

**AGENDA**

1. Welcome
2. Visa Availability Update
3. USCIS Further Deployment Policy Manual Update
4. I-829 Separate Decisions
5. Program integrity
6. Regional Centers
7. Updates
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## WELCOME

- Good afternoon everyone. I'd like to begin my remarks by thanking the leadership of IIUSA for inviting USCIS to speak at today's event.
- Like many, if not all of you, I would much rather be talking to you in a live forum. Due to the pandemic's restrictions, that isn't possible. The Immigrant Investor Program Office, or IPO, and all of USCIS as a whole, is committed to ensuring continuity of mission performance even as the nation and the world struggles with a pandemic.
- The pandemic is affecting IPO's normal business practices. In mid-March, USCIS, like many federal agencies, maximized telework.
- IPO staff have continued to work diligently, even in very constrained and unprecedented circumstances generated by the pandemic. They have adapted to the new environment – one of almost 100% telework. Our on-board staffing level currently consists of 232 dedicated people, including support staff, adjudicators, economists, Fraud Detection and National Security personnel, compliance officers, and others vital to the performance of the IPO mission.
- I want to share several IPO program updates with you today, including:
  - An update on the Visa Availability Approach;
  - A few Policy Manual updates;
  - Updates on Form I-829 separate decisions, program integrity, and regional centers; and
  - Finally, some operational updates on a few of the EB-5 form types adjudicated at IPO.
- We received questions from you before this engagement. Thank you for taking the time to submit them. Due to time constraints, we are unable to respond to all of them; however, we selected some of the most prevalent

questions to include in today's presentation. We plan on posting additional Q&As that we could not address today on our website at [uscis.gov/eb-5](https://uscis.gov/eb-5).

## VISA AVAILABILITY

- As announced at IPO's last stakeholder engagement on March 13, 2020, USCIS implemented a process change for Form I-526, Immigrant Petition by Alien Investor, moving to a visa availability approach that became effective March 31, 2020. Also at the last engagement, IPO reviewed some questions and answers regarding this new process that were later posted on [uscis.gov/eb-5](https://uscis.gov/eb-5), under the "EB-5 Resources" heading.
- One of the new Q&As explains how IPO generally organizes its I-526 inventory based on this prioritization. We manage our pending I-526 inventory through workflows that factor in: (1) whether a visa is available (or soon will be available); and (2) whether the underlying project has been reviewed.
- In addition, IPO generally manages workflows in first-in, first-out order when a visa is available or will be available soon. We have put in place accountability measures to make sure these procedures are followed in the new inventory management process. We are committed to managing the existing inventory in as equitable and efficient a manner as possible.
- Another new Q&A on the USCIS website addresses the methodology that the agency uses to calculate its processing times. The methodology currently used to calculate processing times is described in detail on the website at [egov.uscis.gov/processing-times/more-info](https://egov.uscis.gov/processing-times/more-info) and represents a range of processing times based on an analysis of recently completed cases. More information on this can be found in the Q&A response for later reference. We applied this methodology to Form I-526 processing times in May 2019. Because the current processing times reflect the age of recently adjudicated I-526 petitions, the range can fluctuate depending on the filing dates of petitions we recently completed.

- On the subject of processing times, IPO has also updated the USCIS website to differentiate between the I-526 processing times for petitioners from China and the rest of the world. USCIS hopes these changes will help to provide additional clarity for stakeholders.
- For more information on the visa availability approach, please visit the USCIS website at [uscis.gov/eb-5](https://uscis.gov/eb-5). You can find visa availability FAQs under additional resources, and we recently added a few more FAQs covering some of the information I just addressed.

## **POLICY MANUAL UPDATE**

- On July 24, 2020, USCIS announced a Policy Manual update clarifying initial and further deployments of capital.
- My remarks will primarily focus on further deployment but will also touch upon initial deployment and the relationship between initial and further deployment.
- First, the policy manual update clarifies that capital may be deployed directly or indirectly through any financial instrument so long as it meets applicable requirements. Deployments of capital, both initial and further deployments, must satisfy applicable requirements to:
  - Place the capital at risk, to include a risk of loss and a chance for gain;
  - Demonstrate the actual undertaking of business activity;
  - Demonstrate a sufficient relationship to commercial activity, that is the exchange of goods or services, such that the enterprise is and remains commercial; and
  - Make the full amount of the investment available to the business, or businesses, most closely responsible for creating employment, if the job creation requirement has not already been met.
  - The requirement to make the full amount of capital available to the business or businesses most closely responsible for creating employment

is generally satisfied through the initial deployment of capital resulting in the creation of the required number of jobs.

- Second, further deployments must occur within the framework of the initial bases of eligibility. This means that a deployment must be within the same new commercial enterprise, the same regional center, and the same regional center's approved geographic area to include any amendments expanding the regional center's geographic area approved before the further deployment.
- Third, it must be consistent with the purpose of the new commercial enterprise to engage in the ongoing conduct of lawful business.
- Finally, further deployments must occur within a reasonable amount of time, which is generally considered 12 months. We may consider longer periods as reasonable under the totality of circumstances when there is supporting evidence.

## **I-829 SEPARATE DECISIONS**

- Moving on to the topic of I-829s, we implemented a separate decision functionality in July, allowing IPO to process a principal petitioner's I-829 petition separately from their associated family member's, or derivative's petition.
- In routine adjudication of the I-829, when the petitioner has established eligibility, IPO approves the petitioner first because the derivatives' eligibility is based upon the petitioner. In the past, if required information for a derivative was missing, we would wait to issue a decision on the petitioner's eligibility until we resolved concerns about the missing information for the derivatives.
- With this updated functionality, IPO officers can approve the principal petitioner's Form I-829, while holding the adjudication of the petition's associated derivatives when there is missing information or other action is needed before they can make a final determination.
- IPO uses this new functionality if a derivative associated with an approvable I-829 is missing, for example:

1. Biometrics; or
2. Other information that affects eligibility, such as proof of relationship to the petitioner.

## **PROGRAM INTEGRITY**

- In previous stakeholder engagements, I have covered the importance of program integrity to IPO and today is no different. It is a vital component in ensuring the success of EB-5 projects.
- Program integrity is at the forefront of everything we do. We continuously field questions from Congress and others on how well we perform in this area. IPO is committed to ensuring that we only issue benefits to eligible applicants and petitioners.
- Fraud and other public safety or national security concerns in the EB-5 program, regardless of when such concerns come to light, adversely affect the EB-5 program and the stakeholder community.
- Even with the most stringent safeguards in place, program integrity depends in part on the responsible actions of program participants.
  - Those representing EB-5 parties could help by applying due diligence and ensuring the clients they represent submit bona fide applications and petitions.
  - IPO officers invest the necessary time and focus in conducting inquiries into such matters.
- In general, we have seen that the vast majority of petitions and regional centers are engaged in legitimate business activities and endeavor to strengthen U.S. communities by creating jobs. Unfortunately, instances of malfeasance and abuse by a few program participants have resulted in cases of substantial financial losses to investors. These cases also have a negative impact on local economies and program integrity generally.

- IPO has strong and committed partnerships with law enforcement agencies and financial regulators and in addition to our own inquiries, we support their civil and criminal investigations.
- An example of this is seen in the recent sentencing of two individuals who misused foreign investor funds and defrauded USCIS.
  - A federal jury convicted Jennifer Yang and her business partner, Daniel Wu, of visa fraud, mail fraud, aggravated identity theft, and conspiracy to commit all the above in connection with a scheme to fraudulently obtain immigration benefits through the government's EB-5 visa program.
- In another case out of New Orleans, the federal court has set January 26 as the sentencing date for two regional center principals who were entrusted with promoting and sponsoring job-creating capital investment. Their multi-count conviction for conspiracy to commit wire fraud and mail fraud, conspiracy to commit immigration fraud, conspiracy to commit money laundering, and six counts of wire fraud represents a breach of trust against the investors and USCIS. It may also undermine future investors' confidence in the EB-5 program.
- If you suspect or would like to report an instance of fraud, please visit [uscis.gov/report-fraud](https://uscis.gov/report-fraud). You can click on the EB-5 fraud link and this will take you to information about reporting fraud in the EB-5 program.
- It bears repeating that IPO and the EB-5 stakeholder community share common goals. Maintaining program integrity is mutually beneficial and ensures program longevity.

## **REGIONAL CENTERS**

- I'd now like to discuss USCIS's authority to continue to administer the regional center program. This program was recently extended until December 11, 2020.

