

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

URBAN EQUALITY NOW,

Plaintiff,

v.

**SECRETARY OF THE DEPARTMENT OF
HOMELAND SECURITY, JEH JOHNSON
et al.,**

Defendants.

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CIVIL ACTION NO. 1:15-CV-199

PLAINTIFF’S MOTION TO DISMISS WITHOUT PREJUDICE

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Plaintiff Urban Equality Now (hereinafter “UEN”), and files this Motion to Dismiss without Prejudice pursuant to FED. R. CIV. P. 41(a)(1)(A)(i). Plaintiff makes this request in light of events that occurred subsequent to Plaintiff filing the instant litigation.

Procedural History

UEN filed the instant litigation on November 10, 2015. In this case, UEN has objected to the Defendants’ handling and management of the Immigrant Investor Program, also known as the EB-5 program. UEN requested the Court grant UEN certain relief, including, *inter alia*, an Order directing Defendants to establish policies and procedures to ensure compliance with the Immigration and Nationality Act, with respect to immigrant investors under INA Sec. 203(b)(5)(B), and an Order permanently enjoining Defendants from implementing INA Sec. 203(b)(5)(B) to permit Targeted Employment Areas be created in circumvention of INA Sec. 203(b)(5)(B). More specifically, UEN argued that Defendants permitted foreign investors to use

the EB-5 program through gerrymandered Targeted Employment Areas that failed to meet the letter or spirit of the Immigration and Nationality Act.

UEN's lawsuit generated and/or intensified the publicity and scrutiny focused on the EB-5 program. Congress has held multiple hearings regarding the EB-5 program since UEN filed its lawsuit. In at least one instance, during a Committee hearing, a Member of Congress specifically referred to and displayed documents filed by UEN in this case. Finally, on April 25, 2016, United States Citizenship and Immigration Service (USCIS) conducted a telephone conference wherein USCIS noted that USCIS intends to implement significant regulatory reforms for the EB-5 program. In particular, USCIS noted that it intends to address the TEAs that form the basis for the instant litigation.

Based on the telephone conference, UEN determined that USCIS intends to implement reforms substantially in conformity with the proposed relief requested in the instant litigation. On or about April 27, 2016, UEN proposed that the parties in this litigation file a Joint Motion to Abate the instant litigation in light of USCIS' comments a few days earlier. Defendants declined to join the Motion, instead preferring to file a Motion to Dismiss. On May 2, 2016, Defendants filed their Motion to Dismiss.

Argument and Authorities

UEN relies on FED. R. CIV. P. 41(a)(1)(A)(i) in filing this Motion. UEN believes that judicial economy, as well as conserving limited resources for both parties, dictates that UEN dismiss the instant litigation without prejudice. FED. R. CIV. P. 41(a)(1)(A)(i) permits UEN to file this Motion once as a matter of right given that Defendants have not answered nor have Defendants filed a Motion for Summary Judgment pursuant to FED. R. CIV. P. 56. *See* FED. R. CIV. P. 41.

UEN voluntarily dismisses this lawsuit without prejudice because (1) USCIS' recent comments indicates USCIS' intent to implement the reforms requested by UEN and (2) in the event USCIS implements some but not all the regulatory changes requested by UEN, the nature and scope of the case will have changed such that the dispute between the parties and the relief potentially granted by the Court will not reflect the then-current regulatory landscape.

To be clear, UEN's purpose was and remains focused on proper regulation of the EB-5 program. UEN neither seeks needless litigation nor desires to expend its own, the Court's, or Defendants' limited resources absent a compelling reason to do so. Given the current regulatory landscape, UEN does not believe the instant litigation furthers UEN's goals nor provides the Court with the proper posture to evaluate UEN's claims. Accordingly, UEN seeks a dismissal without prejudice.

Conclusion

WHEREFORE, Plaintiff respectfully requests this Court dismiss Plaintiff's claims without prejudice.

Respectfully submitted,

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By: /s/ Michael Coles _____
Michael E. Coles
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Elizabeth Aten Lamberson
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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2016, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Michael E. Coles
Michael E. Coles