IIUSA
Regional Center BUSINESS JOURNAL

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Bringing Dignity to the EB-5 Immigration Process

Hey, Regional Center, Why Do You Treat Me Like You Do?

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AND LEARN ABOUT OUR ELEMENTÉ AT CASA GRANDE PROJECT

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Nysa EB-5 is proud to be the Host City Sponsor
for the 2024 IIUSA EB-5 Industry Forum

Nysa EB-5 specializes in EB-5-structured project financing, operating with an investor-centric, compliance-oriented service delivery model. Since 2014, we have been a recognized leader in the immigrant investor space, providing thought leadership to streamline processes and establishing standards that are now being adopted throughout the industry as best practices. We operate a proprietary global network of prospective investors, immigration agents and financial advisors who work exclusively with our team to deliver quality investment projects.

FOR MORE INFORMATION, CONTACT GEORGE GRIFFIN
at george.griffin@nysacapital.com or +1 404.239.2222

NYSA EB-5

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Board of **DIRECTORS**

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Leadership **CIRCLE**

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Letter from the *Editor*

Dear Readers,

Welcome to our latest edition of IIUSA's Regional Center Business Journal and the first one of 2024. Now that we are two years into the post-2022 Reform and Integrity Act (RIA) regime, there is a sense that the regional center business has matured. The recent "March rush" to file I-956F project applications (and if one was lucky, also corresponding I-526E petitions), proves once again that things have changed but also not changed. Rushing to get filings done was the norm over the past years as the industry tried to respond to lapses in the EB-5 program or unexpected USCIS pronouncements.

This recent rush though may have been unique to some in terms of the "new" rigor imposed by compliant regional centers on its affiliates. Personally, I was pleased to work with the many regional centers and their counsel that took their instrumental role seriously. Those project participants that were new to the game, however, likely encountered a demand for documents, disclosures and accountability that perhaps was not the norm to some in the past. And now that USCIS appears to be readily sending out audit requests, we all must get ready for more rigor and probably some more "awakenings."

All that aside, we should all be pleased…since in my view "EB-5 is working" and has improved as RIA continues to shape how regional centers must approach their roles and responsibilities.

On behalf of the Editorial Committee, we hope our latest edition of the RCBJ provides helpful guidance and insights. As always, if you have ideas for a future article or you would like to get involved with our committee, please feel free to reach out to me directly at ozzie@torreslaw.net or contact staff at education@iiusa.org.

Thank you for your readership!

Osvaldo (Ozzie) Torres
Editorial Committee Chair
IIUSA *Regional Center Business Journal*

IIUSA Editorial Committee

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THANK YOU TO OUR 2024 EB-5 INDUSTRY FORUM *Sponsors*

Nysa EB-5 specializes in EB-5-structured project financing, operating with an investor-centric, compliance-oriented service delivery model. Since 2014, we have been a recognized leader in the immigrant investor space, providing thought leadership to streamline processes and establishing standards that are now being adopted throughout the industry as best practices. During the pandemic, Congress did not provide a resolution authorizing the continuation of the program; however, Nysa EB-5 continued to review and make strategic changes to our processes in anticipation that the program would eventually be renewed. In March 2022, the passage of the EB-5 Reform and Integrity Act of 2022 reauthorized the EB-5 Regional Center Program for five years and provided several other updates and amendments to the program that the industry had been waiting for for many years. Nysa EB-5 embraces the changes and amendments and goes well beyond the baseline requirements to ensure a successful path to citizenship for our investors.

Pine State Regional Center is a subsidiary of Arkansas Capital Corporation, one of the oldest economic development institutions in the United States founded in 1957. We are a well-known non-profit organization with a heavy emphasis on risk control and our management team has a long track record of creating jobs and working closely with the state and federal government.

For 65 years, ACC has originated, structured, and executed development financing transactions to support economic growth, with an emphasis on rural and underserved areas. Pine State is dedicated to continuing that success through our EB-5 investment offerings, providing confidence and security for our EB-5 investors.

CMB Regional Centers is a leading provider of EB-5 investment opportunities, focusing on job creation projects in targeted economic areas throughout the United States. With a track record spanning more than 25 years, CMB has helped countless investors achieve immigration goals while contributing to regional economic development. Renowned for our expertise, transparency, and commitment to investor success, CMB Regional Centers stands at the forefront of the EB-5 Visa program.

Founded in 2010, SRC's regional designation has expanded to 10 states encompassing the Southeastern Automotive Corridor. SRC has managed five successful EB-5 funds for investment into rural area manufacturing projects. All investors into these funds whose petitions have been adjudicated have been approved for conditional residence or permanent residence. For those who have been approved for permanent residence, 100% of their principal investment has been returned. SRC's team consists of accomplished financial, real estate and legal professionals. SRC has also developed a team of trusted partners including: the former Chief Immigration Officer in charge of Regional Center designation and EB-5 petition adjudication, the former Chief of the Investment & Economic Analysis Division for the Department of Homeland Security, and highly respected and internationally known immigration attorneys.

EB5 Capital provides qualified foreign investors with opportunities to invest in job-creating commercial real estate projects under the United States Immigrant Investor Program (EB-5 Visa Program). As one of the oldest and most active Regional Center operators in the country, the firm has raised over $1 billion dollars of foreign capital across more than 35 EB-5 projects. Headquartered in Washington, DC, EB5 Capital's distinguished track record and leadership in the industry has attracted investors from over 70 countries. In addition to U.S. permanent residency, EB5 Capital offers real estate private equity investments and non-U.S. Citizenship by Investment Programs.

Carrasquillo Law Group (CLG) is a boutique law firm consisting of a multi-disciplinary group of attorneys from various practice areas, offering our clients –both domestic and international– a deep level of advisory experience regarding both their business and legal needs.

Our attorneys come from large law firms and international practices and understand the needs of our entrepreneurial-minded clients.

CLG's practice areas include Corporate & Securities, Immigration, Real Estate & Finance, International Tax, Litigation and Compliance Services. The EB-5 practice group focuses on all aspects of the EB-5 program. We bring an international perspective with a local understanding to our clients.

AMERICAN LIFE

Founded in 1996, American Life, Inc. operates the country's longest-established EB-5 Regional Center program, having helped over 3,000 investors and their families immigrate to the United States through equity-based investment projects. American Life has completed more than 45 projects, and oversees an investor-owned portfolio of internationally-branded hotels, office buildings, and industrial and commercial real estate worth over $1.5 billion USD. As an industry leader, we are actively working with IIUSA and the U.S. Congress to help shape the future of investment-based immigration to the United States. American Life is currently accepting investors for EB-5 projects under development though its partnership with Intermountain Hotel Group.

customers bank

Customers Bancorp, Inc. (NYSE:CUBI) is one of the nation's top-performing banking companies with nearly $22 billion in assets making it one of the 80 largest bank holding companies in the US. A pioneer in Banking-as-a Service and digital banking products, Customers Bank's commercial and consumer clients benefit from a full suite of technology-enabled tailored product experiences delivered by best-in-class customer service.

flagstar PRIVATE BANK

Flagstar Bank is a leading regional bank with a balanced, diversified lending platform and a branch network of 420 locations. This includes strong footholds in the Northeast and Midwest, with exposure to high-growth markets in the Southeast and on the West Coast. The Private Bank has banking teams with offices in over 10 cities in the Northeast, Florida, and on the West Coast. We embrace a single point of contact culture that enables us to offer dedicated and responsive service, drawing on the client-centric culture of one of America's largest and most well-regarded regional banks.

FRAGOMEN
Private Client Practice

Fragomen is the world's leading provider of immigration services, providing immigration services in more than 170 countries. Our Worldwide Private Client Practice helps individuals navigate and plan for their movement around the world to expand and secure their personal and financial security and stability, leverage global business opportunities and enhance their quality of life. Available in multiple countries, alternative citizenship and residency programs promote economic growth through investment and offer immigration benefits to investors.

JTC

JTC is a publicly listed, global professional services business with deep expertise in fund, corporate and private client services. Every JTC person is an owner of the business, and this fundamental part of our culture aligns us with the best interests of all our stakeholders. Our purpose is to maximize potential, and our success is built on service excellence, long-term relationships and technology capabilities that drive efficiency and add value.

JTC provides a full suite of bespoke Fund Administration solutions across multiple asset classes (private equity, real estate, venture capital, debt, impact, Opportunity Zones, insurance dedicated funds) in the US and abroad. As the industry leader in Specialty Financial Administration, the company offers purpose-built solutions for markets characterized by high administrative and regulatory complexity, elevated transaction security needs, and challenging compliance requirements, including EB-5, 1031 Exchange, and Delaware Statutory Trusts. Along with their Private Client, Trustee, and Corporate Services divisions, JTC's US Institutional Client Services team combines sector-specific expertise with industry-leading technology to be a true partner in growth for our clients.

To learn more, visit JTCGroup.com.

GROUP GLOBEVISA

Globevisa Group, established in 2002, is an immigration advice provider based in Singapore that offers services on different immigration programs meticulously selected by Globevisa's expert team. With 39 offices dotted around the world serving clients from 96 countries or regions, running over 300 programs, covering major cities in Asia, Americas, Europe and Oceania, Globevisa has a truly global perspective and is dedicated to realizing relocation dreams for people worldwide.

hcglobal FUND SERVICES

HC Global is a financial services firm with a commitment to white-glove bespoke services. Since 2008, we have steadily grown into a powerhouse team, delivering services across Fund Administration, Accounting and Bookkeeping, Tax and Compliance.

HC Global has its footprint beyond San Francisco, with offices in key operating hubs in Philippines, Canada, BVI, India, and Singapore. Leveraging our global experience and robust connections, we offer customized solutions, enabling our clients to navigate complex regulatory environments.

Metropolitan Commercial Bank
The Entrepreneurial Bank Since 1999
MCB LISTED NYSE

Metropolitan Commercial Bank (the "Bank") provides a broad range of business, commercial and personal banking products and services to individuals, small businesses, private and public middle-market and corporate enterprises and institutions, municipalities, and local government entities.
Metropolitan Commercial Bank was named one of Newsweek's Best Regional Banks and Credit Unions 2024. The Bank was ranked by Independent Community Bankers of America among the top ten successful loan producers for 2023 by loan category and asset size for commercial banks with more than $1 billion in assets.

Burr & Forman's experienced legal team serves clients with local, national, and international legal needs. With industry strengths in financial institutions, manufacturing, health care, and food and beverage sectors, our attorneys draw from a diverse range of backgrounds to serve as trusted business advisors and legal counsel to help clients achieve their goals. Burr & Forman is a regional law firm with 350 attorneys in Alabama, Delaware, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee.

MEYER LAW GROUP
YOUR DREAMS.OUR EXPERTISE.TOGETHER

Meyer Law Group provides immigration and legal services to corporations, small businesses, and start-ups. We offer unparalleled knowledge, unflagging quality, and long-term value to our clients. At MLG, we offer various types of immigration services, including immigrant and non-immigrant visas. Visit is at www.meyerlawgroup.us to see how we can help you achieve your immigration dreams.

Our staff speaks nine different languages and is highly experienced in filing all types of immigration matters. Brandon Meyer brings over 23 years of experience in business immigration practice and is ranked in the Top 25 Immigration Attorneys in the EB-5 Industry. Paul Chen brings over 15 years of EB-5 experience and has represented Indian, Chinese and Vietnamese clients.

Our team specializes in providing immigration services for E-1, E-2, L-1, EB-5, H-1B, O-1, TN, and National Interest Waivers. We also provide immigration compliance services for startups and multinational corporations.

INVESTAMERICA

InvestAmerica provides comprehensive advisory, compliance, and placement services to EB-5 Regional Centers since 2012. Our experienced registered financial professionals lead our capital raising efforts across the globe prioritizing due diligence, compliance, and investor protection with a 100% visa approval success rate. Our EB-5 team includes Mike Xenick, Irina Rostova, Vivek Tandon, Fabiola Bueno, Marcelo Salas, Paul Heuwetter and Ruben Ignacio Briceno. Securities offered by Sequence Financial Specialists LLC, member FINRA/SIPC.

EB-5 COAST TO COAST

Established in 2012 by Steve Smith, EB5 Coast to Coast is one of the largest owners of Regional Centers in the country, with coverage spanning every state, except Alaska. Our RC's sponsor dozens of projects with hundreds of investors. As the RC sponsor, we offer competitive pricing and a comprehensive compliance role.

CanAm Enterprises
EB-5 U.S. Immigration

CanAm, with 35 years of experience in immigration-linked investment funds, has built partnerships with Fortune 500 companies, multinational enterprises, and regional developers so that we can provide EB-5 investors with top-tier EB-5 investment opportunities tailored to their immigration and investment objectives. CanAm, in its 20 years in the EB-5 Program, has raised $3+ billion in EB-5 capital, and more importantly, has had 51 projects repaid to date totaling $2.25+ billion. It counts 5,200+ conditional green card approvals and 2,600+ permanent green card approvals among its CanAm investor families.

HOUSTON EB5

Houston EB5 is a USCIS-certified regional center founded in 2011 by Roberto Contreras Sr., a former EB-5 immigrant. We specialize in managing over $1.3 billion in project costs nationwide and sponsor more than 1,400 green cards. Our team, composed of immigrants working for immigrants, ensures personal service and direct partnership with clients, achieving successful I-526E and I-829 approvals through dedicated communication.

OSP
O'BRIEN-STALEY PARTNERS

O'Brien-Staley Partners (OSP) is a Minnesota-based investment manager focused on credit intensive assets. Since 2010 OSP has recapitalized loans with private sector capital across all asset classes including hospitality. In the process, OSP gained an understanding of the nuances of various federal programs including EB-5, NMTC, SBA 504, USDA, etc."

HILTON
GLOBAL ASSOCIATES

Hilton Global Associates, an investigative due diligence firm, can mitigate risk for investors, and regional centers by conducting enhanced due diligence background checks on projects and applicants. An authorized due diligence provider for CBI programs, Hilton Global's team has significant experience in order to obtain critical intelligence.

PENG & WEBER
greencardlawyers.com

Peng & Weber handles all aspects of EB-5 from setting up regional centers and projects to filing high volumes of investor petitions. Firm leaders, Elizabeth Peng and Cletus M. Weber, have both served on AILA's national EB-5 Committee, and Mr. Weber currently serves on the Board of Directors of IIUSA.

AMERICAN DREAM FUND ADF

Founded in 2008, American Dream Fund has been successfully promoting EB-5 investment across the United States in job-creating real estate-based investments. American Dream Fund is proud of the many immigration success stories all the way through to the permanent resident green card. And since 2008, we have been a proud supporter of IIUSA, serving multiple times on its Board of Directors, and continuing to serve on the President's Advisory Council.

KKTP | KURZBAN KURZBAN TETZELI & PRATT P.A.

Kurzban Kurzban Tetzeli and Pratt P.A. ("KKTP") is the leading law firm in complex immigration litigation in the United States, including specializing in EB-5 litigation. KKTP has litigated over 50 federal immigration cases, has argued in the Supreme Court and the lower federal courts, & obtained the only EB-5 circuit court precedent decision in Chang v. U.S., 327 F.3d 911 (9th Cir. 2003). KKTP successfully represents regional centers and investors in federal courts to review denials of I-526 and/or I-829 petitions, mandamus actions to obtain adjudications, and representing individual investors who seek review of their denied 1-829 petitions in removal proceedings before the immigration court.

bakertilly

Baker Tilly is a leading advisory CPA firm consistently recognized by the EB-5 industry as a top service provider, specializing in EB-5 economic job creation studies, business plans, and fund administration services. Baker Tilly's extensive track record is a testament to its unmatched expertise, guiding clients through the complexities of the EB-5 process with personalized, end-to-end support.

TORRES LAW
EB-5, Corporate, Securities & Media
www.torreslaw.net

Torres Law, P.A., is widely recognized as a leading EB-5 corporate and securities law firm. Our core mission is to provide incisive no-nonsense advice, unparalleled service, and top tier work product. Since 2010 we have successfully counseled and guided numerous regional centers, developers and issuers through the ever-changing EB-5 landscape, including many EB-5 sponsors engaged in hotel development, multi-family, senior living, healthcare, mining and franchise projects.

WA LAW GROUP, LLC
IMMIGRATION LAW FIRM

WA Law Group, LLC is a boutique immigration law firm in Rockville, MD, focusing on investment and employment immigration. We provide exceptional legal service with 100% I-526 and I-829 approval track record with unparalleled service of less than 24-hour response time for our clients.

KLASKO
Immigration Law Partners, LLP

Klasko Immigration Law Partners' accomplished EB-5 team is led by Ronald Klasko, Daniel Lundy, and Anu Nair. Ron and Dan co-counseled the successful litigation that resurrected the regional center program. The firm files hundreds of I-526 petitions a year, structures hundreds of compliant projects, and is a leader in representing regional centers and investors with problematic projects.

TRISTANI LAW

Tristani Law, LLC is an immigration law firm based in the Washington, D.C. metro area specializing in client-centered and strategic immigration solutions for investors, high-skilled professionals, employers, and families. With over a decade of experience, Tristani Law provides robust, creative and successful legal options for immigrants from around the globe.

Whyte & Co.
CORPORATE FINANCE, ADVISORY, M&A

Surprised to learn that we have been in the investment banking sector for over twenty-five years and the scope of our business including compliance matters? That is most likely because we like being small and independent for two reasons. Whyte and Co. is a diversified financial services company that does not easily square into just one business sector. The firm has made the conscious decision to focus our efforts on gathering top talent, with the expertise to lead in every sector, and building an unmatched platform to best serve our clients and return value to shareholders. Rather than waste resources on self-promotion or chasing down the competition, we let our performance speak for itself.

WR Immigration

WR Immigration is a full-service, top-rated immigration law firm that provides strategic, client-centered services combining immigration thought leadership with award-winning technology.

WR serves a diverse client base ranging from Fortune 50 companies to leading academic/research institutions, to engineering firms, to technology companies. Founded by immigrants, our entire firm understands the challenges of immigration program management and has been providing solutions for over 35 years.

Jazayerli Law LLC is an immigration law firm based in Washington D.C., representing clients throughout the U.S. and globally achieve their U.S. immigration goals. With nearly 20 years of experience representing individuals and regional centers under the EB-5 visa program, the firm's principal and founder, Rana Jazayerli, is a recognized expert in the EB-5 industry.

FirstPathway Partners (FPP) helps foreign investors become United States Permanent Residents through the Department of Homeland Security Immigrant Investor EB-5 Program. Since 2008, FPP has assisted hundreds of immigrant investors from over 60 countries to obtain U.S. residency, and we have a 100% success rate of securing permanent Green Cards.

Founded in 1921, Saul Ewing LLP is a full-service law firm with 18 offices and over 400 attorneys around the United States. The Global Immigration & Foreign Investment Group has worked on well over 500 EB-5 projects accounting for more than $10 billion of capital expenditures. This team has also worked with a few thousand EB-5 investors over the years.

Green Card Fund (GCF) is a proven EB-5 Regional Center supporting international families seeking residency-by-investment in the United States. Founded in 2009, GCF has supported more than 290 families, and $425m of project developments that have had significant economic impact across the United States. Delivering reliable immigration outcomes for our investors, GCF's projects have achieved a 100% approval rate with the United States Citizenship and Immigration Services (USCIS).

Our dedicated team spans across the United States, with offices strategically located in Phoenix, Arizona; Columbus, Ohio; and Washington, DC. Furthermore, our representatives on the ground in foreign markets provide personalized support to our esteemed partners and investors. As a subsidiary of NewGen Worldwide, a dynamic hospitality investment platform, GCF possess unrivaled expertise in the hospitality and EB-5 industries.

Contact us about our latest EB-5 Senior Loan projects in Rural TEAs (targeted employment areas).

Ervin Cohen & Jessup is a full-service, California law firm with a robust real estate practice representing a diverse clientele engaged in construction, development, lending, brokerage, leasing and EB-5 investment. In fact, the firm's attorneys have closed more than USD $800MM in EB-5 deals across the United States in the past decade. For more information, visit www.ECJLaw.com.

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EB-5 INDUSTRY FORUM
Hotel Map

Exhibit Hall

1 CanAm Enterprises

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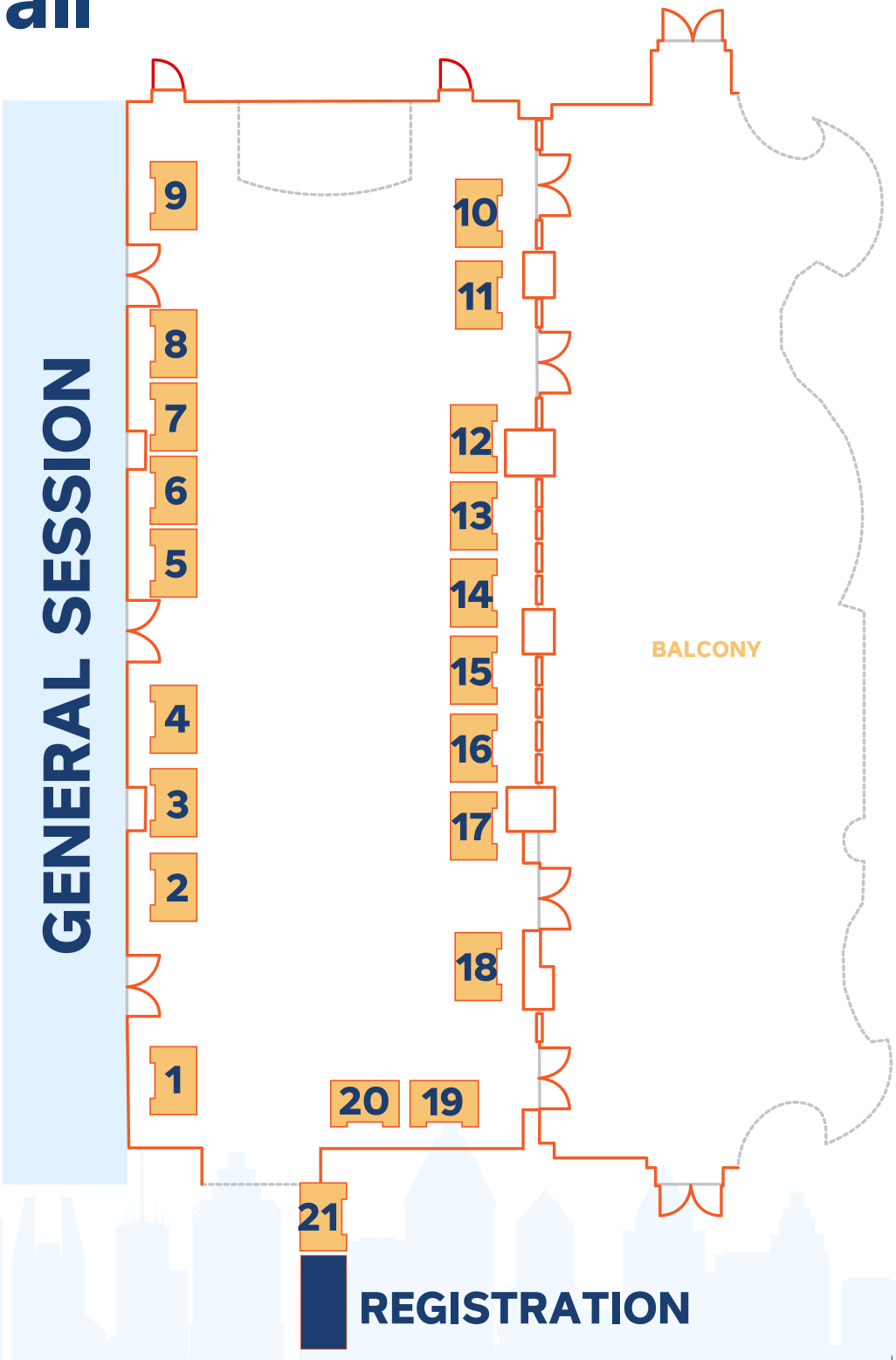

SCHEDULE OF EVENTS

MONDAY, MAY 20

3:15 - 5:00pm	**REGISTRATION**	Astor Prefunction	Sponsored by Jazayerli Law

IIUSA COMMITTEE MEETINGS
(COMMITTEE MEETINGS ARE FOR IIUSA MEMBERS ONLY)

1:00 - 2:00pm	**MEMBERSHIP & INVESTOR MARKETS COMMITTEE**	Vanderbilt	**EDITORIAL COMMITTEE**	Carnegie
2:00 - 3:00pm	**PUBLIC POLICY COMMITTEE**	Vanderbilt	**BEST PRACTICE COMMITTEE**	Carnegie

2:00 - 3:00pm	**NEW MEMBER WELCOME SOCIAL**	Rockefeller
3:30 - 5:00pm	**19TH ANNUAL IIUSA MEMBERSHIP MEETING** & BOARD OF DIRECTORS ELECTIONS	Ballroom C&D
5:00 - 6:30pm	**WELCOME RECEPTION**	The Grand Terrace — Sponsored by Carrasquillo Law Group

TUESDAY, MAY 21

7:30am - 3:00pm	**REGISTRATION**	Astor Prefunction	Sponsored by Jazayerli Law
7:30 - 8:20am	**NETWORKING BREAKFAST**	Astor Prefunction	Sponsored by FirstPathway Partners
7:30 - 8:20am	**IIUSA LEADERSHIP CIRCLE BREAKFAST** (INVITATION ONLY)		Carnegie

8:20 - 8:30am	**WELCOME ADDRESS**	**AARON GRAU, IIUSA Executive Director** NYSA | Host City Sponsor	Ballroom C&D
8:30 - 9:30am	**SESSION 1**	**EB-5 ADVOCACY & GOVERNMENT AFFAIRS**	Ballroom C&D
9:30 - 10:30am	**SESSION 2**	**RFEs and NOIDs: Recent Trends and Successfully Responding to Them**	Ballroom C&D
10:30 - 10:45am	**NETWORKING BREAK**	Astor Prefunction	Sponsored by EB5 Capital
10:45 - 11:30am	**SESSION 3: KEYNOTE**	**Michael Hanley** Data Scientist, U.S. Department of State	Ballroom C&D
11:30am - 12:30pm	**SESSION 4**	**Unpacking USCIS Guidance Post-RIA**	Ballroom C&D
12:30 - 1:30pm	**LUNCH**	Astor Prefunction	Sponsored by WR Immigration
1:30 - 2:30pm	**SESSION 5A** **Regional Center Operations Best Practices & Investor Relations**	Ballroom C&D	**SESSION 5B** **Economic Trends and the Impact on EB-5** — Ballroom A&B
2:30 - 3:30pm	**SESSION 6A** **Concurrent Filings: A Guide for Regional Center Operators**	Ballroom C&D	**SESSION 6B** **Post-RIA Investor Markets Overview: New Opportunities** — Ballroom A&B
3:30 - 3:45pm	**NETWORKING BREAK**	Astor Prefunction	Sponsored by EB5 Capital
3:45 -4:45pm	**SESSION 7**	**How to Be Program Compliant Amidst Missing Guidance**	Ballroom C&D
4:45 - 5:15pm	**MEMBER RECOGNITION CEREMONY & BOARD ELECTION RESULTS ANNOUNCED**		
5:15 - 6:45pm	**HOST CITY RECEPTION**	Astor Prefunction & Astor Ballroom Balcony	Sponsored by NYSA EB-5
7:00 - 9:00pm	**OFF-SITE RECEPTION**	Atlanta History Center	Sponsored by Peachtree Group

WEDNESDAY, MAY 22

8:00 - 11:00am	**REGISTRATION**	Astor Prefunction	Sponsored by Jazayerli Law
8:00 - 9:00am	**IIUSA PAC BOARD BREAKFAST** (INVITATION ONLY)		Carnegie
8:00 - 9:00am	**NETWORKING BREAKFAST**	Astor Prefunction	Sponsored by FirstPathway Partners
9:00 -10:00am	**SESSION 8**	**EB-5 Data: Understanding the Industry Through Numbers & Trends**	Ballroom C&D
10:00 -11:00am	**SESSION 9**	**EB-5 Litigation: What's New and Lessons Learned**	Ballroom C&D
11:00am -12:00pm	**SESSION 10**	**Sustainment & Fee Litigation: A Discussion**	Ballroom C&D
12:30 - 2:00pm	**IIUSA BOARD OF DIRECTORS MEETING** INVITATION ONLY		Carnegie

Meet the Speakers


Sunny An
WA Law Group


Michael Bowen
Southeast Regional Center


Roberto Contreras IV
Houston EB5


Ronald Fieldstone
Saul Ewing


Bill Gresser
EB-5 New York State


Paul Hughes
McDermott Will & Emery


Phuong Le
KLD


Joseph McCarthy
American Dream Fund


Jennifer Moseley
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John Pratt
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James Sozomenou
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KEYNOTE SPEAKER
Michael Hanley

Michael Hanley serves as a data scientist at the Immigrant Visa Control and Reporting Division for the Visa Office within the U.S. Department of State. In this capacity, he administers the annual immigrant visa program, allocating visa numbers to embassies and consulates around the world, ensuring that visa issuances fall within the annual limits set by law, and publishing the *Visa Bulletin* to inform visa applicants of anticipated progress in their application process. Prior to serving at the Department of State, Michael Hanley obtained a doctorate in Political Science from Emory University in 2022, and a bachelors in Political Science from Princeton University in 2013.

IIUSA established the first and only political action committee (PAC) focused exclusively on federal issues and candidates that support EB-5 visas and the Regional Center Program.

If you'd like to learn more about the IIUSA PAC and how to participate, visit the IIUSA PAC table at the **IIUSA EB-5 Industry Forum in Atlanta** or send an e-mail requesting more information to **info@iiusa.org.**

Panels & Speakers

SESSION 1
EB-5 Advocacy & Government Affairs

Aaron Grau | Invest in the USA | Moderator
Lulu Gordon | EB5 Capital
Adam Greene | Peachtree Group
Carolyn Lee | Carolyn Lee, PLLC
George McElwee | Commonwealth Strategic Partners

SESSION 2
RFEs and NOIDs: Trends and Successfully Responding to Them

Christian Triantaphyllis | Jackson Walker | Moderator
Phuong Le | KLD
Natalia Polukhtin | Global Practice Group
Irina Rostova | EB5Support.com
Dennis Tristani | Tristani Law

SESSION 3
Keynote Address

Michael Hanley | U.S. Department of State

SESSION 4
Unpacking USCIS Guidance Post-RIA

Mariza McKee | Kutak Rock | Moderator
Robert C. Divine | Baker Donelson
Darrell Sanders | American Life, Inc.
Kyle Walker | Green Card Fund

SESSION 5A
Regional Center Best Practices & Investor Relations

Ozzie Torres | Torres Law | Moderator
Rogelio Carrasquillo | Carrasquillo Law Group
Roberto Contreras IV | Houston EB5
Gar Lippincott | Atlantic American Partners
Joe McCarthy | American Dream Fund

SESSION 5B
Economic Trends and the Impact on EB-5

Jennifer Moseley | Burr & Foreman | Moderator
Michael Bowen | Southeast Regional Center
Larry Blascovich | Flagstar Bank
Mark Feriante | Baker Tilly
Daniel J. Healy | Civitas

SESSION 6A
Concurrent Filings: A Guide for Regional Center Operators

Dan Schwarz | Fragomen | Moderator
Sunny An | WA Law Group
Nicolai Hinrichsen | Miller Mayer
Rana Jazayerli | Jazayerli Law

Panels & Speakers

SESSION 6B

Post-RIA Investor Market Overview: New Opportunities

Mike Xenick | InvestAmerica | Moderator
Fife Banks | Brave Icons Global
David Enterline | Taipei Commercial Law Firm
Siren Chen | GlobeVisa
Manny Ortiz | FirstPathway Partners

SESSION 7

How to Be Program Compliant Amidst Missing Guidance

Jill Jones | JTC | Moderator
Christine Chen | CanAm Enterprises
Noreen Hogan | CMB Regional Centers
Daniel Topple | Customers Bank
Robert Whyte | Whyte & Co.

SESSION 8

EB-5 Data: Understanding the Industry Through Numbers & Trends

Lee Y. Li | Invest in the USA | Moderator
Charlie Oppenheim | WR Immigration
James Sozomenou | Metropolitan Commercial Bank
Sebastian Stubbe | Pine State Regional Center

SESSION 9

EB-5 Litigation: What's New and Lessons Learned

Joey Barnett | WR Immigration | Moderator
Ronald Fieldstone | Saul Ewing
Brandon Meyer | Meyer Law Group
John Pratt | Kurzban Kurzban Tetzeli & Pratt
Cletus Weber | Peng & Weber

SESSION 10

Sustainment & Fee Litigation: A Discussion

Bill Gresser | EB-5 New York State | Moderator
Paul Hughes | McDermott Will & Emery
Ron Klasko | Klasko Immigration

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Headquartered in Washington, DC, EB5 Capital provides qualified foreign investors with opportunities to invest in job-creating commercial real estate projects under the United States EB-5 Visa Program. As one of the oldest and most active Regional Center operators in the country, we have raised over a billion dollars of foreign capital across more than 40 EB-5 projects. We believe our team's collective diversity and cultural experience enhance our competitive advantage when serving our investors from more than 75 countries.

Please visit www.eb5capital.com for more information.

Bringing Dignity to the EB-5 Immigration Process

Ronald Fieldstone
Partner | Saul Ewing

Rohit Kapuria
Partner | Saul Ewing

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A bipartisan group of representatives, led by Representatives Maria Elvira Salazar (R-FL) and Veronica Escobar (D-TX), have introduced an updated version of the Dignity Act (H.R. 3599) to fix what they call the nation's fractured immigration system. The authors of the bill call it the first serious bipartisan immigration solution proposed by Congress in more than a decade. Notably, while this bill is not yet law and remains subject to revisions, it does contain several positive and promising features. The intent of the bill goes beyond the EB-5 Program; however, the short analysis herein is focused specifically on what positive impacts could inure to the benefit of the EB-5 Investors making large investments in the United States under the EB-5 Program.

"Our broken immigration system is frustrating Americans, causing people to suffer, and fracturing our country - economically, morally, socially, and politically. A solution is long overdue," Rep. Salazar said in a statement.

Rep. Salazar's Office recently stated that "we have not seriously reformed our immigration system in almost 4 decades - longer than any other policy Congress deals with....It has created a security crisis, an economic crisis, and a moral crisis. [Rep. Salazar] ran for Congress to address this issue, knowing that it is extremely difficult both in terms of policy and politics. The Dignity Act was years in the making, because it required a lot of homework and conversations with current Members of Congress to get it right. When introduced last May, it was the first time in a decade a major bipartisan immigration reform effort had even been proposed."

From an EB-5 standpoint, and in particular, "Division E: Unleashing American Prosperity and Competitiveness," provisions would have a material advantageous effect on the EB-5 Program as described below.

As stated by Rep. Salazar's Office, "the Dignity Act has three main goals - stop illegal immigration, address the population already here, and modernize the legal immigration system. The changes to the legal immigration system in the Dignity Act are designed to work together, and by excluding derivatives, raising country caps, and ensuring no one legally approved for a visa waits more than ten years, we can, not only, reduce the backlogs, but have a functioning family and employment-based immigration system that is responsible for workforce needs. These policies are all critical to achieving this outcome."

The recently adopted EB-5 Reform and Integrity Act of 2022 (the "RIA") while tremendously helpful in giving the EB-5 Program much needed reformation and attaching greater integrity driven burdens to all parties associated with such program, as a standalone employment based program, the RIA was not set up to address the overarching visa supply issues that continue to plague several employment based programs such as EB-1, EB-2 and EB-3 or other programs focused on refugees or the Dreamers.

While there are many benefits stemming from the Dignity Act, when focused purely on impacts on the EB-5 Program alone, the below summary shows the potential for significant, positive impacts thereof:

1. 110-Year Gap Limit on Visa Backlogs. 201(b)(F). 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) was amended by adding the below language: "(F) Aliens who are beneficiaries (including derivative beneficiaries) of an approved immigrant visa petition bearing a priority date that is more than ten years before the alien submits an application for an immigrant visa or for adjustment of status."
While the benefits of such addition would provide much needed relief under EB-2 and EB-3, specific to EB-5, the pre-RIA retrogression impact on EB-5 investors and their respective derivatives born in countries subject to possible retrogression, due to high demand, would get some much-needed relief. As of the date hereof, the March 2024 Visa Bulletin sets a priority date for pre-RIA EB-5 investors born in Mainland China at December 15, 2015. While this appears to numerically be an eight-to-nine-year wait, when the actual data is examined, it could easily be upwards of fifteen or more years. As a result, the Dignity Act would assist in capping the backlog to 10 years.

2. Increase in Per-County Cap from 7 Percent to 15 Percent. The 7% cap has been roundly criticized for many years. The effect of more than doubling that percentage from 7% to 15% would not only ensure a greater number of visas being available for pre- and post-RIA investors, particularly those born in retrogression-prone countries, but would also push higher demand within the EB-5 Program.

3. Eliminate Derivatives in Calculating Visa Numbers. This is particularly helpful for ensuring visa numbers are not eaten away by the derivative children. Recent USCIS data showed that that only about one-third of the EB-5 visas go to principal investors, while the rest go to their family members (derivatives).[1] By excluding children under the age of 21 from the visa availability line, the total number of visas will automatically increase.

4. Elimination of "Aging Out" by a Minor. Right now, under pre-RIA Regulations, a child (21 years old or younger) is subject to "aging out" once a Form I-526 Petition for an applicant is approved. This particular provision seeks to ensure that such children will, in addition to not being counted against a visa number (as shown above) but would also be protected from age-outs which remain a recuring problem for many EB-5 Investors.

5. Allowing Employment by Spouse. The goal of this provision is to allow a spouse of an alien spouse admitted for residency to immediately engage in employment in the United States. This is a practical solution to an obvious problem and follows the logic of the H-4 visa grant that was originally focused on tackling this same issue.

CONCLUSION

The above proposals are supported by the EB-5 industry and their participants, together with pending and future EB-5 petitioners. The net result will be to greatly expand the funding of EB-5 capital for job creation and development activities that traditionally have enabled the creation of hundreds of thousands of jobs and enabled the development of billions of dollars of projects in the United States. In addition, the increase in the number of EB-5 conditional residents will provide a significant benefit to our economy, our culture, our educational institutions, and our tax revenue dollars, since generally, once a petitioner becomes a conditional resident, they pay tax on their worldwide income.

[1] See https://crsreports.congress.gov/product/pdf/R/R44475.

Hey, Regional Center,

Why Do You Treat Me Like You Do?

Robert C. Divine
Shareholder | Baker Donelson

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Regional centers ("RCs") are now much more diligent in scrutinizing projects and requiring real time and periodic reporting from participating new commercial enterprises ("NCEs") and the job creating entities ("JCEs") they fund than before the EB-5 Reform and Integrity Act of 2022 ("RIA"). The RIA requires RCs to certify NCE securities and immigration compliance, to retain loads of records about investor subscription and capital flows, and to suffer penalties for noncompliance including huge fines and termination of RC designation.

As counsel for numerous RCs, including some that sponsor projects whose NCEs and JCEs are not affiliated with the RC, this author has had an opportunity to review numerous projects for sponsorship and recordkeeping and is looking forward to USCIS audits. It may be useful for NCEs and JCEs to think about what RCs are looking for and why.

PRE-AGREEMENT REVIEW

An RC will tend to prefer a project with clear and credible business plan, solid capital stack, ample projected job creation, knowledgeable securities and immigration counsel, experienced and principled marketers, and successful and scandal-free principals, as preconditions for even entering a sponsorship agreement. The sponsorship agreement will require time for the RC carefully to review all project documents before the RC signs off on the project application. It will require the NCE and JCE to comply with all laws and with the RC policies and procedures and to provide all documents needed for later compliance (discussed below).

PROJECT OFFERINGS AND APPLICATIONS

RC review of the securities offering and project application documents must be demanding. RC approval of and signature to the project application is the single best opportunity to ensure RIA compliance. The RC should either submit all the documents directly or require a final review of the fully assembled, "camera ready" filing before the NCE is allowed to file it.[1]

Business Plan. The business plan should be professionally prepared and supported with solid documentation of credibility. *Matter of Ho*[2] standards apply, but USCIS also requires evidence of the full capital stack, and this is sometimes lacking as the NCE and JCE scramble to pull together the project for marketing. USCIS will indulge the parties in the assumption that the NCE will be able to raise the amount of EB-5 capital supported by job creation projections, but proof of the commitment and availability of the remaining capital stack is needed. Developer equity should be shown already spent, contributed to the JCE, or readily available in uncommitted cash. Bank loans often are not yet committed, but if so it is best to provide at least one and preferably multiple letters of intent from banks to show the project is "bankable." A simple plan to have the bank loan documented by time of USCIS request for evidence on the project application might not be sufficient when USCIS determines if the project application met the preponderance of evidence at the time of filing as technically required by regulation.[3] Term sheets or letters of intent should be scoured to confirm that the terms are aligned with the project business plan.

Sometimes an NCE has not signed an agreement with the JCE for loan or investment. USCIS might accept a signed document in response to RFE or NOID, but it might not on the basis that the EB-5 capital was not irrevocably committed at the time the I-956F (and the I-526E petitions by investors based on the filed I-956F) was filed. Even if USCIS might allow post-filing execution, an RC should be wary of sponsoring a project where the NCE and JCE have not definitively agreed on all terms.

