



U.S. Citizenship and Immigration Services

EB-5 Immigrant Investor Program Stakeholder Meeting
September 15, 2011



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Agenda

I. Introductions and Opening Remarks, Director Mayorkas

II. EB-5 Updates

A. EB-5 Statistics

B. EB-5 Visa Usage

Q and A on topics covered in this segment

III. Stakeholder Suggested Topics and Questions

A. I-924 Information Use

B. I-924A Guidance for Annual Report Filings

C. Filing Preparation

D. Inquiries on Service Errors

Q and A on topics covered in this segment



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Agenda (continued)

III. Stakeholder Suggested Topics and Questions

E. Removal of Conditions

F. Part Time vs Full Time Positions

G. Duration of Employment

Q and A on topics covered in this segment

H. Acquisition of Existing Business

I. Indirect Jobs

J. Troubled Business

K. Job Creation Record

L. Regional Center Geographic Boundaries

M. Multiple Investors

IV. Open Forum Q&A



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EB-5 Stakeholder Meeting Presentation

This presentation is intended to provide a guide for discussion at the stakeholders' meeting and to explain current USCIS policy and practice. It is not intended to be an official statement of USCIS policy, and does not supersede any existing statutes, regulations, or policy memoranda. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in any way.



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EB-5 Updates

- **EB-5 Case Processing Times and Statistics**
- **EB-5 Visa Usage**
- **Q and A on topics covered in this segment**



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EB-5 Program Statistics

Regional Center Data:

- There are currently 173 approved Regional Centers (RCs), operating in 40 states, including the District of Columbia and Guam.
- A complete list of approved RCs is also available online at <http://www.uscis.gov/eb-5centers> .
- Approximately 90-95% of the individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in RC-affiliated commercial enterprises.



Regional Center Proposal Filing Receipts for FY10 and FY11 Q1 – Q3

| | |
|----------------------------------|--|
| Initial RC Proposal Filings FY10 | Initial RC Proposal Filings FY11 Q1- Q3 (10/01/2010 – 06/30/2010) |
| 110 | 176 |
| Amended RC Proposal Filings FY10 | Amended RC Proposal Filings FY11 Q1 – Q3 |
| 42 | 73 |



Regional Center Final Case Actions FY10 and FY11 Q1- Q3

| FY10 | | FY11 Q1 – Q3 | |
|--|--|--|--|
| Initial Proposal Approvals / Final Action % | Initial Proposal Denials / Final Action % | Initial Proposal Approvals / Final Action % | Initial Proposal Denials / Final Action % |
| 36 / 55% | 30 / 45% | 46 / 67% | 23 / 33% |
| Amended Proposal Approvals / Final Action % | Amended Proposal Denials / Final Action % | Amended Proposal Approvals / Final Action % | Amended Proposal Denials / Final Action % |
| 42 / 71% | 11 / 29% | 32 / 84% | 6 / 16% |



EB-5 Individual Petition Filing Receipts FY05 – FY10, & FY11 Q1 – Q3

| Fiscal Year and/or Quarter | Form I-526 Petition | Form I-829 Petition |
|----------------------------|---------------------|---------------------|
| FY11 Q1 – Q3 | 2,608 | 1,753 |
| FY10 | 1,955 | 768 |
| FY09 | 1,028 | 437 |
| FY08 | 1,257 | 390 |
| FY07 | 776 | 194 |
| FY06 | 486 | 89 |
| FY05 | 332 | 37 |



Form I-526 Petition Final Actions and Final Action % for FY05 – FY10 & FY11 Q1 – Q3

| Fiscal Year and/or Quarter | Form I-526 Approvals | Final Action % | Form I-526 Denials | Final Action % |
|-------------------------------|-------------------------|-------------------|-----------------------|-------------------|
| FY11 Q1- Q3 | 999 | 82% | 224 | 18% |
| FY10 | 1,369 | 89% | 165 | 11% |
| FY09 | 1,262 | 86% | 207 | 14% |
| FY08 | 640 | 84% | 120 | 16% |
| FY07 | 473 | 76% | 148 | 24% |
| FY06 | 336 | 73% | 124 | 27% |
| FY05 | 179 | 53% | 156 | 47% |



Form I-829 Petition Final Actions and Final Action % for FY05 – FY10 & FY11 Q1- Q3

| Fiscal Year and/or Quarter | Form I-829 Approvals | Final Action % | Form I-829 Denials | Final Action % |
|----------------------------|----------------------|----------------|--------------------|----------------|
| FY11 Q1- Q3 | 436 | 93% | 34 | 7% |
| FY10 | 274 | 83% | 56 | 17% |
| FY09 | 347 | 86% | 56 | 14% |
| FY08 | 159 | 70% | 68 | 30% |
| FY07 | 111 | 69% | 49 | 31% |
| FY06 | 106 | 64% | 59 | 36% |
| FY05 | 184 | 62% | 112 | 38% |



EB-5 Case Processing

| Form Type | Target Processing Time | Current Processing Time |
|---|------------------------|---|
| Form I-526 | 5 Months | USCIS is currently making adjustments to improve the accuracy of EB-5 case processing times that are published on the USCIS website and will post the case processing times once this process is finalized. |
| Form I-829 | 6 Months | |
| RC Initial Designation Proposal | 4 Months | |
| RC Amended Designation Proposal | 4 Months | |
| <p>Note: Responses to requests for evidence (RFEs) for individual petitions, and for new or amended RC Proposals are matched with the case file upon receipt of the response. CSC strives to finalize EB-5 cases within 30 days after the responses to the RFEs are received.</p> | | |



EB-5 Visa Usage

| Fiscal Year | Total EB-5 Visas Issued |
|--------------------|--------------------------------|
| FY11 YTD* | 3,706 |
| FY10 | 1,885 |
| FY09 | 4,218 |
| FY08 | 1,360 |
| FY07 | 806 |
| FY06 | 744 |
| FY05 | 158 |

***Estimate of FY11 Visas Issued YTD, reported by the Department of State as of 09/12/2011.**



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Common Issues Resulting in RFEs or Denials in Form I-924 applications

1. Business Plan and Economic Analysis for Each Requested Industry Category (Form I-924, Part 7.)

- A. The application is not supported by a business plan and economic analysis for at least one investment project with sufficient detail to show in verifiable detail how capital investment offerings in the requested industry will create jobs;
- B. Insufficient evidence and/or narrative that describes the investment project activities that the regional center will engage in for each requested industry category, to include;
 - 1. The proposed number of investors for the project(s);
 - 2. The timeline for starting and completing the projects to demonstrate the requisite job creation;
 - 3. A financial plan or budget including capital required and expenditures for the investment projects.



Common Issues Resulting in RFEs or Denials in Form I-924 applications, Cont'd

2. **Reliability and Appropriateness of Data Sources for Economic Model Inputs, (Form I-924, Part 7.)**
 - A. The application of national or state data in the economic model when more accurate regional data is readily available to demonstrate the economic impacts/job creation of the regional center's investment projects;
 - B. The data source for economic or business activity estimates for a given investment project, e.g. the data sources for estimates regarding total revenue generated or for the estimated construction costs (if applicable) for a given project .



Common Issues Resulting in RFEs or Denials in Form I-924 applications, Cont'd

- 3. Choosing and Identifying Appropriate NAIC Codes. (Form I-924, Part 7.)**
 - A. NAIC code should be appropriate to the requested industry;
 - B. An overly broad NAIC code may not be representative of the requested industry;
 - C. An overly narrow NAIC code may be too restrictive for the scope of the contemplated investment project(s) in the requested industry, e.g. “NAIC Code 62” includes assisted living facilities but also covers hospitals. There may be a more appropriate for the requested industry.



Common Issues Resulting in RFEs or Denials in Form I-924 applications, Cont'd

- 4. Exemplar Form I-526s submissions should be documented with evidence with the level of detail required for an I-526 petition so that the exemplar petition if approved will facilitate the review of individual Form I-526 petitions (Form I-924 instructions, page 1.) An exemplar Form I-526 petition should therefore:**
 - A.** Include a Matter of Ho compliant business plan and an associated economic analysis;
 - B.** Include project timeframes for milestones: project commencement, key construction or implementation dates, completion date, and time line for the requisite job creation;
 - C.** Clearly request approval for an exemplar I-526 and include a copy of an exemplar I-526;
 - D.** Include all documents needed for I-526 approval excluding an investor's capital investment information;
 - E.** Identify the amount and source of non-EB5 financing needed for the project.



Questions?



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Stakeholder Topics

- **I-924 Information Use**
- **I-924A Guidance for Annual Report Filings**
- **Filing Preparation**
- **Inquiries on Service Errors**



Form I-924A

- The Form I-924A, Supplement to Form I-924, is the Form for approved regional centers to use for the yearly RC reporting requirement in 8 CFR 204.6(m)(6). Each approved RC is now required to file the I-924A to report RC-related activities for the preceding fiscal year within 90-days of the end of the fiscal year (on or before December 29th of the calendar year in which the fiscal year ended.)
- **The filing of Form I-924A will be required for all approved RCs for Fiscal Year 2011 on or before December 29, 2011.**
- There is no filing fee for the Form I-924A.
- USCIS plans to publish summarized RC data in order to be responsive to requests for this information from a broad spectrum of USCIS' external stakeholders, to include members of Congress, other federal agencies, state agencies, and major media outlets.



Form I-924A, Cont'd

USCIS plans to publish data provided each year by all designated regional centers, to include attributes of the RC-affiliated capital investments, such as:

1. the geographic areas and industry categories receiving investment capital;
2. The volume of regional center affiliated capital invested, and;
3. The number of jobs created or maintained as a result of the capital investments.

This data will be published on the USCIS Web site for each fiscal year, along with summarized data gathered systemically by USCIS.



Filing Preparation

- **Will petitions arrive in the EB-5 unit with tabs cut off? Please clarify preferred filing format guidelines for practitioners on this issue.**
- ✓ The Texas Service Center does not currently adjudicate Form I-526 petitions. All EB-5 cases are adjudicated at the California Service Center. While USCIS encourages petitioners to use tab dividers with the tabs at the bottom of the page when assembling Form I-526 petitions, the practice of using colored paper dividers may also be effective in indexing petition exhibits to facilitate their review by Immigration Services Officers.



