U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Customer Service and Public Engagement Directorate
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U.S. Citizenship and Immigration Services

Executive Summary

EB-5 IMMIGRANT INVESTOR PROGRAM
QUARTERLY STAKEHOLDER ENGAGEMENT
May 1, 2012

On May 1, 2012, USCIS hosted an EB-5 quarterly stakeholder engagement to provide updates on the EB-5 Immigrant Investor Program and answer questions from participants. During the session, USCIS provided a summary of the EB-5 receipts, approvals and denials and subject matter experts from USCIS and the Department of State (DOS) answered questions from participants.

Statistics, Processing Times and Visa Usage

Q: Please list the processing times Forms I-526, I-829, I924 and I-924A and how the times compared to target processing times.
1. Form I-526 (Immigrant Petition by Alien Entrepreneur)
2. Form I-829 (Petition by Entrepreneur to Remove Conditions)
3. Form I-924 (Application For Regional Center) for new Regional Centers
4. Form I-924-A (Supplement to Form I-924)for amendments to Regional Centers

A: Processing times are posted on the USCIS Processing Time Information Web page, accessible via the EB-5 Immigrant Investor page, My Case Status link, Check Processing Times link. The processing times for I-924s are posted on the EB-5 Regional Center web page. USCIS is working to improve processing times, and producing a large volume of cases. We understand stakeholder frustration, and have increased staffing, but the number of filings has also increased. As a result, USCIS can not provide an arbitrary future date upon which target processing times will be met.

Q: When does USCIS plan to release its report based on Form I-924A submissions, including regional center specific Form I-526 and Form I-829 statistics?
A: USCIS is currently analyzing data received through the Form I-924A submissions. The report release date is yet to be determined.

Q: How many questions are currently pending in the EB-5 mailbox? What is the average response time for these inquiries?

A: The USCIS Immigrant Investor Mailbox is administered full-time by an EB-5 supervisor who reviews all incoming messages, assigns inquiries to mailbox-dedicated EB-5 immigration services officers (ISO) for response, and monitors the timeliness of the response. Because we are constantly responding to and receiving new questions, it's impossible to determine how many inquiries we have in the mailbox at any given time. The dedicated mailbox staff has been able to address inquiries within 2-3 days of receipt, although some inquiries may take additional time depending on the amount of research and coordination required. Inquirers are notified if additional time is needed.

Q: How can applicants follow up on the status of Form I-829 applications that have been pending longer than target processing times?
A: Please submit case inquiries with a copy of the receipt notice to the EB-5 mailbox to request a status update. Cases later than 1999 are currently being adjudicated.

Q: Have there been any changes in USCIS regulations, policies or processes or changes in the rules governing investments in regional centers that might extend the timeframe needed to complete an EB-5 transaction?
A: No

Q: USCIS says it takes cases on a first in, first out basis, but also that it is looking at grouping regional center cases to be adjudicated by teams. If a regional center submits an amendment to a Form I-924, will it be included with the group or will it go into the first in, first out process?
A: ISO specialization by regional center efforts are geared toward Form I-526 and Form I-829 adjudications, not Form I-924 adjudications. However, Form I-924 applications are given to ISOs familiar with the regional center applicant, if possible. USCIS still adheres to a first in, first out process when adjudicating cases in the Form I-924 application workflow queue (and in the individual petition queues). Under ISO specialization, when the time comes for a petition or application to be adjudicated, it can be sent to an ISO who is familiar with the regional center and the capital investment project.

Q: Can USCIS establish a system to allow stakeholders to send questions directly to economists?
A: Regional centers that already have direct email communication with USCIS should submit questions through their dedicated email box. If the question relates to work that the economists are responsible for, then they will respond to the question.

Q: How does USCIS balance resources to ensure timely adjudication of all EB-5 applications and petitions?
A: ISOs are assigned to specific regional center applications, including amendments and other Forms I-526 received by USCIS. Economists will complement the work of the ISOs and help address issues we have struggled with in the past. USCIS coordinates among officers who are becoming regional center experts. If another regional center is similar, please make it clear in the application to help us with case assignment.

Q: What is the target processing time for adjudicating responses to Form I-924 Requests For Evidence (RFE)?

