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July 9, 2012

Department of Homeland Security
U.S. Citizenship and Immigration Services
Chief, Regulatory Coordination Division
Office of Policy and Strategy
20 Massachusetts Avenue, NW
Washington, DC 20529-2020

Submitted via email: USCISFRcomment@dhs.gov

**Re: 60-Day Notice of Information Collection under Review:
Form I-924, Application for Regional Center under the
Immigrant Investor Pilot Program
OMB Control No. 1615-0061
77 Fed. Reg. 27473 (May 10, 2012)**

Dear Sir or Madam,

The American Immigration Lawyers Association (AILA) submits the following comments in response to the Department of Homeland Security's (DHS) Notice of Information Collection under Review: Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program, published in the Federal Register on May 10, 2012.

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. The organization has been in existence since 1946. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on the Notice of Information Collection and believe that our members' collective expertise provides experience that makes us particularly well-qualified to offer views on this matter.

Background

P.L. 102-395, Title VI, §610, 106 Stat. 1874 (P.L. 102-395) authorizes U.S. Citizenship and Immigration Services (USCIS) to designate regional centers under the Immigrant Investor Pilot Program. P.L. 102-395, as amended, permits regional center designation upon demonstration of the following:

[O]n the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. 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. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

On December 11, 2009, USCIS issued a memorandum entitled *Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829 Petitions; Adjudicator's Field Manual (AFM) Update to Chapters 22.4 and 25.2 (AD09-38)* (December 2009 Memo), which provided an option for *exemplar* approval of an *actual* capital investment project based upon the submission of EB-5 compliant, "detailed documentation relating to the actual investment project" including, but not limited to, a business plan.

Certain sections of Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program (Form I-924) are unclear and/or do not accurately reflect the requirements of P.L. 102-395, as amended. We therefore recommend that USCIS revise Form I-924 in the following ways.

Application Type

Part 2. Application Type on Form I-924 provides only two categories of applications: (a) Initial Application for Designation as a Regional Center; and (b) Amendment to an Approved Regional Center Application. However, there are multiple types of amendments that a regional center may seek. USCIS should expand the latter category to include each type of amendment and clarify the meaning and evidentiary requirements that are applicable to each one.

Form I-924 should include two categories of amendments: the first relating to changes to approved designation (or "structural" amendments); the second relating to project approvals (or "preapproval" amendments).

A structural amendment should be defined to include requests to amend the geography, industry sector and/or economic model from the approved regional center designation. We also recommend that USCIS clarify whether changes to the organizational structure or administration of a regional center require the filing of Form I-924 or whether e-mail notice will suffice. The instructions to the Form indicate that a regional center must notify USCIS within 30 days of changes in, among other things, the operation or administration of the regional center and prescribes e-mail as the appropriate method.

The preapproval amendment category should include clearly defined subcategories, the evidentiary standard applicable to each, and the effects of approval. The December 2009 Memo introduced the terms “hypothetical investment project,” “exemplar investment project,” “actual investment project” and “exemplar Form I-526.” These terms have not had clear or consistent use in USCIS approvals, requests for evidence (RFE), or in associated Form I-526 adjudications.

In May 2011, USCIS issued a proposal entitled *Proposed Changes to USCIS’s Processing of EB-5 Cases* promising eventual clarity to the terminology, evidentiary standards, and effects. AILA has provided comments to this proposal and urges further dialogue on and speedy implementation of the proposal. The next version of Form I-924 should adopt these proposal clarifications.

Initial Evidence Requirements

Form I-924 prescribes certain mandatory evidentiary elements for an initial application for “Approval and Designation of a Regional Center” that are inconsistent with P.L. 102-395. Specifically, Form I-924 requires a business plan for an actual or exemplar capital investment project that contains “sufficient *detail* to provide valid and reasoned inputs into the economic forecasting tools” and which demonstrates “that the proposed project is *feasible* under current market and economic conditions.” Form I-924 should be revised to indicate that this level of specificity is only required where actual project approval is sought alongside initial designation approval.

Pursuant to P.L. 102-395, as amended in 2002 by P.L. 107-273, an initial regional center request for designation may be approved on the basis of a *general* proposal with *general* predictions. Such general proposals are typically based upon a hypothetical project that may or may not come to fruition, representing merely the kind of capital investment project that the regional center intends to undertake. Such proposals by their nature cannot supply the level of detail the Form I-924 instructions and current USCIS practices require. Such detail, moreover, is contrary to the plain language of the statute. While Form I-924 in some respects follows the language of 8 CFR §204.6(m)(3), that regulation was promulgated based on the initial language of P.L. 102-395, which has not been amended since the amendments to P.L. 102-395 made by P.L. 107-273. An agency’s failure to amend regulations in keeping with statutory changes does not excuse the promulgation of forms that embody outdated regulations.

We suggest that in the next iteration of the Form I-924 that USCIS clarify the evidentiary standard appropriate for initial proposals containing only hypothetical projects. Such clarification, alongside specification of the different preapproval categories and the evidence required for each, is necessary to eliminate confusion and conform USCIS standards to P.L. 102-395, as amended.

Industry Category Title

Part 3. Information About the Regional Center, Number 7, on Form I-924 requires an applicant to identify each industry, by NAICS code, that will be the focus of EB-5 capital investments. Form I-924 states of this requirement, “[i]f you use a code with fewer than six digits, enter the code left to right and then add zeros in the remaining unoccupied boxes.” This language implies that it is permissible to use NAICS codes with less than six digits where appropriate to the requested industries. However, RFEs continue to request use of more specific NAICS codes based upon the hypothetical or actual project documents submitted. Hypothetical project documents are offered to demonstrate how an actual project will be capitalized and operate, as USCIS contemplates in the December 2009 Memo. Actual project documents are offered to seek USCIS review and approval of an actual project. As both are mere samplings of projects that fit within the proposed industry sector, it is improper to limit the industry sector designation to accommodate only these narrowly-crafted projects. We request that Form I-924 clarify that the NAICS codes for requested industries may be broader than those represented by any project documents submitted with the proposal.

The narrowness of industry codes being required in practice by USCIS unnecessarily limits the use of regional center approvals. If a regional center is approved for an economic methodology but only for a very narrow NAICS code, then the regional center must file and await approval of an I-924 amendment before affiliated investors in a project with a slightly different NAICS code may use such affiliation to file an I-526 petition claiming credit for indirect job creation. USCIS currently is taking 10 months to adjudicate regional center amendments. The result is unacceptable delay in proceeding with job-creating investment projects, with the specter of such delay often resulting in projects not going forward with EB-5 funding, or in many cases, not proceeding at all. The application of an approved economic analysis methodology does not differ materially from one NAICS code to another within the broad bands of two-digit NAICS codes. Even to the extent the methodologies do differ somewhat, it is not clear that regional centers and project developers and their economists are unable to adjust for the differences while still using the same general methodology. USCIS has not justified the burden on EB-5 stakeholders caused by its narrow approach to NAICS codes.

Conclusion

We appreciate this opportunity to comment on Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION