

Main office:

Peter D. Joseph, Executive Director
2237 North Lawndale Avenue, Unit 3
Chicago, Illinois 60647
Telephone: 773.899.0563
Email: peter.joseph@iiusa.org
www.iiusa.org
"Creating Jobs Through Investments"

K. David Andersson, President
Robert C. Divine, Vice President
Robert G. Honts, Secretary-Treasurer
Michael Gibson, Director
William P. Gresser, Director
Patrick F. Hogan, Director
Henry Liebman, Director
Tom Rosenfeld, Director
William J. Stenger, Director

December 9, 2011

VIA EMAIL - opefeedback@uscis.dhs.gov
U.S. Citizenship and Immigration Services ("USCIS")
Office of Public Engagement

RE: Comments on USCIS draft memorandum, "A Work In Progress: Towards A New Draft Policy Memorandum Guiding EB-5 Adjudications"

Dear USCIS Office of Public Engagement:

We at the Association to Invest In the USA (IIUSA), the national trade association for EB-5 Regional Centers ("Regional Centers") and other Program stakeholders, and our Members appreciate this opportunity to comment on the draft EB-5 adjudications policy memorandum. IIUSA continues to be fully supportive of USCIS efforts to get the most out of the Program, in terms of economic impact. The proposed consolidation of EB-5 adjudications policy into one comprehensive memorandum is another step towards achieving the goal of maximum economic impact by taking steps toward policy clarity.. The EB-5 Regional Center industry truly appreciates this effort.

IIUSA recommends USCIS take the following into consideration before finalizing the new USCIS EB-5 adjudications policy memorandum:

Definition of Material Change - Changes in initial business plans are a part of private enterprise. Any business needs to be able to adapt and change to succeed. It is in the interest of the Program as a whole that there are clear guidelines on this issue so Regional Centers know when they have to submit an amendment. This kind of certainty is imperative to investors' confidence in the Program, which will always be the backbone of this, or any investment deal.

- **Material change should be narrowly defined to only apply when changes in the business plan lower the total job creation projection below ten per investor or if the Regional Center plans to engage in activities outside of its existing approved economic industry sectors and/or geography.**

It is also the position of IIUSA that USCIS should be very reluctant to find a "material change" and should only do so when the job creating purposes of the program would be frustrated. Changes to business operations involving EB-5 petitions should not require any additional filings when they represent the normal vicissitudes of business in reaction to changing market conditions and do not fundamentally change the type of business being invested in and the fact that jobs will be created. And even when a material change may have occurred, USCIS should allow a Regional Center to file an exemplar petition for a previously approved project to give notice to USCIS of revisions to the business plan without requiring every investor to file a new individual petition and without causing children who turned 21 after the initial I-526 was filed to "age out." Investors should be allowed to file an I-829 petition with evidence of a filed or approved I-924 to revise a business plan for the affected investors, showing that the new plan is viable and is reasonably likely to create the requisite jobs within a reasonable time using "reasonable methodologies," as is appropriate under the language in the 1992 legislation creating the Program and the normal regulatory standard for I-829 approval.

Preapproval Process – The purpose of the preapproval process is for initial determination of EB-5 compliance. As it currently operates, those who are approved using this process receive a revised Regional Center designation letter that states the project's compliance, in theory. Then, once the first I-526 is submitted by an investor for that project, the business plan and/or economic analysis is often the subject of requests for evidence (RFEs), meaning that the adjudicator is re-evaluating these documents, even though the project has been preapproved.

- **IIUSA recommends that USCIS issue an I-797 approval notice for I-924 applications for "actual" projects. This approval notice, along with evidence that the documentation has not been changed, can then be submitted with each I-526, eliminating the need for adjudicators to review that documentation again. This would allow this process to function in the streamlined manner that USCIS intended.**

Effect of Preapproval of Business Plan for Specific Capital Investment Project/Effect of Preapproval for Multiple Investors in the same Specific Capital Investment Project – The only reason USCIS should be able to challenge information that they have previously approved is if there is evidence of fraud or if there is evidence of material change (as defined above).

Amendments to Regional Center designations – Changes in economic methodologies by Regional Center should not require an amendment, so long as it is a generally accepted methodology. Amendment to Regional Center designations should only be required to expand approved economic activity or geographic area.

Bridge Financing – USCIS should state "bridge financing" can be an approvable use of EB-5 capital. It is already being used as such, and is a consistent topic of discussion at quarterly EB-5 stakeholders meetings.

Premium Processing – IIUSA would like to encourage the improvement and efficiency of all aspects of the EB-5 program. If that begins with selectively offering premium processing to specific elements of the program, we strongly suggest it would be to those aspects of the

adjudication process that would accelerate the investment of actual EB-5 capital into projects. The arrival of investment dollars is the element of EB-5 that is directly responsible for its economic impact, in terms of job creation. Offering premium processing solely to the I-924, as was indicated at the September 2011 USCIS EB-5 National Engagement, would likely result in further proliferation of Regional Centers; whereas offering premium processing first to Regional Center amendments for the approval projects (or I-526 exemplars), followed by, second offering premium processing to I-526 petitions associated with pre-approved projects seems to be a task that USCIS could feasibly accomplish, and moreover, would get money to projects faster.

USCIS partnering with other federal agencies – IIUSA urges USCIS to formally identify outside agency or inner office partnerships, such as the Office of Foreign Asset Control (“OFAC”), National Security and Fraud Directorate (“NSFD”), and the Securities and Exchange Commission (“SEC”). It is important for Program stakeholders know USCIS is putting the resources in place to protect Program integrity. Developing these partnerships will ensure USCIS has input from the federal agencies with jurisdiction over the area of concern. IIUSA, as the national trade association for the Program that promotes “best practices,” would welcome the opportunity to partner with USCIS on this effort.

USCIS should not allow foreign ownership of Regional Centers – In October 2010, IIUSA submitted a memorandum requesting that USCIS bar foreign ownership of Regional Centers – similar to the rules in place for J visas sponsoring agencies. We again urge USCIS to consider this policy question as part of its overall review and improvement of the Program. If you need another copy of the letter, please let me know and we will have one sent immediately.

IIUSA again thanks USCIS for its consistency in public engagement and outreach through the policy review of the EB-5 Program. IIUSA looks forward to continued partnership in making this Program as productive and efficient as possible. Our country is depending on the billions of dollars in investment capital and hundreds of thousands of jobs that can be created for American workers over the next several of years.

Please contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Peter D. Joseph".

Peter D. Joseph
Executive Director