



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

September 12, 2023

Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

RE: Request to Update USCIS policies affecting EB-5 Investors with long-pending Forms I-829, Petition by Investor to Remove Conditions on Permanent Residence

Dear Director Jaddou:

On behalf of the American Immigration Lawyers Association (AILA), we write to request your assistance in resolving a critical gap in immigration status documentation for EB-5 investors and their families with conditional permanent resident status.¹ As described more fully below, we believe that United States Citizenship and Immigration Services (USCIS) can address this issue in a manner that is efficient for both the agency and EB-5 conditional residents and we offer two alternatives for providing evidence of continued lawful permanent residence requiring simple adjustments to the language on Form I-829 receipt notices.

A. USCIS's Current Method for Documenting the Lawful Status of EB-5 Conditional Permanent Residents Applying for Removal of Conditions is Inefficient and Burdensome.

By way of background, one category of lawful permanent residents who hold “green card” status on a *conditional* basis are those investors in job-creating U.S. businesses who immigrate to the United States through EB-5 category. These noncitizens obtain two-year “conditional” permanent residency and, before their two-year anniversary of the grant of conditional residence, they must file a petition to remove those conditions on Form I-829. If the Form I-829 petition is

¹ For Example: [AILA Provides Comments to USCIS on Proposed Revisions to Form I-829](#), (2/23/2023) AILA's EB-5 Investor Committee provided comments to USCIS on the proposed revisions to Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status. AILA Doc. No. 23022800. See Also, [Meeting Agenda for AILA EB-5 Committee 2/22/21 Listening Session with CIS Ombudsman's Office](#) (2/22/2021) On February 22, 2021, the AILA EB-5 Committee participated in a listening session with the Office of the CIS Ombudsman to express concerns regarding a variety of procedural and policy issues impacting the EB-5 visa program. AILA Doc. No. 21022630.

approved, the conditions on the green card are removed and the noncitizen becomes a lawful permanent resident without conditions.

Noncitizens petitioning for removal of conditions remain in valid conditional-lawful resident status while the Form I-829 petition is pending. In fact, they retain that status and are entitled to evidence of conditional residence even if USCIS denies their Form I-829 petition, up until a final administrative order of removal is issued.

As you are aware, USCIS currently takes an unprecedented amount of time to adjudicate Form I-829 petitions. According to USCIS, the reported processing time for a Form I-829 petition is 66 months—more than five and a half years.²

These extremely long adjudicatory delays lead to the practical problem of how conditional residents can document their lawful status while their Form I-829 petitions are pending before USCIS. Conditional “green cards” are issued for only a two-year validity period, so they expire around the time the noncitizen files the Form I-829 petition. Nevertheless, continued proof of lawful resident status remains critical for a host of reasons, including:

- Ability to travel internationally,
- Ability to obtain state-law benefits that require proof of lawful immigration status (such as driver’s licenses),
- Ability to obtain or sustain employment, and
- Ability to secure financing at lower interest rates.

Indeed, federal law imposes criminal penalties on noncitizens who fail to carry proof of lawful status³, underscoring the need for USCIS to provide proof to conditional lawful resident status while the agency adjudicates the Form I-829 petition. USCIS published guidance also imposes the same mandate. For example, the USCIS “A Guide for New Immigrants, M-618 provides that permanent residents must “Carry proof of your permanent resident status at all times”.⁴

² <https://egov.uscis.gov/processing-times/>.

³ Section 264(e) of the Immigration and Nationality Act (I.N.A.):

“§1304 (e) Personal possession of registration or receipt card; penalties. Every alien, eighteen years of age and over, *shall at all times carry* with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d). *Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor* and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both.”

⁴ USCIS Web Site: “**After We Grant Your Green Card.** *We issue a Permanent Resident Card (Green Card) to all permanent residents as proof that they are authorized to live and work in the United States. If you are a permanent resident age 18 or older, you are required to have a valid Green Card in your possession at all times.*” See also: [Welcome to the United States A Guide for New Immigrants](#) at Page #14 under title “Your Rights and

Current USCIS procedures for providing Form I-829 petitioners with evidence of continued valid status while their petition is pending are inherently inefficient. When USCIS receives the Form I-829 petition, it issues a receipt notice to the petitioning conditional lawful resident (and each eligible derivative family member) stating that the notice documents the noncitizen’s lawful resident status when presented alongside the expired green card. Under current USCIS policy, however, the notice serves as evidence of lawful status for only a **48-month period** following the expiration of the conditional green card. As USCIS processing times for Form I-829 petitions regularly exceed five 5.5 years, 48 months is inadequate, particularly in cases requiring proof of lawful resident status until the issuance of a final administrative order of removal.

