

CAPITAL AT RISK



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We Will Cover:

- Capital
- Investing or In the Process of Investing
- Evidence of Investment
- At Risk
- Escrow Issues
- Common Investing Scenarios



Capital:

- Definition of Capital
- Regional Center Context
- Standalone Context
- Required Amount of Capital



Capital:

8 C.F.R. § 204.6 (j) states that:

A petition submitted for classification as an alien entrepreneur must be accompanied by evidence that the alien has invested or is actively in the process of investing lawfully obtained *capital* in a new commercial enterprise in the United States which will create full-time positions for not fewer than 10 qualifying employees.



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Definition of Capital:

8 C.F.R. § 204.6(e):

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness... Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.



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Indebtedness Analysis:

- The indebtedness analysis must be done on all cases where the funds for the capital investment were obtained from a loan.
- In either the regional center or standalone context, cash proceeds from indebtedness are often invested in the NCE. In those circumstances, the investor must show that:
 - the investor is personally and primarily liable for any loan obtained to get money for the capital investment; and
 - any loan obtained to get money for the capital investment is secured to the required investment amount by assets owned by the investor.
- If the investor is not personally and primarily liable for the loan, or does not own the assets securing the loan, or if the value of the investor's assets securing the loan is not equal to the required investment amount, the case will need to be denied.



Indebtedness Analysis – Cont'd:

Scenario:

Investor's capital was derived from the proceeds of a loan secured by real estate owned by investor's brother.

Issue:

Although the investor is personally and primarily liable for the mortgage loan, the investor does not own the real estate (assets) that were used as collateral on the mortgage



Regional Center Context:

The capital used in the regional center cases will almost always be cash or cash proceeds of indebtedness. Due to the normal set-up of the NCEs, they require the capital investment to be in cash in order to loan the combined investors funds to a JCE.

In these cases, the petitioner will deposit cash or cash proceeds of indebtedness into the NCE's account, or the escrow account set up by the NCE.



Standalone Context:

In standalone cases, we see much more variety in what capital is invested:

- Cash or Cash Proceeds of Indebtedness - Directly infused into the NCE;
- Property - An office or warehouse for the NCE to conduct business, or machinery or other tangible items needed by the NCE; or
- Inventory – Products for the NCE to use.



Required Amount of Capital:

The investor is required to show that he/she has invested or is actively in the process of investing the required amount of capital:

- \$500,000 if the NCE is located in a Targeted Employment Area (TEA) – The majority of Regional Center cases handled are in a TEA
- \$1,000,000 if the NCE is not located in a TEA



Invest or In the Process of Investing:

- Definition of Invest
- In the Process of Investing
- Indebtedness Analysis
- Investing Capital at Risk
- Common Deficiencies



Definition of Invest:

Definition of “Invest” from 8 C.F.R. § 204.6(e):

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital . . .



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In the Process of Investing:

The Investor must provide evidence that he or she has invested or is actively in the process of investing the required amount of capital. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the investor is actively in the process of investing. The investor must show actual commitment of the required amount of capital.

- The required amount of capital is not required to be invested at the time of filing. Absent an escrow arrangement, a signed subscription agreement will generally satisfy the “in the process of investing” element.



Evidence of Investment:

- What can you expect to see?
- Typical Documents



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What can you expect to see?

8 C.F.R. 204.6(j) contains a list of acceptable evidence:

- Bank statements showing amount deposited in United States business accounts for the enterprise;
- Evidence of assets which have been purchased for use in the United States enterprise;
- Evidence of property transferred from abroad for use in the enterprise;
- Evidence of monies transferred or committed to be transferred to the NCE;
- Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner.

Evidence listed here is not exclusive. You will see evidence outside of that listed in the regulation.



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Typical Documents:

- **Escrow Agreement** – Allows investor to place funds in the hands of a third party who will deliver the capital to the NCE upon the occurrence of some specified event.
- **Subscription Agreement** – Investor agrees to participate in investment by purchasing equity in the NCE.
- **Loan Agreement** – NCE agrees to loan pooled investor capital to job creating entity.
- **Operating Agreement (LLC) / Partnership Agreement (LP)** – Sets the terms of all rights and obligations among each of the members/partners of the NCE.
- **Offering Memorandum** – Provides the specific terms of the NCE's capital investment offering for pooled investments.



Common Deficiencies:

Watch out for:

- Capital being exchanged for any kind of debt instrument or arrangements.
- Investors loaning funds to the NCE
- Investors getting the capital from the NCE then reinvesting it back into the NCE
- In standalone cases, make sure whole investment is not immediately removed from NCE account.



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Risk:

- Capital at Risk Requirement
- Shielding Risk
- Actual Business Activities
- Capital Made Available
- Reserves
- Redemption Agreements
- Guaranteed Returns



Capital at Risk Requirement:

The capital at risk requirement comes from
8 C.F.R. § 204.6 (j)(2) which states:

To show that the petitioner has *invested* or is *actively in the process of investing* the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital *at risk for the purpose of generating a return on the capital placed at risk.*



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Shielding Risk:

Limiting Risk v. EB-5 Requirement for Capital to be At Risk

Investors attempt to shield their capital from risk, or never actually place their capital at risk. The adjudicator must review the file to make sure the capital has been invested and placed at risk for the purpose of generating a return.

NCEs are allowed to try and limit the risk of any given project. The adjudicator must make the determination of whether the project is limiting the risk or if the NCE is actually shielding all risk to investor.



Actual Business Activities:

The AAO determined that merely establishing a commercial enterprise and signing a lease is not sufficient evidence of capital at risk (*Matter of Ho*).

In other words, simply formulating an idea for future business activities, without taking any meaningful concrete action, is not sufficient to establish that the capital investment has been placed at risk with the NCE.



Capital Made Available:

The full amount of the investment must be made available to the business most closely responsible for creating the employment upon which the petition is based (*Matter of Izummi*).

In order for the investor to establish that capital was placed at risk, he/she must present evidence that the capital was invested into the NCE and was subsequently made available to the JCE for the actual undertaking of business activity. Without this evidence there is no assurance that the funds will in fact be used to carry out the business activities and create jobs.



