



U.S. Citizenship and Immigration Services

EB-5 Immigrant Investor Program
Stakeholder Meeting
December 16, 2010

I. Introductions



U.S. Citizenship
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EB-5 Stakeholder Meeting Presentation

This presentation is intended to provide a guide for discussion at the stakeholders' meeting and to explain current USCIS policy and practice. It is not intended to be an official statement of USCIS policy, and does not supersede any existing statutes, regulations, or policy memoranda. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in any way.



II. EB-5 Updates

- EB-5 Case Processing Times and Statistics: Publishing final numbers for FY10
- Data Challenges and Individual Petition Statistics for Regional Centers
- Revision of Form I-526 and Form I-829 in FY 2011
- EB-5 Immigration Services Officer Training on USCIS.gov
- Reminder! Form I-924A, not required for 2010 fiscal year
- Form I-924 and Processing Times
 - Form I-924
 - Over 100 new and amended RC proposals received prior to November 23, 2010
 - Officer training on RC application adjudications
- EB-5 Frequently Asked Question on USCIS.gov



Regional Center Statistics

- There are currently 120 approved Regional Centers (RCs), operating in 35 states, inclusive of the District of Columbia and Guam.
- A complete list of approved RCs is also available online at <http://www.uscis.gov/eb-5centers> .
- Approximately 90% of the individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in RC-affiliated commercial enterprises.



Regional Center Filing Receipts and Final Case Actions FY10

Initial RC Proposal Filings	Initial RC Proposal Approvals	Final Action %	Initial RC Proposal Denials	Final Action %
110	36	55%	30	45%
Amended RC Proposal Filings	Amended RC Proposal Approvals	Final Action %	Amended RC Proposal Denials	Final Action %
42	27	71%	11	29%



EB-5 Individual Petition Filing Receipts FY05 – FY10

Fiscal Year	Form I-526 Petition	Form I-829 Petition
FY10	1955	768
FY09	1028	437
FY08	1257	390
FY07	776	194
FY06	486	89
FY05	332	37



Form I-526 Petition Final Actions and Final Action Percentages for FY05 – FY10

Fiscal Year	Form I-526 Approvals	Final Action %	Form I-526 Denials	Final Action %
FY10	1369	89%	165	11%
FY09	1262	86%	207	14%
FY08	640	84%	120	16%
FY07	473	76%	148	24%
FY06	336	73%	124	27%
FY05	179	53%	156	47%



Form I-829 Petition Final Actions and Final Action Percentages for FY05 – FY10

Fiscal Year	Form I-829 Approvals	Final Action %	Form I-829 Denials	Final Action %
FY10	274	83%	56	17%
FY09	347	86%	56	14%
FY08	159	70%	68	30%
FY07	111	69%	49	31%
FY06	106	64%	59	36%
FY05	184	62%	112	38%



EB-5 Visa Usage

Fiscal Year	Total EB-5 Visas Issued
FY10	1885
FY09	4,218
FY08	1,360
FY07	806
FY06	744



FY10 EB-5 Visa Usage by Country of Chargeability

Country of Chargeability	Total EB-5 Visas Issued	% of Visas Issued
China – Mainland Born	772	41%
South Korea	295	16%
Great Britain & N. Ireland	135	7%
China – Taiwan Born	94	5%
India	62	3%
All Other Countries	527	28%



EB-5 Case Processing

Form Type	Target Processing Time	Current Processing Time
Form I-526	Five Months	Five Months
Form I-829	Five Months	Six Months
RC Initial Designation Proposal	Four Months	Five Months
RC Amended Designation Proposal	Four Months	One Month

Note: Responses to requests for evidence (RFEs) for individual petitions, and for new or amended RC Proposals are matched with the case file upon receipt of the response. CSC strives to finalize EB-5 cases within 30 days after the responses to the RFEs are received.



EB-5 Data Challenges

- Many external EB-5 stakeholders, including members of Congress, prospective alien investors, and the major media, have requested data regarding the case filing volumes and final case actions in Form I-526 and Form I-829 petitions that are affiliated with a specific designated regional center.
- USCIS has determined that the provision of this data would not conflict with the Privacy Act and the non-disclosure requirements for business information under 8 CFR 103.11.
- USCIS intends to publish this data on a quarterly and annualized basis commencing with petitions filed during FY11. However, USCIS must ensure that the data is accurate prior to doing so. Several EB-5 data challenges must be resolved in order to provide accurate and timely data.



