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*"Creating Jobs Through Investments"*

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April 10, 2013

Alejandro N. Mayorkas, Director  
U.S. Citizenship and Immigration Services  
20 Massachusetts Avenue NW  
Washington, DC 20529

**RE: Processing Backlog is Stifling EB-5 Capital Formation and Job Creation**

Dear Director Mayorkas:

IIUSA is the national not-for-profit industry trade association for the EB-5 Regional Center Program (the "Program"). IIUSA's Regional Center members account for approximately 95% of EB-5 capital formation and resulting job creation in the Program – with billions of dollars of capital deployed into their respective regional economies, in turn creating hundreds of thousands of American jobs.<sup>1</sup> The success of our members working with the Program to capitalize economic development projects involves substantial planning to ensure that their investment structures, business plans, and economic impact reports meet the various requirements of the EB-5 Program. All of these components are then thoroughly detailed in a private placement memorandum that discloses the risks associated with making the investment and marketed in compliance with U.S. securities laws.

Our members undertake this required and expensive endeavor under the expectation that there is a level of certainty and predictability in processing times. Furthermore, our members fully understand that U.S. Citizenship and Immigration Services ("USCIS") is a fee-based agency that requires filing fees to cover operational costs. They are willing to pay the fees necessary to bring USCIS adjudication processing in line with commercial realities should insufficient resources be the cause of delay.

The pervasive processing delays currently being experienced by Program stakeholders is an unnecessary – yet fixable – threat to the EB-5 Program's credibility worldwide at a time when the Regional Center industry is setting records in growth and total economic contribution to the U.S. economy. For example:

- The posted processing times for I-526 petitions state that petitions filed in March 2012 or earlier are currently being processed (*i.e.*, petitions a year or older).

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<sup>1</sup> These statistics are based on a comprehensive analysis of FY2011 and 2012 I-924As and economic modeling used in the USCIS/ICF International EB-5 Program evaluation obtained by IIUSA via the Freedom of Information Act.

- Despite a stated goal of four months, I-924 applications (both requests for initial designation and amendments to existing designations) are also backlogged, with “Actual Case Processing Time” listed as nine months for an initial application and ten months for an amendment. The last time the page was updated was May 2012, and it is safe to say that an update would only further retrogress the “actual” average processing time to over a year.
- USCIS has not even released quarterly statistics on I-526, I-829, and I-924 receipts/approvals/denials since the end of FY 2012. Previously, USCIS released new statistics every quarter for the last several years.

**In just the last month, IIUSA has collected well over 500 receipt numbers for I-526 petitions from Regional Centers all over the country. The processing times range from five to twenty-plus months. This small sample of the total backlog of I-526 petitions represents over \$250 million in pure EB-5 capital formation, which other capital investment relies upon to create American jobs. The complete backlog of pending I-526 petitions, based on an analysis of USCIS FY2012 filing statistics, is nearly 4,000 – representing potentially \$2.0 billion in capital formation that will result in the creation of over 40,000 American jobs – all at no cost to U.S. taxpayer.**

IIUSA plans on continuing to collect receipt numbers to monitor the I-526 backlog. With only 88,000 jobs created for the country as a whole in March 2013, it is imperative that the Administration does all it can to create more jobs in the future. The EB-5 program can help, but only if USCIS adjudicates EB-5 petitions promptly.

IIUSA asks that to address the persistent uncertainty in the Program currently, USCIS demonstrate its commitment to responsive governance by implementing pro-economic growth administrative policies by establishing consistent and faster processing times for all EB-5 related petitions and engaging in transparent policy development through robust stakeholder engagement. IIUSA’s specific suggestions are attached as an Appendix.

Please contact me with any questions. Thank you for your leadership and service to our country.

Sincerely,



Peter D. Joseph  
Executive Director

CC: U.S. Senate Committee on the Judiciary  
(Honorable Patrick Leahy, Chair; Charles Grassley, Ranking Member)  
U.S. House of Representatives Judiciary Committee  
(Honorable Bob Goodlatte, Chair; John Conyers, Ranking Member)

## IIUSA's "Top 5" Recommended Administrative Actions for USCIS

- (1) **Expedite the adjudication of the thousands of EB-5 related petitions and applications (I-526, I-829, and I-924) that are still pending at the USCIS California Service Center ("CSC").** It is imperative that the transition of EB-5 adjudications from CSC to the new EB-5 Program Office in DC be as seamless as possible – meaning it does not have a detrimental effect on the Program's job creation outcomes. Expediting adjudication of petitions already pending at CSC would be an excellent first step.
- (2) **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. As introduced in May 2011 by USCIS, "specialized intake teams" should be immediately implemented to allow the differentiation between minor and major changes to a Regional Center designation. USCIS should also adjudicate more quickly amendments seeking "pre-approval" of a specific capital investment project that is ready for EB-5 capital deployment. Lastly, USCIS should be able to challenge information that it has previously approved only if there is evidence of fraud.
- (3) **Establish an official set of processing times for all EB-5 related petitions and stick to them. Processing times must be proportional to the amount of work hours required to adjudicate the particular application/petition type and a meaningful system for I-924 applicants to check the status of their application be implemented (924s were not included in USCIS' new "Case Check" web application.) Petitioners should be able to inquire when their application is outside of normal processing times.** USCIS should establish a separate queue with quicker processing times for: (a) I-924 applications to amend existing Regional Center designations (compared to I-924 applications for initial designation); and (b) I-526 petitions filed with documentation identical to previous I-526 approvals on the same EB-5 project, or an approved I-924 application that included an exemplar I-526 or actual economic development project. Not having to re-adjudicate part of an application/petition after previous approval by USCIS applies to both I-924 amendment applications ("a" above) and I-526 petitions affiliated with business plans and documents identical to a previously approved application or petitions (detailed in "b" above). Currently, there is no way to check on the progress on I-924 adjudications like the "case status" web application for I-526 and I-829 petitions.
- (4) **Limit all additional evidentiary requests to one RFE per case and issue a single RFE when there is a question about the Regional Center business plan and/or economic model, while holding adjudication of subsequent investor petitions in the same project until the issues are resolved.** Current USCIS practice is to issue identical RFEs to every investor in the project, duplicating efforts by all parties involved in responding to and adjudicating the various responses.
- (5) **Finalize and implement the comprehensive EB-5 adjudications guidance.** Now in its third draft, the EB-5 Adjudications Policy memorandum is ready for implementation. It represents an important step forward in predictability by having all adjudications policy consolidated into one memo. If necessary, it can be further refined – but for now must be implemented.