U.S. Department of Homeland Security
Office of Public Engagement
Washington, DC 20529

U.S. Citizenship and Immigration Services

Agenda

EB-5 Immigrant Investor Quarterly Engagement Teleconference (Webinar)

October 14, 2010
1:00PM to 3:00PM (ET)

Discussion Topics

I. Introductions

II. EB-5 Updates

- EB-5 Case Processing Times & Statistics
- EB-5 Visa Usage
- Form I-924 & Form I-924A
- EB-5 Training
- EB-5 Inquiries and EB-5 Mailbox Auto-Reply
- EB-5 Expedite Requests
- Form I-526 Premium Processing

III. EB-5 Economic Analysis

- The Big Picture
- Important Points
- Sources of Information
- Critical Issue
- Common Pitfalls

IV. Stakeholder Suggested Topics & Questions

- Crediting Job Creation Outside the RC
- Reporting EB-5 Fraud & Misrepresentation to USCIS
- RC Termination Process
- Reporting RC Terminations to the Public
- RC Termination Impacts on Affiliated Petition Filings
- Material Changes Post-Filing Form I-526
- CSPA Act

V. Open Forum

AILA InfoNet Doc. No. 10101537. (Posted on 10/15/10)

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EB-5 Immigrant Investor Program
Stakeholder Meeting
October 14, 2010

AILA InfoNet Doc. No. 10101537. (Posted on 10/15/10).

I. Introductions

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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.

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II. EB-5 Updates

- EB-5 Case Processing Times & Statistics
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- EB-5 Training
- EB-5 Inquiries and EB-5 Mailbox Auto-Reply
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Regional Center Statistics

- There are currently 114 approved Regional Centers (RCs), operating in 34 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.
- There are approximately 83 initial designation RC Proposals and 11 RC Proposals that request amendments to previously approved designation proposals pending with USCIS.

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EB-5 Individual Petition Filing Receipts FY05 – FY10

Fiscal Year	Form I-526 Petition	Form I-829 Petition
FY10 *Preliminary	1727*	690*
FY09	1028	437
FY08	1257	390
FY07	776	194
FY06	486	89
FY05	332	37

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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 *Preliminary	1271*	89%*	153*	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%

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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 *Preliminary	253*	83%*	52*	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%

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EB-5 Visa Usage

Fiscal Year	Total EB-5 Visas Issued
FY10 *Preliminary	1886*
FY09	4,218
FY08	1,360
FY07	806
FY06	744

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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.

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EB-5 Staffing Increase at the CSC

- USCIS has decided to dedicate 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 will be substantially increased by the addition of Immigration Service Officers (ISOs) who have been selected from a pool of volunteers with extensive employment-based experience and/or a strong business-related background.
- An additional EB-5 supervisor is also being added to the program.

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

- The new EB-5 ISOs will attend a two-week in-class training course this fall, directed by USCIS SCOPS HQ, which will include 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 will be an integral part of this training effort.
- Experienced EB-5 ISOs will serve as mentors to the new EB-5 ISOs following the conclusion of the in-class training course, which will result in a reduction of EB-5 case adjudicative resources in the short-term.
- 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.

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Form I-924 & I-924A

- **The USCIS Final Fee Schedule "Final Fee Rule" was published in the Federal Register on September 24, 2010. [FR 75 58961]**
- **As a result of this final rulemaking, USCIS will be implementing the Office of Management and Budget (OMB) approved 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 (11/23/2010). [See Docket ID: USCIS-2009-0033 Agency: USCIS RIN: 1615-AB80 at www.regulations.gov.]**

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

- **In addition, the "Final Fee Rule" also amends an EB-5 regulation which will take 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.**
- **USCIS will be posting the forms, instructions to the forms, and an update on the website that will provide general information regarding the implementation of these forms prior to the 11/23/2010 effective date. In the meantime the forms and instructions may be accessed at www.regulations.gov as previously noted.**

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Form I-924

- **Effective 11/23/2010, Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program, will be required for the filing of both initial RC applications and amended RC applications. The Form I-924, which will have a filing fee of $6,230 will:**
- **Clarify filing requirements for the RC designation;**
- **Improve the quality of RC applications;**
- **Better document eligibility for the Pilot Program;**
- **Alleviate content inconsistencies among applicants' submissions; and**
- **Support a more efficient process for adjudication of the RC applications.**

