

The Wild and Complicated World of FOIA



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An underground library. A vault of over 23 million records spanning over 330,000 square feet¹, or about six football fields. Built into a cave to withstand natural and manmade disasters, this is the National Records Center (NRC) in Lee’s Summit, Missouri. A repository for federal agencies, the NRC stores files for use by U.S. Citizenship & Immigration Services (USCIS), Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) and houses all immigrant records for individuals currently in the immigration process and the documents that will continue to track them throughout their lives in the U.S. This is not a digital server facility holding virtual files, it is a physical storage facility of actual files that grow every year, stacked in seemingly endless rows and columns. In 2014 there were some 55 million records with each record growing by 1/16 of an inch every year, plus new records coming in daily. The National Record Center’s reasoning for not digitizing these records is that doing so would be far too expensive and labor intensive.

Since 2010, of behalf of our members, IIUSA has undertaken the task of submitting

¹ As of October 2014 <http://fox4kc.com/2014/10/29/immigration-records-stored-underground-in-lees-summit-center-celebrates-15-years-of-operation/>

Freedom of Information Act (FOIA) requests to collect information on the EB-5 Regional Center Program from the U.S. government in order to better understand and inform the industry it represents. As the industry well knows, not much public information is available about the Program (that has not willingly been made available by Regional Centers) in order to protect the privacy and propriety of investors and businesses, so IIUSA relies on petitioning the government for the information which enables the organization to produce substantive and informative analytic data reports. It also uses this information to understand trends in the industry, collect project data that informs policy discussions and to help the association better serve its members by knowing and understanding all of the above as an aggregation of the conditions and progression of the EB-5 industry. IIUSA acts as the bridge between the public and private sectors, seeking information to inform and guide our industry.

Below is a chart that shows the history of IIUSA’s FOIA requests since 2010. In 2017, IIUSA submitted 44 requests, the most of any year yet, and already this year the organization has submitted 15 requests². As one can see, there are 42 requests “pending” currently, which means they were submitted to USCIS, but IIUSA is awaiting a response. 33 of those requests are from 2017, one is still pending from 2016. An additional 8 requests are in appeal, which means IIUSA received an insuf-

² As of March 12, 2018.

ficient response or a denial from USCIS and a formal appeal was made to argue for the release of the information we are seeking. While there are 125 “fulfilled” cases, that is, requests made that were successfully responded to, it does not reflect cases taken to the appeal level over the last seven years that were successfully fulfilled from this additional step.

Additionally, 16 FOIA requests from IIUSA have been denied over the last 7 years, resulting in no response data. Many of these were appealed only to be denied again. Others were denied for reasons such as “system availability.” This denial response has been more common lately (the last 12 months or so). USCIS cites that, “the databases [needed] to query in order to conduct a reasonable search for records... are not available at this time due to system limitation.”

USCIS’s procedure for processing FOIA requests depends on the type of request made. For the information IIUSA seeks (non-Alien files), the requests are placed in Track Two of this category. According to the USCIS website, the current processing time for Track Two Non-A File requests is 121 days. However, the oldest pending request that IIUSA has in its database was submitted 529 days ago or over four times longer than the current processing time. The rest of the pending requests were submitted in February 2017 or later, with a majority of them well beyond the 121 days for processing stated on the USCIS website.

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| YEAR | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|----------------|---------|--------|-----------|-----------|------|------|------|------|------|
| REQUESTS MADE | 1 | 1 | 12 | 35 | 16 | 24 | 43 | 44 | 15 |
| TOTAL REQUESTS | PENDING | DENIED | IN APPEAL | FULFILLED | | | | | |
| 182 | 42 | 16 | 8 | 125 | | | | | |

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The information IIUSA seeks from its FOIA requests is often quite extensive, so a longer than normal processing time can be understood. However, many other requests, like a small list of recent Regional Center final termination notices, are far less arduous, one would think, to collect and disseminate; however, IIUSA has a pending case for such a request that is nearly 300 days in waiting. Additionally, due to the volume of requests IIUSA makes, it is imperative that staff is diligent in checking and tracking receipt notices from USCIS and logging the tracking numbers it provides. Many times through a regular internal audit of our FOIA records, it is found that a request was submitted several months prior and no receipt record or case control number was ever provided back from USCIS. This requires outreach to FOIA personnel who try to track down the original request communication and insert the request in the appropriate place in line for processing based on the original submission date. As one can see, there are a lot of moving parts to FOIA requests, and this is even before a response is received which must then be logged in IIUSA's database and of course analyzed for reporting.

It may (or may not) seem surprising that these requests, or subsequent communications of them, are lost somewhere along the way. But in a Kansas City news article from 2014³, the intake and storing process of these immigrant records was described as the following:

The files arrive on pallets by the truckload, are processed with bar codes and stored on shelves. The scanned codes for each file are logged into a computer with its location in the stacks, so it can be retrieved if needed. Files are not in alphabetical or numerical order.

With millions of records to store and thousands of more new records coming in, it is, after all, not that surprising for requests to be inappropriately logged in their system, not responded to, or for it to take several months or even years to get a response, especially for the quantity and complexity of the requests IIUSA makes.

Without this data, IIUSA is unable to produce

³ <http://www.kansascity.com/news/local/community/816-north/article3558566.html>

most of its analytical reports that are so critical to the intelligence of the EB-5 industry and our members' businesses. This includes insight on emerging investor markets, visa usage and demand, economic impact and so much more. Additionally, this data informs the policy discussions IIUSA has with other EB-5 stakeholders and legislators regarding reform and reauthorization of the Program. Since IIUSA relies on the data received through FOIA requests, it is imperative that it continue make these regular requests, despite long response times and frustrating back and forth communications with the FOIA office.

IIUSA encourages its members to utilize its member portal (member.iiusa.org) to explore data reports and raw data it receives through FOIA requests. Resources collected through FOIA are updated regularly, as we receive responses. IIUSA will continue to forge ahead with its FOIA requests, striving to learn and to provide relevant and important data about the EB-5 industry to our members and all EB-5 stakeholders. ▀



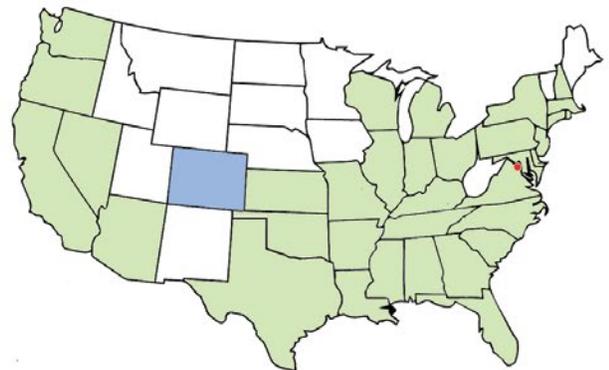
Regional Centers Across the Country



The Wave Apartments
Seattle WA

- Regional centers in 34 states (soon to be 35)
- I-526 petitions **APPROVED**
- I-829 petitions **APPROVED**
- Insurance for I-526 Approval (EB-5 capital will be refunded if I-526 is not approved)

Approved Pending



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