Examples of Evidence of Actual Business Activities:

- Bank statements
- Business licenses and business insurance
- Contracts
- Invoices
- Bills of lading
- Receipts
- Purchase orders
- Advertisements



Reserves:

As a standard practice, construction companies create a reserve for unrealized costs associated with construction. These reserves are only used if costs are over the anticipated amount.

For EB-5 purposes, capital which is held in reserve is not capital which is at risk for the purpose of job creation. This money is not actively being used to create jobs.



Redemption Agreements:

A redemption agreement is an agreement found in the investment documents which would require the NCE to repurchase the investor's equity at a certain time or upon some other triggering event. Because this constitutes a debt arrangement, capital invested in exchange for a redemption agreement is not properly "invested" and is not at risk (*Matter of Izummi*).

Example:

A "sell option" clause in the limited partnership agreement or offering memorandum that gives the investor the right to require the NCE to repurchase the investor's ownership interest in the NCE upon approval of the I-829.



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Guaranteed Returns:

A guaranteed return is any agreement or arrangement found in the investment or project documents which entitles the investor to a certain amount of money or other economic benefit beyond those afforded to a typical equity investor. If an investor is guaranteed the return of a portion of his or her investment, or is guaranteed a rate of return on a portion of his or her investment, then the amount of such guaranteed return is not at risk.

Examples:

- The offering memorandum guarantees annual payments to the investor of 5%.
- A clause in the limited partnership agreement allows the investor to be paid \$500,000 at the dissolution of the partnership, regardless of whether the project is profitable.
- When the investment is made, the investor will be given a house or car for his or her exclusive use.



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Escrow Issues:

- Escrow Agreements
- Permissible Conditions on Escrow Agreements
- Examples of Impermissible Escrow Clauses
- Holdback Clauses



Escrow Agreement:

An escrow is a legal instrument that places the funds of one person in the hands of a neutral third party to be delivered to another party upon the occurrence of some event or meeting of some condition.

Escrow agreements are not directly addressed in the regulations; however, IPO policy has allowed escrow agreements. It has been determined that allowing the funds to be held by a neutral party to ensure investment after agreed upon conditions are met is beneficial to USCIS, the NCE, and the investor.



Permissible Conditions on Escrow:

The EB-5 Policy Memorandum outlines the following permissible conditions for the investor to remove the investment from escrow:

Denial of the Form I-526

Denial of an immigrant visa by Department of State

Denial of the Form I-485 for adjustment of status

Note: IPO has determined that it is acceptable to include a clause where the investor can remove the capital if the immigrant investor program is terminated.



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Examples of Impermissible Escrow Clauses:

- The escrow agreement allows investor to remove capital at any time.
- The escrow agreement allows investor to remove the capital if USCIS fails to take action on the Form I-526 in 12 months.



Holdback Clauses:

A holdback clause allows the escrow agent to hold a portion of each investor's capital from being released to the NCE. These funds, generally, will be used to repay an investor if his or her Form I-526 is denied.

It is important for the adjudicator to thoroughly review any holdback clauses. There are certain clauses which are acceptable and others that are impermissible.



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Holdback Clauses, Cont'd:

How to determine if a holdback clause is acceptable:

- Holdback clauses that guarantee a denied investor a refund from non-EB-5 capital are generally acceptable.
- Holdback clauses designed to repay a denied investor with funds from the other investors' escrowed holdback funds must continue to make the full amount of the capital from all approved investors available to the JCE (i.e. the number of investors x the capital contribution to the NCE = the amount of funds made available to the JCE).



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Common Investing Scenarios:

For Regional Center Cases:

The most common scenario for investment is the investor providing capital to the NCE's escrow agent. These funds will be held by the escrow agent until certain conditions are met. Then the funds will be released to the NCE.

For Standalone Cases:

The most common scenario for investment is the investor depositing the capital directly into the account of the NCE. Most standalones do not use an escrow account; however, it is not prohibited.



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Questions?



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- Date of last revision: April 20, 2015. This presentation is current only as of the date of last revision.
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COMPREHENSIVE BUSINESS PLAN



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We Will Cover:

- Purpose of the Comprehensive Business Plan (CBP)
- Legal Authority
- Elements of a CBP
- Common Supporting Documents
- Adjudication and the CBP



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Purpose of the CBP:

- The CBP is one way by which EB-5 investors can show how their investment will create not fewer than ten full-time positions for qualifying employees.
- A CBP is not required for an EB-5 petition, but it is the only method of establishing prospective job creation
- Also a good place to look for other EB-5 issues, such as capital at risk



Legal Authority – The INA

Section 203(b)(5) of the INA provides the statutory basis for the employment creation requirements of the EB-5 program.

It requires that the petitioner engage in a new commercial enterprise:

1. In which the petitioner has invested or is actively in the process of investing the requisite amount of capital, and
2. Which will create full-time employment for at least 10 U.S. citizens, aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (not including the immigrant, his or her spouse, sons, or daughters)



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Legal Authority – 8 C.F.R.

8 CFR § 204.6(j)(4) lays out two methods that an investor must use to show employment creation:

1. The investor can provide documentation, such as tax records and I-9s, showing that the NCE has already hired 10 qualifying employees **OR**
2. The investor can provide a CBP showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than 10 qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

Unless the investor can show that at least 10 full-time positions for qualifying employees have already been created, the petitioner must provide a CBP. In the case of a troubled business, a CBP is always required. Most EB-5 filings will include a CBP.



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Legal Authority – *Matter of Ho*

- *Matter of Ho* provides the clearest guidance on what elements a CBP “should” contain
- A CBP does **NOT** have to include every element listed in *Matter of Ho* to be acceptable, however, the more elements and details the CBP contains, the more likely it is that the CBP will be considered comprehensive
- “To be ‘comprehensive’ a business plan must be sufficiently detailed to permit the Service to draw reasonable inferences about the job-creation potential. Mere conclusory assertions do not enable the Service to determine whether the job-creation projections are any more reliable than hopeful speculation.” *Matter of Ho*
- Most important factor is CREDIBILITY
- “Without knowing whether a business is feasible and has the potential for long-term survival, neither the petitioner nor the Service can reasonably conclude that it will create permanent, full-time employment.” *Matter of Ho*



Matter of Ho Elements

- Description of the business, its products and/or services, and its objectives

- Market analysis, including:
 - the names of competing businesses and their relative strengths and weaknesses;
 - a comparison of the competition's products and pricing structures; and
 - a description of the target market/prospective customers of the new commercial enterprise.