A: The target processing time for reviewing responses to Form I-924 Requests For Evidence (RFEs) is 30 days.

Q: USCIS should give deference to the credibility of U.S. businesses. How can applicants help ensure expedited review of these cases?
A: USCIS continues to adjudicate cases on a first-in/first-out basis. Recent adjudication asset additions are helping and will improve the process in the future. USCIS has published national criteria for the granting of expedite requests. The EB-5 program follows that criteria in determining whether to grant an expedite request. For more information, please visit the EB-5 Inquiries web page.

Q: Can USCIS confirm that it is adhering to first in, first out processing for EB-5 cases?
A: Yes. If cases are pending beyond posted processing times, please contact the EB-5 mailbox at EB-5ImmigrantInvestor@dhs.gov.

Q: Is USCIS holding Form I-526 (Immigrant Petition by Alien Entrepreneur) petitions filed in connection with pending I-924s that have Requests for Evidence (RFEs) until the I-924 adjudication is complete?
A: Not as a general practice, but an I-924 approval would have to be in place if being used as the basis for the I-526, including amended I-924s.

I-526 Petitions

Q: In many cases, a business cannot actually purchase or enter into a lease for the location until after the investor's Form I-526 has been approved and funds are available. Recognizing that the economic analysis submitted with the I-526 would have to address each location being considered, can the I-526 identify several possible locations for the business or an area in which the business could be located, but not yet make the specific selection of location and then choose one after the I-526 is approved?
A: The business plan to be submitted with the Form I-526 petition must be in compliance with *Matter of Ho*. The information to be presented regarding the location of the business and possible contingent locations must contain sufficient detail to meet the *Matter of Ho* requirements. The determination regarding whether sufficient detail is presented must be analyzed on a case-by-case basis.

Q: After the formulas and multipliers in an economic analysis have been approved by USCIS as part of a regional center's initial application, please confirm that the approved formulas and multipliers may be updated with more current data (for example, updated RIMS II (Regional Input-Output Modeling System) multipliers of the most current year versus multipliers of a few years back when the regional center was approved) at the time of actual Form I-526 or Form I-829 petitions, as long as the methodology used is otherwise the same as what was approved by USCIS.
A: This is acceptable as long as the applicants are consistent and don't "cherry pick" across a range of years. For clarification, it is not acceptable to selectively use the highest multipliers

available for each approved industry since the date that the approval was issued. For example, if the applicant was approved in 2008 to use appropriately specified 2006 RIMS II (Regional Input-Output Modeling System) final demand multipliers for the construction and operation of an assisted living facility, then the applicant must use 2006 RIMS II final demand multipliers for both construction and operation of the facility, or 2007 RIMS II final demand multipliers for both the construction and operation of the facility, or 2008 RIMS II final demand multipliers for both the construction and operation of the facility, and so on. The petitioner may not use a 2006 RIMS II final demand multiplier for construction and a 2009 RIMS II final demand multiplier for operations simply because the RIMS II final demand multipliers for those two industries in those two years happen to be the highest multipliers published since the approval of the I-924.

I-829 Petitions

Q: Is the 20 to 30 month window during which the I-829 must be filed, calculated from the time the I-526 is approved or the conditional green cards are issued?
A: There is no 20 to 30 month "window" during which the Form I-829 must be filed. To the contrary, the regulations require the filing of the Petition by Alien Entrepreneur to Remove Conditions (Form I-829) during the 90-day period preceding an individual's two-year anniversary as a lawful permanent resident.

Lawful Permanent Resident status (on a conditional basis) is a function of admission or adjustment. The approval of the Immigrant Petition by Alien Entrepreneur (Form I-526) merely represents eligibility for an immigrant visa pursuant to INA § 203(b)(5). It is ***not*** an adjudication of admissibility for permanent resident status. Please refer to the Form I-526 instructions, specifically the sections entitled "Approval," and "Meaning of Petition Approval" for more information.

Q: Regarding Form I-829 adjudications, is USCIS applying presently the standards presented in the December 2009 memo, or the standard announced in the draft memo? Is USCIS presently following the draft guidance?
A: USCIS is not using the draft memo as formal policy guidance.

