



EB-5 INVESTOR NEWS

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ABIL Webinar Series: U.S. Investment Visas and Green Cards for Foreign Nationals – A recent three-part webinar series, presented by ABIL and co-sponsored by Invest In the USA, the association of EB-5 regional centers, helped guide individual investors and others, as well as U.S. companies interested in attracting foreign investors and wealthy individuals.

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USCIS Institutes Direct E-Mail Communication for Regional Center Applicants

USCIS is implementing the first phase in a series of proposed enhancements to the EB-5 immigrant investor program. Beginning on September 13, 2011, Form I-924 (Application for Regional Center Under the Immigrant Investor Pilot Program) applicants now are able to communicate directly with USCIS adjudicators via e-mail.

USCIS intends to monitor the progress of this new line of communication to assess whether changes are needed and to implement any needed changes on a "real-time basis." Feedback in response to the use of the direct line of communication for the I-924 may be e-mailed to opefeedback@uscis.dhs.gov.

USCIS said it "is eager to implement all of the proposed enhancements to the EB-5 program that it first announced on May 19, 2011." USCIS is exploring how it can accelerate the implementation of premium processing, "which customarily takes months due to the need to revise the applicable forms." USCIS said it is hiring economists and other experts who will enhance and accelerate the adjudication process and also help constitute the Decision Board that was first described on May 19.

A related Q&A is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=efccf0aec9262310VgnVCM100000082ca60aRCRD&vgnnextchannel=facb83453d4a3210VgnVCM100000b92ca60aRCRD>. Information on the proposed enhancements to EB-5 processing is available at

<http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Operational%20Proposals%20for%20Comment/EB-5-Proposal-18May11.pdf>.

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USCIS Announces Increase in RC Filings, EB-5 Approvals at Quarterly Meeting

U.S. Citizenship and Immigration Services (USCIS) released its latest data on EB-5 filings and regional centers (RCs) at its September 15, 2011, "EB-5 Immigrant Investor Quarterly Engagement" stakeholders meeting, showing that regional center (RC) filings and EB-5 approvals continued to increase. Included in the discussion were updates on I-924 information use, guidance for annual report filings, inquiries on service errors, removal of conditions, part-time versus full-time positions, duration of employment, acquisitions of existing businesses, indirect jobs, troubled businesses, job creation records, regional center geographic boundaries, and multiple investors. There was also an open forum Q&A.

USCIS Director Alejandro Mayorkas said the EB-5 program is a high priority for USCIS and that the agency realizes its job-creating potential. He noted that the implementation of premium processing will take time because the agency must draft a new form, but he said USCIS will try to speed up adjudications anyway. He also said that a decision board will be implemented soon for regional center applications, and that the agency realizes the board needs to be staffed with experts. To that end, USCIS has hired an economist and three business analysts, and is open to hiring more if needed.

Mr. Mayorkas also said USCIS is working on an EB-5 policy memorandum but will not issue a final memo until the agency receives more comments from EB-5 stakeholders.

The following is a summary of selected points from USCIS's presentation:

RC data. USCIS noted that there are currently 173 approved RCs operating in 40 states, including the District of Columbia and Guam, which was an increase of 26 since the last stakeholder meeting. Over 90 percent of the individual Form I-526 (Immigrant Petition by Alien

Entrepreneur) petitions filed each year are filed by those who are investing in RC-affiliated commercial enterprises.

USCIS figures continue to show a steep increase in the number of RC filings and EB-5 visa approvals. The agency reported 176 initial RC proposal filings in the first three quarters of fiscal year (FY) 2011, compared to 110 initial filings in all of FY 2010. The number of amended RC proposal filings also increased by the end of the third quarter to 73; there were 42 filings received for all of FY 2010.

The agency also reported that it has issued a higher percentage of approvals of RC filings. In the first three quarters of FY 2011, the agency approved 46 initial RC proposals and denied 23, an approval rate of 67 percent. This was a big increase from FY 2010, when USCIS approved 36 and denied 30, an approval rate of 55 percent. The approval rate of amended RC proposals in the first three quarters also rose to 84 percent, with 32 approvals and 6 denials. By comparison, in FY 2010 USCIS approved 42 amended RC proposals and denied 11, an approval rate of 71 percent.