Offering Documents. The NCE's operating agreement and subscription agreement establish the rights and responsibilities among the NCE's manager and investors, and a private placement memorandum ("PPM") discloses the business and immigration risks to investors. The operating agreement must establish an at-risk equity investment and not a prohibited "debt arrangement." The definition of the "sustainment period" often needs attention. Some offerings set out long repayment terms between NCE and JCE or even allow the NCE to redeploy repaid capital long after the end of the two years from "investment" required by the RIA. USCIS has clarified that immigration law only sets a minimum for sustainment and does not state a maximum, but under securities laws, NCEs must not mislead investors by making it sound like long periods for sustained investment and redeployment are required for immigration compliance.[4] Subscription agreements sometimes provide for one combined payment of capital and administrative fee, but this could violate RIA's requirement to place EB-5 capital in a separate account and release from it only for refund to investor, transfer to another separate account only for capital, or expenditure by the JCE on the project.[5]

The PPMs I see sometimes fail to disclose adequately such matters as:

- **What happens if the target amount of EB-5 capital is not raised or another block of the planned capital stack does not materialize.**
- **The immigration risks arising from the possibility of the NCE/JCE agreement falling through or the project not materializing as planned.**
- **The immigration risks arising from any JCE requirement of a minimum level of funding for it to accept any NCE capital, or from other contingencies on NCE funding.**

[1] The essential requirements for project applications are spelled out at INA § 203(b)(5)(F).

[2] A22 I&N Dec. 206 (AAO 1998).

[3] See 8 CFR 103.2(b)(1): "An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication."

[4] RIA Section 104 deleted the former clause in INA § 216(d)(1)(A)(i) that had required that the alien "sustained the [investment] throughout the period of the alien's residence in the United States" and added to INA § 203(b)(5) a requirement that the investor's capital invested in the NCE "is expected to remain invested for not less than 2 years." USCIS has published Q&A stating that the new two year "sustainment period" is unconnected with the investor's conditional residence and begins when the investor's capital is "made available" to the JCE. See https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-questions-and-answers. IIUSA has brought a lawsuit against USCIS contending that the USCIS statement misreads the RIA and violates the Administrative Procedures Act. An offering might suggest that a longer period of investment may be helpful to immigration eligibility if IIUSA's lawsuit is successful, but it should at least acknowledge the contrary position.

[5] INA § 203(b)(5)(Q)(i) requires the NCE to "deposit and maintain the capital investment of each alien investor in a separate account, including amounts held in escrow," and (Q)(ii) lists the acceptable releases from the "separate account" without including release for NCE administrative expenses.

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Offering documents should not tout the regional center as a promoter or issuer of the offering, and RCs should consider requiring NCEs to get written agreements from investors disclaiming RC responsibility for the offering.

Bridge financing. The industry has become so accustomed to USCIS allowing EB-5 capital to be used to repay "temporary bridge financing" that NCEs tend to fail to obtain documentation of the parties' intent for the purported bridge financing to have been a temporary bridge to EB-5 funding as of the time that the bridge financing was injected, as essentially required by USCIS policy. Even contemporaneous emails from the time of initial funding may be helpful.

Forms I-956F and I-956H. The project application form must be signed twice by the RC principal (as filing party and certifier for the RC) and once by the NCE principal (as certifying issuer of securities). The G-28 for the I-956F filing should be that of RC's counsel, while the identified "preparer" could be NCE's counsel, who might also include a G-28 as NCE counsel. Part 6 should include references to specific documents and page numbers as indicated in the questions, so USCIS adjudicators can quickly confirm key provisions of the offering documents. Part 7 should identify the applicable RC policies and procedures documents, but the application probably should include a copy of at least the central RC compliance policy document.

Part 9 of I-956F should identify all persons (individuals and entities) "involved with" the NCE and with any "affiliated JCE." USCIS has made clear its position that any owner of a relevant entity, no matter how small the ownership interest or practical authority, is considered "involved" and must be listed and provide a Form I-956H. USCIS has been issuing RFEs for Forms I-956H for the NCE and any affiliated JCE themselves, which seems inappropriate given that an entity is not "involved with" itself, but for now it seems best to submit those forms which do not require any filing fee.

Securities filings and Issues. An RC should require the NCE to document specifically how it will comply with essential securities requirements as to exemptions from registration, state registration requirements, broker dealer registration requirements, and investment adviser requirements. In most cases, the NCE will use exemptions from SEC registration under Regulation S (for investors solicited and subscribed outside the U.S.) and Regulation D (for investors inside the U.S.). No federal filing is required to use Regulation S, but within 15 days after subscribing an investor under Regulation D the issuer must file a Form D with the SEC. The I-956F should state an intention to file Form D once such an investor becomes subscribed. USCIS increasingly is issuing RFEs for a copy of Form D, apparently on the presumption that by then an investor may have been subscribed in the U.S. An RC could choose to require an NCE to file Form D before filing Form I-956F. State registration requirements may apply initially for the place of the offering and for any state in which an investor actually subscribes. Some states provide for filing exemptions that may apply, but others may require an actual registration. Most NCEs can articulate that NCE employees receiving no commissions and sales agents operating solely outside the U.S. are not required to register as broker dealers, but increasingly NCEs actively selling to investors in the U.S. make a risk management choice to use an SEC-registered broker-dealer to effectuate such sales. Most NCEs can articulate how they are not serving as an investment adviser that needs to be registered as such. But the RC should require sponsored NCEs to formalize their positions on these securities-compliance matters for an audit record.

Affiliated JCEs. The RIA defines an "affiliated JCE" as a JCE that is "controlled, managed, or owned by any of the people involved with" the RC or NCE.[6] The implications of having an "affiliated JCE" include the requirement to identify all individuals and organizations "involved with" the JCE and to include Forms I-956H for such persons in the I-956F. Some JCEs have very complex ownership structure, so that triggering this requirement could make a compliant project application filing almost impossible. This author has successfully argued in a few cases that involvement of the NCE itself as an investor in the JCE (as opposed to the more common lender relationship) does not trigger affiliation, since it is the NCE itself that is involved and not persons "involved with" the NCE. Nevertheless, an RC should satisfy itself that all persons involved with an unaffiliated JCE are not "prohibited persons" who would need to answer "yes" to key questions in I-956H, even if such forms are not required in the first instance, both for general securities compliance and anticipating USCIS exercising its discretion to require Forms I-956H from non-affiliated JCE-involved persons.

Promoter agreements.[7] The RC should review the NCE's template promoter agreement and any actual agreements. Such agreements must require filing of Form I-956K not only by the promoter entity contracted with but also by its employees and by any sub-agents and their employees involved in promotion. Only the primary promoter must file the NCE agreement with Form I-956K, while those down the chain may refer to the agreement of the party up the chain. An RC should make a risk management decision whether to require the NCE to collect and provide to the RC copies of any filed Forms I-956K or any USCIS receipt for same. The NCE's promoter agreement must require the promoter to make a written disclosure of compensation signed by investor if the compensation is not disclosed in PPM. (In its responses to public comments to draft RIA forms in late 2022, USCIS stated that an investor's signature to Form I-526E, whose pre-printed language above the investor signature incorporates the I-956F documents including the PPM, constitutes the required signed written disclosure of promoter compensation that is described in the PPM). The promoter agreement must require the promoter to provide to the NCE all documents arising from a subscription per RIA recordkeeping requirements. RCs should discourage the requirement of refund of promoter fees in the event of investor I-526E denial and consequent refund of administrative fees, due to the uncertainty of accomplishment of such refunds and the prospect of claims of misleading to investors in suggesting such refunds.

Marketing materials. The RIA requires a project application to include any "marketing materials used, or drafts prepared for use, in connection with the offering." While an NCE may claim not to have prepared any such materials, an RC should consider requiring an NCE to prepare them before project application so that the RC can vet them and submit them as required and avoid having to interfile them. Such materials should contain

[6] INA § 203(b)(5)(D)(i).

[7] The considerations in this paragraph arise from INA § 203(b)(5)(K).

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appropriate securities disclaimers including a reference to more complete offering documents and limitation to investors who qualify for securities filing exemptions. Marketing materials should be scoured for overstatement and for omission of key risk issues that could be deemed misleading despite the reference to the full PPM.

Fund Administration. Part 10 of Form I-956F requires identification of the required "independent" fund administrator for the "separate accounts" for releases from EB-5 capital.[8] The form contemplates the options for the fund administrator to be a CPA, attorney, or SEC-registered broker-agreement or investment advisor. It does not specifically mention the statutory option to use "an individual or company that otherwise meets such requirements as may be established by [USCIS]," and USCIS has not issued any policy about who could qualify, but the form can be completed simply enough in this regard. The form does not provide any space to indicate use of the statutorily "required" option to avoid a fund administrator if the NCE "or" JCE will obtain annual financial audits under GAAP and share those with the investors and USCIS (ostensibly in the I-956G annual report), but we have successfully used the addendum section to explain this use. USCIS has refrained from responding meaningfully to what the RIA's requirement of audits for NCE "or" JCE means, but this author strongly recommends requiring that both be audited as a basis for forgoing a fund administrator. The RC should require copy of the complete, signed agreement with the fund administrator to make sure it provides for the administrator's proper role. The RC should require identification of the actual "separate accounts" for EB-5 capital (which are called for in Form I-956F) and perhaps even arrange for real-time, direct RC "read only" access to account information and transactions.

SUPPLEMENTING OR AMENDING FORM I-956F

It is not clear under what circumstances a regional center must notify USCIS about changes to an offering and project after I-956F filing. USCIS has stated that the RC may interfile additional papers until I-956F approval, without additional filing fee, so it makes sense to periodically interfile any changes to the I-956F supporting documents. Existing and prospective investors should be notified of such changes, since in their I-526E they incorporate the I-956F documents and "any changes" to them.[9] Once an I-956F becomes approved, any filing of changes requires an amended I-956F with $47,695 fee, which will cause RCs and NCEs to agonize about whether and when to give notice to USCIS concerning minor changes to documents.

MONITORING AND RECORDKEEPING

The RC's job is hardly done when the project application is filed or even approved. The RC should actively monitor the progress of investor subscriptions, promoter compensation payments, and flow of capital. It is tempting for the RC to wait until the end of each fiscal year to gather documents from sponsored NCEs for submission with the RC's I-956G annual report, but in this author's experience, it is critical to follow up early in the process in order to identify problem issues and fix them quickly. The RC should require real time notification about key milestones for the first few investor subscriptions so that it can confirm that the NCE is gathering and sharing all investor-specific subscription documents and properly handling and documenting all capital transfers in coordination with the fund administrator. The RC may wish to require real-time notice of the first investor in the U.S., to make sure that Form D is filed with the SEC, and perhaps each investor in the U.S., to make sure that state securities registration requirements or exemptions are handled properly.

The RIA requires that the RC "maintain records, data, and information relating to all such offers, purchases, sales, and investment advice during the 5-year period beginning on the date of their creation."[10] The RC can only get this from the NCE, who must be required to collect it and routinely provide it to the RC. In effect, the records to be kept for each investor subscription include:

- **Investor's signed Suitability Questionnaire**
- **Investor's and/or NCE's signatures reflecting agreement to Subscription Agreement, any escrow, NCE operative agreement, any side letter, and any other agreement with investor.**
- **If investor is minor: special variation on signature blocks for custodian under applicable state UTMA (or other legal solution)**
- **Verification of investor's accreditation under Regulation D Section 506(c), if applicable**
- **Form D and state filing or explanation of exemption, if applicable**
- **Disclosure of fees, interests, and compensation not described in PPM**
- **Log of all written communications by NCE or any agent or promoter with investor, including social media**

The RIA also requires RCs to "make and preserve, during the 5-year period beginning on the last day of the Federal fiscal year in which any transactions occurred, books, ledgers, records, and other documentation from the regional center, new commercial enterprise, or job-creating entity used to support" its annual Form I-956G and all EB-5 filings including I-956F (which are incorporated into I-526Es) and investor I-829s.[11] The I-956G Attachment 1 requires evidence that the EB-5 capital flowed through NCE to JCE and was spent by the JCE on the project, as well as evidence of project progress.

RCs are required to make certain records available to investors. First, because investors must assert in their I-526E that their petition includes all I-956F records (and that the investor has reviewed, understood and asserts the truth of such petition), the RC needs to require the NCE to share such records with each investor before I-526E filing and after any interfiling or amendment into the I-956F. The RC must share with any requesting investor the RC's annual I-956G report (redacting information unrelated to such investor's project) and the annual audited financial statement for any NCE or JCE forming the basis for waiver of the fund administrator requirement.

Interestingly, the RIA is focused on securities law compliance in subscribing investors and on the flow of EB-5 capital through the NCE and to expenditure by the JCE on the project. The RIA requires nothing from the RC in relation to further handling of the capital or any proceeds from it except in the rare instance that the capital becomes unexpectedly repaid by the JCE to the NCE before it has remained "invested" for two years and needs to be

[8] See INA § 203(b)(5)(Q) for fund administration requirements..

[9] NCEs may choose to seek consent (with opportunity for rescission of investment without consent) for certain changes that could adversely affect investors.

[10] INA § 203(B)(5)(III).

[11] INA § 203(b)(5)(E)(vii)(I).

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redeployed in other at risk activity.[12] The RIA says nothing about tracking investor immigration processing, and Form I-956G (in contrast to former Form I-924A) requires no RC reporting about investor progress or capital repayment. Nevertheless, RCs should consider requiring NCEs to track and report on investor immigration progress and capital repayment.

USCIS AUDITS AND TERMINATIONS

USCIS is required to audit RCs at least every five years to review "documentation required to be maintained" as described above and to review "the flow of alien investor capital into any capital investment project."[13] USCIS recently announced that it will follow GSA guidelines for its audits. The audits will seek to confirm that the RC and sponsored projects are complying with all EB-5 rules, including recordkeeping requirements. USCIS must perform a site visit to each project location where job creation is credited to investors, giving at least 24 hours' notice.[14]

Regional centers should not depend on making a mad scramble to gather up documents when it learns of a USCIS audit. RCs should require sponsored NCEs to maintain and share with RCs real-time electronic repositories of the documents reflecting investor subscriptions and feeding into annual reports about capital flows, promoter compensation, and project progress. USCIS also will seek to confirm "internal controls" that prevent wrongdoing from happening or continuing. RCs may be held to comply with their own policies and procedures submitted to USCIS, even where those may exceed statutory requirements.

If USCIS terminates the designation of a regional center, participating NCEs may seek a replacement RC sponsor anywhere in the U.S.[15] Nevertheless, the process for RC replacement could be mechanically complex and upsetting to investors.

CONCLUSION

Regional centers can expect USCIS to hold them responsible for any securities violations or mishandling of funds, and even in the absence of wrongdoing by NCEs or JCEs, RCs can expect sanctions from USCIS for failing to maintain proper records. RCs must jealously guard their own compliance by diligently confirming the compliance of sponsored NCEs and JCEs. NCEs seeking RC sponsorship need to expect far more than "rubber stamp" reviews and provide constant documentary updates to the RC.

[12] INA § 203(b)(5)(F)(v). The RIA requires USCIS to terminate the designation of a regional center whose sponsored NCE mishandles redeployment funds.

[13] INA § 203(b)(5)(E)(vii)(II).

[14] INA § 203(b)(5)(F)(iv).

[15] INA § 203(b)(5)(F)(iv).

EB-5 Fund Administration:

A Service that Aligns with the Reform and Integrity Act of 2022 and More

Chris LeBeau
CPA, Manager | Baker Tilly

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The EB-5 Immigrant Investor Program, administered by the United States Citizenship and Immigration Services ("USCIS"), offers foreign investors a pathway to obtain a U.S. Green Card by investing in job-creating projects. Historically, an absence of oversight has created an opportunity for some projects to misuse funds, leading to fraud, financial losses, and failure to achieve immigration goals. Now that the Reform and Integrity Act of 2022 ("RIA") has mandated fund administration or independent audits, investors exploring opportunities within the EB-5 program are presented with a variety of fund oversight arrangements. Many of these do not provide the full benefit that experienced fund administrators can provide in ensuring compliance, transparency, and effective management. This article delves into the specifics of EB-5 fund administration, outlining key considerations and the role fund administrators can play in supporting successful EB-5 projects in addition to compliance with the RIA. It will also describe best practices based on my extensive experience in fund administration.

FUND ADMINISTRATOR FUNCTIONS: NAVIGATING THE LANDSCAPE OF INVESTMENT SERVICES

While relatively new to EB-5, fund administrators have long provided independent outsourced services to investment funds. Outsourcing fund administration provides a scalable solution, which accommodates changes in fund size and complexity, allowing fund managers to focus on core investment activities while leaving administrative tasks to professionals. As the keeper of official books and records, fund administrators play a crucial role in the financial ecosystem, providing essential services to investment funds, asset managers, and other financial institutions. Fund administration involves a range of services that support the efficient operation and compliance of investment funds. These services include valuation, financial reporting, compliance and regulatory support, transfer agency services, and risk management.

The accurate valuation of assets in a fund is vital for regulatory compliance and for investors so that they are aware of the current value of their investment. Regular and transparent financial reporting is crucial for investors and regulatory bodies. Fund administrators will prepare financial statements and reports that provide a comprehensive overview of a fund's performance. These reports provide data that is used to make informed decisions and aid in optimizing project outcomes.

Compliance and regulatory support requires expertise with ever-changing regulations and is a complex task. However, fund administrators can assist with navigating the regulatory landscape, ensuring funds adhere to all relevant rules and requirements.

Transfer agency services consist of maintaining an investor's financial records and tracking each investor's account balance. Therefore, the administrator will handle investor transactions such as subscriptions and redemptions. The administrator will also assist with managing communication with investors and maintaining accurate records; one such record being the shareholder register.

Risk management is provided in multiple ways, and it is vital to identify and mitigate potential risks to protect investors and maintain fund stability. Implementing robust risk management frameworks and controls helps to mitigate risk. One such control is to screen investors and service providers both when onboarding the fund to the administrator's platform and on an ongoing basis. Another way to mitigate risk is to file suspicious activity reports as they assist in the prevention of fraud perpetrated by bad actors. With third-party fund administrators in place, in addition to other controls and safeguards, fraud has a better chance of being detected, if not fully prevented.

Administrators also have views into best operational practices, having the luxury of seeing many funds operate, and may be able to provide some guidance, if needed, to the fund's management regarding any decisions needed to be made on behalf of the fund. When considering risk management in specific EB-5 terms, like any investment, EB-5 projects face risks that can impact investor returns and immigration outcomes. It is key that a fund's chosen EB-5 fund administrator employs robust risk management strategies to identify, assess, and mitigate potential challenges.

STATUTORY COMPLIANCE: MEETING EB-5 FUND ADMINISTRATION REQUIREMENTS AS OUTLINED IN THE RIA

EB-5 investors invest in a "new commercial enterprise" or NCE, which is typically organized as a fund that pools investors' contributions and reinvests them in debt or equity of a "job-creating entity" or JCE. Traditionally, EB-5 funds have used fund administrators only occasionally and only in response to investors' desires to have an independent party in place to monitor, account for, and report on their investment. However, the RIA now requires an EB-5 fund to use a fund administrator, unless it engages an independent auditor to conduct annual financial audits in accordance with Generally Accepted Auditing Standards and provides the audit results to the Secretary of the Department of Homeland Security (parent agency of USCIS) and all fund investors. The RIA specifically requires the administrator to be independent of the new commercial enterprise, the regional center, the job creating entity, and the manager of the NCE, as well as needing to be licensed, active and in good standing as a CPA, attorney, or broker-dealer.[1]

This article will not discuss the RIA's provision of an independent audit as an alternative to fund administration, other than to note that audits by their nature can only detect misuse of funds after the fact. Audits cannot prevent fraud and may not even detect fraud when conducted by concerted efforts of skillful perpetrators. This article focuses on fund administration as an oversight regime that is likely to be effective in preventing fraud and provides a broader range of compliance and support services than an audit can.

A licensed, active, CPA can provide multiple benefits by acting as an administrator. CPAs are highly trained professionals with a deep understanding of accounting principles, tax laws, and financial regulations. CPAs stay up to date with the latest changes in the financial landscape, ensuring that you receive accurate and timely advice to assist with making informed decisions. Outsourcing financial tasks to a CPA allows individuals and businesses to focus on their core activities, thereby saving time and resources while ensuring financial matters are handled by a qualified professional.

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CPAs can help analyze financial statements, providing a clear understanding of the fund's financial health, which can be crucial for businesses in making strategic decisions, securing financing, or attracting investors. CPAs can perform compilations of financial statements, which is essential for EB-5 funds that need to provide financial information to investors or regulatory authorities. CPAs help identify financial risks and implement risk management strategies, which is crucial for funds aiming to protect their assets and ensure financial stability.

Lastly, and not to be overlooked, CPAs are bound by a strict code of professional ethics. This ensures that they maintain the highest standards of integrity, objectivity, and confidentiality when handling your financial matters. In summary, working with a CPA can provide expertise, financial guidance, risk mitigation, and peace of mind for both the fund and its investors.

