U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Public Engagement
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U.S. Citizenship and Immigration Services

Executive Summary

USCIS QUARTERLY EB-5 STAKEHOLDER MEETING

January 23, 2012

On January 23, 2012, USCIS hosted an EB-5 Quarterly Stakeholder Engagement via teleconference. The meeting included a focus on EB-5 issues of concern to state governments, and USCIS subject matter experts provided an overview of state government's role in the EB-5 process. In particular, the delegation of authority for states to designate TEAs, the USCIS deference to state TEA designations, and USCIS procedures for managing abuse of TEA designations were discussed. In addition, other EB-5 topics of concern to stakeholders were discussed.

EB-5 Quarterly Stakeholder Engagements are designed as an opportunity for stakeholders to ask questions about the process, and receive responses from a panel of subject matter experts. The following reflects the content of this question and answer session.

STATE GOVERNMENT ISSUES

TARGETED EMPLOYMENT AREAS

Q: Please clarify whether a TEA exists only for a specific application, allowing geography to change to meet investment need or if a TEA in a metropolitan area is set for a period of time (one year from approval) making the TEA community sensitive.

A: The following is taken directly from the December 11, 2009 policy memo, Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829 Petitions:

"If the regional center proposal bases its predictions regarding the number of direct or indirect jobs that will be created through EB-5 investments in the regional center, in whole or in part, by offering investment opportunities to EB-5 investors with the reduced $500,000 threshold, then the Targeted Employment Areas (TEAs), Rural Areas (areas with populations under 20,000 people) and areas of high unemployment (areas with unemployment rates 150% or more of the national rate), should be identified. ***Note: An alien filing a regional center affiliated Form I-526 must still establish that the investment will be made in a TEA within the regional center at the time of filing of the alien's Form I-526 petition, or at the time of the investment, whichever occurs first, to qualify for the reduced $500,000 capital investment threshold."***

Therefore, the current policy is Form I-526 specific; i.e., each alien investor must demonstrate that his/her investment has been made or is in the process of being made within an area of high unemployment as part of the Form I-526 process.

Q: Request for USCIS to consider removing the TEA designation requirement so that all foreign investors can invest a minimum of $500,000.

A: The statute at INA 203(b)(5) governs the definition of "TEA" and the allocation of immigrant visas for investors who invest in a TEA. USCIS has no authority to remove a statutory requirement.

REGIONAL CENTERS

Q: If a Regional Center is owned by a local government (i.e. a city or county), please clarify whether EB-5 projects located in a *different* but contiguous city or county still fall under the city or county's Regional Center designation.

A: According to the Form I-924 regional center application instructions, a regional center application must focus on a geographically defined area. This area must be contiguous and clearly identified in the application by providing a detailed map of the proposed geographical area. In order to be affiliated with a regional center the new commercial enterprise must be located within the geographical boundaries that were sought and approved as part of the regional center application or any amendments.

Q: Please clarify whether city- or county-owned Regional Center projects can still get the benefits of the Regional Center even if they are in a different city or county.

A: According to the Form I-924 instructions, required documentation for regional center Designation includes a description of the business structure of both the regional center entity and the ***commercial enterprises that are or will be affiliated with the regional center.*** In order to be affiliated with the regional center the new commercial enterprise must be located within the approved regional center boundaries.

OTHER EB-5 ISSUES

STATISTICS, PROCESSING TIMES AND VISA USAGE

Q: Request for the most recent quarterly statistics for Form I-526, I-829, Regional Center proposal receipts, approvals and denials, and comparison of this data to preceding four quarters.

A: Current statistics were provided in the PowerPoint slides which can be found at….. Please note that USCIS does still plan on releasing regional center specific I-526/I-829 statistics. We are continuing to review the data and the release date has not yet been determined.

CUSTOMER SERVICE

Issue: The CSC and SCOPSCATA email boxes are not as responsive as they have been in the past. Inquiries about cases pending beyond normal processing times receive a stock reply that the case is being held pending resolution of an issue at HQ.