USCIS also reported significant increases in individual I-526s and I-829s (Petition by Entrepreneur to Remove Conditions). In the first three quarters of FY 2011, USCIS received 2,608 I-526 petitions, compared to 1,955 for all of FY 2010. The increase in the number of I-829 petitions was even more dramatic, with 1,753 received in the first three quarters. By comparison, USCIS received 768 I-829 petitions in all of FY 2010.

In the first three quarters of FY 2011, the agency approved 999 I-526 petitions and denied 224, an approval rate of 82 percent, while in all of FY 2010 USCIS approved 1,369 and denied 165, a higher approval rate of 89 percent. USCIS approved 436 I-829 petitions and denied 34 in the first three quarters, an approval rate of 93 percent, compared to approving 274 and denying 56 for all of FY 2010, an approval rate of 83 percent.

USCIS also reported that the target processing time for I-526 petitions is 5 months, and the target processing time for both initial and amended regional center proposals is 4 months. USCIS said it is "currently making adjustments to improve the accuracy of EB-5 case processing times that are published on the USCIS website and will post the case processing times once this process is finalized." USCIS noted that the California Service Center strives to finalize EB-5 cases within 30 days after responses to RFEs are received.

USCIS is on track to approve a record number of EB-5 visas. Its preliminary estimate is that 3,706 EB-5 visas were issued as of September 12, 2011, compared to 1,885 in all of FY 2010. The previous record was 4,218 EB-5 visas issued in FY 2009.

Common issues resulting in RFEs or denials in I-924 applications. USCIS noted the following reasons why an application may receive an RFE or denial, and included some tips on how to properly complete various sections of the I-924:

1. Business Plan and Economic Analysis for Each Requested Industry Category (Form I-924, Part 7):

- A. The application is not supported by a business plan and economic analysis for at least one investment project with sufficient detail to show in verifiable detail how capital investment offerings in the requested industry will create jobs;
- B. Insufficient evidence and/or narrative that describes the investment project activities that the regional center will engage in for each requested industry category, to include;
 1. The proposed number of investors for the project(s);

2. The timeline for starting and completing the projects to demonstrate the requisite job creation;
3. A financial plan or budget including capital required and expenditures for the investment projects.

2. Reliability and Appropriateness of Data Sources for Economic Model Inputs (Form I-924, Part 7):

- A. The application of national or state data in the economic model when more accurate regional data is readily available to demonstrate the economic impacts/job creation of the regional center's investment projects;
- B. The data source for economic or business activity estimates for a given investment project; e.g., the data sources for estimates regarding total revenue generated or for the estimated construction costs (if applicable) for a given project.

3. Choosing and Identifying Appropriate NAIC Codes (Form I-924, Part 7):

- A. NAIC code should be appropriate to the requested industry;
- B. An overly broad NAIC code may not be representative of the requested industry. For example, "NAIC Code 62" includes assisted living facilities but also covers hospitals. There may be a more appropriate [code] for the requested industry;
- C. An overly narrow NAIC code may be too restrictive for the scope of the contemplated investment project(s) in the requested industry.

4. Exemplar Form I-526s submissions should be documented with evidence with the level of detail required for an I-526 petition so that the exemplar petition if approved will facilitate the review of individual Form I-526 petitions (Form I-924 instructions, page 1). An exemplar Form I-526 petition should therefore:

- A. Include a *Matter of Ho* compliant business plan and an associated economic analysis;
- B. Include project timeframes for milestones: project commencement, key construction or implementation dates, completion date, and time line for the requisite job creation;
- C. Clearly request approval for an exemplar I-526 and include a copy of an exemplar I-526;
- D. Include all documents needed for I-526 approval excluding an investor's capital investment information;
- E. Identify the amount and source of non-EB5 financing needed for the project.