Matter of Ho Elements - Cont'd

- Required permits and licenses obtained (or in the process of obtaining)

- Manufacturing or production process, if applicable.
 - the materials required, and the supply sources

- Contracts executed for the supply of materials and/or the distribution of products



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Matter of Ho Elements – Cont'd:

- Marketing strategy of the business
 - including pricing, advertising, and servicing

- Business organizational structure and its personnel's experience

- Business's staffing requirements
 - timetable for hiring
 - job descriptions for all positions



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Matter of Ho Elements – Cont'd

- Sales, cost, and income projections and the detailed bases therefor

- Credibility
 - Is the business feasible?
 - Are the assumptions described in the CBP reasonable?
 - Is it more likely than not that the NCE will create 10 qualifying jobs per investor?



Common Supporting Documents:

➤ Documents you can expect to see submitted to support the CBP:

- Loan Agreements
- Deeds/Leases
- Permits/Licenses
- Contracts – developer, lenders, government
- Architectural/Engineering plans
- Economic Reports



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Live Case Review:

- Look in your files and find the CBP
- Remember to look for the *Matter of Ho* elements we just discussed



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Adjudication and the CBP:

Regional Center Projects

- An economist will review the CBP along with the other organizational documents and list any concerns in the economist's due diligence summary (EDDS)
- Adjudicator leads should review the CBP and other documentation for issues when the project is released for adjudication
- Adjudicating officer should be familiar with the CBP and job creation for the project
- Most regional center projects will claim indirect job creation, some will claim both direct and indirect job creation



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Adjudication and the CBP – Cont'd:

Stand-Alone Projects

- Vary greatly in quality and length
- Generally not reviewed by economists prior to adjudication; consultation available!
- Stand-alones not affiliated with a regional center can only claim direct job creation!

Troubled Business Projects

- The CBP will include information on job preservation



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Adjudication and the CBP – Cont'd:

Beyond job creation, the CBP and supporting documents are a good resource for information on capital at risk.

- Supporting documents can be evidence of business activity
- Examine the proposed expenditures to make sure that EB-5 capital is going to job creation
 - Pay attention to fees and unexplained expenditures
- Examine financial documents for possible guarantees that could indicate the petitioner's funds are not at risk



Adjudication and the CBP – Cont'd:

Common Problems with CBPs:

- Lack of detail, all rhetoric, no substance
- Unsupported by any documentary evidence
- Economist determines that the economic model used to calculate indirect jobs is not valid



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About this Presentation

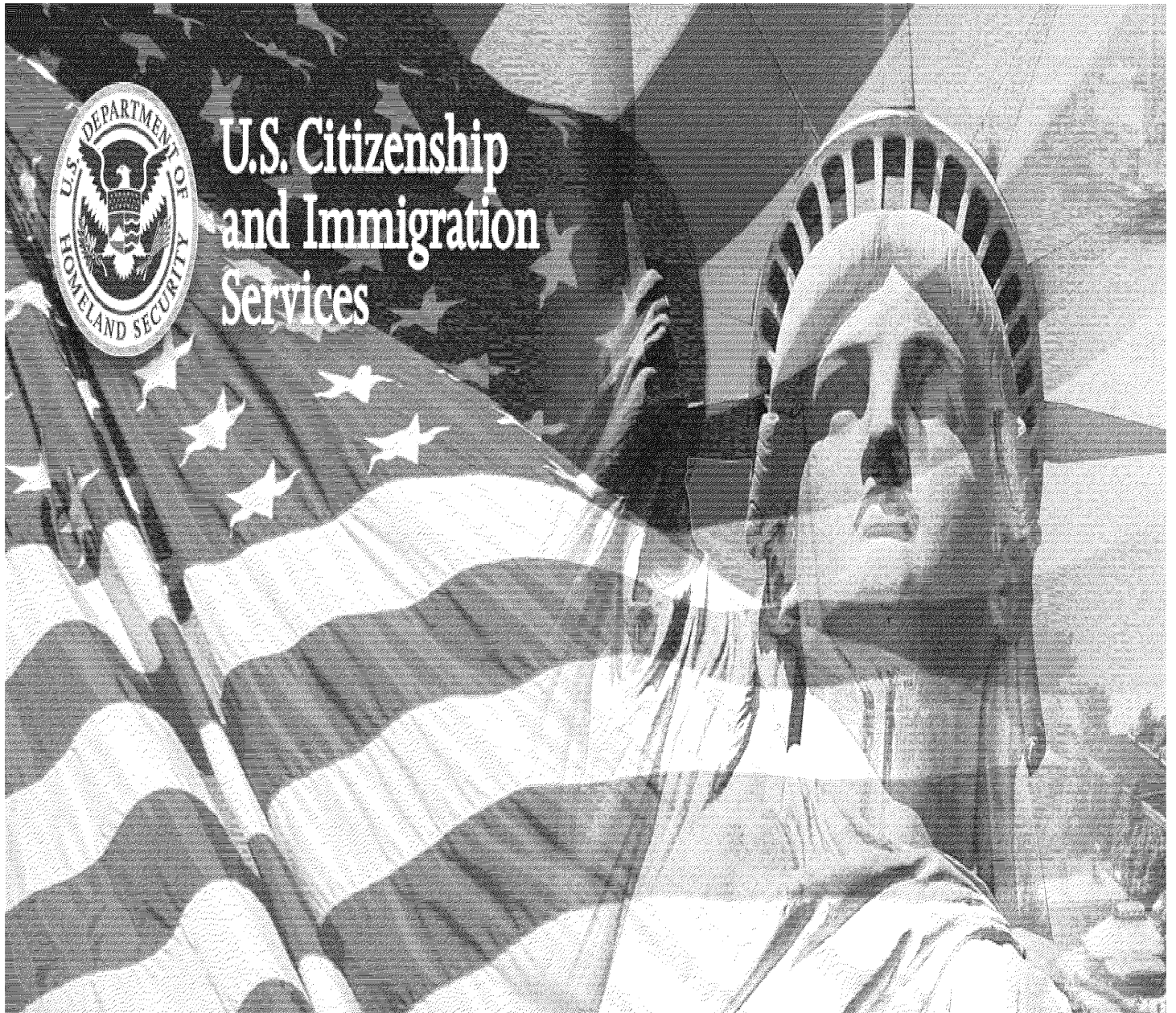
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Child Status Protection Act (CSPA)