Response: The California Service Center (CSC) reorganized and re-staffed the USCIS Immigrant Investor Mailbox in October 2011. The mailbox is now administered full-time by an EB-5 supervisor who reviews all incoming messages, assigns inquiries to mailbox-dedicated EB-5 Immigration Services Officers for response, and monitors the timeliness of the response. Our goal is to reply to each inquiry within 2-3 days of receipt. Currently, we are meeting this goal, with many inquiries receiving a reply the day of receipt. However, inquiries vary in complexity, with some involving ordering files outside the CSC and others involving coordination with USCIS Headquarters. While our goal remains the same, to reply within 2-3 days of receipt, responses to more complex inquiries may take additional time. And,

while each response is crafted to be as informative as possible, please note that we cannot share case-specific details outside the adjudication process on live cases. The CSC will continue to dedicate necessary resources to the USCIS Immigrant Investor email box, which we understand is the foundation of the USCIS Immigrant Investor Program's customer service efforts.

I-526 PETITIONS

Q: Once an initial I-526 petition is approved for one investor, please clarify whether information and documentation concerning the Regional Center designation and the actual EB-5 project need to be included or re-approved in every subsequent investor's I-526 petition for the same project. If so, please consider changing the process so that only information showing each subsequent investor's authentic source of investment funds is required.

A: Each petition must be documented with the required evidence for Form I-526 petitions under 8 CFR 204.6(j). USCIS's Transformation initiative may present solutions to the issue of the submission of duplicative documentation in multiple petitions at some future date.

STAFFING AND TRAINING UPDATES

Q: Please provide the number of business analysts and economists that have been hired and how many will be hired in total. In addition, please provide guidance on how USCIS will deal with prior favorable adjudications based on previously held "reasonable methodologies " if advice from newly hired experts identifies viability issues with previously approved employment analysis and please confirm whether CSC processing times have decreased since allowing "mentors" to go back to doing casework.

A: USCIS is focusing considerable resources to increase EB-5 staffing at the CSC, to include additional Immigration Service Officers (ISOs), Supervisory Immigration Service Officers (SISOs), as well as contract and federal economists.

USCIS conducted a two-week EB-5 training session in December 2011. It is of note that in FY10 USCIS more than doubled staffing levels. However, the increase in EB-5 application and petition filings more than tripled in FY11. In FY12 we have more than doubled staffing levels yet again, and are working hard to bring the new EB-5 staff up to speed in EB-5 adjudications. We now have federal and contract economists on staff and expect to have more on staff in the coming months.

In addition, the CSC is realigning EB-5 staffing by implementing specialized teams to concentrate on specific regional centers, which will promote greater efficiencies and consistency in the Form I-526 and Form I-829 adjudicative processes.

CONDITIONAL PERMANENT RESIDENCE

Q: Please discuss the procedure for the investor to obtain conditional permanent residence status and clarify whether the investor is authorized to work during that time. In addition, please clarify whether it is USCIS procedure to limit the duration of the I-551 stamp until the date of a scheduled master calendar hearing or merits hearing, which are frequently continued.

A: Upon approval of the Form I-526 petition, the EB-5 investor will either file a Form I-485, Application to Register Permanent Residence or Adjust Status, with USCIS to adjust status to conditional permanent resident within the United States, or file a DS-230, Application for Immigrant Visa and Alien Registration, with the Department of State to obtain an EB-5 visa for admission to the United States. The EB-5 investor (and his or her derivative family members) is granted conditional permanent residence for a two-year period upon the approval of the I-485 application or upon entry into the United States with an

EB-5 immigrant visa. The Conditional Permanent Resident card will be valid for two years, and can be extended for one year upon receipt of a properly filed Form I-829 Petition by Entrepreneur to Remove Conditions. Any extensions are normally for one year and the investor is authorized to work the entire period that they are considered to be a conditional permanent resident. Additionally, if the investor becomes subject to proceedings, USCIS offices will limit the duration of the I-551 stamp until the date of a scheduled master calendar hearing or merits hearing. To ensure proof of valid immigration status, the investor may have to make repeated visits to the local USCIS office until the investor's case is decided. If extended foreign travel is required during this period, the investor should coordinate trips abroad within the period of his or her valid status.

Q: Please confirm when an applicant must file Form I-829 with USCIS.

A: According to 8 CFR 216.6(a)(1) the alien investor must file an I-829 within the 90-day period preceding the second anniversary of his or her admission to the United States as a conditional permanent resident. In other words, within the 90 day period preceding the expiration of his/her conditional green card. This is also addressed on p. 4 of the December 2009 memo: December 11, 2009 EB-5 Memo.

REGIONAL CENTERS

Q: Please identify the criteria used by USCIS to determine the appropriate geographical boundary for a regional center that has one initial "shovel ready" project but is planning ***future projects*** in a larger geographical area when the details and location of the future projects are unknown.