When USCIS takes longer than 5.5 years to adjudicate the Form I-829 petition, USCIS current policy requires EB-5 conditional lawful residents to appear in person at a local USCIS field office where they must request the proof of permanent resident status through a stamp in their valid passport (known as an ADIT stamp or I-551 stamp). These stamps are generally valid for twelve months or less. Thus, based on current processing times, EB-5 conditional lawful residents are currently required to appear for in-person appointments at least one or two times so long as their Form I-829 petition remains pending—a process that can drag on for many years. Our proposal to extend the language of Form I-829 receipt notices, as described in detail below, would eliminate these unnecessary field office appointments, thus benefiting both applicants and USCIS.

B. The current system has significant limitations.

The current patchwork of USCIS policies fails to provide EB-5 Investors with a pending Form I-829 Petition a reliable and streamlined procedure for documenting valid status as a conditional permanent resident. Several major process issues created by this gap in status documentation, which would be rectified if our proposed changes to extend the validity of the Form I-829 receipt notices are implemented, are as follows:

- **Unnecessary congestion of in-person appointments at USCIS.** As noted above, to obtain a temporary stamp as evidence of conditional residence, a noncitizen must schedule an in-person appointment at a local USCIS field office. It often takes many weeks to secure an appointment, as demand for these appointments routinely exceeds supply. Further, requiring conditional residents to appear for in-person appointments for routine stamps takes away appointments from other noncitizens

Responsibilities,” USCIS states unambiguously that “As a permanent resident, you **must: . . . [c]arry proof of your permanent resident status at all times.**”

who face true emergencies (like obtaining advance parole to visit dying relatives abroad) and diverts USCIS officers from substantive matters like conducting interviews or adjudicating cases.

- **Burdens on conditional residents.** Requiring in-person interviews to obtain temporary stamps imposes substantial burdens on conditional residents. Because USCIS has phased out its INFOPASS program, obtaining an appointment at a local field office is a cumbersome process—even for attorneys. Expecting conditional residents to navigate this process for years is unreasonable. Moreover, requiring attendance at in-person appointments is especially burdensome for working parents, noncitizens with physical disabilities, and others who lack easy mobility or access to transportation.
- **Difficulty in securing uniform national practice/policy.** USCIS has dozens of local field offices across the United States. Although USCIS’s headquarters has issued guidance to local field offices on this issue, there is inconsistency in practice amongst field offices. AILA attorneys regularly receive reports from clients who, after obtaining an appointment and appearing at a field office in person, are wrongly turned away by officers unaware of USCIS’s policy to issue temporary I-551 stamps. Conditional residents are thus often forced to attend multiple in-person appointments simply to obtain routine notice of their continued lawful conditional residency.
- **Many EB-5 conditional residents returned the original Green Card to USCIS when they obtained an initial I-551 lawful resident status extension stamp.** Although USCIS recently increased the automatic extension on Form I-829 receipt notices from 18 to 48 months, most EB-5 investors have been deprived of that benefit because their expired green cards were surrendered at their initial I-551 stamp appointment due to existing USCIS policy.⁵ More specifically, there exists a large universe of current EB-5 investors (and their family members) who have been waiting for an Form I-829 adjudication for years and whose initial receipt notice extending CPLR status expired – thereby forcing a personal appearance at a local USCIS office for a I-551 stamp. At the time of that appearance, the officer would – per USCIS policy – confiscate their green cards leaving the new I-551 stamps as their sole evidence of continued lawful status. Without their old expired Green Cards, these investors and family members are prevented from benefiting from the new USCIS policy updating the Form I-829 receipt notice to reflect status

⁵ USCIS Policy Manual Vol 11, Part B, Chapter 3, “**Expired Permanent Resident Cards.** To deter fraud and enhance security, USCIS field offices generally collect expired Permanent Resident Cards (PRCs) encountered through the normal course of business, unless the PRC has an unexpired extension sticker or a valid receipt notice to be used with the expired PRC as evidence of continuing LPR status. Offices that have collected expired cards should follow agency procedures to update applicable systems and destroy the expired cards.”

validity for 48 months – because that policy requires the new receipt notice presented alongside the expired green card. To exacerbate matters, AILA attorneys have received reports of EB-5 investors wrongfully turned away for I-551 stamp appointments on the basis that Form I-829 receipts now contain language extending status for 48 months even though these investors cannot take advantage of that policy.

