U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 07890771

Date: APR. 6, 2020

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant investor. See Immigration and Nationality Act section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference (EB-5) classification makes immigrant visas available to foreign nationals who make a qualifying equity investment of the requisite amount in a new commercial enterprise (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. An immigrant investor may choose to invest the required funds through a "regional center."[1] Regional centers apply for designation as such with U.S. Citizenship and Immigration Services (USCIS). Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project, either taken on directly by the NCE or by one or more separate entities known as the "job creating entity." Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii).

The Chief of the Immigrant Investor Program Office denied the Form I-526, Immigrant Petition by Alien Entrepreneur, concluding that the record did not establish, as required, that the Petitioner placed her capital at risk in [redacted] the NCE. Specifically, he determined that she did not demonstrate she would risk suffering a loss on her investment consistent with an equity interest. The Chief reaffirmed that determination on motion and we dismissed the subsequent appeal, finding that she did not establish eligibility under 8 C.F.R. § 204.6(j)(2) because her arrangement with the NCE did not meet the definition of "invest" set forth in 8 C.F.R. § 204.6(e).

On October 30, 2018, USCIS updated its Policy Manual with a section titled ""Redemption Language" that clarifies its policy on debt arrangements. The Policy Manual states:

> Any agreement between the immigrant investor and the new commercial enterprise that provides the investor with a contractual right to repayment is an impermissible debt arrangement. In such a case, the investment funds do not constitute a qualifying contribution of capital.

[1] A regional center is an economic unit involved with the promotion of economic growth through "improved regional productivity, job creation, and increased domestic capital investment." See 8 C.F.R. § 204.6(e) (defining ""regional center").

FN 20. *See Matter of Izummi*, 22 I&N Dec. 169, 188 (Assoc. Comm. 1998). *Matter of Izummi* addressed redemption agreements in general, and not only those where the investor holds the right to repayment. USCIS generally disfavors redemption provisions that indicate a preconceived intent to exit the investment as soon as possible, and notes that one district court has drawn the line at whether the investor holds the right to repayment. *See Chang v. USCIS*, 289 F.Supp.3d 177 (D.D.C. Feb. 7, 2018).

We reopened the appeal on service motion and now withdraw our previous decision and approve the visa petition.

ORDER: The appeal is sustained.