- USCIS has continued its commitment to monitoring compliance of regional centers even during the pandemic. IPO's compliance activity continues to complete compliance reviews and IPO will take appropriate action when a regional center fails to meet the terms and conditions of the EB-5 program.
- As a reminder, we are currently in the middle of the annual filing period for Form I-924A, Annual Certification of Regional Center. A regional center must file a Form I-924A to demonstrate its continued eligibility to operate as a designated regional center in the EB-5 program. A regional center must file for the fiscal year the regional center was designated and for every subsequent fiscal year. The filing period is between October 1 and December 29.
- As required in 8 CFR 204.6(m)(6), to maintain status as a designated regional center, regional centers must provide information annually or as otherwise requested by USCIS. If a regional center fails to properly file Form I-924A, IPO will issue a notice of intent to terminate their participation of the regional center in the program, which may ultimately result in us terminating their approval and designation as a regional center. Last fiscal year, 105 regional centers failed to timely file the I-924A and received Notices of Intent to Terminate. Of these regional centers, we terminated designation for approximately 70%.
- Please note that this year there are some changes to Forms I-924 and I-924A that recently became available. As of January 5, 2021, USCIS will no longer accept the old I-924 and I-924A forms. What does that mean? For example:
  - If you file your I-924A before January 5, 2021:
    - You may use the previous form with an edition date of November 21, 2019, or the new forms with an edition date of July 23, 2020.
    - You should follow the instructions on the USCIS website for filing instructions and fees.
  - If you file late and file your I-924A on or after January 5, 2021:

- You must use the new version of the form with an edition date of July 23, 2020.
- You must file your form and fee according to the website instructions.
- The mailing address may be changing, so check the website to make sure that you are sending it to the correct address.
- Additional changes to the Form I-924A, clarify:
  - 1) That regional center principals must provide all other names the principal owner or non-owner has ever used, including aliases, maiden name, and nicknames.
  - 2) Regional centers must report the aggregate fees or other remittances that have been paid to the regional center or any of its principals, managing companies or agencies, or agents. (This includes fees, profits, surcharges, and other remittances).
- As noted in the Form I-924 instructions, USCIS may require that you appear for an interview or provide biometrics (fingerprints, photograph, and/or signature) at any time to verify your identity, obtain additional information, and conduct background and security checks, including a check of criminal history records maintained by the FBI, before making a decision on your form.
- There are steps you can take to reduce the chances of receiving Requests for Clarification/Requests for Evidence from USCIS regarding Form I-924A.
- Ensure the information in the form is accurate and that you complete the form entirely. If you do not complete the form according to the instructions, or if it contains incomplete or inaccurate data, we may issue a Notice of Intent to Terminate for failure to provide required information. If there are inconsistencies between what is provided on the Form I-924A and what was previously provided to USCIS, take time to explain why something is different.

- The form instructions note that there are specific documents you must include when submitting Form I-924A. For example, regional centers must include government-issued photo identification for all principals. Last year, a significant number of submissions did not include the required photo identification. Please review the form requirements and make sure that your submission is complete. This review will save us time and you time.
- Regional centers must report changes to the center's name, ownership, organizational structure, principals, and geographic area, among other things, by properly filing a Form I-924 amendment and paying the associated fee.
- Submit a Form G-28 with your Form I-924A if you are represented by an attorney.

## UPDATES

- I'd like to turn now to some additional operational updates and a couple of reminders that you may find helpful.
- Regarding I-526 and I-829 completions, during the six-month period after building a more robust quality assurance and control program, IPO completed the adjudication of an average of 212 Form I-526 petitions each month from March 2019 through August 2019. This year, IPO is averaging 304 Form I-526 completions per month during the same six-month period. **This is an increase of approximately 43%.**
- IPO has also improved upon I-829 completion rates. IPO averaged 157 Form I-829 completions per month for the six-month period of March 2019 through August 2019. **That average was 265 during the same period of 2020, an increase of approximately 68%.**
- On the topic of processing times, IPO would like to provide background to the update to the I-924 processing times that occurred over the summer. Previously, terminations were included in the data that I-924 processing times were based on. If the data set included a termination, the processing

time would be calculated from the date of initial receipt of the initial I-924 to the date of termination. This adjusted the overall I-924 processing times, as the period of time between the initial receipt of an I-924 and the termination date does not reflect the time an I-924 has been pending. We have removed the termination date from the calculation in the electronic system to more accurately reflect the actual processing time for a pending I-924 application.