I-924 Petitions

Q: In a regional center application, kindly confirm that two digits of North American Industry Classification System (NAICS) codes are considered sufficient with the industry cluster specified and economic report elaborating the same. The rationale behind this is because in a retail and office setting, three digit code tenants are not ascertained at the time of filing the I-924.
A: This is not acceptable. Even within clusters and projects that incur similarities, USCIS requires four digit NAICS codes at a minimum.

Q: Can USCIS provide filing hints to assist in lowering RFE and denial rates?
A: USCIS has discussed developing filing hints and is looking at ways to be more proactive in communicating with stakeholders. Submitting the most detailed and comprehensive evidence of investment and job creation possible is the primary way to avoid receiving an RFE.

Q: USCIS does not require that applicants use attorneys or economists in filing for any immigration benefits with the agency. When filing Form I-924 using a direct job creation model vs. economist-based job creation (10 jobs created directly per investor), is it possible to file the application without the use of economist and minimal use of attorneys?
A: A regional center application has a robust evidentiary requirement. It is possible to provide a simplified model, but the applicant must demonstrate reasonable methodologies. In every case, the applicant must show a reasonable economic methodology to prove direct or indirect job creation.

Q: If a geographical location is in Federal Empowerment Zone (an economically distressed area), would an investor be eligible to qualify for the EB-5 program by making a $500,000 investment?
A: The area would still need to qualify under the requirements of the EB-5 program. In order to qualify for the EB-5 program based on a $500,000 investment, the investment must be in a targeted employment area (TEA).

Q: When will Form I-924 case status be available online?
A: Case status online is tied to CLAIMS 3. Forms I-924 and I-829 processing times do not reside in CLAIMS 3. Through Transformation, USCIS will have a common platform for all applications, petitions and case status online in a few years. If stakeholders are seeking case status lasting beyond posted processing times, they should use direct email contact or the EB-5 mailbox.

EB-5 Visa Allocations

Q: How many visas are allocated to the EB-5 program annually? Is that an annually adjusted number based on some calculation, or is it a consistent number that is set by either statute or rule? Additionally, how many visas were allocated and how many of those were approved under the EB-5 program each year for the last 5 or 10 years?
A: The annual limit of visas available for the EB-5 category is consistent and set by statute. See INA 203(b)(5)(A).

For information regarding the allocation and approval of EB-5 visas, please visit www.state.gov.

Q: Please confirm whether the number of EB-5 visas via the regional center pilot program is capped at 3,000 or can exceed 3,000 (up to 10,000).
A: 3,000 is not a hard cap number. The regional center pilot program can exceed 3,000 visas.

Q: Has USCIS given any thought to increasing 10,000 visa cap? What are USCIS thoughts on whether program will be extended?
A: This is up to Congress, and USCIS hopes to have more information by next stakeholder meeting.

Q: Stakeholders are concerned with the meteoric rise of Form I-526 applications. What is the process for reauthorization of the EB-5 program?
A: Congress determines how many visas to issue. USCIS will administer the program as Congress sees fit, and hopes to have additional information about the future of the program in time for the next quarterly stakeholder engagement.

Customer Service

Q: Stakeholders have not received responses to questions submitted to the regional center direct communication mailbox (primarily tenant occupancy questions), but petitioners need to respond to RFEs soon. How will USCIS inform stakeholders when RFE response time has been extended?
A: USCIS will communicate individually with applicants with tenant occupancy RFEs via mail and email, and will look into the lack of response from the regional center direct mailbox.

Premium Processing

Q: Can USCIS provide an update on premium processing?
A: USCIS cannot provide an update on premium processing yet, and is evaluating what can and should be done in terms of moving forward.

Troubled Company Designations

Q: Regarding troubled company status, how is the loss period calculated? Are there any adjustments/exceptions to the 20% guideline? Who makes that determination?
A: Troubled business is defined at 8 CFR § 204.6(e). The loss period can be either the one or two year period (12 or 24 month) ***immediately preceding*** the priority date on the immigrant investor's Form I-526, and the loss for such period must be *at least* equal to twenty per cent of the troubled business's net worth prior to such loss.

There are no exceptions to the 20% loss regulatory mandate. However, this is the minimum level of financial loss that must be demonstrated in order for a commercial enterprise to be considered a troubled business. The overall loss can be greater than 20%. Generally accepted accounting principles should be followed in documents used to support claims that a commercial enterprise meets the definition of a troubled business. The determination of whether a commercial entity meets the definition of a troubled business is made on a case-by-case basis.

