



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

January 23, 2023

Samantha L. Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW,
Washington, DC 20529-2240

Submitted via www.regulations.gov

OMB Control Number 1615-0026

Docket ID USCIS-2007-0021

Re: Agency Information Collection Activities; 30 Day Notice; Form I-526E, Immigrant Petition by Regional Center Investor

Dear Ms. Deshommes:

The American Immigration Lawyers Association (“AILA”) respectfully submits the following supplemental comments (collectively the “Comment”) to the above-referenced Department of Homeland Security (“DHS”) and U.S. Citizenship and Immigration Services (“USCIS”) Agency Information Collection Activity: 30 Day Notice: Form I-526E, Immigrant Petition by Regional Center Investor, (USCIS OMB Control No. 1615-0026; Docket ID USCIS-2007-0021) (hereinafter “Proposed Form I-526E”) published in the Federal Register on December 23, 2022.

Established in 1946, AILA is a voluntary bar association of more than 16,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. 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, including on the requirements of the EB-5 Immigrant Investor Visa program. Our members’ collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

AILA National Office

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

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

We submit these comments to supplement our more detailed October 17, 2022 comment on the proposed Form I-526E, which is incorporated herein by reference. A copy of our initial comment is attached hereto. To the extent those recommendations were not reflected in the revised Form I-526E published in conjunction with this 30-Day Notice, we reiterate our recommendations and respectfully request your reconsideration of our suggestions as we believe they are mutually beneficial in that they will improve the efficiency and efficacy of Form I-526E adjudications.

Our supplemental comments to the Proposed Form I-526E are as follows:

Form I-525E Instructions

Page 1: General Instruction Section/Signatures Minors and Mentally Incompetent

The form instructions direct that if the Petitioner is a minor (under 14) or mentally incompetent, a parent or legal guardian may sign the petition on the investor's behalf. The Instructions provide as follows:

Signature. Each petition must be properly signed and filed. For all signatures on this petition, USCIS will not accept a stamped or typewritten name in place of a signature. If you are under 14 years of age, your parent or legal guardian may sign the petition on your behalf. A legal guardian may also sign for a mentally incompetent person.

AILA Comment:

AILA applauds USCIS for confirming in writing its updated policies that an EB-5 Petitioner can be a minor (under 14) or a mentally incompetent person.

Page 2: General Instruction Section/Biometric Services Appointment

The form instructions now establish that the Petitioner may be required to provide biometrics and pay a separate biometric services fee of \$85. The Instructions provide as follows:

Biometric Services Appointment. USCIS may require that you appear for an interview or provide biometrics (fingerprints, photograph, and/or signature) at any time to verify your identity, obtain additional information, and conduct background and security checks. After USCIS receives your petition and ensures it is complete, we will inform you if you need to attend a biometric services appointment. If an appointment is necessary, the notice will provide you the location of your local or designated USCIS Application Support Center (ASC) and the date and time of your appointment or, if you are currently overseas, instruct you to contact a U.S. Embassy, U.S. Consulate, or USCIS office outside the United States to set up an appointment.

AILA Comment:

Nearly all petitioners reside overseas at the time of filing Form I-526E. AILA remains very concerned about the plan to schedule biometrics for a Petitioner living overseas.

In our experience, most U.S. Consulates are not sufficiently staffed and equipped to serve as a biometrics processing center. There is no information in either the Federal Register notice or the form instructions to indicate whether USCIS developed protocols with Department of State to capture biometrics abroad. Also, not every Petitioner will have a valid visitor visa to enter the U.S. to comply with any biometrics obligation. For those petitioners, applying for a tourist visa with a pending Form I-526E will likely complicate satisfying nonimmigrant intent requirements. We are concerned that USCIS may deny a petition on grounds of abandonment if the Petitioner is unable to comply with biometrics processing due either to inaccessibility of consular appointments or inability to obtain a visa to attend a biometrics appointment in the United States.

AILA urges USCIS to delay implementation of any biometrics requirement until such time as reliable procedures are developed to accommodate the overwhelming majority of Form I-526E petitioners who reside overseas.