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Form I-924A Supplement

- The Form I-924A, Supplement to Form I-924, will be the vehicle for a yearly RC reporting requirement pursuant to newly amended 8 CFR 204.6(m)(6).
- Each approved RC will be required to file the I-924A to report RC-related activities for the preceding fiscal year within 90-days of the end of the fiscal year (on or before December 29th of the calendar year in which the fiscal year ended.)
- **The submission of Form I-924A will not be required to report on 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.**
- There is no filing fee for the Form I-924A.
- USCIS plans to publish summarized RC data in order to be responsive to requests for this information from a broad spectrum of USCIS's external stakeholders, to include members of Congress, other federal agencies, state agencies, and major media outlets.

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Proposed I-924A, Cont'd

- USCIS plans to publish data provided each year by all designated regional centers, to include attributes of the RC-affiliated capital investments, such as:

1. the geographic areas and industry categories receiving investment capital;
2. The volume of regional center affiliated capital invested, and;
3. The number of jobs created or maintained as a result of the capital investments.

This summarized data will be published on the USCIS Web site for each fiscal year following the publishing of the Form I-924A.

Note: USCIS does not plan to publish any data from the "ad hoc" data submissions that have been received from approved RCs regarding their EB-5 activities in prior years.

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EB-5 Premium Processing

USCIS has decided not to implement EB-5 Premium Processing for Form I-526 Petitions at the present time, due to:

- The need for further streamlining of the RC designation and Individual Petition adjudicative processes.
- IT infrastructure issues.
- Lack of sufficient EB-5 adjudicative resources to meet statutory and regulatory Premium Processing Service Requirements.

USCIS will reexamine this issue as these program constraints are addressed over time.

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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 inquire 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.

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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 recently 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.

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EB-5 Expedite Requests

- Public Law No. 102-395 provides for priority to be given to Regional Center-affiliated individual petitions. However, the statute does not provide criteria for USCIS to use to determine how petitions filed under the regional center program should be given priority over one another.
- USCIS has national expedite criteria for all petitions and applications, which are posted on the USCIS website.
- The petitioner must demonstrate that one or more of the expedite criteria have been met to be granted an expedite.

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EB-5 Expedite Requests, Cont'd

- The Director of the CSC follows the national expedite criteria when determining whether to grant an expedite request for an EB-5 petition.
- One of the national expedite factors is the "severe financial loss to a company or to an individual." Most of the EB-5 related expedite requests that CSC receives are based on this factor.
- Most EB-5 petitions contain escrow agreements which specify that the capital investment may not be released into the investment project until the approval of the Form I-526 petition.
- USCIS would be inundated by expedite requests if expedite requests were granted based upon these self-imposed financing arrangements.

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EB-5 Expedite Requests, Cont'd

- Expedite requests for EB-5 cases should be directed to the EB-5 program mailbox at: Uscis.immigrantinvestorprogram@dhs.gov .
- USCIS believes that the most equitable approach is to adjudicate EB-5 petitions in accordance with our first-in, first out procedures.

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Q & A on EB-5 Updates

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III. EB-5 Economic Analysis

- The Big Picture
- Important Points
- Sources of Information
- Critical Issue
- Common Pitfalls

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The Big Picture

- Using multipliers to estimate impacts requires the user to provide detailed information including: geographic scope, industry data, and initial changes in output, employment, & earnings.
- This information stems from a well-reasoned business plan.
- Use publicly available sources for data.
- To ensure analysis is readily reproducible include source data and RIMS II tables (if applicable).

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Important Points

- Essential definitions:
  - Direct effects (output, employment, or income) are those occurring to the firm that exports the additional good or service.
  - Indirect effects occur to industries in the backward linked industries that supply the exporting firm.
  - Induced effects result from households spending some of the additional income they receive in the local area.

    (Source: Dr. Wayne Miller study, *Economic Multipliers: How Communities Can Use Them for Planning*, subsequently cited)

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Important Points, Cont'd

- Geographic Dilemmas
  - Push-pull between Regional Center boundary and region defined for multipliers.
  - Targeted and narrowly defined for regional center boundary.
  - Broadly defined for regional impact analysis.
  - Must be large enough to serve as a functional economic unit. Should encompass a region that provides most of the inputs for production.

