



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

March 24, 2022

Mr. David Newman,
Deputy Assistant Legal Adviser
Office of the Assistant Legal Adviser for Consular Affairs - Visas
U.S. Department of State
Washington, D.C.

Via Email: NewmanDS@state.gov

RE: Emergency Request to Amend Visa Bulletin for April 2022 On Chart A and Chart B Dates for EB-5 Regional Center Program Classification (I5 and R5) Pursuant to “effective on enactment” Provisions of Sections 5 and 8 of the EB-5 Reform and Integrity Act of 2022

Dear Mr. Newman:

On behalf of the American Immigration Lawyers Association, we respectfully submit this letter requesting emergency action to amend the newly released Visa Bulletin (“VB”) for April 2022 to comply with certain provisions of the EB-5 Reform and Integrity Act of 2022 (“RIA”) relating to I-526 immigrant visa petitions filed prior to June 30, 2021, based on investments in new commercial enterprises associated with regional centers (“Pre-Enactment Investors”).

Section D of the [Visa Bulletin for April 2022](#) titled “EXPIRATION OF THE EMPLOYMENT-BASED FIFTH PREFERENCE I5 AND R5 REGIONAL CENTER VISA CATEGORIES” contains the following instruction:

The final action dates for the I5 and R5 categories have been listed as “Unavailable” for April.

The Consolidated Appropriations Act, 2022, which reauthorizes and reforms the EB-5 Immigrant Investor Regional Center Program, was signed by the President of the United States on March 15, 2022. *Certain Regional Center Program aspects of this legislation go into effect 60 days after the date of the enactment of this Act.* More information will be published in coming editions of the Visa Bulletin. (Emphasis added).

It is true that “Certain Regional Center Program aspects of this legislation go into effect 60 days after the date of the enactment of this Act.” We agree, for example, that a 60-day delay in effectiveness applies to RIA Section 103, which establishes new requirements and procedures applicable only to immigrant visa petitions filed on or after March 15, 2022 (“Post-Enactment Investors”).

But it is also true that certain aspects of the statute became immediately effective at the time of enactment on March 15, 2022. We believe the April VB fails to properly implement the RIA’s “effective on enactment” provisions governing Sections 105 and 108 relating to “Pre-Enactment Investors” (otherwise called “Grandfathered” Investors.)

Section 105(a) provides that “*A petitioner who was eligible for such classification at the time of such filing shall be deemed eligible for such classification at the time such petition is adjudicated.*” Section 105(c) directs that USCIS “**shall continue to adjudicate petitions and benefits under sections 203(b)(5) . . . during the implementation of this Act and the amendments made by this Act.**”

Most importantly to these Grandfathering provisions, Section 1055(b) titled “Effective Dates” mandates that “*The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.*”

Section 108 amends Section 203(b)(5) of the Immigration and Nationality Act, adding section (S), which further emphasizes the current protections afforded to Grandfather Investors by directing that USCIS “*(i) shall continue processing petitions under sections 204(a)(1)(H) and 216A based on an investment in a new commercial enterprise associated with a regional center that were filed on or before September 30, 2026*” AND that the government “*(iii) shall not suspend or terminate the allocation of visas to the beneficiaries of approved petitions described in clause (i).*”

Based upon the protections afforded by Sections 105 and 108 that make benefits and visa allocations immediately available to all Grandfathered Investors, we believe the VB Chart A “Final Action Dates” should be immediately amended by changing the “Unavailable” (“U”) posting to “Current” (“C”) [or an appropriate cutoff date of in the case of mainland China] at least for all Pre-Enactment Investors. In principle, Chart A would be modified to reflect the same dates appearing in Chart B for the I5 and R5 Classes.

Guidance to the National Visa Center and Posts on Pre-Enactment Investors

We also request that the amended April VB include directives to both the National Visa Center and Consular Posts clarifying that Pre-Enactment Investors with approved I-526 Petitions filed with USCIS prior to June 30, 2021 should be normally processed and visas issued. That class is distinguished from the Post-Enactment Investors who will in the future file new I-526 petitions require further USCIS guidance on visa processing.

For example, the U.S. Consulate in Vietnam just responded to an EB-5 case inquiry by recognizing the enactment of RIA and announcing its policy to “not interview nor process EB-5 visa applications at this time” while they wait for additional guidance from USCIS. See below message:

From: HCMC Consular Info HCMCinfo@state.gov
Sent: Friday, March 18, 2022

Dear Sir/Madam,

Thank you for your inquiry. On March 15, President Biden signed a law that includes authority for an EB-5 Immigrant Investor Regional Center Program and various implementation effective dates for the program. The U.S. Citizenship and Immigration Services (USCIS) is reviewing the new legislation and will provide additional guidance at: <https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program>.

Please note that our office will not interview nor process EB-5 visa applications at this time.

In order to obtain up-to-date information on current priority dates for this visa category, please visit the State Department's website at: <http://usvisas.state.gov/visabulletin>.

Sincerely,

Information and Public Outreach Unit

Consular Section (IV)

U.S. Consulate General in Ho Chi Minh City, Vietnam

Unlocking The CEAC Portal for EB-5 Regional Center Investors

Moreover, the National Visa Center ("NVC") has not unlocked the CEAC portal for EB-5 regional center investors to continue processing their immigrant visa applications, including the payment of immigrant visa fees and submission of Forms DS-260.

For example, NVC issued the below message on March 22, 2022 in response to actions by EB-5 Regional Center applicant: "the case you have attempted to access is **not eligible for further processing . . . at this time.**"



NVC's actions run afoul of the Sections 105 and 108 protections making benefits and visa allocations **immediately available** to all Grandfathered Investors.

Importantly, the ability to pay the immigrant visa fees and submit DS-260 applications are critical to dependent children and their Child Status Protection Act (“CSPA”) protections, and as such, we ask that the NVC be directed to open the CEAC portal so applicants can reach critical milestones to protect their dependents.

Conclusion

Those investors who have reached the stage of processing by the State Department prior to the passage of the RIA on March 15, 2022 all have approved I-526 Petitions. These are “grandfathered” investors who are protected by Section 108 of the RIA because the government “(iii) *shall not suspend or terminate the allocation of visas to the beneficiaries of approved petitions described in clause (i).*” As the RIA provides the State Department with the legal authority to immediately begin issuing visas for those EB-5 regional center investors with approved I-526 Petitions, and as more than half of the fiscal year has passed without the issuance of any EB-5 regional center-based immigrant visas, time is of the essence.

We ask that the State Department expeditiously amend the April 2022 Visa Bulletin to allow for the immediate processing and issuance of immigrant visas to regional center EB-5 petitioners and their dependents. This is critical to reduce the number of unused EB-5 visas for the fiscal year and to allow investors to reach critical CSPA milestones to protect their children.

We look forward to your response. Thank you for your time and consideration.

Sincerely,

Sharvari Dalal-Dheini, Esq.
Director of Government Relations
American Immigration Lawyers Association

David Morris, Esq.
Chair, EB-5 Investor Committee
American Immigration Lawyers Association

Attachment:

- *Reprint of RIA Sections 105 and 108*