

Member Analysis: USCIS Publishes Updated Policy on Regional Center Issues of Geography and Material Change

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On August 24, 2018, USCIS issued a revised Volume 6 of its Policy Manual which concerns EB-5 investors with a summary of the update [here](#). The revisions finalize and clarify policy on the economic methodologies used in connection with regional centers, a regional center's geographic area, including requests to expand geographic area, and the implications of a regional center change or termination.

USCIS has not published a document showing what the actual changes are, but I have run a comparison to detect the changes. Further below I quote the changes, but immediately below I summarize them and provide some commentary.

Policy Content and Implications

Economic Methodologies Used in Connection with Regional Centers

Summary: USCIS will consider the multipliers and assumptions about the geographic impact of the project in determining whether an economic methodology is reasonable. When reviewing the geographic level of the multipliers used, USCIS may consider the area's demographic structure (including labor pool supply, work force rate, population growth, and population density), the area's contribution to supply chains of the project, and connectivity with respect to socioeconomic variables in the area (such as income level and purchasing power), among other factors.

Implications: USCIS assessment of the reasonableness of economic methodologies is based on various factors, which provides flexibility to regional centers but no clear limits. It is not clear what USCIS is trying to do here, and the Policy Manual still states that "[i]ndirect jobs can qualify and be counted ... even if the jobs are located outside of the geographic boundaries of a regional center,"¹ but it is conceivable that USCIS may use this new language not to credit national impact jobs used by economists with certain methodologies.

A Regional Center's Geographic Area

¹ The quoted language is from Chapter 2, section D.4. ("Measuring Job Creation"), and it was supported by a December 3, 2010 letter of USCIS Director Alejandro Mayorkas to Senator Patrick Leahy. See AILA Doc. No. 10122135, available to AILA members at <https://www.aila.org/infonet/uscis-eb-5-indirect-job-creation>.

Summary: A regional center's geographic area must be limited, contiguous, and consistent with the purpose of concentrating pooled investment in defined economic zones. To show the area is "limited," the regional center should show that linkages between proposed economic activities within the proposed area, such as regional connectivity, labor pool and supply chain, and interdependence between projects. In assessing the likelihood that the proposed economic activity will promote economic growth in the proposed geographic area, USCIS will consider the impact of the activity relative to relevant economic conditions. In other words, the size of the area should be consistent with the scope of the project.

Implications: It is not clear whether or how USCIS might use this language to narrow the geographic scope of new regional center requests. The addition of "interdependence between projects" as a consideration could mean that USCIS might not allow regional centers to patch together huge areas based on a combination of unrelated types of projects.

Requests to Change Geographic Area

Summary: For a regional center to expand its geographic scope, it must now file an I-924, and investors cannot file I-526s associated with projects in the requested expanded area until the I-924 is approved. If a regional center's geographic expansion request was submitted before February 22, 2017 either through an I-924 or I-526, and USCIS approves the request, USCIS will continue to adjudicate I-526s associated with investments in that area under the prior policy guidance from the May 30, 2013 EB-5 Adjudications Policy Memorandum (now superseded by the Policy Manual), which had allowed regional centers to sponsor I-526s in projects outside the approved geographic area but with impact at least touching the approved area.

Implications: This addition to the Policy Manual aligns the policy set forth in its April 26, 2017 email Update to March 3, 2017 EB-5 National Stakeholder Meeting Engagement Remarks. I had [severely criticized](#) the March 3, 2017 announcement of an unfairly retroactive policy change. The email had appropriately made the change only prospective, and this Policy Manual change makes that good change more publicly known.

Termination and Change of Regional Center

Summary: If an investor changes regional centers after I-526 filing, the change constitutes a material change, which already was the policy in event of termination of a regional center.

Implications: USCIS already had stated that investors whose sponsoring regional center becomes terminated must be denied or revoked if they have not yet been admitted as a conditional resident. Now USCIS has made clear that such investors cannot avoid the problem by finding another regional center to take over sponsorship of the project or their investment in it. After a material change, such investor may be denied or revoked and would need to start over with a

new I-526 filing, losing the prior place in the queue for visa numbers and facing "age out" of any child who already reached age 21 and of a child whose adjusted age (absolute age minus new I-526 processing time) may exceed 21 while awaiting a visa number. This policy is not compelled by statute, is unnecessarily restrictive, and is particularly unfair for investors who are sponsored by regional centers that are terminated for actions completely unrelated to the investor and the project in which they invested. Congress should overrule this policy along the lines of language included in recent EB-5 reform proposals.

Conclusion

USCIS appropriately memorializes a non-retroactive change to its policy on sponsoring investors outside an originally approved area. It is not clear what the agency is up to in its statements about the scope of geographical areas for regional center jurisdiction and for job counts. Its new policy on change of regional center, like its policy on regional center terminations, is unfortunate and unnecessary. But at least USCIS is publishing its policy for all to see, and comment on.

