



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-TMO-, INC.

DATE: MAR. 11, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, to classify the Beneficiary as an E-2 Commonwealth of the Northern Mariana Islands (CNMI) investor pursuant to section 101(a)(15)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(E), based on a treaty of friendship, commerce, and navigation. On the Form I-129, the Petitioner states that it is engaged in "tour operations/homestay/bed and breakfast." The Beneficiary is the owner and sole employee.

The Director, California Service Center, denied the petition. The Director concluded that the Beneficiary was ineligible for the benefit sought, finding that she was not classified as a long-term investor on or before November 27, 2009.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred in finding that the Beneficiary was not a long-term investor on November 27, 2009.

Upon *de novo* review, we will withdraw the Director's denial and remand the matter to the service center.

I. LEGAL FRAMEWORK

Section 101(a)(15)(E)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(E)(ii) defines a treaty investor as:

an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him; . . . (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital

The regulation at 8 C.F.R. § 214.2(e)(23) contains provisions for classifying foreign investor in CNMI as E-2 nonimmigrant treaty investors. The following provisions apply:

- (i) *E-2 CNMI Investor eligibility.* During the period ending on January 18, 2013, an alien may, upon application to the Secretary of Homeland Security, be classified as a CNMI-only nonimmigrant treaty investor (E-2 CNMI Investor) under section 101(a)(15)(E)(ii) of the Act if the alien:
 - (A) Was lawfully admitted to the CNMI in long-term investor status under the immigration laws of the CNMI before the transition program effective date and had that status on the transition program effective date;
 - (B) Has continuously maintained residence in the CNMI;
 - (C) Is otherwise admissible to the United States; and
 - (D) Maintains the investment or investments that formed the basis for such long-term investment status.

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- (ii) *Long-term investor status.* Long-term investor status under the immigration laws of the CNMI includes only the following investor classifications under CNMI immigration laws as in effect on or before November 27, 2009:
 - (A) Long-term business investor. An alien who has an approved investment of at least \$50,000 in the CNMI, as evidenced by a Long-Term Business Certificate.
 - (B) Foreign investor. An alien in the CNMI who has invested either a minimum of \$100,000 in an aggregate approved investment in excess of \$2,000,000, or a minimum of \$250,000 in a single approved investment, as evidenced by a Foreign Investment Certificate.
 - (C) Retiree investor. An alien in the CNMI who:
 - (1) Is over the age of 55 years and has invested a minimum of \$100,000 in an approved residence on Saipan or \$75,000 in an approved residence on Tinian or Rota, as evidenced by a Foreign Retiree Investment Certification; or
 - (2) Is over the age of 55 years and has invested a minimum of \$150,000 in an approved residence to live in the CNMI, as evidenced by a Foreign Retiree Investment Certificate.

II. ISSUE ON APPEAL

The record contains a CNMI Entry Permit, showing that the Beneficiary was admitted under the classification 706N.6A. According to the Director, the classification 706N.6A is not a subset of 706N for a long-term investor, but instead is for nonresidents who will be employed by a foreign resident business. The Director concluded that the evidence was insufficient to show that the Beneficiary was classified as a long-term investor under the CNMI laws as of November 27, 2009.

The regulation at 8 C.F.R. § 103.2(b)(19) states that the Director will notify a petitioner in writing of a decision made on a benefit request. Further, 8 C.F.R. § 103.3(a)(1)(i) states that when denying a petition, the Director shall explain in writing the specific reasons for denial. Here, the Director's decision does not provide a sufficient explanation for denying the petition. Thus, the petition will be remanded to the Director for further action and entry of a new decision.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Director's decision will be withdrawn and the matter will be remanded.

ORDER: The decision of the Director, California Service Center, is withdrawn. The matter is remanded to the Director, California Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of T-TMO-, Inc.*, ID# 11150 (AAO Mar. 11, 2016)