



USCIS Regional Center Site Visits



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The passage of the EB-5 Reform and Integrity Act of 2022 (“RIA”) brought about many changes to the EB-5 program. Several of these changes renewed and enhanced the focus on reporting, program compliance, and transparency. The RIA also established the EB-5 Integrity Fund to provide USCIS with the resources needed to conduct more frequent and consistent regional center and project audits, amongst several other goals. However, USCIS conducting in-person audits of regional centers and their sponsored projects is not new. These initiatives have existed for many years, but in 2018 USCIS commenced the process of conducting formal, in-person, compliance reviews. In this article, CMB Regional Centers and EB5 Capital will offer their firsthand experience with these audits. CMB Regional Centers will share their insights from one of the earliest USCIS compliance reviews focused on its CMB Export, LLC regional center. EB5 Capital will share their recent experience with respect to project site visits associated with I-829 adjudications.

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REGIONAL CENTER AUDITS: PREPARATION, PREPARATION, PREPARATION.

By Pam Ellis, Senior Vice President, CMB Regional Centers.

Even today, very few regional center operators have experienced an in-person regional center compliance review from USCIS. What's more, until a regional center operator receives a formal Notice of a USCIS Compliance Review outlining specific requests, it is hard to anticipate the parameters. But preparation for a USCIS audit does not begin with the receipt of the notice; it truly begins when a company files its Application for Regional Center Designation, previously the form I-924 and now the form I-956. With each application, even pre-RIA, an aspiring regional center was required to outline and describe its organizational structure, operating procedures, and regional center administration. These requirements have now been enhanced under the RIA. The compliance review creates an opportunity for USCIS to confirm, in-person that each regional center is practicing what they have promised.

Receiving any notice from USCIS can be intimidating when you are given a very short window to prepare or respond. In August of 2018, CMB received a notice stating that USCIS representatives would be visiting our office in two weeks and provided a data collection list of items to have available for their review. Naturally, and as we would recommend, our first call was to our immigration counsel to inform them of the notice, request that they advise on our preparation, and be present during the visit. It was also incumbent upon our team to clear our schedules and make ourselves available for the planned two-day visit regardless of any prior commitments. Being prepared and making the process smooth for USCIS is imperative, not only to maintain your regional center's designation but, most importantly, to help maintain and ensure a successful immigration path for your investors.

Under the direction of Pat and Noreen Hogan, our team developed a plan to present information to USCIS above and beyond their written requests. Although the compliance review was focused on our CMB Export, LLC regional center alone, we believed it was necessary to outline the history of CMB's 15 designated regional center designations. In part, this background information allowed us to note that by auditing the practices of one of the CMB Regional Centers, USCIS was actually auditing the practices of all our regional centers. For those companies with multiple regional center designations, this also highlights the importance of maintaining consistency in applications by which each regional center is established. With little understanding of what additional information could be sought by USCIS, our best course of action was to rely upon our own best practices.

Upon the arrival of the two USCIS field officers, we welcomed them to our office and introduced them to our staff, and toured them through our building, meeting team representatives from various departments along the way. We settled into our conference room, where we began several presentations, taking most of the first day's visit. Throughout our presentations, the USCIS field officers were engaged, took notes, and asked great questions. It was clear that this was a new concept for the field officers and somewhat of a learning experience that would guide their questions in future compliance reviews of other regional centers.

Our initial presentation covered our history and company structure and provided the opportunity to highlight Pat Hogan's involvement in EB-5, which precedes the EB-5 Regional Center Program and the 1997 federal designation of CMB Export. It was important to us to note what sets CMB apart from any other

regional centers USCIS may have visited, as not all regional centers are created equally and do not fit into the same box. From our perspective, providing this information helped guide the conversations with USCIS representatives by giving them an understanding of our structure and the evolution of our practices which have paralleled, and in many instances, preceded the evolution of the EB-5 program.

Throughout the visit, additional presentations were made highlighting the activities of each of our company's departments, featuring the management teams that oversee each department. A unique characteristic of CMB is that we have teams in-house that perform several functions that are often outsourced by other regional centers or vertically integrated regional centers/developers. Presentations were made by CMB's project development, financial analytics, economics, project compliance, legal, client relations, securities compliance, and IT teams. Each department was prepared to provide a high-level overview of their department and provided hard copy items they felt necessary to share. We understand that not all regional centers are structured to this level of sophistication; however, outlining these departments within our company and noting their best practices proved important to a successful compliance review. Many regional centers are simply not structured to include these teams in-house and rely upon several outsourced components that may or may not be available on short notice to provide feedback during a compliance review. Many regional centers often rely on migration agents and referral relationships to be the source of communication with their clients and have very few practices in place to administer guidance and information to clients as they proceed through their immigration process. One should question and should be prepared for what could be requested by USCIS and be able to outline the efficiencies and effectiveness of these structures during a compliance review.

Lastly, a final presentation was prepared as a case study of one of CMB's then-recent offerings. We walked the USCIS field officers through the life cycle of an EB-5 offering, from vetting a potential project, underwriting, securities compliance, legal, offering of the partnership, subscription, acceptance as a Limited Partner, accounting practices such as the transfer of investment funds and limited partner financial statements, communication practices such as limited partner notices, project updates, project financial reporting, immigration document preparation for I-526 and I-829 filing templates, as well as the return of capital process, wrap up and dissolution of a partnership. This was done by reviewing the physical documentation of these processes as well as the tracking of information within our database that allows our teams to pull various reports on our over 6,000 individual investors that may be required for reporting purposes. This segment was crucial in providing the field officers with the best possible understanding of our operation and the full path that each investor takes from a process standpoint beyond the immigration cycle alone.

We wrapped up the on-site visit by early afternoon on the second day. A few weeks later, we received a confirmation letter that the USCIS had completed their compliance review and no further action was required. Since that time, we have included the confirmation letter in various USCIS filings, most recently with our I-956 Regional Center applications. Throughout the compliance review, we were confident in our practices and were able to provide meaningful responses to each of their questions. The USCIS field officers were respectful, inquisitive, and not at all confrontational. It was clear that their goal was to confirm that we practiced what we promised and that we had systems in place to properly vet and continuously administer each of our offerings and their respective investors.

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As a regional center, CMB has consistently pushed for greater transparency. We were one of the first, if not the first regional centers to subject ourselves to third-party auditing beginning in 2014. We do believe that our well-developed best practices and culture of transparency allowed our company to easily navigate the compliance review process. However, as the program evolves, we expect that future USCIS audits will also evolve, and should USCIS see flaws within the operations of other regional centers during these audits, their standards and the depth of their questions will likely increase. As mentioned above, preparation shouldn't start when the Notice of Compliance Review is received. The best practices highlighted with the establishment of each regional center should already be at the heart of your day-to-day operations. If they are, a USCIS audit of any kind should be a simple process.

PROJECT SITE VISITS: HOW TO PREPARE FOR THE UNEXPECTED.

By Mariana Gomez, Senior Vice President, EB5 Capital.

Founded in 2008, EB5 Capital has successfully funded 30+ EB-5 real estate projects, has fueled economic development throughout the United States, and has created thousands of new jobs for American workers. Interestingly, it was just late last year that EB5 Capital had its first experience dealing with a project site visit. We have many projects near USCIS's headquarters, so we had been expecting and planning for site visits long before one actually occurred. However, EB5 Capital's recent project site visits involved two of our hotel projects in California, followed by another one of our hotel developments in New York City. While all three visits had many things in common, the inspections were also unique in their process.