The RIA also requires the administrator to provide investors with periodic reporting on the history of their investment, specifically noting a minimum 5-year period beginning on the last day of the fiscal year in which any transactions occurred – essentially for the life of the fund, which would be typical practice for any type of fund under fund administration. To quote the RIA, the fund administrator *"shall periodically provide each alien investor with information about the activity of the account in which the investor's capital investment is held, including— (aa) the name and location of the bank or financial institution at which the account is maintained; '(bb) the history of the account; and (cc) any additional information required by the Secretary; and (VII) shall make and preserve, during the 5-year period beginning on the last day of the Federal fiscal year in which any transactions occurred, books, ledgers, records, and other documentation necessary to comply with this clause, which shall be provided to the Secretary upon request."* [2]

EB-5 FUND ADMINISTRATION BEST PRACTICES: AVOID LIMITED SERVICES AND ENSURE ONGOING DUE DILIGENCE

To properly align with the RIA, administrators should avoid providing limited services, such as ending administration services upon the completion of the final draw request or its final disbursement to the Job Creating Entity, essentially taking the singular role of co-signatory. This limited service doesn't appear to align with the RIA's requirement for periodic reporting and would not fit into classification of typical fund administration. What this limited service does do, is give EB-5 investors a false sense of protection from potential fraud. Fund administration is typically carried out from the launch of the fund until the formal windup/liquidation of the fund – the entire life cycle. To end services prior to the completion of the fund's life cycle creates risk for the investors as the independent party is now removed from the accounting and reporting aspect of their investment. To paint a clearer picture, if a fund administrator was to back away from the fund upon the completion of the final draw request, who are the investors then relying on to perform the ongoing accounting, provide them with the financial reporting related to their investment, to monitor bank accounts and transactions, to co-sign payments, to appropriately calculate and distribute interest payments, and to complete payments related to return of capital? If the independent fund administrator is removed prior to the orderly windup of the fund, an opportunity is then created for any potential bad actors to fraudulently move money to accounts unrelated to the investors or the project.

A critical duty for a fund administrator is to carry out initial and ongoing due diligence on investors and service providers to the fund. Despite an extensive source of funds exercise being completed prior to onboarding investors, there is still a need to complete ongoing screenings to assist the manager with mitigating any risk associated with investors, or service providers, that may turn up on a sanctions list during the life of the fund. The intention here is to prevent returning funds to an individual noted on a sanctions list.

The RIA specifically allows the Secretary of Homeland Security (and by extension USCIS) to expand the fund administrator's reporting responsibility to "any information required by the Secretary." This opens the door to further regulation that could require additional oversight by the fund administrator.

MEETING COMPLIANCE REQUIREMENTS: DOCUMENT MANAGEMENT IN EB-5 FUND ADMINISTRATION

As the RIA requires fund administrators to preserve books and records (document storage) for a minimum of five years, it is crucial that the administrator securely stores all fund-related documents in an orderly fashion, which will allow them the ability to respond in a timely manner should a regulator request documentation from the fund. As an example, when USCIS audits regional centers, having an organized and comprehensive set of documents related to all NCE transactions will provide assurance to USCIS officials that the funds are being monitored according to best practices. These records will also be crucial to investors' I-829 applications for unconditional U.S. residency at the end of the investment cycle.

Handling the documentation and record-keeping for each EB-5 investor is a complex task. Fund administrators must maintain accurate records of investors' capital contributions, immigration documentation, and compliance-related materials. Utilizing digital platforms for document storage and management enhances efficiency and accessibility. Secure, cloud-based systems facilitate streamlined communication and collaboration among project stakeholders. For fund administrators, it is key to have a secure, online portal that can be used to safely share and store documentation.

ADMINISTERING SEPARATE ACCOUNTS IN ACCORDANCE WITH THE RIA FOR EB-5 PROJECTS

The RIA notes that the fund administrator *"shall monitor and track any transfer of amounts from the separate account; shall serve as a cosignatory on all separate accounts; before any transfer of amounts from a separate account, shall—verify that the transfer complies with all governing documents, including organizational, operational, and investment documents; and approve such transfer with a written or electronic signature."*[3] As this cosignatory function is critical for EB-5 projects,

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administrators need to carefully oversee the proper release of funds based on predetermined milestones, ensuring compliance with USCIS regulations. Administrators should work closely with client banks to ensure all parties adhere to escrow agreements that may be in place and ensure that the release of funds are processed correctly and efficiently, in addition to storing all supporting documentation for reporting purposes.

ENHANCED REPORTING STANDARDS: PROVIDING ACCURATE I-956G ANNUAL STATEMENTS IN EB-5 FUND ADMINISTRATION

While the RIA does not require fund administrators to track ongoing job creation, analyzing and reporting on ongoing job creation can provide significant advantages. EB-5 job creation is typically derived through input-output economic modeling reports prepared by experienced EB-5 economists. As the project progresses, the fund administrator can collect construction draw requests and project expense ledgers for use in calculating to-date jobs analysis. Working directly with the fund administrator, the economist can properly line up expenditures to their proper industry code multipliers and then apply the appropriate deflation calculation to determine jobs. This collaboration between the fund administrator and economist provides added benefit to the NCE manager and investors that job creation milestones are being met. Many EB-5 funds continue to bring in investors after job creation has commenced through early investors and bridge financing. An independent report on jobs already created would provide important information to potential investors. Also, the regional center benefits from this real time job creation analysis as annual I-956G reporting requires to-date job creation analysis. The fund administrator can store these frequent jobs updates and provide them as needed by all parties.

ADAPTING TO REGULATORY CHANGES: ENSURING COMPLIANCE AND MEETING FUTURE DEMANDS IN EB-5 FUND ADMINISTRATION

Users of financing through the EB-5 program must adhere to strict regulatory requirements to maintain eligibility for investors seeking permanent residency. Changes to these requirements in recent years have affected project structures and compliance requirements, and there is a good chance that further regulatory changes will come. As fund administrators play a pivotal role in ensuring compliance with USCIS regulations, regional center requirements, and securities laws, they must stay abreast of regulatory updates and guide projects through any necessary adjustments. While the industry waits for USCIS to provide more specific guidance on their interpretation of RIA and its impacts on EB-5 funds, it is critical for NCE managers and regional centers to work with a fund administrator that is able to keep up with regulatory changes, not only to provide ongoing guidance but also to be prepared to meet increased fund oversight that USCIS policy or future action by Congress may impose. For example, a potential update to policy could include a requirement that both a fund administrator as well as an independent audit are necessary for compliance, which is commonplace in typical investment funds. Working with a fund administrator that has extensive experience with audits would provide an advantage to staying in compliance with this potential change.

EB-5 SUCCESS: COMPLIANCE, TRANSPARENCY, FUTURE-READINESS

In the complex landscape of the EB-5 Immigrant Investor Program, effective fund administration is paramount for the success of projects and the satisfaction of investors. With their expertise in compliance, transparency, and leveraging technology, EB-5 fund administrators will contribute significantly to the overall integrity and success of the program, fostering investor confidence and supporting economic development initiatives in the United States. They can also play a role in affording EB-5 investors the type of safeguards private fund investors outside of EB-5 have long demanded. Investors and managers in the EB-5 space should evaluate the service level being offered by fund administrators not only to ensure that service levels satisfy the RIA, but also minimize risks, inspire investor confidence, maintain good investor relations and help “future proof” the project against the likelihood of even stricter regulatory requirements.

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Chris is originally from Springfield, Massachusetts and is a manager on Baker Tilly’s Development and Community Advisory’s Capital Formation team. He manages the EB-5 fund administration team.

Chris has over 20 years of experience in the financial services industry including time previously spent at firms such as Goldman Sachs, BNY Mellon, Maples Group, Barings and Apex Group. Most recently, Chris served as the Head of Funds (USA) for Bolder Group.

Chris held increasingly senior positions throughout his career, consisting of roles within investor services, fund accounting and fund governance. Chris, while previously a resident of the Cayman Islands, served as an independent director for several years on a wide range of investment funds, including multi-manager funds, hedge funds, private equity funds, unit trusts and segregated portfolio companies.

Chris is an active CPA with a Master of Business Administration from the University of Massachusetts and a Bachelor of Science in Business Administration from Western New England University. In addition, Chris holds the Accredited Director designation granted by the Institute of Chartered Secretaries of Canada and is a member of the AICPA.

[1] See the EB-5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act of 2022, Pub. L. 117-103, 136 Stat. 49 (March 15, 2022), Q, iv, I-II https://www.govinfo.gov/content/pkg/PLAW-117publ103/pdf/PLAW-117publ103.pdf

[2] See the EB-5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act of 2022, Pub. L. 117-103, 136 Stat. 49 (March 15, 2022), Q, iv, VI https://www.govinfo.gov/content/pkg/PLAW-117publ103/pdf/PLAW-117publ103.pdf

[3] See the EB-5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act of 2022, Pub. L. 117-103, 136 Stat. 49 (March 15, 2022), Q, iv, III-V https://www.govinfo.gov/content/pkg/PLAW-117publ103/pdf/PLAW-117publ103.pdf.

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REGIONAL CENTER REPRESENTATION:

- Structuring NCE's
- Structuring RC Affiliations
- Project Compliance and Diligence

INTEGRITY COMPLIANCE:

- Regional Center Certifications
- Regional Center SEC Compliance
- Regional Center Reporting

EB-5 OFFERINGS:

- Deal Structuring & Term Sheets
- Reg D & Reg S Offering Documents
- Loan Model Documents
- Agent Agreements

SEC REGULATORY:

- Fee Structuring
- Finder's Fees
- Broker Dealer Compliance

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EB-5 Origins:
Meet Suzanne Lazicki
Founder, Lucid Professional Writing

Laura Kelly
IIUSA Editorial Committee

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For this issue, our EB-5 Origins spotlight features Suzanne Lazicki, who has built a reputation not only for her extensive professional writing career, but for her blog, blog.lucidtext.com, which has become a go-to source for EB-5 news and analysis. I spoke with Suzanne about how she found her place in EB-5 and a few of the things she's learned along the way. I hope it will be as enlightening for you as it was for me.

RCBJ: You're known not only as a writer of EB-5 business plans, but for your expertise on the program as a whole. What about your background drove you toward a focus on EB-5?

Suzanne: The diversity in EB-5 is a good fit for my background. I was born in France, grew up in Chad and Cameroon, got degrees in literature and business, worked in a variety of industries, spent five years in China, and was with a California real estate developer in 2008 when EB-5 crossed my radar. Working with EB-5 business plans lets me draw on my expat and business experience and use both the MBA and the English major. And it's helped me to pay forward a debt of kindness that I built up in years of living as a foreigner getting help from locals. I've been motivated to master the ropes in EB-5 so that I can offer resources and support to investors and developers trying to navigate a complex system.

RCBJ: Having written business plans for hundreds of projects, are there things you see time and again from developers first entering the space? What do they get wrong about EB-5 investors? Are there misconceptions about EB-5 that just won't die?

Suzanne: Developers tend to initially see EB-5 investors simply as investors, while many investors initially approach EB-5 simply as an immigration opportunity. There's a process to grasp how both investment and immigration considerations fit together in the EB-5 picture. Developers can be surprised by how EB-5 investors judge projects, and by the long-term process and commitments involved in supporting immigration compliance.

Regarding misconceptions, I'm distressed by the sticky belief that EB-5 backlogs don't exist until they reach the visa stage and get reported in the visa bulletin.

RCBJ: Talk to us a bit about how EB-5 has changed since you began. Has the industry matured? What areas are still lacking?

Suzanne: Back in 2010, EB-5 was a gold rush. There were plenty of EB-5 visas then, few established regional centers, low barriers to entry, limited government oversight, recession-fueled demand from developers for non-traditional capital sources, and growing demand from foreign investors as Canada restricted its previously-popular program. Many entering the EB-5 frontier in those days were amateurs who didn't know what they didn't know about private offerings, securities laws, and how the program works.

Since then, the "Wild West" has been tamed. EB-5 now has higher barriers to entry and fewer opportunities, but the field is better understood and more professional. Going forward, I would like to see improvements in the program's incentive structure. Regional centers, EB-5 service providers, and the U.S. government should not only be incentivized to bring in EB-5 money, but should have more of a stake in seeing the investments and immigration process succeed for investors.

RCBJ: Your blog has become one of the go-to places for EB-5 data and analysis. Why is it so hard for the industry to get concrete information out of USCIS?

Suzanne: Communicating EB-5 information is not anyone's job, unfortunately. Guidance and data from USCIS must go through layers of bureaucracy and a maze of public engagement rules, only to be published in hard-to-find places. On the industry side, few people are motivated to search out the USCIS data and present it without self-interested spin.

RCBJ: How did the passage of the EB-5 Reform and Integrity Act of 2022 affect what you do? Is the assessment of EB-5 projects different?

Suzanne: Since the RIA, I've written several business plans for interesting manufacturing projects in remote towns. Congress would love these projects, which are poised to bring well-paying jobs and significant economic activity to underdeveloped areas. In the past, such projects could hardly compete, as EB-5 investors naturally favored real estate opportunities in major cities from an investment perspective. Today, RIA rural incentives give more projects a chance. Developers should count on investor decisions being shaped by immigration incentives, and changing as those incentives change.

RCBJ: Now that we have confirmation of the two-year sustainment period, do you expect to see more short-term projects offered to EB-5 investors?

Suzanne: Again, it's important to think about how both investment and immigration considerations affect EB-5. The holding period for an EB-5 investment is not simply the minimum period required by USCIS for immigration purposes – however that period may be calculated and defined -- but also the time it takes a project to successfully create jobs and support an exit strategy. Those magical words "two years" have been around since the Immigration Act of 1990 established the EB-5 program and defined a two-year conditional period. But that doesn't mean short-term EB-5 projects have ever been common, even back before USCIS delays and visa waits unnaturally expanded the process far beyond the conditional residence period established by the INA. Investors have always needed to consider the holding period that's economically reasonable to kind of project they want to invest in. Rules on the immigration side have only ever put a floor but never a ceiling or a guarantee on investor exit timing.

RCBJ: Those of us in the industry want EB-5 to last into the future and avoid another lapse in the Regional Center program. What steps does the industry need to take to come together and convince lawmakers that EB-5 is an asset to the country?

Suzanne: Let's each do what we can to ensure that EB-5 is, in fact, an asset to the country: a program that genuinely creates jobs, supports economic development, attracts good people, and makes the news for the right reasons.

I-956 and I-956F Post-RIA Adjudication Trends:

Considerations & Issues for Regional Centers & Issuers Two Years After the RIA

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It's been over two years since the EB-5 Reform and Integrity Act of 2022 ("RIA") has gone into effect and industry stakeholders have had some time to analyze adjudication trends from USCIS regarding EB-5 petitions across the board. While the majority of post-RIA adjudication data points to positive trends in processing times (reports of both rural and high unemployment I-526Es being approved in under a year for example), there's been less useful information or analysis about I-956 and I-956F data.[1] Below we share our thoughts about I-956 and I-956F adjudication trends from our own personal experience as well as cases we've been asked to co-counsel or retained to respond to RFEs. The hope is to shed some light on USCIS adjudications of I-956 and I-956F filings so the industry can have a broader discussion of what to be aware of and prepare for moving forward.

Positive Trends	Common RFE Issues
Multi-State Geographic Designations	Whether RC has sufficient staffing (both too much and too little)
Faster processing overall (compared to pre-RIA I-924 filings)	Broad focus on persons and entities with potential indirect ownership or control over EB-5 funds
Acceptance of Supplemental I-956/I-956F filings	Clarification of roles and duties for RC key personnel and employees
Acceptance of multi-class offerings and portfolio funds	Requests to unravel ultimate beneficial owners of holding companies or trusts
	Project financing issues (including sources and uses)
	Bridge financing and case-by-case studies

[1] Fortunately, USCIS' processing times seem to have improved across several other immigration categories. Notably, processing times for Employment Authorization Documents are at 3.6 months and Advance Parole documents are at 4.4 months. "Historical Processing Times Trends Fiscal year 2016 – 2024". https://www.uscis.gov/sites/default/files/document/fact-sheets/historical_pt_factsheet_fy16_to_fy24.pdf (last accessed April 15, 2024).

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We focus on three main areas in our article below: (1) positive trends for RC operators and issuers; (2) potential RFE issues to prepare for, and (3) unresolved issues to be aware of in the future.

POST-RIA ISSUES AND RISKS TO CONSIDER

GOOD NEWS: MULTI-STATE GEOGRAPHIC DESIGNATIONS

Whether it's because they want to allow Regional Centers to maximize their ability to promote economic growth post-RIA, USCIS seems to be more open to granting multi-state designations for Regional Centers post-RIA. Whereas it wasn't unusual pre-RIA for Regional Centers to receive detailed RFEs asking for justification of different swaths of a state (Northern versus Southern California for example), post-RIA, USCIS appears to thankfully take a more business-friendly approach lately when it comes to allowing multi-state designations.

Although USCIS maybe more accommodating of requests for multi-state geographic designations, it is critical that the Regional Center provide credible evidence that their proposed projects and pipeline will reasonably promote economic growth in their requested area. A naked request or plea without any verifiable or credible evidence of economic growth in the requested states is likely not very compelling and a good waste of filing fees.
On the other hand, a submission that p
rovides evidence of actual and hypothetical projects in the RC's pipeline, where they are located in the RC's requested area, and the expected economic impact, would be much more persuasive. While the entire I-956 application is important, there are key items that USCIS will find helpful. A well-crafted and researched economic analysis tying together the economic activity of the Regional Center's proposed economic activities should be Exhibit A. In our experience and discussions with economists, we find that acceptable analysis includes commuting data crisscrossing multiple counties, or even supply-chain data showing the "hub and spoke" nature of spending and its resulting impact on surrounding areas. Second, a well-written Regional Center operational plan detailing how the Regional Center intends to oversee and manage a wide range of offerings across multiple states would provide powerful credible data about the Regional Center's sufficient manpower and resources to manage the requested area. Finally, business plans or summaries providing details about the actual or hypothetical proposed projects would tie everything together (and provide objective information/data for the economic analysis).

SUPPLEMENTAL I-956 AND I-956F FILINGS: UPDATE VERSUS MATERIAL CHANGE?

While USCIS and IPO have confirmed that they will accept supplemental filings for both I-956 and I-956F matters, it is important to consider the actual substance and nature of the supplemental submission that will be interfiled as these petitions are pending.

Given the processing timelines for I-956 and I-956F petitions and the general development timeline of projects, it's natural that there may be substantive or important updates that a Regional Center or Issuer will want to file with IPO. For one, from a best practices standpoint, there may be outstanding issues that were pending or unresolved when an offering went to market, such as the closing date of a senior loan or other key component of the project's financing. An issuer in such a situation who closes on senior financing would reasonably want to provide an amendment/notice to their current investors, as well as to update USCIS on this key development, both to lower investor anxiety over project viability as well as to preempt a predictable RFE from USCIS.

However, beware that filing a supplemental submission that provides drastically different information may be viewed as a material change and a new I-956 or I-956F may be required. We still believe that a fundamental change in a project's asset class or purpose will likely require a new I-956F filing versus a mere supplemental filing (for example, an I-956F originally filed for a hotel will likely no longer be valid if the developer suddenly pivots to multifamily housing for the same project site).

REGIONAL CENTER STAFFING: HOW MUCH IS ENOUGH?

In terms of regulatory or enforcement priorities, the agency has seemed to put a particular focus on ensuring Regional Centers have transparent staffing, operations, and ownership structures. Whether a Regional Center has no employees or over 50, they should be prepared to address questions about whether the Regional Center has sufficient personnel to run their operations and who are their key personnel with decision-making authority over operations and EB-5 financing.

From a staffing standpoint, Regional Centers with only a handful of people (including owners) may receive a RFE requesting evidence that they have sufficient personnel to oversee their various projects, investor database, I-956G reporting, etc. Since a number of Regional Centers may be new or may have vastly different staff post-RIA (and post-COVID), it is helpful to dedicate extra space in a Regional Center Operations or Compliance manual to explaining the staffing in place is sufficient staff to effectively oversee its operations now and in the future if necessary. For example, some Regional Centers are simply winding down their past offerings and don't need a large payroll to manage the I-829/ repayment process. Others have invested in software or fund management platforms that have largely centralized and automated such functions. A Regional Center can also explain that its staffing is sufficient for now but that it will hire additional people as it grows and as it becomes necessary. The above are real-life factual scenarios that are specific to each group and all have been approved. A viable and commonsense plan is most important.

REGIONAL CENTER STAFFING: FORM I-956H AND KEY PERSONNEL?

Regional Centers with mature operations and staffing may run into a different issue – USCIS may issue a broad request

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demanding information about each Regional Center employee and whether or not they have decision-making authority or substantive control over Regional Center Operations or EB-5 financing under INA §203(b)(5)(H). Regional Centers can expect adjudicators to list almost every Regional Center staff member identified on their website who appears to be involved with sales, marketing, finance, or investor relations. It would be effective to explain who the Regional Center's ultimate decision makers are, and the chain of command of people that actually have power or control over such decisions.

REGIONAL CENTER: INDIRECT OWNERSHIP OR FINANCIAL INTEREST?

Similarly, USCIS has taken a similarly broad analysis of the entities and individuals that it deems to have indirect ownership or financial interest in a Regional Center. This most commonly appears in Regional Centers that are owned by layers of holding companies and individuals.

USCIS' main focus is identifying all potential owners, regardless of whether they claim to have only a passive financial interest, to run I-956H background checks on them to ensure they are qualified to participate or be associated with a Regional Center under the RIA. Corporations and trusts should expect to file I-956H not only for the entity, but for the ultimate individuals or beneficiaries behind such owners. USCIS has made similarly broad requests for any foreign ownership of a Regional Center, whether the ownership interest is held as an individual or through an entity.

