



U.S. Citizenship and Immigration Services

EB-5 Immigrant Investor Program Stakeholder Meeting
California Service Center
March 17, 2011

Agenda

I. Introductions

II. Program Statistics

III. Webpage Update

IV. Regional Center Economic Analysis

V. Stakeholder Topics

VI. Q&A



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EB-5 Stakeholder Meeting Presentation

This presentation is intended to provide a guide for discussion at the stakeholders' meeting and to explain current USCIS policy and practice. It is not intended to be an official statement of USCIS policy, and does not supersede any existing statutes, regulations, or policy memoranda. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in any way.



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II. EB-5 Program Statistics

Regional Center Data:

- There are currently 125 approved Regional Centers (RCs), operating in 36 states, including the District of Columbia and Guam.
- A complete list of approved RCs is also available online at <http://www.uscis.gov/eb-5centers> .
- Approximately 90-95% of the individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in RC-affiliated commercial enterprises.
- There are 156 initial RC Proposals, as well as 34 RC proposals seeking to amend approved RCs, pending initial review with USCIS.



Regional Center Proposal Filing Receipts for FY10 and FY11 Q1

Initial RC Proposal Filings FY10	Initial RC Proposal Filings FY11 Q1 (10/01/2010 – 12/31/2010)	FY11 Q1 Filings as a % of FY10 Filings
110	116	105%
Amended RC Proposal Filings FY10	Amended RC Proposal Filings FY11 Q1	FY11 Q1 Filings as a % of FY10 Filings
42	24	57%



Regional Center Final Case Actions FY10 and FY11 Q1

FY10		FY11 Q1	
Initial Proposal Approvals / Final Action %	Initial Proposal Denials / Final Action %	Initial Proposal Approvals / Final Action %	Initial Proposal Denials / Final Action %
36 / 55%	30 / 45%	13 / 76%	4 / 24%
Amended Proposal Approvals / Final Action %	Amended Proposal Denials / Final Action %	Amended Proposal Approvals / Final Action %	Amended Proposal Denials / Final Action %
42 / 71%	11 / 29%	7 / 78%	2 / 22%



EB-5 Individual Petition Filing Receipts FY05 – FY10, & FY11 Q1

Fiscal Year and/or Quarter	Form I-526 Petition	Form I-829 Petition
FY11 Q1	701	531
FY10	1955	768
FY09	1028	437
FY08	1257	390
FY07	776	194
FY06	486	89
FY05	332	37



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Form I-526 Petition Final Actions and Final Action Percentages for FY05 – FY10 & FY11 Q1

Fiscal Year and/or Quarter	Form I-526 Approvals	Final Action %	Form I-526 Denials	Final Action %
FY11 Q1	190	77%	56	28%
FY10	1369	89%	165	11%
FY09	1262	86%	207	14%
FY08	640	84%	120	16%
FY07	473	76%	148	24%
FY06	336	73%	124	27%
FY05	179	53%	156	47%



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Form I-829 Petition Final Actions and Final Action Percentages for FY05 – FY10 & FY11 Q1

Fiscal Year and/or Quarter	Form I-829 Approvals	Final Action %	Form I-829 Denials	Final Action %
FY11 Q1	39	75%	13	25%
FY10	274	83%	56	17%
FY09	347	86%	56	14%
FY08	159	70%	68	30%
FY07	111	69%	49	31%
FY06	106	64%	59	36%
FY05	184	62%	112	38%



Pilot vs. Regular Program Statistics

Question: The previous stakeholder meetings have discussed many topics related to regional center projects. If possible, we would like to know more about EB-5 under the regular program. The statistics from the December's stakeholder's meeting showed that 11% of the I-526 petitions and 17% of the I-829 petitions were denied [in FY10]. We are interested in finding out how many cases were non-RC among those denied cases and what the common reasons for denial for those non-RC cases.



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Pilot vs. Regular Program Statistics, Cont'd

Answer:

- USCIS does not currently track I-526 & I-829 Pilot Program final action statistics apart from regular program statistics.
- USCIS is addressing a variety of EB-5 data challenges, to include the fact that the I-526 and I-829 petitions do not collect information about the affiliated RC, and that USCIS's systems of record for these petitions do not provide a means to electronically capture this information.
- USCIS will publish distinct I-526 & I-829 statistics for Pilot and for regular case populations once these data challenges are addressed.



Pilot vs. Regular Program Statistics, Cont'd

Answer, Cont'd: USCIS does not currently track the specific reasons for the denial of each I-526 and I-829 petition.

Anecdotally, the most common reasons for denial involve issues relating to these areas of eligibility:

- I-526:
 - Amount and lawful source of capital investment funds
 - Job creation (demonstrating that the investment will create the requisite jobs)
 - Targeted Employment Area (TEA) determinations

- I-829:
 - Sustaining the capital investment
 - Job Creation (demonstrating that the investment has or will create the requisite jobs within a reasonable period of time.)



Publishing RC-Specific Statistics

Question: Is the process towards release of RC-specific I-526 & I-829 statistics in June still on Track?

Answer: USCIS has made substantial progress in electronically associating I-526 petitions with the relating RC, and will likely be able to publish I-526 data based upon RC-affiliation in June. However, there will be a delay beyond June in publishing I-829 data based upon RC-affiliation.

USCIS still plans to publish I-526 and I-829 data based upon RC-affiliation through quarterly and/or annualized data releases, but will only do so after the data has been validated.



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EB-5 Case Processing

Form Type	Target Processing Time	Current Processing Time
Form I-526	Five Months	Six Months
Form I-829	Six Months	Six Months
RC Initial Designation Proposal	Four Months	Seven Months
RC Amended Designation Proposal	Four Months	Five Months

Note: Responses to requests for evidence (RFEs) for individual petitions, and for new or amended RC Proposals are matched with the case file upon receipt of the response. CSC strives to finalize EB-5 cases within 30 days after the responses to the RFEs are received.



EB-5 Visa Usage

Fiscal Year and/or Quarter	Total EB-5 Visas Issued
FY11 Q1	1,421*
FY10	1,885
FY09	4,218
FY08	1,360
FY07	806
FY06	744
*Preliminary estimate of FY11 Q1 Visas Issued	



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Regional Center-Affiliated Visa Usage

Question: Based on the number of I-526 petitions that were approved in FY2010, the 3,000 visas allocated to the Pilot Program should have been surpassed. Is USCIS planning to give the Pilot Program applicants more visas every year, or to allow the applicants to be in queue to wait for following year's visa allocation?

Answer: USCIS interprets the set aside of visas to ensure that a minimum of 3,000 visas are available for regional center based applicants. We do not see the set aside as limiting the number of visas that can be granted to regional center based applicants, to the extent that such applicants can be allocated up to 10,000 visas, along with the non-regional center based applicants.



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Questions?



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III. Revisions to Immigrant Investor Web Pages



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HEADLINES Special Update as of March 11: Relief for Japanese and Other Nationals from the Pacific Stranded due to the Earthquakes and Tsunami

WHERE TO START

I Am...

I Want To ...

CASE STATUS

Enter your receipt number

INFOPASS

- Schedule a FREE Appointment
Remember to keep your PIN

CUSTOMER TOOLS

Before I File

- Check Filing Fees
- File My Application Online (E-Filing)
- Check Processing Times
- Check National Processing Volumes and Trends
- Find a Medical Doctor (Civil Surgeon)

After I File

- Check My Case Status
- Sign-up for Case Updates
- While My Case is Pending

Green Card (Permanent Residence)

- Renew or Replace My Green Card
- Remove Conditions on My Green Card
- Green Card Through Family
- Green Card Through a Job
- Help HAITI Act of 2010

Citizenship

- Citizenship Through Naturalization
- Citizenship Through Parents
- The Naturalization Test
- Citizenship Resource Center

Working in the US

- Information for Employers and Employees
- Permanent Workers
- Temporary (Nonimmigrant) Workers
- Temporary Visitors for Business
- Student and Exchange Visitors

Family

- Family of U.S. Citizens
- Family of Green Card Holders
- Family of Refugees & Asylees
- Fiancé(e) Visas

ALERTS

- Special Update as of March 11: Relief for Japan and Other Nationals from the Pacific Stranded due to the Earthquakes and Tsunami
- Be Aware of Diversity Visa Scams
- Cases Processed in Delayed Immediate Relative Petitions, (Form I-130) at Texas Service Center
- New Filing Location for Change of Address Form Beginning April 1

E-VERIFY®

- E-Verify Homepage
- E-Verify Login

MOST SEARCHED FORMS

- Apply for Citizenship (Form N-400)
- Apply for a Green Card (Form I-485)
- Help My Relative Immigrate (Form I-130)
- Renew or Replace My Green Card (Form I-90)
- Employment Verification (Form I-9)
- Apply for Employment Authorization (Form I-765)
- Affidavit of Support (Form I-864)

Change of Address

Humanitarian

- Haiti Earthquake Response
- Refugees & Asylum

Adoption

- Before You Start
- Before Your Child Immigrates to



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Printer Friendly

Working in the US

The United States welcomes thousands of foreign workers in multiple occupations or employment categories every year. These include artists, researchers, cultural exchange participants, information technology specialists, religious workers, investors, scientists, athletes, nurses, agricultural workers and others. All foreign workers must obtain permission to work legally in the United States. Each employment category for admission has different requirements, conditions and authorized periods of stay. It is important that you adhere to the terms of your application or petition for admission and visa. Any violation can result in removal or denial of re-entry into the United States.

