



October 30, 2018

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## Policy Alert

SUBJECT: Immigrant Investors and Debt Arrangements

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is revising policy guidance in the [USCIS Policy Manual](#) to clarify its policy on debt arrangements.

### Background

Foreign nationals may seek an immigrant visa based on their investment in a new commercial enterprise in the United States if they meet certain related job creation requirements.<sup>1</sup> To make a qualifying investment, the immigrant investor must contribute the minimum investment amount in a manner that does not constitute a debt arrangement.<sup>2</sup>

Relevant precedent provides that a redemption agreement is a debt arrangement if the petitioner enters into the agreement knowing that he or she has a willing buyer at a certain time and for a certain price.<sup>3</sup> Recently, two federal courts have addressed the issue of redemption agreements in the context of options exercisable by the new commercial enterprise.<sup>4</sup>

This update to Volume 6 of the Policy Manual clarifies which redemption agreements are considered debt arrangements. This policy guidance is controlling and supersedes any prior guidance on the topic.

### Policy Highlights

- Clarifies which redemption agreements are debt arrangements and therefore are not qualifying investments where the investor holds a redemption right or the new commercial enterprise is otherwise obligated to redeem the investor's equity interest.

### Citation

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

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<sup>1</sup> See [INA 203\(b\)\(5\)](#).

<sup>2</sup> See [8 CFR 204.6\(e\)](#) (definition of invest).

<sup>3</sup> See [Matter of Izummi](#), 22 I&N Dec. 169, 186-187 (Assoc. Comm'r 1998).

<sup>4</sup> See *Doe v. USCIS*, 239 F.Supp. 297 (D.D.C. 2017); *Chang v. USCIS*, 2018 WL 746081 (D.D.C. Feb. 7, 2018).