

**PROPOSAL FOR COMMENT**

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Comment period ends: 06-17-2011

**Proposed Changes to USCIS's Processing of EB-5 Cases**

Congress created the EB-5 Immigrant Investor Program in 1990 to create jobs and spur investment in the United States. The EB-5 program is available to prospective immigrants who invest in a new commercial enterprise that will create at least 10 full-time jobs in the United States. EB-5 investors may petition to participate either on their own or under a USCIS-designated "Regional Center." Regional Centers are public or private entities that promote economic growth, regional productivity, job creation, and capital investment. USCIS accepts petitions for interested investors on Form I-526 and applications for Regional Center designation on Form I-924.

Proposals submitted under the EB-5 Program are often complex, involving business plans supported by expert analyses evidencing that the EB-5 Program's legal criteria are met. The proposed steps outlined below respond to concerns stakeholders and petitioners have raised about the often-complex EB-5 proposal process and reflect USCIS's long-term commitment to realizing the EB-5 Program's fullest job-creation potential and to addressing stakeholder concerns about process challenges.

**Background**

Regional Centers submit I-924 applications in one of two varieties. First, "actual" applications present "shovel-ready" business projects that are sufficiently developed to support the immediate filing of actual I-526 petitions from participating investors. "Actual" applications are supported by specific business plans and economic analysis, the actual capital-investment structures and documentation for the investment offering, the anticipated regional economic impacts, and the Regional Center's operating plan and structure. The review of the specific documentation to be provided in I-526 petitions for projects that can be started immediately after the approval of the I-924 application promotes efficiency and predictability within the EB-5 immigrant petitioning process as issues can be identified and resolved within the I-924 application prior to the filing of any I-526 petitions. Second, "exemplar" applications present feasible business projects that are not yet "shovel ready," together with an exemplar I-526 petition, for a preliminary determination of EB-5 compliance. The "exemplar" process allows Regional Centers to seek approval of new, job-creating projects in principle before the business projects are fully developed to the point where participating investors can submit their I-526 petitions.

**Proposed Step 1: Accelerated and Premium Processing of "Shovel-Ready" Cases**

USCIS proposes to prioritize "actual" I-924 applications to ensure that eligible, shovel-ready business projects get underway as quickly as possible. First, we will offer accelerated target processing times for "actual" Regional Center filings. Second, we will make "actual" I-924 application Regional Center filings eligible for the USCIS Premium Processing Service (PPS). (PPS offers 15-day turnaround and enhanced customer service for an additional fee.) Clear filing guidelines for "actual" vs. "exemplar" I-924 applications and I-526 petitions will be provided to the public through a revised I-924 application, I-526 petition, and instructions for these forms. I-924 applications including a hybrid of "shovel-ready" and "exemplar" documentation will be

accepted for processing as “exemplar” applications. Third, accelerated target processing times will also apply to the I-526 petitions associated with approved “actual” I-924 applications, and PPS will be available for those petitions as well. Prioritizing shovel-ready cases will also create a strong incentive for the public to file clear, focused applications and petitions.

The following target processing times will apply both to initial and amended I-924 applications and EB-5 petitions:

<b>Case Type</b>	<b>Current Target Processing Time</b>	<b>Actual Processing Time</b>	<b>Proposed Target Processing Time</b>
I-924 – “Actual” (Shovel-Ready) Project	4 Months	5 Months	2 Months
I-924 – “Actual” (Shovel-Ready) Project – <i>Premium</i>	N/A	N/A	15 Days
I-924 – “Exemplar” Project	4 Months	5 Months	5 Months
I-526 – RC “Actual” (Shovel-Ready) Project	5 Months	6 Months	2 Months
I-526 – RC “Actual” (Shovel-Ready) Project – <i>Premium</i>	N/A	N/A	15 Days
I-526 – Regional Center “Exemplar” Project	5 Months	6 Months	5 Months
I-526 – Not Affiliated with a Regional Center	5 Months	6 Months	5 Months
I-829	6 Months	5 Months	3 Months

**Proposed Step 2: Specialized Intake Teams for I-924 Applications, with Direct Customer Access**

USCIS proposes to create Specialized Intake Teams to handle the initial intake and review of I-924 applications. The teams will have expertise in economic development and analysis, as well as EB-5 Program requirements. Members will include USCIS economists, business analysts, and adjudicators, and each team will be supported by legal counsel.

The intake teams will determine if an I-924 application filed as an “actual” application meets the “actual” filing guidelines, and will work to ensure that each “actual” or “exemplar” I-924 application package is ready for adjudication. The teams will review the package for all required documentation and evidence and communicate directly with the I-924 applicant in writing to address identified questions or needs.

**Proposed Step 3: Enhanced Decision Process for I-924 Applications, with Option for In-Person or Telephonic Interview**

USCIS proposes to have an expert I-924 Decision Board render decisions in I-924 applications. The Board will be composed of a USCIS economist and two USCIS adjudicators, and will be

supported by legal counsel. The Board will receive a case for disposition from the Specialized Intake Team, and the Board's first step in each case will be to approve the I-924, to route the I-924 back to the intake team for a Request for Evidence ("RFE"), or to issue the applicant a Notice of Intent to Deny ("NOID"). If the Board issues a NOID, it will offer the applicant the opportunity to have an in-person or a telephonic interview with the Board to inform its final decision. If an applicant believes an RFE has been issued unnecessarily and the application is ready for adjudication, the applicant can request the issuance of a NOID for the purpose of obtaining an interview. The Board will audiotape or otherwise memorialize the interviews for the record. The Board will then ultimately approve or deny the I-924. I-924 approval letters will clearly identify whether the case was approved as an "actual" or "exemplar" application. Business plans, economic analysis, and I-526 documentation approved in an "actual" I-924 application, if unchanged, will be given deference in the filing of associated I-526 petitions, and such petitions will be eligible for accelerated target processing times and for PPS.

PROPOSAL