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VIA EMAIL

June 11, 2019

Mr. Kenneth Cuccinelli
Principal Deputy Director
U.S. Citizenship & Immigration Services
20 Massachusetts Avenue NW
Washington, DC 20529

RE: Recent Surge of EB-5 Adjudication Delays

Dear Deputy Director Cuccinelli:

Invest in the USA (IIUSA) is the national membership-based 501(c)(6) trade association for the EB-5 Regional Center Program (the “Program”). Our members include 200 EB-5 regional centers and 176 other member organizations from the Program’s stakeholder community. Our members’ efforts account for the majority of U.S. capital formation and job-creation that has resulted from the Program.

We write to you to express our concern about the recent surge of the adjudication delays with regards to the Form I-526. Based on the latest data on USCIS website, the estimated processing time of Form I-526 completion is 29 to 45.5 months (as of May 2019).¹ Our analysis (enclosed) found that the processing time of adjudicating I-526 petitions in the Immigrant Investor Program Office (IPO) recently experienced a significant 32% to 60% surge within one month. Additionally, in a year-over-year comparison, the estimated I-526 processing time in May 2019 almost doubled from May 2018.²

It is our understanding that IPO has received “additional resources” to increase the productivity for adjudicating I-526 petitions in FY2018. Specifically, during her remarks in October 2018, Ms. Sarah M. Kendall, Chief of the IPO, shared with the audience, “IPO has been able to put a significant dent into the

¹ USCIS Processing Times: <https://egov.uscis.gov/processing-times/>, IIUSA accessed data on May 31, 2019

² According to USCIS, the estimated processing time range for Form I-526 in May 2018 was between 20 to 25.5 months.

Form I-526 backlog due in large part to additional resources provided to IPO. We have reduced the backlog by 36%. We will be working towards additional reductions in the backlog in FY19.”³

As the industry trade association that represents nearly 370 EB-5 stakeholder organizations, IIUSA, along with our members, greatly appreciate the efforts that IPO has put in enhancing the productivity of Form I-526 adjudication completions. While USCIS’s data in FY2018 and early FY2019 demonstrated IPO’s achievements on the reductions of I-526 processing times, the most recent data illustrates a sudden and significant surge on Form I-526 adjudication delays in May 2019, about which the EB-5 community is deeply concerned.

Furthermore, Figure 1 below also demonstrates that the estimated processing time of I-526 petitions in May 2019 reached its highest level in the Program’s history. In fact, it was significantly higher than the second highest level of the estimated I-526 processing times, which was 32.5 months in April 2018.

