



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

May 20, 2015

Honorable León Rodríguez
Director, U.S. Citizenship and Immigration Services

Nicholas Colucci
Chief, Immigrant Investor Program Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

**Re: Request for Opportunity to Provide Public Comments on Forthcoming EB-5
Policy Memorandum**

Dear Director Rodríguez and Chief Colucci:

With this letter, the American Immigration Lawyers Association (AILA) respectfully requests that USCIS publish a draft version of its upcoming EB-5 policy memorandum which will address issues arising out of the establishment of a cut-off date for EB-5 China, and provide an opportunity for public comment prior to issuing a final memorandum.

On April 22, 2015, USCIS held a stakeholder teleconference to discuss the Immigrant Investor Program, also known as the EB-5 Program. During the first part of the engagement, USCIS announced that it was working on a policy memorandum to address several important emerging issues arising from the State Department's recent implementation of a cut-off date in the EB-5 China category.

Since the creation of the EB-5 Program nearly 25 years ago, the demand for immigrant visas was consistent with the supply, and as a result, visas were always immediately available. However, in the May 2015 Visa Bulletin, for the first time in the program's history, a cut-off date of May 1, 2013 was established for applicants chargeable to mainland China. As a result, Chinese EB-5 applicants, who are estimated to comprise nearly 80 percent of all EB-5 visa applicants, will likely experience significant delays in acquiring conditional residence status. The unprecedented establishment of a cut-off date and the delays that will inevitably result creates anomalies in the EB-5 process that are not addressed by current adjudication policies.

AILA supports USCIS's decision to issue a policy memorandum addressing these new issues, as guidance is clearly needed to structure an EB-5 compliant project to the extent USCIS standards are affected by visa backlogs. However, we urge USCIS to issue a proposed policy memorandum in a draft format, and allow all stakeholders the opportunity to provide feedback and comment before finalizing binding guidance.

AILA National Office

1331 G Street NW, Suite 300, Washington, DC 20005

Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org

Former USCIS Director Alejandro Mayorkas hailed the “iterative” process of incorporating stakeholder input into the drafting of the May 30, 2013 comprehensive EB-5 policy memorandum. The process of seeking public input has been acknowledged by USCIS and stakeholders alike as a critical tool for bringing greater clarity and predictability in EB-5 adjudications. In his January 2012 “Message from The Director,” Mr. Mayorkas stated:

U.S. Citizenship and Immigration Services (USCIS) thanks stakeholders for providing comments to the draft policy memorandum we posted to address certain foundational issues in the EB-5 Program. In anticipation of tomorrow’s “Conversation With The Director” regarding the EB-5 Program, we have attached the revised draft policy memorandum that incorporates some of your comments. ***In tomorrow’s Conversation, we will discuss the revised draft policy memorandum and seek to focus on certain important policy issues that we wish to further explore with you,*** including the issue of material change and how to most fairly and effectively address it in our EB-5 adjudications.

As we stated previously, the formulation of the guiding EB-5 policy memorandum is an iterative process, one in which we seek your input. The revised policy memorandum is a further step in the iterative process. Tomorrow’s Conversation will be important in guiding our determination of how to most effectively address some of the more difficult issues in the policy memorandum development process. We can continue tomorrow’s discussion in the broader EB-5 quarterly engagement scheduled for later this month. We are working hard to enhance the EB-5 Program, including the issuance of policies that address developments in the use of the Program and carefully adhere to the governing statutes and regulations. Tomorrow, we will discuss our efforts to date, issues of importance to you, and the path ahead. We are dedicated to realizing the EB-5 Program’s potential to create jobs for U.S. workers and to vigilantly protecting the Program’s integrity. (Emphasis added)

This sound public policy is as critical today as it was in 2012 and 2013 as the EB-5 Program faces even greater challenges with the onset of visa backlogs. Taking input from the public prior to publishing a final memorandum will help ensure the continued success of the Program by addressing stakeholder concerns and questions up front, and establishing clear, workable policies and procedures.

AILA applauds USCIS’s efforts to continually enhance the administration of the EB-5 Program. Updates to current adjudication policies due to the establishment of visa cut-off dates are urgently needed. We ask that USCIS implement the same public comment process that was employed prior to the release of the final May 30, 2013 EB-5 policy memorandum, which continues to be lauded for its transparency and effectiveness.

Sincerely,



Leslie Holman
President, The American Immigration Lawyers Association