U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-X-

DATE: MAY 30, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner seeks classification as an immigrant investor. *See* Immigration and Nationality Act (the 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 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" (JCE). 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 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. We dismissed the 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).

Pursuant to the settlement agreement in *Bi et al. v. Nielsen et al.*, Case No. 1:18-cv-00429 (D.D.C. 2018), we now reopen the appeal on service motion, withdraw our previous decision, and approve the visa petition.

[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").

ORDER: The appeal is sustained.

Cite as *Matter of Y-X-*, ID# 1727294 (AAO May 30, 2018)