



December 14, 2010

Executive Summary

USCIS EB-5 (Immigrant Investor) Stakeholder Quarterly Engagement

Overview

On October 14, 2010, U.S. Citizenship and Immigration Services (USCIS) Service Center Operations (SCOPS) Directorate and the Office of Public Engagement (OPE) hosted the EB-5 Immigrant Investor Quarterly Engagement. OPE advised participants that the session was for USCIS to listen to the views and information of individual stakeholders and not for the purpose of obtaining group or consensus advice.

SCOPS provided updates about various aspects of the program followed by a discussion of issues related to the economic analyses in EB-5 cases by the USCIS economist.” Additionally, USCIS shared a presentation that was tailored to respond to topics, themes and responses to general questions posed by stakeholders prior to the engagement.

Updates

- **EB-5 Statistics and Case Processing Times**

USCIS shared an overview of filing receipts from fiscal year 2005 to fiscal year 2010, for Form I-526 Immigrant Petition by Alien Entrepreneur and Form I-829 Petition by Entrepreneur to Remove Conditions. In fiscal year 2010, a total of 1,886 EB-5 visas were issued, which represents a significant decline from fiscal year 2009, when a total of 4,219 EB-5 visas were issued.

USCIS leadership establishes target processing times for EB-5 related petitions and thus far, current processing times are at or within one month of the targeted processing time. Of special note is the processing of regional center amended proposals that have a four month targeted processing time, but are currently being processed within one month. Also, cases in which a Request for Evidence (RFE) was issued are typically finalized within 30 days of receipt of the response to the RFE.

USCIS established a four month targeted processing time for Initial Regional Center designation proposal. At present, the processing time for these cases is within five months. Some of the variables affecting the processing times are:

- Centralization of adjudications at one service center which allows for better management of caseload;
- Security issues that need to be resolved before a case may progress to the next processing stage; and
- The complexity of a given case may require research and case review that adds to the adjudication timeframe.

It should be noted that processing times for individuals filing non-regional center affiliated Forms I-526 Immigrant Petition by Alien Entrepreneur (Form I-526) will experience longer processing times than those who file Form I-526 based upon an investment made through a regional center. Adjudicative resources are geared towards I-526 petitions that are related to regional centers because the law permits priority to be given to regional center affiliated petitions. However, each caseload is processed according to first in, first out procedures.

To address the increasing EB-5 case volume and further reduce EB-5 case processing times, USCIS plans to significantly augment the EB-5 team at the California Service Center. Experienced Immigration Service Officers have been selected from a pool of volunteers. Training efforts will include formal classroom training, and hands-on EB-5 case review and discussions, followed by mentoring by experienced EB-5 Immigration Service Officers.

- **Form I-924 & Form I-924A**

Effective November 23, 2010, USCIS will require the use of Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program, for an entity to request designation as a Regional Center. USCIS also published Form I-924A, Supplement to Form I-924 (Form I-924A), which will be used to enable customers to adhere to the yearly regional center reporting requirement. Although published on November 23, 2010, Form I-924A will not be required to be filed by any regional center until after the close of fiscal year 2011.

The data collected via Form I-924A will be published externally, on USCIS.gov, for each fiscal year following the publication of Form I-924A. This will allow the agency to more efficiently provide this information to various stakeholders.¹

- **EB-5 Inquiries and EB-5 Mailbox Auto-Reply**

Stakeholders were reminded that USCIS provides a vast amount of information on USCIS.gov. The “EB-5 Inquiries” web page contains information on the type of questions that the EB-5 team may respond to through their dedicated mailbox at USCIS.ImmigrantInvestorProgram@dhs.gov. Recently, an automatic reply was added to this email account to provide customers with links to various USCIS EB-5 pages and to other EB-5 public information.

- **EB-5 Expedite Requests and Form I-526 Premium Processing**

While the law does permit that priority be given to regional center affiliated petitions, it does not provide the information for USCIS to determine how petitions filed within the regional center

¹ USCIS does not plan to post ad hoc data it received from approved regional centers in previous years because in many cases the ad hoc data was not comprehensive and was not presented in a manner so that it would be comparative from one regional center to another.

program should be prioritized. However, USCIS has posted to its website national expedite criteria used to prioritize all immigration benefit applications and petitions. Although the agency's national expedite criteria includes "severe financial loss to company or individual," it should be noted that self-imposed financial requirements will not be sufficient to meet this criteria.

At present USCIS is not able to implement premium processing of Form I-526 Immigrant Petition by Immigrant Entrepreneur.

Principal Themes

- **Economic Analysis**

The USCIS economist shared tips to assist customers to better prepare their filings:

- Multipliers require detailed information. Bear in mind that the analysis depends on the quality of the information;
- Ensure you have a well-reasoned basis for all the numbers, especially when using multipliers;
- It is best to use publicly available sources of information. For example, data obtained from the U.S. Bureau of Labor Statistics;
- Check the economic analysis and business plan numbers to ensure they make sense;
- If using data from a private consulting firm, please provide the methodology; and
- If using Rims II, please include the multiplier tables, to facilitate checking the analysis.

In addition, the USCIS economist highlighted the following points:

- RIMS II and IMPLAN are examples of backward-linked models; meaning the data in the model represents suppliers to the industry rather than customers.
- There should be a balance between competing geographic definitions. For example, sometimes an investor may narrowly define geographic boundaries to maximize the benefit of a targeted employment area and broadly define geographic boundaries for multiplier analysis.
- USCIS does not require that the person preparing the analysis have a degree, e.g. MBA, CPA. The important thing to remember is to provide well-reasoned, reproducible information.