Temporary (Nonimmigrant) Worker

A temporary worker is an individual seeking to enter the United States temporarily for a specific purpose. Nonimmigrants enter the United States for a temporary period of time, and once in the United States, are restricted to the activity or reason for which their nonimmigrant visa was issued.

Permanent (Immigrant) Worker

A permanent worker is an individual who is authorized to live and work permanently in the United States.

Students and Exchange Visitors

Students and exchange visitors may, under certain circumstances, be allowed to work in the United States. They must obtain permission from an authorized official at their school. The authorized official is known as a Designated School Official (DSO) for students and the Responsible Officer (RO) for exchange visitors.

Information for Employers & Employees

Employers must verify that an individual whom they plan to employ or continue to employ in the United States is authorized to accept employment in the United States. Individuals, such as those who have been admitted as permanent residents, granted asylum or refugee status, or admitted in work-related nonimmigrant classifications, may have employment authorization as a direct result of their immigration status. Other aliens may need to apply individually for employment authorization.

Temporary Visitors For Business

To visit the United States for business purposes you will need to obtain a visa as a temporary

More Information

Forms

- [Employment Based Forms](#)

Other USCIS Links

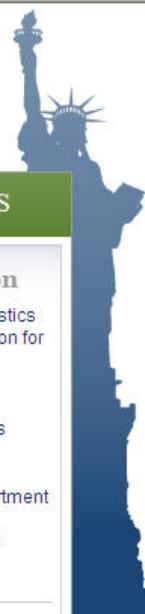
- [Work Authorization](#)
- [Working in the US Resources](#)
- [Green Card Through a Job](#)
- [E-Verify Program](#)
- [VIBE Program](#)

Non-USCIS Links

- [Foreign Labor Certification, Department of Labor](#)



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FORMS NEWS RESOURCES LAWS OUTREACH ABOUT US

Home > Working in the United States > Permanent Workers

- Temporary Workers
- Permanent Workers**
 - Employment-Based Immigration: First Preference EB-1
 - Employment-Based Immigration: Second Preference EB-2
 - Employment-Based Immigration: Third Preference EB-3
 - Employment-Based Immigration: Fourth Preference EB-4
 - Employment-Based Immigration: Fifth Preference EB-5**
- Students and Exchange Visitors
- Information for Employers & Employees
- Temporary Visitors for Business

Permanent Workers

Approximately 140,000 immigrant visas are available each fiscal year for aliens (and their spouses and children) who seek to immigrate based on their job skills. If you have the right combination of skills, education, and/or work experience and are otherwise eligible, you may be able to live permanently in the United States. The five employment-based immigrant visa preferences (categories) are listed below.

Labor Certification

Some immigrant visa preferences require you to already have a job offer from a U.S. employer. This employer will be considered your sponsor. For some visa categories, before the U.S. employer can submit an immigration petition to USCIS, the employer must obtain an approved labor certification from the U.S. Department of Labor (DOL). The DOL labor certification verifies the following:

- There are insufficient available, qualified, and willing U.S. workers to fill the position being offered at the prevailing wage
- Hiring a foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers

For more information see the "Labor Certification" link to the right.

US Federal Tax Information

Aliens employed in the U.S. may have a U.S. Tax obligation.

- Taxation of Resident Aliens

Permanent Worker Visa Preference Categories

Preferences	General Description	Labor Certification Required?
First Preference EB-1	This preference is reserved for persons of extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors or researchers; and multinational executives and managers.	No

- More Information**
- Approval and Denial Statistics for I-140, Immigrant Petition for Alien Workers
- Forms**
- Working in the U.S. Forms
- Non-USCIS Links**
- Labor Certification, Department of Labor
 - IRS: Taxation of Resident Aliens
-



FORMS NEWS RESOURCES LAWS OUTREACH ABOUT US

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- Permanent Workers
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 - Employment-Based Immigration: Fifth Preference EB-5**
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EB-5 Immigrant Investor

Visa Description

- Define:
- Commercial Enterprise
 - Troubled Business

Job Creation Requirements

- Direct and Indirect Jobs
- A Qualified Employee
- Full-time Employment
- A Job Sharing Arrangement

Capital Investment Requirements

- Required minimum investments
- Define:
- A Targeted Employment Area (TEA)
 - A Rural Area
- Continued Requirements

EB-5 Links

- EB-5 Immigrant Investor Application Process
- Regional Center Pilot Program
- Immigrant Investor Regional Centers
- EB-5 Inquiries

Forms

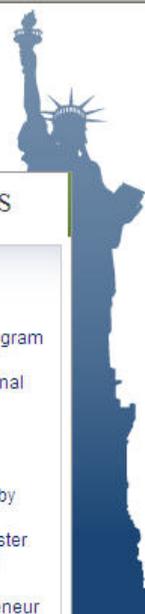
- I-526, Immigrant Petition by Alien Entrepreneur
- I-829, Petition by Entrepreneur to Remove Conditions
- I-924, Application For Regional Center Under the Immigrant Investor Pilot Program
- I-924A, Supplement to Form I-924
- I-485, Application to Register Permanent Residence or Adjust Status
- G-28, Notice of Entry of Appearance as Attorney or Accredited Representative
- G-28i, Notice of Entry of Appearance as Attorney in Matters Outside the U.S.

