

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

URBAN EQUALITY NOW,

Plaintiff,

vs.

**SECRETARY OF THE DEPARTMENT OF
HOMELAND SECURITY JEH JOHNSON,
and USCIS DIRECTOR LEON
RODRIGUEZ,**

Defendants.

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CIVIL ACTION NO.

PLAINTIFF’S ORIGINAL COMPLAINT

COMES NOW Plaintiff Urban Equality NOW (“Urban Equality NOW” or “Plaintiff”) and brings this declaratory judgment action against Defendants Department of Homeland Security (“DHS”) Secretary Jeh Johnson and United States Citizenship and Immigration Services (“USCIS”) Director Leon Rodriguez and in support of its cause of action alleges as follows:

I. PARTIES

1. Plaintiff Urban Equality NOW is a non-profit corporation established under the laws of the State of Texas.

2. Jeh Johnson, Secretary of the Department of Homeland Security, is the head of the government agency based in Washington, D.C., and must be served with process pursuant to regulations by serving the Office of the General Counsel, United States Department of Homeland Security, Washington, D.C. 20528.

3. Defendant USCIS Director Leon Rodriguez is the head of the government agency based in Washington, D.C., and may be served with process by serving the Office of the

Principal Legal Advisor, U.S. Citizenship and Immigration Services, United States Department of Homeland Security, 425 I Street NW, Room 6100, Washington, D.C. 20536.

4. Pursuant to Fed. R. Civ. P. 4(i)(1)(A), service also includes service on the United States Attorney's Office for the Northern District of Texas, located at 1100 Commerce Street, Third Floor, Dallas, Texas 75242-1699.

II. JURISDICTION AND VENUE

5. This court has proper jurisdiction as Plaintiff has raised a federal question pursuant to 28 U.S.C. § 1331, to wit, 28 U.S.C. § 2201, the Declaratory Judgment Act.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(C).

III. FACTS SUPPORTING PLAINTIFFS' CLAIMS

7. According to DHS, its mission includes managing U.S. borders and administering U.S. immigration laws. To administer U.S. immigration laws, DHS oversees USCIS, among other agencies.

8. According to USCIS, its mission includes granting immigration and citizenship benefits and ensuring the integrity of our immigration system.

9. Pursuant to 8 U.S.C. § 1153(b)(5), DHS and USCIS have been charged with implementing the employment creation visa program (the "EB-5 visa"). To support job creation, Congress created a pilot program that provides at least 300 visas annually for "the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." Section 610(a) of P.L. 102-395. The pilot program, as originally authorized, expired five (5) years after its creation. *Id.* at 610(b).

10. Congress repeatedly extended the pilot program beyond its sunset date, with the last such legal authorization occurring by virtue of the Consolidated Appropriations Act for

FY2016. *See* P.L. 114-113. P.L. 114-113, however, only extended the pilot program until September 30, 2016.

11. On September 29, 2016, President Obama signed into law H.R. 5325, which included a Continuing Resolution for Fiscal Year 2017. H.R. 5325, however, lacked any actual or apparent intent by Congress to extend the sunset date for the immigrant investor pilot program beyond September 30, 2016.

12. To extend the sunset date for a particular program, any legislative action must demonstrate Congress' intent to do so. Congress typically indicates its intent to do so by (a) explicitly amending the statute to provide a new sunset date or (b) directing that the statute be applied through a later date.

13. In the absence of demonstrated Congressional intent to extend a program, such program terminates immediately pursuant to the sunset provision. *See Consortium Venture Corp. v. United States*, 5 Cl. Ct. 47 (1984), *aff'd*, 765 F.2d 163 (Fed Cir. 1985). *See also* GAO Red Book, Vol. 1, at 2-70, 2-71, 4-19.

14. Upon information and belief, DHS and USCIS continue to adjudicate EB-5 immigrant investor petitions pursuant to the pilot program. Furthermore, upon information and belief, DHS and USCIS continue to review and approve Regional Centers, as authorized by the expired Congressional authorization.

15. Specifically, on October 3, 2016, USCIS published on its website “a list of *current* EB-5 (immigrant investor) regional centers by state.”¹ (emphasis added) Furthermore, on that same date and webpage, USCIS noted that “[t]he list will be periodically updated.” Such

¹ *See* Exhibit A, obtained online on October 6, 2016 at <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>.

language indicates Defendants' intent to continue operating the immigrant investor pilot program, despite legislative authority to do so.

IV. STATEMENT OF CLAIMS

DECLARATORY JUDGMENT

16. Plaintiff Urban Equality NOW incorporates Paragraphs 1 through 15 hereinabove as if fully set forth herein at length.

17. Absent Congressional authorization, Defendants DHS and USCIS lack authority to continue the EB-5 immigrant investor pilot program. Despite this lack of authority, Defendants continue to operate the pilot program *ultra vires*.

18. Urban Equality NOW seeks a Declaratory Judgment that:

- a. The EB-5 immigrant investor pilot program ceased to exist on October 1, 2016;
- b. Defendants are no longer permitted to approve EB-5 petitions based on any regional center, effective Oct. 1, 2016;
- c. Any EB-5 petition approved on or after Oct. 1, 2016 based on any regional center is invalid;
- d. Defendants are no longer permitted to grant approvals for Regional Centers, effective Oct. 1, 2016; and
- e. Any Regional Center approved on or after Oct. 1, 2016 is invalid.

V. REMEDIES

19. WHEREFORE, Plaintiff prays that the Court grant the following relief:

- a. For an Order declaring:
 - i. The EB-5 Pilot Program ceased to exist on October 1, 2016;

- ii. Defendants are no longer permitted to approve EB-5 petitions based on any regional center, effective Oct. 1, 2016;
 - iii. Any EB-5 petition approved on or after Oct. 1, 2016 based on any regional center is invalid;
 - iv. Defendants are no longer permitted to grant approvals for Regional Centers, effective Oct. 1, 2016; and
 - v. Any Regional Center approved on or after Oct. 1, 2016 is invalid.
- b. For an Order awarding Plaintiff the costs of the action;
 - c. For an Order awarding Plaintiff its attorneys fees; and
 - d. For an Order granting such other relief as may be necessary and appropriate.

Respectfully submitted,

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By: /s/ Michael E. Coles
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