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CONTACT IIUSA
80 M Street SE, Suite 100
Washington, DC 20003
(202) 795-9669
info@iiusa.org

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IIUSA
INVEST IN THE USA

Letter from the Editor

Dear Readers,

Thank you for virtually picking up the 2023 Q3-4 edition of IIUSA's *Regional Center Business Journal*. The Editorial Committee is pleased to bring you this publication which has articles addressing consular processing, EB-5 banking, visa delays, I-526/I-526E data, IIUSA FOIA efforts, and generally how the EB-5 industry is adapting to the EB-5 Reform and Integrity Act 1.5 years since its passage.

Please note that in the process of publishing this edition, USCIS published several updates affecting the EB-5 Program under RIA. While we were unable to publish articles addressing these important updates in time for this edition, please stay tuned to the IIUSA blog and the next RCBJ for expert analyses on these topics.

On behalf of the whole Editorial Committee, I hope you enjoy our latest edition of the RCBJ. As always, if you have ideas for a future article or you would like to get involved with our committee, please feel free to reach out to me directly or contact staff at **education@iiusa.org**.

Thank you for your readership!

Sincerely,

Osvaldo (Ozzie) Torres
Editorial Committee Chair
IIUSA *Regional Center Business Journal*

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YOUR PRIVATE CLIENT GROUP

Lawrence J. Blascovich
Group Director - Senior Vice President
T (646) 981 2406 | M (516) 582 9162
1400 Broadway, 26th Fl., New York, NY 10018
EB-5 Office | 200 Park Avenue South, Suite 501
New York, NY 10003
lblascovich@signatureny.com

Vincenzo Ciancio
Group Director - Vice President
T (917) 618-8532
1400 Broadway, 26th Fl., New York, NY 10018
EB-5 Office | 200 Park Avenue South, Suite 501
New York, NY 10003
vciancio@signatureny.com

Angela Rosario
Relationship Manager
T (646) 343-2839
EB-5 Office | 200 Park Avenue South, Suite 501
New York, NY 10003
arosario@signatureny.com

Erica Torres
Senior Client Associate – Officer
T (646) 822-1925
200 Park Avenue South, Suite 501
New York, NY 10003
ETorres@signatureny.com

Leena Bhaggan
Senior Client Associate - Officer
T (646) 981-2449 | M (718) 313-8995
1400 Broadway, 26th Fl., New York, NY 10018
lbhaggan@signatureny.com

Myles Nigro
Client Associate
T 646 343 4859 | M 914 582 6946
EB-5 Office | 200 Park Avenue South, Suite 501
New York, NY 10003
mnigro@signatureny.com

Marie Belizaire
Associate Group Director – Vice President
T (646) 981-2409 | F (646) 981-2401
1400 Broadway, 26th Fl., New York, NY 10018
mbelizaire@signatureny.com

Howard Efran
Associate Group Director-VP
T (646) 981-2408 | F (646) 720-1171,
M (347) 564-0539
1400 Broadway, 26th Fl., New York, NY 10018
hefran@signatureny.com

Emerson Godoy
Senior Client Associate - Officer
T (646) 981-2410 | M (347) 440-4060
1400 Broadway, 26th Fl., New York, NY 10018
EGodoy@signatureny.com

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Are Things Better, or Just Different?

Experts Discuss the Good and Bad of the RIA Era

Laura Kelly
Vice President, Marketing | JTC

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In March 2022, the EB-5 industry was given new life. The passage of the EB-5 Reform and Integrity Act of 2022 (RIA) renewed the Regional Center program for five years, allowing immigrant investors once again to pursue their dreams of living in America through investment in job-creating Regional Center projects.

In addition to renewing the Regional Center program, the RIA brought with it a host of new rules, forms, and fees, many of which were met with skepticism upon the law's passage. What would the effect of these new regulations be? Would the industry survive intact?

After 18 months, we have a little clarity – though only a little. To understand how the industry has fared since the RIA's passage and what the future may have in store, a recent online forum was held where a panel of experts discussed their experiences with the post-RIA world of EB-5.

Hosted by IIUSA and presented by JTC, the webinar, 18 Months into RIA: Where Are We Now? offered insight into the good, the bad, and the as-yet-uncertain of the new era of EB-5, and why the panelists believe we have a lot of reasons to be hopeful.

THE GOOD: THE REGIONAL CENTER PROGRAM GETS 5 MORE YEARS

The most obvious effect of the RIA was the renewal of the Regional Center program for five years. As Thomas Martin, Managing Director/Community Impact Director at Baker Tilly, pointed out at the webinar, five years is a major win when compared to the types of short-term renewals the program had seen in the past.

"We've got more time to kind of get things put together right," he said. A longer renewal period allows investors time to do proper due diligence and pick the right projects. When coming up against the hard deadline of a program expiration date, investors might rush into something, but with the security of a five-year renewal, they can take their time.

Demand for EB-5 projects appears to be as strong as ever. Recent data suggests thousands of pending visa applications under the new law, showing that despite the hurdles of understanding and complying with the RIA, investors still want to be involved and are managing to find projects to invest in.

Martin said that the creation of reserved visas for rural projects, a much-discussed feature of the RIA, could be greatly affecting demand.

"Folks that maybe weren't able or weren't interested in waiting in the kind of lines that we had before are now very interested in getting into a project that's in a visa set-aside."

In addition to set-aside visas, rural projects also offer the advantage of priority processing. While it wasn't clear what this term meant when the law was first passed, we've since seen reports of I-526E approvals in less than a year. For investors from countries like China with wait times of four years or more, that's a major improvement, and makes a rural EB-5 investment much more desirable.

"If these things keep getting processed quickly, that's huge," said Dan Wycklendt, President at FirstPathway Partners and Director at IIUSA. While these reports on priority processing are encouraging, Wycklendt pointed out that there's still a lot we don't yet know.

"How fast are they processing I-526E's from high-unemployment areas? These are things where data would be very helpful." In order to understand just how much faster visa adjudication could be for a rural, high-unemployment, or infrastructure project investments, USCIS would have to be a lot more forthcoming with its data.

"We're not getting that clarity yet from USCIS," said Wycklendt. These gaps in information are at the core of what hasn't worked as well as hoped since the RIA's passage.

THE BAD: UNCERTAINTY AND CONFUSION FROM USCIS

While the RIA contained a lot of new procedures that needed to be understood and followed, there were also elements that simply couldn't be understood because the information was not provided.

"There was a requirement that USCIS put out some regulations within 60 days," said moderator Jill Jones, General Counsel, JTC Group. "Unfortunately, that didn't happen."

The result has been confusion as to how certain aspects of the new law will be interpreted. One example is determining whether a district qualifies as a high-unemployment TEA (Targeted Employment Area). The methodology used to make these determinations has changed, though as Martin pointed out at the webinar, it's not completely clear why.

"We're having to deal with an agency that is a little confused about this," said Martin, adding that the same is true of infrastructure projects, for which 2% of visas are meant to be reserved. "Still trying to figure that out as an industry," he said.

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Wycklendt added that since there are caps on infrastructure and rural set-aside visas, getting proper data would be helpful. "How many of these have been filed?" he asked. "Sadly, we don't have that information right now."

There is a clear demand for more data, as evidenced by some of the questions that came from the webinar's Q&A section. One viewer asked if the panel had insight into trends related to Requests for Evidence (RFEs), information that could help issuers and investors prepare for the types of requests they're likely to receive.

Unfortunately, said Jones, "The lack of people reporting these numbers or the lack of a central location to collect them," makes it difficult to draw proper conclusions.

Jones also cautioned that reports of high numbers of RFEs or denials from USCIS do not necessarily reflect a new normal under the RIA, as many of these denials and RFEs are likely coming from pre-RIA petitions that were filed just before the expiration of the old Regional Center program.

"People rushed in petitions," she said, many of which are only now being adjudicated. "You have to really factor in where we are in the backlog."

Though it's true USCIS has been slow in releasing information, there are plenty of reasons for optimism around the new era of EB-5, and the panelists suggested that there are ways industry leaders can make things better without waiting for USCIS.

REASONS TO BE HOPEFUL

Roy Carrasquillo, Managing Shareholder at Carrasquillo Law Group, pointed out that most EB-5 investors don't know much about the RIA, or EB-5 in general, when they start the process.

"We end up educating a lot of investors," he said. That's why it's important to have accurate information, especially in terms of timing: investors need to understand what they're getting into. But it can be difficult with USCIS failing to offer that information.

"We don't have clear information from the agency at this point for us to be able to actually present things correctly to investors," said Carrasquillo. But, he offered, the industry doesn't have to wait for USCIS.

"As an industry, we can try to share with each other what's going on," he said.

Wycklendt agreed, saying that IIUSA is proving to be a valuable resource. "The best thing we can do is share that information with each other," he said.

"The more we know, given this sort of lack of information or clarity from USCIS, will help us better serve clients, investors, and everybody in this process," said Carrasquillo.

The panelists pointed out other positives from the RIA, as each offered a "silver lining" that they'd seen based on their experiences over the past 18 months. For Carrasquillo, it was the RIA's ability to weed out bad actors.

"EB-5 has become a more mature program after the RIA," he said.

For Wycklendt, the improved processing times have been a relief. "Investors clearly are getting processed faster right now," he said, adding that, "the fact that we even have the ability to do EB-5 again now," should be appreciated.

Martin was optimistic about the future. "Stuff's happening," he said. "We're getting stuff through. Approvals are coming through. That's great."

MORE FROM THE WEBINAR

The panel discussed many other EB-5 and RIA-related issues at the webinar, including how USCIS is treating source of funds issues, dealing with Requests for Evidence, and which countries have shown a renewed interest in EB-5 after the RIA. They also answered questions from virtual attendees. The full webinar is available to watch online.

While the RIA has brought some confusion to the industry, it's also brought a lot of opportunity, and the panelists demonstrated the excitement surrounding the program's future.

"The RIA, obviously, was fantastic," said Wycklendt. "I don't think you'll find anybody in the industry that isn't happy about the RIA."

The IIUSA PAC: An Incredible Tool Off to an Incredible Start

Robert W. Kraft
Chairman & CEO, FirstPathway Partners | IIUSA PAC Board President | IIUSA President Emeritus

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A BIG STEP

This year, as part of its ongoing effort to strengthen its presence on Capitol Hill, flatten the EB-5 learning curve for federal legislators, and identify and support an expanded number of EB-5 champions, IIUSA created a federal political action committee (PAC) called the IIUSA PAC. Establishing and managing a PAC requires attention to details, awareness of federal rules, and a willingness among an association's members to participate and support the PAC. The IIUSA Leadership Circle and board of directors took these realities into account, debated the pros and cons of taking this step, and ultimately decided the benefits far outweigh the concerns or necessary diligence. I believe they are right.

Political action committees are formal organizations committed to supporting political candidates who reflect a PAC's priorities and values. A PAC receives voluntary financial contributions from those permitted to provide them and uses that money to support selected political candidates. Every PAC must register with the Federal Election Commission (FEC) and follow specific rules regarding how (and to whom) they solicit contributions to their cause and how they make contributions to candidates. IIUSA elected to file its new PAC with the FEC as an "affiliated PAC." Specifically, IIUSA PAC is "affiliated" with IIUSA, a 501(c)(6) business league/trade association. This type of registration allows IIUSA (the corporate non-profit) to pay for IIUSA PAC's administrative costs such as IIUSA PAC related events and a separate dedicated accountant to handle the IIUSA PAC's distinct bank account and all necessary FEC filings. Permitting IIUSA to budget for and underwrite these costs assures 100% of contributions IIUSA PAC receives are provided to its selected candidates.

In exchange, however, rules governing "affiliated" PACs require certain thresholds be met before they are fully functional and demand specific restrictions on how funds are solicited. IIUSA and IIUSA PAC take these rules very seriously and closely monitor any PAC related activities to be sure the association and its affiliated PAC remain compliant.

FULLY FUNCTIONAL

FEC rules limit the amounts PACs can contribute to both of candidates' elections (primary and general elections). The chart below illustrates the difference between multicandidate PACs' limitations and non-multicandidate PACs' limitations. The top line lists the entities to which a PAC may give money. IIUSA PAC is focused on the first column: contributions to "Candidate Committee per Election." Note multicandidate PACs can provide $1,700 more to a candidate's primary election and again to a candidate's general election.

Contribution Limitations: Multicandidate v. Non-Multicandidate[1]

For 2023-24 Elections	Candidate Committee per Election	PAC (SSF & Nonconnected per year)	State, District & Local Party Committee per Year	National Party Committee per Year	Additional National Party Committee Accounts per year
Multicandidate	$5,000	$5,000	$5,000 (combined)	$15,000	$45,000
Non-Multicandidate	$3,300	$5,000	$5,000 (combined)	$41,300	$123,000

To become a multicandidate PAC and therefore more impactful, a PAC must pass three milestones.