More Information

- EB-5 Stakeholder Meeting
- Blog Posting: What is the EB-5 Program
- EB-5 Policy and Procedural Memos

Other USCIS Links

- TITLE 8 CODE OF FEDERAL REGULATIONS (8 CFR)
- Adjudicator's Field Manual SEE:



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EB-5 Immigrant Investor Application Process

Describes the process of acquiring a Green Card through the self-petitioning process:

- List of steps

Form I-526 Petition for an Alien Entrepreneur

Table showing the petitioning process and evidentiary Requirements based on if you're a New Commercial Enterprise or a Troubled Business.

Form I-829 Petition by Entrepreneur to Remove Condi

Table showing the petitioning process and evidentiary Requirements based on if you're a New Commercial Enterprise or a Troubled Business.

Dependents

Defines dependents and talks about how the removal of Conditions apply to them.

EB-5 Links

- EB-5 Home
- Regional Center Pilot Program
- Immigrant Investor Regional Centers
- EB-5 Inquiries

Forms

- I-526, Immigrant Petition by Alien Entrepreneur
- I-485, Application to Register Permanent Residence or Adjust Status
- I-829, Petition by Entrepreneur to Remove Conditions

More Information

- EB-5 Stakeholder Meeting
- Blog Posting: What is the EB-5 Program
- EB-5 Policy and Procedural Memos

Other USCIS Links

- TITLE 8 CODE OF FEDERAL REGULATIONS (8 CFR)
- Adjudicator's Field Manual SEE: Chapter 22.4

Tools

- My Case Status
- Make an Appointment

Non-USCIS Links

- Office of Foreign Assets Control (U.S. Department of Treasury)
- Bureau of Economic Analysis (U.S. Department of



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EB-5 Regional Center Pilot Program

Defines a Regional Center and what a submitted proposal must Show to receive a designation as a Regional Center.

Information on:

- Immigrant Investor Pilot Program, (Form I-924) and Fee
- Supplement to Form I-924, (Form I924A)-Continued Eligibility

Define what an approval of a Regional Center means, as well as the termination of a Regional Center and appeal process.

Consumer/Investor Protection

Advises immigrant investors of risks and USCIS authority/role In Consumer/Investor protection.

EB-5 Links

- EB-5 Home
- EB-5 Immigrant Investor Application Process
- Regional Centers List
- EB-5 Inquiries

Forms

- I-924, Application For Regional Center Under the Immigrant Investor Pilot Program
- I-924A, Supplement to Form I-924
- I-290B, Notice of Appeal or Motion

More Information

- EB-5 Stakeholder Meeting
- Blog Posting: What is the EB-5 Program
- EB-5 Policy and Procedural Memos

Other USCIS Links

- TITLE 8 CODE OF FEDERAL REGULATIONS (8 CFR)
- Adjudicator's Field Manual SEE: Chapter 22.4

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- My Case Status
- Make an Appointment

Non-USCIS Links

- Office of Foreign Assets Control (U.S. Department of Treasury)
- Bureau of Economic Analysis (U.S. Department of Commerce)

Questions?



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IV. Regional Center Economic Analysis



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Defining Direct Jobs

Question:

“An EB5 investor invests in a company which then invests in businesses; are the jobs created in the businesses which receive funds “direct” and/or can they be multiplied by the appropriate RIMS II multipliers to get credit for “indirect” and/or “induced jobs”? EXAMPLE: EB5 investor invests in company A which is a pooled fund; the pooled fund then invests in company B. Company A only has 2 FT employees, but Company B has 6 FT employees. Can both the 2 and 6 employees be direct employees so that they can be multiplied by the RIMS II multipliers? It appears that the Bureau of Economic Analysis considers them “direct”.

An EB5 investor invests in a retail commercial center and leases to new businesses. Are the jobs created by those tenants “direct” jobs, which can be multiplied by the appropriate RIMS II multipliers to get credit for “indirect” and/or “induced jobs”? Again, BEA appears to consider them direct.”



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Defining Direct Jobs (cont.)

Answer:

- What is the business of the RC?
 - Commercial lending, commercial development, leasing, or retail sales
- Direct jobs occur in the new commercial enterprise that is created with EB-5 dollars
 - Problematic analyses estimating direct job creation
- Solution—Capital expenditure



Projected vs. Actual Jobs

Question:

“Can we multiply direct jobs projected by the appropriate RIMs II Direct Effects multiplier to get credit for indirect and/or induced jobs for purposes of satisfying the 10 job projection in an I-526, and, again to get credit for indirect and/or induced jobs for purposes of satisfying the 10 job requirement at the time of the I-829?

If our Economic Analysis concludes that the expenditure of an amount of money creates a certain number of direct, induced and indirect jobs for each business category, then proof that the money was indeed expended into a business in that business category is proof enough, with no need to show W2s. Correct? Also, can we multiply the number of millions expended by the “Final Demand Multiplier” to get credit for projected jobs in the I-526 and actual jobs in the I-829? BEA indicates yes.”



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Projected vs. Actual Jobs (cont.)

Answer:

- In the Regional Center context, showing projected and actual job creation is similar because the same model is used.
- At the I-829 stage, you need to show what actually happened:
 - If you based job creation projections on direct jobs, you need to show that the direct jobs were created
 - If you based job creation on expenditures, then you need to show that the money was expended as specified in the business plan in the approved Form I-526 petition.



Using a State-wide Analysis

Question:

“Our Economic Analysis used State-wide RIMS II data to project FT direct, indirect and induced jobs when \$1million is invested. We accepted lower State-wide predictions of job creation in order to be able to apply our analysis to any business which was included in the business categories included in our Analysis anywhere in the State, even though an analysis based on the exact location of the business may result in higher job projections. So, to confirm, if a business is selected that is in one business category and the State wide economic analysis predicts more than enough jobs created for the number of EB5 investors involved, is there any need for a separate economic analysis? EXAMPLE: An investor invests \$1million in a restaurant and the economic analysis concludes that a restaurant in Florida will, with a \$1million investment, create more than 10 direct, indirect and induced jobs, no further economic analysis is needed to be submitted with the I-526, correct?”



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Using a State-wide Analysis (cont.)

Answer:

- If this is a state-wide chain it would have state-wide impacts. An individual establishment would only have local impacts
- To choose the proper multipliers, you look at the area supplying the majority of inputs—restaurant is mainly labor.
- Note—state-wide impacts are usually larger than any single county or group of counties.



Selecting/Switching Impact Models

Question:

“What flexibility do Regional Centers have to utilize economic models for EB-5 projects that were not used as part of their original Regional Center proposal, which in many cases, was approved years ago? Both USCIS and the regulations have historically recognized models such as IMPLAN, RIMS II, and REDYNE as “reasonable methodologies,” but it’s unclear whether USCIS would accept a switch from the use of one of these to another. Clearly, switching economic models in the middle of a specific EB-5 project would be problematic and impractical, but there is nothing in the regulations that would prohibit the application of a different economic model on projects subsequent to the RC submission. Currently, the uncertainty has created the following concerns: (1) Ms. Atteberry indicated a preference for RIMS II during the June 2010 stakeholder meeting and many RCs had not previously adopted RIMS, (2) many RCs are now engaging more experienced economists, each of whom have their own personal preference for economic models, (3) the models themselves are improving and RCs would like flexibility to utilize advances, and finally (4) an amendment would impose a lengthy and expensive delay in getting much needed EB-5 capital to projects that would create new jobs.”



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Selecting/Switching Impact Models (cont.)

Answer:

■ Adjudicative Issues:

- Switching model after the RC was approved requires an amendment
- See Form I-924 Application Instructions (<http://www.uscis.gov/files/form/i-924instr.pdf>)

■ Economic Issues:

- USCIS does not prefer or endorse any particular model
- RIMS II facilitates transparency
- Model preferences
- Remember your audience



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Helpful Hints

- Use up-to-date data
- Communicate all assumptions
- Cite sources that can be verified
- When determining the geographic scope of your RC and/or TEA, consider what data is available for that particular geography
- The Census website provides a current list of NAICS codes:
<http://www.census.gov/eos/www/naics/>
- Maps outlining the important geographic features are helpful



Questions?



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V. EB-5 Stakeholder Topics

- a) EB-5 Program Review
- b) 121109 Memo Review
- c) Targeted Employment Areas (TEAs)
- d) Redemption Agreements
& Investor Salary from the NCE
- e) Complex Capital Investment Vehicles



EB-5 Program Review

Question: What is the status of the policy/procedure review that Director Mayorkas alluded to at his annual Director's engagement?

Answer: USCIS is in the preliminary stages of exploring ways in which EB-5 procedures may be modified under the current regulatory framework in order to address concerns raised by internal and external stakeholders. Going forward, USCIS will also explore potential policy and regulatory program changes that will provide long-term solutions to program issues. At this point in time it is premature to provide specifics.



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121109 Memo Review

Questions: How many comments did USCIS receive to the Neufeld Memo? What is the timeframe for the CIS response to the comments? What will be the format for that response? When will revised Neufeld memo be released? Will USCIS be responding directly or indirectly to the specific comments of stakeholders?

Answer: USCIS received 19 documents containing comments on the 121109 memo. The 121109 memo addressed many topics and the diverse comments received involved many if not all of them.



