

## Keynote Speech – IIUSA 11<sup>th</sup> Annual Advocacy Conference

### **Introduction:**

- Thank you, Peter, and Invest in the USA for the invitation to speak with you today.
- I am excited by the opportunity to brief you on the state of the EB-5 program as it is overseen by my agency, U.S. Citizenship and Immigration Services.
- I'm feeling a little under the weather today, so thank you for bearing with me.
- I want you to know the role IIUSA plays in the EB-5 community.

### **Congress:**

- As many of you know, I spent most of my career working in the Senate for Chairman Chuck Grassley of the Senate Judiciary Committee, and before that, in his personal office. I spent nearly 18 years with Senator Grassley.
- During this time, I helped reauthorize the regional center program on an ongoing basis.
- So, I am very familiar with the EB-5 program.
- EB-5 was on autopilot, extended year after year, until 2011, when we held our first in-depth hearing on the program. We had several after that.
- This was one of many hearings that was held while I was on Capitol Hill.
- Some of you may have even been asked to testify at those hearings. Thanks for sharing your perspective.
- The initial hearing in 2011 allowed me to really dig into the EB-5 program and see the need for reform – not only for program integrity but also for the benefit of investors and communities across the country.
- I have worked since that time on legislative fixes to make the program work better for rural America and underserved areas truly in need of economic development.
- I have also worked on changes that will strengthen national security.
- While we didn't make progress on statutory changes, the work that we did on the Hill brought sunshine to the program and instigated administrative reforms.
- So I tell myself all of that, even though Congress failed to act, that work was valuable.

## **USCIS:**

- I left the Senate to join USCIS because I wanted to make sure that our immigration laws are followed faithfully; that policy decisions are rooted in the language of the law.
- So now, I'm the Chief of the Office of Policy and Strategy at USCIS.
- My office is responsible for all policy memorandums, the policy manual and regulations affecting the agency.
- A few of the regulations we're working on impact your association and your clients.
- So, I'm here today to provide you some information on these regulations, to the extent that I can, and how the agency is working to process petitions.
- The Administrative Procedures Act does preclude me from sharing certain information with you all.

## **Reform:**

- IIUSA, even going back to my days on the Hill, has always been a valuable resource in providing recommendations for statutory and regulatory changes. Thank you for that.
- I've always valued the relationship I have with your organization.
- Some of you in the room today agree that the EB-5 program is broken and needs to be fixed.
- Some of you may not want changes to the program.
- But, I always respect the way that your association gathers input from members and relays it in one voice to the Hill.
- Those of you who know me, know that the status quo is unacceptable for me.
- The status quo is not acceptable for Director Cissna.
- Bad actors should not be able to take advantage of our immigration laws, including participating in the program and seeking immigration benefits.
- I know that the program was established with noble goals.
- But, the EB-5 program has strayed far away from its original intent to use foreign investment to create American jobs.
- It has essentially turned from an investment program into a loan program.
- In my view, without reform, the EB-5 program does not serve the national interest.
- Rather, it serves the interests of a few at the expense of others.

- Loopholes and gerrymandering have allowed many of you in the room to benefit from the program.
- Congress has sought changes especially to improve national security.
- Every time these reforms pick up steam, some EB-5 lobbyists and real estate interests have joined together to fight these reforms.
- I know. I was in the room. I saw it.
- Director Cissna, who was sworn in last October, is committed to EB-5 reform.
- He is committed to strengthening the program.
- Under his leadership, we are working on a series of regulatory and administrative actions to strengthen the EB-5 program and administer it according to Congressional intent.
- These regulations include our EB-5 Modernization Notice of Proposed Rulemaking Making and future proposed rules.

#### **Administrative Reforms/Transparency:**

- Let's talk a little bit about what USCIS has done outside of regulations and statutory changes.
- USCIS has begun a series of administrative reforms to enhance transparency.
- We have begun terminating regional centers that no longer promote economic growth or fail to submit required information.
- We terminated 83 regional centers in FY 2017 and 46 in FY 2018 to date.
- For those regional centers in operation, we have begun a compliance review program to verify the evidence provided by designated regional centers in applications and annual certifications.
- We also verify compliance with applicable laws and authorities to ensure continued eligibility for the regional center designation.
- We have been doing site visits to the job creating entities to ensure that projects are operating as expected.
- Of the 221 projects USCIS visited in FY2017, 153 were operating as expected.
- For those projects that are not operating as expected, we have begun scheduling interviews or requesting additional evidence from the applicant prior to our adjudication to remove conditions on permanent residence.
- So, let me share some more good news with you.
- We have stepped up our EB-5 adjudications to eliminate the backlog of cases.
- We are adjudicating about 60% more I-924s per month this year than we did last year, while receipts have come in at 1/5<sup>th</sup> of that pace.

- Our current pace for I-526 adjudication is now twice as much as in 2014 and more than 6 times as much as in 2011.
- We have also averaged a record-setting pace for I-829 adjudications.
- You will see this progress reflected in our posted processing times the next time over the next year as these are updated

### **EB-5 Modernization Regulation:**

- As you may know, the lower investment level for Targeted Employment Areas was created to incentivize targeted investment in rural and high unemployment areas.
- Under current practice, investors have found ways to exploit those TEA provisions.
- As a result, very few investors are investing the \$1 million as Congress had envisioned.
- Our EB-5 Modernization Regulation proposes to allow DHS, rather than State governments, to designate high unemployment areas.
- We believe that eliminating states from the process of determining high unemployment areas will eliminate inconsistent and gerrymandered TEA determinations.
- Our rule proposes a methodology that puts an end to this practice.
- And, our rule proposes that a project site may be determined to be within a TEA if the census tract where the project is located, by itself or in combination with any number of the census tracts immediately surrounding that census tract, have an unemployment rate that is 150 percent above the national average.
- Ending gerrymandering is not enough, though.
- Our rule also proposes to increase the minimum investment levels.
- As stated in the proposed rule, we anticipate that these increased investment levels will ensure that the program operates according to Congressional intent.
- Our Fall 2017 Unified Agenda includes this Notice of Proposed Rulemaking to address this, which we aim to publish it later this year.

### **Regional Center Program:**

- We have also published an advanced notice of proposed rulemaking to protect our national security and reduce fraud and abuse.
- As I'm sure it does for many of you, it irritates me to see story after story of corrupt EB-5 operators using the program to enrich themselves.

- It's not fair to the investors, and it's not fair to the communities they aim to serve.
- The never-ending stories give testimony to the need to reform the regional center program.
- Current regulations allow foreign governments to own or operate regional centers.
- Current regulations allow regional centers to use speculative job forecasting methodologies that skirt the job creation requirements.
- Current regulations allow an investor to file an I-526 before a business plan is approved.
- We will be working hard to update our regulations.

**Conclusion:**

- Ultimately, our regulatory and administrative reforms aim at modernizing the program, realigning it with the authorizing statutes, protecting national security, and transparently administering the program.
- We believe that these reforms will ensure that the EB-5 program will fulfill its mission to create jobs, increase investment in the U.S., and strengthen rural and high unemployment areas.
- Without reforms, this program is in jeopardy.
- The EB-5 program is at a critical juncture.
- It can continue to operate according to the status quo, or it can be reformed and saved to serve the Nation's interest.
- I urge you and your association to continue to advocate for consensus on the Hill by advancing ideas and proposing legislative solutions.
- Without your voice and your active engagement, the EB-5 program is in jeopardy.
- So, again, I appreciate the invitation to be here today.
- It's an honor to be here with you, and I appreciate what you can do to help make this the best program possible.