PROJECT FINANCING: SHOW ME THE MONEY

One thing remains unchanged with USCIS adjudication of EB-5 offerings – any EB-5 offering that doesn't clearly have all the financing in place to complete construction of its project should expect an RFE requesting evidence that all financing has been secured (or will be imminently secured) before USCIS will approve the underlying I-956F. The rationale for this is straightforward and dovetails with advice we give our own investors – one of the simplest ways of mitigating project risk is to simply pick a project that has all its financing in place already (and EB-5 would presumably be only to payoff bridge financing or lower the cost of capital elsewhere). USCIS is right to be concerned about whether projects are ultimately viable, especially if a chunk of their necessary capital is to be determined in the future. Issuers who go to market before all financing is secured can expect similar questions from agents and investors during the due diligence phase. If senior financing is secured after the initial offering, we advise that a supplemental I-956F be interfiled to update USCIS on this critical information.

USCIS has also taken careful approach with analyzing bridge financing. USCIS has always stated that whether bridge financing qualifies is determined on a case-by-case basis, and issuers are advised to provide a careful factual analysis of why they believe their bridge financing qualifies to be taken out by EB-5 funds.[2] This is especially important because stakeholders tend to forget the importance of laying out a strong factual framework to help USCIS understand why something was or wasn't intended to be short-term. In terms of recent history, if a developer was forced to take on burdensome financing due to volatility with development plans and financing availability due to COVID-19 and roller coaster interest rates, it should clearly be explained. Similarly, if a developer was forced to take on exorbitant financing or otherwise be in danger of losing a deal or to remove building restrictions imposed by local government, evidence should be provided showing the above. Declarations from the developer or those involved with project financing, and explanations/evidence provided by key construction personnel such as engineers or General Contractors, would be a good start here. Strong facts are needed to help the agency understand why the circumstances of a particular project needed bridge financing.

CLOSING THOUGHTS

While there are still unanswered questions and issues for which stakeholders await guidance from USCIS, the above article paints some themes that the agency is clearly focused on.

While USCIS and IPO may be more accepting of a wide range of Regional Center structures and offerings, they clearly have zeroed in on transparency of Regional Center operators, ownership, and financing. This makes sense given that USCIS recently announced it would begin to roll out Regional Center audits under the RIA despite a number of other RIA issues that remain unresolved.[3] However, the positive news is most of the issues raised in this article are manageable and can be navigated by EB-5 stakeholders and we hope USCIS continues to fairly and swiftly adjudicate I-956 and I-956F petitions moving forward.

[2] See, e.g., "EB-5 Bridge Financing: A Study of Market-Driven Applications & Definitions," by Nima Korpivaara, Phuong Le & et al., IIUSA Regional Center Business Journal, Volume 6, Issue 1 (April 2018).

[3] See "EB-5 Regional Center Audits" (last updated April 9, 2024). https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/eb-5-regional-center-audits (last accessed April 15, 2024).

Surprising Revelations in 2023 EB-5 Data

Laura Kelly
VP of Marketing | JTC

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At a recent webinar from IIUSA and JTC, statistics from the past year showed how much activity has increased since the RIA and where opportunities may lie.

How has EB-5 been doing lately? It's not such an easy question to answer, especially when one of the most recognizable features of USCIS is how difficult it can be to get information out of the agency. In order to understand the state of EB-5 since the passage of the EB-5 Reform and Integrity Act of 2022 (RIA) and where the program is today, industry stakeholders have to pool our resources.

That was the motivation behind IIUSA's February 14 webinar, "EB-5 in 2024: What Do We Know?" Sponsored by JTC, the event featured exclusive data and insights from experts hailing from different corners of the EB-5 world. Together, they analyzed this new information in an attempt to answer some of the biggest questions facing the industry.

HOW DID EB-5 FARE IN 2023?

At the webinar, IIUSA Director of Policy Research & Data Analytics Lee Y. Li shared numbers from 2023, the first full calendar year under the RIA, and how they compared to previous years.

"I think these statistics are very encouraging," said Li, who informed the panel that I-526/526E case filings increased 215% year over year while steadily increasing each quarter of 2023. In addition, case adjudications went up by 170% in FY2023.

"That is very, very welcome news," said Joey Barnett, Partner at WR Immigration. "That's something that we have been waiting to see."

Nearly $2.1 billion in EB-5 investment was raised in FY2023, with the post-RIA total estimated at $2.3 billion.

"2023 was a good year," said Li, who noted that the EB-5 capital raised was enough money "to buy everyone in the U.S. a dozen red roses."

Can we expect this growth to continue? Will activity and interest in EB-5 increase in 2024?

According to moderator Jill Jones, JTC General Counsel, while we've made progress, EB-5 hasn't fully recovered from the Regional Center program lapse.

"If I look at this chart, and it's going from 2008 to 2023," said Jones, "we're nowhere near pre-RIA numbers, are we?"

Nonetheless, the panel was optimistic. "The upward trend is definitely there," said Eren Cicekdagi, Managing Director of Operations at Golden Gate Global.

"Regional Centers now are back to business, and EB-5 is definitely back," added Barnett. "2024 is going to be a great year."

WHERE HAS INVESTMENT BEEN COMING FROM SINCE THE RENEWAL?

Jones also shared data based on JTC's work as an EB-5 administrator, presenting a cross-section of what's happening in the industry to identify trends in the EB-5 investor market. "One of the most common questions we get is 'what countries are the immigrants coming from?" said Jones.

It was expected that the RIA's reserved visa categories and priority processing would bring renewed interest from retrogressed countries, specifically China and India. Based on the data, that appears to be true.

"Between China and Taiwan, we're at over 58% of all the investors coming in," said Jones. "We're seeing a resurgence here."

Cicekdagi explained that because of its previously robust EB-5 industry, China was well-placed to get things back up and running after the renewal.

"The set-asides really created this kind of legitimate hype in the Chinese market and Taiwanese market to put these agents back to work," said Cicekdagi. "Today, there's a lot of hype and excitement from these markets, but this doesn't really reduce the fact that other markets are also interested."

As far as where other interest has been coming from, Cicekdagi pointed to concurrent filing of Adjustment of Status as a driver of interest from holders of H-1B or student visas.

"In San Francisco, there are a lot of H-1Bs, people that come from India," he said, though he cautioned that this level of interest could ultimately lead to retrogression yet again.

"It's great that they put that in the legislation," said Barnett, who stressed that concurrent filing allows immigrant parents to make better decisions for their families. "It's all about the children and making sure their children have a clear future."

While H-1B visa holders are an exciting category of new potential investors, they also have different needs and financial situations than some other EB-5 investors, bringing up another big point of discussion: increased filing fees.

WILL INCREASED FILING FEES AFFECT EB-5 INTEREST?

USCIS recently announced new filing fees for both EB-5 investors and Regional Centers, representing increases of as much as 204% for I-526 applications and 168% for I-956 applications. Could these fees discourage investors from pursuing EB-5?

"It's definitely another upfront cost," said Barnett. "Not everybody who does EB-5 has tens of thousands of dollars sitting around. This is their life savings, and they're scraping through as much as they can or taking out additional debt to fund EB-5."

"I don't think this is really going to slow down the market," said Cicekdagi. But will it create a surge in investment to get applications in before April 1st, when the changes take effect?

"We are seeing a little bit of a surge, and I expect there to be a lot of cases filed in the next six weeks," said Barnett, who added that for many EB-5 investors, fees that amount to 1% of the total being invested are not enough to cause them to rush things. "It's really up to the individual."

Jones asked the panel about partial payments, and whether this option is realistic for those who want to get in before the deadline.

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"It's permissible and it's definitely something a lot of people are looking at, in particular because of April 1st," said Barnett, stressing that "it needs to be done the right way" and that investors need to understand the ramifications.

"If you don't put your full money in right away, then your sustainment period doesn't really start until that full money has been made available to the JCE for use," said Barnett.

The new sustainment period could have an effect on the types of projects investors look for. Will short-term projects become the norm? Are rural projects going to dominate the market? What do investors care most about right now? That data had some answers.

WHAT ARE EB-5 INVESTORS LOOKING FOR IN A POST-RIA WORLD?

One of the surprises in the data was that more than 380 Regional Centers have applied for designation since the RIA, with 231 new projects already launched.

"There's a lot of options for investors to look at," said Li.

"The market's going to be overcrowded really soon," said Cicekdagi, who expects the demand for rural to continue. "A good rural project appeals to everyone," he said. "It doesn't have to be a retrogressed country."

There was also a wide-ranging discussion of the new sustainment period and how investor demand for shorter deals may change how projects are structured. While this may occur in the future, Jones shared data that indicated larger projects are still dominating the market.

"Investors are still looking for projects that have a reputation, that have a track record," she said. Looking at the projects that have been funded post-RIA, she noted, "they're very large projects, far larger than I would have expected." This makes sense from the perspective of investors who care more about the success of their visa applications than anything else.

"I want to be sure that I get my green card, so who's done this before?" said Jones, noting that JTC's focus on best practices comes from both concern for program integrity and investor immigration success. In short, "how should people be treating other people's money?" With a lot of projects to choose from, investors can be picky about who they choose to work with.

More topics were covered at the webinar, including what steps should be taken to ensure the future health of the program. There was also more data shared that won't be found anywhere else.

Scan the QR to see more data and hear insights from the panelists, watch the full webinar recording from IIUSA.

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Lifting the Veil: Corporate Transparency Act Compliance for EB-5 Stakeholders

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The EB-5 compliance landscape is facing a new regulatory horizon with the introduction of the Corporate Transparency Act (CTA).[2] Enacted as part of the National Defense Authorization Act for Fiscal Year 2021,[3] the CTA aims to enhance transparency and combat illegal activities by requiring certain business entities to disclose their beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury. This legislation, which came into effect on January 1, 2024, holds significant implications for the EB-5 community, including regional centers, new commercial enterprises (NCEs), job-creating entities (JCEs), and their managers.

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The CTA was enacted to address a critical gap in the United States' anti-money laundering (AML) framework.[4] Historically, the lack of a centralized registry for beneficial ownership information has been a significant challenge for law enforcement and regulatory agencies in combating illicit financial activities. Anonymous shell companies, which do not require disclosure of their true owners, have often been used to launder money, finance terrorism, evade taxes, and engage in other forms of corruption. The Financial Action Task Force (FATF), an international standard-setting body for AML and counter-terrorist financing measures, criticized the United States for its failure to collect beneficial ownership information, urging corrective action.[5] In response to this criticism and the growing recognition of the risks posed by opaque corporate structures, Congress introduced the CTA as part of the broader Anti-Money Laundering Act of 2020.[6] The CTA aims to enhance transparency, strengthen the integrity of the financial system, and provide law enforcement with the tools needed to track and prevent illicit activities facilitated through anonymous entities.

CTA REPORTING REQUIREMENTS

The CTA's reporting requirements introduce a crucial shift in regulatory expectations for certain U.S. entities. It designates as "reporting companies" certain entities either formed or registered to conduct business in the United States.[7] These companies are required to file a Beneficial Ownership Information (BOI) report with FinCEN, the U.S. Treasury's financial intelligence unit. The BOI report must contain detailed information about the reporting company, such as its full legal name, alternative business names, current U.S. business address, jurisdiction of formation or registration, and its IRS Taxpayer Identification Number (TIN) or a foreign tax identification number, if applicable.[8]

Additionally, the report must include information on each "company applicant" and "beneficial owner." A company applicant is defined as the individual, such as a controller, an accountant, or a lawyer, who files the document that forms a domestic reporting company or first registers a foreign reporting company to do business in the United States. A beneficial owner is an individual who, either directly or indirectly, exercises substantial control over the entity or owns at least 25% of the entity's ownership interests. For each of these individuals, the BOI report must provide their full legal name, date of birth, current residential or business address, a unique identifying number from an acceptable identification document (such as a passport or driver's license), and a scanned copy of the identification document.[9]

The information submitted to FinCEN through the BOI report is not made publicly available, ensuring privacy and confidentiality. However, it can be accessed by U.S. federal law enforcement agencies for investigative purposes. Additionally, with appropriate court approval, certain other enforcement agencies can access this data. Non-U.S. law enforcement agencies may also request this information through a U.S. federal agency. Financial institutions can access the disclosed information, but only with, among other things, the explicit consent of the reporting company. The reporting requirements introduced by the CTA represent a significant effort to enhance transparency and accountability within the U.S. business environment. This push for greater clarity has particular relevance in the EB-5 sector, with its often complex, multi-tiered transaction structures.

EB-5 ENTITIES AND CTA COMPLIANCE

The applicability of the CTA to the EB-5 industry introduces a new layer of regulatory oversight that impacts various entities involved in the typical EB-5 transaction structure. Regional centers, which sponsor EB-5 projects, play a pivotal role in ensuring compliance with applicable law, including the new requirements introduced by the CTA.[10] As the entities responsible for overseeing compliance that extends to new commercial enterprises (NCEs) and job-creating entities (JCEs), regional centers must be particularly vigilant in adhering to the CTA's mandates.

NCEs, serving as the primary investment vehicles for EB-5 investors, are typically structured as limited liability companies or limited partnerships. These entities, along with their managers, may find themselves subject to the CTA's reporting obligations. Similarly, JCEs, which are the ultimate recipients of EB-5 funds for project development, could be required to comply with the CTA, depending on their organizational structure and business registration status.

The CTA's reporting requirements underscore the importance of transparency, clarity, and accountability among members of the EB-5 transaction team. As such, regional centers, NCEs, and JCEs must carefully assess their compliance obligations to navigate this evolving regulatory environment successfully.

EXEMPTIONS AND IMPLICATIONS

There are several exemptions to the reporting requirements of the CTA that mitigate the reporting obligations for certain entities. Understanding these exemptions is crucial for EB-5 entities to determine their compliance obligations.[11] One notable exemption applies to "large operating companies." Entities that employ more than 20 full-time employees in the United States, report over $5 million in gross receipts or sales on their U.S. tax returns, including those of affiliates, and maintain an operating presence at a physical office within the U.S., are exempt from the CTA's reporting requirements.[12]

[1] The authors extend their sincere gratitude to Mine Ekim for her insights and contributions, which greatly enriched this article.
[2] Corporate Transparency Act of 2020, Title LXIV of Division F of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, §§ 6401-6403, 134 Stat. 3388, 4528-36 (2021).
[3] Id.
[4] Comparatively, over many years, the European Union (EU) has implemented several directives aimed at increasing transparency and combating money laundering, such as the Fourth Anti-Money Laundering Directive (AMLD IV) and the Fifth Anti-Money Laundering Directive (AMLD V). These directives require member states to establish beneficial ownership registers and impose obligations on entities to provide accurate and up-to-date information on beneficial owners. Additionally, the EU has been working on further strengthening anti-money laundering regulations, with proposals for a Sixth Anti-Money Laundering Directive (AMLD VI) being discussed: https://finance.ec.europa.eu/financial-crime/eu-context-anti-money-laundering-and-countering-financing-terrorism_en.
[5] Beneficial Ownership Transparency in Corporate Formation, Shell Companies, Real Estate, and Financial Transactions, Congressional Research Service (July 8, 2019), https://crsreports.congress.gov/product/pdf/R/R45798
[6] Corporate Transparency Act of 2020 §§ 6401-6403, 134 Stat. 3388, 4528-36 (2021).
[7] 31 CFR § 1010.380(c)(1)(i).
[8] 31 CFR § 1010.380(c)(1)(i).
[9] 31 CFR § 1010.380(c)(1)(ii).
[10] EB-5 Reform and Integrity Act of 2022, Title II of Division BB of the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, §§ 2201-2207, 136 Stat. 49, 986-997 (2022).
[11] 31 CFR § 1010.380(c)(2).
[12] 31 CFR § 1010.380(c)(2)(xxi)

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Additionally, the "subsidiary exemption" may be relevant for certain EB-5 entities. Under this exemption, entities that are wholly-owned or controlled, directly or indirectly, by one or more exempt entities might also be exempt from the reporting requirements.[13] This could potentially apply to NCEs or JCEs that are subsidiaries of larger, exempt entities.

The pooled investment vehicle exemption under the CTA could also potentially apply to some EB-5 entities.[14] For an EB-5 entity structured as a pooled investment vehicle to qualify for this exemption, it must be identified by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the Securities and Exchange Commission (SEC).[15] While this exemption may be applicable to some EB-5 entities, it is important for each entity to carefully evaluate whether they meet the specific criteria set forth in the regulations.

For EB-5 entities, especially regional centers, it is essential to assess their eligibility for these exemptions based on factors such as size, activities, or regulatory status. NCEs and JCEs should also evaluate their exemption status based on their ownership structure and business registration status. For further details on the CTA's exemptions and their implications for the EB-5 community, stakeholders are encouraged to refer to the guidance provided by FinCEN and consult with legal professionals specializing in EB-5 and corporate compliance.[16]

REPORTING TIMELINE

The CTA establishes specific deadlines for reporting companies to file their initial BOI reports with FinCEN. Entities formed or registered to do business in the U.S. before January 1, 2024, must submit their reports no later than January 1, 2025. For entities formed or registered between January 1, 2024, and December 31, 2024, the initial report must be filed within 90 calendar days of their formation or registration. Entities formed or registered on or after January 1, 2025, are required to file their reports within 30 days of formation or registration. These timelines are crucial for ensuring timely compliance with the CTA's reporting requirements and avoiding potential penalties for late submissions.[17]

PENALTIES FOR VIOLATIONS

The CTA imposes penalties for non-compliance. Willful failure to report accurate beneficial ownership information or knowingly providing false or fraudulent information can result in civil penalties up to $500 for each day the violation continues and criminal fines up to $10,000, imprisonment for up to two years, or both. Moreover, the penalties for unauthorized disclosure of beneficial ownership information include civil penalties of up to $500 per day and criminal penalties of up to $250,000 and imprisonment for up to five years.[18]

SIGNIFICANCE OF THE YELLEN CASE

The constitutionality of the CTA was challenged in National Small Business Association, et al. v. Yellen (2024).[19] The U.S. District Court for the Northern District of Alabama declared the CTA unconstitutional and suspended its enforcement against the plaintiffs, finding that it exceeded Congress' power. The plaintiffs argued that the CTA's disclosure requirements infringed upon their constitutional rights due to privacy and security concerns. The Justice Department, on behalf of the Department of the Treasury/FinCEN, filed a Notice of Appeal on March 11, 2024, to appeal the Court's ruling.[20]

The CTA is not currently being enforced against the Yellen plaintiffs: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024). While FinCEN stated it will not enforce the CTA against the plaintiffs (pending appeal), the broader implications of this decision remain uncertain. Entities that are not plaintiffs in the Yellen action are expected to comply with the CTA. This legal development highlights the importance for EB-5 stakeholders to stay informed about the evolving legal landscape surrounding the CTA.

KEY COMPLIANCE CONSIDERATIONS FOR EB-5 ENTITIES

Navigating the CTA's requirements demands diligence and a proactive approach from EB-5 stakeholders. Here are essential compliance considerations:

1. **Determine Reporting Status.** Assess whether your EB-5 entity falls under the definition of a reporting company or qualifies for an exemption. This may require a thorough review of the entity's structure, activities, and financials.
2. **Identify Beneficial Owners.** Identify all individuals who meet the criteria of beneficial owners. This may involve reviewing ownership structures, control mechanisms, and equity interests.
3. **Collect Required Information.** Gather the necessary information for each beneficial owner and company applicant, including legal names, addresses, and identifying numbers.
4. **File Timely Reports.** Ensure that initial and subsequent reports are filed within the specified deadlines.
5. **Maintain Records.** Keep records of the information submitted to FinCEN and any changes to beneficial ownership.
6. **Monitor Legal Developments.** Stay informed about ongoing litigation and potential changes to the CTA and its implementing regulations. The outcome of cases like Yellen could have significant implications.
7. **Changes to Investment/Organizational Documents.** Stakeholders should consider including representations, covenants, and indemnification provisions for CTA compliance in existing and new agreements.

CONCLUSION

The CTA introduces a new layer of regulatory oversight for EB-5 entities, aimed at enhancing transparency and combating illicit financial activities. Navigating the CTA's requirements demands a proactive approach, with careful attention to the identification of beneficial owners, timely reporting, and adherence to exemptions. As the legal landscape evolves, particularly in light of recent challenges to the CTA's constitutionality, EB-5 stakeholders must remain vigilant and prepared to adapt their compliance strategies.

This article provides a general overview and is not legal advice. EB-5 stakeholders should consult with legal professionals to understand their specific obligations under the CTA and the EB-5 Reform and Integrity Act of 2022. For further guidance on compliance with the CTA, visit FinCEN's website and explore their resources, including FAQs and compliance guides.