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121109 Memo Review, Cont'd

Here are the general topics raised in the 121109 memo comments:

Streamlining the EB-5 Adjudicative Process	New Commercial Enterprises	Material Change	TEA Gerrymandering
Exemplar Capital Investment Projects	Job-Creating Entities	Regional Center Due Process	Bureau of Labor Statistics (BLS) Statistical Analysis Recommendations
Exemplar Form I-526 Petitions	Capital Investment Projects	Principal Place of Business	EB-5 Program Fraud and Misrepresentation
Communication with External Stakeholders	Targeted Employment Area Determinations	Sustaining the Capital Investment	EB-5 Readjustment Procedures
Direct, Indirect & Induced Job Creation	Rural and High Unemployment Area Definitions	NTA Issuance	General Comments



121109 Memo Review, Cont'd

USCIS is currently reviewing the external stakeholder comments. In accordance with standard procedures for soliciting public comment on memo, direct or indirect responses to the specific comments of external stakeholders will not be provided.

Rather, updated policy and procedural guidance will be issued that considers the issues raised in the external stakeholder comments, as well as internal EB-5 program concerns that are identified as part of the 121109 memo review and the EB-5 program review initiative.



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Targeted Employment Areas (TEAs)

Question: If we have the TEA designation letter from an authorized state official, do we still have to show strict proof that the area either is a rural area or is experiencing an unemployment rate of 150% of the national average at the time of I-526 filing?

Answer: State governments do not have the authority to issue TEA designations based on a finding that an area meets the TEA “rural” criteria. A state-issued TEA designation must be supported by evidence, including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained. See 8 CFR 204.6(i). The statistics used in the state’s analysis must reflect the national and local unemployment rates for these regions at the time of the alien investor’s capital investment. See 8 CFR 204.6(e).



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Targeted Employment Areas (TEAs), Cont'd

Question: What is the meaning of a “geographic subdivision” in 8 CFR § 204.6(i)? What are the limitations in creating and designating such a special area? (Assume that the high unemployment data yields a qualifying rate.) The words geography or geographic refers to physical features on the Earth’s surface; therefore, a geographic subdivision would refer to an area carved out based on physical features. For example: Central Valley, San Joaquin Valley. Yet, current practice by applicants interprets it to be any area carved out at will, irrespective of geographical and political boundaries. It goes as far as creating an area by “statistical gymnastics” that yields a qualifying rate for high unemployment area designation and bears no relationship to any economic or employment effect of the prospective business.



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Targeted Employment Areas (TEAs), Cont'd

Answer: State governments have the discretion to decide whether to issue TEA designations based upon high unemployment. The following reasoning for involving states in this process was noted in legacy INS' final rule implementing the initial EB-5 regulations, *Employment-Based Immigrants*, [56 FR 60897]:

- The evidence of such area designations that a state provides to a prospective alien entrepreneur should include a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained.
- This part is not intended to place any unnecessary burden upon any state. With respect to geographic and political subdivisions of this size, however, the Service believes that the enterprise of assembling and evaluating the data necessary to select targeted areas, and particularly the enterprise of defining the boundaries of such areas, should not be conducted exclusively at the Federal level without providing some opportunity for participation from state or local government.



Targeted Employment Areas (TEAs), Cont'd

Answer, cont'd:

If a state government is presented with a request to designate an area as a TEA that the state does not feel is appropriate, then the state may in its discretion refuse to issue the TEA designation.

Note that when the regulation at 8 CFR 204.6(i) was published 18 years or so ago the required data for making TEA determinations based upon high unemployment was not readily available to the general public. Now state and federal unemployment data is readily available from government sources on the internet.



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Targeted Employment Areas (TEAs), Cont'd

Question: 8 C.F.R. § 204.6 (j) 6 (ii) A&B instruct demonstration that a new commercial enterprise has created or will create employment in a targeted employment area through submission of one of two attachments to the petition. The first appears to be independent submission of data indicating it has met the unemployment criteria. The second is through communication from the Governor presumably providing the same statistical support. Please discuss any additional authority the State Governor may possess and if there is none, please discuss the intent of the two options.

Answer: A state government's authority is limited to making TEA designations based upon a finding that an area is an area of high unemployment. See 8 CFR 204.6(i). The two evidentiary avenues to demonstrate that an area qualifies as a TEA in I-526 petitions is described in 8 CFR 204.6(j)(6)(ii) and allows an investor to (1) directly provide evidence of TEA eligibility or (2) seek assistance from the state government in providing the required evidence.



Targeted Employment Areas (TEAs), Cont'd

Question: Please discuss how the USCIS recommends a State Government identify and submit TEA's when there are municipal development and environmental issues (i.e. protection of water source, transitional military bases, local targeted-development ordinances) that the local government needs to have addressed in designating TEA's?