EB-5 Data Challenges, Cont'd

- EB-5 data challenges include the fact that the Form I-526 and Form I-829 petitions do not collect information about the affiliated RC and that USCIS's systems of record for these petitions do not provide a means to electronically capture this information.
- USCIS began capturing the affiliation between the affiliated RC and the individual petitions a year or so ago outside of the case system of record, but only when a petition was assigned to an ISO for review. Since these petitions remain in the case processing time queue for awhile prior to assignment, there typically is a lack of visibility regarding the RC-affiliation of a given petition for several months after the petition is filed.



EB-5 Data Challenges, Cont'd

- USCIS is addressing the data capture issue in the short-term by devoting resources to capture the RC-affiliation of Form I-526 and Form I-829 petitions shortly after the petitions are filed. However, there are currently several months of case filings in which the data has not been captured, and will only be captured at the time that the case is assigned to an ISO.
- Once all of the petitions filed on or after the beginning of FY11 have been associated with their respective RC-affiliation, then USCIS can take steps to validate the data and prepare it for publishing.
- USCIS plans to publish FY11 Form I-526 and Form I-829 data based upon RC-affiliation for the first quarter of FY11 by June of 2011. Quarterly and annualized data releases will occur on a regular basis after June of 2011.



Form I-526 and Form I-829 Revisions

- USCIS intends to revise Forms I-526 and Form I-829 later on in FY11, according to the Office of Management and Budget's established notice and comment procedures, that involve the publishing of draft revised forms on www.regulations.gov.
- The form revisions will include proposed information collections for the capture of RC-affiliation within these petitions. This information will be incorporated into the petitions' system of record when the EB-5 petitions are implemented into USCIS's Transformation initiative.
- USCIS encourages EB-5 external stakeholders to actively participate in the forms revision process by providing comments and proposed form revisions on www.regulations.gov once the forms are posted for notice and comment.



EB-5 Staffing Increase at the CSC

- USCIS has dedicated additional resources to the adjudication of EB-5 cases at the California Service Center (CSC), in order to better address increasing EB-5 case filing volumes.
- Total EB-5 staffing has substantially increased by the addition of Immigration Service Officers (ISOs) who were selected from a pool of volunteers with extensive employment-based experience and/or a strong business-related background.
- An additional EB-5 supervisor has also been added to the program.



EB-5 Staffing Increase at the CSC, cont'd

- The new EB-5 ISOs attended a two-week in-class training course this fall, directed by USCIS SCOPS HQ, which included training in Forms I-526, I-829, I-924 and I-924A adjudications.
- Hands-on case review followed by case-specific discussions in a group setting was an integral part of this training effort.
- Experienced EB-5 ISOs are currently serving as mentors to the new EB-5 ISOs, which has resulted in a reduction of EB-5 case adjudicative resources in the short-term.
- 210 Form I-526 training cases were assigned to the trainees. Each training case is being reviewed by an EB-5 mentor prior to processing the case. The CSC is about 95% through this case review process.
- USCIS believes that the short-term investment in this training initiative will be beneficial to the program in the long-term, and will ultimately result in a reduction of EB-5 case processing times.



Posting of 2010 EB-5 Training Materials on the USCIS Website

- USCIS intends to post the EB-5 training materials used in the Fall 2010 EB-5 training on the USCIS website by the end of February 2011.
- The materials will be reviewed by USCIS Freedom of Information Act (FOIA) staff prior to posting in order to ensure that:
 1. All training documents or sections thereof that are not exempt under FOIA are posted, and;
 2. All case-specific materials used during the training are properly redacted so that Privacy Act and proprietary business information as defined in 8 CFR 103.11 will not be posted.



Form I-924 & I-924A

- USCIS implemented the Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program, and Form I-924A, Supplement to the Form I-924 on November 23, 2010.
- USCIS received approximately 100 RC initial and amended proposals in the week or so prior to the implementation of the Form I-924. This influx of filings is equivalent to 65% of all of the RC proposal case filings during FY10.
- Though USCIS is in the process of adding additional ISOs to the adjudication of RC proposals and Form I-924 applications, the adjudication of this high volume of case filings will cause RC proposal/Form I-924 application processing times to increase in the short-term.



Form I-924 & I-924A, Cont'd

- USCIS has posted the Forms I-924 and I-924A and instructions to the forms. These forms and instructions can be accessed on the USCIS website under the “Forms” tab on the main webpage.
- **Reminder:** An amended EB-5 regulation which took effect on 11/23/2010, 8 CFR 204.6(m)(6), regarding certain RC-activity information collection procedures and procedures for the termination of approved RCs in certain instances.
- **Note: The submission of Form I-924A will not be required to report RC EB-5 activity in FY10, but will be required to be filed by all approved RCs for FY11 on or before December 29, 2011.**



EB-5 Inquiries

- Reminder: USCIS has published a page entitled “EB-5 Inquiries” on the www.uscis.gov website that outlines how the public may make inquiries on EB-5 related matters.
- This webpage may be accessed from the USCIS homepage as follows:
- Home > Working in the United States > Permanent Workers > Employment-Based Immigration: Fifth Preference EB-5.



EB-5 Inquiries, Cont'd

The “EB-5 Inquiries” page clarifies:

- The EB-5 inquiries that are appropriate to send to the EB-5 mailbox at Uscis.immigrantinvestorprogram@dhs.gov, and;
- Other avenues that can be used to send questions or inquires to USCIS that are not suitable for the EB-5 mailbox.

Note: The CSC has implemented an informational “auto-reply” that is now provided in response to emails that are sent to the EB-5 Mailbox. This auto-reply contains some great information and links to USCIS web-pages and other sites that the public can use to obtain EB-5 related information.



EB-5 FAQs

USCIS has been actively developing Frequently Asked Questions (FAQs) to be published on the USCIS website.

- The FAQs will address a wide variety of EB-5 topics that are of interest to EB-5 stakeholders.
- The FAQs are targeted to be published on the website by the middle of January 2011.
- USCIS intends to update the EB-5 FAQs on an on-going basis.



Q&A – Update Topics



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III. Stakeholder Suggested Topics & Questions

- Maintaining Jobs in a Troubled Business
- OFAC Requirements
- Other Federal Agency Oversight over EB-5 Capital Investments and Commercial Operations
- Sustaining the Capital Investment
- EB-5 Status Issues
- TEAs
- EB-5 Policy Review
- EB-5 Study



Maintaining Jobs in a Troubled Business

Question: Will USCIS agree with the contention that a saved or preserved job under the ‘troubled business’ definition is equivalent to a direct created job?

Answer: Every EB-5 investor must create at least 10 jobs as a result of his or her capital investment. However, meeting the job creation requirements through job maintenance in a “troubled business” also involves demonstrating that the number of existing employees were maintained at no less than the pre-investment level during the EB-5 investor’s two year period of conditional permanent residence. [See 8 CFR 204.6(j)(4)(ii) & 8 CFR 216.6(c)(iv).]



Maintaining Jobs in a Troubled Business, Cont'd

Answer, Cont'd: The concept of what qualifies as a “direct” job for EB-5 purposes can be complicated.

1. For non-RC affiliated capital investments, job creation may only be credited through the creation or preservation of jobs that are directly within the commercial enterprise in which the EB-5 Investor made his or her investment.
2. For RC-affiliated capital investments, job creation may be credited through the creation of jobs directly within the commercial enterprise in which the EB-5 investor made his or her investment, but can also be credited with indirect job creation through equity investments or loans to other organizations, or through indirect job creation based upon an econometric model supported by a detailed business plan and associated economic analysis.
3. The concept of a what a direct job is within econometric modeling differs slightly from a direct job described in #1 or #2 above, as a direct job in this context is a job that can be directly attributed to the economic impact of the capital investment in order to derive estimates of indirect job creation.



Office of Foreign Assets Control (OFAC)

Question: OFAC issue with Iranians. What is USCIS policy on getting an OFAC license for Iranian investors? At what stage of the EB-5 process does the license need to be acquired? Does USCIS and OFAC coordinate these policies? If so, how?