Q: If the assets of a troubled business have dropped below 20%, would that be a sufficient requirement for saving the business and jobs?
A: We would look to the regulations for net worth and would apply the standard in the regulation.

Q: Since the definition of a troubled business is clearly stated in the regulations, when an actual project is being undertaken by a regional center involving a troubled business, please confirm that no amendment involving a troubled business is required for that regional center to undertake this project provided no change is involved in terms of geographic scope, approved industries and job methodology. Please also confirm that the net worth of a troubled business is based on generally accepted accounting principles.
A: Determinations regarding whether a business meets the "troubled business" requirements are made at the Form I-526 petition stage. A Form I-924 amendment is not required; however, an amendment may be made if there is a change in the geographic area, organizational structure or administration, capital investment projects – including changes in the economic analysis and underlying business plan to estimate job creation- or the affiliated new commercial enterprise and/or capital investment instruments or offering memoranda. See instructions to Form I-924.

The net worth of a troubled business must be based on generally accepted accounting principles according to the definition found at 8 CFR § 204.6(e).

Diversification

Q: Where can stakeholders find information about investing in a diversified portfolio enterprise which then lends to a specific commercial enterprise?
A: Information on specific investment projects is generally provided by the regional center operators or individual entrepreneurs who are not affiliated with a designated regional center.

Q: In EB-5 Basic Direct can investors, joined together to invest in a business, also diversify their funds into 2 or more businesses?
A: An immigrant investor who is not associated with a regional center may deploy capital into a portfolio of businesses, so long as all capital is deployed through a single commercial enterprise and all jobs are created within that commercial enterprise. For example, in an area in which the minimum investment amount is $1,000,000, the investor can satisfy the statute if the commercial enterprise deploys $600,000 toward one business that it wholly owns, and $400,000 toward another business that it wholly owns. See 8 C.F.R. § 204.6(e). (In this instance, the two wholly-owned businesses would have to create an aggregate of ten new jobs between them.) An investor cannot qualify, on the other hand, by investing $600,000 in one commercial enterprise and $400,000 in a separate commercial enterprise.

New Commercial Enterprise Definition

Q: Where can stakeholders find the definition of a new commercial enterprise and job creation as it pertains to an EB-5 regional center?
A: The regulations governing the EB-5 program define the term "commercial enterprise" broadly. The regulation defines a "commercial enterprise" as: [A]ny for-profit activity formed for the ongoing conduct of lawful business. See 8 C.F.R. § 204.6(e). The regulation provides a list of examples of commercial enterprises and specifically states that the list is not exhaustive.

The regulation provides that the commercial enterprise must be one that is designed to make a profit. Certain charitable organizations do not qualify and the definition does not include "noncommercial activity" such as owning and operating a personal residence.

The EB-5 program has presented a broad definition of what constitutes a "new" commercial enterprise into which the immigrant investor can invest the required amount of capital and help create jobs.

The EB-5 program defines "new" as "established after November 29, 1990." See 8 C.F.R. § 204.6(e). The immigrant investor can invest the required amount of capital in a commercial enterprise that was established after November 29, 1990 to qualify for the EB-5 Program, provided the other eligibility criteria are met.

In addition, under the EB-5 Program, a "new" commercial enterprise also means a commercial enterprise that was established before November 29, 1990 and that will be restructured or expanded through the immigrant investor's investment of capital.

Job Creation:
For a new commercial enterprise that is not a troubled business and is located within a regional center, the EB-5 Program provides that the full-time positions can be created either directly or indirectly by the new commercial enterprise. See 8 C.F.R. § 204.6((j)(4)(iii).

Q: Would a joint venture be considered an acceptable new commercial enterprise? Are only wholly owned subsidiaries considered new commercial enterprises? Please explain.
A: Joint ventures and wholly owned subsidiaries are mentioned in the non-exclusive list of what would be considered a commercial enterprise. The determination of whether a wholly owned subsidiary meets all of the statutory and regulatory requirements of the EB-5 program is made on a case-by-case basis.