A: Section 610(a) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended, provides in pertinent part:

> A regional center shall have jurisdiction over a **limited geographic area**, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. (emphasis added)

8 CFR 204.6(m)(3) states, in pertinent part:

> (3) Requirements for regional centers. Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the Assistant Commissioner for Adjudications, which:
>
> (i) Clearly describes how the regional center **focuses on a geographical region** of the United States, and how it will promote economic growth through increased export sales [if any], improved regional productivity, job creation, and increased domestic capital investment; (emphasis added).
>
> (iv) contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy…

As indicated above, the statute provides that "a regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones." The regulation at 8 C.F.R. § 204.6(m)(3) also provides that each regional center must describe "how the regional center

focuses on a geographical region of the United States." The geographical limitation of the regional center was also emphasized in *Matter of Izummi*, 22 I&N Dec. 169,174 (Comm'r. 1998).

Each regional center must demonstrate in the Form I-924 application that the activities of the Regional Center will focus on the proposed geographic area in a manner consistent with the statutory requirement that at a Regional Center have jurisdiction over a limited geographic area with the purpose of concentrating pooled investment in defined economic zones and with the regulatory requirement that it will promote economic growth and have a positive economic impact throughout its region.

In regards to identifying future projects, the instructions to Form I-924 Application for Regional Center designation allow for amending previously approved regional center applications including amending the geographical area; organizational structure or administration; capital investment projects; and capital investment instruments including offering memoranda.

Q: If a developer enters into an agreement with a designated regional center whereby the regional center agrees to take on the project as a regional center-sanctioned project, please clarify what criteria USCIS uses to determine the appropriateness of this relationship. For example, if the relationship is a license agreement, is this problematic? Are other forms of agreement considered to be more compliant?

A: The regulation defines "commercial enterprise" as: "any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition includes a commercial enterprise consisting of a holding company and its wholly-owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business. This definition shall not include a noncommercial activity such as owning and operating a personal residence." See 8 CFR 204.6(e).

Form I-924 instructions allow for documentation of business relationships to include, but not limited to the following: articles of incorporation, certificate of incorporation, or legal creation as a partnership or limited liability company. The regional center may amend its designation to include the new project.

Q: Please clarify how USCIS defines "organizational structure or administration" as it pertains to I-924 amendments.

A: Part 3 of Form I-924 requires the identification of the organization structure for the regional centers as well as regional center affiliated commercial enterprises. Part 3 also requires a description of the "regional center's administration, oversight, and management functions that are or will be in place to monitor all EB-5 capital investment activities."

Q: Please provide an update on when the MFAS database will be integrated with CLAIMS so that I-829 case status will be available online.

A: There are currently no plans to integrate the MFAS database with CLAIMS.

Q: Please clarify the documentary requirements for a Regional Center amendment filing if the amendment is solely to (a) change industry code; or (b) change geography; or (c) change economic methodology.

A:

a) Change Industry Code:
A change or request for a new industry code should include all the information that is usually submitted with the initial I-924 in relation to a request for an industry category, and requires the petitioner to submit a new or significantly revised business plan and economic impact analysis. The evidence submitted should include a comprehensive and transparent business plan, economic impact analysis, and job creation analysis to demonstrate that, following the preponderance of evidence standard, the regional center will be targeting the EB5 investment in that industry. Please note that the industry code should be as specific as possible, using as many digits as possible. In addition, considering the fact that the magnitude of economic impact multipliers vary by industry, the petitioner should submit a revised economic impact analysis that uses multipliers which correspond to the newly-requested industry

(b) Change Geography:
A change in the geographic scope of the regional center should include all the information that is usually submitted with the initial I-924 to demonstrate the following pursuant to 8 CFR 204.6(m)(3): that the regional center will be focusing on the requested geographic region; that there will be promotion of regional or national growth; and that there will be a regional or a national impact.

The evidence submitted should include a valid and reasonable statistical or economic justification that the proposed investment activities will have an economic impact on the entire, clearly defined geographic region. This justification is often presented in the form of commuting patterns (as obtained from the U.S. Census Bureau) or geography-specific economic trends (usually obtained from the 2007 Economic Census). In addition, the petitioner should explain to USCIS if the market conditions significantly differ from the originally-requested region and also submit revised economic impact estimates that use multipliers that correspond to the newly-requested geographic territory.

