

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **APR 01 2019** Office: IMMIGRANT INVESTOR PROGRAM OFFICE FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal line extending to the right.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Chief, Immigrant Investor Program Office (IPO), denied the preference visa petition on May 14, 2013. On July 11, 2013, the chief granted the petitioner's motion to reopen and again denied the petition. On February 6, 2014, the chief dismissed the petitioner's second motion, a motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will remand the appeal to the IPO to review in accordance with the settlement agreement between the government and other parties, *V Real Estate Group v. USCIS*, No. 2:14-cv.01096-RCJ-CWH.

The petitioner seeks classification as an employment creation alien pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The petitioner indicates that he created [REDACTED], as a new commercial enterprise (NCE). The petitioner also indicates that the NCE, with an office located in [REDACTED] Nevada, is principally doing business within a targeted employment area (TEA) and that the required investment amount is thus \$500,000. The petitioner purchased franchise rights from the franchisor [REDACTED]. According to the initial brief, the NCE and a number of similar franchises will engage "in the development and establishment of one realty firm, with the ultimate intent of opening multiple . . . franchise realty locations within [the franchisor's] franchised territorial area."

## I. LAW

Section 203(b)(5)(A) of the Act, as amended by the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

- (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
- (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

## II. DISCUSSION

Recently, U.S. Citizenship and Immigration Services (USCIS) reached a settlement with parties related to the petitioner. We will remand the matter for the chief to review the denial in light of that settlement. In reviewing the petition, the chief may also wish to consider whether the petitioner has shown the lawful source of the funds he wired into the escrow account ending in [REDACTED]. Specifically, the loan agreement for the funds that the petitioner transferred to the United States provides that "This Loan is specifically for the Lender's [REDACTED] purpose including but not limited to purchase of property, investment, education." The chief may wish to request evidence that the petitioner's personal investment in the NCE falls within "the Lender's purpose." In addition, the chief may wish to consider whether the unaudited financial statements establish how [REDACTED] accumulated sufficient

funds to loan the petitioner \$500,000 as well as its other commitments, including loans to any other investors in [REDACTED] franchises.

Finally, the chief should consider whether the petitioner's funds remain at risk and committed to the NCE. Specifically, the director may wish to verify that the petitioner's funds remain in the [REDACTED] escrow account ending in [REDACTED], as stipulated in both escrow agreements. According to evidence in the record, the escrow agent transferred the funds out of the account ending in [REDACTED] into a [REDACTED] account ending in [REDACTED] identified as an [REDACTED] account. Neither escrow agreement mentions an [REDACTED] account ending in [REDACTED], nor does the record establish that the [REDACTED] account is under the control of the escrow agent and subject to the requirement that the agent will distribute the funds to the NCE upon the approval of the petition.

### III. SUMMARY

We will remand this matter to the IPO for a new determination in light of the settlement agreement. The burden to establish eligibility for the immigration benefit continues to rest solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

**ORDER:** The matter is remanded to the chief solely for the purpose of determining whether the petitioner established eligibility in light of the settlement agreement and entry of a new decision that, if adverse to the petitioner, is to be certified to this office for purposes of an adjudication of the second motion on its merits.