List of Approved Regional Center Projects

Q: Are regional center projects actually approved by a regional center a matter of public record, or is that proprietary information? Is there a list of approved projects within each regional center, their size and the project type?
A: USCIS approval of an EB-5 regional center application ***does not*** in any way:

* Constitute USCIS endorsement of the activities of that regional center;
* Guarantee compliance with U.S. securities laws; or
* Minimize or eliminate risk to the investor.

Potential investors are encouraged to seek professional advice when making any investment decisions. In light of the above, USCIS does not provide information to the public regarding regional centers' capital investment projects.

Q: Where can the proposal for the improvement of the EB-5 program referenced in the May 19, 2011 blog (http://blog.uscis.gov/2011/05/eb-5-program-creating-jobs-in-america.html) be found?
A: The proposal for the improvement of the EB-5 program referenced in the May 19, 2011 Beacon post is posted at:
http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Operartional%20Proposals%20for%20Comment/EB-5-Proposal-18May11.pdf

Permissible Expenditures

Q: Any reasonable budget will include line items for "contingencies" and "operating capital" which are required in order to sustain a business successfully during the development process. Some business plans have been approved with such lines (as they should be) while others have been rejected specifically citing these budget lines as "not being job creating activities". Please confirm that such expenditures are permissible - no business plan is believable without such budget lines.
A: Whether a particular line item in a budget presented in support of an EB-5 petition is appropriate cannot be confirmed in general, but must be analyzed in the context of the instant case. However, USCIS does agree that a credible business plan should contain a reasonable budget that outlines the prospective expenses of the business.

Refundable Fees

Q: If USCIS rejects a Form I-526 or I-829 petition, is the petition fee refundable, in whole or in part?
A: If a petition is rejected, i.e., not accepted for processing by USCIS, then the entire fee is returned with the petition to the petitioner or the attorney of record.

Job Creation

Q: Can expenditure models based on RIMs II Final Demand Multipliers, if they project adequate number of jobs to satisfy the 10 full time job requirement per investor, satisfy the job creation requirement and proof of such expenditure submitted with the I-829 in accordance with the business plan submitted with the I-526?
A: This is an acceptable methodology if the structure of the business entities precludes the acquisition of tax documents or other evidence of employment for the components projected to be involved in direct job creation. USCIS would require a detailed explanation as to why the use of a model projection as opposed to evidentiary proof is necessary.

Q: Professional Employer Organizations (PEOs) are often used by small businesses. They provide that the business hires, fires and controls the business's employees, but the PEO technically employs the employees and leases them to the business. This allows small businesses to save money on employee costs such as workers' compensation and offer employee benefits more affordable, such as health insurance. Do these employees count as employees of the business for purposes of EB5 job creation verification and compliance?
A: The PEO concept may possibly be acceptable within the EB-5 context in certain instances. However, as the scope and nature of PEO contractual relationships vary greatly, the approvability of such an arrangement for EB-5 purposes would have to be decided on a case-by-case basis through a review of the specific evidence of record.

Q: In a case where the EB-5 business is a real estate development, which leases space to tenant businesses who then hire employees, do the following factors increase the likelihood that those tenant's jobs can count toward satisfying the job requirements of the development's EB-5 investors:

a. The tenant business is a new business which did not merely move from another location
b. The tenant business received cash from the development for tenant improvements
c. The tenant business received a loan from the development
d. The tenant received free rent or rent reductions

The tenant received an equity investment from the development

A:

a. The tenant business is a new business which did not merely move from another location
This is not acceptable. None of the EB5 capital would be flowing to the jobs created by the tenant.

b. The tenant business received cash from the development for tenant improvements
This is not acceptable. The tenants would still be responsible for creating the jobs. The EB-5 capital would simply be improving/outfitting/customizing the structure already owned by EB-5 capital.

c. The tenant business received a loan from the development
This is acceptable with caveats. This effectively represents the co-mingling of capital. Similar to the *quid pro quo* expenditure agreement referenced above, however, this will render the agency vulnerable to fraud because the tenants could form an agreement beyond the adjudicative scope of USCIS to funnel the funds back to the developer. In addition, USCIS would need to define the constraints of the loan amounts and duration. Otherwise, the developer could loan $0.01 to a tenant to take credit for any jobs created. Finally, the tenant business must verify that the jobs are new jobs not transferred from elsewhere.

