planned.
- ii. **Job Pooling Concept:** Where excess jobs were created in the earlier Jay Peak projects versus a clear deficiency in the latter projects, the Vermont Regional Center and the Receiver propose the concept of pooling all jobs under one-project umbrella versus analyzing each project independent of the other given the nature of the alleged fraud and misappropriation of EB-5 investor monies. According to our analysis, a surplus of jobs exists thereby permitting such consideration. This is also consistent with the “in good faith, substantially met” approach in regulations 8 CFR 216.6 and is consistent with the fact that the projects’ principals commingled money amongst the projects so that investors’ money actually did create jobs, albeit not in the intended project.
- iii. **Transfer of Investors to Other Projects Within the Jay Peak Umbrella:** Given the dearth of job creation in Phase VII (ANC Biomedical Research Park), we suggest transferring ANC Bio investors to other projects such as Phase VIII (Burke Hotel) and to a lesser extent Phase VI (Stateside). Additionally, we propose that this transfer process allow investors to maintain priority date status.
- iv. **A Coordinated Effort Between the Receiver, USCIS and Vermont Regional Center:** Understanding that a sale of an individual asset(s) could be considered a failure of the EB-5 investors to sustain the planned investment pursuant to the initial business plan, thereby jeopardizing an investor’s eligibility for U.S. permanent residence, we respectfully propose that USCIS permit the modification of business plans to allow the Receiver to continue to develop unfinished Jay Peak projects (notably Phase VI Stateside) or sell projects under an arrangement that allows for the continued operation of the projects under the EB-5 program in order to preserve the EB-5 investors’ claims for benefits. Furthermore, we ask USCIS to allow the Receiver to restore diverted capital through other financing options specifically additional capital raises from existing and / or new prospective investors or from damages recovered from the third party wrongdoers.

As we proceed forward in administering our duties as an approved USCIS designated EB-5 regional center and as a court appointed receiver, it is imperative that we address collectively this high profile situation and the urgent policy implications surrounding the unique issues facing the Jay Peak EB-5 investors and their

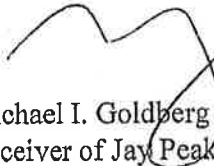
USCIS Investor Program Office
Office of Public Engagement
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attainment of green cards. Accordingly, we would welcome the opportunity to meet in-person with the appropriate USCIS personnel in Washington D.C. to discuss the proposals raised in this letter to collectively remedy the situation for all investors.

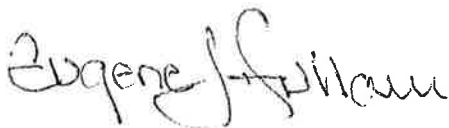
Sincerely,



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June 29, 2016

Nicholas Colucci
Chief, Immigrant Investor Program
U.S. Department of Homeland Security
Immigrant Investor Program Office
Mailstop 2235
Washington, D.C. 20529-2020
USCIS.ImmigrantInvestorProgram@uscis.dhs.gov

Dear Mr. Colucci:

Thank you for your letter of June 24, 2016. However, this is non-responsive to the urgent issue(s) facing USCIS regarding ANC Bio/Jay Peak investors as it concerns advancing expiration dates for I-829 petitioners and the concomitant consequence of deportation of these EB-5 investors.

Specifically, without USCIS's assistance, the Vermont Regional Center, along with the court appointed Receiver of Jay Peak and related projects, face substantive challenges both economically and operationally should USCIS fail to voluntarily work with the Vermont Regional Center and the Receiver to address outstanding issues and resolve them in a manner that allows investors the opportunity to achieve green card status.

Moreover, Jay Peak investors have done everything right. The fraud perpetuated upon these investors, which was implemented by the projects' principals, was not of their doing. Consequently, we ask for equitable treatment and relief for the aforementioned investors, which only USCIS can grant through its specific performance to address and resolve fundamental problems pertaining to Jay Peak and the immigration process.

Our letter of May 24, 2016 (see attached), specifically notes proposed solutions that would permit Jay Peak investors the opportunity to achieve green card status. In order for this to become reality, we are requesting once again an in-person meeting with the appropriate USCIS personnel in Washington, D.C. to discuss proposals raised in our May 24 letter that collectively remedy the situation for all investors.



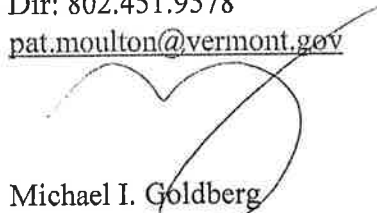
Nicholas Colucci
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June 29, 2016

Your immediate attention is requested.


Sincerely,



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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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**U.S. Citizenship
and Immigration
Services**

Patricia Moulton, Secretary
Agency of the Commerce & Community Development
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Montpelier , VT 05620-05010

June 24, 2016

Dear Patricia Moulton:

This is in response to your letter, dated May 24, 2016, to the U.S. Citizenship and Immigration Services regarding the Vermont Agency of Commerce and Community Development advocating for investors under the Jay Peak projects Phase I to VIII. In your letter, you acknowledge the recent civil action alleging investor fraud at EB-5 projects run by Jay Peak, by the state of Vermont and the U.S. Securities and Exchange Commission, as well as request that USCIS review several proposals to help Jay Peak investors .

USCIS offers several avenues for regional center principals and petitioners to make inquiries about their cases. Most recently, USCIS has implemented a process to elevate inquiries that EB-5 petitioners or applicants believe need additional attention. Inquiries submitted are elevated for higher review and customers are provided a response. There are also several resources that may assist customers to understand the status of their case located on our website, www.uscis.gov.

With regards to concerns about the status of Form I-829 petitioners, USCIS adjudicates Form I-829 petitions on the basis of the evidence that the petitioner submits to show compliance with the requirements for removing the conditions. We will notify the petitioner in writing of any action on their petition. If further information is needed, we will contact the petitioner to submit supplemental evidence.

Again, thank you for your continued support of the EB-5 program. Your letter of support will be added to your case-file and for each petition associated with this case. If we may be of further assistance, please do not hesitate to contact the USCIS Immigrant Investor Program Office at: USCIS.ImmigrantInvestorProgram@uscis.dhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Colucci".

Nicholas Colucci
Chief, Immigrant Investor Program