



THE MOST WONDERFUL TIME OF THE YEAR: I-924A SEASON



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It's that most wonderful time of the year again, when Regional Centers gather with their sponsored

EB-5 projects and new commercial enterprises ("NCEs") and reminisce over a warm beverage on the past fiscal year's job creation. Yes, it's the happiest season of all in the EB-5 industry. . . I-924A season! It is now time for Regional Centers to complete the Form I-924A, Annual Certificate of Regional Center ("Form I-924A") for submission to USCIS, and to resolve to continue promoting economic growth so that USCIS does not issue a Notice of Intent to Terminate ("NOIT").

GET PREPARED

In reality, the Form I-924A has become a time-consuming, agonizing requirement for Regional Centers that wish to maintain their designation. For new Regional Centers or Regional Centers with multiple projects, it's critical to start the process of collecting relevant information and documents in the autumn months for submission of the Form I-924A to USCIS by December 29 each year. With USCIS' emphasis on maintaining integrity within the EB-5 Program and the new focus of the Immigrant Investor Program Office ("IPO") on terminating poorly-managed Regional Centers, the proper, timely submission of a Form I-924A is essential. Because the Form I-924A is concerned with each specific Federal fiscal year's capital investment and job creation, it may be necessary to enlist an economist for assistance.

Regional Centers that wait until December to begin completing the Form I-924A may very well end up being overwhelmed with the amount of information that needs to be included. There's no reason to delay the preparation of the Form I-924A. Further, organizing information and documents for a Form I-924A submission will also help prepare Regional Centers and NCEs for Form I-829 petitions, and for Regional Center compliance audits.

Every Regional Center designated as of September 30 must file a Form I-924A on or before December 29 of the same calendar year, with a new fee of \$3,035.00.¹ The earliest a Regional Center can submit a Form I-924 is October 1 of each fiscal year. The Form I-924A must be submitted to USCIS' California Service Center, not the IPO. Once the I-924A is properly filed, USCIS will issue a receipt notice within 21 days after submission. A Regional Center that has not received a receipt notice should contact USCIS at USCIS.ImmigrantInvestorProgram@uscis.dhs.gov.

Failure to file Form I-924A in a timely manner, or to fully complete for the Form I-924A, or to provide certain documents² will result in the issuance of a NOIT, and may also cause USCIS to further scrutinize the Regional Center's sponsored EB-5 projects or its oversight/management practices. Regional Centers should also be aware that information submitted in the Form I-924A relating to principals or own-

1 U.S. Citizenship and Immigration Services Fee Schedule, 81 Fed. Reg. 205 (Oct. 24, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-10-24/pdf/2016-25328.pdf> (last accessed August 25, 2017). Note that entities with a pending initial Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program ("Form I-924") and Regional Centers that have been terminated are not required to submit a Form I-924A.

2 Regional Centers should submit legible photocopies of documents requested, unless the I-924A Instructions specifically state that an original document must be submitted. If an original document is submitted when not required or requested by USCIS, it may be immediately destroyed upon receipt.

ers of a Regional Center and its sponsored projects will be used by USCIS to perform standard background checks with law enforcement agencies, which may reveal derogatory information that may also result in the issuance of a NOIT.

Unfortunately, the Form I-924A has inadequate formatting and somewhat ambiguous instructions, which can lead to unorganized submissions. It appears that USCIS understands the confusing or complex nature of the Form I-924A, as it has provided filing tips³ and hosted webinars on the form⁴. While retaining experience immigration counsel to prepare, or at the very least, review the Form I-924A before submission is highly advised, below is some general guidance on completing the form.

COMPLETING THE FORM I-924A

The current version of the I-924A Form and Instructions (dated December 23, 2016) can be found on the USCIS website at <https://www.uscis.gov/i-924a>.

The Form I-924A requests information about four items: (a) the ownership of the Regional Center (Part 1 and Part 4), (b) the management of the Regional Center (Part 2 and Part 4), (c) the aggregate capital investment and job creation from the EB-5 capital investments sponsored through the Regional Center (Part 5 and Part 6), and (d) the number and status of EB-5 applications filed with USCIS by immigrant investors who have made capital investments sponsored through the Regional Center (Part 7).

3 Annual Reporting Information/Filing Tips: Form I-924 Supplement to Form I-924 (Dec. 3, 2015), available at <https://www.uscis.gov/forms/annual-reporting-information-filing-tips-form-i-924a-supplement-form-i-924> (last accessed August 25, 2017).

4 A recording of a webinar on the I-924A held on August 24, 2017 is available at <https://www.uscis.gov/outreach/form-i-924a-annual-certification-regional-center>. USCIS previously hosted an interactive engagement on I-924A on September 17, 2015.

Part 5 and Part 6 are certainly the most time-consuming to complete. The Form I-924A requires Regional Centers to demonstrate the aggregate capital investment and job creation in each industry category for each sponsored EB-5 project and NCE. Regional Centers should only include aggregate capital investment and job creation that occurred during the Federal fiscal years chosen in the Reporting Period selected in Part 3 of the Form I-924A. Because this may require the calculation of direct jobs or jobs created through expenditures or revenue to be pro-rated for the Federal fiscal year, Regional Centers should meet with sponsored NCEs and associated developers to discuss and obtain evidence of construction expenditures, operational revenue, and direct employment during the prior Federal fiscal year.