1. **It must have received contributions from at least 51 persons.**
2. **It must have been registered with the FEC for at least six months; and**
3. **it must have made contributions to at least five federal candidates.**

[1] Federal Election Commission, FECTube: FedConnect OnDemand

Continued On Page 11

The IIUSA PAC was established and registered with the FEC in February 2023. Therefore, it meets the six-month milestone. Further, the IIUSA PAC has already made contributions to three candidates: Congressman Brian Fitzpatrick (R-PA-01), Congressman Greg Stanton (D-AZ-04), and Congresswoman Maria Salazar (R-FL-27). Therefore, the IIUSA PAC need only contribute to two other candidates. Finally, the IIUSA PAC has received contributions from 20 separate people, leaving 31 to go before meeting the final requirement to become a multicandidate PAC.

The IIUSA PAC is very grateful to each of its contributors. Although contributions to a PAC must be personal (corporate contributions ae not allowed), they can be of any amount ($1 to $5,000) to help a PAC reach its 51-contributor threshold.

SOLICITING FUNDS

Any PAC may only solicit and receive contributions from individuals. FEC rules do not allow corporate contributions. An "affiliated" PAC may only solicit and receive contributions from those people in its "restricted class" and even then, only from those within the restricted class who give permission to be solicited.

The FEC defines "restricted class" for an affiliated PAC as:
noncorporate members (such as individuals and partnerships) of the association;
the association's executive and administrative personnel;
executive/administrative personnel and stockholders of member corporations (with prior approval); and
the families of all three groups.

"Prior approval" is exactly what it says. People in an affiliated PAC's restricted class may only be solicited if the IIUSA member with which they are associated or employed provides approval for said solicitations. As mentioned, IIUSA and IIUSA PAC take these rules very seriously and therefore only solicit people in its restricted class after their employer submits the association's prior approval form.

The form, available on the IIUSA website, grants IIUSA PAC permission "to solicit and accept contributions from employees of [our] firm and that permission to do so may be withdrawn at any time." In other words, IIUSA and IIUSA PAC seek permission to solicit the "executive/administrative personnel and stockholders of [its] member corporations" before asking for any contribution. Although providing a prior approval form in no way requires anyone to make any contribution, no person who has not submitted the form or whose employer has not done so will be asked to contribute to the IIUSA PAC. To date, 27 IIUSA association member organizations have provided their approval.

THE VALUE & OUR PROGRESS

Anyone can make a political contribution to any candidate they choose. The value a PAC contribution brings is its stated priorities and values. For example, if Citizen Kane contributes $2,000 to a candidate the candidate must report that contribution to the FEC and Mr. Kane's name will be listed in FEC records. However, few people will know why Mr. Kane made his contribution or where he stands on any issue.

When IIUSA PAC makes a $2,000 donation to a candidate the contribution is also reported to the FEC. It also becomes a matter of public record, but rather than simply being tied to one person, the contribution is tied to an organization with stated priorities and policy goals. Candidates that accept PAC contributions understand this and consequently try not to accept campaign funds from organizations with which they do not agree. We can expect, therefore, that the more candidates IIUSA PAC supports, the more support IIUSA can expect.

As stated, IIUSA PAC has already contributed to three candidates. Representatives Fitzpatrick and Stanton were the RIA's House of Representatives co-sponsors. Representative Salazar introduced the Dignity Act, a bill that eliminates derivative visa counts and limits processing wait times to 10 years.

As the IIUSA PAC grows, becomes more involved in federal candidates' efforts, and can support more candidates with more meaningful contributions (as a multicandidate PAC), more people, candidates, and their staff, will become more aware of EB-realities: the powerful economic development and job creation it provides and the investors and regional centers face. Sharing that information will underpin a more informed Congress, one which IIUSA will soon ask for a new reauthorization, if not permanent authorization. To this very critical end, the IIUSA PAC is an incredible tool off to an incredible start.

IIUSA PAC

If you'd like to know more about the IIUSA PAC, please send a message to IIUSA's Executive Director, Aaron Grau at **aaron.grau@iiusa.org**. If you are a member of IIUSA and would like to review the IIUSA PAC prior approval form, you can do so here.

EB-5 Consular Processing Versus Adjustment of Status Concurrent Filing

Understanding the Risk of a Visa Fraud Finding

Joseph "Joey" Barnett
Partner | WR Immigration

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The recent changes in EB-5 processing options that has created new opportunities for EB-5 investors bring to light immigration risks that can disrupt an immigrant's future in the United States. In particular, entering on a nonimmigrant visa such a visitor's visa, or even a student visa, with an intent to file an adjustment of status could lead to inadmissibility determinations under INA 212(a)(6)(C)(i) based on fraud or material misrepresentation finding. This article seeks to provide EB-5 stakeholders with insight on this complicated and opaque issue that is often overlooked by EB-5 promoters and is manifestly fact-dependent on each immigrant investor's circumstances.

CONCURRENT FILING OPTION

One of the biggest game-changing provisions[1] in the EB-5 Reform and Integrity Act of 2022 is the ability of an EB-5 immigrant investor to file a Form I-485 Application for Adjustment of Status before the initial EB-5 petition (Form I-526) is approved, provided a visa is "available". For new investors, this means a Form I-485 can be filed concurrently (at the same time) as the Form I-526. For existing investors, this means a Form I-485 can be filed before the pending Form I-526 is approved.

Included with a Form I-485 adjustment application are applications for work authorization (Form I-765) and for advance parole (Form I-131) that allow the applicant to travel internationally during the time the Form I-485 is pending. The ability to remain in the U.S., and lawfully work upon receipt of the EAD card, and have children attend public school, during the time in which the EB-5 petition is pending, is appealing.

In contrast, for those outside the United States, the path to a green card is through consular processing and admission on an immigrant visa, which can only occur after U.S. Citizenship and Immigration Services (USCIS) approves the initial EB-5 petition. Although EB-5 processing times are improving, the prospect of waiting outside the U.S. for an unknown amount of time after making such a substantial investment is a burden for some.

Prospective investors are inquiring on options to fast-track their lawful presence in the United States. Questions come up from visitors, students, temporary workers, as well as those on E treaty investor/trader visa, and O-1 extraordinary ability workers, as well as TN visas for Canadians and Mexicans, and others. All of these visas must meet the nonimmigrant intent requirement[2]. Note, certain categories of nonimmigrant cannot apply to adjust under the concurrent filing rules including, visa waiver entrants, crewmen, J-1 visa holders that are subject to the two-year home residence rule, and others. H and L visas allow dual intent so there is no issue when H or L nonimmigrants file concurrent adjustment applications immediately after entry.

Nonimmigrant intent generally means having a residence abroad that he or she has no intention of abandoning and allows the individual to legally enter and stay in the United States for only a limited period. Taking action that is inconsistent with that stated intent shortly after one's initial entry, including the filing of an adjustment of status application, can cause dire immigration consequences.

OCTOBER 2023 VISA BULLETIN MOVEMENT OF CHART B APPLICATION FILING DATES

For existing investors, the same issue – entering on a nonimmigrant visa with an intent to file an adjustment of status has recently arisen as a large batch of EB-5 visas are available with the new fiscal year (starting October 1, 2023). In the October 2023 Visa Bulletin[3], the U.S. Department of State significantly advanced the Application Filing Dates in Chart B. USCIS has subsequently indicated[4] it will use Chart B in October 2023 (and generally allows for use in the initial months of each fiscal year) for purposes of "visa availability" so Form I-485s can be submitted.

Oct 2023 Chart B Date	Sept 2023 Chart B Date	Change in Wait Time
1 - Jan - 17	1 - Jan - 16	- 1 year
1 - Apr - 22	8 - Dec - 19	- 2 year, 5 months

The October 2023 Visa Bulletin has thus increased the number of immigrant investors who are potentially eligible to file a Form I-485, opening the door for possible immigration risks for EB-5 investors outside the United State who wish to take advantage of Chart B's movement. Yet, entering on a temporary visa to do so can be problematic due to issue of immigrant intent. Certain visa categories such as B-visitor visas, F-student visas, TN visas, and many others (in fact, the only nonimmigrant visas that allow for "dual intent" are L intracompany transferee visas and H specialty occupation visas) must have a temporary intent to visit that is primarily consistent with their visa category. A student must enter with the primary purpose of studying, and the visitor must have legitimate tourist intent as their primary purpose.

[1] See 8 U.S.C. § 1255(n)("If the approval of a petition for classification under section 1153(b)(5) of this title would make a visa immediately available to the alien beneficiary, the alien beneficiary's application for adjustment of status under this section shall be considered to be properly filed whether the application is submitted concurrently with, or subsequent to, the visa petition.").

[2] According to the INA, aliens shall be presumed to be an immigrant until they establish "to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission" that they are entitled to a nonimmigrant status under §1101(a)(15)." See 8 U.S.C. § 1184(b).

[3] See https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2024/visa-bulletin-for-october-2023.html

[4] See https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin

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PRECONCEIVED INTENT

To understand the concept of preconceived intent or visa fraud, one must simply realize that if entering as a visitor, one must primarily be a visitor and not plan to file for a green card. The question is whether a visitor enters with a legitimate tourist intent, and thereafter becomes aware of this new concurrent filing option, are they then eligible to adjust if they change their mind after entry? It is important to be clear on the rules because entering on a nonimmigrant visa, with a plan to file an adjustment after entry, could lead to a lifetime bar. USCIS may look at the specific facts that occurred after entry when making such a determination, and certain actions like enrolling a child into school or severing ties with a home country, could be major red flags.

INCONSISTENT CONDUCT AFTER ENTRY

Circumstances may arise after entry that could lead to a change of an individual's intent. The timing between the issuance of a nonimmigrant visa or entry and the individual's change of plans or intentions are crucial. The U.S. Department of State's Field Adjudicator Manual ("FAM")[5] is clear and is commonly known as the "90-day rule":

"If an individual engages in conduct inconsistent with their nonimmigrant status within 90 days of visa application or admission to the United States . . . you may presume that the applicant made a willful misrepresentation (i.e., you may presume that the applicant's representations about engaging in only status-compliant activity were willful misrepresentations of their true intentions in seeking a visa or admission to the United States)."

Although the FAM does not control how USCIS adjudicators will act, it can be relevant in these situations.

USCIS guidance is less clear, as the agency has removed references to the "30/60-day rule" in its Policy Manual. Under this old rule, there would be a presumption of misrepresentation if the status violation or conduct occurred within 30 days of entry. If the status violation or conduct occurred more than 30 days but less than 60 days after entry, no presumption of misrepresentation would apply but if the facts gave rise to a "reasonable belief" that the individual misrepresented his or her intent, he or she would be provided the opportunity to present evidence to the contrary. Violations that occur after 60 days would not be a basis for a finding of inadmissibility for willful misrepresentation[6]. Notably, even before its removal from the policy manual, USCIS said the 30/60-day rule is used for guidance only, is not governed by the statutes or the regulations, and is not a conclusive tool to ascertain misrepresentation. Yet, a USCIS officer may still find the alien obtained admission by misrepresentation, if, on the basis of all the facts and evidence in the record, a reasonable person could reasonably find that the alien had done so.

Now, the USCIS Policy Manual states:

"If the officer finds that the evidence for and against a finding of fraud or willful misrepresentation is of equal weight, then the applicant is inadmissible due to failure to meet the burden of proof. As long as there is a reasonable evidentiary basis to conclude that a person is inadmissible for fraud or willful misrepresentation, and the applicant has not overcome that reasonable basis with evidence, the officer should find the applicant inadmissible."

This guidance potentially opens the door for scrutiny of one's actions and intent even beyond any specific period of time. For this reason immigrant investors need to be diligent in documenting their intent, and cautious when making investment and immigration decisions. On the other hand, if an applicant entered the US on a visitor's visa to accompany their child attending college and only learned of the ability to file an adjustment under the new law only one week after entry, then presumably there is no visa fraud, despite entering as a visitor. It is advisable for issuers to note this immigration risk in offering documents and to ensure immigrant investors are properly counselled regarding their immigration plan. As noted above, while the 90-day rule is just a guideline for DOS, there is authority for USCIS to revoke the approval of a green if they determine it was erroneously issued due to fraud or misrepresentation, and the issue could be raised again during a naturalization process.

CONSEQUENCES

Immigrant investors must understand the severe consequences of preconceived intent and inconsistent conduct violations. If found inadmissibility under INA 212(a)(6)(C)(i), the Form I-485 adjustment of status will be denied, and removal (deportation) proceedings initiated unless the applicant is eligible for and granted a waiver. A finding of fraud or misrepresentation will also lead to a permanent bar to obtaining a visa and entering the U.S. There is a discretionary waiver of inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national[7]. Unfortunately it is rare for most EB-5 adjustment applicants to even have the required "anchor" relative. Applicants must understand that only H or L visa bearers are dual intent visas, and all other nonimmigrants must be knowledgeable and aware of the rules and risks in filing for an adjustment of status.

An INA 212(a)(6)(C)(i) finding results in a lifetime bar to entering the U.S. While there are nonimmigrant waivers, and in some instances immigrant waivers if one has a close U.S. citizen or permanent resident relative, these waivers are extremely hard to obtain and often take years to process.