d. The tenant received free rent or rent reductions
This is acceptable with caveats. Similar to (b) above, this effectively represents the co-mingling of capital as the free rent/rent reductions acts as a loan. The same caveats apply here as in (b) above. In addition, this will cause a significant decrease in rental income for the EB-5 NCE, which should be an investment at-risk, not at-loss. USCIS would still need to define the constraints of the rental discount required, which effectively serves as a loan. It is highly unlikely, however, that the free rent or rent reduction over a 2.5-year period would sum to a total amount that could be considered a substantial investment in the tenant business.

e. The tenant received an equity investment from the development
This is acceptable with caveats. Again, this effectively represents the co-mingling of capital as in (b) above. The same caveats apply here.

Q: One of the most effective ways to attract investors is for the business into which they are going to invest to buy and own the real estate in which they will operate the business, rather than merely lease it. This makes the investor feel that the business is more likely to succeed, or, if it fails, the real estate could perhaps be used to establish a second business. Therefore, where part

of the investment expenditure is spent on real estate in which the business is to be operated, is it correct that such expenditure is a job creating expenditure for which appropriate job creation credits can be obtained. For example, if an investor invests $1million to acquire a building for $500,000 and then spend another $500,000 to renovate and equip as well as fund operating capital for a restaurant, would the entire $1million be considered an appropriate EB5 investment, assuming it otherwise qualifies.
A: This is a simple transfer of real estate with renovations occurring subsequent to the purchase. The renovation and outfitting of the facility will create temporary jobs, and it is possible that a trivial number of jobs could be created by the fees charged for the real estate transfer. Summarily, yes—the $1 million could be considered an appropriate EB-5 investment—assuming that the other requirements of the EB-5 regulations are satisfied.

Geographic Designations

Q: Will a single or multiple contiguous census tracts be considered as a geographic subarea?
A: USCIS encourages that standard Bureau of Labor Statistics (BLS) estimation methodology be used. In the event that subareas for which Local Area Unemployment Statistic estimates are not regularly produced, such as census tracts, the TEA applicant should be aware of the following: (1) the census-share technique be used ONLY where inputs for the preferred BLS methodology are not available and (2) only household-only inputs be used, in order to eliminate the impact of the Census 2000 Group Quarters processing error. More information regarding this answer can be found at the Bureau of Labor Statistics webpage at:
http://www.bls.gov/bls/empsitquickguide.htm

Q: Can a qualifying census tract with unemployment 150% of the national rate be certified as a TEA?
A: Yes, but designation will depend on the quality and timeliness of the data used to support the 150% of the national average rate of unemployment claim. Acceptable data sources for purposes of calculating unemployment include Local Area Unemployment Statistics produced by a government agency, U.S. Census Bureau data, and data from the American Community Survey.

Q: Have there been any changes to the rules governing investments in the targeted employment areas?
A: No

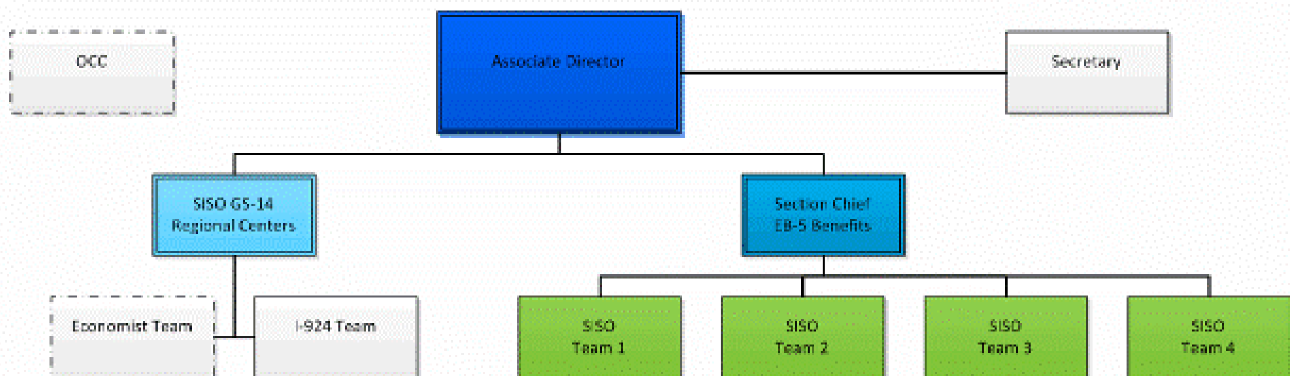
Q: Has there been any progress on further defining an acceptable vs. gerrymandered TEA? Will USCIS be providing additional guidance?
A: This issue is being examined in the context of the draft memorandum, which will be posted for comment in the near future.