- **Customs and Border Protection (CBP) current policy of boarding for lawful residents does not allow conditional lawful residents to travel without possession of the permanent resident card and the I-797 Receipt Notice.** Thus, investors whose conditional green cards were surrendered at an initial I-551 stamp appointment are denied boarding despite USCIS's new policy on 48-month auto extensions.
- **USCIS will sometimes refuse to schedule appointments to obtain I-551 Stamps citing the new 48-month Form I-829 auto-extension policy.** As noted above, USCIS will only accept a receipt notice as evidence of lawful status when accompanied by the expired green card. However, many investors' green cards were confiscated by USCIS at their initial I-551 stamp appointments. Despite this, AILA attorneys report that USCIS refuses to schedule appointments for new I-551 stamps, even though USCIS's new 48-month extension policy does not help these investors.
- **The new USCIS Mail Delivery Process for Receiving ADIT Stamps does not expressly include Form I-829 petitions.** USCIS has recently rolled out a policy of mailing I-551 ADIT stamp extensions to conditional residents based on marriage to a U.S. citizen, but it appears USCIS policy does not address EB-5 investors. AILA urges USCIS to expressly extend this policy to EB-5 investors, who are in an essentially identical position as conditional residents based on marriage.

C. Proposals for Reforming USCIS Form I-829 Proof of Lawful Resident Status Policy

USCIS can change its practices to make it more efficient and less burdensome for both the agency and EB-5 conditional residents to obtain continued evidence of their lawful permanent resident status. Below, we offer two alternatives USCIS could adopt through an administrative policy change—with no new legislation or formal rulemaking required – requiring simple adjustments to the language on the Form I-829 Receipt Notices:

- **Option #1**

The most efficient method would be for USCIS to modify the language on the Form I-829 receipt notices to provide that **the Receipt Notice, when accompanied by**

either an expired I-551 card or a valid passport as proof of identity,⁶ constitutes evidence of the noncitizen's lawful resident status until there is a final administrative order of removal or a final approval by USCIS of the Form I-829 petition—that is, until either the I-829 petition is approved (and a permanent 10 year green card is issued) or a final administrative order of removal is entered against the conditional resident. Including such an annotation would align the language of the I-797 Receipt Notice with the statute, regulations, and case law as well as provide relief for those conditional residents who were required to surrender their conditional resident cards.

Following applicable regulations and USCIS policy, the notice could read: **“This Notice, when accompanied by a either an expired I-551 card or valid passport as proof of identity, serves as evidence of the petitioner’s conditional lawful permanent resident status until such time as this petition is approved or a final administrative order of removal is entered against the petitioner.”** See [5 USCIS Policy Manual, Part G, Chap. 5, § D](#) (“USCIS issues the immigrant a temporary Form I-551 until an order of removal becomes administratively final.”).

- **Option #2**

Alternatively, during the period USCIS is adjudicating a Form I-829 petition, USCIS could automatically issue *notices* to petitioners stating that the *notice, when accompanied by either an expired I-551 card or a valid passport as proof of identity*, constitutes evidence of the petitioner’s continued conditional lawful resident status. This *notice* would include a set validity period (two years, or some other extended period), and if the Form I-829 petition remains pending when that validity period nears its expiration, USCIS would then automatically issue a new notice with a new extended validity period.

Although such a system would require some initial effort to establish, the long-term efficiency gains should dwarf any of the initial costs. The entire process could be automated—USCIS’s own databases contain information on whether a given Form I-829 petition remains pending, and the notices could be produced and mailed automatically based on this information. (Indeed, USCIS already automatically sends notices to conditional residents when their deadline to file a petition to remove conditions approaches). Issuing such notices from a central automated

⁶ While providing the alternative of a valid passport as proof of identity to be presented with the Form I-829 receipt notice will require a corresponding change to the Policy Manual, it provides a simple and efficient mechanism for those conditional permanent residents who, as noted above, were required by DHS to surrender their permanent resident cards to prove valid permanent resident status.

system would be far more efficient than requiring local field offices to conduct manual checks and physically issue I-551 stamps in investors' passports. It would also substantially reduce burdens on conditional residents, who have no control over USCIS's processing times. In March 2023, USCIS announced that it would issue some I-551 stamps by mail to certain lawful permanent residents.⁷ We recommend that USCIS expand this program to conditional residents as well.