Page 4: Information About Your Regional Center and Project Application

AILA welcomes USCIS' decision to allow petitioners to electronically upload required initial evidence directly to USCIS. AILA recommends that the instructions be updated to reflect that petitioner's attorney/representative will be able to upload directly to myUSCIS through their designated accounts. We believe that the further modernization of USCIS' initial evidence procedures will only serve to facilitate faster processing times and consistent adjudication standards. We anticipate that USCIS will offer further guidance regarding its technical prerequisites for uploaded files, including the use of single or multiple PDF documents, or the use of one combined PDF with bookmarks linking each exhibit in a filing.

Page 5: Item Number 9. Disclosure of Fees.

AILA Comment

We recommend that the form instructions be modified to include language from the RIA which says that an investor shall sign a disclosure *"to the extent not already specifically identified in the business plan filed"* with their I-956F. The full text of Section 203(b)(5)(K) states:

“(iv) DISCLOSURE.—Each petition filed under section 204(a)(1)(H) shall include a disclosure, signed by the investor, that reflects all fees, ongoing interest, and other compensation paid to any person that the regional center or new commercial enterprise knows has received, or will receive, in connection with the investment, including compensation to agents, finders, or broker dealers involved in the offering, **to the extent not already specifically identified in the business plan filed** under subparagraph (F).”

(Emphasis added.)

Further, we do not believe that USCIS should penalize petitioners who fall victim to regional centers or new commercial enterprises that do not properly provide investors with compliant disclosure documentation, which may also independently be governed by U.S. Securities Laws and as opposed to the RIA.

[Page 7: What Evidence Must You Submit?](#)

We again are pleased that USCIS will allow Form I-526E investors to submit their evidence through the myUSCIS portal. Based on our past experience with online filing systems such as the ELIS Case Portal, we recommend that the IPO establish additional options to allow attorneys to email a specific IPO email address in the event there are issues with the myUSCIS portal. We also recommend that USCIS give petitioners a specific period of time, such as 90 days or longer, and list such instructions in the form instructions and on the myUSCIS portal.

AILA also requests that USCIS clarify whether petitioners may submit or interfile additional evidence not required as part of the initial petition using the myUSCIS portal. Similarly, we also recommend that the USCIS allow petitioners the option to respond to RFE, NOIDs, or other post-filing requests from USCIS via the myUSCIS portal.

[Page 7, What Evidence Must You Submit / 1. Investment in a USCIS-designated Regional Center](#)

AILA appreciates USCIS' acknowledgement in its instructions that an I-526E petition may be filed without a copy of the Form I-956F receipt notice, so long as the petitioner's new commercial enterprise and regional center filed the Form I-956F prior to the filing of Form I-526E.

[Form I-526E](#)

[Part 2 Information About You / Question 20](#)

AILA Comment

AILA appreciates that USCIS has modified the scope of this question from the previous draft, which requested employment history from "all prior employment." AILA still objects to the period of time that the question now asks (i.e. "the last 20 years"). AILA's concern is that USCIS may request information that may need to be supported by primary or secondary evidence which may not be available to investors due to limitations in public or private recordkeeping. The RIA already requests an investor's prior seven (7) years of tax returns, and the scope of this question as currently written may leave investors unable to comply due to the unavailability of records. AILA believes

that the statutory provisions of the RIA provide a reasonable period of seven years, which reflects similar foreign recordkeeping requirements for employment, banking, and tax records.

Separately, AILA notes that the reporting requirements for military service added to this question are distinct and apart from regular employment. AILA recommends that the requirement to report government or military foreign service would be best collected in a separate question.

