



EB-5 Reform and Integrity Act of 2022

FAQs

Prepared for IIUSA by Carolyn Lee, Esq., Of Counsel, IIUSA; Founder, Carolyn Lee PLLC

Question # 1:

What are the major impacts of the EB-5 Reform and Integrity Act of 2022 (“RIA”) to existing investors (those who are waiting for their immigrant visas and those whose I-526 is still pending?)

Carolyn Answer:

- **Case processing resumes**
 - **Pending regional center I-526s will be processed again.**
 - **Adjustments (AOS) can be filed if priority date is current under Chart B. (More on this later.)**
 - **NVC visa processing will resume.**
 - **Visa interviews can be scheduled if current under Chart A.**

- **Cases will be decided under law at time of filing, not the new law. So no increased investment or new TEA rules apply to the current cases.**

- **Concurrent AOS filings**

Good stuff.

Question # 2:

How will RIA affect new investors?

Carolyn Answer:

- **Grandfathering is huge. This is good for current and new investors. If there is a Regional Center program sunset in the future, that investors won’t suffer the uncertainty and gaps in processing.**

- **Project exemplars will be required before investor EB-5 filings. This will bring more transparency to project status. Investors will know if there has been an RFE or other USCIS question on the project. Note USCIS often has questions, so not to be confused with project having a problem.**
- **Greater protections in place from the start. For example, regional centers will be required to only have “good faith” actors involved with the regional center.**
- **On the flip side, lots of new provisions and questions. Also, higher investment amounts.**

Question # 3:

When will RIA go into effect?

Carolyn Answer:

- **Some provisions went into immediate effect. As of March 15, 2022, the new investment amounts are USD 800,000 for TEAs and Infrastructure projects and \$1.05 million for others.**
- **Other immediately effective changes:**
 - **TEA designations can only be made by DHS, not states.**
 - **Visa set-asides.**
 - **New kind of TEA – Infrastructure projects.**
 - **Required investor background checks**
- **Taking effect in 60 days:**
 - **Regional center oversight and sanctions**
 - **Rural cases – prioritized**
 - **New indirect job creation rules**
 - **Redeployment – anywhere in the U.S. if all the jobs created and no material change**
 - **Investor source of funds – includes admin fees**
 - **Fund administration**
 - **Protection of good faith defrauded investors**
 - **Exhaustion of administrative remedies required before going to federal court**

Question # 4:

When will USCIS resume adjudication? The April Visa Bulletin Chart A indicates “unavailable” for China-born EB-5 investors and Chart B has a date of December 2015, what does this all mean?

Carolyn Answer:

- **Reports of I-526 petition approvals already. Latest, cases should resume after 60 days.**
- **April VB – State Department seems to be taking the view that State needs to wait 60 days before resuming visa processing and visa issuance. Hopefully, it will at least re-open NVC. But we may need to wait 60 days.**

<p><i>APRIL 2022 VB:</i></p> <p><u>D. EXPIRATION OF THE EMPLOYMENT-BASED FIFTH PREFERENCE I5 AND R5 REGIONAL CENTER VISA CATEGORIES</u></p> <p>Statutory authorization under Division O, Title I, Section 104 of the Consolidated Appropriations Act, 2021, for the EB-5 Immigrant Investor Regional Center Program ended on June 30, 2021. No I5 or R5 visas may be issued overseas, or final action taken on adjustment of status cases after June 30, 2021.</p> <p>The final action dates for the I5 and R5 categories have been listed as “Unavailable” for April.</p> <p>The Consolidated Appropriations Act, 2022, which reauthorizes and reforms the EB-5 Immigrant Investor Regional Center Program, was signed by the President of the United States on March 15, 2022. Certain Regional Center Program aspects of this legislation go into effect 60 days after the date of the enactment of this Act. More information will be published in coming editions of the Visa Bulletin.</p>	<p><i>March 2022 VB:</i></p> <p><u>D. EXPIRATION OF THE EMPLOYMENT-BASED FIFTH PREFERENCE I5 AND R5 REGIONAL CENTER VISA CATEGORIES</u></p> <p>Division O, Title 1, Section 104 of the Consolidated Appropriations Act, 2021 extended the immigrant investor pilot program until June 30, 2021. No I5 or R5 visas may be issued overseas, or final action taken on adjustment of status cases after June 30, 2021.</p> <p>The final action dates for the I5 and R5 categories have been listed as “Unavailable” for February.</p> <p>If there is legislative action extending this category for February, the final action dates would immediately become “Current” for February for all countries except China-mainland born I5 and R5, which would be subject to a November 22, 2015 final action date.</p>
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Question # 5:

Visa set-asides: for existing or new investors? If existing investors can claim these visas, do these projects need to re-apply with DHS to qualify as rural/TEA/infrastructure?