[13] 31 CFR § 1010.380(c)(2)(xxii).
[14] 31 CFR § 1010.380(c)(2)(xviii).
[15] Form ADV, Part 1A, Schedule R, Section 2.A.
[16] FinCEN, "Corporate Transparency Act: Overview and Resources," https://www.fincen.gov/boi.
[17] 31 CFR § 1010.380(a)(1)-(3).
[18] 31 CFR § 1010.820; 31 CFR § 1010.840.
[19] National Small Business Association, et al. v. Yellen, No. 5:22-cv-01448-LCB (N.D. Ala. Mar. 1, 2024).
[20] Updated: Notice Regarding National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Al.) (updated Mar. 11, 2024) https://www.fincen.gov/news/news-releases/updated-notice-regarding-national-small-business-united-v-yellen-no-522-cv-01448.

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Understanding Fund Transfers for EB-5 Stakeholders: A Simple Guide

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EB-5 is notorious for having deadlines. Program extension dates, impending policy changes, and most recently significant fee increases. It's just a fact of life in this business.

On the one hand, deadlines can be helpful to stakeholders because they stimulate action - but they can also create angst and concern. This is particularly true in EB5 because multiple parties are involved. To meet most submission deadlines, the activities of an investor need to be carefully coordinated with the Regional Center, law firms, agents, escrow companies, or more. When money deposited is critical to meeting a submission deadline, understanding the details about how the money movement works can be helpful.

For an EB-5 investor, moving money safely and efficiently is crucial. For a Regional Center having predictability into money arrival is also crucial. Unfortunately, there is often a lack of transparency and understanding as to the processes that go on within the sending bank, the banks in between, and the receiving bank during a transfer of funds. In fact, many bankers themselves struggle to articulate the details, and as a result fail to set the right expectations.

There are several methodologies that can be used to transfer funds including wire transfers, Automated Clearing House (ACH) transfers, 3rd party payment services, and of course physical checks.

WHAT ARE WIRE TRANSFERS?

Wire transfers are the most common method for transferring funds in EB-5, especially when dealing with investments across countries.

Wire transfers are electronic payments from one bank account to another, anywhere in the world. They're fast, usually taking just a day or two, making them ideal for international investments that need to happen on time - like those in the EB-5 program when a deadline is approaching.

HOW DO WIRE TRANSFERS WORK?

There are three basic steps involved in wire transfers: Initiating, Processing, and Clearing Receipt.

Step 1: The sender initiates a wire at the bank where the deposit is held.

Unfortunately, this is not as straightforward as it should be. Each bank has their own format for collecting information before sending a wire. In some cases, bank clients must go into a branch and fill out a form, in other cases they have an option to use an on-line portal. In all cases common information is required to be included somewhere on the form: the amount to transfer, the currency type intended, the recipient's name, the bank account number to be sent from, the receiving bank account number, and bank information. Usually, there is a beneficial information section on the form that allows the sender to include additional information about the purpose of the wire which may help the receiving party process it. This is a commonly used field in EB5 to identify a specific project, or investor name in the event the wire comes from another friend or family member. However, because there is no standard this information is sometimes truncated during transmission. Senders are advised to put the most important information first in this field. Account and recipient data in particular must be entered completely and accurately for a wire transfer to be successful.

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Step 2: Your bank processes the transfer within their "wire operations center."

There are two parts to this process.

Part A. Upon receiving the initiation request, the sending bank must do an anti-money laundering (AML) (sometimes referred to as fraud prevention) review. All US banks are required by law to do a review, and also to flag and take action on any suspicious activity. If suspicious activity is flagged the sending bank will usually inform their client that the wire is being held pending further review or that it was cancelled and to contact the bank for further information. The bank may also be required to file a suspicious activity report (SAR) with their regulator. The reasons for a bank to flag an attempted wire are many, and unfortunately are not always predictable. The most sophisticated banks use artificial intelligence based systems to automatically assess whether there is anything unusual about the wire request that should be flagged for further review.

Part B. If nothing is flagged the sending bank proceeds to send the funds electronically to the recipient's bank using networks like SWIFT (Society for Worldwide Interbank Financial Telecommunications). In international cases the use of an intermediary or correspondent bank occurs with some frequency and is nothing to be alarmed about. When the wire is sent, the funds are immediately removed from the sender's account. There may be a gap in timing between sending and receiving depending upon the banks involved, and this can be a source of angst to investors.

Step 3. Once the funds are clear at the receiving bank, the recipient can use them.

Wires between domestic US banks usually take less than 24 hours to clear. International wires usually take two business days, but depending on the destination and where the wire is initiated it can take up to 5 days. Investors and Regional Centers should keep in mind that banks only process wires on business days. Therefore, if holidays, or weekends occur during the wire process there will be delays.

EB5 Stakeholders should be aware that banks charge fees for both sending and receiving wires. On occasion a bank may choose to waive those fees but typically range between $15 -$150 per wire. Planning for this in advance is important for EB5 investors to ensure that the full investment amount is received.

WHAT ARE ACH TRANSFERS?

An ACH transfer is another method of electronic funds transfer made between financial institutions. In this case the transfer is made using the ACH network. Almost all financial institutions in the United States, and a growing number of international banks are on the ACH network.

Unlike wire transfers which can go directly from bank to bank, all ACH transfers are done via the 3rd party ACH network. ACH is commonly used when moving funds from one bank account in the US to another bank account in the US. It tends to be the preferred method for most consumers and businesses for recurring payments such as bill pay, payroll etc. There are typically no fees involved when using the ACH transfer method, however, ACH transfers usually take longer than wire transfers to clear and the timing is less predictable. Senders using ACH should plan on a process period of two to four days, which means that some planning is required when trying to meet a

deadline. Same day ACH is becoming more common but does come with higher fees, and is still US centric.

ACH is a good choice for Regional Centers making distributions to investor whenever it is available as an option. Distributions can be planned, and using ACH can reduce costs significantly.

HOW DO ACH TRANSFERS WORK?

The process for sending an ACH is similar to a wire. The same type of information is required. Once the transfer is initiated the banks go through the same anti-money laundering (AML) review and will flag any requested transfer that appears to have suspicious activity.

All financial institutions have daily transfer limits in place for both ACH and wires. EB5 investors should consult their bank in advance to confirm what the limit is so they can plan accordingly or ask for an exception to meet a deadline.

WHAT OTHER MONEY TRANSFER ALTERNATIVES ARE AVAILABLE?

There are other options available including Checks, Cashier's Checks, Money Orders, or other on-line payment services like PayPal, Venmo, or Zelle.

When using Cashier's Checks, funds can move quicker than regular checks. When using Cashier's Checks, funds are immediately debited from the "senders" account, and the receiving bank must make funds available next business day unless some suspicious activity is suspected. Using checks for international transactions is less desirable than wire transfers due to the lack of predictability and potential security concerns. Used domestically, however, they can be a reasonable alternative to a wire transfer if the investor is able to physically go into a branch of both the sending and receiving bank.

The other payment alternatives mentioned above are not typically a good fit in EB5 for a number of reasons. Most on-line payment services, and money orders are designed for consumer, and small business transactions and as a result have daily limits well below what an EB5 investor would typically require.

WHAT ISSUES CAN CAUSE MONEY TRANSFERS TO BE FLAGGED OR CANCELLED?

Investors and regional centers should not panic if wire transfers are flagged or even cancelled. Remember, the US banking system is heavily regulated and financial institutions are frequently subjected to large fines for failures to do proper AML. Therefore banks (the larger ones in particular) can be extremely cautious and often will overcompensate, leading to transfers being flagged with some regularity.

Some of the most common reasons a funds transfer can be flagged include:

- A large sum of money is involved. All financial institutions have daily limits on money transfers, and have additional reporting requirements when large transfers are requested. Given the large amounts typically moved in EB-5, a transfer may be held up unless an exception has been granted.
- The transaction is "atypical" for that bank client. What is considered atypical will vary from bank to bank, and even client to client within the same bank. For instance, an investor who is a student in the US doesn't typically have balances of EB5 size, or typically send large wires.
- The information provided on the initiation form is not accurate. All information should match exactly with both the sending and receiving bank's information. A small mistake in the account number, bank code, account name, or sender's information can block the transfer. Since bank systems are not all the same, and artificial intelligence systems are increasingly involved, what wires get flagged may not appear to be consistent.
- Insufficient funds are available. There needs to be enough funds available (i.e., cleared) in the sending account to cover the amount to be sent. If funds were just received into the sender's account, but are not yet cleared, they may not be available to transfer.
- Regulatory issues: Banks monitor for fraud and money laundering. If a transaction seems suspicious or involves a sanctioned country, it might be stopped.
- AI Software: Often banks use software that can inadvertently flag a client account for reasons unknown to the client, or even the banker employee they are interacting with. There are a host of issues the bank may deem appropriate to meet its anti-money laundering (AML) requirements at that moment in time.

TIPS FOR SMOOTH WIRE TRANSFERS OF EB-5 FUNDS

Plan Ahead: Speak with your banker in advance regarding your plans, and to be informed of their policies in the event you need to do additional paperwork, or seek an exception. Consider the timing requirements and have your banker help you select the best methodology.

- **Double-check details:** Always verify the recipient's information before sending.
- **Understand the fees:** Know what your bank charges for wire transfers, especially for international ones, and ensure that the target amount required will be received by the recipient.
- **Keep records:** Save all information about your wire transfers in case there are any questions
- **ACH transfers:** Remember that these are another option for domestic transfers, and are usually cheaper (but slower) than wire transfers.
- **Don't Immediately Panic:** Far too often, when a transfer fails the first instinct is to try it again. Trying the same transfer, the same way, shortly after the first attempt is likely to cause the AML review to look at this as suspicious activity. Instead, reach out to your banker to discuss with them what the actual issue is and discuss how it can be resolved.

CONCLUSION

For EB-5 stakeholders, understanding the different fund transfer alternatives is essential for managing your investments effectively. By knowing how they work, what can cause delays, and how to avoid common issues, you can ensure your funds move quickly and safely to where they need to be. Always consult with your bank or a financial advisor to choose the best method for your specific needs.

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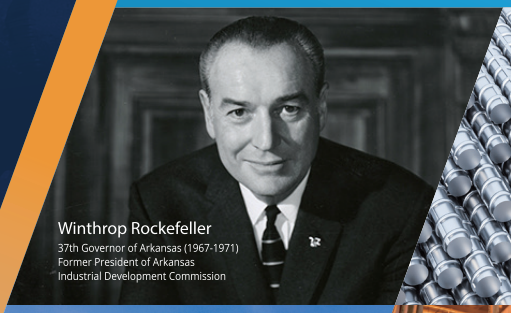

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FOIA Litigation Update:

Trends in Source of Funds Issues

John Pratt
Partner | Kurzban
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Edward Ramos
Partner | Kurzban
Kurzban Tetzeli & Pratt

Continued On Page 53

Over the past two years, IIUSA has collaborated with Kurzban Kurzban Tetzeli & Pratt (KKTP) on litigation under the Freedom of Information Act (FOIA) aimed at uncovering changes and trends in the IPO's adjudication of source-of-funds issues. During that time, we have obtained and analyzed over 5,000 pages of documents. This article highlights what we learned (and what suspicions we confirmed) through this ongoing FOIA case.[1]

USCIS TARGETS INVESTOR USE OF "CURRENCY SWAPS" TO EXCHANGE FUNDS

"Currency swaps," sometimes called "informal value transfers," are a popular way to exchange local currency into U.S. dollars and then transfer those funds to the United States to make an EB-5 investment. In a currency swap, an investor transfers local funds to a third party, who in turn transfers U.S. dollars held in the United States (or another country without currency restrictions) to the investor or the investor's new commercial enterprise. Currency swaps have historically been used by investors from countries with restrictions on currency export (such as China and Vietnam) because they facilitate EB-5 investments without the need to transfer funds directly out of a country with currency export restrictions.

In 2017, EB-5 attorneys began to see a spate of Requests for Evidence (RFE) for investors who used currency swaps.[2] Despite the longstanding popularity of this method of currency exchange, USCIS for the first time began asking investors to prove not only the lawful source of their EB-5 funds, but also to show the lawful source of funds for any third parties that helped with a currency swap. In many cases, these requests were for investments made many years prior. Investors who were unable to prove the lawful source of the third party's U.S. dollars then faced I-526 petition denials.

We now have evidence that these RFEs and denials resulted from an affirmative decision within the IPO to change policy on cases involving currency swaps. An internal USCIS email dated February 2017, titled "Informal Money Transfer/3rd Party Currency Swap/Informal Value Transfer," describes a "new direction we are taking when it comes to IVTs [Informal Value Transfers]." The email explains that the IPO, "[b]ased on discussions with FDNS [Fraud Detection and National Security], IPO Leadership and OCC [Office of Chief Counsel],...will be rolling out" new currency-swap "guidance to the floor."

From: Weatherl, Tsa M
To: Egan, Paul J; Mason, Christopher A; Sarapu, Christine M; Nogueras, Benjamin A; Watkins, Jonathan L; Hamilton, Laura J; Nguyen, Phil H; Rodriguez, Luis A
Cc: Leckenby, David M; Garfield, Reed R
Subject: Informal Money Transfer/3rd Party Currency Swap/Informal Value Transfer
Date: Thursday, February 23, 2017 1:20:07 PM
Attachments: RFE Template Language for 3rd Party Money Exchange (OCC Edits 2-2-17) Final Doc 2-22-17.docx
3rd Party Money Exchange Examples (OCC Edits 2-17-17) Final TMW 2-22-17.docx
Form I-526 Templates-Topics per Section of Law Final 22217.docx
image002.png

Hi BCs,

You probably noticed that this topic is on the agenda and I'm sure you saw my email sent out to the floor letting everyone know that the working group has completed its review of the cases submitted to the IVT email box. Based on discussions with FDNS, IPO Leadership and OCC, we will be rolling out the attached guidance to the floor.

I wanted to give you visibility into this new direction we are taking when it comes to IVT and would like to meet with you to discuss this matter before the guidance goes out officially to the floor to ensure we are all on the same page. Can we coordinate a meeting on **Monday February 27th** to discuss?

For today's interdivision meeting I've asked FDNS' Adam H to give the backstory as to why we are moving in a new direction and I will let the AOs know that written guidance will be coming out shortly. I will also thank everyone for referring their cases to the IVT box. We had some AOs that were extremely consistent about referring their cases. AOs will also be informed that they can speak with their SAO should they have additional questions after receiving the written guidance and of course, I'm always available for questions as well.

Thanks,

TEAM

Tsa Marie Weatherl

Team All-Star: Doing Big Things
USCIS-Immigrant Investor Program (IPO)
Supervisory Adjudications Officer (SAO)
(b)(6) Office:

This new guidance includes the instruction that "[w]hen a petitioner uses a third-party to effectuate the transfer of his or her funds that involves a 'swap' of funds, adjudication officers may find that there is insufficient evidence to demonstrate that the capital invested belonged to the petitioner, and/or the capital invested was derived—directly or indirectly—from lawful means." It also advises adjudicators to request licensing and registration information for any currency exchangers, as well as evidence as to how the third-party currency exchangers acquired the U.S. dollars used as part of the currency exchange.

These internal records obtained through the FOIA litigation vindicate the frustration of EB-5 practitioners who decried USCIS's retroactive application of new currency-swap guidance to existing EB-5 cases—even while USCIS repeatedly insisted in federal court filings that there was no change in policy.

All documents obtained through the FOIA lawsuit are accessible on KKTP's website. Scan the QR to access the site

[1] See IIUSA v. USCIS, No. 22-cv-2687 (D.D.C.).
[2] See, e.g., Jennifer Hermansky, Third Party Currency Swaps: Considerations for RFEs, 6 IIUSA Business Journal 38 (Oct. 2018).

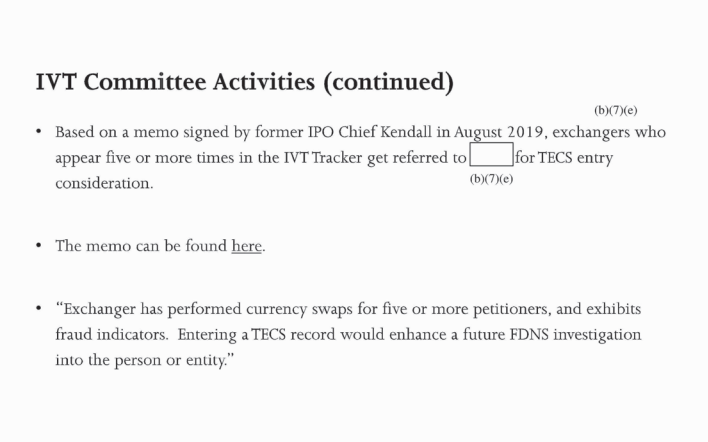
Continued On Page 54

Other key findings involving currency swaps include the following:

- **USCIS now has substantial internal guidance and officer training on currency swaps.** Among other things, adjudicating officers are instructed to request proof: (1) of how third-party currency exchangers acquired the U.S. dollars used as part of a currency-exchange transaction; (2) that the EB-5 investor entered into an agreement with the third party assisting with the currency swap; (3) of the full path of funds from the investor to the exchanger, and vice versa; and (4) of licensing documentation for the exchanger (if a claim is made that the exchanger is licensed). Consistent with the denials received by some investors, USCIS instructs its officers that affidavits alone are insufficient and that cases will be denied when a third-party exchanger is unable or unwilling to cooperate.

- **The IPO created an "IVT Tracker" to keep tabs on currency exchangers.** USCIS developed an "IVT Tracker"—a new addition to the agency's internal tracking software for EB-5 matters. IPO adjudicators at both the I-526 and I-829 stages are now required to input information about third-party currency exchangers into the IVT Tracker.

  According to a guidance memorandum issued in 2019, any currency exchanger that appears in the IVT Tracker more than five times is referred for possible entry into law-enforcement databases. The IPO is also developing (or by now has already developed) automatic alerts that ping adjudicators when a currency exchanger has been used multiple times by other investors.



IVT Committee Activities (continued)

- Based on a memo signed by former IPO Chief Kendall in August 2019, exchangers who appear five or more times in the IVT Tracker get referred to (b)(7)(e) for TECS entry consideration.
- The memo can be found here.
- "Exchanger has performed currency swaps for five or more petitioners, and exhibits fraud indicators. Entering a TECS record would enhance a future FDNS investigation into the person or entity."

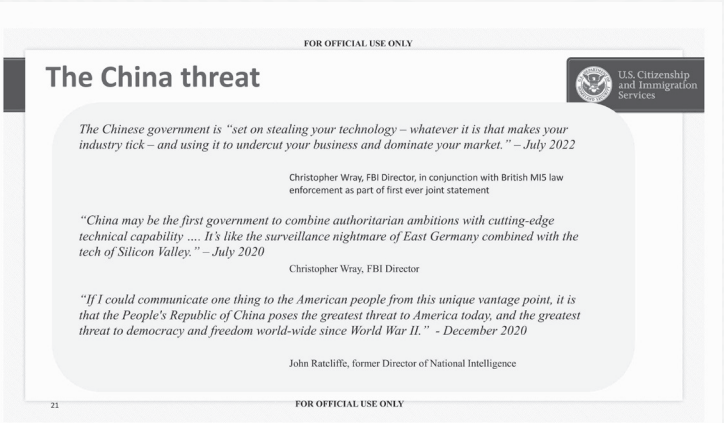
- **USCIS works with other law enforcement agencies on currency-swap guidance.** Material obtained through the FOIA litigation shows that USCIS established an "IVT Working Group" that worked closely with various law-enforcement agencies on currency-swap issues, including the Department of Treasury's Financial Crimes Enforcement Network; ICE's Homeland Security Investigations; the IRS; and the Department of State. According to the FOIA materials, these agencies "expressed an interest [to USCIS] in investigating currency exchangers to evaluate possible violations of money laundering laws, and their predicate offenses; wire fraud, mail fraud, structuring and bulk cash smuggling."

In short, it is clear from the FOIA documents that scrutiny that currency swaps face from the IPO is not going away anytime soon.

USCIS TARGETS CHINESE INVESTORS AND FUNDS SOURCED FROM CHINESE TECH COMPANIES

Another trend confirmed through the FOIA litigation is that the IPO is targeting Chinese investors for extra scrutiny—particularly investors who acquired their EB-5 funds from Chinese technology companies.

One IPO training slide, titled "The China Threat," reveals the IPO's general attitude toward China. The slide consists entirely of quotes from U.S. law enforcement, including the FBI Director Christopher Wray, accusing the Chinese government of "stealing…technology…and using it to undercut [American] business" and describing China's actions as "the surveillance nightmare of East Germany combined with the tech of Silicon Valley." The slide also quotes a former Director of National Intelligence describing China as "the greatest threat to America today, and the greatest threat to democracy and freedom world-wide since World War II." The slide says nothing about how these comments relate in any way to EB-5 adjudications. But this "China Threat" label does little to instill confidence that Chinese investors' cases are being impartially adjudicated.