- **Part 3 Information About Your Spouse and Children**

Part 3 continues to require that the Petitioner provide basic biographical information about the spouse and children, and includes questions requesting a statement of future intent to apply for consular processing or adjustment of status:

Family Member 1			
1.	Family Name (Last Name)	Given Name (First Name)	Middle Name (if applicable)
	<input type="text"/>	<input type="text"/>	<input type="text"/>
2.	Date of Birth (mm/dd/yyyy)	3.	Country of Birth
	<input type="text"/>		<input type="text"/>
4.	If spouse, Country(ies) of Citizenship (current)		
	<input type="text"/>		
5.	If spouse, Country(ies) of Citizenship (relinquished)		
	<input type="text"/>		
6.	Relationship to You <input type="checkbox"/> Spouse <input type="checkbox"/> Child		
7.	Applying for Adjustment of Status? <input type="checkbox"/> Yes <input type="checkbox"/> No		8. Applying for Visa Abroad? <input type="checkbox"/> Yes <input type="checkbox"/> No

AILA Comment

AILA remains very concerned by the broad language of Part 3 which requires the Petitioner indicate the present intent of each family member to seek derivative immigrant classification. It is entirely appropriate for the Petitioner to list all family members for identification purposes. However, a family member's individual decision to ultimately apply/not apply for derivative immigrant benefits is frequently the subject of a complex analysis of personal and business issues and may change over time. For example, it is not uncommon for the investor and children to seek EB-5 benefits, while the investor's spouse intentionally elects to not pursue any immigrant benefits. In current form, Part 2 demands the reporting of the name of such non-participating spouse and such listing could impute immigrant intent, complicating future nonimmigrant visa applications and admissions. Moreover, a non-binding statement of future intent is of no evidentiary value and should not be required upon submission of the Form I-526E Petition.

AILA recommends the Form be modified to simply direct Petitioner to list and provide basic biographical information on spouse and children, and not be required to provide speculative information about their individual intent to ultimately pursue benefits and how that might be accomplished.

Part 4 Information About Your Regional Center and Project Application

This section requires the Petitioner to provide information pulled from the I-956F to determine if the investment meets one or more specified categories.

AILA Comment

AILA recommends the elimination of “High Unemployment Area” category option. The Instructions provide that

“High Employment Area. *A high employment area is an area experiencing unemployment significantly below the national average unemployment rate. The investment amount required in a high employment area is the same as the standard investment amount.”*

However, the phrase “significantly below” is not defined. In the absence of a specific and objective measurement criteria, this classification should be removed.

Part 5 Information About Your Investment

Question 1 requires the Petitioner provide information about completed and prospective investment activities, as follows:

Part 5. Information About Your Investment

1. Enter the amount and date of your investment(s) in the NCE. If you are actively in the process of investing capital in the NCE, enter the amount and date you anticipate making the investment. If you need additional space, use the space provided in **Part 12. Additional Information.**

Date of Investment (mm/dd/yyyy)	Amount of Investment
	\$
	\$
	\$
	\$
Total	\$

The corresponding instructions provide:

“Item Number 1. Dates and Amounts of Your Investment. Provide the date(s) and amount(s) of your investment in the NCE in a month/day/year format. If you are actively in the process of investing capital, provide the date(s) and amount(s) you anticipate making the investment.”

AILA Comment

AILA finds the table response formatting for Question 1 potentially confusing. Petitioner is directed to consolidate into a single table both completed investment activities and prospective activities. AILA recommends the table separate completed activities from prospective activities.

AILA appreciates that USCIS modified Question 2 as provided in our comment. However, we note that the proper term to utilize in this question is “cash”, as “Capital” is defined by INA §203(b)(5)(D)(ii) which provides in part:

“(ii) CAPITAL. —The term ‘capital’—

“(I) means **cash** and all real, personal, or mixed tangible assets owned and controlled by the alien investor, or held in trust for the benefit of the alien and to which the alien has unrestricted access;

(Emphasis added.)

Part 5 Administrative Costs and Fees / Question 8

Question 8 requires the Petitioner provide information about “all” administrative costs and fee, as follows:

Administrative Costs and Fees

8. Enter the date and amount of **all** administrative costs and fees associated with your investment.

Date (mm/dd/yyyy)	Amount
	\$
	\$

The Instructions direct the Petitioner as follows:

Item Number 8. Administrative Costs and Fees. Provide the date(s) and amount(s) of any administrative fees you paid associated with your investment in the NCE in a month/day/year format.

AILA Comment

The Form and Instructions use overly broad language of “all” and “any” to mandate Petitioner’s disclosure of administrative fees and costs. AILA is concerned that the instructions fail to provide any meaningful guidance defining the terms “administrative fees and costs.” Petitioner is only left to speculate at the scope of the request.