- I encourage you to visit the USCIS website for FAQs that you may find helpful, including those on the modernization rule that became effective on November 21, 2019, and questions on the visa availability approach that began on March 31, 2020.
- You can also visit the website to review the remarks made at previous stakeholder meetings, as well as other web content that we consistently update.

## QUESTIONS SUBMITTED IN ADVANCE

- I would like to now address the questions we received in advance.

### **(1) Does the visa availability approach apply to a petitioner who has an approved Form I-526?**

No, the visa availability approach is IPO's inventory management approach for the assignment of **pending** Form I-526 petitions.

### **(2) How does the visa availability approach affect an investor from a rest of world (ROW) country with a historically small number of applicants?**

For petitioners with pending petitions and an available visa or a visa that will be available soon, IPO will prioritize the assignment of their Form I-526 petition before other Form I-526 petitions of investors without a visa available or soon to be available.

**(3) What is the impact on how many months a visa could take to be issued, especially now that U.S. Embassies are not fully operational due to COVID-19 constraints?**

Visa issuance falls under the purview of the Department of State. For additional information on visa availability and processing please visit [travel.state.gov](https://travel.state.gov).

**(4) How is USCIS processing Hong Kong petitioners' cases under the visa availability approach?**

For purposes of the visa availability approach, USCIS will continue to look to the Department of State's Monthly Visa Bulletin. USCIS compares a petitioner's country of birth to Chart B of the Visa Bulletin and uses this information, along with other factors, to determine which Form I-526 petitions should be processed first.

**(5) Several investors have suffered temporary halts to construction projects due to COVID-19 and statewide restrictions. Is the IPO considering those when the investors have not proceeded with the business plan due to stoppage of construction? Kindly clarify what the position of the IPO is in these situations.**

Each situation is reviewed on a case-by-case basis and based on the individual facts of the particular case. However, while we acknowledge that the pandemic may affect business realities, the petitioner or applicant must still establish each eligibility requirement by a preponderance of the evidence.

**(6) If the job creation is done and the project is benefitting the public (not only real estate developers), can you have a policy to ensure that investors will not need to reinvest in another project?**

The USCIS Policy Manual provides guidance on the capital at risk requirement, including the sustainment of that requirement through the conditional permanent residence period.

A foreign national seeking EB-5 immigrant visa classification must have invested or be actively in the process of investing the required capital in a new commercial enterprise and create full-time employment for not fewer than 10 qualifying individuals. See INA 203(b)(5). The foreign national's investment must be placed at risk. See 8 CFR 204.6(j)(2). The immigrant investor must sustain the investment, including the at-risk requirement, throughout the two years of the immigrant's conditional residence. See INA 216A and USCIS Policy Manual, Volume 6, Part G, Chapter 5.A(2).

**(7) With the current processing times for Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status, will IPO consider extending the 18-month conditional lawful permanent resident status on the I-829 receipt notice?**

At this time, USCIS is not considering extending the current 18-month conditional lawful permanent resident status extension upon receipt of a properly filed I-829.

**(8) What steps should a petitioner take to add an eligible derivative to a Form I-829?**

Petitioners should contact IPO's Inquiry Management Team at [uscis.immigrantinvestorprogram@uscis.dhs.gov](mailto:uscis.immigrantinvestorprogram@uscis.dhs.gov), placing, "Request to Add Derivative to Form I-829" in the subject line.

**(9) What steps should a petitioner take to resolve the improper rejection, from Lockbox staff, of a request to add an eligible derivative to a Form I-829?**

Petitioners should contact IPO's Inquiry Management Team at [uscis.immigrantinvestorprogram@uscis.dhs.gov](mailto:uscis.immigrantinvestorprogram@uscis.dhs.gov), if a petitioner believes we incorrectly rejected their request to add a derivative to Form I-829.

**(10) Can investors receive their investment back after submitting the Form I-829, if they have met the eligibility requirements at time of filing?**

To qualify for removal of the conditions on permanent residence, the immigrant investor must, in part, show that at least 10 full-time positions for qualifying employees have been created or will be created within a reasonable time, and provide evidence that they sustained their investment throughout the period of their status as a conditional permanent resident. USCIS reviews the investor's evidence to ensure sustainment of the investment for two years from the date the investor obtained conditional permanent residence.