Child Status Protection Act (CSPA)

- On August 6, 2002, President Bush signed legislation that addressed the problem of minor children losing their eligibility for certain immigration benefits as a result of processing delays.
- Public Law 107-208 amended the INA and created section 203(h) of the INA. It provided a new set of rules for determining if certain aliens satisfy the age requirement as children under 101(b)(1) of the INA.





Processing Age Out Dependents

- Due to the definition of “child,” an applicant was precluded from adjustment of status if the applicant reached the age of 21 years.
- Many children aged-out due to delays in processing their immigrant visa petitions.
- The amendments made to the Immigration and Nationality Act (INA) by the Child Status Protection Act (CSPA) have changed the way we determine whether the alien may immigrate in a “child” classification, allowing some individuals to remain a “child” after turning 21.





Purpose

- The CSPA allows some beneficiaries to retain a visa classification as a “child” after the beneficiary reaches the age of 21.






Eligible Applicants

- Immediate relatives
- Direct beneficiaries of family based preference petitions
- Derivative beneficiaries of family and employment based preference petitions
- Diversity Visa applicants
- Asylee and Refugee derivatives





Preference Categories (including EB-5)

- For preference categories, a calculation is applied to determine the beneficiary's "CSPA age." If the beneficiary's CSPA age is under 21 when a visa becomes available, then a one-year period begins during which the alien must seek to acquire permanent residence for CSPA coverage to continue.
- It does not matter if the child aged out before or after the enactment date of CSPA, so long as the petition is filed before the child reaches 21.





CSPA Age Formula

- Determine the age of the alien on the date that a visa number becomes available (1st day of the first month the visa bulletin showed the priority date current or the date of petition approval, whichever is later).
- Subtract the number of days the petition was pending from the alien's age at the time of visa availability.
- This is the alien beneficiary's CSPA age. If the child is under 21 using this formula, he or she is eligible for benefits under CSPA, if they seek to acquire within one year.



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Visa Availability

- For an already approved petition: the first day of the first month a visa is available per the DOS visa bulletin
- If the visa is available when the petition is approved: the day of approval





Visa Regression

- If the petition is approved, but they haven't applied for an IV or adjustment: age calculated when the visa becomes available again
- If the petition is approved and they have already applied for an IV or adjustment: age is locked in and they remain eligible when the visa is available again





Who Determines Eligibility

- The Department of State (DOS) or a USCIS Field Office makes final determination at the time of visa or adjustment adjudication.



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EB-5-based Case Scenario


- Meilan's mother filed an I-526 on April 1, 2013.
- Meilan turned 21 years of age on November 1, 2014 (DOB November 1, 1993).
- The visa number for EB-5 category is current now and the I-526 is still pending.
- Let's pretend we approve the petition today...



Calculating “CSPA age”

- CSPA age:
- Biological age on the date visa became available minus time petition was pending:
- 2015 4 15 2015 4 15 21y 5m 14d
- -1993 11 1 -2013 4 1 -2y 0m 14d
- ----- ----- -----
- 21y 5m 14d 2y 0m 14d 19y 5m 0d
- CSPA age 19y 5m d





What do you think?

- If the I-526 is approved today, would Meilan eligible as a derivative under CSPA?



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Answer

Yes:

- She is the (derivative) beneficiary of a pending or approved petition on or after the date of enactment
- By subtracting the petition pending time, her “CSPA age” is under 21
- Caveat: she must “seek to acquire” lawful permanent residence within one year of visa availability (in this scenario, the date the petition was approved)





Effect of Visa Regression

- Meilan's mother filed an I-526 on April 1, 2013.
- Meilan turned 21 years of age on November 1, 2014 (DOB November 1, 1993).
- The visa number for EB-5 category regressed on March 1, 2015 and remains unavailable for Meilan.
- The I-526 is still pending.
- Let's pretend we approve the petition today...

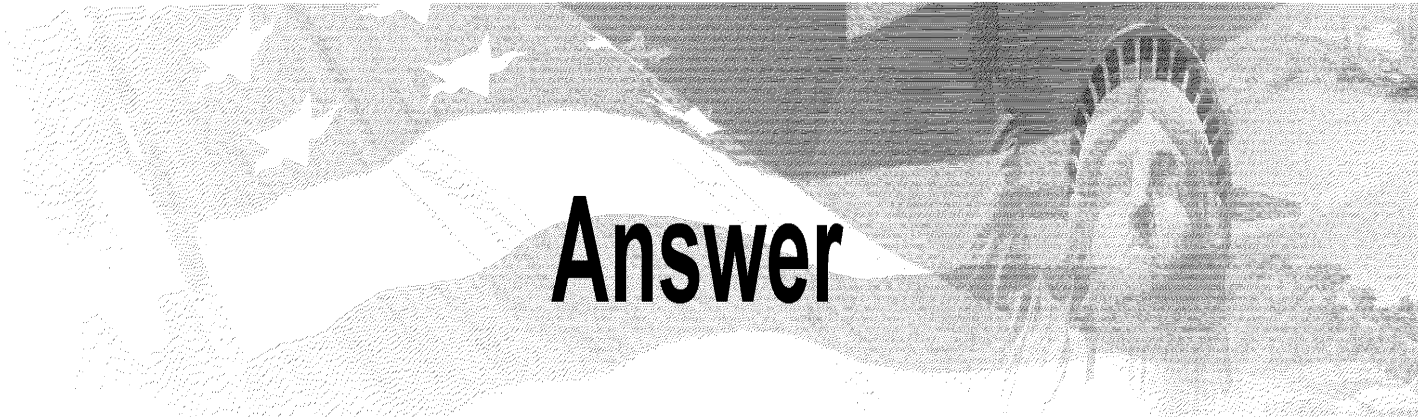




How does visa regression impact Meilan?