For example, under the language of the current Question, must the Petitioner report all immigration legal fees? All corporate lawyer legal fees for due diligence review of offering? All translation fees? Interpreter fees? All accounting professional fees for lawful source of funds analysis? Any Investment Advisor fees? AILA urges additional clarification be added to this question and accompanying instructions.

Part 5 Administrative Costs and Fees / Question 10

Question 10 requires the Petitioner to provide information about net worth.

AILA Comment

AILA strongly objects to this question for multiple reasons. First, the Instructions provide no guidance or clarification on how to answer Question 10. Second, and more importantly, a Petitioner's net worth is not a requirement or factor appearing in the RIA, regulations or Policy Manual. Moreover, net worth is not naturally connected to lawful source of funds or path of funds eligibility requirements. For example, why is net worth relevant to any Form I-526E adjudication if the Petitioner is receiving a gift or loan to make the investment? Further, this inquiry is an unnecessary and overly broad intrusion into the privacy of the Petitioner by demanding highly confidential information unrelated to any eligibility criteria. This question should be eliminated in its entirety.

Part 5 Your Sources of Investment Capital / Question 11

AILA Comment

AILA again appreciates and commends USCIS for recognizing our comment and making the suggested modification to these questions.

Part 7. Bona Fides of Persons Involved With Regional Center Program

Part 7 and Questions 1 to 13 require information from a Petitioner that holds a "position of substantial authority" in the NCE, JCE or RC. The introduction provides as follows:

Part 7. Bona Fides of Persons Involved With Regional Center Program

Each person involved with a regional center, NCE, or affiliated JCE must answer the questions below. A person is involved with a regional center, NCE, or affiliated JCE if the person is, directly or indirectly, in a position of substantive authority to make operational or managerial decisions over pooling, securitization, investment, release, acceptance or control or use of any funding. A person may be in a position of substantive authority if they serve as a principal, a representative, an administrator, an owner, an officer, a board member, a manager, an executive, a general partner, a fiduciary, an agent or in a similar position at the regional center, NCE, or affiliated JCE.

Each petitioner must answer the questions in their capacity as an owner of the NCE associated with the Regional Center.

1. Have you committed a criminal or civil offense involving fraud or deceit within the previous 10 years? ☐ Yes ☐ No
2. Have you ever committed a criminal or civil offense involving fraud or deceit that resulted in a liability in excess of \$1,000,000? ☐ Yes ☐ No
3. Have you ever committed a criminal or civil offense for which you were convicted and sentenced to a term of imprisonment of more than 1 year? ☐ Yes ☐ No

The instructions mandate the Petitioner "answer "Yes" to any question that applies, even if the records were sealed or otherwise cleared, or if anyone, including a judge, law enforcement officer, or attorney, told you that you no longer have a record. You should also answer "Yes" to the following questions whether it occurred here in the United States or anywhere else in the world."

AILA Comment

A vast majority, if not all, of the Petitioners in the regional center setting serve only as a limited partner in the NCE with no role in its daily management or operations. As a result, a position of “limited authority (as limited partner) does not therefore meet the definition of a “position of substantial authority.” Accordingly, USCIS should revise Part 7 to begin with a “Yes/No” question akin to “*Does the Petitioner’s role in the NCE or JCE exceed that of a limited partner?*” *If you answer No to the above, skip to Part 8. If you answered Yes, answer the below questions.*”

Additionally, Questions 12 and 13 seem totally without merit and appears only to target a Petitioner-Investor seeking immigrant classification who a practicing lawyer in the United States is also. It is hard to imagine such a fact pattern exists, but in the rare instance it does – there is insufficient justification to further expand the Form to include two separate questions to that extraordinarily small universe of potential petitioners. AILA urges the removal of Questions 12 and 13.

Conclusion

We appreciate this opportunity to provide additional comments on the Proposed Form I-526E and look forward to a continuing dialogue with DHS on this important matter.

Please address any concerns or questions to AILA Director of Government Relations Sharvari Dalal-Dheini at SDalal-Dheini@aila.org.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION