



EB-5 National Stakeholder Engagement

March 3, 2017

Washington, D.C.

Remarks by Immigrant Investor Program Office (IPO) Division Chief Lori
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EB-5 NPRM and ANPRM

As you know, DHS published an advanced notice of proposed rulemaking (ANPRM) in the Federal Register on January 11, 2017 and a notice of proposed rulemaking (NPRM) on January 13, 2017. We look forward to receiving and reviewing your comments on our NPRM and ANPRM. Please submit your comments using the Federal Register process to ensure they will be considered as part of the rulemaking process.

EB-5 Policy Manual

We received a few other questions regarding the EB-5 policy manual. Part G of the USCIS Policy Manual covering EB-5 was published in final form, effective on November 30, 2016. We have reviewed the comments received and we do not currently plan to make changes to the policy manual based on the comments received.

Requesting Change to Regional Center Geographic Area

We received some questions regarding how requests to change a regional center's geographic area should be filed and the timing of such a filing. Specifically, where a regional center has a filed and pending Form I-924 amendment requesting an expansion in geographic area, stakeholders have asked whether or not Form I-526s

may be filed prior to approval of the I-924 amendment, relying on such proposed expanded geography.

At the March 3, 2017 stakeholder engagement, USCIS noted that the May 2013 policy memo had previously provided guidance that a formal amendment was not required to expand a regional center's geographic area, and permitted concurrent filing of I-526 petitions prior to approval of the geographic scope amendment. The May 2013 guidance was superseded by the recent publication of the final Form I-924 and instructions. The I-924 revisions included changes to the Form I-924 instructions and require that regional centers file a Form I-924 when seeking an expansion of their geographic area. The revised Form I-924 became effective on December 23, 2016, following publication of the revisions in draft form in the Federal Register in May of 2016, and a period during which the public had the opportunity to comment.

As such, USCIS stated at the March 3, 2017 engagement that it would continue to adjudicate all petitions filed prior to December 23, 2016 (the effective date of the new Form I-924) under the prior guidance, reflected in the May 30, 2013 policy memo. USCIS further noted at the engagement that petitions filed on or after December 23, 2016 must follow the current guidance; namely, Form I-526 petitions based on investments in an area not previously approved would be deniable due to ineligibility at time of filing.

During the engagement, some stakeholders expressed concerns regarding this policy. After considering the concerns raised, USCIS is replacing the above guidance expressed during the March 3, 2017 engagement with the following: Where the regional center's geographic area expansion request was submitted either through a Form I-924 amendment or Form I-526 petition filed prior to February 22, 2017 (the date on which use of the new Form I-924 became mandatory), and the request is ultimately approved, USCIS will continue to adjudicate additional Form I-526 petitions associated with investments in that area under the guidance reflected in the May 30, 2013 memo. Any requests for geographic area expansion made on or after February 22, 2017 will be adjudicated under the current guidance; namely, a Form I-924 amendment must be filed, and approved, to expand the regional center's geographic area before an I-526

petitioner may demonstrate eligibility at the time of filing his or her petition based on an investment in the expanded area.

USCIS believes this clarification will minimize the impact on stakeholders. Additionally, in an effort to further reduce processing times, USCIS will adjudicate Form I-924 amendments in a separate queue from Form I-924 initial designation requests. USCIS believes this operational change will help more efficiently adjudicate these amendments.

August 2015 Draft Policy Memo

We also received questions regarding the timeline by which USCIS anticipates publishing additional guidance to address issues raised in the August 2015 draft policy memo, in which the agency provided draft policy guidance on adjudication of job creation and capital at risk issues. USCIS hopes to publish updates to EB-5 portions of the Policy Manual in final in the near future, including final guidance on issues addressed in the August 2015 draft policy memo.

Source of Funds, Non-Profits

One question regarding source of funds related to the use of Bitcoin to transfer investment funds to the new commercial enterprise. USCIS is currently considering issues involving virtual currency such as Bitcoin. USCIS cannot provide blanket assurances regarding any particular form of transfer, but we will continue to evaluate evidence provided by petitioners to determine whether the relevant statutory and regulatory requirements have been met, including evidence that the funds invested belong to the petitioner, and were acquired, directly and indirectly, by lawful means.

Another question related to whether a new commercial enterprise can be a nonprofit 501(c)(3) organization. EB-5 petitioners must invest in a “new commercial enterprise”, which is (in part) defined in the regulations as any for-profit activity formed for the ongoing conduct of lawful business. Accordingly, a new commercial enterprise must be formed as a for-profit business and may not be formed as a nonprofit organization regardless of whether it separately qualifies for tax exemption under IRC 501(c)(3) or other applicable authorities. However, there is no such express requirement that a job-creating entity necessarily be a for-profit

entity in the regional center context. Consequently, a nonprofit job-creating entity may receive EB-5 capital from a for-profit new commercial enterprise to indirectly create jobs for EB-5 investors (assuming all other eligibility criteria are met).