The calculation of jobs in the Form I-924A should employ the same economic methodology identified when the sponsored EB-5 project was first submitted to USCIS (unless USCIS has subsequently approved a different economic methodology for that EB-5 project). However, in cases where a current project is different than what was contemplated in Form I-924 or Form I-526, the job creation calculation should employ the intended methodology for related Form I-829. Whichever methodology is used, an economist will likely be required to perform an analysis to determine the aggregate capital investment and job creation in each industry category that has been the focus of EB-5 capital investments sponsored through the Regional Center. The economist's report should include a description which explains the pro-rated inputs and job creation calculations in relation to the total jobs expected to result from each sponsored EB-5 project.

The form also requires Regional Centers to distinguish between aggregate EB-5 capital investment and aggregate non-EB-5 capital investment for each sponsored EB-5 project. USCIS noted during the August 2017 stakeholder meeting that aggregate capital must be tracked by industry category. Unfortunately, USCIS has provided no guidance on how to allocate EB-5 capital investment and non-EB-5 capital investment into each industry category.

A critical challenge in completing the Form I-924A is to ensure internal consistency between different sections. For example, for Regional Centers with more than one NCE, the aggregate capital investment and job creation numbers included in Part 5 should

match the sum of all capital investment and job creation for each NCE included in Part 6. If USCIS spots inconsistencies in this simple arithmetic, it will question the competency of a Regional Center's management. In its I-924A webinar on August 24, 2017, USCIS indicated that Regional Centers may submit printed attachments from Word or Excel to provide the requested information in Part 6, as long as the Regional Center's "Authorized Individual" signature and date is included on each page, and the attachment clarifies what part and question of the Form I-924A is being answered. The format of the Form I-924A limits the amount of information that can be provided, but attachments can be used to present complete information in a simple, understandable way.

Regional Centers should also ensure external consistency with other immigration petitions (Form I-526s and Form I-829s) filed with USCIS under the Regional Center's designation. The job creation number should reflect the aggregate direct, indirect, and/or induced jobs that have actually been created by all sponsored projects during the appropriate reporting period, regardless of whether EB-5 investors have independently claimed credit for such jobs on a Form I-526 or Form I-829. Regional Centers should only include "maintained jobs" if its sponsored projects involve a "troubled business."

WHAT IF LIMITED OR NO CAPITAL INVESTMENT OR JOB CREATION?

Due to IPO's focus on terminating inactive Regional Centers, recently designated Regional Centers or Regional Centers that have not been active during the past fiscal year may be apprehensive about completing a Form I-924A which indicates limited or no capital investment or job creation. In these circumstances, especially for those Regional Centers that previously submitted a Form I-924A indicating limited or no capital investment or job creation in prior years, it is advisable to provide evidence that the Regional Center has pursued the sponsorship of EB-5 projects for the "purpose of concentrating pooled investment as required by section 610 of the Appropriations Act"⁵. The goal is adequately demonstrating to USCIS that the Regional Center has taken noteworthy, valuable, and concrete actions in order to promote economic growth. This could include letters of intent to sponsor real estate projects; evidence of conducting due diligence (such as feasibility studies or Targeted

Employment Area analysis) to verify whether potential EB-5 projects would comply with EB-5 requirements; evidence of undergoing the real estate entitlement or permitting process (including environmental impact reports or working with design professionals); or letters from local or state government entities expressing support for the Regional Center's future development activities. Regional Centers may also wish to note their coordination efforts with developers, bankers, escrow agents, marketing staff, immigration attorneys, accountants, permitting and licensing experts, and others to promote economic growth through improved regional productivity, job creation, and increased domestic investment.

Drawing USCIS' attention to the market factors surrounding the EB-5 Program may also be an attractive strategy. For example, Regional Centers that have filed I-924 amendments with an EB-5 project exemplar may indicate that long USCIS processing times make marketing EB-5 projects practically unrealistic, as the buyer's market of EB-5 visas generally require I-924 exemplar approvals to be taken seriously. Marketing an EB-5 project without a Form I-526 approval (now taking on average over a year and a half for USCIS to adjudicate) is also difficult.

Finally, it may also be wise to include reference to Matter of A-L-V- LLC⁶, ID # 15160 (AAO June 20, 2016), which indicated that a Regional Center's Form I-924 As failed to reflect any economic activity since designation seven (7) years earlier before USCIS issued a NOIT to terminate its Regional Center status. Putting together a successful EB-5 project is no easy task, and it is reasonable to assert that a Regional Center's careful planning in a highly competitive marketplace is prudent business model.

CONCLUSION

The Form I-924A is the easiest way for a Regional Center to demonstrate its capital investment activities and resulting job creation, and also its competency in overseeing and managing its sponsored EB-5 projects and NCEs. Regional Centers can also use this annual opportunity to organize relevant documents for future Form I-829 use, and to prepare for possible Regional Center compliance audits. ■

⁵ See USCIS Policy Manual, Volume 6, Part 6, Chapter 3.

⁶ See Matter of A-L-V, LLC ID # 15160 (AAO June 20, 2016), available at https://www.uscis.gov/sites/default/files/err/K2%20-%20Regional%20Center%20Termination/Decisions_Issued_in_2016/JUN202016_01K2610.pdf (last accessed September 1, 2017).