

Teleconference on EB-5 Investor Visas: Opportunities and Challenges September 26, 2008

The following are comments and questions from the teleconference and the answers from USCIS.

Comments

Adjudications Attitude – A caller commented that EB-5 Request for Evidence and Denial Notices informally communicate a "gotcha" message and, otherwise, that it seems that the agency wants to deny these cases. Another caller suggested that USCIS has lost sight of the fact that EB-5 investors are investing millions of dollars into the U.S. economy. A caller wondered why USCIS does not give investor cases the "benefit of the doubt" in the absence of evidence which raises a question of fraud.

Questions

- 1. **Possible Sunset of Regional Center Program** -- One caller asked whether the September 30, 2008 sunset date applied to the entire EB-5 visa category, or only to the Regional Center Pilot. Another call asked how USCIS would act on pending Regional Center cases if the program were not extended.
 - Ombudsman Response -- The sunset provisions were applicable only to the Regional Center Pilot program. The Ombudsman understands that USCIS planned to continue work on Regional Center cases through September 30, 2008. Thereafter, if the Regional Center Program was not yet acted on, USCIS would hold pending cases in abeyance until Congress acts, or until after January 1, 2009. Congress did reauthorize the Regional Center pilot on an interim basis through March 6, 2009.
- 2. **Premium Processing** -- Another caller pointed out that I-526 Alien Entrepreneur Petitions are taking in excess of seven months to process, and suggested that USCIS consider instituting premium processing for this product.
- 3. **Currently Active Designated Regional Centers** A caller inquired about the number of approved USCIS "designated" Regional Centers.
 - Ombudsman Response Over time, 28 Regional Centers have been designated.
- 4. **Minimum Threshold Investment Amount** -- One caller asked whether eligibility for the \$500,000 threshold investment amount is automatically provided for by designation as a Regional Center, or if it is connected to another factor.
 - Ombudsman Response -- The reduced \$500,000 investment threshold is provided by law to regional
 centers which are established within a "targeted employment area" in a rural or specific urban area that
 qualifies as a "high unemployment" area. Obtaining Regional Center "designation" does not automatically
 qualify a specific investment project for the reduced \$500,000 investment amount.
- 5. Targeted High Unemployment Area -- A caller requested that USCIS provide guidance on what type of data can be relied on to prove unemployment rates, and where can such data be obtained? Also, how current must the data be? Does it need to be accurate at time of adjudication, or at time of filing, or both? The caller noted that unemployment data tends to change.
 - Ombudsman Response USCIS has advised that it will look to each state governor's office, or its designee, for such data.
- 6. **Special Public Law Legislation Cases** -- Another caller's question about a specific case referenced how USCIS is considering I-829 (Petition by Entrepreneur to Remove Conditions) cases that remain unadjudicated for several years due to delays in issuance of implementing regulations.
 - Ombudsman Response We understand from USCIS that proposed rules are currently with the USCIS legal counsel for final review.
- Regular Stakeholder Meetings -- Several callers raised or agreed with comments that USCIS should hold more EB-5 stakeholder meetings around the country, with an annual meeting in Washington or at the California Service Center.
 - Ombudsman Response USCIS Acting Deputy Director (now Acting Director) Michael Aytes and EB-5
 policy and adjudication officials were at an EB-5 stakeholders' conference in Washington, DC, on September

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- 23, 2008. The Ombudsman understands that USCIS plans to increase its outreach to EB-5 stakeholders during the next year.
- 8. **Job Creation** A caller asked how and when USCIS determines whether the necessary job creation element is met.
 - Ombudsman Response Job creation is demonstrated at the I-829 stage of the immigration process. If direct jobs were predicted in the business plan at the I-526 stage, then probative evidence must be submitted, i.e., W-2s and/or I-9s. If indirect jobs were predicted, then evidence of expenditure is usually provided as was predicted in the job creation forecast.
- 9. **Overlapping Regional Centers** A caller asked whether the EB-5 pilot program permits overlapping regional centers.
 - USICS Response Yes, the EB-5 Pilot Program does permit overlapping Regional Centers.
- 10. **Number of Adjudicators** Another caller asked how many EB-5 adjudicators there will be at the California Service Center.
 - Ombudsman Response The Ombudsman understands that USCIS has trained ten adjudicators for the EB-5 product line, and that they are committed to sufficiently staff this line to meet work demand.

Towards the end of the teleconference, the USCIS Deputy Service Center Operations Director shared the following information:

- USCIS is committed to conducting quarterly EB-5 stakeholder meetings.
- Ten adjudicators will be assigned for California Service Center EB-5 processing, as volume demands.
- USCIS will look into the recent complaint of I-829 receipt notice delays or non-issuance.
- One caller asked how to obtain a determination that an area qualifies as a "targeted unemployment area" enabling an EB-5 investor to qualify based on the reduced \$500,000 threshold. USCIS indicated that the investor should contact the governor's office, which routinely works with the designated state agency designated by the governor for that purpose.
- Finally, USCIS will address non-case specific EB-5 questions at its dedicated email address: USCIS.ImmigrantInvestorProgram@dhs.gov

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