Since the immigrant investor must submit Form I-829 within the 90-day period preceding the second anniversary of obtaining conditional permanent resident status, filing Form I-829 may not necessarily account for the entirety of the investor's required sustainment period.

In cases with a similar fact pattern, the required 10 jobs may not have been created or the record may not demonstrate that the requisite jobs will be created within a reasonable time, which may result in us denying the Form I-829.

**(11) What can a denied Form I-829 petitioner do to ensure that USCIS properly extends their I-551?**

The regulations state that if USCIS denies the Form I-829 petition, USCIS will provide written notice to the investor of the decision and the reason(s) and will issue a Notice to Appear. The investor's lawful permanent resident status and that of their spouse and any children will be terminated as of the date of USCIS' written decision. The investor cannot appeal this decision with USCIS; however, they may seek a review of the decision in removal proceedings.

Because an immigrant investor whose Form I-829 has been denied may seek review of the denial in removal proceedings, USCIS issues a temporary Form I-551 until an order of removal becomes administratively final. An order of removal is administratively final if the decision is not appealed or, if appealed, when the appeal is dismissed by the Board of Immigration Appeals.

**(12) Would a Form I-829 case adjudication be affected by the termination of its sponsoring regional center, if all other requirements have been met, such as job creation, etc.?**

It depends on the facts of the case. An immigrant investor's conditional permanent resident status, if already obtained, is not automatically terminated if the investor has invested in a new commercial enterprise associated with a regional center that USCIS terminates. The investor will continue to have the opportunity to demonstrate compliance with EB-5 program requirements, including through reliance on indirect job creation. However, there are times when the reason a regional center has failed to promote economic growth and USCIS has terminated its designation which may have a bearing on the I-829 adjudication. For example, depending on the facts of a particular case, if a regional center was terminated and there was evidence of misappropriation, such evidence could undermine the petitioner's ability to make the showings required under 8 CFR 216.6. In such a scenario, it is not the termination of the sponsoring

regional center that is affecting the I-829 adjudication but rather an evaluation of the applicable eligibility requirements.

**(13) How long does it take to change the ownership of a regional center by filing a Form I-924?**

We do not publish separate processing times for I-924 amendments related to ownership changes. Processing times for I-924s generally are available on our website at [egov.uscis.gov/processing-times/](https://egov.uscis.gov/processing-times/).

**(14) When will you publish the quarterly I-526 case status reports again? The report has not been updated since Quarter 1 of fiscal year 2020.**

We stopped publishing the I-526 specific report because those statistics are covered by the agency's collective forms reporting. Fiscal year 2020 data, which includes I-526 data, is available through Quarter 2 of fiscal year 2020 and can be found at [uscis.gov/sites/default/files/document/data/Quarterly\\_All\\_Forms\\_FY2020Q2.pdf](https://uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2020Q2.pdf).

**(15) 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?**

Yes.

**(16) Why are delays being encountered with sending an approved I-526, Immigrant Petition by Alien Investor, to the National Visa Center?**

The pandemic and USCIS' hiring freeze affected IPO staffing levels and workplace procedures. Early in the shift to pandemic-safe operations, IPO experienced operational deficits which temporarily impacted our program's ability to transition cases to the National Visa Center. This deficit has been identified and we are actively working to address this concern.

**(17) It appears that USCIS is now back to scheduling biometrics for I-829 petitioners and dependents. However, it appears that USCIS has been scheduling the petitioners first and dependents later. Can biometrics appointments for family members be consolidated?**

When USCIS offices temporarily closed on March 13, 2020, the Biometric Scheduling System canceled all pending appointments. When application support centers reopened, the system automatically started scheduling the petitioners. We are actively trying to schedule all family members on the same day, when it is possible.

**(18) Is USCIS considering implementing a premium processing fee for EB-5?**

USCIS is not considering implementing premium processing for the EB-5 investor program petitions and applications at this time.

## **CONCLUSION**

- I hope the information we have covered today has been helpful.
- You will find much of the information discussed today, including these remarks, on the USCIS website.

- Thank you for your attention. We appreciate your interest in the EB-5 program and thank you for the opportunity to speak with you today.