Answer: State governments have the discretion to decide whether to issue TEA designations based upon high unemployment. No state government is required to issue such a designation if it might be detrimental to an area based upon potential adverse impacts of an EB-5 project. The Environmental Protection Agency (EPA) is most likely the appropriate federal source for a state government to consult with regarding environmental issues that may be impacted by EB-5 capital investment projects.

Note that the regulation at 8 CFR 204.6(i) only provides state governments the authority to delegate areas as TEAs based on a finding of high unemployment to “the agency, board, or other appropriate governmental body of the state...” Since municipal governments, such as a local city government or a town government are not a part of state government, state governments may not delegate the TEA determination authority to a local governmental body.



Targeted Employment Areas (TEAs), Cont'd

Question: What is the meaning of a “political subdivision” in 8 CFR § 204.6(i)? What are the limitations in labeling an area as political subdivision? (Assume that the high unemployment data yields a qualifying rate.) Explanation: The common meaning of the term political subdivision refers to a civil administrative unit of the government such as a county or city. Yet, the US census Bureau provides data based on elections districts. Are elections districts such as congressional districts, state representative districts, state senatorial districts, county supervisor districts, city council member districts qualify as political subdivisions for the purposes of high unemployment are designation?

Answer: According to Black's Law Dictionary (8th ed. 2004), a political subdivision is a division of a state that exists primarily to discharge some function of local government. The examples provided above appear to meet the legal definition of a political subdivision.



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Redemption Agreements & Investor Salary from the NCE

Question: WHAT CONSTITUTES [Capital Investment] “AT RISK”?

Answer: The EB-5 precedent decision, Matter of Izumii, 22 I&N Dec. 169 (Comm. 1998) provides significant guidance in what constitutes immigrant investor capital “at risk”, to include the following:

- An alien may not receive guaranteed payments from a new commercial enterprise while he owes money to the new commercial enterprise.
- To enter into a redemption agreement at the time of making an “investment” evidences a preconceived intent to unburden oneself of the investment as soon as possible after unconditional permanent resident status is attained. This is conceptually no different from a situation in which an alien marries a U.S. citizen and states, in writing, that he will divorce her in two years.
- For the alien’s money truly to be at risk, the alien cannot enter into a partnership knowing that he already has a willing buyer in a certain number of years, nor can he be assured that he will receive a certain price. Otherwise, the arrangement is nothing more than a loan, albeit an unsecured one.
- An alien may not enter into a redemption agreement with the new commercial enterprise at any time prior to completing all of his cash payments under a promissory note. In no event may the alien enter into a redemption agreement prior to the end of the two-year period of conditional residence.
- A redemption agreement between an alien investor and the new commercial enterprise constitutes a debt arrangement and is prohibited under 8 C.F.R. § 204.6(e).



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Redemption Agreements & Investor Salary from the NCE

Question: **-PREFERRED RETURNS:** Is a provision that agrees to pay the investor a 5% annual return on investment, **but only if the profits are available** to pay it, permissible?

Answer: Such an arrangement must comport with the holdings in Izummi in that in no case can a preferred return on investment be guaranteed. Note that any return on investment whether guaranteed or not may not be made to an investor from EB-5 capital investment funds during the period of conditional permanent residence. In such an event the I-829 petition may not be approvable as the investor has not then sustained his capital investment.

Question: **-REDEMPTIONS:** Is it permissible to agree to purchase an EB5 investor's shares in a business, so long as it is at a price determined by an appraisal at time of purchase? **OPTIONS TO BUY:** Is it permissible for a business to have the right to buy back the investor's shares, so long as the business is not obligated to buy them back?

Answer: In no event may the alien enter into a redemption agreement prior to the end of the two-year period of conditional residence. Any purchase of shares subsequent to the two-year period of conditional residence must be made based upon the fair market value of the shares.



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Redemption Agreements & Investor Salary from the NCE

Question: May an investor who is active in the business be paid a reasonable salary during the period of conditional residence without the payment disqualifying the EB-5 arrangement (such as being treated by USCIS as some kind of redemption)? Have you developed any parameters of what is reasonable for such a salary?

Answer: Any salary paid to the investor by the NCE may not erode the capital investment contribution during the period of conditional permanent residence, and must be commensurate with the time expended by the investor in the performance of the duties and at a level of compensation typically provided to persons performing similar duties in the location of employment.



Complex Capital Investment Vehicles

Question: Please explain your current thinking and practice concerning evaluation of petitions that involve investments in enterprises that pool multiple investors' money and allocate the capital to multiple job-creating projects/entities at the same time. In the past USCIS has reacted with ambivalence to these notions, and some adjudications of the past have reflected opposition to them. Investors would like to spread their risk of loss among multiple projects, and it seems reasonable to allow them to spread their risk of any one project's ability to create the target number of jobs by letting the investors allocate the job creation from the total of the jobs created by multiple projects (using some method of allocation agreed to among the investors, such as "first to invest, first jobs allocated," though other methods might work).