(c) Change Economic Impact Methodology:
A change in economic methodology should include all of the information that is usually submitted with the initial I-924 to demonstrate that the economic methodology, as it relates to the associated business plan, is using data that is transparent, applicable, reliable, and up-to-date. USCIS would need to see a revised economic impact analysis that transparently demonstrates the analytical steps taken by the petitioner to derive the employment impacts. Depending on the nature of the change, however, we may need to see a revised business plan as well. For instance, suppose the petitioner is requesting to change its methodology from IMPLAN to RIMS II direct employment. In this case, we would need to see the business plan sections that describe the number of projected employees because these values serve as inputs to the RIMS II model.

Q: Please provide an update on how USCIS will use the information collected on Form I-924A and when a summary of that information will be available.

A: USCIS plans to publish summarized Regional Center data in order to be responsive to requests for this information from a broad spectrum of USCIS' external stakeholders, to include members of Congress, other federal agencies, state agencies, and major media outlets. USCIS plans to publish data provided each year by all designated regional centers, to include attributes of the RC-affiliated capital investments, such as:

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

This data will be published on the USCIS Web site for each fiscal year, along with summarized data gathered systemically by USCIS.

Q: Please clarify how clear requests, such as geographical expansion, new economic models, and additional NAICS codes, can be quickly approved through an I-924 amendment.

A: Please see instructions on the I-924 Form for a description of the changes that require the filing of an amendment and ones that do not require an amendment filing. As noted in the response to question #3 above, all documents and information in support of an amendment filing should comport to the requirements as set forth in section 203(b)(5) of the INA, section 610(a) of P.L. 102-395 as amended by P.L. 107-273, and 8 CFR 204.6(m).

An efficient way to have the amendment approved is for the regional center to submit evidence that the change is warranted and appropriate. While this evidence will vary depending on the requested change, in general the evidence should include a revised business plan and/or economic impact analysis. Simply giving notice to USCIS Immigrant Investor Programs staff is not sufficient.

EB-5 BASIC PROGRAM

Q: Please clarify whether, in the EB-5 Basic Direct context, an investor can individually, or in conjunction with other EB-5 investors, diversify funds into two or more businesses.

A: An immigrant investor who is not associated with a regional center may deploy capital into a portfolio of businesses, so long as all capital is deployed through a single commercial enterprise and all jobs are created within that commercial enterprise. For example, in an area in which the minimum investment amount is $1,000,000, the investor can satisfy the statute if the commercial enterprise deploys $600,000 toward one business that it wholly owns, and $400,000 toward another business that it wholly owns. See 8 C.F.R. § 204.6(e). (In this instance, the two wholly-owned businesses would have to create an aggregate of ten new jobs between them.) An investor cannot qualify, on the other hand, by investing $600,000 in one commercial enterprise and $400,000 in a separate commercial enterprise.

Q: Please confirm whether EB-5 investors can acquire existing residential real estate as a part of a diversified investment plan and rent it to the public as an EB-5 qualified enterprise as long as adequate full time jobs are created by all the diversified investments combined.

A: No, this is counter to the requirement that 100% of an EB-5 investment be put at risk through an investment into a *job creating* commercial enterprise. Although the requisite number of jobs might be created, the total investment would not be available to the job creating enterprise.

OTHER ISSUES

Q: Please discuss USCIS' procedure when a Form I-9, Employment Eligibility Verification is submitted with an I-829, Petition by Entrepreneur to Remove Conditions and USCIS determines that one or more of the employees is not a U.S. citizen or permanent resident.

A: USCIS will review Form I-829, Petition by Entrepreneur to Remove Conditions, for evidence that 10 full-time jobs for qualifying employees have been created or will be created within a reasonable time. Such evidence may include, but is not limited to, business payroll records, relevant tax documents, and employee Forms I-9. A qualified employee is a U.S. citizen, permanent resident or other immigrant authorized to work in the United States. The individual may be a conditional resident, an asylee, a

refugee, or a person residing in the United States under suspension of deportation. This definition does not include the immigrant investor; his or her spouse, sons, or daughters; or any foreign national in any nonimmigrant status (such as an H-1B visa holder) or who is not authorized to work in the United States. USCIS may issue a Request for Evidence (RFE) if it is determined that claimed employees are not qualifying employees. USCIS will also determine, on a case by case basis, if the investor has the opportunity to replace an unqualified employee with a qualifying employee.

Q: Please confirm whether the number of EB-5 visas via the regional center pilot program is capped at 3,000 or can exceed 3,000 (up to 10,000).

A: 3,000 is not a hard cap number. The regional center pilot program can exceed the 3,000.