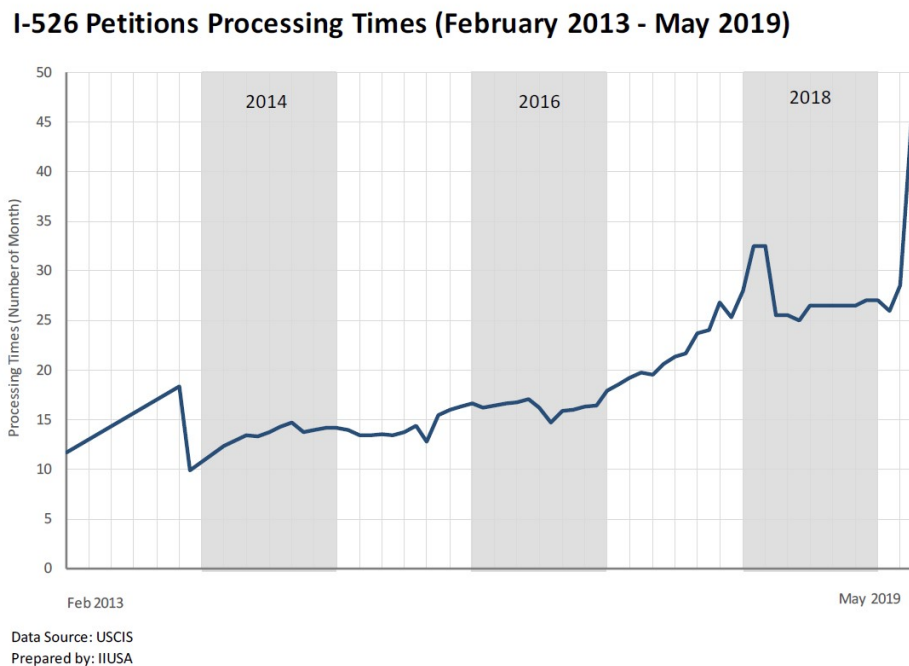


Figure 1: Historical Data on Form I-526 Processing Times

The delays in completing Form I-526 adjudications leads to disruptions in the businesses of the EB-5 community that facilitate capital investment from qualified I-526 petitioners (“Investors”) which support local economic growth in American communities. The ever-lengthening delays in adjudicating investor petitions will further delay the deployment of the EB-5 funding to the project developers, many of which depend on the investment from the investors to complete the economic development projects in their local communities, creating jobs for American workers.

³ Immigrant Investor Program Office 2018 AILA & IIUSA EB-5 Industry Forum Sarah M. Kendall Remarks, October 29, 2018, page 5, https://www.uscis.gov/sites/default/files/files/nativedocuments/2018_AILA_IIUSA_EB-5_Industry_Forum_Sarah_M._Kendall_Remarks.pdf

With that, we respectfully submit this letter to seek further insights on the recent surge of the processing times. Specifically, we sincerely hope that your office can respond to the following questions:

1. What are the specific causes of the surge in Form I-526 processing times, particularly in May 2019?
2. What efforts have been or will be taken to enhance IPO's productivity on completing I-526 adjudications and reduce the backlog of Form I-526 in the rest of FY2019 and beyond?
3. According to Ms. Kendall, IPO had close to 200 dedicated personnel in October 2018.⁴ Has this number changed since then? How many personnel are allocated to the I-526 team?
4. How many I-526 petitions did IPO receive so far in FY2019 and for how many I-526 petitions has IPO completed adjudications so far in FY2019? How do these numbers compare to the same time period last federal fiscal year?
5. When will IPO host the next EB-5 stakeholder engagement meeting?

Thank you for your consideration. We look forward to your response.

Sincerely,



Aaron L. Grau

Executive Director, IIUSA

Enclosed: *IIUSA Data Report: Trends and Data Insights of Form I-526 Processing Times at the Immigrant Investor Program Office, June 7, 2019*

CC: Sarah M. Kendall,
Julia Harrison

⁴ Transcript of USCIS Meeting with IIUSA, October 5, 2018, page 20, https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Cissna_IIUSA_Meeting_and_Statistical_Analysis_Charts.pdf

DATA REPORT

EB-5 PROCESSING TIMES:

Trends and Data Insights of Form I-526 Processing Times at the Immigrant Investor Program Office

Data Source: U.S. Citizenship and Immigration Services (USCIS)

Prepared by: Lee Li, Policy Analyst, Invest In the USA (IIUSA)

Updated: June 7, 2019

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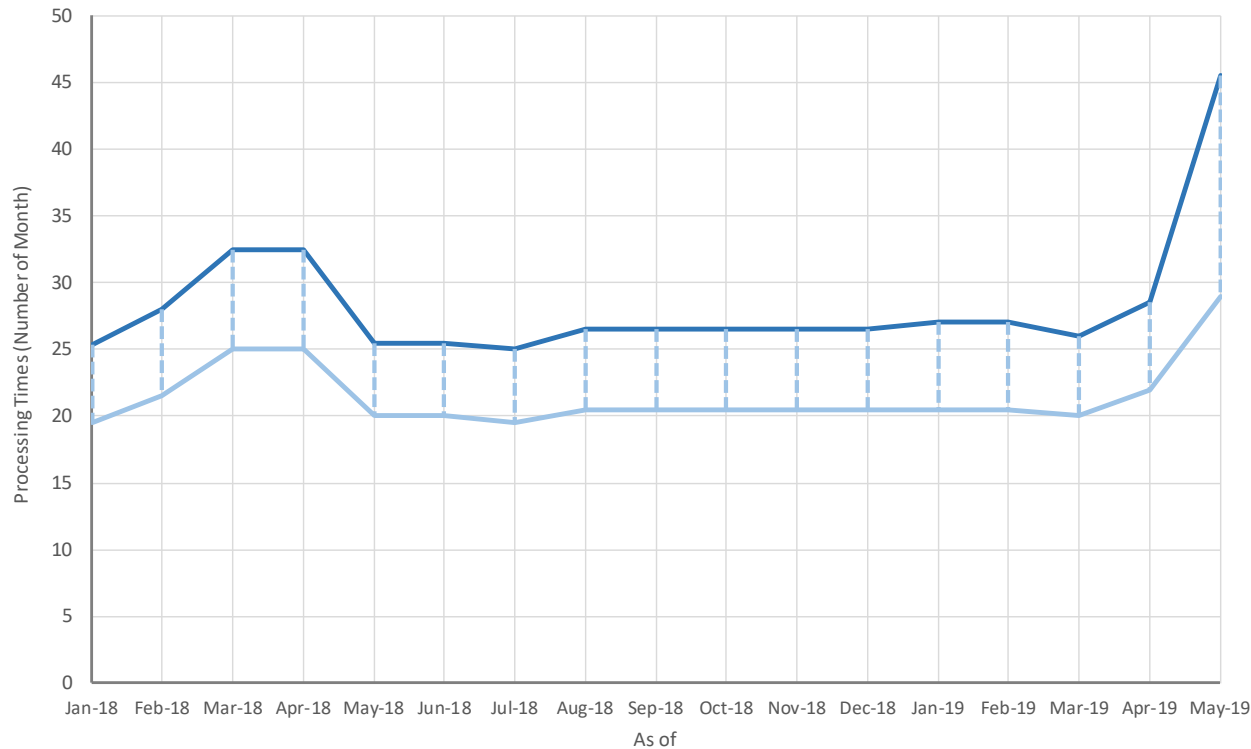
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I-526 PROCESSING TIME RANGES SINCE 2018

I-526 Petitions Processing Time Ranges (January 2018 - May 2019)



Data Source: USCIS, Lucid Professional Writing
Prepared by: IIUSA

DATA INSIGHTS:

The estimated processing time range of I-526 petitions showed a sudden and significant surge from 22-28.5 months in April 2019 to 29-45.5 months in May 2019. Within one month, the estimated processing time of an I-526 petition increased by 32% to 60%.

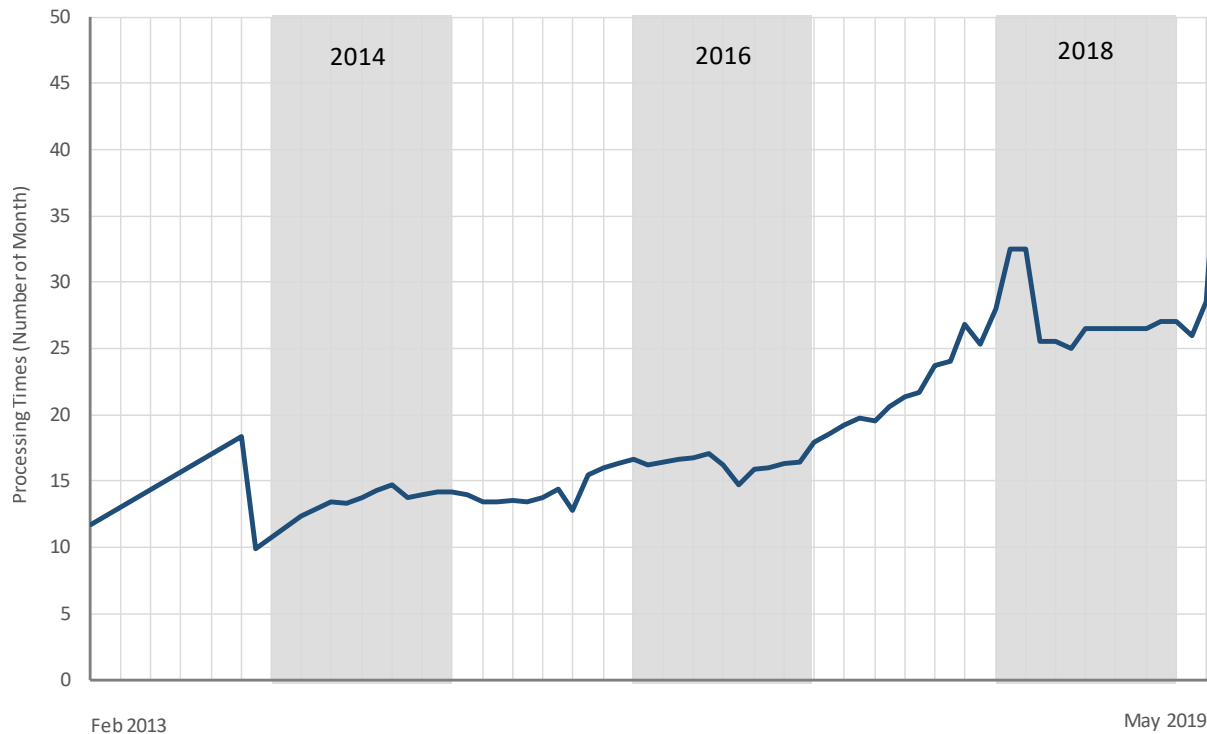
In a year-over-year comparison, the estimated I-526 processing time range in May 2018 was 20 to 25.5 months, almost half of the current estimated processing time range.

Additionally, during her remarks in October 2018, Ms. Sarah M. Kendall, Chief of the Immigrant Investor Program Office (IPO) indicated that the IPO received “additional resources” and “has been able to put a significant dent into the Form I-526 backlog.”¹ However, the latest data on I-526 processing times indicated a drastic shift in IPO’s productivity in terms of adjudicating I-526 petitions.

¹Immigrant Investor Program Office 2018 AILA & IIUSA EB-5 Industry Forum Sarah M. Kendall Remarks, October 29, 2018, page 5, https://www.uscis.gov/sites/default/files/files/nativedocuments/2018_AILA_IIUSA_EB-5_Industry_Forum_Sarah_M._Kendall_Remarks.pdf

HISTORICAL PROCESSING TIME ESTIMATES OF I-526 PETITIONS

I-526 Petitions Processing Times (February 2013 - May 2019)



Data Source: USCIS
Prepared by: IIUSA

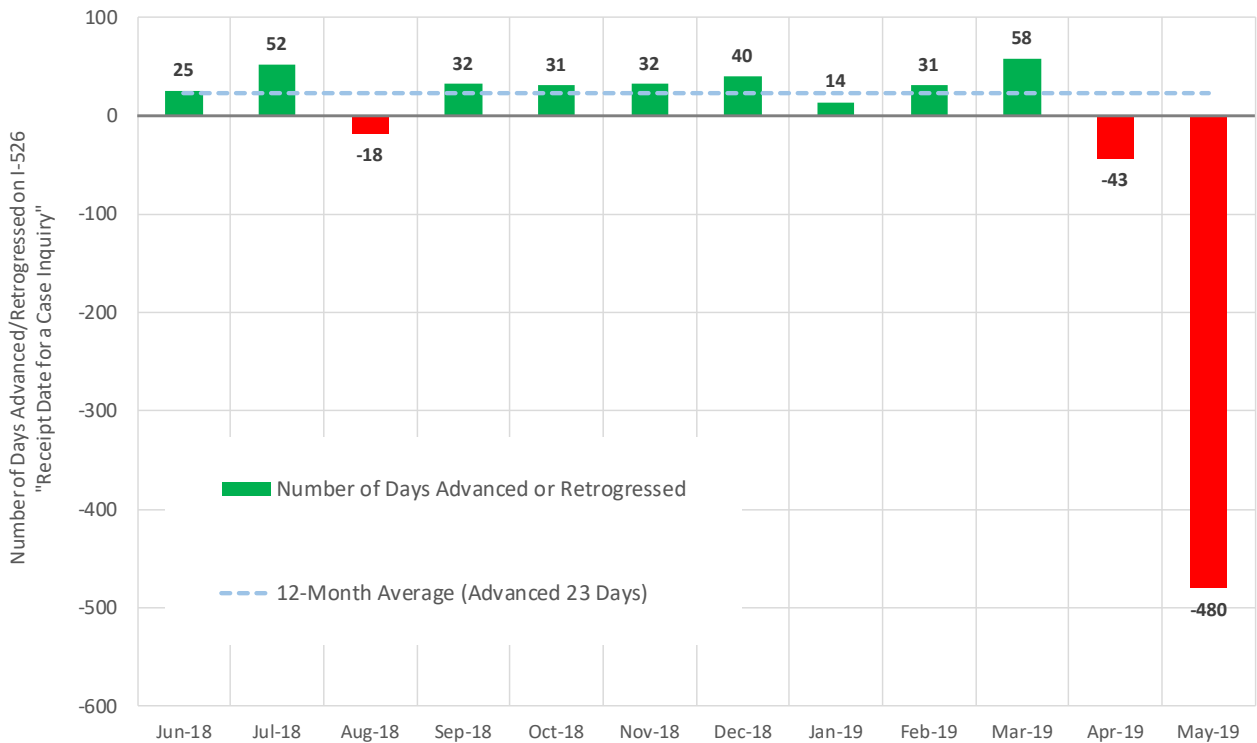
DATA INSIGHTS:

The estimated processing time of I-526 petitions in May 2019 (up to 45.5 months) reached its highest level in EB-5 history. In fact, it was significantly higher than the second highest level of the I-526 processing time, which was 32.5 months in April 2018.

Although IPO reduced the Form I-526 backlog in late 2018 and kept the processing time of I-526 petitions to approximately 26 months, the average processing time of adjudicating an I-526 petition continued to increase in the last five years, from under 15 months in 2014 to more than 40 months in May 2019.

I-526 PROCESSING TIME PREDICTIONS – CASE INQUIRY DATE MOVEMENTS

I-526 Case Inquiry Date Monthly Movements



Data Source: USCIS
 Prepared by: IIUSA

DATA INSIGHTS:

The “receipt date for a case inquiry” on the processing time webpage for Form I-526 serves as an important indicator on whether a pending I-526 petition is outside the range of normal processing time.