Carolyn Answer:

- **Visa set asides are effective now. But State Department needs to figure out whether that means they will be allocated to (a) documentarily qualified**

current cases filed under the old law or (b) to new cases filed after enactment. *Stay tuned.*

Question # 6:

What is “grandfathering” and how will this protect investors going forward?

Carolyn Answer:

- **Grandfathering has 2 aspects: (1) avoiding retroactive application of new laws (like investment amount increases), and (2) continued processing of cases during a regional center program lapse.**
- **This protects investors by not changing the rules applicable to their cases. Importantly, it also allows their cases to continue even if we experience another lapse in the future, which we all hope will not happen.**

Question # 7:

RIA allows concurrent filing of adjustment of status applications with I-526 petitions – will this apply to visa backlogged investors?

Carolyn Answer:

- **Only if their priority date is current under Chart A (Final Action Date) on the Visa Bulletin.**
- **Earlier if the priority date is current under Chart B, if USCIS is accepting Chart B AOS that month.**

Question # 8:

RIA provides certain age protection measure for dependent children, what are they?

Carolyn Answer:

- **There is a one-time protection from age-out for children of investors whose CPR status is terminated – say for terminated RCs or debarred NCEs – if
 - the parent files a new I-526 petition within 1 year of termination of CPR, and
 - the child remains unmarried.**

- **Essentially \$800K to protect a child; so practically, would only do it if there is more than 1 child.**

Question # 9:

How does RIA protect investors if a regional center is terminated during the I-526 process or the 2-year sustainment period? And if the NCE or JCE does not create enough jobs? Will investors be able to retain their priority date?

Carolyn Answer¹:

- **Options**
 - **If complete job creation, then can amend their petitions to say “still good.”**
 - **If incomplete job creation, and RC is terminated, then:**
 - **Can associate with a new RC in good standing**
 - **Make a new investment in new NCE**
 - **If incomplete job creation, and NCE is debarred, then:**
 - **Can associate with a new NCE in good standing**
 - **Can invest more capital to complete job creation**
- **Protections**
 - **Investor receives notice of termination + 180 days in abeyance**
 - **Priority date retention**
 - **Amendments are protected from “material change”**
 - **Any recovered funds may be used for job creation credit (example: insurance, additional capital)**
 - **Deadlines extended**
 - **Conditions may be removed 2 years after subsequent investment**

Question # 10:

How will new TEAs be determined?

Carolyn Answer:

- **By DHS only. The states are out of TEA designations.**

¹ Special thanks to Senator Leahy, Senator Grassley, and their tireless staff – past and present – for working with me and IIUSA on these defrauded investor protections.

Question # 11:

Redeployment: Current USCIS guidance is that redeployment must occur within the same geographic area of the regional center. Does RIA change this? When is the change effective?

Carolyn Answer:

- **Redeployment can be outside the original regional center geography if all the jobs are created and the business plan has been executed without material change.**
- **RIA also calls for regulations. So we will have see what regulations USCIS will come out with and when.**
- **The change is effective 60 days after enactment.**

Question # 12:

What is the advocacy take-away from the RIA?

Carolyn Answer:

- **Try to file AOS now if you can – in the U.S. lawfully and current under Visa Bulletin Chart B/Dates for Filing (“C” for Direct, 12/15/2015 for RC). From [USCIS](#):**

For Employment-Based Preference Filings:

For all employment-based preference categories, you must use the [Dates for Filing chart in the Department of State Visa Bulletin for March 2022](#).

- [USCIS March 2022 Adjustment of Status Filing Charts](#)

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- **Monitoring visa movements is more important than ever now with Visa Set Asides and Concurrent AOS. State Department and USCIS policy will be fluid as Agencies figure out how to implement RIA.**

➤ *****New visa monitoring rubric**:***

<u>Visa Bulletin</u>	Visa Availability FAD/Chart A		Visa Availability DFF/Chart B		AOS FAD/Chart A		AOS DFF/Chart B	
	RC	Direct	RC	Direct	RC	Direct	RC	Direct
<u>APRIL 2022</u>	U	C	Only China 12/15/15	C	U	C	Only China 12/15/15	C
			ROW C				ROW C	
<u>MARCH 2022</u>	U	C	12/15/15	C	U	C	12/15/15	C

Action item for EB-5 Industry – Using visa numbers. We have double the number of EB-5 visas this fiscal year.

Take Down Visa Numbers!