- If the visa becomes current for her again on October 1, 2015?
- What if the visa doesn't become available for her until October 1, 2018





Answer

- CSPA age:
- Biological age on the date visa became available minus time petition was pending:
- 2015 10 1 2015 4 15 21y 11m 0d
- -1993 11 1 -2013 4 1 -2y 0m 14d
- ----- ----- -----
- 21y 11m 0d 2y 0m 14d 19y 10m 16d
- CSPA age 19y 10m 16d
- She's still OK

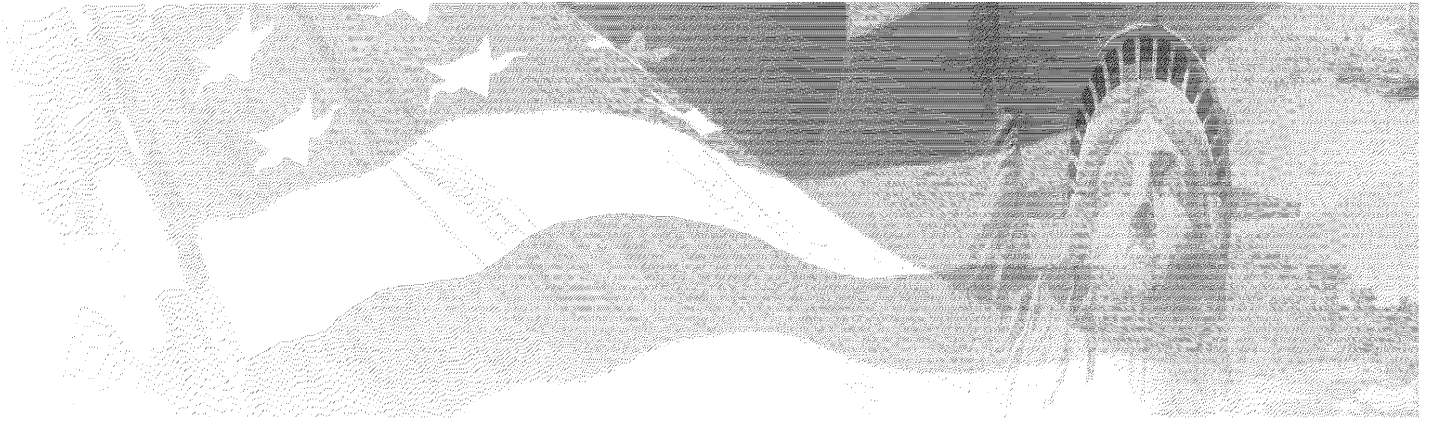




Continued...

- CSPA age:
- Biological age on the date visa became available minus time petition was pending:
- 2018 10 1 2015 4 15 24y 11m 0d
- -1993 11 1 -2013 4 1 -2y 0m 14d
- ----- ----- -----
- 24y 11m 0d 2y 0m 14d 22y 10m 16d
- CSPA age 22y 10m 16d
- She's out of luck =(





Questions?



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Hit me up anytime...

If you want to know more because you're a glutton for punishment, or you come across questions in your case work, I'm always happy to discuss the CSPA...

Erica Simpson

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DHS OVERVIEW



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We Will Cover:

➤ Vision

➤ Mission

➤ History

➤ Organization



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DHS Vision:

The vision of homeland security is to ensure a homeland that is safe, secure, and resilient against terrorism and other hazards



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DHS Core Missions:

1. Prevent terrorism and enhance security;
2. Secure and manage our borders;
3. Enforce and administer our immigration laws;
4. Safeguard and secure cyberspace;
5. Ensure resilience to disasters; and
6. Mature and strengthen the DHS enterprise.



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History of DHS:

- Proposed by U.S. Commission on National Security/21st Century on Jan. 31, 2001.
- In response to 9/11 attacks, President George W. Bush created Office of Homeland Security on Oct. 8, 2001.
- Homeland Security Act of 2002 signed into law on Nov. 25, 2002.



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History of DHS – Cont'd

- DHS became operational on Jan. 24, 2003.
- Most DHS component agencies were merged into the department on Mar. 1, 2003.