Labor is a major input—look at commuting patterns.

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Where to get more information?

- Bureau of Economic Analysis
- Census Bureau
- Bureau of Labor Statistics (LAUS)
- Small Business Administration
- National Associations
- Helpful studies that further define direct effects and geographic scope:
  - Dr. Wayne Miller, *Economic Multipliers: How Communities Can Use Them for Planning:*

http://www.uaex.edu/Other_Areas/publications/PDF/FSCED6.pdf

  - Linda Levine, *Job Loss and Infrastructure Job Creation Spending During the Recession*:

http://cardin.senate.gov/pdfs/jobloss.pdf

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Critical Issue

The business plan and economic analysis should be

TRANSPARENT and REPRODUCIBLE

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Common Pitfalls

- Defining the study area incorrectly
- Comparing apples to oranges
- Averaging multipliers
- Treating employment impacts as FTE
- Double counting direct impacts
- Incorrectly identifying initial impacts
- Combining forward linkages with backward linkages

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Q and A on EB-5 Economic Analysis

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- Reporting EB-5 Fraud & Misrepresentation to USCIS
- RC Termination Process
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Crediting Job Creation Outside the RC

- Section 610(a) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended, provides that
  - A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones.
- USCIS's regulation at 8 CFR 204.6(m)(3)(i) requires, in pertinent part, that each regional center must provide a proposal which *clearly describes how the regional center focuses on a geographic region of the United States* (emphasis added).

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Crediting Job Creation Outside the RC, Cont'd

- USCIS has interpreted that a regional center should focus its EB-5 capital investment activities on a single, contiguous area which is within the bounds of the limited geographic area for which a regional center requests jurisdiction.
- Beyond these statutory and regulatory directives there are no specific mandates that indirect jobs be created in any particular location.
- There is an exception pertaining to Targeted Employment Areas (TEAs). INA 203(b)(5)(B)(i) provides that a certain number of visas made available under the EB-5 category "be reserved for qualified immigrants who invest in a new commercial enterprise … which will create employment *in* a targeted employment area" (emphasis added).

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Crediting Job Creation Outside the RC, Cont'd

- 8 CFR 204.6(e) define a TEA as "an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate."
- A reduced capital investment amount of $500,000 is permitted for a TEA. If a proposed RC business plan in the Form I-526 includes a TEA and the petitioner is relying on a capital investment of $500,000 in a new commercial enterprise rather than $1,000,000, the predicted jobs created must be within the TEA.

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Crediting Job Creation Outside the RC, Cont'd

- This interpretation of the statutory and regulatory language does not justify job creation data methodologies that are not reasonable. While the RC's EB-5 capital investment activity may produce a legitimate economic benefit outside its formal jurisdictional RC boundaries, the data set used to estimate job creation should fit within the intended impact of the capital investment project.
- Where appropriate, regional data should be used as the basis for a regional center's job creation analysis in keeping with 8 CFR 204.6(m)(3)(i). USCIS may not accept statewide data or data from a broader area outside a regional center as suitable for the job creation analysis when regional data is readily available that focuses solely on an RC's geographic area.

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Crediting Job Creation Outside the RC, Cont'd

- The scope and nature of industries present in an entire state or in an area outside the geographic boundaries of an RC may not be comparable to the more limited scope and nature of the industries within the RC's jurisdictional area and included in the data for the region.
- However, if the prospective impacts of the capital investment project provided in the project's business plan and associated economic analysis indicate that a broader geographic area should be considered, USCIS will do so.

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Reporting EB-5 Fraud & Misrepresentation to USCIS

- Many USCIS External Stakeholders have expressed concerns regarding the potential for fraud and misrepresentation within the EB-5 program.
- USCIS takes allegations regarding EB-5 program malfeasance very seriously. EB-5 ISOs follow established USCIS procedures for referring cases to the Fraud Detection & National Security Directorate (FDNS) when an EB-5 case appears to contain fraud or material misrepresentations.
- General information about FDNS can be found on the USCIS website www.uscis.gov at: Home > ABOUT US > Directorates and Program Offices > Fraud Detection and National Security.

