Policy Alert

SUBJECT: EB-5 Immigrant Investor Program Modernization Final Rule

Purpose

U.S. Citizenship and Immigration Services (USCIS) is revising its policy guidance in the USCIS Policy Manual to align with the EB-5 Immigrant Investor Program Modernization Final Rule, published on July 24, 2019, and effective November 21, 2019.

Background

Under the employment-based fifth preference (EB-5) classification, petitioners may seek an immigrant visa if they make the necessary investment in a new commercial enterprise in the United States and meet certain job creation requirements.\(^1\) On July 24, 2019, the Department of Homeland Security published the EB-5 Immigrant Investor Program Modernization rule to reflect statutory changes and modernize the EB-5 program.\(^2\) This rule provides, among other things, priority date retention for certain EB-5 immigrants; increases the investment amounts to account for inflation; reforms targeted employment area (TEA)\(^3\) designations; and clarifies USCIS procedures for the removal of conditions on permanent residence.

These updates to Volumes 6 and 7 of the Policy Manual conform USCIS policy to the provisions in the final rule. This policy guidance is controlling and supersedes any prior guidance on the topic.

Policy Highlights

*Volume 6, Part G: Investors*

- Updates the minimum investment amounts to $1.8 million standard and $900,000 in a TEA for petitions filed on or after the effective date.
- Clarifies the definition of rural.
- Explains the new methodology for determining high unemployment areas for petitions filed on or after the effective date of the rule, including the removal of a state’s ability to designate certain geographic and political subdivisions as high-unemployment areas.
- Updates the guidance on engagement in the management of the new commercial enterprise, to list the new evidentiary requirements for that requirement.

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1. See INA 203(b)(5).
2. See 84 FR 35750 (July 24, 2019).
3. A TEA may be a rural area or an area of high unemployment.
• Adds a Priority Dates section explaining that the priority date of a previously approved immigrant investor petition may generally apply to any subsequent immigrant investor petition filed on or after November 21, 2019.
• Clarifies that certain changes to comply with securities laws are not material.

Volume 7, Part A: Adjustment of Status Policies and Procedures

• Adds to the Priority Dates section that the priority date of a previously approved immigrant investor petition may generally apply to any subsequent immigrant investor petition filed on or after November 21, 2019.
• Clarifies when the priority date may not be retained or conferred to any subsequently filed immigrant investor petition.

Citation

Volume 6: Immigrants, Part G, Investors [6 USCIS-PM G] (Chapters 1, 2, 4, 5); and Volume 7: Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].