Profit Requirements

Q: At the end of the two year period, to remove the restriction, does the business created have to make profits? Or can the business lose money as long as the ten job creation requirement is satisfied?
A: There is no "profit" requirement in the statue or regulations. As long as the investment has been made and is at risk of loss and the required jobs have been created there is no additional profitability requirement.

New Hires

Q: What will the USCIS EB5 unit organizational chart look like once hiring is complete?
A: We can only provide a generalized org chart, without specific staffing numbers.



Q: USCIS has stated that it will not be involved in the securities side of EB-5 filings, but is now advertising for a securities counsel. What will their role be? Will stakeholders be able to interact w/them directly as with Securities and Exchange Commission (SEC) staff?
A: It continues to be the role of USCIS to adjudicate benefits under the Immigration and Nationality Act (INA). As far as further developing the team, we are seeking in –house counsel to help review and advise on individual case matters, they will work together with the agency's current EB5 counsel.

Q: Is funding an issue for USCIS to hire and train additional staff?
A: Yes. The number of cases has quadrupled in 1.5 years. USCIS has realigned resources at the expense of other workloads to bring in economists and securities attorneys.

Bridge Financing

Q: Under what circumstances will USCIS approve bridge financing? Will the memo address this? This does not appear to be covered with adequate specificity in the last iteration of the policy memo. Stakeholders are not aware of any written guidance on bridge financing other than am AAO decision on the Victorville case, and this is an extreme example with specific facts. Of the two memos in 2009 (June and December) on construction, the December 2009 memo superseded the June memo, but stakeholders continue to receive RFEs referencing the June memo.
A: Pursuant to 8 C.F.R § 204.6(j)(4)(i), the new commercial enterprise, not the EB-5 investors, must create the requisite employment. As such, it is acceptable for the developer or the principal of the new commercial enterprise, either directly or through a separate job-creating entity, to utilize interim, temporary or bridge financing – in the form of either debt or equity – prior to receipt of EB-5 capital. If the project commences based on the bridge financing prior to the receipt of the EB-5 capital and subsequently replaces it with EB-5 capital, the new commercial enterprise still gets credit for the job creation under the regulations.

This policy will be issued in the forthcoming EB-5 policy memo in Section C, the Creation of Jobs section:

"It is important to recognize that while the immigrant's investment must result in the creation of jobs for qualifying employees, it is the new commercial enterprise that creates the jobs. This distinction is best illustrated by an example:

Ten immigrant investors seek to establish a hotel as their new commercial enterprise. The establishment of the new hotel requires capital to pay financing costs, purchasing the land, developing the plans, obtaining the licenses, building the structure, taking care of the grounds, staffing the hotel, and the many other types of expenses involved in the development and operation of a new hotel. The immigrant's investments can go to pay part or all of any of these expenses."

Non-Profit Organizations

Q: How can non-profits benefit from this program? Can they receive a direct investment from an EB-5 investor or do they need to work through a regional center?
A: An EB-5 investment must be in a for-profit entity, so a direct investment in a non-profit probably does not meet program requirements. EB-5 promoters may be able to advise on structuring specific investment opportunities, but the premise of the EB-5 program is investment in for profit activities. Job creation is the same, but premise of program is for for-profit commercial entities.

F-1 Visas and EB-5

Q: What happens if an F-1 visa student files Form I-526, which is approved, followed by a Form I-829, which is denied? Can the applicant still continue study in the U.S. in F-1 status?
A: F-1 status does not have dual intent, so that may cause some problems. If someone becomes a conditional permanent resident through the EB-5 program (a prerequisite for filing the form I-829), he or she is no longer an F-1 visa holder.