Common pitfalls to be wary of are:

- Use the appropriate geographic region for multipliers; for instance, avoid using state multipliers for county region;
- Ensure you compare similar data elements and offer a reasoned explanation;
- The data needs to make sense;
- Time periods must be level / comparable;
- When making seasonal and non-seasonal adjustments for unemployment, please be specific;
- If using RIMS II, become familiar with the handbook to deal with initial impacts and the backwards linkage model. Ensure to include "induced" as well as direct hire employees and indirect hired employees, as in those hired elsewhere due to an increased demand in a different area, which then goes to another industry.

- **Targeted Employment Area (TEA)**

A stakeholder inquired if it was acceptable, for purposes of defining a TEA, to link a high unemployment area with census tracts or political subdivisions with low unemployment in order to arrive at an aggregate finding of high unemployment when the intent is actually to invest in the low unemployment area. USCIS advised that a TEA determination must be based upon valid statistics

for the TEA area and comply with the statutory requirement that the area has an unemployment rate that is at least 150% of the national average unemployment rate. The data used should comport with the U.S. Bureau of Labor Statistic standards.

- **Regional Center Applications**

In reference to the new Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program and Form I-924A, Supplement to Form I-924, a stakeholder stated that USCIS did not take comments on the forms into account during the final fee rule publication and suggested the comments should be posted with in the docket. USCIS shared that the information is available on the [Office of Management and Budget](#) website.

One stakeholder inquired if it was acceptable to submit a regional center application in which a private equity strategy was used, no specific project was identified, and the investment was made in a targeted employment area, after a regional center approval. The UCSIS economist shared that in this scenario, the process allows for filing an exemplar project that is supported by a business plan and an economic analysis. At this stage, a generic project can be accepted because the actual determination of a TEA will take place at the filing of Form I-526 Immigrant Petition by Alien Entrepreneur, not within the adjudication of the regional center proposal. Also, a private equity strategy is an acceptable fund structure, but advised that the level of complexity needs to be well documented to include easily recognizable job creation estimates.

Stakeholders asked if a regional center can be created in one state and a second regional center in a region. USCIS indicated that it is not uncommon for promoters to be involved in one or more regional centers as there is no prohibition on an individual or an entity making multiple regional center application and upon approval promoting multiple regional centers. USCIS indicated that strong regional centers often focus on projects that involve other domestic investment as all of the jobs created through the entire project can be credited to the EB-5 investors.

A stakeholder inquired how the December 11, 2009, memorandum entitled “Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829” that provides information on exemplar documents functioned in practice. USCIS indicated that it took an informal poll and found that there were only 4 regional centers with approvals that included exemplar documents. The agency also indicated that at the present time, there is no mechanism in place to separately track which EB-5 cases included documentation that was previously presented in a regional center application as an exemplar Form I-526 Immigrant Petition by Alien Entrepreneur.

A request was made for USCIS to add additional information to its website about designated regional centers. Stakeholders were informed that the agency is working on determining the type of regional center information that can be shared while continuing to comply with privacy requirements.

- **Job Creation**

In response to a request for general information about how much credit a minority investor may receive for direct and induced jobs, USCIS said the capital investments in a given project do not have to be exclusively from EB-5 sources. However, the EB-5 program requirements must be met, to include:

- Each EB-5 investor meeting the minimum capital investment of \$1,000,000 or \$500,00, and sustaining that investment throughout the period of the investor’s conditional permanent residence; and

- Creating the required minimum number of jobs. In the case of pooled investments, the total number of jobs created and the manner in which these jobs are allocated to each individual investor must be documented.

These eligibility requirements are reviewed when USCIS makes a determination regarding whether the conditions should be removed from the investor's permanent resident status as part of the adjudication of the investor's Form I-829, Petition by Entrepreneur to Remove Conditions.

One stakeholder commented that job creation outside the regional center is sometimes viewed as potentially fraudulent. USCIS plans to further refine the EB-5 Inquiry web page and provide additional information on job creation, as well as other topics of interest like the new Form I-924. In addition, the agency will also include information about the Child Status Protection Act as it relates to dependent children of EB-5 customers.

USCIS was asked if the absence of permits from local authorities and other capital investment project delays are taken into account when determining whether sufficient permanent jobs were created through the investment. USCIS stated that the adjudication of Form I-829 typically takes place approximately 2.5 years from filing Form I-526 Immigrant Petition by Alien Entrepreneur, but that the law allows for a favorable determination to be made in the Form I-829 petition if the documentation shows that sufficient jobs will be created within a reasonable period of time.

- **EB-5 Dependents**

One stakeholder asked what would be the best course of action when an EB-5 dependent beneficiary ages out. USCIS said the agency will continue to process the Form I-526, Immigrant Petition by Alien Entrepreneur, and will determine if the aged-out dependent may benefit from the Child Status Protection act (CSPA).

Next Steps

- USCIS posted to its website Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program and Form I-924A, Supplement to Form I-924, with corresponding instructions.
- On December 13, 2010, USCIS posted to its website the current policy memoranda titled "Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-828; Adjudications Field Manual (AFM) Update to Chapters 22.4 and 25.2 (AD09-38)."

Comments may be sent via email to opefeedback@uscis.dhs.gov. The final date for comments is January 21, 2011.

For more information and to comment, please visit our home page at uscis.gov and follow this path: Home > Outreach > Feedback Opportunities > Current Memorandum for Comment.