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The China threat

U.S. Citizenship and Immigration Services

The Chinese government is "set on stealing your technology – whatever it is that makes your industry tick – and using it to undercut your business and dominate your market." – July 2022

Christopher Wray, FBI Director, in conjunction with British MI5 law enforcement as part of first ever joint statement

"China may be the first government to combine authoritarian ambitions with cutting-edge technical capability …. It's like the surveillance nightmare of East Germany combined with the tech of Silicon Valley." – July 2020

Christopher Wray, FBI Director

"If I could communicate one thing to the American people from this unique vantage point, it is that the People's Republic of China poses the greatest threat to America today, and the greatest threat to democracy and freedom world-wide since World War II." - December 2020

John Ratcliffe, former Director of National Intelligence

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Indeed, the FOIA results also show how animus toward China manifests itself in concrete EB-5 policy. For example, internal agency emails reflect a "Management Directive" issued to IPO adjudicators, instructing them to scrutinize the record for ties to the Chinese Communist Party. In addition, the IPO has developed a "Source of Funds from Unlawful Entities Working Group." The purpose of that working group is to "address sources of funds from unlawful companies, and more specifically, technologies companies on our radar"—including "entities highlighted in IPO and FDNS trainings."[3]

Other parts of the FOIA results show that major Chinese technology companies—including Huawei Technologies Co., Ltd. and its subsidiaries—are being targeted by USCIS. This explains, in large part, why EB-5 practitioners have seen unprecedented scrutiny for investors who sourced their funds through perfectly lawful employment from bona fide Chinese tech companies like Huawei.

[3] IIUSA recently filed a new FOIA request aimed at uncovering the policy developed by this "Unlawful Entities Working Group."

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USCIS APPLIES THE WRONG STANDARD FOR SOURCE OF FUNDS ISSUES IN I-829 ADJUDICATIONS

Other IPO trainings uncovered through the FOIA litigation target the adjudication of source-of-funds issues in I-829 petitions. These trainings instruct I-829 adjudicators to accord "deference" to source-of-funds determinations made at the I-526 petition stage. They advise, however, that such deference can be overridden if the adjudicator uncovers a "mistake of law or fact" in a favorable source-of-funds decision made at the I-526 stage. Under this guidance, when an I-829 adjudicator determines that "deference" is unwarranted, officers are instructed to conduct a new source-of-funds analysis—guidance which may well explain a recent uptick in adverse source-of-funds denials at the I-829 stage.

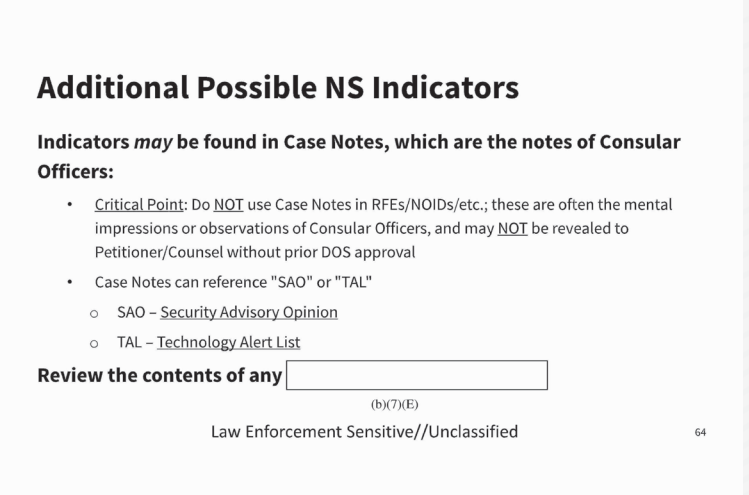
This IPO guidance seemingly skirts a clear regulatory restriction on source-of-funds scrutiny at the I-829 petition stage. According to a longstanding regulation, an I-829 petition may be denied for source-of-funds reasons only when it becomes "known" to the government that the investor's funds were obtained through unlawful means.[4] This standard requires more than just a finding that the original source-of-funds record was legally or factually deficient in some way (as USCIS's "deference" policy would seem to permit). Rather, the regulation's plain meaning requires some new affirmative knowledge on the part of USCIS that the funds were illicitly sourced. While the IPO training cites this regulation, it otherwise fails to discuss the limitations the regulatory text imposes on adjudicators who wish to second-guess favorable source-of-funds determinations made at the I-526 petition stage.

USCIS ACCESSES OTHER AGENCY DATA TO ADJUDICATE SOURCE OF FUNDS ISSUES

We also know from the FOIA litigation that IPO adjudicators are trained to look beyond the four corners of the EB-5 record when adjudicating source-of-funds issues. Adjudicators, for example, are trained to query Department of State databases. including the Consolidated Consular Database (CCD)—a database containing nonimmigrant visa applications. IPO adjudicators are instructed to use CCD information to screen for national-security concerns on the part of the EB-5 investor (or others implicated in the source-of-funds chain). Such concerns include: (1) employment history at sensitive companies like Huawei or its affiliates; (2) work for governmental entities of interest, including entities associated with the Chinese Communist Party or military apparatus; and (3) the use of official passports, which would indicate ties to foreign governments.

Officers are also instructed to scour investors' answers to questions on the DS-160 (nonimmigrant visa application) for inconsistencies with the employment history reported in their EB-5 petitions. Any inconsistencies may result in the issuance of an RFE or NOID and could ultimately result in a denial if not satisfactorily addressed.[5]

Finally, officers are instructed to hide the ball when it comes to concerns uncovered through a consular officer's notes. Specifically, policy guidance to IPO adjudicators states that while consular officer notes make give rise to national-security indicators, those notes "may NOT be revealed to Petitioner/Counsel without prior DOS approval" and therefore an officer should "NOT use Case Notes in RFEs/NOIDs/etc."



Additional Possible NS Indicators

Indicators *may* be found in Case Notes, which are the notes of Consular Officers:

- Critical Point: Do NOT use Case Notes in RFEs/NOIDs/etc.; these are often the mental impressions or observations of Consular Officers, and may NOT be revealed to Petitioner/Counsel without prior DOS approval
- Case Notes can reference "SAO" or "TAL"
  - SAO – Security Advisory Opinion
  - TAL – Technology Alert List

Review the contents of any [redacted]

(b)(7)(E)

Law Enforcement Sensitive//Unclassified 64

The obvious consequence of such guidance is to encourage pretextual denials, and it is unclear how such guidance is consistent with binding USCIS regulations that require all non-classified material that forms the record of proceeding (including adverse evidence) to be disclosed to a visa petitioner.[6]

THE USE OF CRYPTOCURRENCY TRIGGERS EXTRA SCRUTINY

Finally, the FOIA materials revealed the IPO's struggle to adjudicate cases involving cryptocurrency. The FOIA documents reveal that for a time, all cases involving cryptocurrency were shelved while the IPO worked with USCIS's Office of Chief Counsel to develop its cryptocurrency policy. As of May 2021, all cases involving cryptocurrency are "disseminated to designated adjudicators" forming part of a "designated team." The FOIA results also contain training that cautions officers that cryptocurrency can be used to hide the sources and flow of funds and can be used by criminal actors. Moreover, as of the agency's May 2021 guidance, any case involving cryptocurrency requires "supervisory concurrence" before an approval or denial can be issued. It is clear, therefore, that cryptocurrency cases will continue to endure additional security.

However, FOIA results do provide some positive signs. For example, slides from a June 2021 "case discussion" show at least one case involving cryptocurrency that was approved when the investor was able to present (1) a purchase history on the Coinbase platform, (2) a complete sale history statement from Coinbase, (3) a declaration attesting to the gains made on the increase in the cryptocurrency's valuation, and (4) tax returns showing that all requisite taxes were paid on the financial gains.

CONCLUDING THOUGHTS

IIUSA and KKTP's FOIA litigation on source-of-funds issues has confirmed the suspicions of EB-5 practitioners: this area continues to be a hotbed of policy changes for the IPO—sometimes in ways that conflict with the law and due process. The FOIA is a powerful tool to illuminate these important issues, and KKTP looks forward to its continued collaboration with IIUSA so that regional centers, EB-5 investors, and other EB-5 stakeholders can better understand the policy that guides EB-5 adjudications.

[4] 8 C.F.R. § 216.6(c)(2).
[5] For this reason, EB-5 counsel may wish to request copies of all DS-160s filed by the EB-5 investor or any other individuals whose employment history is implicated in the source-of-funds analysis. If these records are no longer available, they may be requested from the Department of State through a Freedom of Information Act request.
[6] 8 C.F.R. § 103.2(b)(16)(i).

Partial Investments 101

What Regional Centers Need to Know

Joey Barnett
Partner | WR Immigration

Will Cornelius
Associate | Torres Law

Continued On Page 58

Partial EB-5 investments have always been allowed by U.S. Citizenship and Immigration Services ("USCIS") but are currently en vogue. Demand for this payment flexibility has grown dramatically with the increased minimum investment amount under the EB-5 Reform and Integrity Act of 2022 and the desire to secure an earlier priority date while the "invisible" visa backlogs grow with Forms I-526E pending at USCIS. Other reasons for undertaking a partial investment relate to flexibility to liquidate assets and mitigating risk and uncertainty due to volatile financial markets. This article explains the legal framework for allowing partial investments and the possible legal issues and downsides from allowing this approach.

WHAT EB-5 LAW AND USCIS REGULATIONS SAY

The Immigration and Nationality Act, as amended, states that EB-5 visas are available for those who have "invested (after November 29, 1990) or, is actively in the process of investing, capital" in a new commercial enterprise. 8 U.S.C. § 1153(b)(5)(A)(i). Applicable regulations indicate:

To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital.

8 C.F.R. § 204.6(j)(2); see also Matter of Hsuing, 22 I&N Dec. 201, 204 (AAO 1998) ("An actual commitment does not exist if the petitioner's assets are not at risk.").

However, neither the law nor regulations (nor USCIS) articulate exactly how much capital must be invested to qualify for an EB-5 visa in the event the full minimum investment amount cannot be placed prior to filing the I-526E petition. This is up for negotiation between the immigrant investor, the new commercial enterprise and the sponsoring Regional Center based on, among other considerations, the need for capital by the job creating entity.

Furthermore, the start date for the "sustainment period" for post-RIA investments is "the date that the full amount of qualifying investment is made to the new commercial enterprise and placed at risk under applicable requirements, including being made available to the job creating entity, as appropriate."[1] As such, an immigrant investor's sustainment period may likely be extended with the use of a partial investment.

DO THE OFFERING DOCUMENTS PERMIT PARTIAL INVESTMENTS?

Even though partial investments are permissible under the EB-5 Program, it is important to determine as a threshold matter whether an NCE's offering documents allow partial investments.

Offering documents that permit partial investments will typically memorialize the arrangement in the investor's subscription agreement (or other similar agreement). The subscription agreement ordinarily provides for the acceptance of the investor's subscription upon the making of the partial investment, with the balance payable either (1) upon a specified installment schedule set forth in the subscription agreement or (2) pursuant to a promissory note signed by the investor.

The authors note the distinction between "actively in the process of investing" cash as capital (see 8 U.S.C. § 1153(b)(5)(D)(ii) and 8 C.F.R. § 204.6) and investing indebtedness secured by assets owned by the immigrant investor, shown through a promissory note. USCIS' Policy Manual mandates additional requirements on the immigrant investor and new commercial enterprise when using a promissory note, including perfection of a security interest by the NCE, to the extent provided for by the jurisdiction in which the asset is located.

Though promissory notes can be subject to scrutiny by USCIS, they do provide certain advantages to the NCE. First, the NCE would be a creditor of the investor and would have the same remedies customarily afforded to lenders by applicable law. Second, the NCE can require the investor to pledge collateral to

[1] See EB-5 Questions and Answers (updated Dec. 2023), available at https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-questions-and-answers-updated-dec-2023 (last accessed March 18, 2024).

Continued On Page 60

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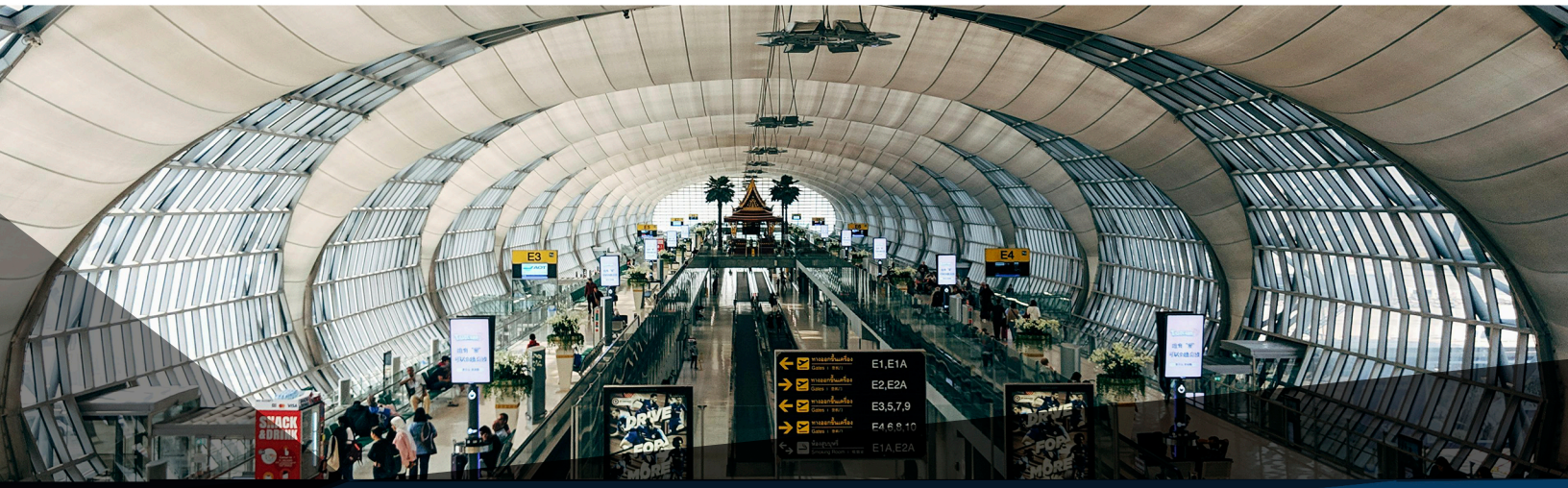
Greece
Hong Kong SAR
United Kingdom
United States
Japan
Malaysia
Malta
Portugal
Singapore
South Korea
The Philippines
United Arab Emirates
Thailand



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secure his or her obligation to fund, which often includes a pledge of the investor's ownership interest in the NCE.

FILING THE FORM I-526E

If permitted by the offering documents, immigration attorneys have different strategies to demonstrate an EB-5 investor's commitment to invest the balance of the principal investment amount when filing the I-526E petition. Some may provide a detailed explanation of the lawful source(s) of the entire subscription amount at the time of filing, emphasizing that the EB-5 investor has already identified and sourced all the funds that will comprise the principal investment amount. Others may merely provide source of funds documentation for only the partial investment in the NCE.

Careful consideration based on the investor's circumstances is required to prevent any inconsistencies that could be deemed "material misrepresentations" which would adversely affect U.S. immigration options in the future. A "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication." 8 C.F.R. § 103.2(b)(l). In addition, "a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts." See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm 'r 1971).

A partial capital contribution, a signed subscription agreement, and an attestation showing the present commitment to fund the balance within a certain period of time can assist to demonstrate the actual commitment of investing the full amount, not a prospective investment arrangement. Illustrating how and when the funds will be available in the future (a closing date for a real estate transaction, or a bond coming due) is prudent. It is advisable to complete the full investment amount prior to any action taken by USCIS on the case, and to interfile the remaining "source of funds" documents.

Additional evidence showing how the EB-5 investor has already made arrangements or formulated a strategy for transferring the balance into the new commercial enterprise's account could also be helpful, as it demonstrates real and actual steps the investor has already initiated in preparation for the transference of the full EB-5 investment amount.

If the full investment has not been made when the Form I-526E is adjudicated, USCIS will issue a Request for Evidence, asking for information and documents related to the full investment amount. With processing times picking up – in particular for investments in rural projects that have I-956F approvals – immigrant investors should ensure the ability to fully fund the minimum investment amount quickly.

WHAT ABOUT ENGAGEMENT IN THE NEW COMMERCIAL ENTERPRISE?

An EB-5 investor is required to demonstrate at the time of filing that that he/she is engaged in the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, in accordance with 8 C.F.R. § 204.6(j)(5). A Regional Center must ensure that the new commercial enterprise's offering provides an immigrant investor with this right, notwithstanding the use of partial investment. In particular, if the immigrant investor has not made the full investment amount into the new commercial enterprise, then how will he/she be able to demonstrate compliance with this regulatory provision?

These questions are critical and demonstrate precisely why it is important to understand the subscription and investment procedures contained in the offering documents. At the outset, investors should review the NCE's operating agreement or limited partnership agreement to confirm that their rights as a member or limited partner comply with the EB-5 Program, including their engagement with the NCE. Investors should also be careful to ensure that they are immediately admitted as a member or limited partner once their subscription is accepted and their initial installment funded. Once accepted, investors would be entitled to the rights granted to members or limited partners under the NCE's operating agreement or limited partnership agreement.

WHAT HAPPENS IF FULL INVESTMENT AMOUNT IS NOT TRANSFERRED?

An NCE and/or Regional Center must also consider the possibility that an immigrant investor reneges on the commitment to fully fund the EB-5 investment. In these situations, it is important to review the offering documents and other partial investment documents, such as promissory notes.

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If the partial investment is structured as a promissory note, the NCE would be able to enforce its rights as a creditor should an investor fail to timely fund the balance of their investment. The NCE would also have the right to foreclose on any collateral pledged to secure the obligations under the promissory note. If an investor pledged his or her interests in the NCE as collateral, the NCE can effectively remove the investor from the NCE by foreclosing on their pledged interests.

Even if an investor's obligation is payable over installments that are not evidenced by a promissory note, EB-5 operating agreements and limited partnership agreements typically include expulsion provisions that allow the manager or general partner to expel an investor for failure to timely fund the balance of their investment.

In either event, the threat of losing their interest in the NCE (and possibly the immigration benefits sought under the EB-5 Program) may prove effective in deterring investors from not timely funding the balance of their capital contribution.

CONCLUSION

There are certainly some advantages to accepting partial payments of EB-5 capital, both from the perspective of prospective investors and NCEs, regional centers and project developers. However, EB-5 stakeholders on all sides must be mindful of the critical issues discussed in this article in order to both ensure EB-5 compliance and properly address any concerns regarding project capitalization.

Calculating Demand and Supply for Reserved EB-5 Visa Numbers: Data, Factors, Knowns, Unknows, and Estimates

Lee Y. Li
Director of Policy Research and Data Analytics | Invest In the USA (IIUSA)

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OVERVIEW

Demand for EB-5 has increased significantly since the enactment of the EB-5 Reform & Integrity Act of 2022 (the RIA). Thanks to the new reserved visa categories, post-RIA investors now have an opportunity to avoid the pre-RIA visa backlog. As the demand continues to grow, the biggest questions are whether the supply of reserved visas is sufficient and if there will be a cut-off date for the reserved categories in the near future.

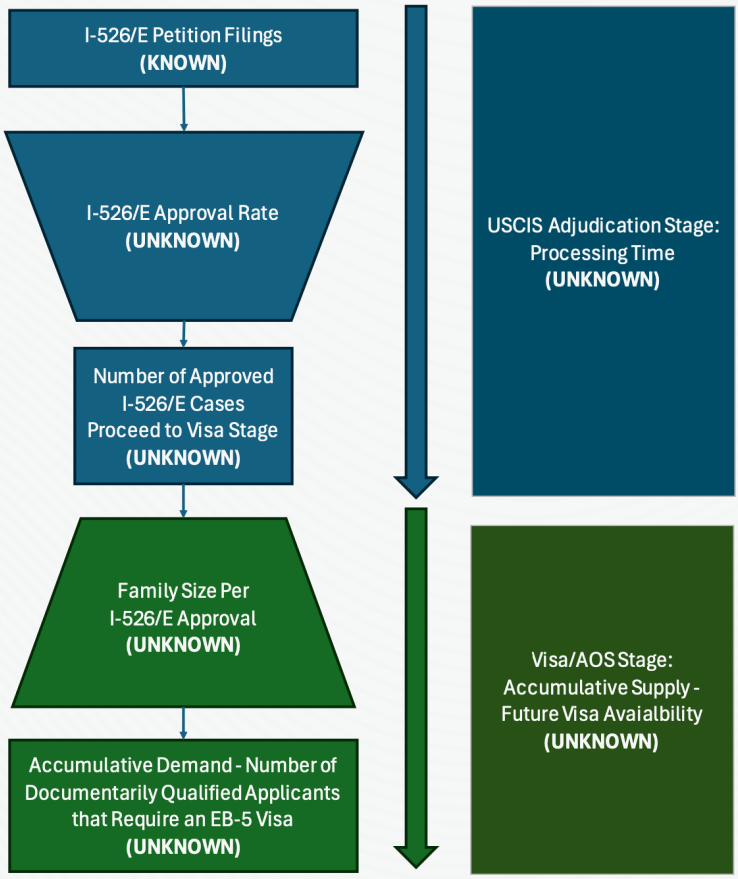
Calculating the current EB-5 visa waitlist is a complicated endeavor requiring many data points. As Figure 1 illustrates, a variety factors play a significant role in forming the EB-5 visa waitlist, including the number of I-526/E petitions on file, approval rates of these cases, and the family size of each principal EB-5 visa applicant.

