

EB-5 SITE VISITS: Coming to a JCE Near You



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As announced in numerous USCIS stakeholder calls over the last two years, USCIS has begun site visits to supplement its EB-5 adjudications.

WHAT WE KNOW NOW

The below summarizes what we know so far:

- Site visits are at the **job creating entity (JCE)** site, not the regional center or new commercial enterprise site.
- Site visits are **unannounced**.
- Site visits appear to be in connection with **Form I-829 adjudication**, not I-924 or I-526 adjudication. Regional center compliance audits, on the other hand, may take place at any time.
- FDNS officer creates a **Compliance Review Report** after the inquiry, which becomes a part of the record.
- Site inspectors **verify information in the petition and existence of the**

business(es).

- Site inspectors **take photographs and interview personnel** at the site.
- Site visits are conducted by **Fraud Detection and National Security (FDNS)** directorate, not by Investor Program Office (IPO), itself.
- Site visits are part of a **larger USCIS verification program** aimed at sites employing religious workers, H-1B workers, and L-1 workers.

Based on recent experience, site inspectors appear to be familiar with the project record. Here are some sample questions asked in connection with a recent site visit:

- “How are EB-5 funds being put to use?”
- “How much EB-5 has been drawn and used by the company?”
- “How are jobs being created?”
- “How many workers are on site?”
- “What is the business of the company?”
- “How many employees does the company have?”
- “How many facilities are in the U.S.?”

It’s evident that the site inspectors are focused on job creation and actual employees. This can be a problem if the inquiry is not redirected toward the indirect jobs associated with the project. Note also that the inquiry extends to the JCE’s core business, not just the EB-5 project. So if the JCE’s headquarters is elsewhere as

it usually is, the same questions about employees may be asked of the JCE’s main business.

PROBLEMS WITH EB-5 SITE VISITS

USCIS site inspectors are accustomed to visiting named employers on a worker petition. The inspected business therefore knows or should know that it is on record with USCIS and that USCIS may conduct a site visit.

In the EB-5 context, however, the project site business or businesses may have no idea that any EB-5 capital was used, or even know what EB-5 is. Consider a large scale construction project involving an office tower and retail on the ground floor. USCIS site inspector arrives and begins questioning retail and office tenants with questions like the above. The tenants have no idea why they’re being asked these questions and would understandably be alarmed or at minimum, confused, about why they are being asked these questions. They would also not know whether they were required to answer the questions, and how best to answer if they even have knowledge enough to answer. Consider these questions being put to a cashier at a retail clothing store.

Other problems center around project site location. A greenfield project’s only “address” may be a census tract. If a site inspector is unsuccessful in finding the location, one imagines what Compliance Review Report might say: “Project site not found,” “Project site unverifiable,” or perhaps even “Project site nonexistent.”

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A similar problem arises from the type of business. For example, a manufacturing plant is not a retail store and may not be set up to receive visitors. What if the entryways are shut for safety? How would a site inspector gain entry or make his presence known? Again, one imagines darkly what the Compliance Review Report might say on that: “Site doors shut,” “Could not find entryway,” or “No sign of commercial activity.” In that instance, no one may know that the site inspector was even there so that someone can explain how the facility works.

While USCIS has assured stakeholders that regional centers should not be alarmed, we have seen issues already arising with inspectors questioning startled tenants, arriving at wrong addresses, and asking questions seemingly targeted toward finding direct employment which is an irrelevant measure of job creation in most regional center projects based on indirect job creation.

MEASURES TO PREPARE

Although the JCE site is often not entirely in the control of an arm’s length regional center

or new commercial enterprise fund manager, there are steps that can be taken by all parties involved in raising and using EB-5 capital.

First, be sure to correctly **capture the JCE site address on the new I-526 petition form**. The new form asks in multiple places for addresses of various entities. Carefully complete the JCE address to conform with the actual site address.

Second, **inform all possible parties** including tenants, regional center, fund managers and anyone else involved in the EB-5 project that USCIS may be conducting a site visit. Prepare a simple fact sheet including the contact information of the person who should be contacted. Be sure to have this point of contact be an email box or phone line that is always regularly checked.

Third, **train your own employees** whoever you are – regional center, fund manager, JCE. If a government official comes knocking on the door, all personnel should have basic information on at least to whom such official or phone call or correspondence be directed within the organization. The point of contact

within the organization should be trained to either be familiar with all the projects, or know where to look for project information.

Fourth, be aware of **when Form I-829s have been filed** for investors. This is the likely time for site inspections. Know which projects have begun filing I-829 petitions for removal of conditions, particularly if there are multiple I-829s being filed at the same time for different projects.

Fifth, if you are the point of contact, have **detailed knowledge of the I-829 petition contents**. If there are any updates or factual discrepancies you believe may arise in the course of a site inspection, be prepared to discuss and explain.

Having experienced EB-5 counsel on hand should help protect the regional center project record and avoid prejudice to investor I-829 petitions. The EB-5 compliance point of contact should be equipped with counsel contact information in his or her “compliance fact sheet” along with other key resources on hand. ■

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