CONCLUSION

EB-5 applicants must fully understand the options of consular processing versus adjustment of status and the benefits and risks of either option. It is critical for all EB-5 applicants to have a carefully planned short-term and long-term immigration strategy to achieve EB-5 success. It's vital for EB-5 stakeholders to understand these rules to help investors navigate the complex U.S. immigration system.

[5] https://fam.state.gov/fam/09FAM/09FAM030209.html
[6] See Memorandum from Lori Scialabba, Associate Director for Refugee, Asylum, & International Operations Directorate, et al., USCIS HQ 70/21.1 AD, available at https://www.hsdl.org/?view&did=21566 (last accessed September 28, 2023).
[7] See 8 U.S.C. § 1182(i).

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Is your Regional Investment Center Free from Financial and Legal Conflicts of Interest and therefore a Truly Independent Fiduciary

Rob Donnelly
Managing Partner | EB5 & Co

The elephant in the EB-5 living room is the fact that the vast majority of Regional Investment Centers are "affiliated" with their underlying projects and entities creating an environment fraught with conflicts of interest, diluted investor representation, and misalignment between the Regional Center and their EB-5 Immigrant Investors. The sum of which equals a challenged, or in some cases broken, fiduciary relationship.

Let's first start by understanding what we mean by the term affiliated. EB-5 projects are based on a specific framework provided by USCIS, which includes two business entities: (i) the New Commercial Enterprise (NCE) which serves as the investment entity or fund in which EB-5 investors make their cash investment, and (ii) the Job Creating Entity (JCE) which is the actual project entity that will be creating jobs through a combination of construction and permanent jobs as described in the project's economic report.

EB-5 investors are legally and financially connected to the NCE, which is the entity where their actual investment is made. As such the NCE will accept the EB-5 investors cash investment, make distributions, and return capital to the EB-5 investors at the end of their immigration process. The NCE is the guardian and fiduciary for investors.

The most common structure in the EB-5 industry is a subordinated loan from the NCE to the JCE that owns the project and manages the work product and assets. Think of the JCE as the actual operating business that is developing and managing the real estate project. The JCE will have its own set of equity investors, a senior loan from a bank, a management company, operating partners, and other stakeholders. The NCE, therefore, is a lender that generally fits in between the senior bank and the equity investors in the project.

Returning to the term affiliated, while Regional Centers must be the creators and managers of the NCE since that is the direct connection to the EB-5 program and investors, they have the option to create, manage, or be financially connected to the JCE as well. This is, in fact, how the vast majority of EB-5 projects are structured in the EB-5 industry today.

When a Regional Investment Center has a legal, financial, or ownership interest in both the NCE and JCE, it is deemed to be affiliated and must be disclosed to USCIS and investors.
One of the reasons this structure is prevalent is the fact that the majority of Regional Investment Centers were born of the real estate developer community and not of financial services or banking. Creating real estate projects by organizing and managing the necessary components, including the capital stack (the debt and equity financing required), is the traditional playbook for developers.

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The developer model works because each investor, or lender, is protecting its own interests and all parties understand the developer's role, financial incentives, motivations, and potential conflicts. Developers generate revenue and profit from two primary sources, management fees paid at various stages of development and operations, and then at the end when the property is sold. The exit is the material financial gain or upside for the developer as they will receive some form of profit share with the equity investors (commonly known as the General Partner interest, promote, or split). There are several structures and models used in the real estate industry.

How does this impact the EB-5 story? Regional Centers are often affiliated, meaning they are both the developer and subordinated debt lender - two disparate and opposing forces. It is one of the only places in business and finance where the same party is both the lender and borrower.

As the developer, the Regional Center has many constituencies: senior banks, equity investors, development partners, end users, management companies, and now EB-5 investors. They are also keenly aware of their own financial interests as they are often invested in the equity and then compensated heavily by fees and the eventual exit profit. The varied and diverse audiences, constituencies, and motivational drivers lead to one unified outcome, a real and likely potential for conflicts of interest.

What does this mean for EB-5 investors? It means you are one of many factors in that Regional Center's model. Your investment in the NCE is used alongside other capital to enable the project and fund their development business. It means the Regional Center has inherent conflicts between you and other investor classes, like the equity which could include their own capital; or, between you and their own profit incentives; or, between you and challenges or threats to the underlying project.

Who is the real priority? Who will they defend in the event of a problem or challenge? For whom are they truly a fiduciary? These are some of the questions no one can answer when such conflicts exist.

The Solution - unaffiliated structures in which the Regional Center is solely focused on the NCE and makes a loan to a truly independent JCE in which it has no legal or financial connection; just as any regulated bank would structure and manage a loan to a third-party borrower or real estate developer.

This approach brings the Regional Center and EB-5 investor into perfect alignment, as the financial incentives and drive towards a singular, successful outcome are united.

It is under this structure that a true and effective fiduciary relationship is founded, whereby the Regional Center protects, defends, and pursues the investor's interests unabated. This is the path for improved risk management and a focus on positive outcomes.

The message to EB-5 investors is clear. Deeply rooted in its history of developer-led Regional Centers, conflicts of interest can and do exist in this industry. Caveat Emptor. Do your own due diligence and ask detailed questions.

However, there is a better way. Seek Regional Centers that are unaffiliated with the projects and, therefore, will serve as a true and independent fiduciary, focusing solely on you and your financial and immigration success.

The Best Banking Solution for EB-5 Regional Centers

Jill Jones
General Counsel | JTC

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EB-5 investors want security for their funds, and the best way to provide that is to avoid restricting your banking to a single institution and go with a flexible option.

EB-5 investors put a lot on the line when they embark on their EB-5 investing journeys. Not only is their invested capital at risk, but their immigration status depends on the successful use of that capital to create jobs for US taxpayers. A failure to timely invest the funds in job-creating activities could mean losing their chance to resettle in America, so they can't afford to make a mistake.

More than financial returns, these investors care about security: they want to feel confident their funds will be managed properly, and their visa applications will be successful. Choosing the right banking partner can offer peace of mind that funds will be protected – because in 2023, we've seen what can happen when a bank fails.

WHY EB-5 STAKEHOLDERS ARE ESPECIALLY VULNERABLE TO BANK FAILURES

This year has seen three of the four largest bank failures in the history of the United States. While these banks had different reasons for their financial troubles, they had many things in common: all were regional banks that dealt in specialty deposits – the exact category of banks often used for EB-5 subscriptions. In fact, Signature Bank, which was taken over by federal regulators in March, was a major player in EB-5 banking.

Why are regional banks used so often for EB-5 deposits when larger banks are more likely to survive a financial crisis? And what can be done to mitigate risk and assure investors that their funds are safe? Protecting investor funds requires understanding what is required of a bank to take EB-5 deposits, what can go wrong, and how to offer flexibility for investors.

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BANKS AND EB-5: BIGGER ISN'T ALWAYS BETTER

Investors concerned about potential bank failure may wonder why a Regional Center doesn't choose to work with the largest and most established financial institutions available. The reason is that the largest banks have no appetite for EB-5 deposits.

Larger banks have established policies and infrastructure in place, and don't want to alter their procedures for a market they might see as too small to be worth their while. And because EB-5 funds come from all over the world, the due diligence and AML/KYC procedures to verify source of funds can be difficult, especially from countries with remittance restrictions where investors may need to engage in currency transfer services or seek assistance from several friends and family members to export funds in multiple smaller tranches, not just one.

Unlike their larger counterparts, regional banks have a desire to source more deposits, making it worthwhile for them to invest the time and resources to understand EB-5 rules and design internal processes to comply with regulators. By specializing in sectors like EB-5, they can build a niche business where they won't be competing with larger banks. That specialization should be seen as a good thing for investors, who benefit from a bank with EB-5 experience.

EB-5 is a complex and nuanced world, and regulatory compliance is of the utmost importance. Even if larger banks were an option, regional banks with specific EB-5 expertise could still provide investors with greater confidence that their funds will be released when necessary and won't be disbursed in a way that violates EB-5 rules.

That said, regional banks often have more risk associated with them due to high LTD ratios and a tendency to become overleveraged in specific sectors. For normal depositors, this risk isn't a big issue, as FDIC insurance can protect their deposits. But what about those depositing more than the $250,000 FDIC limit? Will they lose their funds?

WHAT HAPPENS WHEN A BANK FAILS?

Silicon Valley Bank (SVB) and Signature Bank had high rates of uninsured deposits, meaning amounts in excess of $250,000 for any particular depositor were not insured. Thankfully, in the cases of both SVB and Signature, the FDIC insurance was extended to deposits greater than $250,000 for a time, protecting the full balance and allowing depositors to move their money to other institutions. But FDIC insurance may not be extended to deposits greater than $250,000 in the event of a future failure at another bank.

While depositors at some failed banks have been able to avoid losing their funds, it's not something that can be counted on. Any depositor with more than $250,000 at a single institution is at risk of losing the balance above $250,000 if the bank goes under.

The minimum investment amount for an EB-5 investor is currently $800,000. If those funds are deposited at a single financial institution that then fails, $550,000 would be uninsured and potentially lost, not to mention the catastrophic effect on the immigration status for the investor's family.

To avoid leaving investor deposits uninsured, Regional Centers should instead offer a flexible solution that provides maximum security for investor funds.

DIVERSIFICATION THROUGH A THIRD-PARTY BANKING SOLUTION

As previously mentioned, deposits are insured up to $250,000 for each depositor at a particular financial institution. Some may fear this means $250,000 for the entire NCE as the depositor, but this may not be the case. EB-5 accounts, if structured correctly, may be held in a manner so the FDIC insurance would pass through to the beneficiaries, meaning each investor is entitled to the full $250,000 FDIC insurance at each financial institution.

Even though the NCE can access $250,000 in FDIC insurance for each investor, that still means four or more banks per investor would be needed in order to guarantee no investor has more than $250,000 at any single bank. Regional Centers may find it difficult to manage the number of investors, accounts, and financial institutions involved. Keeping track of where each investor's funds are held at all times is crucial, which is why it's important to work with banking and escrow partners who have the resources to do so.

Some depository banks offer what is known as a deposit sweep solution, in which a group of banks operate on a system of reciprocity, allocating investor deposits among one another to ensure full FDIC coverage. However, there may be limited availability when it comes to how many institutions are participating, so there won't be much, if any, choice offered. Banks also sometimes have to pay to participate in deposit sweep arrangements, and this cost could be passed on to depositors in the form of fees.

The alternative is an independent deposit solution that isn't tied to a particular bank. At JTC, we're able to work with any bank, meaning we can direct deposits towards our most reliable partners or work with clients to select banks they know and trust. This provides a greater level of choice for Regional Centers when it comes to where they deposit investor funds.

Regional Centers may also want to allocate a portion of investor funds to a specific financial institution because of higher interest rates or for deposits to be used as credit to access more favorable loan terms. A flexible banking solution will allow them to allocate deposits based on their current priorities.

PROTECTING AGAINST BANK FAILURES

While both deposit sweep and independent solutions can provide full FDIC coverage to mitigate risk, an independent solution allows depositors greater flexibility when it comes to selecting where their deposits are held and a much easier path toward moving those deposits to other institutions when circumstances change.

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Regional Centers have the option of using the depository bank as their escrow agent, but this can present problems if the bank is acquired, fails, or simply has a policy change, which presents problems for continuing to service the EB-5 account.

If a bank fails, investor funds may be protected through FDIC insurance, but development on the EB-5 project needs to continue in order for investors' visa applications to remain approvable. If deposits are delayed during the FDIC insurance claim process, those projects could stall or go into default. That's why investor funds need to be accessible and moved quickly.

There are also other reasons why a Regional Center may need to move investor funds. If the depository bank alters its policies and no longer intends to service EB-5, institutes a ban on deposits from certain countries, or refuses to accommodate changes like amending release triggers, funds will need to be moved to an institution that can meet the EB-5 issuer's needs.

If the escrow agent is also the depository bank, this could be a slow and complicated process. To minimize the impact on the EB-5 project, funds need to be moved as quickly as possible.

With an independent escrow agent, deposits can be moved quickly in any situation: a bank failure, unexpected takeover, change in ownership, bank policy change, or even to capitalize on more attractive interest rates.

While deposit sweep solutions can offer the FDIC insurance investors need, they can't match the flexibility, choice, and risk mitigation that an independent solution provides. Take a look:

Benefit	Independent Solution	Banks with Deposit Sweep Solutions
%100 FDIC Coverage	YES	YES
Ability to Pursue Higher Interest Rates	YES	NO
Ability to Place Deposits at a Specific Target Bank for Lending Credit	YES	NO
Shielded from Changes in Bank Policy	YES	NO
Fees	NO	SOME
Subject to Volume Limitations	NO	SOME

While it's not possible to foresee every issue a bank may have, it is possible to plan ahead and know what to do when situations change or opportunities arise.

The best way to protect investor funds is to choose partners and service providers with the ability to adjust as situations evolve. An independent third-party escrow agent that employs a flexible deposit solution partnered with a vast network of banks can give Regional Centers the greatest flexibility to make the best choices for their projects and provide the security their EB-5 investors need.

EB-5 Origins: Meet Christine Chen

Chief Operating Officer, Canam Enterprises

Osvaldo F. Torres
Partner | Torres Law

Our EB-5 Origins series for this issue features Christine Chen, the Chief Operating Officer of CanAm Enterprises. It was my pleasure to interview Christine and get to know her a bit better. I hope my exchange with her will be as engaging for you as it was for me.

RCBJ: Hi there Christine.

Christine: Hi. Thank you so much for thinking of me for this series.

RCBJ: I am excited that you have agreed to let us feature you in our EB-5 Origins series and am grateful and appreciative of your time. My intent is to mainly have us focus on a project or some tidbits of a project that you think might be useful for the reading public. I would like to see if we can organize our discussion into three parts, starting with your background, followed by some thoughts on a current EB-5 project or experiences and then reflections and lessons.

Christine: I will answer all your questions to the best of my ability. And if we need some numbers, I can certainly give them to you.

RCBJ: I do not think we have to dig for numbers.

Christine: Okay!

RCBJ: What is your current position and how long have you been in this position, and can you give an overview of what you do in your work?

Christine: I am Chief Operating Officer at CanAm and I have been in this position for the past six or seven years, but I have been at CanAm for 20 years and have moved my way up the chain. I think that – I always like to say that my job is to 'keep the trains moving' so anything that comes up that's related to keeping our operations going, from all the various departments we have in our New York City headquarters as well as our overseas offices and a lot of it is trouble shooting – so you know when our various teams hit a road block it's just moving it out of the way and keeping things moving along. Every year we set a goal for the company. We set up an idea of what we want to achieve that year and then making sure everybody knows what is going on and communications are being shared. Things always move so quickly in EB-5 that it is hard sometimes to keep everyone on the same page but it does affect different operations within an organization.

RCBJ: I understand. As a senior associate back during my Big Law days in New York City I often saw a big part of my job was taking my mentor's numerous, and mainly atmospheric, thoughts, and helping them 'touch down.'

Christine: Yes, and that is a lot of what we do. Tom Rosenfeld, our Founder, President and Chief Executive Officer, has big ideas and we just need to figure out how to make them happen. And also a little fine tuning but I would say certainly the part of my job that I really enjoy is the strategic planning that we do as an organization. How do we make the most of opportunities in front of us? How to create opportunities? How do we leverage the assets we have? It is always interesting to think about what else we can do. It is what keeps the job interesting. But what I really enjoy is creating the opportunities that as an organization we can really act on. It has been an interesting year for sure.

RCBJ: What would you say motivates you to do what you do? What are you most excited or enthusiastic about? What are your goals that you most want to accomplish in your work?

Christine: I would say that, as you know, I have been with the company and EB-5 for 20 years. It has been interesting to see how the industry has shifted – lots of ups and downs. There have

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been periods of growth that have been great but also been a little too fast. There have been periods of growth that have been a little too slow and trying to create opportunities out of that has sometimes required a lot of creativity. All that is remarkably interesting and to me we can always try to figure out when we meet a challenge. What is that challenge? What other opportunities does that challenge create? Yes, some are easier than others; the EB-5 program lapse was definitely a bigger challenge than any of us had an appetite for, but it has always been interesting. From opening different markets, to redeployment, I love that the business itself is very project oriented. There is a lot of learning about different projects, and then how do we connect that to the CanAm story. Every project we do, if we can link it back to why CanAm is doing what we are doing, how it builds on the existing brand that we have, how does it open and connect to the new directions we want to head in... that has always been what drives a lot of us. It certainly drives me to make sure that everything we do ties back to this legacy that we really are very thoughtful about creating and maintaining as an organization.

RCBJ: That is wonderful and you guys do have a great legacy.

Christine: It is incredibly important to Tom that we all feel it and we all carry that responsibility.

RCBJ: Yes. Leadership always starts at the top.

Christine: And I will say that the people who stay at CanAm and thrive here is because they get it, and some people do not and that is fine. In terms of the market, we understand our brand and our conservative approach to structuring EB-5 is appealing to certain people in this business, in this industry and even the projects that we provide EB-5 capital to – they have to get what we are offering and why we are doing it. If they are looking for something different, say purely a higher return, they should just go somewhere else. That is not going to be our top priority. I think that if we understand what we offer and what they are looking for and we are all on the same page then everyone ends up kind of happy. And that is worth it because as you know unhappy people in the business are exceedingly difficult.

RCBJ: So how did you wind up at CanAm? What led you to that job? What were you doing before then and what attracted you to work for CanAm?

Christine: When I was in graduate school getting my Ph.D. in anthropology, of all things, I became unhappy because at that point I had done a good chunk of my research and I was thinking I am going to end up in some university in the middle of nowhere because that is the nature of academia. I was going to grad school here in New York City and a friend of mine who was in the graduate program at NYU had been working for Tom over the summer. She told me she was going back to her coursework and she is like "well there's this guy I worked for over the summer, he's looking for someone to continue through the school year".

RCBJ: And that is how you met Tom?

Christine: I was writing my dissertation for my graduate program, so I had time. When I first met Tom, I had pink hair. I was in my 20s. He had just gotten back into EB-5. It was such a small business back then. When I met Tom I had no idea what he was doing. He was finishing up some of his business with the Canadian program that he had been doing for the previous 20 years and he had just started in EB-5 and he needed someone to write and research, and as a graduate student that is something I knew how to do.

RCBJ: Right.

Christine: So I did not know why he wanted me to write and research things about Philadelphia and its target industries and demographics, but it ended up being the basis of our regional center application.

RCBJ: So that was early 2000s, right?

Christine: Yes, I think our regional center application was submitted in 2002 and it got approved in February of 2003. Our first approval came from INS because it was right before the Department of Homeland Security had gotten established.

RCBJ: So let us go back a little bit. Where did you grow up? What was it like to grow up there? Where did you go to college and what was that like?

Christine: I grew up... I was born in New York, but I do not remember much of it. When I was about four we moved down to Texas. My dad had worked for the United Nations, and it was a great job, but he wanted to go out and do something on his own and somehow decided that we needed to move to Texas to do it. I was there until I was 10, through fifth grade and it was, you know, for me it was great. There was a lot of space, we were allowed to wander around. I think my interest in anthropology was sparked by the Native American folklore that I learned in school. There was not a large Asian population where we were, so I definitely felt like I stood out quite a bit. In some ways, it just made me more resilient and able to persevere. We moved back to the northeast when I started junior high, so that was a big shift. It is much faster paced here; things move much more quickly. It was mostly to be with my dad's family. My grandmother was ill and we wanted to come back and be closer before her condition worsened. She eventually passed away. I spent my formative years of high school in the northeast around New York City and then I went to college at the University of Chicago.

RCBJ: That is a great school.

Christine: I ended up coming back to New York to Columbia for grad school so I have been in this city since then.

RCBJ: Another great school. So, who were your key mentors, people who deeply influenced you?

Christine: I had a few professors in college that had this – they were really passionate about the cultures that they studied. They went and spent time every year in the countries where their research was. It just made it so interesting to be among people and understand what their concern was. Your worries are not necessarily theirs and that is really impactful in terms of how you approach your work. I think the idea of looking under the cover, not assuming that what is there is all there is. You know, that has been something I have carried through with me and certainly in EB-5, when you talk to some of these people, it is amazing. They are very unassuming and their stories about how they made their wealth, how they navigated their lives, how they – why they want to create opportunities for their children – it is fascinating. So it is a real pleasure when you do get to meet them, I do not get to meet them as often as I would like, but it is wonderful.

RCBJ: Do you have any life changing experience that put you on this path?

Christine: I do not know. I would say that part of it was that I wanted to get out of grad school. From a very factual point

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of view, I needed a job. When we started, I did a little bit of everything, which is honestly not what everybody says is a great career path, but it worked well for me. Nothing is too big or too small to undertake, which is definitely applicable in EB-5. I have done everything from running payroll and sending boxes out in the mail … to making sure we had the right strategy, a budget, and everything else. And that is the kind of mindset we try to bring with the people that stay here, because there is no handbook for what we do.

RCBJ: So, let us move on now to the story you are going to tell. What is the specific project you are going to be telling us about? Give us a brief overview of it.

Christine: I do not even know what I am allowed to say. I am trying to think of my compliance obligations and what I am allowed to say. It is hard to pick just one EB-5 project that CanAm has done.

RCBJ: You can just think about bricks and mortar, you do not have to talk about a securities offering.

Christine: I will say that with the program changes--with the reauthorization-- it was – CanAm is used to pivoting in EB-5, it has always been necessary. But with the shift to rural it was a much bigger turn. We have multiple regional centers, but they have all been in major cities and a lot of our partnerships have been with major urban developers. We obviously have our partnerships with these cities, and a lot of our network was really built for urban development. So, trying to find partners in rural spaces was a bit of a challenge and a learning curve for us.

RCBJ: Oh, I see.

Christine: We had started – not without a lot of brain damage – looking at things like manufacturing projects, that we did not really want to do, or were startups, which were not in CanAm's comfort zone. We ended up having a few really great relationships from completely different projects that ended up yielding some great projects and other introductions for us. We realized that all the legislative incentives for infrastructure and energy out there were very complementary in a capital stack with EB-5.

RCBJ: I see.

Christine: And, those were the same spaces that major companies with good balance sheets and experience to back up their endeavors were experimenting in. So that ended up being the model that we chose. You have got great sponsorship with an equity company that is investing and acquiring companies in rural areas and in businesses that were really going to benefit from a lot of the legislative incentives, and EB-5 could play a part. So, Fortress Investment Group, which we had a relationship with from when we did our rail project in Florida, known as the 'Brightline' and their major real estate development around their station in Miami.

RCBJ: The Brightline came out beautiful by the way.

Christine: Yes! We are so excited. It feels like it was such a long time ago that we first met with them, but it is finally going up to Orlando.

RCBJ: I know. It has taken a while, but it is lovely.

Christine: Yes, and they had the vision. We were a little skeptical at the time, but they had the vision. They have this innovative way of looking at businesses – our most recent project is with them. Some of their projects are really technical – we did a green hydrogen project with them. We had to learn and become experts on green hydrogen, how important hydrogen is to so many industries and how green hydrogen is to meeting some of the environmental initiatives set by the federal government. Our most recent project with them – they are drilling for natural gas in Virginia, which does not sound all that innovative, except that that whole region of the United States is heavily reliant on coal as their main source of fuel for their powerplants. And the U.S. government has been pushing hard to retire as many of those as possible. So, at first, we looked at the project and we all thought 'well this is not as progressive as green hydrogen', but it is an important intermediate step for that region, really – not everyone can be California from the get-go. Some regions must take a step forward to eventually start on that journey towards a greener way of powering their lives.

RCBJ: That is forward looking. And are you able to transform the reliance on energy sources in that area, is that the idea?

Christine: I think over time, that is definitely their long-term plan. They are going to be doing work there, well beyond this project that they are doing with us.

RCBJ: Can you think of anything that was most difficult or challenging?

Christine: It is always about explaining and translating to our investors the due diligence we have to do on the industry. We understand that there is a balance between being as transparent as possible, but not overwhelming them.

RCBJ: Some focus on the numbers – others do not.

Christine: Yes. We will do our due diligence for putting together our offerings and the like. Then the kind of questions we sometimes get back – especially on non-traditional projects – we know what kind of questions to expect about an office building, but the kind of questions that come back to us on some of these new kinds of industries that we are getting into now, they understand that we have to go back to our borrowers, they are the experts. And they always have the answer because they live and breathe their business. And we have been learning the questions that are raised from these kinds of EB-5 projects. So that has been interesting.

RCBJ: What did you learn from the people you worked with in those projects?

Christine: What we learned, and it still holds true, someone who looks and lives and breathes the industry they're in – they're believers. They have been convinced and that is great. That passion is great. And it's good to work with those people because they're there for all the right reasons. But our obligation is to our investors, so we have to just keep digging into the downside of every deal. And that has become our mantra … what's the worst-case scenario? How much do they have to earn to make sure they cover us, cover our debt payments, cover their senior payments? We have been and we continue to be very conservative on our collateral structure for that reason. We always look at the worst-case scenario. How hard is it going to be to recover that capital? And, with a lot of the borrowers, their response is: banks do not ask for this, other regional centers do not ask for this, why are you asking for it? Our response: it is our job, it will be easier for us to explain to our investors, and to USCIS. If you are not worried about defaulting, then it is in your interests to be transparent with us. .

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RCBJ: Right, right. When I negotiated bank loans and the borrower was apt to try and negotiate the events of default, my senior lender clients would say: 'well, if you're so worried about the default section then maybe we shouldn't make the loan'.

Christine: I hear you. We are extremely competitive with our rates. And we just realize that the quality of the deals that we want and the collateral structure that we require for our investors – it's worth the peace of mind.

RCBJ: What do you think you taught them in those instances?

Christine: I would hope that they learned not every regional center operator is the same. There are a lot of people who talk the talk and we always say: look, if this isn't good enough for you that's fine, but know what you're walking into. We have a proven track record. There is a reason our borrowers come back to us deal after deal.

RCBJ: We've covered a lot of ground and I want to thank you so much. I have two last questions if you don't mind, if you're okay with that.

Christine: Absolutely.

RCBJ: When you think of the future of the kind of work that you talk about, what gives you a sense of hope? What makes you concerned or worried?

Christine: You know, I will answer the second question first if you do not mind.

RCBJ: I hope you do not feel like you are being grilled.

Christine: You're very cordial, but you know what worries me right now, because we've been here before, is how fast everything is moving right now. China is back in the picture, which is great, but I hope that it's not China from 2016. It was a little too crazy. Things were not – all the questions were not being answered accurately – there were definitely some games being played. I do think people are smarter, I think investors – there's a lot more information on the internet now, there's a lot more education now. People have been burned and they've learned not all regional centers are the same, not every deal is the same – it's important to look at the fine print and understand all the clauses, so I think that is really good. But I do worry about things – we are all eager to make up for lost time. I just think some projects out there meet the letter of the law but not the spirit of the law and that is always a concern. What I am excited about is that…

RCBJ: I just want to interject that now you are going to tackle the positive part of the last two-part question I asked.

Christine: Yes, now I'm going to the positive. That being said, I think that I'm excited that what I saw with the program lapse was regional centers – certain regional centers learning it's important to cooperate with each other, share information… I've seen that with lawyers too, it's just, we can't – there's enough factors out there to take down EB-5 – we need to work together. I have seen how seriously people are taking the importance to get in front of congressional offices now about reauthorization. At CanAm, we really think about what kind of story can we tell with the projects we're doing since reauthorization. What kind of story are we putting out there for how we really understood the intent of the reform? So, from that perspective, I am proud of the rural projects we are doing. You know, the idea of bringing

broadband to rural areas so they can be competitive and be connected, that's a great story!

RCBJ: I think so too. That is great.

Christine: Helping a major company in producing green hydrogen in an area where that's very needed. Where there's a shortage, where there is a green way of doing it that's still profitable and proving that is a real business venture. We are really proud of that. So these are the kinds of projects, as much headache as it gave us to find these projects under the whole rural opportunities, it created some really great opportunities for us to do some projects we probably never would have done, and will be remarkable stories when the time comes to look back at what the Reform Act has produced – what the RIA has been able to yield. And so I am always 'long terming' because I like to plan. I am planning for 2025 at this point.

RCBJ: You are jumping ahead of my next set of questions, which are my final ones. What is next for you and your work? What are you looking forward to?

Christine: We are trying to see – this year has been so much about pivoting and learning. Every time we thought we figured something out, it changed. So we are trying to see what it is that we can figure out for 2024. So, we have got a lot of ambitions. We are at the end of the third quarter, we are heading into the fourth quarter, we are bringing all our overseas people in at the end of the year. We will be doing a lot of strategic planning for 2024, but a lot of the conversations we have been having are about how we want to come out strong in the beginning of 2024 and what that is going to look like. I think that for us the reauthorization has been a good opportunity to get in front of our investors. They have so many questions. But being able to really create loyalty among our clients, seeing what else we can do for them and what business opportunities might be there – that has always been of interest. The challenge is finding the time to think about it.

RCBJ: I cannot tell you how wonderful it has been to be with you. Thank you for all your time. I am sorry I took up so much of it.

Christine: Oh, not at all. I have been looking forward to it.

Visa Delays!

Why Is it Taking So Long for Visas to be Issued by the Department of State?

Simone Williams-Arrington
Founder & Managing Partner | Williams Global Law

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Since 2020, the Department of State and U.S. Citizenship and Immigration Services (USCIS) have increasingly struggled to meet the demands of applicants and petitioners. Delay has pervaded nearly every area of immigration and travel. Specifically, the increase in visa processing times raises concern for several parties. These severe delay patterns impact first-time travelers, destination businesses, local economies, international markets, and ultimately, multiple aspects of the United States economy. A culmination of factors led to the current delays, including the COVID-19 pandemic, limitations on hiring and visa issuances implemented by the Trump administration, and general consulate and embassy staffing complications. Even worse, an overall increase of demand for travel exacerbates the problem.

WHAT DOES THE DEPARTMENT OF STATE SAY?

The Department of State (DOS) released multiple statements to address the delays and provide potential solutions in an effort to reassure waiting parties. As of now, the estimated wait time for in-person interview appointments can change weekly and "is based on actual incoming workload and staffing."[1]

Visa wait times vary depending on the visa category and respective nation. For example, the total wait time can span 556 days for a B1/B2 Visitors visa from the Abu Dhabi consular office. However, it may only take three days for a Student/ Exchange Visitors visa (F, M, J) from that same location. By contrast, an applicant for a Student/Exchange Visitors visa (F, M, J) from Jerusalem has an estimated interview wait time of 100 days while a B1/B2 visa application from the same location will have a 175-day interview wait time.

These periods represent the duration an applicant will likely wait before attending their in-person interview. Applicants should note that the times, posted by DOS as *"Wait Times for a Nonimmigrant Visa to be Processed,"* do not encompass the time required for administrative processing.[2] Therefore, applicants must anticipate extra time for the application to be received, undergo initial administrative processing, and for post-issuance delivery. The duration for administrative processing varies on a case-by-case basis, as per the DOS site.[3] Certain cases require additional administrative processing. If the consular office determines this need, the officer will notify the applicant at the end of their interview. This immediate execution curtails unnecessary bureaucracy.

Amongst many other factors, visa refusals most commonly cause extended administrative processing. Such refusals often hinder the State Department's ability to provide accurate wait times. Refusals indicate the consular office's determination of ineligibility for a visa even after they have completed the application and required interview. Yet, consulate offices may use a refusal to reveal insufficient or unclear information in an application. When the consular office recognizes an opportunity to overturn the refusal, they will request further documentation or provide the next steps. Applicants should respond comprehensively as soon as possible. Many times, consular offices will reconsider the application at a later time after provided additional information or "upon the resolution of administrative processing."[4] In cases where administrative processing becomes necessary, outside of providing additional documentation, processing times will vary.

Frequently, consular offices send refusals under section 221(g) of the Immigration and Nationality Act (INA). In 2022, AILA identified a rise in both the number of 221(g) refusals and the duration those applications spent in administrative processing.[5] To decrease administrative processing delays, DOS responded by implementing nonimmigrant visa vetting using the National Vetting Center. According to the State Department's Office of the Assistant Legal Adviser for Consular Affairs (L/CA), vetting of many nonimmigrant visas can occur without additional administrative processing.[6]

HIGHLY AFFECTED IMMIGRANT VISA CATEGORIES

These attempts aim to mitigate concerns; however, certain immigrant groups, such as employer-sponsored immigrants, remain highly affected. USCIS states that the Immigrant Investor Visa process cannot be accurately predicted – even under normal conditions— "because they are numerically limited visa categories."[7] The amount of quantitative information in each application requires thorough inspection and oversight. Traditionally, employer-sponsored applications already have several errors which lead to further delayed correspondence. Thus, an influx of applications only worsen the backlog. Lastly, several employment-sponsored visa applications need in-depth administrative processing which delays issuance beyond the in-person interview. Because USCIS advises applicants not to "make any final travel arrangements, dispose of property, or give up jobs until and unless visas are issued,"[8] these delays can stunt investors' progress for extended periods – making it difficult for some to maintain and advance the very requirements used to apply in the first place.

Applicants' frustrations have resulted in a lawsuit against USCIS for unreasonable wait times.[9] In a recent case, plaintiffs cited instances of favoritism as a form of misconduct by USCIS due to the agency processing some petitions out of order. Ultimately, the US Court of Appeals for the District of Columbia Circuit found that the South African plaintiffs could not be remedied without unfairly being placed ahead of other waiting applicants. Additionally, the Court did not find claims of USCIS misconduct persuasive. As within their rights, USCIS "'gives priority to petitions where visas are immediately available' under the per-country cap."[10] Though unsuccessful, such

[1] "Global Visa Wait Times - Travel." Department of State- Bureau of Consular Affairs, Department of State,travel.state.gov/content/travel/en/us-visas/visa-information-resources/global-visa-wait-times.html.
[2] " Visa Appointment Wait Times ." Travel. State. Gov, U.S Department of State - Bureau of Consular Affairs, travel.state.gov/content/travel/en/us-visas/visa-information-resources/wait-times.html.
[3] "Administrative Processing Information." U.S. Department of State, U.S. Department of State - Bureau of Consular Affairs, travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrative-processing-information.html.
[4] Ibid.
[5] AILA DOS Liaison Committee Liaison Meeting with the Department of State ..." U.S Department of State, U.S Department of State - Bureau of Consular Affairs, travel.state.gov/content/dam/visas/AILA/AILA-Agenda-4-26-2023.pdf.
[6] Ibid.
[7] "Immigrant Investor Visas - Travel." Travel.State.Gov, U.S Department of State - Bureau of Consular Affairs, travel.state.gov/content/travel/en/us-visas/immigrate/immigrant-investor-visas.html
[8] Ibid.
[9] Kreighbaum, Andrew. "Immigrant Investors Lose Visa Delay Suit before D.C. Circuit." Bloomberg Law, 18 Aug. 2023, news.bloomberglaw.com/daily-labor-report/immigrant-investors-lose-visa-delay-suit-before-d-c-circuit.
[10] United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUITArgued May 11, 2023Decided August 18, 2023No. 22-5313ADRIAN DA COSTA AND JAYD Adrian Da Costa, et al v. Immigration Investor Program Office, et al, Docket No. 22-05313 (D.C. Cir. Nov 30, 2022), Court Docket

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measures indicate a notable dissatisfaction and concern with the current process. Because other appeal courts had a split decision, Brad Banias, attorney for the plaintiffs in the second consolidated case, predicted "more unreasonable delay litigation, not less."[11]

Individuals pursuing Diversity Immigrant Visas face increased difficulty as well. The widespread visa delays exposed them to a curiously high amount of fraud attempts via email and mailed letters. These attempts aim to extract funds from applicants by presenting false U.S. websites and payment portals. While the U.S. government will send applicants an email to check their application status, any correspondence about their actual status will appear in the official DV Entrant Status Check portal. Also, any required fees are paid to the consular office at the time of their appointment. Applicants must be vigilant and go directly to the DV Entrant Status Check portal or official government websites ending in ".gov". As these unprecedented delays continue, more applicants have unfortunately become vulnerable to scams. Applicants can visit the State Department's 'Fraud Warning'[12] page for more details and ways to identify fraudulent efforts.

HIGHLY AFFECTED NONIMMIGRANT VISA CATEGORIES

Nonimmigrants across several visa categories also suffer from these unprecedented delays. Per the FY 2022 USCIS Report, "a growing number of noncitizens with valid Employment Authorization Documents (EADs) faced a lapse in employment authorization while waiting for their renewal EAD applications to be processed."[13] While the report lauds how "USCIS and the Department of State issued all available employment-based immigrant visas in FY 2022 – double the pre-pandemic number,"[14] the issuance does not meet the concerning high demand. Still, this required an all hands-on-deck effort across the agency as it sought to meet the standard that "any unused visas at the end of the fiscal year would become unavailable starting on Oct. 1, 2022, the start of FY 2023.[15] The May 2022 Temporary Final Rule (TFR), another effort to diminish the overwhelming backlog, extended EAD validity periods for over 400,000 current noncitizens. While this does not directly benefit new applicants, easing the backlog speeds up the EAD acquisition for new applicants who may still apply for work authorization as they await pending visa issuances.

Petition-Based Temporary Workers (H-2B) have another set of concerns. Their participation in critical aspects of the United States economy heightens the urgency of their visa needs. United States industries, such as tourism, hospitality, landscaping, food preparation, and many more, rely on H-2B visa holders. In suit with this focus, DOS and the Department of Homeland Security (DHS) repeatedly expand H-2B visa offerings,[16] providing more supplemental H-2B nonagricultural worker visas than ever before."[17]

As the nation's current labor demand increases, congested backlogs and visa delays command direct executive involvement. The Biden Administration gathered with Heads of State and Government of the "Argentine Republic, Barbados, Belize, the Federative Republic of Brazil, Canada, the Republic of Chile, the Republic of Colombia, the Republic of Costa Rica, the Republic of Ecuador, the Republic of El Salvador, the Republic of Guatemala, Co-operative Republic of Guyana, the Republic of Haiti, the Republic of Honduras, Jamaica, the United Mexican States, the Republic of Panama, the Republic of Paraguay, the Republic of Peru, and the Oriental Republic of Uruguay." They underscored their collective will to "strengthen national, regional, and hemispheric efforts to create the conditions for safe, orderly, humane, and regular migration and to strengthen frameworks for international protection and cooperation."[18] Consular offices in each of these nations have also experienced setbacks in visa processing. Because each office manages its own timelines and processes, the conversation aims to align each nation to adopt more compatible methods.

Though widespread delays stirred several sectors, the U.S. tourist markets remains particularly stricken. Destination markets began shifting their entire outreach strategies toward active travelers with approved visas. According to Adam Burke, the president and CEO of the LA Tourism and Convention Board, the organization does not completely avoid nations where visa wait times are an issue. Yet, it "partners directly with the travel trade to target people who already have a valid visa."[19] In New York City, destination markets have pivoted in the same direction. Rachel Inseler, vice president of international marketing and operation at NYC Tourism + Conventions explained the transition to "targeting their messaging at people who are ready to travel now." By shifting their definition of readiness to mean actual capability and away from abstract sentiment, they aim to attract a more dependable customer base. Now, their "goal is to have somebody book a flight" instead of pursuing first-time visitors who cannot yield returns during the current visa delay crisis.[20]

In fact, these tourist markets find those with 10-year visa validity more promising because most travelers return to locations associated with positive experiences. According to Burke from LA Tourism, they now concentrate their efforts on the "5 million people in India with a valid 10-year visa."[21] These adaptive methods may soften the financial blow slightly, but the negative impact on the bottom line has been inevitable.

Of course, commercial finances only represent a portion of the threats imposed by considerable visa delays. Nonimmigrants

[11] Kreighbaum, Andrew. "Immigrant Investors Lose Visa Delay Suit before D.C. Circuit." Bloomberg Law, 18 Aug. 2023, news.bloomberglaw.com/daily-labor-report/immigrant-investors-lose-visa-delay-suit-before-d-c-circuit.
[12] "Fraud Warning." U.S. Department of State, U.S. Department of State, travel.state.gov/content/travel/en/us-visas/visa-information-resources/fraud.html.
[13] USCIS Fiscal Year 2022 Progress Report, U.S. Citizenship and Immigration Services, www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Fact Sheet: U.S. Has Expanded Labor Visa Opportunities." Fact Sheet: U.S. Has Expanded Labor Visa Opportunities | Homeland Security, www.dhs.gov/news/2023/07/31/fact-sheet-us-has-expanded-labor-visa-opportunities
[18] "Los Angeles Declaration on Migration and Protection." The White House, The United States Government, 14 June 2022, www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/.
[19] Habtemariam, Dawit. "Visa Delays Hurt U.S. Tourism Marketing." Skift, 31 Aug. 2023, skift.com/2023/07/31/visa-delays-hurt-u-s-tourism-marketing/.
[20] Ibid.
[21] Ibid.

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participating in upholding the safety of local U.S. communities, such as U and T visa holders and applicants, experience several drawbacks. The U nonimmigrant visa status applies to victims of criminal activity "who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity."[22] The T nonimmigrant visa status applies to certain victims of human trafficking. T visa holders may stay in the U.S. for "an initial period of up to 4 years if they have complied with any reasonable request for assistance from law enforcement in the detection, investigation, or prosecution of human trafficking or qualify for an exemption or exception."[23]

USCIS and DOS have not been able to keep up with the increased demand in either visa category. In Fiscal Year 2022, USCIS reported 189,381[24] pending applications for U visas. Only halfway into FY2023, USCIS reported 195,619 pending applications. Though USCIS reports far lower numbers for T visas, the relative hike in pending applications follows the same trend. USCIS ended FY 2022 with 3,940 pending applications. The first two quarters of FY 2023 reported 5,330 pending applications.[25] These numbers do not account for each applicant's dependents.

Considering the time sensitivity these applications require, backlogs place some applicants in challenging predicaments. Because these victims are working critically with law enforcement, many attorneys advise them not to leave the country to avoid further delays. Though the application process does allow victims to apply for a work permit while waiting for their visa issuances – due to the bona fide determination process[26] – many experience several-year delays in attaining it. Unfortunately, an inability to gain lawful employment can make some applicants more vulnerable to trafficking once again.[27]

DEPARTMENT OF STATE EFFORTS TO REMEDY DELAYS

These growing issues have the entire traveling world on edge. Personally and professionally, parties must readjust their lives to accommodate for seemingly inauspicious conditions. As of September 2023, almost 40,000 immigrant visa applicants are scheduled for September 2023 appointments. Over 275,500 eligible immigrant visa applicants still await scheduling.[28] The DOS certainly recognizes these problems and has implemented several initiatives to remedy the issues. More than anything, a willingness to confront public anxiety with transparency suggests a commitment to ameliorate the crisis. On April 26, 2023, DOS and the Visa Office in the Bureau of Consular Affairs provided responses[29] to concerns - based on both anecdotal & statistical information - raised by the American Immigration Lawyers Association (AILA).

For the past three years, the U.S. government, relevant agencies, and consular offices across the world have been racing to tackle these daunting delays. By waiving more in-person interviews and increasing consular processing staff, DOS can remove bulk load to allow more complicated applications to be handled comprehensively. Traditionally, almost every application required an in-person interview. Yet technological advancements, especially post-pandemic, permit basic standard cases to forgo such prerequisites. The State Department "extended the authority of consular officers to waive in-person interviews for certain nonimmigrant visa categories through December 31, 2023."[30] This will apply to applicants for certain H-2 (temporary agricultural and non-agricultural workers) applicants; certain students, professors, research scholars, short-term scholars, or specialists (F, M, and academic J visa applicants).[31] This also benefits certain temporary workers who have an individual petition approved by USCIS (H-1, H-3, H-4, L, O, P, and Q visa applicants) who meet certain conditions, including that they are applying for a visa in their country of nationality or residence.[32]

Additionally, "consular officers have the discretion to waive the visa interview requirement for certain first-time and renewing H-2 visa applicants, and for certain F, M, and academic J, and individual petition-based H-1, H-3, H-4, L, O, P, and Q applicants who were previously issued any type of visa, and who have never been refused a visa unless such refusal was overcome or waived, and who have no apparent ineligibility or potential ineligibility; or for certain first-time F, M, and academic J, or individual petition-based H-1, H-3, H-4, L, O, P, and Q applicants who are citizens or nationals of a country that participates in the Visa Waiver Program (VWP)."[33] Of course, these waivers will be considered on a case-by-case basis; however, these permissions will provide consular offices with clearer guidelines and discretion that will heighten efficiency.

Simultaneously, DOS acknowledges the responsibility to improve its internal staffing because "staffing heavily influences estimated wait times."[34] In 2022, USCIS and DOS collaborated to issue all available employment-based immigrant visas. Per the USCIS Fiscal Year 2022 Progress Report, USCIS worked cases "7 days a week to effectively address pending EAD applications in the final quarter." However, this could only occur because of the "surge of overtime resources made possible by congressional appropriations specifically directed for backlog reduction

[22] "Victims of Criminal Activity: U Nonimmigrant Status." USCIS, U.S. Citizenship and Immigration Services, 20 Mar. 2023, www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status#:~:text=You%20may%20be%20eligible%20for,information%20about%20the%20criminal%20activity
[23] "Victims of Human Trafficking: T Nonimmigrant Status." USCIS, U.S Citizenship and Immigration Services, 21 Aug. 2023, www.uscis.gov/humanitarian/victims-of-human-trafficking-t-nonimmigrant-status
[24] "Number of Form I-918, Petition for U Nonimmigrant Status (Bona ... - USCIS." USCIS, U.S. Citizenship and Immigration Services, www.uscis.gov/sites/default/files/document/data/I918u_visastatistics_fy2023_qtr2.pdf
[25] "Number of Form I-914, Petition for T Nonimmigrant Status (Bona ... - USCIS." USCIS, U.S. Citizenship and Immigration Services, https://www.uscis.gov/sites/default/files/document/data/I914t_visastatistics_fy2023_qtr2.pdf.
[26] National Engagement - u Visa and Bona Fide Determination Process - Frequently Asked Questions." USCIS, U.S. Citizenship and Immigration Services, 23 Sept. 2021, www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions.
[27] Christopher, Tirzah. "A Visa Program Created to Help Law Enforcement Puts Immigrant Victims at Risk Instead." NPR, NPR, 12 Aug. 2023, www.npr.org/2023/08/12/1193597303/a-visa-program-created-to-help-law-enforcement-solve-crimes-puts-immigrant-victi.
[28] "National Visa Center (NVC) Immigrant Visa Backlog Report - Travel." U.S Department of State, U.S Department of State - Bureau of Consular Affairs, travel.state.gov/content/travel/en/us-visas/visa-information-resources/visas-backlog.html
[29] "AILA DOS Liaison Committee Liaison Meeting with the Department of State ..." U.S Department of State, U.S Department of State - Bureau of Consular Affairs, travel.state.gov/content/dam/visas/AILA/AILA-Agenda-4-26-2023.pdf.
[30] Habtemariam, Dawit. "Visa Delays Hurt U.S. Tourism Marketing." Skift, 31 Aug. 2023, skift.com/2023/07/31/visa-delays-hurt-u-s-tourism-marketing/.
[31] "Important Announcement on Waivers of the Interview Requirement ... - Travel." U.S. Department of State, U.S Department of State - Bureau of Consular Affairs, travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html.
[32] Ibid
[33] Ibid.
[34] "Global Visa Wait Times - Travel." Department of State- Bureau of Consular Affairs, Department of State, travel.state.gov/content/travel/en/us-visas/visa-information-resources/global-visa-wait-times.html.

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efforts."[35] More resources must be allocated to reach sustainable work efficiency.

Despite endless complaints, DOS efforts have decreased wait times for certain nations. A 2022 DOS press release reported that "nearly half of the almost seven million nonimmigrant visas the Department issued in Fiscal Year 2022 were adjudicated without an in-person interview."[36] Individual nations have seen a recent decrease in wait times. As of July 30, an aspiring tourist would have to wait over 100 days for an interview at the U.S. embassy in Rio De Janeiro, a big drop from over 400 in early January.[37] At the Mumbai embassy, there is a wait of 598 days, which is lower than 999 days in early January.[38] For Afghan nationals, USCIS extended and expanded fee exemptions. USCIS also expanded expedited processing for Afghan nationals from the end of 2022 to September 30, 2023."[39] Unfortunately, these improvements are commonly overshadowed when wait times in other areas continue to increase dramatically.

DOS expects more improvements as they close out the year, reaching for backlog reduction goals set by M. Jaddou, current director of USCIS. As the U.S. strives to return to pre-pandemic efficiency, the world awaits with anticipation to see if these massive delays actually suggest a new norm in global connectedness.

RESOURCES:

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IIUSA EB-5 Passport Series

Looks to Wrap a Second Successful Year

9 Countries | 13 Cities | 1,000s+ Attendees

McKenzie Penton
Director of Events & Business Development | IIUSA

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Renewed energy and excitement around EB-5 is welcome news and reason to celebrate. The industry is back in full swing and IIUSA is embracing opportunities to strengthen its members' promotion and sales in traditional markets and ramp up education in burgeoning markets.

The IIUSA EB-5 Event Passport Series is a proven way to generate new leads, connect with investors, and "soften the ground" in new countries. Finishing its second full year in November, the events have become a powerful business development and educational platform. To date, the Passport Series has hosted seminars and banquets in twenty-seven cities and twelve countries in just the past eighteen months.

EDUCATING MARKETS AROUND THE WORLD

- Bogota, Colombia
- Medellin, Colombia
- Buenos Aires, Argentina
- Sao Paulo, Brazil
- Mexico City, Mexico
- Monterrey, Mexico
- Seoul, South Korea
- HCMC, Vietnam
- Hong Kong, Hong Kong
- Taipei, Taiwan
- Chennai, India
- Hyderabad, India
- Bengaluru, India
- Surat, India
- New Delhi, India
- Mumbai, India
- Abuja, Nigeria
- Lagos, Nigeria
- Cape Town, South Africa
- Dubai, UAE
- Abu Dhabi, UAE

The events connected our members to investment migration professionals, investors, and their representatives in established markets around the globe. However, the Passport Series did more than facilitate success in mature market; it opened the door to new cities and countries whose investors are curious, willing, and eager to know more about EB-5 emigration.

In fact, between established and nascent markets, the Passport Series hosted thousands of attendees ensuring the EB-5 industry continues its conversations and work in places like India and starts new dialogues in places like Colombia and Argentina.

IIUSA members are champions of industry best practices and education, but they also run businesses. The Passport Series furthers the association's educational goals and provides members with a direct platform to grow their businesses. These events would not have been possible without the support of our members, both as panelists and sponsors, and IIUSA is grateful for their commitment.

KEY 2023 HIGHLIGHTS

- 250+ Attendees in Ho Chi Minh City
- First Major Industry Events in Buenos Aires, Lagos, and Chennai
- 1000+ attendees in four city tour of India
- 40+ migration agencies in attendance at Korea and Taiwan events

The events' success is also founded on our global partners' dedication. As the industry's only non-profit membership association, IIUSA is uniquely positioned to leverage its members' expertise to work with the most trusted and like-minded organizations around the world.

That is most evident in IIUSA's ongoing collaborations with the AmCham network around the world, India's PHD Chamber of Commerce and Indo-American Chamber, Taiwan's Investment Migration Council and Taiwan Immigration Consultants Association, Korea's Korean Emigration Association, Nigeria's Abuja Chamber of Commerce, and Global African Business Association and China's Guangdong Exit and Entry Association.

