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Policy Alert

SUBJECT: Immigrant Investors and Investment of Loan Proceeds

Purpose

U.S. Citizenship and Immigration Services (USCIS) is revising policy guidance in the [USCIS Policy Manual](#) to comply with a recent court order.

Background

Noncitizens may seek an immigrant visa based on their investment in a new commercial enterprise in the United States if they meet certain related minimum investment and job creation requirements.¹ An investment must consist of a contribution of capital, which includes, among other things, both cash and indebtedness.²

Historically, USCIS has viewed loan proceeds as indebtedness rather than cash, requiring that the petitioner demonstrate that he or she is personally and primarily liable for the debt, that it is secured by his or her own assets, and that the assets of the new commercial enterprise do not secure any of the debt.³ Recently, a federal court held that this interpretation is not supported by the plain language of the regulation.⁴ Therefore, this update removes language that contradicts the court's order. This update, contained in Volume 6, is controlling and supersedes any prior guidance on the topic.

Policy Highlights

- Updates guidance to reflect that USCIS evaluates an investment of lawfully obtained loan proceeds as a contribution of cash rather than indebtedness. USCIS continues to determine whether loan proceeds were lawfully acquired and whether the investor has placed the required amount of capital at risk for the purpose of generating a return on that capital.

Citation

Volume 6: Immigrants, Part G, Investors, Chapter 2, Eligibility Requirements [[6 USCIS-PM G.2](#)].

¹ See [INA 203\(b\)\(5\)](#).

² See [8 CFR 204.6\(e\)](#) (defining invest and capital).

³ See [Matter of Soffici](#), 22 I&N Dec. 158, 162 n.1 (Assoc. Comm. 1998).

⁴ See [Zhang v. USCIS](#), 978 F.3d 1314 (D.C. Cir. 2020).