I-924A annual report filings. USCIS noted that a Form I-924A filing will be required for all approved regional centers for FY 2011 on or before December 29, 2011. There is no filing fee for the I-924A. The I-924A supplement to the I-924 is used by approved regional centers to meet the yearly RC reporting requirement in 8 CFR 204.6(m)(6). Each approved regional center now must file the I-924A to report regional center-related activities for the preceding fiscal year within 90 days of the end of the fiscal year (on or before December 29 of the calendar year in which the fiscal year ended).

USCIS said it plans to publish on its website summarized regional center data "to be responsive to requests for this information from a broad spectrum of USCIS' external stakeholders, to include members of Congress, other federal agencies, state agencies, and major media outlets." This information will include attributes of the regional center-affiliated capital

investments, such as the geographic areas and industry categories receiving investment capital; the volume of regional center-affiliated capital invested; and the number of jobs created or maintained as a result of the capital investments.

Geographic regions. USCIS responded to a question about what criteria are used in determining the appropriate geographical boundary for a regional center that has one initial "shovel-ready" project but is planning future projects in a larger geographical area, but the details and location of the future projects are unknown:

- ✓ A regional center may be granted jurisdiction over a limited geographic area for the purpose of concentrating pooled investment in defined economic zones.
- ✓ A regional center must demonstrate in the Form I-924 that its activities will focus on the requested geographic region, and not simply on isolated and unrelated areas within the region.
- ✓ It may be more appropriate for the regional center to initially request a geographic area that is in keeping with the economic impacts of the existing project, and then subsequently file an amendment request for an expanded geographic area as the details and location of future projects become known.

USCIS's agenda and full presentation are available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=13c5f5873e661310VgnVCM100000082ca60aRCRD&vgnnextchannel=e0b081c52aa38210VgnVCM100000082ca60aRCRD> (scroll down to the links at the bottom).

The full list of RCs by state is available at <http://www.uscis.gov/eb-5centers/>.

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House Holds Hearing on Immigrant Investor Program and Job Creation

On September 14, 2011, the House of Representatives' Subcommittee on Immigration Policy and Enforcement held a hearing on the EB-5 investor visa program. House Judiciary Committee Chairman Lamar Smith (R-Tex.) opened the hearing by declaring that the "number one job of Congress is to create jobs." He said the investor visa program plays a part in achieving that goal. "The regional center pilot project, which is almost two decades old, has become the most used part of the investor visa program," Rep. Smith noted. "Investment through a regional center is attractive to potential investors because they are relieved of the responsibility of running a new business and they can count indirect job creation towards the job creation requirement." He said that the Association to Invest in the USA "has estimated that the regional center program has created or saved over 65,000 jobs in the U.S. and has led to the investment of over \$3 billion in the U.S. economy," and noted that the program is set to expire on September 30, 2012. Rep. Smith said the hearing would focus on how to continue bringing entrepreneurs to the U.S. while rooting out fraud and abuse.

Witnesses included William Stenger, President and Chief Executive Officer, Jay Peak Resort, Vermont; Daniel Healy, Chief Executive Officer, Civitas Capital Group, Texas; Jason Mendelson, Managing Director, Foundry Group, Colorado; and Shervin Pishevar, Managing Director, Menlo Ventures, California.

Mr. Stenger suggested that:

- Congress should make the EB-5 program permanent so regional centers can concentrate on quality, long-term job-creating programs. He said that short-term

extensions cripple its effectiveness because projects cannot plan correctly and potential investors do not have confidence due to the uncertainty.

- U.S. Citizenship and Immigration Services (USCIS) should make every effort to be as efficient as possible with EB-5 case processing so that predictability can become a program asset instead of a program concern.
- Premium processing should be allowed for EB-5 cases desiring it.
- Regional center projects should be provided with a Business Plan Review and pre-approval before an I-526 submission takes place. Once an agreed-upon business plan is approved, it should not be revisited unless there is a substantial change.

Mr. Healy highlighted the job-creating aspects of the EB-5 program in difficult economic times, and also noted that the program costs taxpayers nothing and has an overall positive fiscal impact because of fees and taxes paid over time, in addition to jobs created. He argued strongly that unused EB-5 visas should not be reallocated to other categories and urged that Congress soon reauthorize the program permanently. "With each passing day, the uncertainty surrounding the program's reauthorization increases, making EB-5 capital more difficult to raise and therefore hampering the job-creation goal of the program," he noted. Mr. Healy also recommended that USCIS make premium processing available soon, which will allow regional center operators to plan for the future. (At the stakeholder meeting on September 15, 2011, USCIS Director Alejandro Mayorkas said premium processing would take time because a new form must be developed. See the full report on the stakeholder meeting in this issue.)

Mr. Healy also discussed the "exemplar" process, which refers to the ability of a regional center manager to obtain pre-approval for a project business plan before coordinating investors' submissions of hundreds of individual petitions. "It is vitally important that this process be streamlined and that decisions by USCIS be final and not subject to reinterpretation by USCIS in the context of an individual investor's I-526 petition," he said.

Mr. Healy shared his personal experience with relying on an approved exemplar petition, which cost \$6,230 to submit and took eight months to adjudicate, only to have investors receive requests for evidence (RFEs) "on issues that should have been addressed at the exemplar stage." He said the process "must be reformed, standardized and streamlined so that it serves its intended purpose: eliminating uncertainty for regional centers and individual investors with respect to a particular project's compliance with EB-5 requirements, leaving only factors related to the individual investor to be adjudicated at the I-526 stage."

Mr. Pischevar shared his own success story as an immigrant entrepreneur, and said that reforming the legal immigration process "so that highly motivated, well-intentioned immigrant entrepreneurs who want to grow their businesses in America must be a Congressional priority." He also said that "growing bipartisan support for the Startup Visa proposal is indeed promising." Passing legislation encompassing much-needed reform would be a clear win for both sides of the aisle and Members of Congress need to do all that they can to break this logjam." Mr. Pischevar noted that "this is not a Republican issue or a Democratic issue. It is an American competitiveness issue where there is a clear opportunity to create jobs and foster innovation here."

Rep. Smith's statement and the statements of the witnesses are available at http://judiciary.house.gov/hearings/hear_09142011.html.

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ABIL Webinar Series: U.S. Investment Visas and Green Cards for Foreign Nationals

Many foreign entrepreneurs want to start businesses or invest in the United States. Other wealthy individuals want green cards to live in the United States, but may be hesitant because of real or perceived immigration obstacles. Real estate developers and companies seeking capital for development projects are increasingly looking for EB-5 capital from foreign investors. Several visa options exist, and each has advantages, disadvantages, and limits.

A recent three-part webinar series, presented by the Alliance of Business Immigration Lawyers (ABIL) and co-sponsored by Invest In the USA, the association of EB-5 regional centers, helped guide individual investors and others, as well as U.S. companies interested in attracting foreign investors and wealthy individuals. Each 90-minute webinar in the series explained immigration options and offered practical real-world strategies:

- Session 1: Visa options for individual investors: E and L nonimmigrant visas; EB-5 green cards through direct investments or regional centers, was held on April 13. (A recording of the webinar is available for purchase.) Moderated by Bernard P. Wolfsdorf. Presenters: Kehrela Hodkinson, Mark Ivener, and Stephen Yale-Loehr.
- Session 2: EB-5 regional center applications and project pre-approval petitions, was held on July 6 at 3 p.m. (ET). Moderated by Laura Danielson. Presenters: Bryan Funai, H. Ronald Klasko, and Steve Trow.
- Session 3: How to successfully navigate the back end of the EB-5 process for both individual investors and regional centers, was held on August 16 at 3 p.m. (ET). Moderated by Steve Clark. Presenters: H. Ronald Klasko, Robert Loughran, and Stephen Yale-Loehr.

The cost is \$89 for an individual session or \$249 for all three sessions, recorded. For more information, contact Lauren Anderson at lauren@abil.com.

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New Publications and Items of Interest

[Green Card Stories](#). The immigration debate is boiling over. Americans are losing the ability to understand and talk to one another about immigration. We must find a way to connect on a human level. *Green Card Stories* does just that. The book depicts 50 recent immigrants with permanent residence or citizenship in dramatic narratives, accompanied by artistic photos. If the book's profilees share a common trait, it's a mixture of talent and steely determination. Each of them overcame great challenges to come and stay in America. *Green Card Stories* reminds Americans of who we are: a nation of immigrants, from all walks of life and all corners of the earth, who have fueled America's success. It tells the true story of our nation: E pluribus unum--out of many, one.