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Complex Capital Investment Vehicles, Cont'd

Answer: A regional center may opt to structure EB-5 capital investment projects that involve multiple investment vehicles. However, USCIS has consistently maintained that a regional center must transparently show at the Form I-526 stage the specific job creating entities/projects in which the investor's capital will be invested, supported by comprehensive business plans and an economic analysis that provides a reasonable methodology for estimating the job creation that will occur as a result of these complex investments.

Some recently-reviewed RC applications have put forth capital investment structures that seem to presume that the EB-5 immigration process allows for a Regional Center to recruit EB-5 investors, who then file Form I-526 petitions in order to invest in an enterprise without identifying the specific capital investment projects that will receive the immigrant investor's capital.



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Complex Capital Investment Vehicles, Cont'd

Answer, Cont'd: This same presumption is reflected in some of the questions regarding capital investment structures as follows:

1. Our Regional Center is approved to include Florida businesses in many RIMS II “sectors”. If in a I-526, we submit a generic business plan (and legal documents) for a business that falls within one of the sectors, then, after the I-526 is approved, the business affiliate gets the investor’s funds and selects the specific business. Is that permissible?
2. I would like the Service to comment on the desired legal structure for *multiple asset investments*. How must an RC structure the limited partnership investments when there are sub-assets to a project?
3. The push for fund of funds regulations is significant—will the USCIS allow all Regional Centers the same flexibility to not specifically identify the jobs creation project at the I-526 and allow them to let the USCIS know what we did sometime before the I-829?



Complex Capital Investment Vehicles, Cont'd

Answer, Cont'd: I-526 petitions may not be approved for investments (or loans) to businesses that will not be identified or selected until after the approval of the petition. Such a strategy is not EB-5 compliant as the EB-5 program is not an attestation-based program. Prospective job creation must be demonstrated at the Form I-526 petition through USCIS review and approval of the business plan and associated economic analysis for the actual capital investment projects that will receive the immigrant investor's capital. This documentation provides the foundation for the adjudication of the I-829 petition to determine if the investor has met the requirements for removal of conditions pursuant to INA 216A and 8 CFR 216.6. The Ninth Circuit has held that USCIS may not "de-couple" I-526 petition approval from I-829 approval. *See Chang v. U.S.*, 327 F.3d 911, 927 (9th Cir. 2003). This means that, using Form I-829, alien investors must demonstrate compliance with the EB-5 program rules by confirming the fulfillment of the investment scheme and business plan that USCIS approved at the I-526 petition stage. *See id.*



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Complex Capital Investment Vehicles, Cont'd

Answer, Cont'd: Most if not all RCs generally seek to limit their capital investment offerings to those that may qualify for the reduced capital investment threshold of \$500,000 through investments in a TEA.

Additionally, a large percentage of RC-affiliated capital investment vehicles involve investments in NCEs which ultimately loan capital to third parties who use the capital in the ultimate job-creating project. There are other requirements for eligibility for the approval of EB-5 petitions which prohibit an I-526 attestation-based process, to include:

- INA 203(b)(5)(B)(i) which provides that a certain number of visas made available under the EB-5 category “be reserved for qualified immigrants who invest in a new commercial enterprise ... which will create employment *in* a targeted employment area” (emphasis added).



Complex Capital Investment Vehicles, Cont'd

Answer, Cont'd:

- Matter of Izumii, 22 I&N Dec. 169 (Comm. 1998) provides significant guidance in making TEA determinations and RC capital investment projects, to include the following:

Regardless of its location, a new commercial enterprise that is engaged directly or indirectly in lending money to job-creating businesses may only lend money to businesses located within targeted areas in order for a petitioner to be eligible for the reduced minimum capital requirement.

Under the Immigrant Investor Pilot Program, if a new commercial enterprise is engaged directly or indirectly in lending money to job-creating businesses, such job-creating businesses must all be located within the geographic limits of the regional center. The location of the new commercial enterprise is not controlling.



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Complex Capital Investment Vehicles, Cont'd

Answer, Cont'd: Other facets regarding I-526 eligibility are predicated on a review and analysis of the actual capital investment project, to include the identification of the ultimate recipient of capital investment funds, such as:

- Determining job creation, generally: In order to demonstrate that the new commercial enterprise will create not fewer than 10 full-time positions, the petitioner must either provide evidence that the new commercial enterprise has created such positions or furnish a comprehensive, detailed, and credible business plan... See Matter of Ho, 22 I&N Dec. 206 (Comm. 1998), 206.
- Determining job creation as a result of investments into pre-existing business..See Matter of Soffici, 22 I&N Dec. 158 (Comm. 1998), 158. See also Matter of Hsiung, 22 I&N Dec. 206 (Comm.. 1998), 201.
- Determining whether the job creation may be met through the preservations of jobs in a “troubled business”. See INA section 203(b)(5)(A)(ii) and 8 CFR 204.6(j)(4)(ii).



VI. Q&A



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