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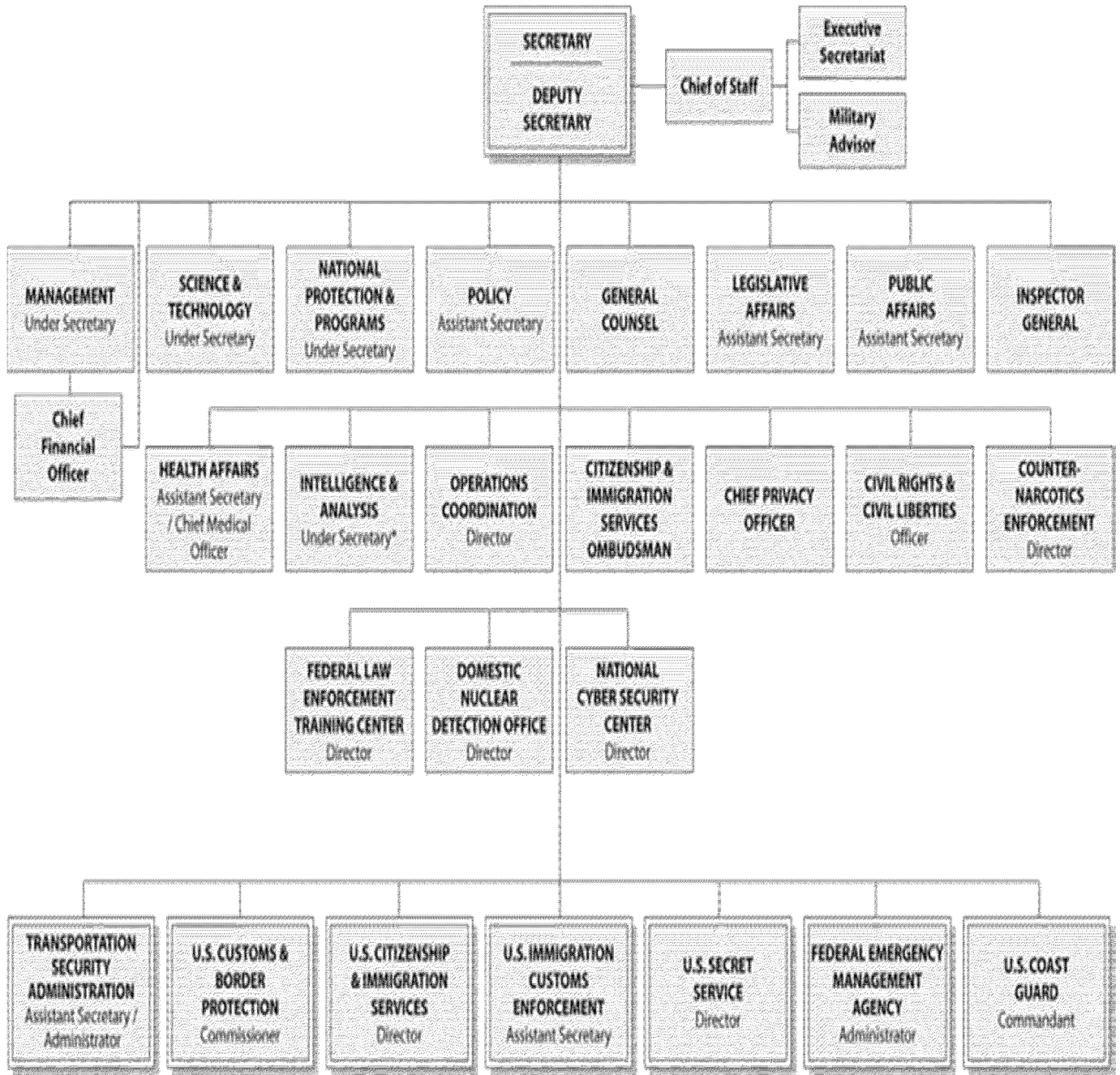
Organization of DHS:

- Cabinet-level secretariat.
- Includes:
 - nine component offices and directorates; and
 - seven component agencies.



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DHS Organizational Chart:



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DHS Component Agencies:

- U.S. Citizenship & Immigration Services (USCIS)
- U.S. Customs & Border Protection (CBP)
- U.S. Immigration & Customs Enforcement (ICE)
- Federal Emergency Management Agency (FEMA)
- Transportation Security Administration (TSA)
- U.S. Secret Service (USSS)
- U.S. Coast Guard (USCG)



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U.S. Citizenship and Immigration Services

- Grants immigration and citizenship benefits.
- Promotes awareness and understanding of citizenship.
- Provides information to immigrants and stakeholders.
- Ensures integrity of the immigration system.



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Customs and Border Protection:

- Regulates and facilitates the lawful movement of people and goods across U.S. borders.
- Responsible for protecting the borders of the U.S. at and between ports of entry.
- Front line in protecting the American public against terrorists and instruments of terror.



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Immigration and Customs Enforcement:

- Charged with enforcing U.S. immigration and customs laws and preventing terrorism.
- Investigates illegal movement of people and goods into, out of, and through the U.S.
- Largest DHS investigative arm.



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Federal Emergency Management Agency:

- Leads the federal government's role in preparing for, preventing, and mitigating the effects of all domestic disasters, whether natural, man-made, or acts of terror.
- Coordinates with other federal, state, and local agencies for responses to, and recovery from, disasters.



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Transportation and Security Administration:

- Protects the transportation system for people and goods into, out of, and through the U.S.
- Ensures the freedom of movement for people and commerce.
- Performs inspections of people and goods at ports of entry and other transit hubs and stations.



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U.S. Coast Guard:

- Charged with ensuring maritime safety, security, and stewardship.
- Protects the safety and security of people, natural and economic resources, and the integrity of our maritime borders.



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U.S. Secret Service:

- Investigates violations of laws related to the counterfeiting of currency, obligations and securities of the U.S.
- Investigates financial and electronic crimes.
- Protects the President, Vice President, and other designated individuals as well as the White House and other government buildings in Washington, D.C.



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DHS Integration:

- Agencies are designed to focus on particular duties and missions, but often overlap.
- DHS components coordinate for regular, day-to-day activities as well as special investigations.



DHS & The Big Picture:

- DHS relies on other federal executive departments for essential information to carry out its mission, including Dept. of State, Dept. of Labor, Dept. of Justice, and others.
- DHS and its components regularly coordinate with other federal, state, and local agencies



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Interacting with Other Agencies:

USCIS accesses several databases owned by other DHS components and outside agencies to run background checks and verify petitioner information, such as

- TECS (CBP)
- CCDI (DOS)
- NCIC (FBI)



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Interacting with Other Agencies – Cont'd

- IPO relies on our FDNS branch to reach out to and coordinate with other DHS components and outside agencies when needed.
- Speak to your supervisor if you have a need to interact with another agency.



About this Presentation

- Author: Investor Program Office
- Date of last revision: April 20, 2015. This presentation is current only as of the date of last revision.
- This presentation contains no sensitive Personally Identifiable Information (PII).
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DIRECT JOB CREATION



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We Will Cover:

- Statutory laws governing Direct Job creations
- Regulatory definitions
- Job creation requirements
- Brief summary of Direct v. Indirect v Induced jobs
- Direct Jobs in depth
- Seasonal and/or contracted jobs
- New Jobs (Precedent decision) and Pooled Investments
- Troubled Business



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Statutory Job Creation Framework:

INA 203(b)(5)(A)(ii) requires that immigrant investors invest a certain amount of capital into a new commercial enterprise, which will create full-time employment for at least 10 qualified U.S. workers.

INA 203(b)(5)(D) defines full-time employment as employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.



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Regulatory Job Creation Definitions:

8 CFR § 204.6 (e) – “Employee”

Employee means an individual who provides services or labor for the new commercial enterprise (NCE) and who receives wages or other remuneration directly from the NCE.