Inquiries on Service Errors

- If a RC based EB-5 project has been pre-approved, and a RFE is issued (and no changes have been made to the pre-approved project) – can we bring this to the attention of the CSC Management?
- ✓ The Form I-526 petitioner and/or the attorney or accredited representative of record on Form G-28, may bring to the attention of USCIS any EB-5 case decision or notice that appears to be in gross error by sending an inquiry if to the EB-5 general mailbox at USCIS.ImmigrantInvestorProgram@dhs.gov. Please see the [EB-5 Inquiries](#) page on the USCIS website at www.uscis.gov for further information regarding EB-5 inquiries.



Questions?



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Stakeholder Topics (continued)

- **Removal of Conditions**
- **Part Time vs Full Time Positions**
- **Duration of Employment**



Removal of Conditions

- **Must an investment be completely spent before an application for removal of conditions is filed?**
- ✓ Per a June 2009 memo addressing Form I-829: “Primarily, USCIS is determining whether the alien *has invested* the requisite capital and created the requisite jobs through that investment.”
- ✓ Per a December 2009 memo: “The Form I-829 petition must demonstrate that *all of the terms and conditions of the EB-5 program have been met by the alien investor* in order for the conditions on his or her permanent residence to be removed.”



Part Time vs. Full Time Positions

- In a non-regional center application, if an investor is purchasing an existing business that employed full-time and part-time employees, and the employer adds 10 more full-time employees, does it matter whether the part-time employees are still employed?
- ✓ Part time employment does not affect the requirement that the EB-5 investor demonstrate that his/her capital investment created 10 *full time* jobs for qualifying employees.



Duration of Employment

- **Must qualifying jobs last two years? If a position starts prior to the I-829 filing date, does it count?**
- ✓ There is no requirement for how long a qualifying job must last
- ✓ A June 2009 memo instructed USCIS officers to “ensure that the business plan filed with the Form I-526 reasonably demonstrates that the requisite number of jobs will be created *by the end of the two year period.*”
- ✓ A June 2009 memo states: “Although employment in some industries such as construction or tourism can be intermittent, temporary, seasonal or transient, officers should not exclude jobs simply because they fall into such industries.”



Questions?



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Stakeholder Topics (continued)

- **Acquisition of Existing Business**
- **Indirect Jobs**
- **Troubled Business**
- **Job Creation Record**
- **Regional Center Geographic Boundaries**
- **Multiple Investors**



Acquisition of Existing Business

- In a non-regional center application, if an investor acquired an existing business by paying the owner \$1,000,000 for the business, the investment *is* qualifying, assuming that all other EB-5 criteria, including job creation and establishment of a new commercial enterprise are met
- ✓ Yes.



Indirect Jobs

- **Page 5 of the June 17, 2009 Memo it says “USCIS... now interprets that direct AND INDIRECT construction jobs that are created by the petitioner’s investment and that are expected to last at least 2 years, INCLUSIVE OF WHEN THE PETITIONER’S I-829 IS FILED, may now count as permanent jobs.”**
- ✓ The discussion in this memo does refer to indirect construction jobs at an EB-5 project.



Troubled Business

- **If 2 investors' investments in a troubled business will save 15 jobs, and 5 will be added, do both qualify?**
- ✓ In order to meet the requirements of INA 203(b)(5)(A)(ii), each investor must create or maintain at least 10 jobs through the investment in a “troubled business”.
- ✓ The investor's capital investment in a “troubled business” must maintain the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident.



Job Creation Record of Regional Centers

- **Is USCIS going to publish RC-associated petition filing data on the USCIS Website?**
- ✓ Yes. USCIS is actively in the process of producing and validating regional center specific data, which will be published once USCIS finishes this process.



Regional Center Geographic Boundaries

- What criteria is used in determining the appropriate geographical boundary for a regional center that has one initial “shovel ready” project but is planning future projects in a larger geographical area; but the details and location of the future projects are unknown?
- ✓ A Regional Center may be granted jurisdiction over a limited geographic area for the purpose of concentrating pooled investment in defined economic zones
- ✓ A Regional Center must demonstrate in the Form I-924 that its activities will focus on the requested geographic region, and not simply on isolated and unrelated areas within the region
- ✓ It may be more appropriate for the Regional Center to initially request a geographic area that is in keeping with the economic impacts of the existing project, and then subsequently file an amendment request for an expanded geographic area as the details and location of future projects become known



Multiple Investors

- **Could there be several EB5 Direct Basic investors who invest together in a restaurant? For example, 3 investors jointly invest as limited partners in the restaurant and are actively involved in the restaurant.**
- ✓ Yes. The EB-5 regulations at 8 CFR 204.6(g) provides in pertinent part that:
 - *The establishment of a new commercial enterprise may be used as a basis of a petition for classification as an alien entrepreneur by more than one investor, provided each petitioning investor has invested or is actively in the process of investing.*



Questions?



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