

Data Analysis on Fiscal Year 2019 EB-5 Visa Number Usage & Estimated Visa Waiting Lines

Highlights from the Guest of Honor Presentation by the U.S. Department of State at the 9th Annual IIUSA EB-5 Industry Forum

By Lee Y. Li, Policy Analyst, IIUSA

November 11, 2019

IIUSA was honored to welcome Mr. Charlie Oppenheim, *Chief of Immigrant Visa Control & Reporting Division at U.S. Department of State*, as our Guest of Honor speaker for last month's EB-5 Industry Forum in Seattle, WA. This was the 5th year in a row Mr. Oppenheim shared his insights at IIUSA's annual event. Not only did Mr. Oppenheim provided the latest statistics on EB-5 visa number use in fiscal year (FY) 2019, but more importantly he also shared critical updates on EB-5 visa waiting lines, comments on the current EB-5 visa backlog, and his predictions on future EB-5 final action date movement.

The below report includes a detailed recap and additional analysis of Mr. Oppenheim's presentation during the event. Additionally, we also dive into the extra statistics that Mr. Oppenheim shared with IIUSA in follow-up dialogue after the conference.

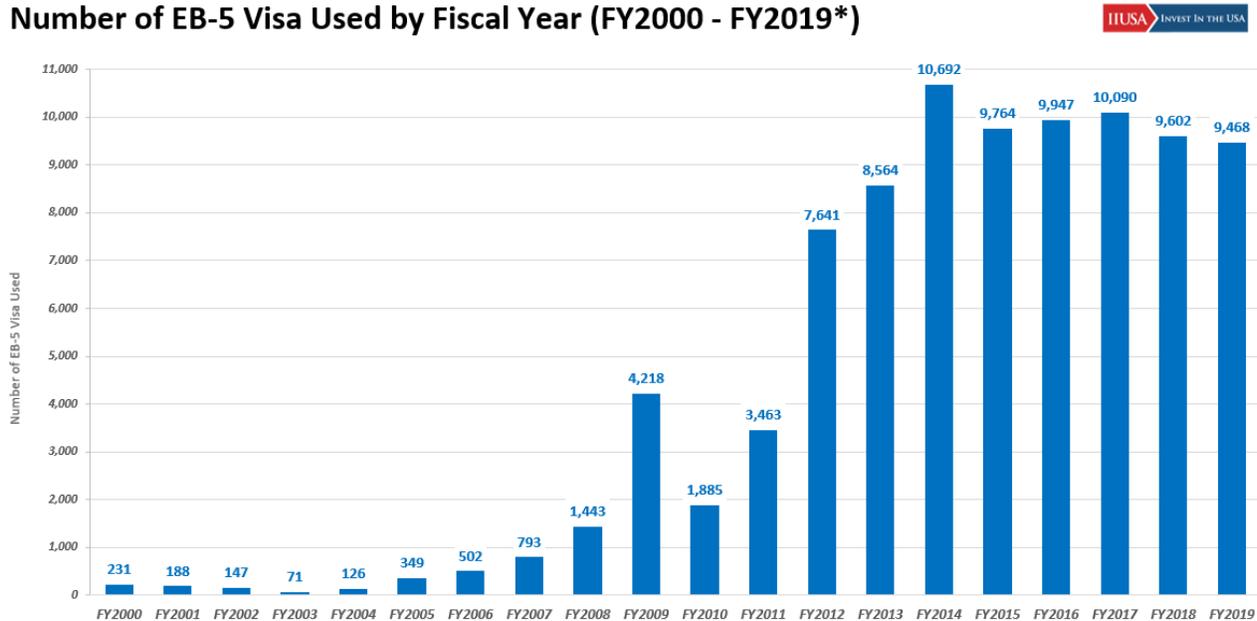
IIUSA would like to extend a special thank you to Mr. Oppenheim for providing this firsthand EB-5 visa data and for sharing his informative insights on EB-5 waiting lines.

You can download Mr. Oppenheim's full presentation slides from IIUSA's website at [here](#).

It's important to note that all the statistics at this report should be considered as preliminary until the Department of State publishes its annual Report of the Visa Office 2019.

EB-5 Visa Use: Grand Total.

Number of EB-5 Visa Used by Fiscal Year (FY2000 - FY2019*)



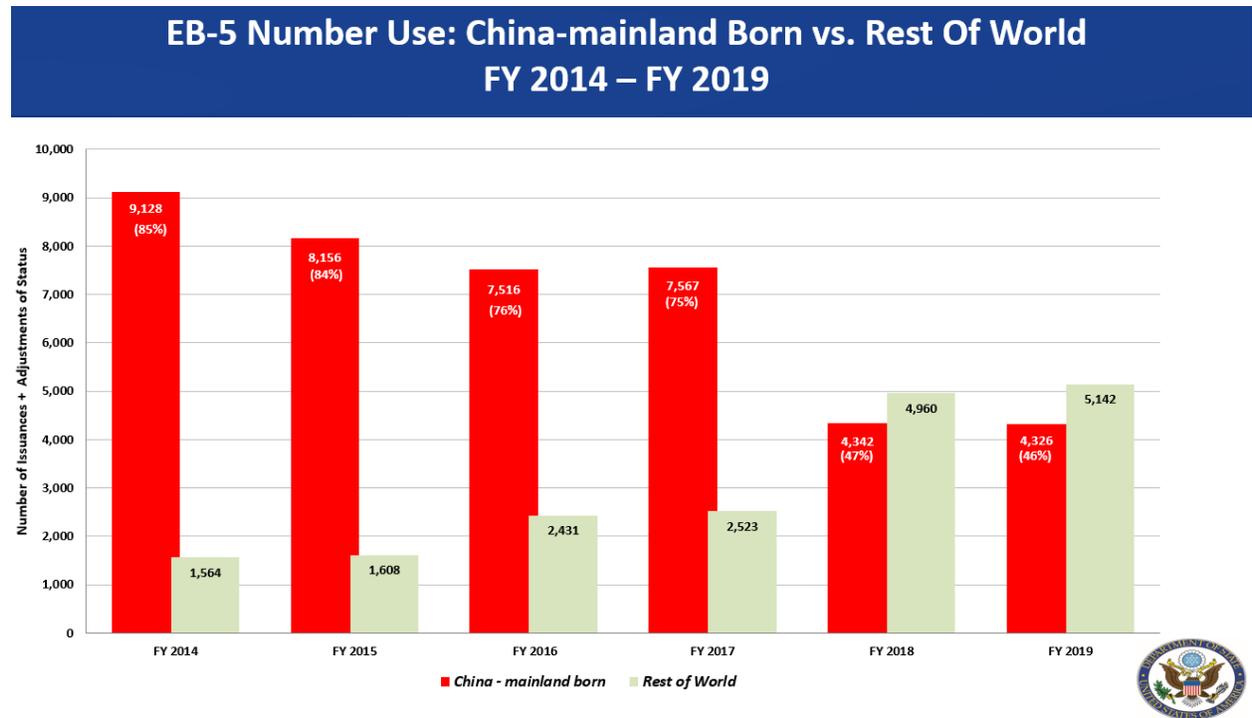
The chart above was prepared by IIUSA based on the FY2019 EB-5 visa statistics provided by Mr. Oppenheim. A total of 9,468 EB-5 visa numbers were used in FY2019, down slightly by 1.4% from FY2018. The data also indicated that the EB-5 number use in FY2018 and FY2019 did not reach its annual numerical limit, which is approximately 9,940 visas per fiscal year.¹ During follow-up dialogue with IIUSA, Mr. Oppenheim explained that the determination of final action dates on the August and September Visa Bulletin, which has a direct impact on the annual total visa number use, depend on 1) how many visa numbers were still available, which requires considerations of several of reasonable estimates regarding visa number use in past month(s), visa number use in the current and future months, unused and return visa numbers; and 2) estimates of additional visa demand from USCIS based on the final action date movements.

In reality, it's practically impossible for the actual visa number use to be the same as its annual numerical limit, not only because the final action dates that control monthly visa allocations have to be determined based on the best available historical data while the actual number use can be different from the data patterns in previous month(s), but also the visa number which have been provided for use during a particular month can be returned because applicants either failed to appear for their scheduled

¹ According to the Immigration and Nationality Act (INA), EB-5 is entitled to up to 7.1%, or approximately 9,940 visas, of the annual 140,000 employment-based immigrant visas. 8 U.S.C. 1153 (b)(5)(A).

interviews, or were found ineligible for some reason and may then overcome that ineligibility in a later month, according to Mr. Oppenheim. **Despite the complexity of the visa allocation process, the gap between the actual EB-5 number used and its annual numerical limit has been less than 5% in the last five fiscal years.**²

EB-5 Visa Use: China vs. Rest of World.



EB-5 applicants from China accounted for 46%, or 4,326, EB-5 visa numbers used in FY2019, essentially unchanged from the previous fiscal year. Because of the per-country caps, only the otherwise unused EB-5 visas in a fiscal year were allocated to the applicants from mainland China,³ although these Chinese visa applicants have an earlier priority date and have been waiting for their visa availability for up to five (5) years.⁴ With the surge of EB-5 visa demands from other countries outside China in recent fiscal

² The margins between the number of actual EB-5 visa use and its annual limit (9,940) for the last five fiscal years were: FY2015: -1.77%; FY2016: +0.07%; FY2017: +1.51%; FY2018: -3.40%; and FY2019: -4.76%.

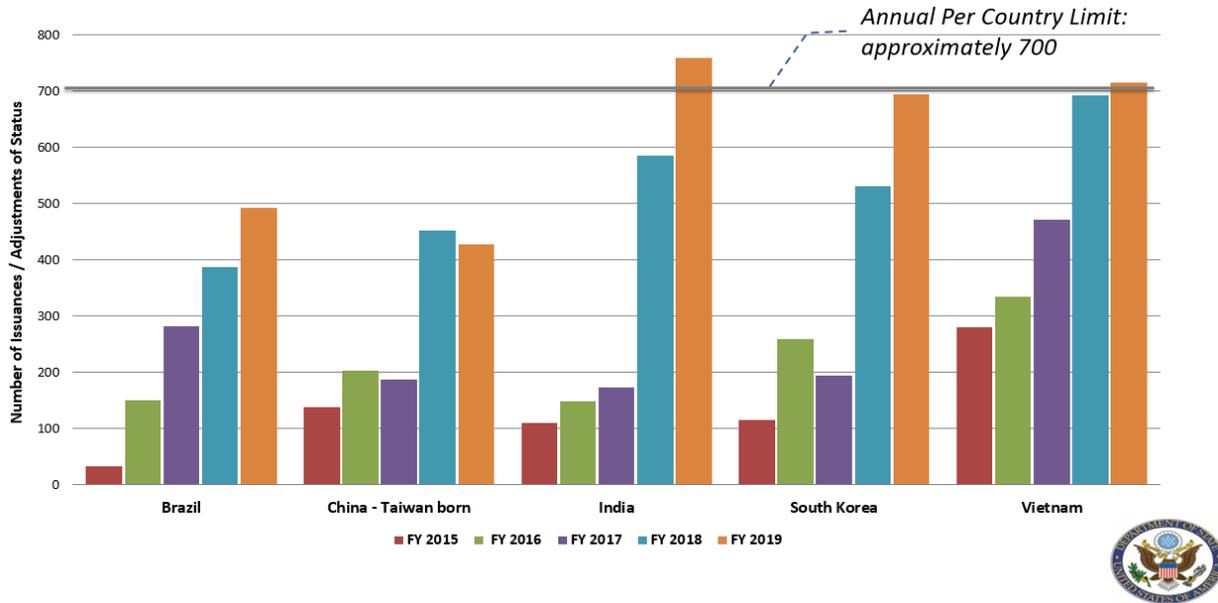
³ The per-country caps on the INA Section 203 requires that no signal foreign state can receive more than 7% of the total immigrant visas (green cards) issued in a given fiscal year, unless these green cards would otherwise go unused.

⁴ According to the November Visa Bulletin, the Final Action Date for Chinese EB-5 visa applicants is November 1, 2014.

years,⁵ the number of otherwise unused EB-5 visas has become increasingly smaller, hence less EB-5 visa numbers in FY2018 and FY2019 were available to the Chinese applicants waiting at NVC.

EB-5 Visa Use: Top Countries of Current Interest.

EB-5 Number Use By Top Countries Of Current Interest Other than China-mainland Born: FY 2015 – FY 2019



The total number of EB-5 visa used by applicants from the top countries of current interest in FY2019 include:

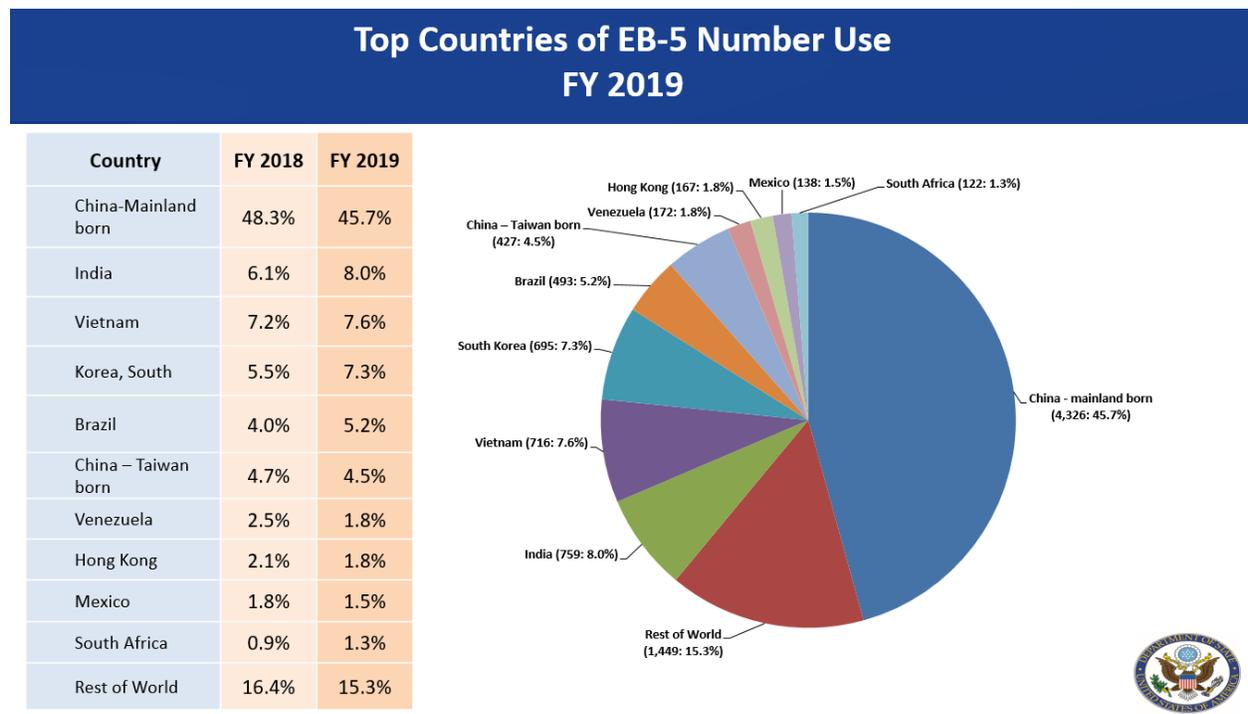
- Brazil: 493 visas (increase of 27% from FY2018);
- India: 759 visas (increase of 30% from FY2018);
- South Korea: 695 visas (increase of 31% from FY2018);
- Taiwan: 427 visas (decrease of 6% from FY2018);
- Vietnam: 716 visas (increase of 3% from FY2018);

⁵ More details can be found on IIUSA data report: *Analyzing Form I-526 Statistics by Investor’s Country of Chargeability for Fiscal Year 2017: What is New and What it Tells Us.* <https://iiusa.org/blog/wp-content/uploads/2018/11/Analyzing-I-526-Data-for-FY2017-Lee-Li-IIUSA-FINAL.pdf>

It's important to note that Indian applicants accounted for approximately 760 EB-5 visas in FY2019, up from 585 visas in FY2018. **With a growth of 30% in visa usage year-over-year, India surpassed Vietnam as the second largest investor market in FY2019.**

Furthermore, South Korean investors and their qualified family members used a total of 695 EB-5 visas in FY2019, missing its annual per-country limit by less than 10 visas.⁶ Although South Korea exhibited a significant growth in terms of EB-5 visa number use and almost reached its annual per-country cap in FY2019, **Mr. Oppenheim indicated that he did not anticipate South Korea would be subject to a final action date in the foreseeable future in FY2020 based on the current visa number use patterns.**

EB-5 Visa Use: Top Countries of Current Interest (Cont.).



EB-5 applicants from India, South Korea, and Brazil exhibited the biggest growth between FY2018 and FY2019 in terms of the percentage of EB-5 visa number use. 45% of the EB-5 numbers were allocated to Chinese applicants in FY2019, down from 48% in FY2018, because less otherwise unused EB-5 numbers were available as a result of the growth among various EB-5 markets around the globe.

⁶ The estimated per-country annual numerical limit of the EB-5 category (except for China) for FY2019 was 696. *Annual Numerical Limits for Fiscal Year 2019. Department of State.*
<https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/Annual%20Numerical%20Limits%20-%20FY2019.pdf>

EB-5 Visa Use: Consular Processing vs. Adjustment of Status.

	CP	AOS	AOS (%)	TOTAL
Brazil	279	214	43%	493
China	3,893	433	10%	4,326
India	502	257	34%	759
S. Korea	658	37	5%	695
Taiwan	401	26	6%	427
Vietnam	665	51	7%	716
Rest of World	1480	571	28%	2,051
Grand Total	7,878	1,589	17%	9,467

Source: U.S. Department of State (Preliminary Data)

Prepared by: IIUSA

The above are additional statistics which Mr. Oppenheim provided to IIUSA after the conference regarding the EB-5 visa number use by consular processing (“CP”) through the Department of State versus adjustment of status (“AOS”) through USCIS in FY2019.

In particular, 43% of the Brazilian EB-5 applicants obtained their lawful permanent residency in FY2019 through AOS, meaning these investors and their family members were already legally present in the U.S. when they applied for their green cards. Additionally, AOS accounted for 34% of the EB-5 numbers that were used by Indian applicants in FY2019, considerably higher than the worldwide average of 17%.

EB-5 Visa Use: Principal Investors vs. Family Derivatives.

Average Percentage of EB-5 Principal Investors FY 2017 – 2018

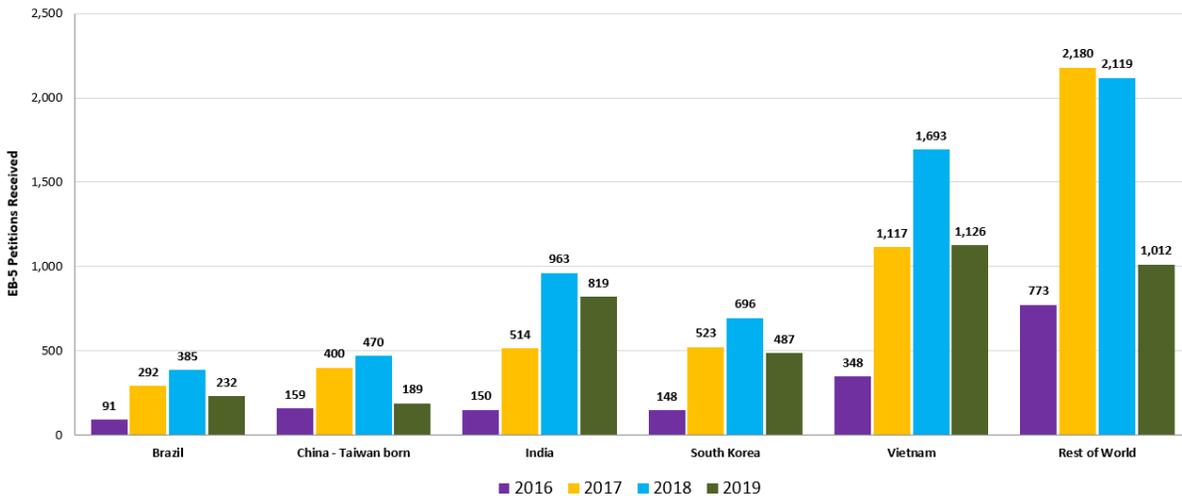
	China - mainland born	Vietnam	India	S. Korea	Brazil	China - Taiwan born	Rest of World
FY 2018	36.8%	26.3%	41.2%	35.8%	32.7%	36.9%	33.6%
FY 2017	36.1%	27.2%	42.0%	35.9%	29.4%	39.4%	34.0%

As a follow-up with IIUSA, Mr. Oppenheim shared that, although the average percentage of EB-5 principal investors in the FY2019 EB-5 number use has “slight variations” from the previous year’s data (see the chart on page 6), the variations are not statistically significant.

Based on the FY2018 statistics, each EB-5 investor from India would account for 2.4 visas, the lowest percentage of principal investor in visa number use among the biggest EB-5 markets; while 3.8 EB-5 visas were expected to be used by each Vietnamese EB-5 investor. On average, each I-526 petitioner would result in the use of three (3) EB-5 visa numbers.

EB-5 Visa Applications Received at National Visa Center (NVC).

Number of EB-5 Applicants on Petitions Received at NVC 2016 – 2019



Note:
 - Rest of World data excludes China-mainland born, and those countries listed above.
 - The numbers above include all EB-5 applicants on petitions (principle investors plus any qualified family derivatives)



Largely due to the increasingly slower processing times of I-526 adjudications at USCIS, the number of EB-5 applicants with petitions received at NVC in FY2019 were lower than that in FY2018 across the board (as illustrated by the chart above). Specifically, in the first three quarters of FY2019, USCIS completed 3,003 I-526 adjudications, a 41% decrease year over year. As a result, fewer EB-5 investors (I-526 petitioners) from Brazil, India, South Korea, Taiwan, Vietnam, and all other countries were able to proceed with further action on their visa process at NVC.

EB-5 Visa Waiting Lines at NVC and USCIS (DOS Estimated).

EB-5 Applicants with Petitions on File at NVC and Estimated USCIS Applicant Data (As of October 1st, 2019)

Foreign State of Chargeability	Actual Number of Applicants at NVC	DoS <i>ESTIMATED</i> Number of Applicants with Petition on File at USCIS	<i>Estimated Grand Total</i>
Brazil	212	765	977
China-mainland born	35,264	13,325	48,589
India	607	4,100	4,707
South Korea	221	1,900	2,121
China-Taiwan born	101	1,241	1,342
Vietnam	1,771	3,200	4,971
Rest of World	1,011	6,480	7,491
Grand Total	39,187	31,011	70,198



According to Mr. Oppenheim, the estimated EB-5 visa queue (as of October 1st 2019) consists of **70,198 applicants with petitions on file (including principal investors and qualified family members)**. In particular, a total of 35,264 visa applicants from China were waiting at NVC for their visa availability; while Mr. Oppenheim estimated that the pending I-526 cases at USCIS could generate 13,325 visa applicants from China when their I-526 petitions are approved by IPO.

Comparing to the data one year ago, IIUSA’s analysis found that the actual number of EB-5 visa applicants at NVC increased by 6% (from 36,839 in October 2018 to 39,187 in 2019), while the estimated number EB-5 applicants with petitions on file at USCIS declined by 4% (from 32,221 to 31,011) as of October 2019.⁷ The increase in the visa applicants pending at NVC could be due to the fact that an increasingly larger number of EB-5 visa applicants from China, India, and Vietnam (the three countries that are currently facing the visa backlog issue) are awaiting their visa number availability at NVC. The data indicated that more and more investors and families are affected by the current visa backlog issue.

⁷ The 2018 statistics is based on Mr. Oppenheim’s presentation at the 2018 AILA/IIUSA EB-5 Industry Forum.

Regarding the 4% year-over-year decline in Mr. Oppenheim’s estimates on the number of EB-5 applicants that could be generated by the I-526 petitions that were pending at USCIS, the author suspects that the decline could be attributed to a combination of different factors, including:

- **The decline in I-526 petition filing in FY2019.** During the first three quarters in FY2019, the number of new I-526 petitions filed to USCIS was down by 41% year-over-year.⁸ Despite the fact that USCIS only completed 4,127 I-526 adjudications between October and June 2019 (a drop of 62% year-over-year), the number of I-526 petitions pending at USCIS as of June 2019 was reduced by 9.2% from October 2018.⁹ With fewer number of I-526 petitions pending at USCIS, the estimated number of future EB-5 visa applicants with an I-526 petition on file at USCIS would be smaller.
- **Lower I-526 approval rates.** The average I-526 approval rate in Q3 FY2019 was only 58%, the lowest level in the last 14 years.¹⁰ Hypothetically, with a lower I-526 approval rate, there will be a fewer approved EB-5 petitions from USCIS that would require a visa number, hence the estimates of EB-5 applicants with petitions on file at USCIS could be lower.
- **Higher percentage of principal investors in EB-5 visa number use?** Hypothetically, if family derivatives no longer account for 2 additional visas per EB-5 investment, the visa waiting lines could be lower. Although the FY2019 data is not available yet to confirm or invalidate this hypothesis, it’s unlikely that the higher percentage of principal investors in visa number use could generate any significant impact on the visa waiting line calculation because, as Mr. Oppenheim shared at the follow-up dialogue with IIUSA, “statistically speaking, slight variations in the percentage being used would not amount to much.”

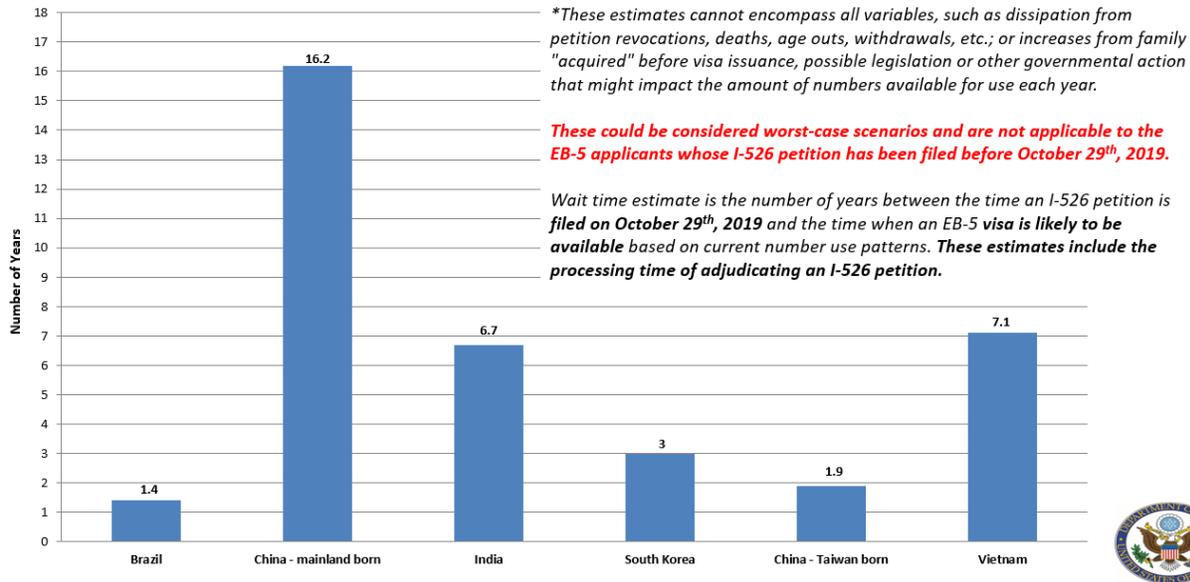
⁸ For more information, read IIUSA’s quarterly data report on Form I-526 statistics: <https://iiusa.org/blog/iiusa-data-report-form-526-quarterly-data-review-analysis/>

⁹ Ibid.

¹⁰ Ibid.

DOS Estimates on Potential EB-5 Visa Wait Times on I-526 Petitions that were filed on October 29, 2019.

**Potential Wait Time (Estimated)* Until Visa Number Availability
If the I-526 Petition IS FILED TODAY (October 29, 2019)**



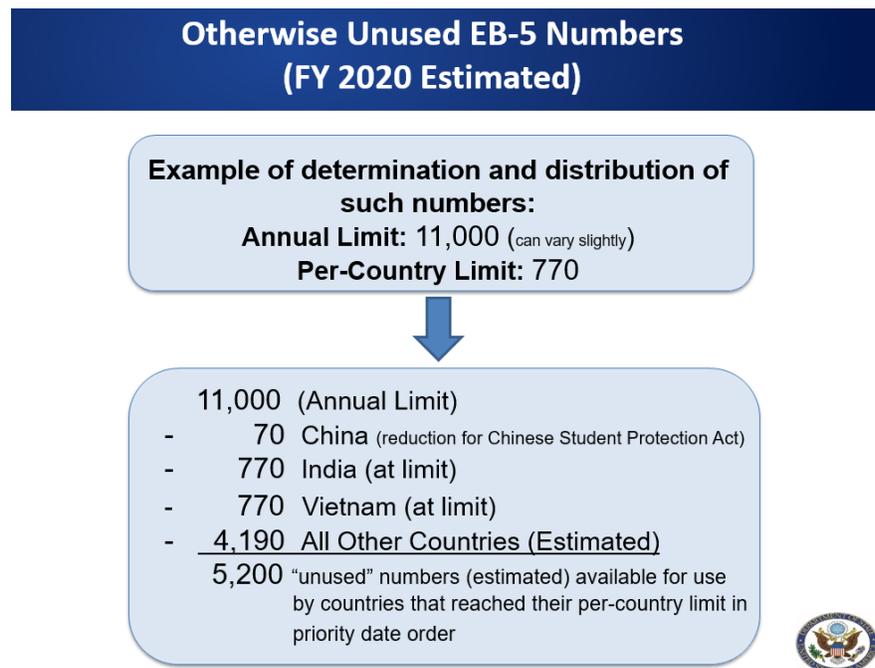
Based on the estimates on the number of visa applicants with petitions on file (the chart on page 8), the potential “wait times” of visa availability for an applicant filing a I-526 petition **on October 29, 2019** would be:

- Brazil: approximately 1.4 years;
- China: approximately 16.2 years;
- India: approximately 6.7 years;
- South Korea: approximately 3 years;
- Taiwan: approximately 1.9 years; and
- Vietnam: approximately 7.1 years.

It’s important to note that all estimates on the potential wait times above are based on the assumption that all of the applicants with petitions on file had been approved as of October 28. In addition, the wait times for Brazil, India, South Korea, Taiwan, and Vietnam were calculated based on 700 EB-5 visas per year; while the wait time for China was calculated based on 3,000 EB-5 visas per year.

In addition, the wait time estimate is the number of year(s) between the time when an I-526 petition was filed and the time when an EB-5 visa is available, which includes the processing time of adjudicating an I-526 petition at IPO. That is, for example, the estimated wait time of an Indian investor who filed his/her I-526 petition on October 29, 2019 is 6.7 years. Hypothetically, if it takes USCIS 3 years to adjudicate this petitioner’s I-526 case,¹¹ the additional wait of visa availability for this Indian applicant and his/her family member(s) would be approximately 3.7 years.

EB-5 Visa Allocation Estimates in FY2020.¹²



Thanks to the unused family-based immigrant visa numbers left in FY2019, Mr. Oppenheim discussed that there will be a total of approximately 155,000 visas available to be allocated among the five employment-based categories in FY2020, of which the EB-5 Program is entitled to 7.1% or approximately 11,000 visas. **With that, the per-country limit of the EB-5 category in FY2020 will be**

¹¹ The estimated time range of Form I-526 adjudication was between 29 months and 50 months, USCIS Processing Times. <https://egov.uscis.gov/processing-times/> (Accessed November 11, 2019)

¹² The official and actual Annual Numerical Limits for FY2020 was published by the State Department after the publication of this report, view IIUSA’s analysis here: <https://iiusa.org/blog/department-of-state-published-annual-numerical-immigrant-visa-limits-for-fy2020-1111-additional-visas-will-be-available-to-the-eb-5-applicants/>

approximately 770 visas, 10% higher than the normal limit. Other than China, India, and Vietnam, Mr. Oppenheim did not anticipate any other country will reach its EB-5 per-country cap in FY2020.¹³

In addition, given the fact that NVC received fewer new EB-5 applications in FY2019 largely due to the slowdown in I-526 adjudications at USCIS, Mr. Oppenheim estimated that there could be less EB-5 visa numbers used by applicants from other countries (excluding China, India, and Vietnam), hence more otherwise unused visa numbers in FY2020 (approximately 5,200) could be available for the Chinese applicants who have been waiting in line at NVC with an early priority date.

Future EB-5 Final Action Date Predictions.

Based on the current EB-5 number use patterns, Mr. Oppenheim shared his predictions on the following future EB-5 final action dates for December 2019 and October 2020 (by best case scenario versus worst case scenario):

	December 2019 Visa Bulletin	October 2020 Visa Bulletin	
		(Best Case Scenario)	(Worst Case Scenario)
<u>China</u>	November 15, 2014	March 08, 2015	February 15, 2015
<u>India</u>	January 01, 2018	Current	November 2017
<u>Vietnam</u>	December 01, 2016	June 01, 2017	April 01, 2017
<u>All Other Countries</u>	Current		
<i>Note: the predictions above are based on the current EB-5 visa number use patterns.</i>			

** All data should be considered "preliminary" until DOS publishes its 2019 annual report.*

Disclaimer: This publication is intended for your information only (i.e. not legal advice). Unless you receive IIUSA's prior written consent, you may not modify, translate, create derivative works of, copy, distribute, market, or display any content from this publication. The Invest in the USA ("IIUSA") logo is a registered trademark and sole property of IIUSA. It therefore, may NOT be used without the express written consent of the Board of Directors.

¹³ Based on the current visa number use pattern.