2023 was a banner year for the association and its international events. However, we are just getting started and we hope to see you at a Passport Series event in 2024!

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ఐఐయుఎస్ఏ పాస్ పోర్ట్ సిరీస్ ప్రారంభం

విశ్వవాకం సూర్య: యుఎస్ఏ (ఐఐయుఎస్ఏ) మరియు పిహెచ్ డి ఫౌండర్ ఆఫ్ కామన్స్ అండ్ ఇండస్ట్రీ (పిహెచ్డిసిఐ) లో పెట్టుబడి పెట్టడానికి ఐఐయుఎస్ఏ పాస్‌పోర్ట్ సిరీస్ రెండవ ఎడిషన్ ఇండియాలోని చెన్నైలో గురువారం ప్రారంభమైంది. తదుపరి ఈవెంట్స్ బెంగళూరు (సెప్టెంబర్ 9, 2023), హైదరాబాద్ (12 సెప్టెంబర్ 2023), నూర్‌లో (14 సెప్టెంబర్ 2023)న జరగనున్నాయని చెన్నైలో ఏర్పాటు చేసిన సమావేశంలో ప్రతినిధులు మయాంక్ శేఠ్వాల్, ఆరం గ్రేవ్, మెకంజీ పెంటన్ తెలిపారు.

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THE TIME TO JOIN IIUSA IS NOW!

Don't miss out on this valuable business development platform! The IIUSA EB-5 Passport Series has set the standard for delivering face-to-face interactions between series participants and potential investors from around the globe.

Sponsorship opportunities are exclusively available for members, so join IIUSA today and open doors to a world of possibilities! Seize the opportunity to become a valued member of our industry-leading community, dedicated to fostering growth, knowledge, and prosperity. Together, we will shape the future of investment immigration.

Check out our IIUSA Membership Brochure for more information on the benefits of membership. Join today and receive a special introductory discount of 50% and a complimentary ticket to the 2024 IIUSA EB-5 Industry Forum.

IIUSA EB-5 EVENT SERIES

GLOBAL BUSINESS DEVELOPMENT

IIUSA EB-5 EVENT SERIES
GLOBAL BUSINESS DEVELOPMENT

See You Around the World in 2024

GLOBAL NETWORKING & BUSINESS DEVELOPMENT

Join the IIUSA EB-5 Event Passport Series, designed to connect members with investors and service providers worldwide. Our goal is simple: facilitate business development while minimizing expenses and travel time. With successful events in Asia, Latin America, India, the Middle East, and Africa, our series has become a premier platform for expanding your global reach.

The Passport Series enables you to tap into key investor regions, fostering valuable connections and partnerships. By packaging trips together, we ensure a cost-effective and efficient experience for all participants.

Don't miss out on upcoming trips and new destinations on the horizon. Join our esteemed network of members and expand your business opportunities in the international EB-5 market.

* IIUSA partners with a host of organizations on other industry events throughout the year. Special discounted pricing for IIUSA members may be available.

2024 REGIONAL SERIES

INCLUDE

Q1 | LATIN AMERICA
Colombia x 2 | Peru | Brazil

Q2 | SOUTHEAST ASIA
Vietnam x2 | Hong Kong | Singapore

Q3 | EAST ASIA
South Korea | Taiwan | China x2

Q4 | INDIA

Available Sponsorships

Sponsorship opportunities are limited and will sell out quickly.

	Panel Role	Pre-Event Digital Distribution of Marketing Materials	Digital & Onsite Marketing	Access to Attendeee List	Company collateral in the event mobile app for digital access	Pre-Access to Future IIUSA Passport Series Sponsorship Opportunites
Gold Limit 10 per event	✓	✓	✓	✓	✓	✓
Silver Limit 4 per event			✓	✓	✓	✓

One Year After the Publication of the New Form I-526 and Form I-526E

What is the Data Showing Us?

Lee Y. Li
Director of Policy Research and Data Analytics | IIUSA

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On July 12, 2022, as part of the implementation of the EB-5 Reform and Integrity Act (the "RIA"), U.S. Citizenship and Immigration Services (USCIS) published new two forms including Form I-526 (Immigrant Petition by Standalone Investor) and Form I-525E (Immigrant Petition by Regional Center Investor) and discontinued the old Form I-526 (Immigrant Petitions by Alien Entrepreneurs). One year later, on July 19, 2023, for the first time ever, USCIS started to provide data on the three categories of Form I-526 petitions: 1) the "legacy I-526 petitions" for cases that were filed prior to the RIA; 2) the new Form I-526 for direct EB-5 investment ("direct I-526"); and 3) the new Form I-526E for Regional Center EB-5 investment.

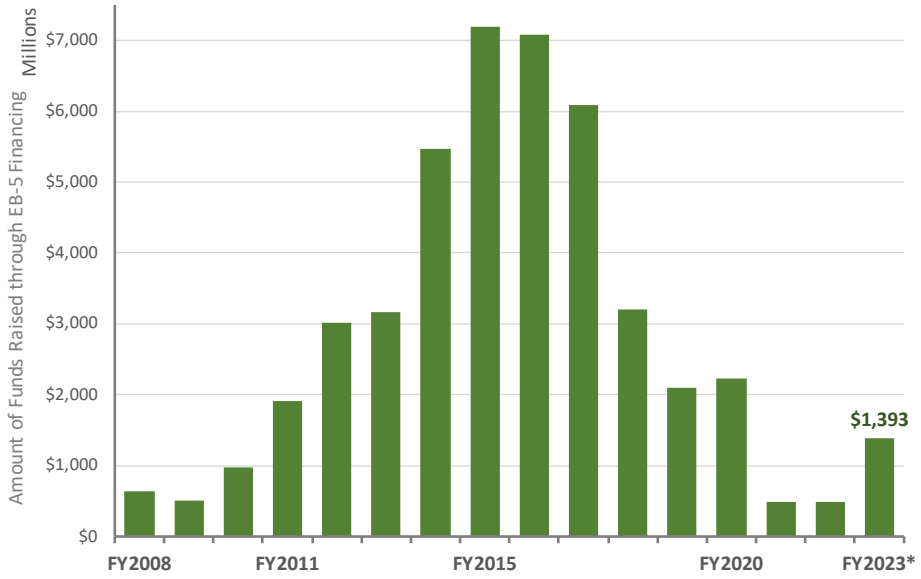
Among other trends, here are four key data points that we learned from the most recent Form I-526 and Form I-526E statistics:

1. OVER $1.5 BILLION IN CAPITAL INVESTMENT HAS BEEN RAISED THROUGH EB-5 SINCE THE INCEPTION OF THE RIA

Between the introduction of the new I-526/I-526E forms in July 2022 and the end of the third quarter of fiscal year (FY) 2023 (the latest data available when this article is written), USCIS received more than 1,760 Form I-526E petitions and over 140 Form I-526 (direct) petitions. Based on our calculations, over $1.5 billion has been raised through the EB-5 Program since the inception of the RIA, and nearly $1.4 billion in capital investment has been generated through the EB-5 Program in FY2023 alone. The amount of EB-5 investment generated in the first three quarters of FY2023 already represents a 190% increase from the amount of EB-5 investment raised in the entire FY2022.

Over $1.5 Billion Raised through EB-5 since RIA

Figure 1: Estimated Amount of EB-5 Investment Inflows by Fiscal Year



Note: EB-5 capital investment inflow is estimated by the number of Form I-526 and Form I-526E filed to USCIS.
** 2023 data for Q1, Q2, and Q3 only*
Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

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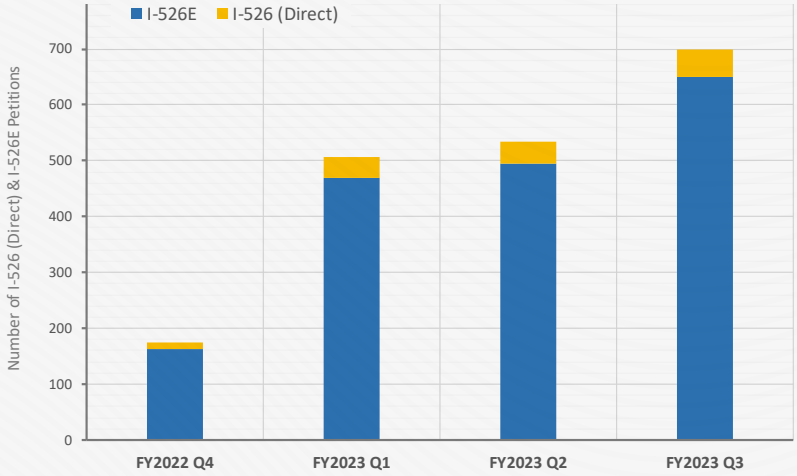
2. DEMAND FOR EB-5 CONTINUES TO GROW SINCE RIA

During the first three quarters of FY2023, USCIS received 1,558 I-526E petitions and 129 I-526 (direct EB-5) filings. The volume of I-526 filings, including both I-526 (direct EB-5) and I-526E, in the current fiscal year has already represented a 103% growth compared to the total number of I-526 petitions filed throughout all FY2022. In addition, 649 I-526E petitions were filed in Q3, FY2023, representing a 31% growth from the previous quarter. The number of I-526E filings has increased consecutively in each quarter since the inception of the form in Q4 FY2022, indicating continued growth in demand for EB-5 Regional Center projects among investors across the globe.

Continued Growth of the Demand for EB-5

Figure 2: Number of Form I-526E and I-526 (Direct) Filed by Quarter



Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

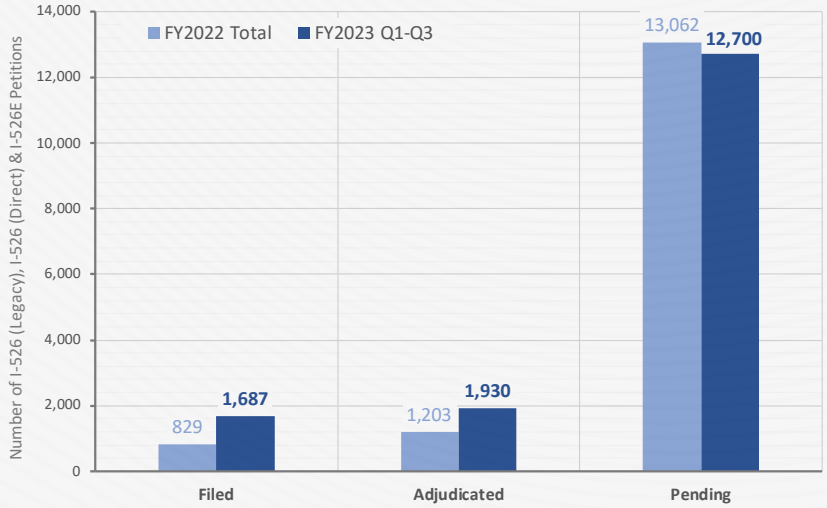
3. HIGHER CASE ADJUDICATION VOLUME IN FY2023

USCIS processed 1,930 legacy I-526 cases in the first three quarters of FY2023, marking a 60% increase from the total I-526 adjudication volume in FY2022. Although USCIS did not disclose any data on the number of I-526 (direct) and I-526E cases that have been adjudicated, we believe that the agency has already started approving I-526E cases that are associated with investment in an EB-5 project located within a rural area. Overall, the increase of case adjudications should translate into the improvement of case processing time for I-526 petitions.

As USCIS continues to process a relatively large number of legacy I-526 cases in FY2023, the number of pending legacy I-526 petitions continues to decline. As of the end of Q3 FY2023, there were 10,802 pending legacy I-526 cases at USCIS, which represents a 7% decrease from the previous quarter. The backlog of legacy I-526 cases has been reduced by 16% since the beginning of FY2023.