8 CFR § 204.6 (e) – “Full-Time Employment”

Full-time employment means employment of a qualifying employee by the NCE in a position that requires a minimum of 35 working hours per week.



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Regulatory Job Creation Definitions, Cont'd:

8 CFR § 204.6 (e) – “Full-Time Employment”

- A job-sharing arrangement whereby two or more qualifying employees share a full-time position shall count as full-time employment provided the hourly requirement per week is met.
- This definition shall not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week.



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Regulatory Job Creation Definitions, Cont'd:

8 CFR § 204.6 (e) – “Qualifying Employee”

- Means a United States citizen, lawful permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation.
- This definition does not include the investor, the investor’s spouse, sons, or daughters, or any nonimmigrants.



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Regulatory Job Creation Requirements:

8 CFR § 204.6(j)(4) describes how each investor must demonstrate job creation:

- (i) General. To show that a NCE will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
 - (A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
 - (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the NCE, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.



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Regulatory Job Creation Requirements 8 CFR § 204.6 (j)(4), Cont'd :

(ii) Troubled Business. To show that the NCE which has been established through a capital investment in a troubled business meets the statutory employment creation requirement, the petition must be accompanied by evidence that the number of existing employees is being or will be maintained at no less than the pre-investment level for a period of at least two years.

➤ Photocopies of tax records, Forms I-9, or other relevant documents for the qualifying employees and a comprehensive business plan shall be submitted in support of the petition.



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Regulatory Job Creation Requirements 8 CFR § 204.6 (j)(4),
Cont'd :

(iii) Immigrant Investor Program. To show that the NCE located within a regional center approved for participation in the Immigrant Investor Program meets the statutory employment creation requirement, the petition must be accompanied by evidence that the investment will create full-time positions for not fewer than 10 persons either directly or indirectly through revenues generated from increased exports resulting from the Program. Such evidence may be demonstrated by reasonable methodologies including those set forth in paragraph (m)(3) of 8 CFR § 204.6.



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Direct v. Indirect Jobs:

- Direct Jobs: are those jobs that establish an employer-employee relationship between the newly established commercial enterprise and the persons that they employ.
 - Investors who invest in a commercial enterprise that is not affiliated with a regional center may only be credited with direct jobs.

- Indirect Jobs: are the jobs held by persons who work outside the newly established commercial enterprise. For example, indirect jobs include employees working for producers of materials, equipment, and services that are used in a commercial enterprise's capital investment project, such as concrete and steel producers and providers of accounting services.



Induced Jobs:

- Induced jobs: are a subset of indirect jobs that can be credited to investors who invest in a regional center-affiliated commercial enterprise.
 - Induced jobs are those jobs created when direct and indirect employees spend their increased incomes on consumer goods and services.

An example would be workers who are directly or indirectly employed as the result of a highway construction program might spend some portion of their wages in their communities at grocery stores, auto repair shops, and movie theaters.



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From this point forward:

We will focus on Direct Jobs only which fall under:

- 8 CFR § 204.6 (j)(4)(i)(A) – Already hired employees.
- 8 CFR § 204.6 (j)(4)(ii) – Employees of a troubled business.

You will receive separate classes on the following topics:

- 8 CFR § 204.6 (j)(4)(i)(B) – Comprehensive Business Plans
- 8 CFR § 204.6 (j)(4)(iii) – Indirect Job Creation



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Direct Jobs:

- The PETITIONER'S job at the time of filing the I-526 petition is to show that he/she has created or will create at least 10 full-time positions at the new commercial enterprise.
- YOUR job is to determine the number of full-time positions created by the investment and whether the workers in the positions are qualifying employees.
- If the petitioner has not already created at least 10 full-time positions at the time of filing, he/she must submit a comprehensive business plan pursuant to 8 CFR § 204.6 (j)(4)(i)(B).



Examples of Accepted Documentation:

Acceptable documentation for both employees already hired following the establishment of the new commercial enterprise, and existing employees at a troubled business include, but are not limited to:

- Photocopies of tax records
- Forms I-9
 - Should be requested when analyzing direct job creation, but not required.
 - EB-5 adjudication is not an I-9 enforcement action.
 - If you suspect that the EB-5 employer hired undocumented workers, refer the case to FDNS.
- Company payroll documentation
- State or federal payroll documentation