Q: Please provide the number and duration of extensions of the EB-5 pilot program since 1992.

A: The EB-5 pilot program has had a series of successive extensions, beginning in 1997 and most recently in 2009. The legislative history can be found in the following citations:

Pub.L. 105-119, Title I, § 116(a), 111 Stat. 2467 (Nov. 26, 1997); Pub.L. 106-396, Title IV, § 402, 114 Stat. 1647 (Oct. 30 2000); Pub.L. 107-273, Div. C, Title I, § 11037(a), 116 Stat. 1847 (Nov. 2, 2002); Pub.L. 108-156, § 4, 117 Stat. 1945 (Dec. 3, 2003); Pub.L. 111-83, Title V, § 548, 123 Stat. 2177 (Oct. 28, 2009)

Q: Are there any questions of policy currently under consideration that are on hold until all of the new hiring of business analysts and economists has completed?

A: No.

Q: If a U.S. Commercial enterprise has been closed or is about to be closed because of lack of revenue to sustain the business operations, then can this circumstance lead to an approvable new EB-5 project? That is, can a new commercial enterprise buy the assets of this failed business and be treated as a new commercial enterprise for EB-5 purposes? Would this be treated differently to the concept of "troubled business?"

A: There appears to be confusion regarding the concept of "troubled business" versus the concept of what the requirements are for demonstrating that the entity in which the investor makes his or her investment qualifies as a new commercial enterprise.

In order for the entity to qualify as a new commercial enterprise, the entity must have been established after November 29, 1990. If the entity was established prior to that date, then in order to be "new", the entity must be restructured or reorganized as described in 8 CFR 204.6(h). These concepts do not specifically relate to EB-5 job creation requirements.

In order to count jobs existing prior to the acquisition of a commercial enterprise through EB-5 investment, the business must meet the definition of a "troubled business" defined as: "a business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve or twenty-four month period prior to the priority date on the alien entrepreneur's Form I-526, and the loss for such period is at least equal to twenty per cent of the troubled business's net worth prior to such loss. For purposes of determining whether or not the troubled business has been in existence for two years, successors in

interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded." See 8 CFR 204.6(e)

Note that pursuant to Matter of Soffici, 22 I&N Dec. 158 (AAO 1998):

A petitioner who acquires a pre-existing business must show that the investment has created, or at least has a reasonable prospect of creating, 10 full-time positions, in addition to those existing before acquisition. The petitioner must, therefore, present evidence concerning the pre-acquisition level of employment. Simply maintaining the pre-acquisition level of employment is not sufficient unless the petitioner shows that the pre-existing business qualifies as a "troubled business."

FOLLOW UP QUESTIONS

Q. USCIS has delayed processing a number of cases pending resolution of one issue. When will this issue be resolved and when will USCIS provide guidance on those pending applications?

A: In our last stakeholder call regarding the EB-5 immigrant investor program, a number of stakeholders raised questions with respect to our adjudication of petitions that for purposes of the job creation requirement have utilized what has been commonly termed a "tenant-occupancy" methodology. In light of the number of questions we received on this subject, we thought that providing clarification of our approach was warranted.

The "tenant-occupancy" methodology seeks credit for job creation by independent tenant businesses that lease space in buildings developed with EB-5 funding. USCIS continues to recognize that whether it is economically reasonable to attribute such "tenant-occupancy" jobs to the underlying EB-5 commercial real estate project is a fact-specific question. Each case filed will depend on the specific facts presented and the accompanying economic analysis.

USCIS is now moving forward with the adjudication of certain pending I-924 Applications For Regional Centers Under the Immigrant Investor Pilot Program that are supported by the "tenant-occupancy" economic methodology. Our newly-hired economists and business analysts will be bringing expertise to these new adjudications, and requests for evidence will be issued to certain applicants and petitioners to address any questions or issues we have about the economic methodologies employed in their specific cases.

Our retention of experts with economic and business analysis expertise is part of our ongoing efforts to improve our administration of the EB-5 program. We are taking other steps to both improve the efficiency of the program as well as to ensure its integrity. We look forward to keeping you informed of these improvements.

Q. Is it permissible for the geographical boundaries of a city or county-owned regional center to extend beyond the city or county limits?

A: Yes, this is acceptable.