Answer: The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments. [See www.treasury.gov]



Office of Foreign Assets Control (OFAC), Cont'd

Answer Cont'd: 31 CFR 560 Prohibits certain U.S. Transactions with Iran, known as the “Iranian Transaction Regulations”.
(ITR)

- Pursuant to Section 3 of Executive Order 12959, all federal agencies are “directed to take all appropriate measures within their authority to carry out the provisions” of the ITR.
- Civil monetary penalties ITR violation can be \$250,000 or twice the value of the transaction at issue, whichever is greater.
- Criminal penalties can include a fine of up to \$1,000,000, and possible incarceration of up to 20 years. The statute of limitations on these violations is 5 years.



Office of Foreign Assets Control (OFAC), Cont'd

Answer Cont'd: USCIS has met with OFAC in order to learn about how ITR requirements may impact lawful source of funds requirements in EB-5 petitions. OFAC has confirmed that:

1. the U.S. recipients of funds from Iranian investors as well as any individuals involved in structuring/facilitating these transactions would be in violation of the ITR unless OFAC licensure procedures have been followed.
2. Investment of funds that have passed through prohibited banks would also be in violation of the ITR. For a list of prohibited banks and Specially Designated Nationals (SDN) [See: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.]
3. These investors are required to apply for and received a license from OFAC, or a letter stating that no license is needed.
4. OFAC will determine if such transactions will get a license or not via the application procedure set forth in 31 CFR 501.801(b).



Office of Foreign Assets Control (OFAC), Cont'd

- Answer Cont'd: The only instance where a license would not be required is when the Iranian national resides outside of Iran and the money is shown to be obtained through a lawful source and transferred to the United States without having traveled through a prohibited bank.
- In all other situations, any U.S. recipient of prohibited funds and facilitators of such transaction (attorneys, accountants etc.) should apply for a license from OFAC , who will determine if the transaction is or is not prohibited by the ITR and, if prohibited, whether to grant a license to permit the transaction.
- OFAC has indicated that each individual transaction must be licensed separately.



Office of Foreign Assets Control (OFAC), Cont'd

Answer Cont'd: The lawful source of an EB-5 investor's capital investment must be established at the time of filing of the Form I-526 petition. The application for licensure with OFAC must be resolved prior to the filing of a Form I-526 petition by an EB-5 investors if the lawful source of the capital investment may be impacted by OFAC licensure requirements.

- The Administrative Appeals Office recently issued an unpublished decision which examines OFAC licensure requirements in the EB-5 context which may be helpful to those who wish to have further information on this topic. [See http://www.uscis.gov/err/B7%20-%20Form%20I-526%20and%20I-829/Decisions_Issued_in_2010/Sep212010_01B7203.pdf .]



Office of Foreign Assets Control (OFAC), Cont'd

Answer, Cont'd: If the OFAC license appears to be limited and does not appear to cover all of the transactions presented in the I-526 petition, then the petitioner has failed to establish lawful source of funds.

- If the license does not authorize any transactions that occurred prior to the date of issuance, then the license cannot cover the transfer of funds from Iran included in the petition where the license was obtained after the petition was filed.



Other Federal Agency Oversight over EB-5 Capital Investments and Commercial Operations

Question: Is an EB-5 Regional Center subject to Securities Exchange Commission regulation?

Answer: The Security Exchange Commission (SEC) is the appropriate source to provide guidance regarding whether an entity and/or particular capital investment instrument is subject to SEC regulations. USCIS does not oversee EB-5 Regional Center compliance with SEC regulations. It is important to note that many other federal government agencies are involved in the oversight of business entities and capital investment instruments that are utilized for investments within the United States, to include the SEC. Unlike the Executive Order 12959 requirements regarding USCIS's assistance with OFAC regulations, USCIS typically has no role in regulating aspects of EB-5 capital investment unrelated to immigration.



Sustaining the Capital Investment

Question: If someone establishes their own RC project, how long would they have to stay involved with it after they are granted an unconditional green card (e.g. Could they sell the project at that point if they wished to?)

Answer: The requirement that an EB-5 investor must sustain the capital investment is the same for RC-affiliated investments and non-RC-affiliated investments. The EB-5 investor must sustain the capital investment throughout the two year period of conditional permanent residence. This is the timeframe that is examined during the adjudication of the Form I-829 petition. [See INA 216A(d)(ii) and 8 CFR 216.6(C)(iii).] An EB-5 investor may sell the investment after the removal of the conditional status.

Note: Any pre-arrangement for the sale of the investment must be based upon the fair market value of the investment at the time it is sold.



EB-5 Status Issues

Question: In some cases the USCIS has put investors whose I-829s have been denied into removal proceedings even though the investor has already left the US and in some cases re-entered on a new temporary visa (e.g., H-1B). It doesn't appear as though the USCIS is checking status before issuing the NTAs. Can USCIS do a better job checking its databases before issuing NTAs to EB-5 investors? It is inefficient for all parties (USCIS, ICE and the investors) to have to file a motion to terminate removal proceedings in such situations.

Answer: USCIS does not issue a Notice to Appear (NTA) to an EB-5 investor whose Form I-829 petition has been denied if systems checks and file review reveal that the individual has left the United States. However, if the individual has re-entered the country pursuant to a new temporary visa and there are applicable grounds for removal, an NTA may be issued as appropriate.



EB-5 Status Issues, Cont'd

Question: I understand that even after I-829 is denied, the petitioner and dependent family members can obtain temporary I-551 stamp at a local USCIS Field Office. What is the immigration status of the PA and dependent family members whose I-829 have been denied but who still have I-551 temporary stamps in their passports? For example, can they travel outside the US and return; and can they work?

Answer: 8 CFR 216.6(d)(2) states in regard to a denied I-829 that “the alien’s lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the date of the director’s written decision.” However, if the I-829 has been denied and an NTA has been issued, but no final order of removal has been entered, then USCIS must collect the expired conditional permanent resident card and follow established procedures for providing a temporary extension of the alien’s conditional resident status upon request at a local USCIS Field Office. If the temporary extension is granted, then the aliens will be authorized to work and may travel outside the United States.



EB-5 Status Issues, Cont'd

Question: Where the PA already obtained permanent green card through I-829 approval, can a dependent who has not yet obtained conditional permanent resident status (in other words, the dependent who has not obtained CPR status through either IV processing or I-485 adjustment at the time the PA obtains I-829 approval) do a follow-to-join (either via I-485 or IV processing) AFTER the PA has already obtained permanent green card status? If so, would such dependent follow-to-joining be accorded CPR or permanent resident status by American Embassy or USCIS?

Answer: USCIS has received and adjudicated solo-filed derivative I-485s based on the principal alien's (PA) approved EB-5 related I-485/I-829. USCIS has also received Form I-824 applications, which have been approved and forwarded to the consulate, if the relationship between the PA and the dependent has been established. If the conditions have already been removed from PA's lawful permanent resident (LPR) status, then the derivative should be granted LPR status without conditions.



EB-5 Status Issues, Cont'd

Question: Our issue is whether on an I-90 application, a dependent beneficiary who never obtained Conditional Permanent Resident status is eligible to join as a Lawful Permanent Resident after the principal obtains Legal Permanent Resident status through an I-829.

Answer: Form I-90, Application to Replace Permanent Resident Card, cannot be used to obtain lawful permanent resident status in the United States. Rather, the application is used by individuals who are already lawful permanent residents to obtain a new Form I-551 card.



TEAs

Question: How do you identify a TEA area so that investors can qualify for the \$500,000 vs the 1,000,000 investment threshold?

Answer: The EB-5 investor must demonstrate in the Form I-526 petition that the area in which the capital investment has been made qualifies as a “rural” area or an area of “high unemployment.” The specific evidence to submit is outlined in:

- 8 CFR 204.6(j) Initial Evidence to accompany (Form I-526) petition.
- 8 CFR 204.6(j)(6)(ii)(A) Evidence of TEA
- 8 CFR 204.6(j)(6)(ii)(B) Letter from State-designated official that meets the requirements of 8 CFR 204.6(i).



Q&A – Stakeholder Topics



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Q&A – General



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