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Immigration

Investors File Lawsuit Against DHS To Stop EB-5 Regional Center Decertifications

Legal Update

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This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

A group of investment and capital firms filed a lawsuit on May 24, 2022, against the Department of Homeland Security, arguing that when U.S. Citizenship and Immigration Services (USCIS) decertified existing EB-5 regional centers, it violated the Administrative Procedure Act and misinterpreted the EB-5 Reform and Integrity Act of 2022, which was signed into law following a lapse in authorization for the EB-5 Regional Center Program. Plaintiffs say that by categorically decertifying more than 600 existing EB-5 regional centers and requiring them to recertify, USCIS “eviscerated” the program and determined that a wholly new regional center program was created rather than following congressional intent to reauthorize the program with a few changes and allow existing regional centers to continue their work.

Alleging that USCIS’s action was “unlawful for a host of reasons,” plaintiffs said the agency’s action meant that “all existing regional centers, which already have billions of dollars in invested capital, ongoing development projects and investors awaiting adjudication of their visa petitions, must effectively pause all revenue-generating operations (while still maintaining regulatory obligations to existing investors) indefinitely until USCIS approves their new applications. At current processing rates, it will take well over a decade for more than 600 programs to become redesignated.”

Plaintiffs are represented by H. Ronald Klasko and Daniel B. Lundy, of Klasko Immigration Law Partners LLP, and Paul W. Hughes, Andrew A. Lyons-Berg and Alex C. Boota, of McDermott Will & Emery LLP.

This is the second lawsuit challenging USCIS’s claim that all regional centers must be redesignated. A preliminary injunction hearing in *Behring Regional Center LLC v. Mayorkas*, No. 3-22-cv-02487-VC (N.D. Cal.), will be held June 2.