Q. Does a state department of labor have the authority to designate a targeted employment area?

A: Before any such designation is made, an official of the state must notify USCIS of the agency, board, or other appropriate governmental body of the state which shall be delegated the authority to certify that the geographic or political subdivision is a high unemployment area. See 8 CFR 204.6(i)

Q. Will USCIS provide average I-526 and I-829 processing times?

A: I-526 and I-829 average processing times are available on the USCIS Processing Times web page. The I-924 processing times are available on the USCIS web page by clicking I-924 Processing Times.

Q. Can USCIS provide a breakdown of receipts, approvals and denials for regional center and individual applications?

A: Aggregate statistics for each form-type were presented during the meeting. In the future USCIS will provide distinct basic program and regional center program statistics for Form I-526 and I-829 petitions.

Q. When an exemplar petition is approved, what type of scrutiny is applied to the actual project? How closely should it mirror the exemplar? Are applications reviewed for compliance with the exemplar or against general requirements?

A: There is no requirement to file an exemplar I-526 petition; however, the December 2011 policy guidance includes guidance on filing exemplar petitions and the deference that will be given by USCIS when adjudicating individual investor petitions. At the I-924 stage, USCIS considers whether the applicant has provided verifiable detail about how jobs will be created in each industry. The Form I-924 revisions will include guidance on submitting an application for a shovel ready project and guidelines on how to provide adequate specificity in regional center applications.

Q. Why has there been a decrease in approvals recently?

A: Quarterly data provides only a snapshot of receipts, approvals and denials in a given time period and may not accurately reflect increases and decreases in approvals and denials over time. The annual data is more reflective of overall trends than quarterly data. Such data was provided during the meeting.

Q. USCIS stated that 2,300 EB-5 visas have been issued so far this fiscal year. Are there any plans to increase the number of visas available? Are applicants placed on a waiting list when the visa cap is met?

A: Congress sets visa numbers, so an increase in the number of visas available would require congressional action. Once USCIS approves an I-526, a priority date is assigned. The priority date is the date the I-526 is received by USCIS, not the date it is approved. If the visa cap is met in a given year, the State Department would assign "cut-off" dates for visa availability. When the 10, 0000 additional visas become available at the beginning of the next fiscal year, the State Department would update the "cut-off" date and start issuing visas based on priority date. See INA 203 and 201(d).

Q. Can USCIS intervene if a state issues a TEA designation based on specific census tract and the attorney or petitioner disagrees with how the state chooses to designate the TEA?

A: Please consult the regulations for information on the state TEA designation process. At this time, USCIS defers to the state's TEA designation in terms of the state's definition of the geographic boundaries of the TEA based upon high unemployment. However, USCIS must ensure compliance with the statutory requirement that the proposed area designated by the state in fact has an unemployment rate of at least 150 percent of the national average rate. For this purpose, USCIS will review state determinations of the unemployment rate and, in doing so, USCIS can assess the method or methods by which the state authority obtained the unemployment statistics.

Q. When will USCIS issue I-924A statistics?

A: We are in the process of reviewing the Form I-924A supplements that were filed by designated regional centers for FY2011. After this review process is concluded, then USCIS will analyze the data, along with USCIS records regarding EB-5 petition and applications and will publish results from this review and analysis later on during this fiscal year.

Q. Is buying and renting real estate permissible if all other criteria are met?

A: Adjudication is done on a case by case basis. If the investor's funds are 100% committed and at risk and are being used to create qualified jobs, this may be acceptable. Again, USCIS must note that each case is adjudicated on a case by case basis and decisions will vary depending on the actual facts presented.

Q. Which national unemployment rate should be used for purposes of TEA designation?

A: Annual data sets for national and local data based upon the most recently available data should be provided as proof of high unemployment. It is important that the data set covers an annualized period of time so that unemployment rates are reasonably represented, and are not overly high or low based on short-term fluctuations which may or may not be representative of the actual unemployment realities of a given area.

Q. For a project that is almost shovel ready, but not quite, is it better to submit a general I-924 followed by an amendment, or to wait a few months until the project is shovel ready and submit a more detailed I-924?

A: USCIS can not give legal or adjudicative advice. As such, the applicant needs to make this decision on a case by case basis.

Q. Does the investor have to have management experience?

A: No. The regulations at 8 CFR 204.6(j)(5) discuss the investors role in the management of the new commercial enterprise. There is no EB-5 requirement that an EB-5 investor must have prior management experience.

Q. What is the main reason for Form I-829 denials?

A: Non-compliance with the statute at INA 216(a) and the regulations found at 8 CFR 216.6.

Q. Can USCIS provide examples of well-written regional center proposals?

A: No.