Green Card Stories will be released on November 8. For more information or to order, visit http://www.abil.com/green_card.cfm.

Member News

Steve Clark (bio: <http://www.abil.com/lawyers/lawyers-clark.cfm?c=US>) moderated Session 3 of the ABIL webinar series, "U.S. Investment Visas and Green Cards for Foreign Nationals." Session 3: How to successfully navigate the back end of the EB-5 process for both individual investors and regional centers, was held on August 16, 2011. Panelists included ABIL members **Robert Loughran** (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm?c=US>) as well as **Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) and **H. Ronald Klasko** (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm?c=US>).

Mr. Yale-Loehr was quoted in *Bloomberg Businessweek*. In comments on the EB-5 program, he said, "This is a unique way for immigration to enhance the U.S. economy ... at no expense to the U.S. taxpayer."

Mr. Yale-Loehr and **Mr. Klasko** (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm?c=US>) spoke at the Invest In the USA association meeting in Washington, DC, on September 15, 2011. Mr. Klasko spoke on current EB-5 policy and administrative issues; Mr. Yale-Loehr spoke on legislative strategies to renew the EB-5 regional center program through Congress. For more information, go to <http://iiusadc915.eventbrite.com/>.

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EB-5 Government Agency Links

USCIS Web Page on EB-5 Immigrant Investors:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextchannel=facb83453d4a3210VgnVCM100000b92ca60aRCRD&vgnnextoid=facb83453d4a3210VgnVCM100000b92ca60aRCRD>

USCIS Policy and Procedural Memoranda on EB-5 Investors:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextchannel=f1f051b4b1af3110VgnVCM1000004718190aRCRD&vgnnextoid=f1f051b4b1af3110VgnVCM1000004718190aRCRD>

Immigrant Investor Regional Centers List: <http://www.uscis.gov/eb-5centers>

Form I-526, Immigrant Petition by Alien Entrepreneur:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=79a7105b5904d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=7d316c0b4c3bf110VgnVCM1000004718190aRCRD>

Form I-829, Petition by Entrepreneur to Remove Conditions:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=d4f63591ec04d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=7d316c0b4c3bf110VgnVCM1000004718190aRCRD>

Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=7387e6b2fc57c210VgnVCM100000082ca60aRCRD&vgnnextchannel=7d316c0b4c3bf110VgnVCM1000004718190aRCRD>

Form I-924A, Supplement to Form I-924:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=256866fcd667c210VgnVCM100000082ca60aRCRD&vgnnextchannel=7d316c0b4c3bf110VgnVCM1000004718190aRCRD>

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About ABIL

The Alliance of Business Immigration Lawyers (ABIL) is comprised of top U.S. business immigration lawyers and their respective firms, as well as affiliates around the world. Regional centers, investors, corporate counsel, human resource professionals, in-house immigration managers and other corporate decision-makers turn to ABIL attorneys for outstanding legal skills and services. Foreign investment in the U.S. has increased rapidly over the past few years, as the U.S. government has incentivized programs (such as EB-5 regional centers) that promote job creation. There are both short- and long-term immigration solutions for investors,

but devising a workable strategy involves a critical level of understanding and experience in this complex area of immigration law. Many of the nation's top investment immigration lawyers are in ABIL, and ABIL members represent clients on all levels of EB-5 transactions -- advising project developers on how to use EB-5 financing, negotiating agreements between project developers and regional centers, preparing regional center applications and amendments, reviewing offering documents and sales practices, preparing visa petition templates for regional centers, and preparing visa petitions and applications for individual investors. ABIL attorneys have filed applications for or participated in the establishment of dozens of EB-5 regional centers and submitted hundreds of petitions for EB-5 investors.

The Alliance of Business Immigration Lawyers' Web site is at <http://www.abil.com/>.

Disclaimer/Reminder

This e-mail does not constitute direct legal advice and is for informational purposes only. The information provided should never replace informed counsel when specific immigration-related guidance is needed.

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