U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Public Engagement
Washington, DC 20529

U.S. Citizenship and Immigration Services

Conversations with the Director
EB-5 Immigrant Investor Program
September 14, 2011

Overview

On September 14, 2011, USCIS Director Alejandro Mayorkas held the first in a series of small group discussions called *Conversations with the Director*. The first in this series of engagements focused on the EB-5 immigrant investor program and provided stakeholders an opportunity to engage in a discussion on issues of relevance to the EB-5 program with Director Mayorkas.

The information below provides a review of the discussion between stakeholders and USCIS. Please note that this meeting did not announce or create any new statement of USCIS policy, which can only be done through formal processes such as by policy memorandum or regulation.

Principal Themes

- **Updates on Enhancements to the EB-5 Program**

Director Mayorkas provided an update on the proposal to revise the EB-5 process. On September 13, 2011, USCIS launched the first in a series of enhancements to the EB-5 program whereby Form I-924 applicants will be able to communicate directly with USCIS adjudicators via e-mail. This enhancement will streamline the adjudication process by providing applicants and adjudicators the ability to quickly raise and resolve issues and questions that arise during the adjudication process.

Director Mayorkas also noted that the agency is eager to implement all of the proposed enhancements to the EB-5 program. Premium processing will be introduced through revisions to the Form I-924 and we are currently exploring how to expedite this process which can take several months. Additionally, USCIS is in the process of hiring economists and other experts that will enhance and accelerate the adjudication process and also help constitute the Decision Board that was first described in the EB-5 proposal.

The Director also provided an update on the status of the December 2009 EB-5 memo that was posted for public comment. Director Mayorkas indicated that the comments had been considered and the memo is under review. The Director also stated that the agency would not finalize the memo prior to engaging further with our stakeholders.

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- **Effect of State Designation on Targeted Employment Area (TEA)**

Some stakeholders reiterated that they believe the authority to designate a TEA is delegated to the states. Stakeholders commented that USCIS's analysis of the TEA should focus solely on the required unemployment level; the state designation would define the boundaries while investors are required to present the methodology in support of the unemployment level. Some stakeholders presented concerns regarding the lack of standards in state-issued TEA designations. These stakeholders stated that USCIS should require state delegation of TEAs be supported by statistical data that demonstrates the geographic area has an unemployment rate that is 150% of the national average.

- **Bridge Financing**

Stakeholders commented that there is still a lack of clarity regarding the use of bridge financing in an EB-5 investment. Stakeholders are seeking confirmation that the job creation requirement applies to the "new commercial enterprise" and not to the specific EB-5 investor's capital. If the job creation requirement applies to the "new commercial enterprise" rather than the specific EB-5 investor's capital the commencement of job creation based upon bridge or interim financing subsequently replaced by EB-5 capital does not detract from the creation of jobs by the new commercial enterprise where there is a reasonable nexus between the infusion of EB-5 capital into the job creating capital investment activity.

- **Exemplar Petitions**

Stakeholders noted that they would like confidence in the approval of a project and not have issues revisited during the adjudication of individual I-526 petitions, Immigrant Petition for an Alien Entrepreneur, when exemplar petitions were previously approved with the same documentation during the I-924 stage. Stakeholders commented that the exemplar petitions are approved because there is sufficient information to approve but, at the time of filing the I-526 petition, an investor's petition is being questioned. Stakeholders are requesting confirmation that the approval of an exemplar I-526 petition will be binding with respect to the particular project at the time of the actual I-526 filing.

- **Adjudication and Processing Times of EB-5 petitions**

Stakeholders expressed an overall lack of confidence in the adjudications of EB-5 petitions. In particular, they are concerned about a lack of consistency. Stakeholders would like increased predictability in the processing of EB-5 petitions. Stakeholders seek a more efficient EB-5 adjudication process. Some participants commented that EB-5 processing times are lengthy and requested enhancements to shorten approval times and keep investors informed. Stakeholders further requested transparency through the availability of accurate EB-5 processing times on the USCIS website. Processing times for both the I-526 and I-829 are now available on uscis.gov.

Stakeholders also commented that the business community should be given trust and that the agency should not presume fraud exists in any particular case. Director Mayorkas stressed that there is no presumption of fraud in any case and that all cases are adjudicated on their merits. He further noted that USCIS was considering how to embed the perspective of the business community in the adjudication process such as through additional training.

Some stakeholders also commented that applicants and their representatives are seeking a level of certainty in the application process. Specifically, stakeholders stated that a decision should not be questioned at later stages in the adjudication process and that applicants should be able to rely on a body of approvals.

- **Child Status Protection Act (CSPA) and the EB-5 program**

Stakeholders commented that, in some situations, the children of investors who have aged out lost the protection of the Child Status Protection Act. Stakeholders requested that USCIS look into changes that would provide CSPA protection throughout the adjudicatory process.

- **Communication with Stakeholders**

Stakeholders requested a mechanism to remain informed during the EB-5 process. Also, stakeholders commented that any substantive changes in USCIS's adjudication policies should be communicated to stakeholders in advance of their implementation.

Next Steps

Stakeholders are seeking clarification on filing requirements for the Form I-924A (Supplement to Form I-924) which is used to demonstrate a Regional Center's continued eligibility for the Regional Center designation. Each designated Regional Center entity must file a Form I-924A for the fiscal year on or before December 29, 2011. If stakeholders have questions on the filing requirements, you may direct these to the Office of Public Engagement: public.engagement@dhs.gov **by November 15, 2011**. USCIS will then respond through the posting of FAQs on the public website.

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U.S. Citizenship and Immigration Services

Meeting Invitation

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A Conversation with Director Mayorkas:

EB-5 Immigrant Investor Program

September 14, 2011 @ 3:30 PM (EDT)
20 Massachusetts Ave, NW
Washington, DC 20529

USCIS announces the launch of ***Conversations with the Director***, a series of small group sessions to discuss policy issues that are of relevance to our stakeholders. During the sessions, members of the public will have the opportunity to meet with USCIS Director Alejandro Mayorkas and senior members of the USCIS leadership team to discuss discrete policy issues.

The first of these engagements will be held on September 14, 2011 at 3:30 PM (Eastern) and will focus on economic development in the context of the EB-5 (Immigrant Investor) program. This small group discussion will complement the existing quarterly EB-5 engagements, the next of which will take place on September 15, 2011 at 1:00 pm (Eastern), by allowing for a more in-depth dialogue on discrete policy issues related to the EB-5 program.

You may attend this engagement either in-person or by teleconference, however those attending via phone will be in **listen-only mode**. If you wish to attend **in-person,** attendance is **limited to the first 25 people who register**. The session will be intentionally limited to 25 people in order to allow for a robust, in depth discussion. Additionally, in-person participation will be limited to one person per organization or practice.

To Participate in the Session

If you wish to attend, please respond to this invitation by contacting the Office of Public Engagement at public.engagement@dhs.gov and reference the following in the subject line of your email:

- **"EB-5 Conversation – in person"**
- **"EB-5 Conversation – phone"**

Please also include your full name and the organization you represent, if any, in the body of the email.

We hope you will be able to join this important discussion and we look forward to engaging with you.