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September 2, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Leon Rodriguez
Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Washington, DC

Dear Director Rodriguez:

I am writing to inquire about your agency's policies with regard to the EB-5 immigrant investor program and to express concern about a troubling new development in which EB-5 regional centers target investments from children.

In the past few months, various representatives of EB-5 regional centers have openly discussed having *children* make EB-5 investments and file EB-5 petitions. The motivation for this proposal is apparently the backlog in immigrant visa availability for nationals of China – a development that means that nationals of China, who constitute the largest beneficiaries of the EB-5 program, now must wait potentially several years between the time their EB-5 petition is approved and the time they actually receive an immigrant visa under the program. By arranging for the investment and petition to be filed while the beneficiary is still a child, any adverse effect of the delay caused by the multi-year backlog is mitigated.

The subject was discussed in detail last week in a blog post by a leading EB-5 law firm.¹ The law firm reports: “USCIS stated at a recent stakeholder meeting that there is nothing prohibiting a minor from being an EB-5 investor and petitioner, however, the investor must prove by a preponderance of the evidence that the investment contract is valid and not voidable.”² The firm advises that though contracts entered into by minors “are typically void or voidable by the child when he or she becomes an adult,” this can be dealt with by just having the parent or guardian, acting on behalf of a minor child, enter into the contract on behalf of that child. This can be accomplished, the firm suggests, by simply including some boilerplate language on the signature page of the EB-5 subscription and operating agreement. Though the firm observes that there is no minimum age set by law below which a parent or guardian could not sign such a contract on behalf of the child, the firm recommends that this technique be

¹ Daniel B. Lundy, “Minors as EB-5 Investors,” Klasko Immigration Law Partners, LLP (Aug. 22, 2016) (available at <http://www.klaskolaw.com/eb-5-investor-visas/minors-eb-5-investors/>).

² *Id.*

limited to 16- and 17-year-old children because children under 14 are not deemed by USCIS to be able to sign forms on their own behalf.

When Congress created the EB-5 program, it did so with the intention of attracting investors with entrepreneurial talents. In fact, the section of the Immigration and Nationality Act that provides for the removal of conditions on the permanent resident status of alien investors is titled “Conditional Permanent Resident Status for Certain Alien *Entrepreneurs*, Spouses, and Children.”³

Senator Phil Gramm articulated this goal during Senate consideration of the program:

I, for one, want us to go more on merit and talent and ability, whether that ability is in physics or whether that ability is in the practice of business to create jobs, growth, and opportunity. I want, quite frankly, to have more people with both of those kinds of abilities.

It seems to me that the provision of this bill is a good provision. It is a provision that says that if people have been successful in business - if they can bring that talent and the fruits of that talent, a million dollars to this country, and if they meet the criteria of job creation and ability to sustain that business - they then have a right to come here and to practice that business.

*. . . . I do not see how [we] can . . . reject the criterion of economic success, entrepreneurial ability, and the fruits of that ability.*⁴

In essence, it is not just aliens with cash that we are primarily seeking; we are seeking aliens possessing the sorts of entrepreneurial gifts that have resulted in them having cash (“the fruits of that talent”). Yet, under the current EB-5 program regulations, alien investors can acquire their investment funds through inheritance or gift.⁵ While legislation is being considered to limit the ability to use gifted or loaned funds, it’s questionable whether a minor who has been gifted half a million dollars and is petitioning for an EB-5 visa could ever possess the entrepreneurial spirit and ability Congress intended such investors to have.

It is also not clear to me that the statutory requirement that the EB-5 petitioner be “seeking” to enter the U.S. “for the purpose of engaging in a new commercial enterprise (including a limited partnership)” could be satisfied by a child. It seems to be an evasion of the statutory requirement that the petitioners be “engaging” in the investment enterprise, if the limited partnership overseeing the flow of EB-5 funds into the investment enterprise is made up of two dozen children whose parents vote on their behalf.

Moreover, since children are inherently vulnerable, this new scheme to use children as EB-5 investors should immediately raise concerns about whether children are being exploited or

³ Section 216A, Immigration and Nationality Act (emphasis added).

⁴ 135 Cong. Rec. S7748-02 *et seq.* (1989).

⁵ See Matter of X, No. WAC 94-005-50010 (Assoc. Comm’r; Mar. 17, 1997).

forced to do something (apply to emigrate from their country, invest substantial capital into an overseas business enterprise of questionable merit) that may not be in their best interest.

This latest tactic that some EB-5 industry representatives are promoting is exactly the sort of cynical exploitation of the program rules that have brought such disrepute to the program over the years. I would be greatly disappointed if your agency were to confirm the law firm's assertion that U.S. Citizenship and Immigration Services (USCIS) has already endorsed these shenanigans and is allowing minors to be used for such purposes.

In light of the foregoing, I would appreciate answers to the following questions:

1. What, exactly, did USCIS representatives state regarding EB-5 petitions filed by children during the stakeholder meeting referenced by the law firm discussed above?
2. What is the agency's position on the legality of allowing children – in particular, children under age 14 – to (i) file EB-5 petitions and (ii) invest in EB-5 enterprises?
3. Have any EB-5 petitions been filed by children? If so, how many have been approved?
4. Is there any lower age limit below which a child may not file an EB-5 petition?
5. Please explain how, per section 203(b)(5)(A)(i) of the Immigration and Nationality Act, USCIS would determine that a minor (whether 2 years old or 14 years old) is "seeking" to enter the U.S. "for the purpose of engaging in a new commercial enterprise."
6. Please explain how, per section 203(b)(5)(A)(i) of the Immigration and Nationality Act, a minor under 18 years of age could reasonably be determined to be "engaging" in a limited partnership that directs or finances a new commercial enterprise.

I request that USCIS respond to this letter no later than September 12, 2016. Should you have any questions, please contact Kathy Nuebel of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman