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VIA EMAIL

October 9, 2020

Ms. Sarah M. Kendall
Chief, Immigrant Investor Program Office
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, DC 20001

RE: IIUSA member questions for Ms. Kendall's address at upcoming 2020 Virtual EB-5 Industry Forum on Tuesday, November 10 at 2:00pm ET

Dear Ms. Kendall:

Thank you for participating in IIUSA's upcoming Virtual EB-5 Industry Forum this November and for the opportunity for our members to submit questions to you. Attached is a list of questions sent to us by members of our association. These questions and comments come from a broad range of EB-5 professionals including EB-5 Regional Center owners/operators/staff, immigration attorneys, corporate/securities attorneys, business plan writers and more.

We look forward to your participation and to having many of these pressing questions answered to establish more clarity in the Program's operation and future. And again, thank you for this opportunity of open dialogue.

Sincerely,

Aaron Grau
Executive Director

Enclosure

Questions for Ms. Kendall

For I-526 petitions approved for expedited processing, how long does it normally take for USCIS to process those petitions? Specifically, for cases where the petitioner is a front-line worker during the covid-19 pandemic?

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Why is it taking USCIS / IPO **three or four months** (or longer) to send notice to NVC after it approves an EB-5 investor's I-526 petition? And this delay is **on top of the more than 2 years** that the I-526 petitioner has had to wait for USCIS to adjudicate the I-526 petition. In the past, we would receive notification from NVC in 30 days or less after USCIS approved an I-526 petition. And all indications are that the delay in notification is coming from USCIS and not NVC.

For example, recently, I contacted NVC through its online inquiry portal to ask about the visa application fee invoice for the I-526 Petitioner and his immediate family members that we had not yet received even though USCIS had approved the I-526 petition more than 2 months earlier. An NVC case research agent sent me an email in response less than 48 hours after I submitted the inquiry to NVC via its online inquiry portal. The agent emailed to state that s/he would look into the matter, and then less than a week later, reverted back to report that NVC had no record of ever receiving notice of the I-526 approval notice from USCIS, even though the petition had been approved more than 2 months before.

For USCIS to delay sending notification to NVC that an EB-5 investor's I-526 Petition has been approved after the investor has already waited years for their petition to be approved makes no sense, especially given that IPO is approving far fewer I-526 petitions today than it has in the past when it was still able to provide notice to NVC in a much more timely manner. It is also extremely unfair and needlessly distressing to the petitioners.

The exchange with NVC also highlights another very significant problem with USCIS and the Investor Program Office – an absolute lack of any substantive or meaningful way for petitioners or their attorneys to obtain information about case processing delays or procedural matters that can and should be quickly and easily addressed. Recently, AILA representatives met with NVC representatives and were able to get substantive information about EB-5 IV visa processing delays, timelines and how to contact NVC with questions when cases were not being timely processed – all of which have been effective. NVC has an online site that publishes its case creation time frames after it receives a case from USCIS. <https://nvc.state.gov/timeframes> And as the experience discussed above demonstrates, NVC responds within only a couple of days of receiving an inquiry from an attorney.

By contrast, when we send an inquiry to USCIS IPO through the IPO email address

- uscis.immigrantinvestorprogram@uscis.dhs.gov (which is the only method available to contact IPO) –

it takes months to receive a response back, if we receive any response at all. This is the situation even when we use the word “ESCALATE” in the Subject line of the email. This is of no benefit at all for situations where timing is important, or deadlines are involved.

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Why do projects have to submit project information for every single investor? If the project was approved and nothing has changed, what is the purpose of submitting these duplicative documents for tens or hundreds of investors? This seems like a waste of time and resources on both sides of the process.

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With the new redeployment policy published in July of 2020, what is going to happen with investors who were following previous redeployment guidance that is now changed retroactively to follow the new guidance? These investors should not be punished for following the guidance that was available and given at the time of their redeployment. How does USCIS plan to handle these cases?

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Why are case statuses online not kept up to date? It is a common occurrence that a case status is looked up and it is weeks or not months behind on reporting the actual current status of the case.

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If the Historical National Average Processing Time for FY20 is 13.7 months for I-526, then why is the estimated time range for processing I-526 37 to 73.5 months (or 31.5 to 60 months for all other areas not China)? **Are they processing that many National Interest Waivers & Expedites?**

<https://egov.uscis.gov/processing-times/historic-pt>

<https://egov.uscis.gov/processing-times/>

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Further Deployment

- When and how will USCIS respond to the many industry comments submitted in response to the July 24, 2020 Policy Manual update on Further Deployment?
- When commenting on the July 24, 2020 Policy Manual update, industry stakeholders and experts united in pointing out the theoretical error and major practical damage in the new geographic area restriction for further deployment, especially considering the retroactive application. When will IPO address this particularly urgent concern?

Processing Questions

- How many staff are currently employed at IPO?
- How many IPO staff currently work on adjudications?
- Does IPO anticipate the need to furlough staff in FY2021 due to budget issues?
- How has descoping of federal contracts affected EB-5 adjudications?
- How have USCIS budget challenges affected EB-5 adjudications?
- How does IPO plan to maintain integrity in adjudicating the large pending backlog, in light of dramatically reduced I-526 and I-924 receipt revenue in the wake of the EB-5 Modernization Regulation and other factors depressing EB-5 demand?
- Has IPO seen the visa availability approach accomplishing its objective: more timely processing for petitioners from underrepresented countries? Why are reported I-526 processing times for countries other than China not improved over worldwide times reported prior to implementing the approach?
- What goals does IPO have for processing productivity?
- What goals does IPO have for processing times?
- What assurance can IPO give the community today regarding its commitment to EB-5 program credibility? Does IPO still stand by this statement by Sarah Kendall: “We recognize that this is a business community. There are business practices. There are people, the individuals behind every application. And that the credibility of that application's likelihood of being adjudicated in a timely way is important. So we hear you. And the agency has made long-term investments to make sure that we can reasonably manage the work load that comes in.” (October 5, 2018 meeting with IIUSA.)
- What is IPO doing to realize this commitment expressed by Sarah Kendall: “we are conscious of our obligations to be productive, to be good stewards of public resources.” (October 5, 2018 meeting with IIUSA.)
- What can the industry do to support efficiency and integrity at IPO in an environment of budgetary constraints?
- Will IPO revise interfiling guidelines along with a timeline of when an investor can expect the interfile evidence to be considered
- Why does USCIS not use the average as the outside time rather than the 93% percentile which would capture just about the longest time USCIS takes – not very meaningful - other than, of course, shielding USCIS from mandamus.

Reporting Questions

- Do the “Estimated Time Range” months in the revised USCIS Check Case Processing Times Page for Form I-526 continue to represent the median and 93rd percentile of recently adjudicated I-526 from China and other areas?
- When will USCIS publish separate reports for I-526 and I-829 data on the Immigration and Citizenship Data page? (The last published report was for FY2020 Q1.)
- When will IPO revise the EB-5 Filing Tips, Form Filing Tips, and Suggested Order of Documentation posted on the USCIS website to conform with current adjudication standards? (The guidelines posted on the website should be revised to match the new adjudication worksheets implemented in 2019, so that petitioners know in advance which evidence they are now expected to prepare.)
- When will IPO publish termination letters for regional centers terminated in 2019 and 2020? (So far, the USCIS website has only published letters for regional centers terminated up to 2018.)
- When will IPO publish designation letters for regional centers, so that the community can – at least -- know the identity of regional center principals, and thus help to protect program integrity?
- When will IPO publish data for pending I-526 by country (and/or I-526 receipts by country), without which the industry and prospective investors cannot know the true state of visa oversubscription and backlog size? Hiding the only data for actual EB-5 demand and usage benefits no one except fraudsters, who can exploit lack of information to sell myths about short EB-5 wait times. (Note that since 2019, many inquiries to the IPO customer service email requesting this data have been rebuffed, and multiple long-standing FOIA requests for the data have gone unanswered.)
- Why is IPO no longer engaging at least quarterly with the EB-5 community?