Higher Case Filing and Adjudication Volumes in FY2023

Figure 3: YOY Data Comparison for Form I-526s Filed, Adjudicated & Pending



Note: Data in the chart above include I-526 (legacy), I-526 (direct) and I-526E cases.
Adjudication data for FY2023 Q1-Q3 only includes Form I-526 (legacy) statistics.
Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

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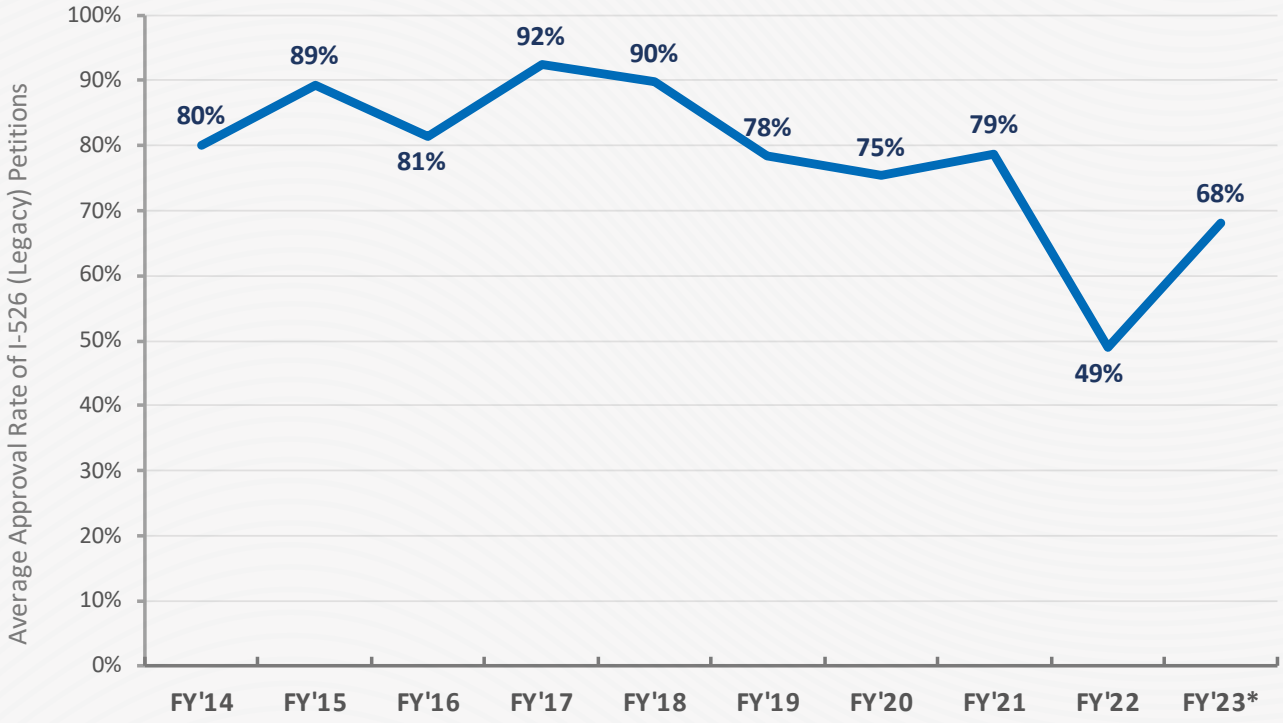
4. APPROVAL RATE OF PRE-RIA I-526 CASES DROPPED SIGNIFICANTLY IN THE LAST TWO FISCAL YEARS

Since FY2022, the average approval rate of legacy I-526 cases has seen a significant decline. Particularly, less than half of the I-526 cases that were adjudicated in FY2022 received an approval from USCIS, marking the lowest approval level in the 32-year history of the EB-5 Program. In the first three quarters of FY2023, the average approval rate of pre-RIA I-526 petitions was 68%, bouncing back from the historical low but remain at the second-lowest level observed in the last 10 years. Despite the drop of average approval rate, USCIS has not released any information shedding light on the reasons behind the recent surge in legacy I-526 case denials

Approval Rate of Pre-RIA I-526 Cases Remain at Historical Low

Figure 4: Average Approval Rate of Form I-526 (Legacy) by Fiscal Year



** 2023 data for Q1, Q2 and Q3 only*
Source: U.S. Citizenship and Immigration Services (USCIS).
Prepared by: IIUSA

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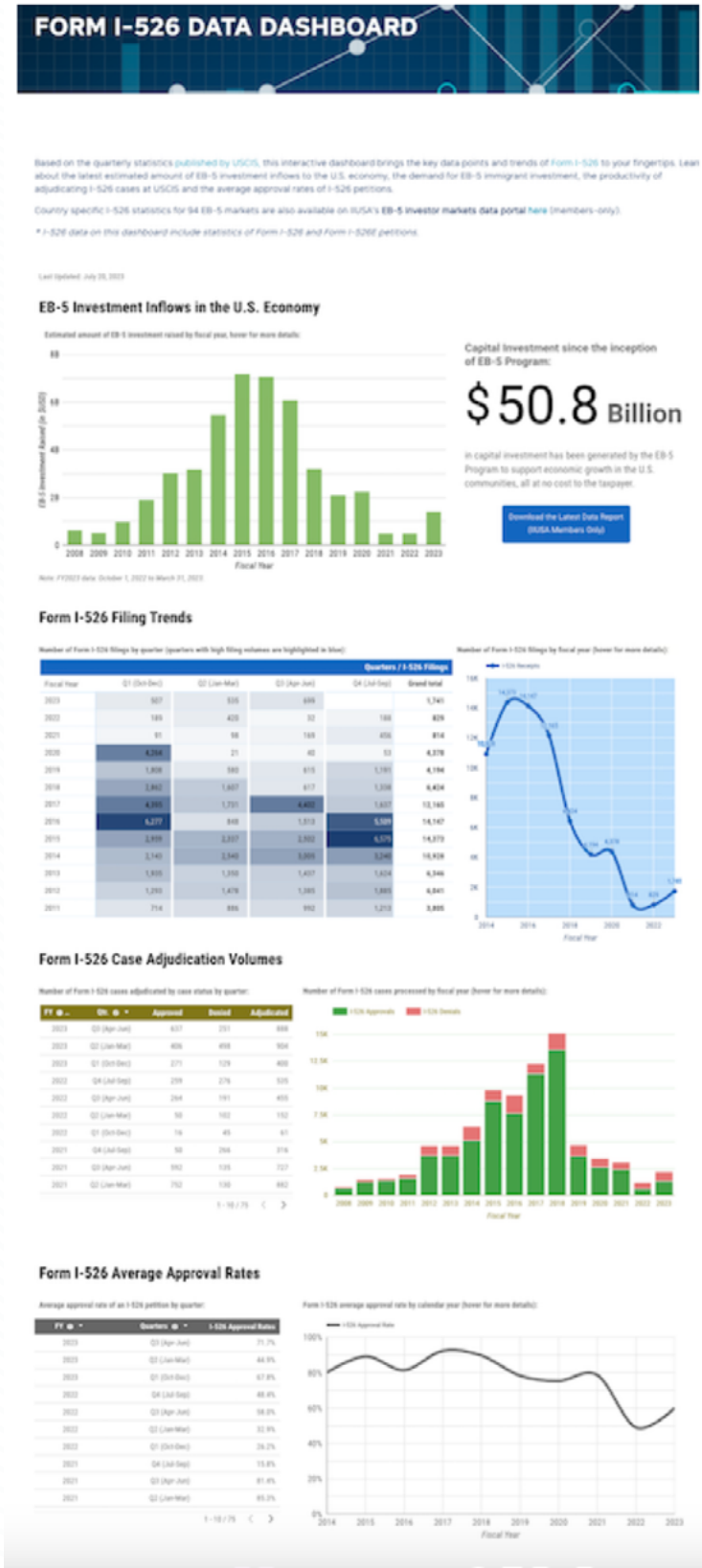
INTRODUCING IIUSA'S I-526 DATA DASHBOARD

Make sure to check out IIUSA's interactive I-526 Data Dashboard on iiusa.org/i526data. This free online tool features the historical trends of the demand for the EB-5 Program and the most up-to-date statistics on Form I-526 and Form I-526E petitions, including:

- **Estimated amount of EB-5 investment inflows to the U.S. economy.**
- **Number of I-526 petitions filed by EB-5 investors.**
- **USCIS's productivity in processing I-526 cases.**
- **Average approval rates for I-526 petitions; and**
- **The latest news and analyses regarding USCIS adjudication trends.**

Since its launch in 2021, this powerful data tool has attracted more than 9,000 pageviews, and over 7,500 EB-5 stakeholders across the globe have visited this interactive data dashboard. Add this new interactive I-526 Data Dashboard to your bookmark and stay up-to-date with the key statistics most relevant to EB-5 investors.



IIUSA FOIA Efforts

A Frustrating Process to Critical Data

Ashley Sanislo Casey
Director of Education & Professional Development | IIUSA

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In previous editions of the *Regional Center Business Journal*[1], I have written about IIUSA's efforts of submitting Freedom of Information Act (FOIA) requests to the federal government, mainly U.S. Citizenship & Immigration Services (USCIS), for information and data related to the EB-5 Program. This data is critical to curating and updating the information IIUSA provides to its members, which is distilled through analytical reports produced by our own internal data scientist, Lee Li. Not only do our members find these reports interesting to read, but many find the information crucial to their marketing and business plans as it sheds light on EB-5 trends that are otherwise inaccessible.

If you have read any of my previous articles or have made FOIA requests yourself over the last five or so years, then you know the process is frustratingly slow, disjointed, and often fruitless. When I first joined IIUSA in 2014, we often would receive helpful, relatively well-organized responses through FOIA requests within only a few weeks of making the request. As time passed, the turnaround time has more or less come to a grinding halt. Most requests sit in the "pending" pile for years and when we do receive a response, they tend to be heavily redacted, omitting the crucial information we were seeking in the first place.

A majority of our requests are what we call our regular requests – ones that we ask for the same data on a recurring basis (monthly, quarterly, or yearly). Because of the regular recurrence of these requests since I have been with IIUSA, we know that they used to provide this information not just in a much faster manner, but also in a more complete data set. The shift in both the processing time to fulfill the request and the completeness of the information we receive is confounding and burdensome, to say the least.

An added level of incongruity is fostered by the fact that there is no central place to update contact information with USCIS. IIUSA has moved offices a few times over the last several years and when our address moves, any FOIA response to a request made while at the previous address will be sent to the address on the request. With request processing taking years, we have found many times that responses are lost in the mail, and we are unable to let USCIS know to send all future responses to a new address.

To give you an idea of the backlog we are dealing with, below are three tables. Tables 2 and 3 were included in previous articles on this topic and table 1 is the updated and current data. It is important to note that IIUSA made only two requests between October 2021 and March 2023. This was due to both the lapse in the program and waiting for new forms to be published and filed once the EB-5 Reform and Integrity Act (RIA) passed in March 2022. Our oldest pending request is from May 2018. There are a total of 5 pending requests from 2018; 11 from 2019; 8 from 2020; 7 from 2021; and 38 from 2023.

Table 1: IIUSA FOIA requests as of October 2023

Total Request	Pending	Denied	In Appeal	In Litigation	Fulfilled
363	69	29	0	2	258

Table 2: IIUSA FOIA requests as of September 2020

Total Request	Pending	Denied	In Appeal	Fulfilled
285	82	20	1	182

Table 3: IIUSA FOIA Requests as of August 2019

Total Request	Pending	Denied	In Appeal	Fulfilled
248	70	20	0	158

[1] Vol. 9, Issue 2; Vol. 6, Issue 1; Vol. 7, Issue 2 https://iiusa.org/news-publications/regional-center-business-journal/

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A new column was added to Table 1 to reflect requests in litigation. In 2020, IIUSA began suing USCIS to compel records that were critical to our operations and/or to the industry's knowledge. To date, IIUSA has been a party to six lawsuits to compel records through FOIA requests that were pending beyond the statutory obligation of the agency, which states that the agency has 20 business days to provide a response[2].

We are grateful to both John Pratt (Kurzban Kurzban Tetzeli & Pratt) and Brandon Meyer (Meyer Law Group) for their help in drafting requests and filing and managing some of these lawsuits on behalf of the association. While these requests and subsequent lawsuits have not provided us the full breadth of the information we sought, it has produced some useful information and certainly in a more timely manner than if we waited for the requests to be fulfilled on the normal timeline of FOIA processing.

A year after RIA's passage, IIUSA rebooted its FOIA request machine in earnest. With many new forms required under the new law and several months into implementation, there was a slew of information to be solicited to learn how the EB-5 industry and USCIS were adapting to RIA. Since restarting our FOIA requests in March 2023, IIUSA has submitted 38 requests, all of which are still pending. Below is a list of some of IIUSA's new recurring requests. **This is not an exhaustive list** and does not account for one-off requests (such as when IIUSA sought records on how USCIS came to its policy update on redeployment in August 2020).

Forms I-526 and I-526E adjudication statistics;

Form I-829 adjudication statistics;

Forms I-526 and I-526E petitioner country of birth information;

Form I-829 petitioner country of birth information;

Forms I-956 and I-956F adjudication statistics and approval letters;

RFEs, NOIDs, and denial information;

Regional Center NOITs and termination letters; and

The fact remains that IIUSA and its members rely heavily on the information guarded by USCIS which is only available through formal FOIA requests. Without the timely and full release of information requested, the association and the industry are hamstrung to understand trends in EB-5 that heavily impact how businesses plan for current and future projects, marketing, and compiling documents for EB-5-related petitions and applications. Additionally, much of the information sought through FOIA is critical to IIUSA's advocacy efforts, and without updated data, the evidence we bring to Capitol Hill to tell the story of EB-5's success and profound impact on American communities is outdated.

Unfortunately, I do not have a silver lining on which to end this article, but I can assure you IIUSA will not let up on its FOIA efforts. We will continue to make our requests, do regular audits of the requests and any releases we receive, follow up with FOIA officers and the National Records Center, and work with members who are willing to donate their time and expertise to this cause.

[2] Public Law No. 114-185

A QUICK AND EASY DIGITAL TOOL TO MASTER THE BASICS OF EB-5

LEARN ABOUT

- **EB-5 terms and acronyms**
- **The EB-5 immigration process**
- **Regional Center operations**
- **Economic impact**
- **Securities laws**
- **And more!**

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