IIUSA, and other industry stakeholders, do not have all the information available, so any calculation must rely on assumptions. Different assumptions of these factors would lead to a very different estimate of the demand for reserved EB-5 visas.

On the other hand, 8,136 EB-5 visas are available in the set-aside categories in the current fiscal year and we estimate that another 3,300 visas will be newly available in the reserved categories in FY2025. Whether the supply of reserved visas in these two years can be used to clear out the current demand on file depends on various factors, including 1) USCIS processing time, 2) adjudication volume, and 3) how quickly documentarily qualified applicants can react and secure their visa numbers—all of which are critical elements but lack data.

This analysis outlines major factors that affect the calculation of the demand and supply for reserved EB-5 visas. The goal is to present the latest data and the best historical statistics to educate our audience and empower them to conduct their own assessment.

Figure 1: Formation of the Demand for EB-5 Visa Numbers



KNOWN: I-526 & I-526E PETITIONS ON FILE

According to the data obtained from USCIS by the American Immigrant Investor Alliance (AIIA), 3,444 EB-5 investors filed their I-526/E petitions between April 2022 and November 2023 (see Table 1). Overall, more than 1,093 (or 32%) petitions that were filed to USCIS during that time period invested in EB-5 projects in a rural area. Over 2,185 (or 63%) cases were associated with a project in a high unemployment area (or an "urban TEA"), while no petition was filed under the infrastructure category.

Additionally, there are 16 petitions associated with multiple reserved visa categories and could qualify for both rural area and urban TEA. According to the U.S. State Department, a final policy decision is being made to require EB-5 visa applicants to select only one set-aside category for their visa when they reach the visa stage.[1]

Table 1: I-526/E Filing by Investment Category & by Country

Category	China	India	Rest of the World	Total
Rural	767	174	152	1,093
HUA (Urban TEA)	976	375	834	2,185
Infrastructure	0	0	0	0
Multi-Category	7	3	6	16
Total Reserved	**1,750**	**552**	**992**	**3,294**
Unreserved	**26**	**21**	**103**	**150**
Grand Total	**1,776**	**573**	**1,095**	**3,444**

Data Source: USCIS (obtained by AIIA)
Data Period: Apirl 2022 - November 2023

The data is only the first step in calculating the demand for reserved EB-5 visas. However, a variety of important factors play a major role in the process between filing an I-526/E petition and requiring a visa number, such as the approval rates of these cases and the family size of the approved petitioners, both of which remain unknown based on available information, but have a significant impact in the calculation. More discussion on this is in later sections of this report.

[1] See more at Five Things that we Learned from the State Department Presentation at 2023 IIUSA Leadership Summit: https://iiusa.org/blog/five-things-we-learned-from-the-state-departments-presentation-at-iiusa-leadership-summit/

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KNOWN & UNKNOWN: ACTUAL EB-5 VISA NUMBER USAGE

With 8,136 EB-5 visas available in the reserved categories in FY2024, the number of actual visas used in the current fiscal year is critical to digesting the demand on file and reducing the accumulative waitlist in future fiscal years. USCIS reported that 63 I-526E cases were approved in Q4, FY2023. We expect to see the actual usage of the reserved visas in FY2024.

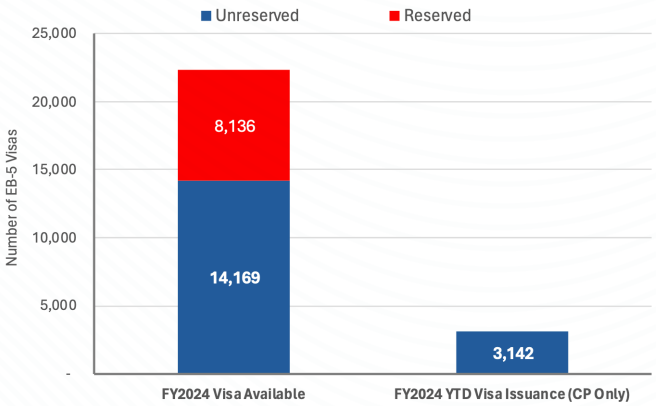
KNOWN:

According to the data published by the State Department, 3,412 EB-5 visas have been issued via consular processing so far in FY2024 (between October 1, 2023, and January 31, 2024), all of which were under the unreserved category. Figure 2 presents the total number of EB-5 visas available versus the actual number of EB-5 visas issued year-to-date in FY2024.

UNKNOWN:

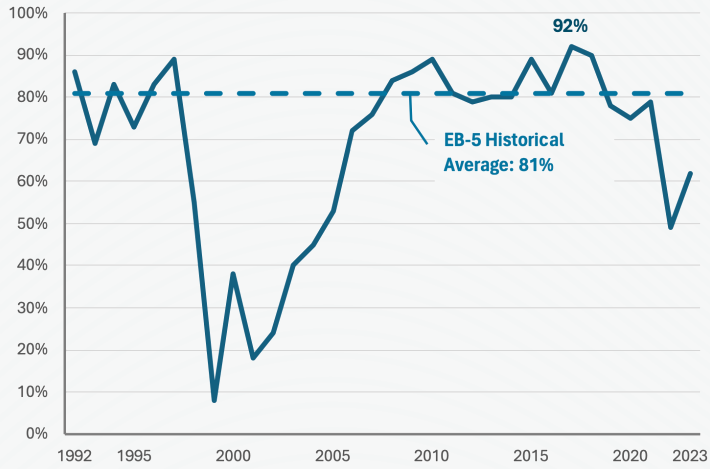
We do not have any data on EB-5 visa number usage via adjustment of status (AOS) at USCIS. Historically, AOS accounted for less than 20% of EB-5 visa usage except for the pandemic years.[2] This percentage could change significantly after the RIA because an increasing number of investors are filing their I-526/E petitions and I-485 AOS applications concurrently – a new benefit that was introduced by the RIA. However, USCIS does not publish any AOS data by employment-based visa category, so it is unknown whether any reserved EB-5 visa numbers have been used so far in FY2024 through USCIS.

Figure 2: EB-5 Visa Number Availability & YTD Visa Issuance



Data Source: Department of State
FY2024 YTD Data: October 1, 2023 - January 31, 2024
Prepare By: IIUSA

Figure 3: Legacy I-526 Case Approval Rate by Fiscal Year



Data Source: USCIS
Prepare By: IIUSA

UNKNOWN: I-526 & I-526E CASE APPROVAL RATE

The approval rate of I-526/E cases is another unknown data point that plays a major role in calculating the demand for a reserved EB-5 visa. USCIS reported that 63 I-526E petitions were approved, and zero I-526E cases were denied in FY2023, indicating the approval rate of I-526E cases was 100% in the last fiscal year. However, it is unknown whether this trend will continue.

However, based on USCIS' adjudication statistics for legacy I-526 cases, the approval rate remained above 80% between FY2010 and FY2018 but fluctuated significantly in recent years (see Figure 3). Notably, it dropped to 49% in FY2022 but bounced back to above 60% in FY2023.[3]

As Figure 3 illustrates, the overall average I-526 approval rate has been 81% throughout the history of the EB-5 program, while the highest annual average approval rate was 92% in FY2017.

If we use the 80% to 90% range as the inputs for our forecast, the estimated number of I-526/E approvals would be between **874** and **984** cases in the rural category and between **1,748** and **1,967** cases in the urban TEA category.

[2] See more on IIUSA's EB-5 Visa Data Dashboard: https://iiusa.org/eb5-visa-data-dashboard/
[3] See more I-526 statistics on IIUSA's I-526 Data Dashboard: https://iiusa.org/i526data/

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UNKNOWN: FAMILY SIZE

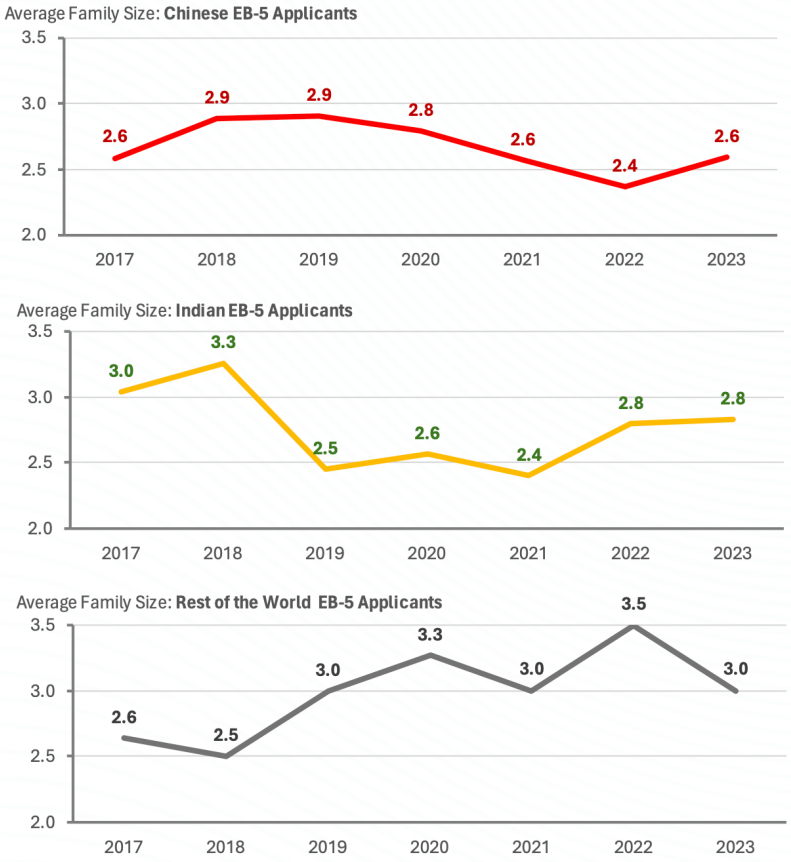
Family size is also an unknown data point that significantly impacts the demand calculation for EB-5 visas. Under the current law, eligible family members are counted towards the annual visa limits, so the number of approved I-526/E petitioners will be multiplied by their family size when they proceed to the visa stage.

We can make the assumption that, with concurrent filing, we will see the family size per I-526/E case trend lower because an increasing number of investors are either younger and do not have any family derivative (principal applicants are under the F1 student visa status) or don't need a visa(s) for their child(ren) because the principal applicants are under the H1B work visa status with their child(ren) being born in the U.S. However, there is no data available to confirm this assumption.

Thanks to the latest data shared by the Department of State, Figure 4 visualizes the trends of average family size per principal EB-5 applicant by fiscal year for investors from China, India, and the rest of the world. In recent years, the family size among Chinese EB-5 investors remained stable in the 2.4 to 2.6 range, while this range among Indian EB-5 investors trended upwards, increasing from 2.4 to 2.8. According to the State Department, the average family size among EB-5 from the rest of the world fluctuated between 3.0 and 3.5. The next section discusses how the range impacts the demand for an EB-5 visa number.

It is important to note that the data points in Figure 4 only include statistics from the State Department and do not include the data on adjustments of status by USCIS.

Figure 4: EB-5 Visa Applicants Average Family Size by Fiscal Year (Consular Processing Only)



Data Source: Department of State
Prepared by: IIUSA

Continued On Page 66

UNKNOWN: DEMAND FOR RESERVED VISAS

Even though we now have the data on the number of I-526/E cases on file by investment category, given the unknown case approval rate and the family size, the actual waitlist for a reserved EB-5 visa could be a wide range. Table 2 summarizes our calculations based on our assumptions on the range of the approval rate and family size.

RURAL AREA CATEGORY:
Our estimated visa demand could be between **1,312** and **2,951** for the rural area category. For example, if we assume that the approval rate is 80% (a conservative assumption based on the historical average approval rate) and the family size is only 1.5 (the lowest end of our estimated range), the 1,093 I-526/E petitioners that are currently on file (as of November 2023) would require 1,312 visa numbers from the rural area category. In contrast, if the I-526/E case approval rate is high (i.e., 90%) and each investor needs three (3) visas as the historical data indicates, the visa demand would be 2,951.

URBAN TEA CATEGORY:
For those 2,185 I-526/E cases on file that are associated with an urban TEA project, our calculated range of visa demand would be anywhere between **2,622** (assuming 80% case approval and 1.5 visas per family) and **5,900** (using the 90% approval rate and 3 visas per family as inputs), based on the same sets of assumptions and estimated ranges.

See Table 2 for a summary of our calculations on visa demand ranges.

The key takeaways from these calculations are:

1) the actual demand for visas could be a wide range given the unknown factors, and
2) removing family derivatives from the annual visa limit is an effective way to reduce the size of the visa waitlist.

Table 2: Analysis of EB-5 Visa Demand Ranges by Category Based on Different Assumptions

Number of I-526/E Cases on File (Rural Area): **1,093**

			I-526/E Approval Rate Assumption	
			Low (Conservative)	*High (Optimistic)*
			80%	*90%*
Family Size Assumption	*Low (Smaller Families)*	*1.5*	1,312	1,476
	High (Larger Families)	*3*	2,623	2,951

Number of I-526/E Cases on File (Urban TEA): **2,185**

			I-526/E Approval Rate Assumption	
			Low (Conservative)	*High (Optimistic)*
			80%	*90%*
Family Size Assumption	*Low (Smaller Families)*	*1.5*	2,622	2,950
	High (Larger Families)	*3*	5,244	5,900

Note: I-526/E cases on file include petitions filed between April 2022 and November 2023

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UNKNOWN: ACCUMULATIVE SUPPLY FOR RESERVED VISAS

RURAL AREA:
In FY2024, 2,286 newly available EB-5 visas were reserved for rural areas, and 2,799 visas were carried over from FY2023 and added to this category. In FY2025, it is estimated that 2,059 visas will be newly available for the rural area reserved category.[4] The State Department informed us that carryover visa numbers will be used before the "regular" EB-5 visa numbers.[5] That means if there is any rural visa to be used in FY2024, it will be first deducted from the 2,799 carryover visa numbers.

We assume all 2,286 newly available rural area reserved visas will remain unused in FY2024 and be added to the FY2025 visa availability as a carryover. It's estimated that at least **4,345** visas will be available in FY2025 for the rural category. If none of the 2,799 carryover numbers in FY2024 is used, they will be made available to the unreserved category in FY2025 and be "gone" from the rural category.

However, if all the 2,799 carryover visa numbers can be used in FY2024, the accumulative supply of rural visas in FY2024 and FY2025 will be **7,144**, which is the theoretical maximum level of visa supply to digest the current demand on file. But this is unlikely to happen unless USCIS can speed up I-526/E cases adjudication in the remaining year.

HIGH UNEMPLOYMENT AREA:
Applying a similar calculation to the high unemployment reserved visa category, the minimum visa supply in FY2024 and FY2025 is **2,173** (if none of the carryover visa number is used in FY2024), while the theoretical maximum supply will be **3,572** (if all of the carryover visa numbers are used in the current fiscal year).

See Table 3 for a summary of our analysis.

Table 3: Analysis of Accumulative EB-5 Visa Supply

RURAL AREA CATEGORY

Newly Available Visas		Number
	FY2024	2,286
	FY2025 (Est.)	2,059
Carryover Visas		
	FY2024	2,799
	FY2025 (Est.)	2,286
FY2024-25 2-Year Accumulative Visa Usage Range		
Low (0 Reserved Visa Number Used in FY2024)		4,345
High (All Carryover Reserved Visa Number Used in FY2024)		7,144

HIGH UNEMPLOYMENT AREA CATEGORY

Newly Available Visas		Number
	FY2024	1,143
	FY2025 (Est.)	1,030
Carryover Visas		
	FY2024	1,399
	FY2025 (Est.)	1,143
FY2024-25 2-Year Accumulative Visa Usage Range		
Low (0 Reserved Visa Number Used in FY2024)		2,173
High (All Carryover Reserved Visa Number Used in FY2024)		3,572

Prepared by: IIUSA

[4] Learn more from the IIUSA webinar EB-5 in 2024: What Do We Know? https://iiusa.org/courses/eb-5-in-2024-what-do-we-know/
[5] See page 4, footnote 1.

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CONCLUSION

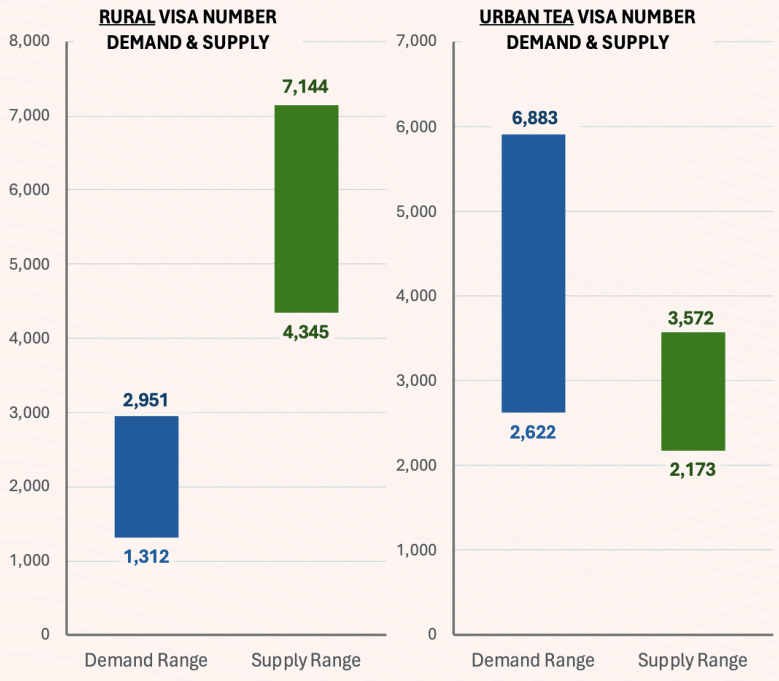
This analysis discussed the data that plays a significant role in calculating the demand and supply for reserved EB-5 visas. While the latest number of Post-RIA I-526/E petitions on file offers the foundation to start the calculation of visa demand, it's insufficient. Our estimates on case approval rate range and family size range based on historical statistics show that the results could be very different if different assumptions are used in the calculations. In addition, we examined the supply of reserved EB-5 visas and analyzed the minimum and maximum accumulative visa availability in FY2024 and FY2025.

Figure 5 visualizes our calculations on the visa demand and supply ranges for rural areas and the urban TEA categories.

Our key conclusions include:

- **Different assumptions will lead to a different estimate of visa demand, and the results could vary widely given the unknown data points.**
- **The supply of EB-5 visa numbers in the rural area category seems to be sufficient to meet the current visa demand (as of November 2023). Based on our estimates, the I-526/E petitions on file would require up to 2,951 visa numbers, while at least 4,345 visas are available in the rural area category between now and the end of FY2025 (see Figure 5).**
- **Petitions on file associated with the urban TEA category could demand 2,622-6,883 visa numbers, while less than 3,572 visa numbers are available in FY2024 and FY2025 based on our estimates (see Figure 5).**
- **USCIS' productivity in processing I-526/E cases in FY2024 is critical to maximizing the actual usage of available reserved visa numbers to digest the current visa demand on file.**
- **Removing family derivatives from annual visa limits can effectively reduce the visa waitlist, which requires a change through legislation.**

Figure 5: Analysis of Demand Range versus Supply Range of Rural and Urban TEA Reserved Visas



Data: Author's Calculations
Prepare by: IIUSA

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Celebrating 20 Years of Excellence

2003

- CanAm's First Regional Center is Approved- The **CanAm PIDC Regional Center**
- The Launch of CanAm's First EB-5 Project- The Philadelphia Navy Yard Project

2005

- First **Conditional Green Card** Issued to a CanAm Investor
- CanAm helped establish the **EB-5 loan model,** setting the standard for the industry

2011

- **1000th** Conditional Green Card Issued for the Time Warner Project
- Rhoads Industries Project Repaid - **$50 million** Repayment Milestone

2012

- **Launch of CanAm Investor Services, the FINRA approved broker-dealer affiliate of CanAm Enterprises. CanAm was the first EB-5 Regional Center Operator to have its own broker-dealer**

2018

- Tom Rosenfeld Wins the First **IIUSA Lifetime Achievement Award**
- **$1 Billion** Repayment Milestone

2020

All Aboard Florida Project Repayment- **$350 million**- The single largest project repayment in EB-5 history

2022

$2 Billion Repayment Milestone

2023

50th EB-5 Project Repaid- $2.24 Billion Repayment Milestone

2004

CanAm became the first Regional Center Operator to introduce an EB-5 Project to the **China Market**

2006

First **Permanent Green Card** Issued to a CanAm Investor

2007

Lionsgate Films Project Launched- First CanAm EB-5 funding for a film

2013

- **1000th Permanent Green Card** Issued for the University of Pittsburgh Medical Center Project

2014

- **2000th** Conditional Green Card Issued for the SEPTA Project
- City Center Allentown Project Launched- **50th** CanAm EB-5 Project

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- CanAm EB-5 Projects have created more than **100,000** program-qualifying jobs for U.S. workers
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International Business Times

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