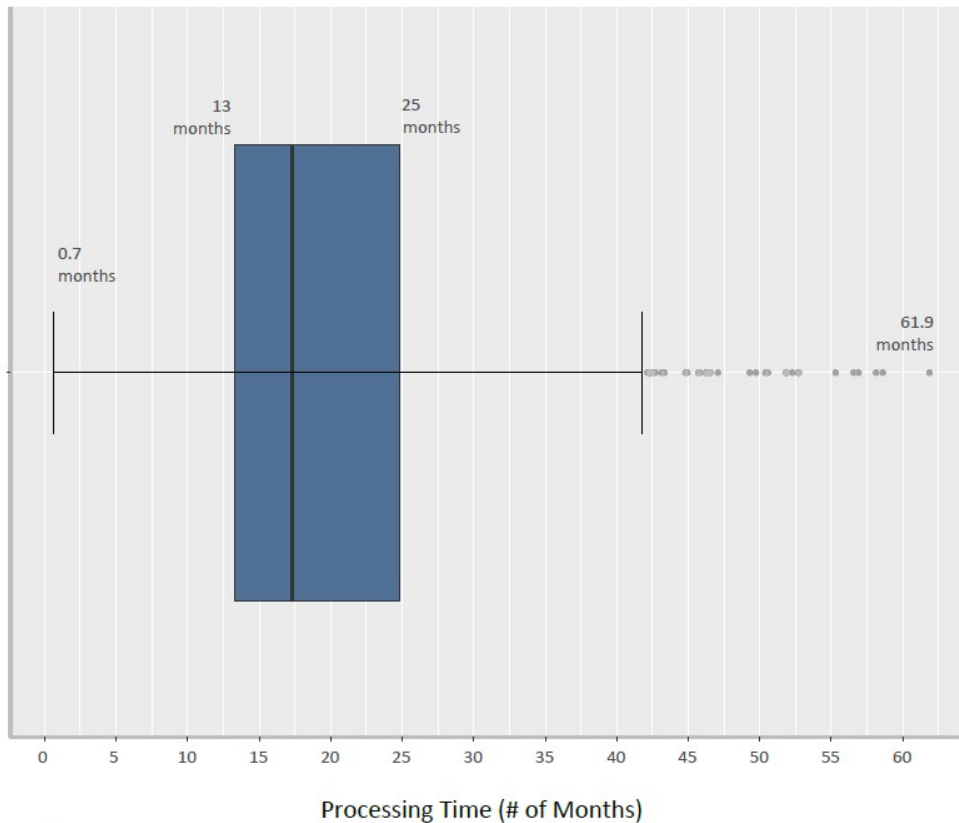
As of May 31, 2019, the case inquiry date for Form I-526 was 9/17/2015. The date retrogressed 480 days from the previous month, marking the largest monthly retrogression on processing of I-526 cases in the EB-5 history.

In contrast, before May 2019, on average, the case inquiry date advanced by 23 days each month from June 2018 to April 2019.

As the figure to the left illustrates, the case inquiry date between September 2018 and March 2019 actually advanced more than 30 days per month; however, in April 2019, the case inquiry date retrogressed for the first time in the last 8 months.

IN-DEPTH: I-526 PETITIONS PROCESSING OVER TREND IN Q1 FY2018

I-526 Processing Time Ranges (FY2018 Q1)



Data Source: USCIS
Prepared by: IIUSA

DATA INSIGHTS:

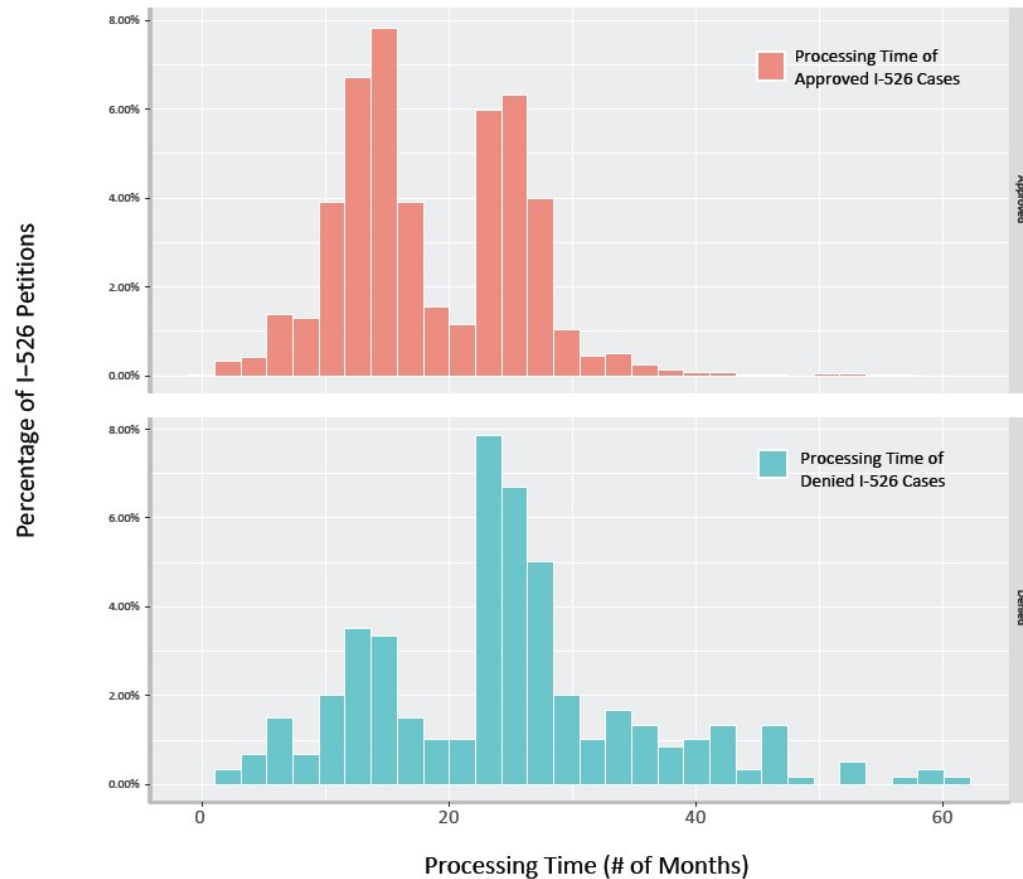
Thanks to the Freedom of Information Act (FOIA), IIUSA was able to receive the actual receipt dates and the approval/denial dates for 3,020 I-526 cases that were adjudicated by IPO in the first quarter of FY2018 (Oct., Nov., and Dec. 2017). The analysis of such a valuable dataset shed some light on the actual processing times of I-526 adjudication on the level of individual cases.

Based on the analysis of the 3,020 I-526 cases, the adjudication of an I-526 petition took from as short as 0.67 month (or 20 days) to as long as 61.87 months (1,856 days).

In addition, as the figure to the left demonstrates, a majority of the I-526 petitions were adjudicated between 13 and 25 months. The median processing time of an I-526 case was 17 months.

IN-DEPTH: I-526 PETITIONS PROCESSING TREND BY CASE STATUS IN Q1 FY2018

I-526 Processing Time Distributions by Case Status (FY2018 Q1)



Data Source: USCIS
Prepared by: IIUSA

DATA INSIGHTS:

The figure on the left illustrates the distribution of I-526 processing times based on case status (approvals versus denials).

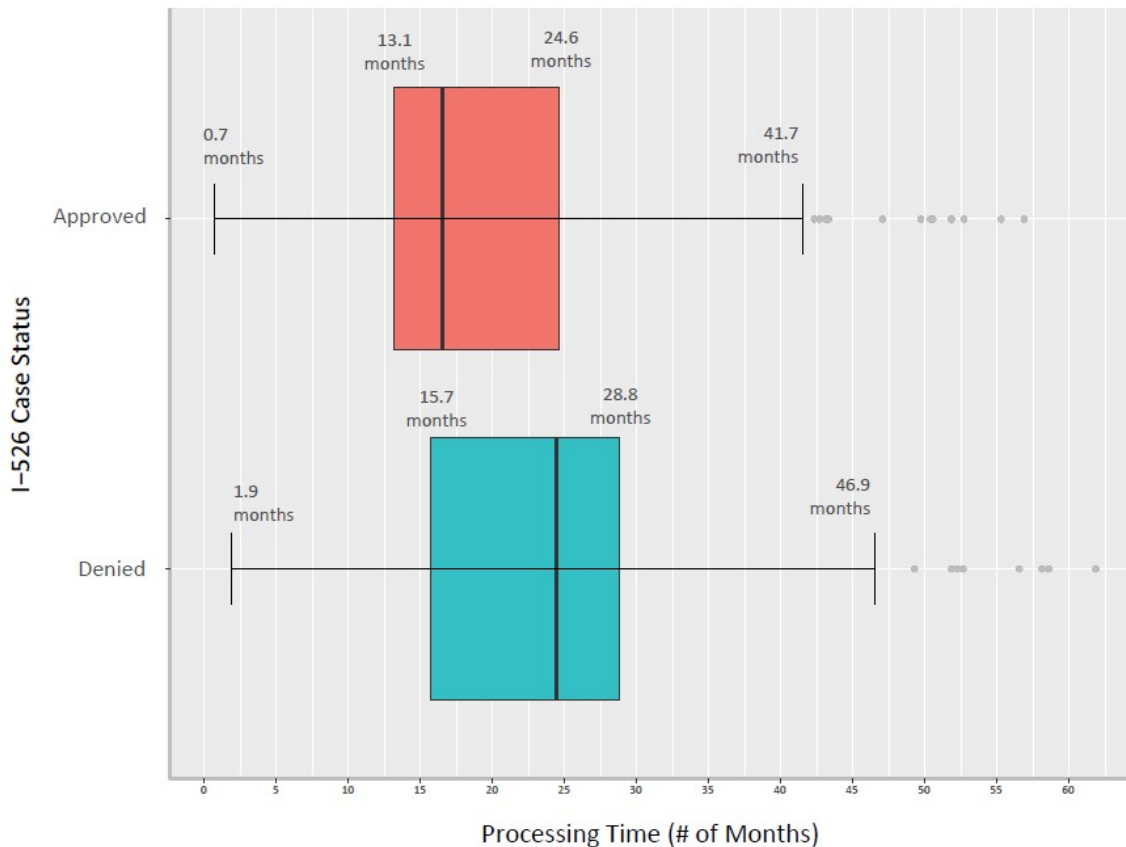
For I-526 petitions that were approved by IPO in Q1 FY2018, the majority of the processing times fell into two ranges: 9-18 months or 22-28 months. The author suspects that the time range of 9-18 months could reflect the processing times of the I-526 cases that did not receive a request for evidence (RFE), while the 22-28 months range could be the processing time for I-526 cases that received an RFE from IPO.

Processing times for the majority of the I-526 petitions that were denied in Q1 FY2018 was between 22 to 28 months.

In addition, nearly 15% of the I-526 cases that were denied by IPO experienced processing times of more than 36 months, while only 1% of I-526 approvals were in adjudication for more than 36 months. The data presented a positive correlations between the processing times and the likelihood of denials for I-526 petitions.

IN-DEPTH: I-526 PETITIONS PROCESSING TIMES APPROVALS VERSUS DENIALS

I-526 Processing Time Ranges by Case Status (FY2018 Q1)



DATA INSIGHTS:

For I-526 cases that were adjudicated in Q1 FY2018, the median processing time of an approved I-526 petition was 16.5 months while the median processing time of a denied I-526 petition was 24.4 months.

In addition, the processing times of the majority of approved I-526 petitions was between 13.1 to 24.6 months while the processing times of over 50% of I-526 denial cases were between 15.7 to 28.8 months.

The data of Q1 FY2018 indicates that the processing time of I-526 denials tended to be longer than the processing time of I-526 approvals.

Data Source: USCIS
Prepared by: IIUSA



IIUSA, a national 501(c) (6) not-for-profit, is the unifying voice for thousands of diverse stakeholders who contribute to economic development and job growth in the U.S. through the EB-5 Regional Center Program (the Program).

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