



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION



January 18, 2023

Ms. Alissa Emmel
Chief
Immigrant Investor Program Office
U.S. Citizenship and Immigration Services
Washington, DC 20529

Re: Critical Substantive Engagement Toward Efficient RIA Implementation

Dear Ms. Emmel:

On behalf of the undersigned organizations involved in EB-5 advocacy, we thank you for the USCIS Investor Program Office (“IPO”) National Engagement held on October 19, 2022 (“October 2022 Engagement”). It was helpful to be introduced to IPO leadership and learn directly about initiatives and priorities within the IPO.

An important recurring theme among stakeholders dialing into October 2022 Engagement was the request for a meaningful and substantive engagement with the IPO on implementing the EB-5 Reform and Integrity Act of 2022 (“RIA”). The point of such substantive engagement would be to avoid what the ruling judge in recent litigation against the USCIS deemed a “clearly erroneous” interpretation of the RIA.

When we called into the October 2022 Engagement, we reiterated the point that resolving interpretive questions the RIA raises through litigation, or alternatively, by unilateral agency action, frustrates both the RIA’s purpose and the interests of concerned stakeholders. As the recent confusion surrounding the I-956 and I-956G filings by the end of last year showed, substantive engagement between stakeholders and USCIS in the post-RIA world is more critical now than it has ever been.

The goals of such a dialogue would be to bring awareness about open interpretive questions and to engage in technical discussions examining the different possible interpretations and the impacts they would have on stakeholders. For example, the dialogue could focus on the best interpretation of the RIA regarding sustainment. Leveraging legal and policy experts from both the IPO and the EB-5 industry could bring to bear precedent, prior interpretations of same or similar concepts, prior legislative drafts, current policy, and commercial impacts to together devise the most appropriate interpretation.

During the October 2022 Engagement, the IPO requested examples of substantive or meaningful dialogues USCIS has held with stakeholders in the past. We attach to this letter examples of engagements that were substantive, specific, and impactful. For example, the July 2012 engagement with USCIS economists was among the first tackling the highly technical topic of indirect job creation. This was a productive engagement in which USCIS economists put forth their interpretations and took feedback from stakeholders on a narrow and technical topic. Similarly, a May 2013 in-person engagement regarding ELIS and the document library concept was fruitful where IPO leadership advanced the idea of centrally depositing common project documents appearing in all associated investor petitions without copying them in each petition. Thanks to the engagement, this idea had the opportunity to be socialized among legislative advocates and is now a part of the RIA.

The meaningful dialogue we seek is compatible with the transparency provisions of the RIA. Section 107 of the RIA requires USCIS to act impartially and prohibits USCIS from giving preferential treatment to any party. Under Section 107, meeting regional centers, new commercial enterprises, job-creating entities, or any person or entity associated with those types of entities at their request and in a manner not accorded to others is also prohibited. Rather than meeting with such direct beneficiaries of the EB-5 program regulated directly under the RIA, we urge you to meet with industry and bar advocacy organizations including AILA, Invest in the USA (IIUSA), the U.S. Chamber of Commerce, and other nonprofit advocacy groups interested in efficient RIA implementation holistically.

Thank you for your kind attention to this important matter. We all worked hard toward the RIA's passage and we are excited about the new opportunities for economic development and job creation it will bring to the U.S. We are confident that you will agree that we can and should work more closely together to ensure the RIA achieves its full potential.

Please reach out to the undersigned organizations to further discuss and coordinate this request. We look forward to engaging with you.

Sincerely,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION (AILA)

EB-5 INVESTMENT COALITION (EB-5IC)

INVEST IN THE USA (IIUSA)

U.S. CHAMBER OF COMMERCE

Attachments

cc: The Honorable Ur Jaddou, Director, United States Citizenship and Immigration Services
Emilie Hyams, Deputy Chief of Staff
Carrie Selby, Associate Director External Affairs Directorate
Michael Valverde, Associate Director Field Operations Directorate
Carlos Munoz-Acevedo, Chief, Public Engagement Division