Source of Funds

Q: After receiving the mandatory amount of funds from an immigration investor, can a U.S. business entity borrow additional funds from U.S. banks with the entity's property as security?
A: In general, yes.

Q: Nearly all Chinese investors have source of funds issues. The Chinese government in 2009 enacted a law allowing Chinese companies that obtain an overseas investment license to manage overseas investments, so an EB-5 investor from China could legally open an account in Bank of China with more than $50,000 (previous limit). Now Chinese companies and citizens are permitted to invest overseas without applying for a special commission. As a result, we have first investor investing $500,000 drawn on a Chinese bank. No regulation or law has been printed yet, but will a remittance from Bank of China suffice as proof?
A: Stakeholders are encouraged to email the USCIS Immigrant Investor Program mailbox with concerns regarding RFEs for this issue. The regulatory requirement for evidence to establish lawful source of funds is found at 204.6(j), and the eligibility requirement is taken seriously. This states that funds must be from non-criminal, lawful source. Every case has its own nuances, but the regulation should be the guide.

Q: A stakeholder has investors who have taken out $500,000 through an investment license channel, but a RFE asks whether this is legitimate and whether money is in the bank.
A: If you feel an RFE is in error, please send an email to EB-5 Immigrant Investor mailbox, but still be sure to respond in a timely manner to the RFE so that you do not jeopardize the adjudication.

Q: With recent allegations of alleged corrupt Chinese government activity, is there a higher scrutiny for source of funds applied to Chinese cases?
A: The standard for reviewing source of funds is not country specific. Everyone must show that capital is obtained from a lawful source.

RFEs

Q: Why, after submitting many petitions with the same facts over many years, do stakeholders seem to suddenly be getting RFEs?
A: Different attorneys may have different styles of filing, and USCIS reviews and responds to the information that is presented. If stakeholders think an RFE is in error, please send inquiries to EB-5 mailbox. USCIS is working to improve RFE templates.

Q: Is it possible to organize RFEs with one RFE with one set of questions? USCIS needs to streamline the process.
A: USCIS has been looking at ways to meet differing interests of I-526 petitioners and regional center promoters, and recognizes the tension. USCIS is working to have adjudicators collaborate, and appreciates that it must be frustrating for stakeholders and adjudicators alike, and encourages suggestions from stakeholders. USCIS is always looking for ways to improve efficiency and meet legal requirements.

Q: What level of detail does USCIS expect in response to RFEs? Projects are unique and not bound by limitations.
A: USCIS can not engage in a case specific discussion, but is working hard to adjudicate all cases. USCIS reviews all material that applicants submit in response to an RFE.

Q: Email is not working for case specific inquiries from stakeholders. How will extensions be communicated?
A: USCIS will look into issues with email, and communicate directly to tenant occupancy applicants regarding extensions.

Draft Policy Memorandum

Q: When will draft EB-5 memo be finalized?
A: USCIS anticipates that next iteration of policy memo will be posted in next few weeks; it will be a draft memo posted for public comment.

Q: Until the memo is final, is USCIS applying the standards in the draft memo, especially removal of conditions in a material change scenario? The memo announces a standard of flexibility – are we presently following this directive? If the consequence of not following a flexible standard is removal of conditions and beginning of removal proceedings, why would USCIS not following a flexible standard?
A: This is a draft memo and USCIS is not following it yet. This is a policy issue that will be addressed in final memo. USCIS is following laws and policies currently in place.

EB-5 Sunset

Q: What is the status of the EB-5 "sunset" scheduled for September 30, 2012, and how might this affect current and future applications and projects?

A:

- The EB-5 Immigrant Investor Pilot Program is scheduled to end or "sunset" at the end of the current fiscal year, on September 30, 2012.
- Without Congressional reauthorization, the Immigrant Investor Pilot Program will end on September 30, 2012. Congress may choose to end or extend the program.
- If Congress does not reauthorize the Immigrant Investor Pilot Program, all existing regional center designations will expire automatically.
- Following the sunset of the Immigrant Investor Pilot Program, USCIS will no longer possess authority to approve a regional center designation.
- USCIS will continue to monitor Congressional actions pertaining to the EB-5 Immigrant Investor program, and will keep stakeholders informed as new information becomes available.