Policy Alert

SUBJECT: Immigrant Investors and Debt Arrangements

Purpose

U.S. Citizenship and Immigration Services (USCIS) is revising policy guidance in the USCIS Policy Manual to clarify its policy on debt arrangements.

Background

Foreign nationals may seek an immigrant visa based on their investment in a new commercial enterprise in the United States if they meet certain related job creation requirements. To make a qualifying investment, the immigrant investor must contribute the minimum investment amount in a manner that does not constitute a debt arrangement.

Relevant precedent provides that a redemption agreement is a debt arrangement if the petitioner enters into the agreement knowing that he or she has a willing buyer at a certain time and for a certain price. Recently, two federal courts have addressed the issue of redemption agreements in the context of options exercisable by the new commercial enterprise.

This update to Volume 6 of the Policy Manual clarifies which redemption agreements are considered debt arrangements. This policy guidance is controlling and supersedes any prior guidance on the topic.

Policy Highlights

- Clarifies which redemption agreements are debt arrangements and therefore are not qualifying investments where the investor holds a redemption right or the new commercial enterprise is otherwise obligated to redeem the investor’s equity interest.

Citation


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1 See INA 203(b)(5).
2 See 8 CFR 204.6(e) (definition of invest).