The Actual Language Added to the Policy Manual

Chapter 2, Section D.5 (Evidence of Job Creation), adding:

In reviewing whether an economic methodology is reasonable, USCIS analyzes whether the multipliers and assumptions about the geographic impact of the project are reasonable. For example, when reviewing the geographic level of the multipliers used in an input-output model, the following factors, among others, may be considered:

- The area's demographic structure (for example, labor pool supply, work force rate, population growth, and population density);
- The area's contribution to supply chains of the project; and
- Connectivity with respect to socioeconomic variables in the area (for example, income level and purchasing power).

Chapter 3, Section A (Regional Center Proposals, Geographic Area), adding:

In addition, a regional center's geographic area must be limited, contiguous, and consistent with the purpose of concentrating pooled investment in defined economic zones. [7] To demonstrate that the proposed geographic area is limited, the regional center applicant should submit evidence demonstrating the linkages between proposed economic activities within the proposed area based on different variables. Examples of variables to demonstrate linkages between economic activities can include but are not limited to:

- Regional connectivity;

- The labor pool and supply chain; and
- Interdependence between projects.

Moreover, in assessing the likelihood that the proposed economic activity will promote economic growth in the proposed geographic area, an officer reviews the impact of the activity relative to relevant economic conditions. The size of the proposed area should be limited and consistent with the scope and scale of the proposed economic activity, as the regional center applicant is required to focus on a geographical region of the United States. [8] The regional center applicant must present an economic analysis of its proposed economic activity in the proposed geographic area that is supported by economically or statistically valid forecasting tools. [9] The Form I-924 instructions provide further information regarding the requirements of the economic analysis.

[Footnotes]

6. See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, 106 Stat. 1828, 1874 (October 6, 1992), as amended. See 8 CFR 204.6(m)(3)(i) (requiring a clear description of how the regional center focuses on a geographical region of the United States and how it will promote economic growth).

7. See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, 106 Stat. 1828, 1874 (October 6, 1992), as amended.

8. See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, 106 Stat. 1828, 1874 (October 6, 1992), as amended. See 8 CFR 204.6(m)(3)(i).

9. See 8 CFR 204.6(m)(3).

Chapter 3, Section D (Regional Center Amendments), adding:

Requests to Change Geographic Area

When a regional center requests to expand its geographic area, the proposed geographic area must be limited, contiguous, and consistent with the purpose of concentrating pooled investment in defined economic zones. [15]

Any requests for geographic area expansion made on or after February 22, 2017 are adjudicated under the current guidance in the Form I-924 instructions which requires that a Form I-924 amendment must be filed, and approved, to expand the regional center's geographic area. The

Form I-924 amendment must be approved before an I-526 petitioner may demonstrate eligibility at the time of filing his or her petition based on an investment in the expanded area.

If the regional center's geographic area expansion request was submitted either through a Form I-924 amendment or Form I-526 petition filed prior to February 22, 2017, and the request is ultimately approved, USCIS will continue to adjudicate additional Form I-526 petitions associated with investments in that area under prior policy guidance issued on May 30, 2013. [16] That policy did not require a formal amendment to expand a regional center's geographic area, and permitted concurrent filing of the Form I-526 prior to approval of the geographic area amendment.

[Footnotes]

15. For a discussion of an officer's review of a regional center's proposed geographic area, see Section A, Regional Center Application Proposals [6 USCIS-PM G.3(A)].

16. See EB-5 Adjudication Policy Memo, PM-602-0083, issued May 30, 2013.

Chapter 4, Section A (Petitions Associated with Regional Centers), adding:

As part of the determination of whether a regional center investor has invested, or is actively in the process of investing, in a new commercial enterprise located within a regional center, an officer reviews the regional center's geographic boundaries. If the regional center has requested to expand its geographic area, USCIS adjudicates the petition based on the following:

- Any requests for geographic area expansion made on or after February 22, 2017 are adjudicated under the current guidance in the Form I-924 instructions which require that a Form I-924 amendment must be filed, and approved, to expand the regional center's geographic area. The Form I-924 amendment must be approved before an I-526 petitioner may demonstrate eligibility at the time of filing his or her petition based on an investment in the expanded area.
- If the regional center's geographic area expansion request was submitted either through a Form I-924 amendment or Form I-526 petition filed prior to February 22, 2017, and the request is ultimately approved, USCIS will continue to adjudicate additional Form I-526 petitions associated with investments in that area under prior policy guidance issued on May 30, 2013. [5] That policy did not require a formal amendment to expand a regional center's geographic area, and permitted concurrent filing of the Form I-526 prior to approval of the geographic area amendment.

[Footnotes]

5. See EB-5 Adjudication Policy Memo, PM-602-0083, issued May 30, 2013.

Chapter 4, Section C (Material Change), adding:

Further, if a regional center immigrant investor changes the regional center with which his or her immigrant petition is associated after filing the Form I-526 petition, the change constitutes a material change to the petition. Similarly, the termination of a regional center associated with a regional center immigrant investor's Form I-526 petition constitutes a material change to the petition. [10]

[Footnotes]

10. See 8 CFR 204.6(j). See 8 CFR 204.6(m)(7).