All site visits were conducted by officers of the USCIS' Fraud Detection and National Security Directorate, who identified themselves as such at the time of the call and visit. Each of the site visits was announced via phone call to EB5 Capital; however, you should not necessarily expect 24-hour notice as the regional center may be informed about a visit just a few hours prior to the inspection. And, unlike regional center audits, there is no advance notice as to what the officer will be seeking. All the site visits were made in the context of an I-829 petition review but not necessarily the first I-829 petition filed in connection with the specific project being inspected. All the site visits lasted a relatively short period of time and involved officers taking pictures of the project and asking questions regarding job creation and operations.

EB5 Capital partners with experienced and highly reputable developers seeking EB-5 project financing through our regional centers and EB-5 offerings. We fully disclose to our development partners the possibility and implications of one or more project site visits by USCIS representatives during the life of the development. Moreover, we require full cooperation from our developer partners before, during, and after a project site visit, and we require that they direct all inquiries by USCIS officers to EB5 Capital. We suggest all regional center operators follow this practice as it will reduce the risk of surprises and help prevent unnecessary delays or complications that may result from on-site workers or employees providing inaccurate or incomplete information to officers during their visit.

At the time of inspection, construction for all three of our projects was complete, and the hotels were open to the public and fully operational. USCIS representatives were greeted by front desk employees who ultimately connected the officers to the

respective hotels' General Managers. EB5 Capital was not present during the site visits, and we do not believe it is imperative that a regional center representative attends the inspection as long as clear directions have been provided to on-site workers or employees on how to respond and proceed in the event of a project site visit. If sufficient notice is provided, it would certainly be preferable to have one of our team members present.

Of the three site visits we have mentioned, one of them ended after the USCIS officer left the project site with no further communication. The other two involved post-visit phone and/or email communications between EB5 Capital and the USCIS officers. In the post-visit communications, USCIS officers requested certain information and documents about each respective I-829 petitioner and their projects. The interactions with both officers were very pleasant and even somewhat informal. After the site visits, we consulted with our immigration counsel regarding the site visits and follow-up requests. We fully cooperated in providing responses and sought to foster a cooperative exchange with the USCIS officers. As a regional center operator, EB5 Capital performs all critical functions in-house, including deal sourcing, due diligence and project analytics, finance, IT, and marketing. While we have outside counsel oversee our deal, offerings, and immigration compliance, even those documents are initially drafted in-house. We make certain our team knows our projects, our project documentation, our investors, and our best practices. We have all the information we need at our fingertips.

It is unclear whether the USCIS officers who visited the respective projects received and had the opportunity to review each petitioner's file, as some of the documents and information required after the project site visits had already been provided to USCIS as part of the I-829 submission. In addition, the nature and scope of some of the inquiries led us to quickly realize that officers of the Fraud Detection and National Security Directorate may not be as well versed on EB-5 specific matters as one would anticipate. In the event of a project site visit, expect and be ready to clearly outline the role of the regional center and the project developer/operator with respect to managing the project, as well as tracking and reporting relevant EB-5 information, particularly as it relates to job creation.

Over the years, EB5 Capital has developed strict Standard Operating Procedures that involve ongoing and timely collection and storage of information and documents from the developer about the EB-5 project. We strongly encourage all regional center operators to pay attention to these practices, as well as preemptively assign clear roles and responsibilities within their teams. Best practices in these areas will enable a regional center to effectively and efficiently address questions and requests that may arise after a project site visit. Although there is room for training and improvement by USCIS, overall, we have been satisfied with the site visit process and the post-visit results, which have included speedy I-829 approvals.

In our view, each project site visit offers regional centers a chance to show USCIS and other EB-5 stakeholders the compliance measures in place and the tangible positive impacts achieved by the EB-5 Program. Both regional center audits and project site visits are unique opportunities to feel proud of what we are building and the way we are building it. We welcome and support all initiatives and ongoing efforts by USCIS developed in the context of the RIA to oversee the implementation of the EB-5 Program and ensure its long-term sustainability. ■