



June 28, 2022

Ms. Ur Jaddou
Director
U.S. Citizenship and Immigration Services
Via Email: uscisdirector@uscis.dhs.gov

**Re: AILA Questions to USCIS On Implementation of Temporary Injunction
Issued in Behring v. Mayorkas on June 24, 2022**

Dear Director Jaddou:

On behalf of the American Immigration Lawyers Association (AILA) and AILA's EB-5 Investor Committee, we write seeking clarification of the revised USCIS policies required to implement the Temporary Injunction Order issued on June 24, 2022 in the case of Behring Regional Center LLC v. Mayorkas (Case 3:22-cv-02487-VC) (hereinafter "Behring II").

As you are aware, on Friday June 24, 2022, United States District Judge Vince Chhabria for the Northern District of California ruled in Behring II that certain USCIS actions interpreting and implementing the EB-5 Reform and Integrity Act of 2022 ("RIA") was arbitrary and capricious within the meaning of the APA and ordered a nationwide preliminary injunction.¹ That decision (1) enjoins USCIS from "treating as deauthorized the previously designated regional centers" and (2) requires that "those centers must presently be permitted to operate within the regime created by the Act. This includes processing new Form I-526 petitions from immigrants investing through previously authorized regional centers."

Accordingly, we request urgent clarification and guidance from USCIS on the immediate implementation of the injunction in Behring II. This parallels USCIS policy adjustments to the EB-5 Program issued on July 6, 2021 to conform with the prior Behring decision.²

¹ AILA Doc. No. 22062732 (June 24, 2022).

² On June 22, 2021, the United States District Court (Northern District of California) issued an order vacating the 2019 EB-5 Immigrant Investor Program Modernization Final Rule ("Modernization Regulations")¹ in a lawsuit titled, *Behring Regional Center LLC v. Wolf et. al.*, (3:20-cv-09263-JSC). The ruling was issued effective immediately and its impact is national in scope. As a result of that decision, USCIS issued the following response:

*"On July 6, 2021, USCIS issued a notice reinstating the pre-Modernization Regulations. On June 22, 2021, the U.S. District Court for the Northern District of California, in *Behring Regional Center LLC v. Wolf*, 20-cv-09263-JSC, vacated the EB-5 Immigrant Investor Program Modernization Final Rule (PDF). While USCIS considers this decision, we will apply the EB-5 regulations that were in effect before the rule was finalized on Nov. 21, 2019."*

Our below questions relate to RIA implementation, considering Behring II, regarding regional center-affiliated Form I-526 filings:

1. When will USCIS update its web site to reflect implementation of the preliminary injunction?
2. Is the Form I-956F required for “exemplars” approved before RIA’s enactment given that the new Section 203(b)(5)(F)(ii) states the “approval of an application under this subparagraph, **including approval before the date of the enactment of this subparagraph, shall be binding**”.
3. Is USCIS immediately accepting Form I-956F supplements for project pre-approval applications?
4. RIA section 103(b)(1) creating the new INA Section 203(b)(5)(E)(ii)(III) states USCIS “(III) shall deem such petitions [I-526 petitions] to include records previously filed with the Secretary pursuant to subparagraph (F) if the alien petitioner certifies that such records are incorporated by reference into the alien’s petition.” The Form I-526 instructions, however, enumerate a list of evidence to accompany the petition that are redundant in that the same evidence is also required to be included in the regional center business plan pursuant to subparagraph (F). The list includes, for example, Job Creation evidence, but filings under subparagraph (F) are required to contain a comprehensive business plan and economic analysis to establish job creation.

Please confirm that by investor certification that the records previously submitted with the Secretary pursuant to subparagraph (F), the petition will be deemed to include the evidence also listed on the Form I-526 instructions. The contrary would defeat the purpose of such certifications, as I-526s would still need to include all the documents in I-956F. It is understood that filings under subparagraph (F) will not include evidence of lawful capital invested by investors; accordingly, investors must continue to provide, of course, lawful source of funds documentation.

5. Please instruct on what evidence is required to show that a regional center has fulfilled the new INA Section 203(b)(5)(F)(i) requirement that “a regional center shall file an application” under subparagraph (F) “before any alien files a petition for classification”. Stakeholders are concerned about delays in USCIS issuing receipts of the Form I-956F. **Will USCIS accept proof of Form I-956F delivery to USCIS to allow investors to file petitions for classification, or will a formal I-956F receipt be required?** If the latter, please confirm that these will be promptly issued.

These questions are urgent and require prompt guidance. Please publish the guidance on the above questions to the public.

Should you have any questions, please contact AILA's Director of Government Relations, Shev Dalal-Dheini, sdalal-dheini@aila.org, or AILA EB-5 Investor Committee Chair, David Morris, morris@visalawgroup.com

Kind regards,

AMERICAN IMMIGRATION LAYWERS ASSOCIATION

CC: Alissa Emmel, Chief Immigrant Investor Program Office
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