Policy Questions

- How will IPO ensure that geographic areas with small populations and struggling economies can keep regional center representation and opportunity, going forward? (IPO has already terminated 100% of regional centers serving Maine, South Dakota, and Alaska for not having been active enough quickly enough, and has nearly eliminated the regional center opportunity in North Dakota, Wyoming, Arkansas, Nebraska, Montana, Kansas, Idaho, and Iowa following a rash of terminations that penalized activity levels. The current implicit litmus test for ongoing designation privileges the few geographies best able to support robust deal flow and aggressive marketing, contradicting Congressional intent that EB-5 opportunity be available in areas with less active economies. In the wake of program shocks from the regulations price increase, pandemic, and other factors, it may be years before most regional centers serving rural and distressed areas can bring new EB-5 projects to fruition and win some of the few available EB-5 investors. USCIS policy for terminations will determine whether or not these regional centers can survive long enough to bring any EB-5 opportunity to their states. As it is, the program’s existence and effectiveness are threatened by I-924 processing times up to eight years followed by requirement to have I-526 filed within three years or lose designation.)

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- Based on the overwhelming response from the industry with respect to the July 24 th guidance limiting geographic scope in redeployment being seen as a significant and substantive policy change as opposed to a clarification, will USCIS consider only applying the change prospectively to those investors whose funds have not yet been redeployed?
- Based on the language of the July 24 th policy update, can you confirm that the new policy regarding geographic restrictions on redeployment will not apply to investors who were redeployed after they were already in their LPR period?
- Why was the language about new issue municipal bonds removed in the policy update?
- The new policy allows investors to continue with their EB-5 immigration process if their Regional Center has been terminated. With that in mind, is it also a reasonable interpretation that an investor can continue their immigration process with a new Regional Center in the event their original Regional Center has gone bankrupt or has failed to move forward with the initial project in a timely manner?
- How does the policy change regarding geographical territories account for the fact that some Regional Centers have a very limited geographic territory (or only a single project) where another project is not likely (or unable) to become available in time to redeploy within the required 12-month period?
- Is USCIS concerned that if the geographic territory restriction is enforced, it will force investors to only invest into major urban areas to ensure another investment is available for redeployment?
- Can you share how many comments you have received on the policy update? Will these comments be made public? If so, where will we be able to find them?
- From time to time it seems appropriate to update USCIS on the status of a project, often referred to as interfiling. What is your team's internal process when USCIS receives this type of information?

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In an EB-5 Regional Center Project, to show an irrevocable commitment of personal Investment funds by the investor at time of filing an I-526 petition, can there be, as an example, an initial cash investment of \$200,000.00 and a Promissory Note Agreement between the New Commercial Enterprise and the Investor , to pay the balance of the required investment amount. That is, if the required investment amount is \$900,000, then the investor will owe \$700,000 and this balance according to the promissory note will be paid in monthly installments over the next 24 months.

The promissory note will be secured by the existing investors assets, which may be liquid assets of the investor, amounting to a market value of \$700,000. The New Commercial Enterprise will have an enforceable lien on the investors assets in case there is a default in a monthly payment by the investor.

Question: Will the above hypothetical scenario support the EB-5 concept of "process of investing" ?

In the hypothetical scenario, the EB-5 investor will be committing their personal funds in their own new commercial enterprise and job creating entity and the EB-5 investor is committing their funds to their own US business.

Question: In the hypothetical scenario, will the concept of "process of investing" incorporating a promissory note between a third-party fund administrator and the investor, be acceptable in a direct EB-5 project? In addition, in a Direct EB-5 project can the concept of "process of investing and the promissory note" apply to more than one EB-5 investor in this one Direct EB-5 project?

The EB-5 Regulations refer to the ability of a divorced spouse and children (of a principle investor) to file separately an I-829 Petition.

Under the EB-5 Regulations, the principle investor who is divorced, will still have the ability to file their own I-829 Petition.

Question: Can the divorced spouse and children file their own I-829 Petition, without the principle investor filing an I-829 Petition? That is, the principle investor does not want to file their own I-829 Petition.