Conclusion

We believe the efficiency initiatives proposed here are straightforward and would both free up USCIS's resources for other tasks and improve the lives of countless conditional residents recently welcomed to our country.

We look forward to your response and are available to answer any questions or address any concerns that you may have about this proposal. Please contact Sharvari (Shev) Dalal-Dheini, Director of Government Relations at (202) 507-7621 or by email at SDalal-Dheini@aila.org or David Morris, Chair of AILA's EB-5 Investor Committee at morris@visalawgroup.com.

Sincerely

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

⁷ <https://www.uscis.gov/newsroom/alerts/uscis-announces-additional-mail-delivery-process-for-receiving-adit-stamp>.



**U.S. Citizenship
and Immigration
Services**

January 19, 2024

Sharvari Dalal-Dheini
Director of Government Relations
American Immigration Lawyers Association
1331 G Street NW, Suite 300
Washington, DC 20005

Dear Ms. Dalal-Dheini:

Thank you for your letter dated September 12, 2023 related to the request to update U.S. Citizenship and Immigration Services (USCIS) policies affecting EB-5 Investors with long-pending Forms I-829, Petition by Investor to Remove Conditions on Permanent Residence.

We appreciate your feedback on the difficulties many of our investors face while waiting on adjudication for a Form I-829, and your recommended language to add to the Form I-829 receipt notices. We are aware of the issues and are actively working to alleviate these concerns, including a careful review of your recommendations. USCIS extended the validity of Permanent Resident Cards (also known as Green Cards) for petitioners who properly filed Form I-829 for 48 months beyond the card's expiration date. This change started on January 11, 2023, for Form I-829¹. We made this change to accommodate processing times for Form I-829, which have increased over the past year.

USCIS field offices have also recently started issuing and mailing Form I-94 with ADIT (temporary I-551) stamps as temporary evidence of LPR status without requiring an in-person appearance at the field office, for most customers who request evidence of status. With this new operational process, USCIS has added more ways for applicants to obtain proof of status. The Form I-94 with an ADIT stamp enables an individual to travel outside of the United States and is also an acceptable List A receipt for Form I-9 and E-Verify. More detailed information about USCIS' Temporary Status Documentation for Lawful Permanent Residents (LPR) is available at <https://www.uscis.gov/i-9-central/form-i-9-related-news/temporary-status-documentation-for-lawful-permanent-residents-lpr>.

Traditionally, guidance instructed field offices to collect expired Permanent Resident Cards (PRCs) encountered through the normal course of business. While this has always been a

¹ Please see: <https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-for-conditional-permanent-residents-with-a-pending-form-i-751-or>

standard practice during field office encounters, on March 7, 2023, we updated this guidance, giving field office staff extra clarity when it comes to PRC validity and I-797 extension notices. Though USCIS extended the validity of expired PRCs by 48 months for Form I-829 petitioners on January 11, 2023, unfortunately, not all petitioners may be benefiting from these extensions, particularly those with older pending petitions. An I-829 petitioner who may have obtained an ADIT stamp prior to the 48-month extension change may have properly had their expired PRC confiscated during that field office encounter. As the validity of the 48-month extension requires that the individual present both their expired PRC and their original receipt notice associated with their Form I-829 petition, individuals not in possession of both would still need to request an ADIT stamp to obtain proof of status. We recognize the challenges for this small percentage of conditional permanent residents whose Form I-829 remains pending, we are continuing to add resources to process these forms and build in other efficiencies.

Thank you for sharing there have been inconsistencies across field offices in the issuance of ADIT stamps. As indicated above, we have provided guidance, and continue to provide guidance, to field offices across the country regarding this operational change. Should you continue to encounter challenges, please contact IPO at uscis.immigrantinvestorprogram@uscis.dhs.gov so that we may follow up further on the matter.

Your letter and a copy of this response will be published on the USCIS Electronic Reading Room pursuant to the communication protocols in §107(e)(3) of the EB-5 Regional Center Reform and Integrity Act of 2022. Please share this response with Mr. David Morris, who cosigned your letter. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Alissa Emmel".

Alissa Emmel
Chief, Immigrant Investor Program Office