

STIPULATIONS, JOINT MOTIONS, VOLUNTARY DISMISSALS, AND SETTLEMENT AGREEMENTS IN EB-5 AND RC PROGRAM

By Joseph P. Whalen (Monday, October 19, 2015)

In my casual perusal of case filings in courts¹ across the country, I noticed a pattern that I wish to share. First, most of these dockets are restricted access, allowing only minimal information upon which to base my speculations. Even though there are gaps in the publicly available information, a pattern is slowly emerging. There is a trickle of cases where denial of I-526s and/or I-829s is apparent. It is likely that there are more I-526s that are being denied and are the subject of these cases but that is just my educated guess. Denial of an I-829 is supposed to result in termination of status and issuance of an NTA which moves jurisdiction to EOIR's Immigration Court.

It appears that USCIS is negotiating solutions with aliens, groups of aliens, and other entities which could include some Regional Centers. Again, I stress that this is speculation on my part. Are the aliens being directed to the re-filing option in the EB-5 Adjudications policy Memo? Is there some increased Customer Service happening here? Is IPO at the heart of these initiatives or is the decision to proceed in this fashion coming from higher up? Might it be from the Office of the Director, the Secretary, or the Deputy Secretary? I do not know nor do I care, because it is not important.

What kinds of terms might these stipulations and agreements contain? *Equitable estoppel* is not within the authority of an executive branch agency but it is within the power of the courts. Could these various agreements and stipulations contain terms utilizing *equitable estoppel* which is then "blessed" by a judge? I wonder and I hope so. I would rather see some greater flexibility due to the business realities involved in larger development projects than see huge EB-5 failures. I am just throwing this "out there" in order to get the conversation started. Several dismissals are attached as examples.



Dated this 19th day of October, 2015

/s/ Joseph P. Whalen

That's my two-cents, for now!

¹ I use Justia Dockets at: <https://dockets.justia.com/search?parties=uscis&cases=mostrecent>
I use search terms such as: USCIS, Jeh Johnson, Nicolas Colucci, and Leon Rodriguez.

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 8 UNITED STATES DISTRICT COURT
 9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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 11 MEHRDAD SALARI,
 12 Plaintiff,
 13 v.
 14 JEH CHARLES JOHNSON, et al.,
 15 Defendants.

No. CV 14-5651-RSWL(ASx)
ORDER DISMISSING ACTION
 [Hon. Ronald S.W. Lew]

17
 18 Pursuant to stipulation, IT IS ORDERED that this action is
 19 dismissed without prejudice.

20 Each side shall bear its own costs and attorney's fees.

21 DATED: March 16, 2015.

22 **RONALD S.W. LEW**
 23 _____
 HON. RONALD S.W. LEW
 24 SENIOR U.S. DISTRICT JUDGE

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**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

CHEN, Chun-Yi, et. al.

Plaintiffs,

v.

UNITED STATES CITIZENSHIP &
IMMIGRATION SERVICES, et al.

Defendants.

Case No.: CV 14-6550-GW(AJWx)

ORDER

Judge George H. Wu

The Court APPROVES the parties' stipulation. The above captioned case shall be dismissed with prejudice.

IT IS SO ORDERED.

DATED: April 21, 2015



Hon. George H. Wu
United States District Judge

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 7

8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF NEVADA**

10 V REAL ESTATE GROUP, INC., a Nevada
 corporation, WELLCITY REALTY, INC., a
 11 Nevada corporation, FAIRTOP REALTY, INC.,
 a Nevada corporation, RICHCORP REALTY,
 12 INC., a Nevada corporation, and WHISTLER
 REALTY, INC., a Nevada corporation,

CASE NO.: 2:14-cv-01096-RCJ-CWH

**STIPULATION AND [PROPOSED]
 ORDER FOR DISMISSAL, WITH
 PREJUDICE**

13 Plaintiffs,

14 vs.

15 UNITED STATES CITIZENSHIP &
 16 IMMIGRATION SERVICES, Jeh Charles
 JOHNSON, Secretary, U.S. Dept. of Homeland
 17 Security; Leon RODRIGUEZ, Director,
 U.S. Citizenship & Immigration Services; Kathy
 18 BARAN, Director, U.S. Citizenship
 & Immigration Services, California
 19 Service Center, Nicholas COLUCCI, Chief,
 Immigrant Investor Program, U.S. Citizenship
 20 and Immigration Services, Eric HOLDER, U.S.
 Attorney General, Lori SCIALABBA, acting
 21 director, U.S. Citizenship & Immigration Services
 DOES I-X and ROE ENTITIES I-X, inclusive,

22 Defendants.
 23

24 Plaintiffs, V REAL ESTATE GROUP, INC. ("VREG"), WELLCITY REALTY, INC.
 25 ("Wellcity"), FAIRTOP REALTY, INC. ("Fairtop"), RICHCORP REALTY, INC. ("Richcorp"),
 26 and WHISTLER REALTY, INC. ("Whistler," together with VREG, Wellcity, Fairtop, Richcorp,
 27 "Plaintiffs," herein), by and through counsel, the law firm of Gordon Silver, and Defendants
 28 UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES, JEH CHARLES

1 JOHNSON, Secretary, U.S. Dept. of Homeland Security; LEON RODRIGUEZ, Director, U.S.
2 Citizenship & Immigration Services; KATHY BARAN, Director, U.S. Citizenship &
3 Immigration Services, California Service Center, NICHOLAS COLUCCI, Chief, Immigrant
4 Investor Program, U.S. Citizenship and Immigration Services, ERIC HOLDER, U.S. Attorney
5 General, LORI SCIALABBA, acting director, U.S. Citizenship & Immigration Services
6 (collectively, the “Defendants”), by and through counsel, United States Department of Justice,
7 hereby stipulate and agree that this Court should enter an Order of Dismissal of the Complaint on
8 file herein, with prejudice.

9 In support of the Stipulation and Proposed Order, the Court is advised that the parties
10 entered into a Settlement Agreement effective as of March 13, 2015 which resolves all of
11 Plaintiffs’ claims against all of the named Defendants.

12 Respectfully submitted this 20th day of March, 2015.

13 GORDON SILVER

UNITED STATES DEPARTMENT OF
JUSTICE, CIVIL DIVISION
OFFICE OF IMMIGRATION LITIGATION

14
15 /s/ Mark S. Dzarnoski

/s/ Glenn M. Girdharry

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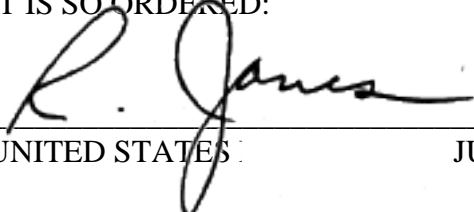
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[PROPOSED] ORDER

Based upon the Stipulation of the Parties and the representations contained therein that the matter has been fully and completely settled as to all Plaintiffs and all Defendants, and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT the Complaint on file herein is dismissed, with prejudice, as to all claims and Parties.

IT IS SO ORDERED:



UNITED STATES JUDGE

DATED: _____ March 27, 2015 _____