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Reporting EB-5 Fraud & Misrepresentation to USCIS

- Members of the public may report instances of fraud or misrepresentation to the EB-5 mailbox at Uscis.immigrantinvestorprogram@dhs.gov.
- It is helpful if the information provided contains specific information relating to the allegations of fraud or misrepresentation, supported by documentation, if possible.
- Information of this nature that is received through the EB-5 mailbox will be reviewed by EB-5 program staff, and if it appears to be credible, may be provided to the affected party in an EB-5 case in accordance with 8 CFR 103 and 205 as part of an adverse case action. Such information may also be provided to FDNS through established USCIS procedures.

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RC Termination Procedures

- USCIS may terminate the status of an approved RC under the termination procedures provided in 8 CFR 204.6(m)(6), upon a determination that the RC no longer serves the purpose of the Pilot Program by promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.
- USCIS must notify the RC through the issuance of a Notice of Intent to Terminate (ITT) of the reasons for termination and provide the RC with 30 days to provide evidence in rebuttal of the issues raised in the ITT.
- If USCIS determines that the RC's participation in the Pilot Program should be terminated, USCIS shall notify the RC of the decision and of the reasons for termination. As provided in 8 CFR 103.3, the RC may appeal the decision to USCIS within 30 days after the service of notice.

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RC Termination Procedures, Cont'd

- USCIS will notify the public via the USCIS website of the termination of any previously approved RC, upon the completion of the administrative appeals process in the matter, if any.
- If USCIS determines that the RC's response to the ITT overcomes the reasons for termination, then USCIS shall affirm the approval of RC's designation for participation in the Pilot Program in writing.
- Note: Amended 8 CFR 204.6(m)(6), which takes effect 11/23/20010, provides for the termination of an RC using the procedures outlined above if an RC fails to provide an RC fails to submit required information of its EB-5 activities (Form I-924A).

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Filing of New Form I-526 Petition – Prior to Gaining CPR Status

- An alien may opt to file a new Form I-526 petition, and if approved, may use the new petition as the basis for applying for adjustment of status or for an immigrant visa with DOS.
- It would be helpful if the alien would request to withdraw the previous Form I-526 petition.

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Material Changes Post-Filing Form I-526

- What is the relationship between an approved Form I-526 petition and the Form I-829 petition in establishing EB-5 eligibility?
  - Each alien investor must file a Form I-526 petition to establish his or her eligibility for classification as an EB-5 alien investor.
  - If approved, the business plan (and the economic analysis in the case of an RC-affiliated new commercial enterprise) provided in support of the Form I-526 petition describes how the investor is going to satisfy the requirements of the EB-5 program, and, therefore, removal of conditions at the Form I-829 petition stage
  - *Chang v. United States of America*, 327 F. 3d 911(9th Cir. 2003) In *Chang* the court stated that although the adjudication of the I-829 is not a re-adjudication of the I-526, the Form I-526 approval may not be "decoupled" from the I-829 approval. The court further stated that Form I-829 approval is predicated by the Form I-526 approval and the "successful execution of the approved plan."

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Child Status Protection Act of 2002 (CSPA)

- CSPA amended the Immigration and Nationality Act (Act) to permit an applicant for certain immigration benefits to retain classification as a child under the Act, even if he or she has reached the age of 21, (i.e, has “aged-out”).
- CSPA added section 201(f) for applicants seeking to qualify as Immediate Relatives and section 203(h) for applicants seeking to benefit under a preference category, including derivative beneficiaries.
- CSPA may provide limited age-out protection to certain EB-5 dependent children. USCIS is currently reviewing its existing CSPA guidance to ensure that such beneficiaries are protected to the extent permitted by law.

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Child Status Protection Act of 2002 (CSPA), Cont'd

- Investors who have dependent children who are nearing their 21st birthday should be aware that an EB-5 dependent child must be under the age of 21 years at the time of filing of the Form I-526 petition in order to qualify as a derivative beneficiary. The dependent children must meet the definition of child as modified by the CSPA at the time the immigrant visa is issued (or approval of the I-485).
- CSPA may protect some dependents from "aging out." Essentially, the time the Form I-526 was pending (from filing to approval) can be subtracted from the child's age on the date a visa becomes available (per the visa bulletin or the petition's approval date, whichever is later) as long as the child seeks to acquire lawful permanent residence within one year of visa availability (filed Form I-824 or I-485 with USCIS or submitted DS-230 to Department of State).

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Questions?

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