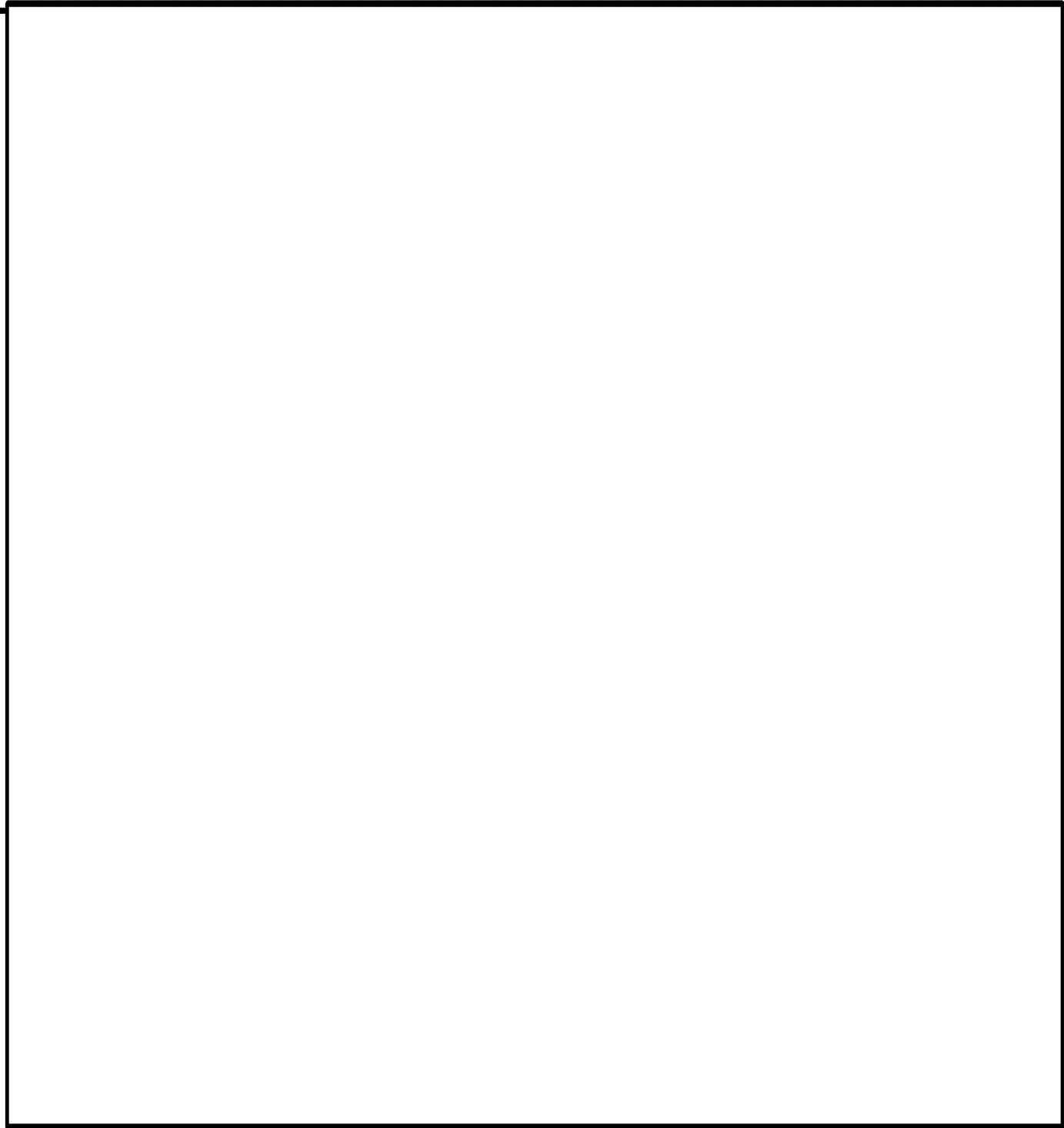
Slide 14

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Samples can be shown by the instructor if warranted. Adding to a slide presentation seems excessive since most adjudicators will not be seeing or dealing with these types of forms/cases when they first start. New officers primarily deal with Regional I-526 filings.

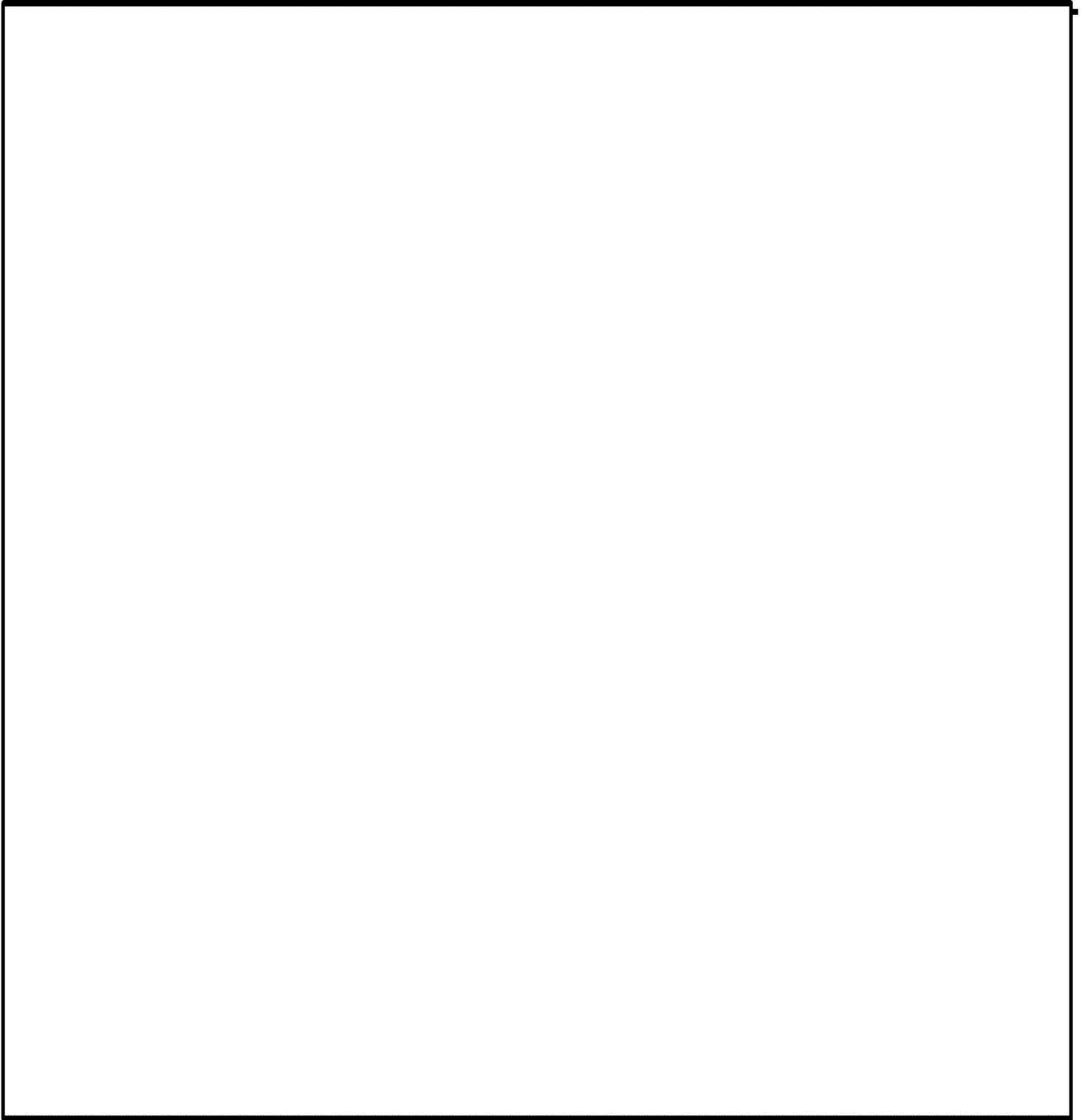
USCIS User, 3/31/2015

Analyze Facts and Documents as a Whole:



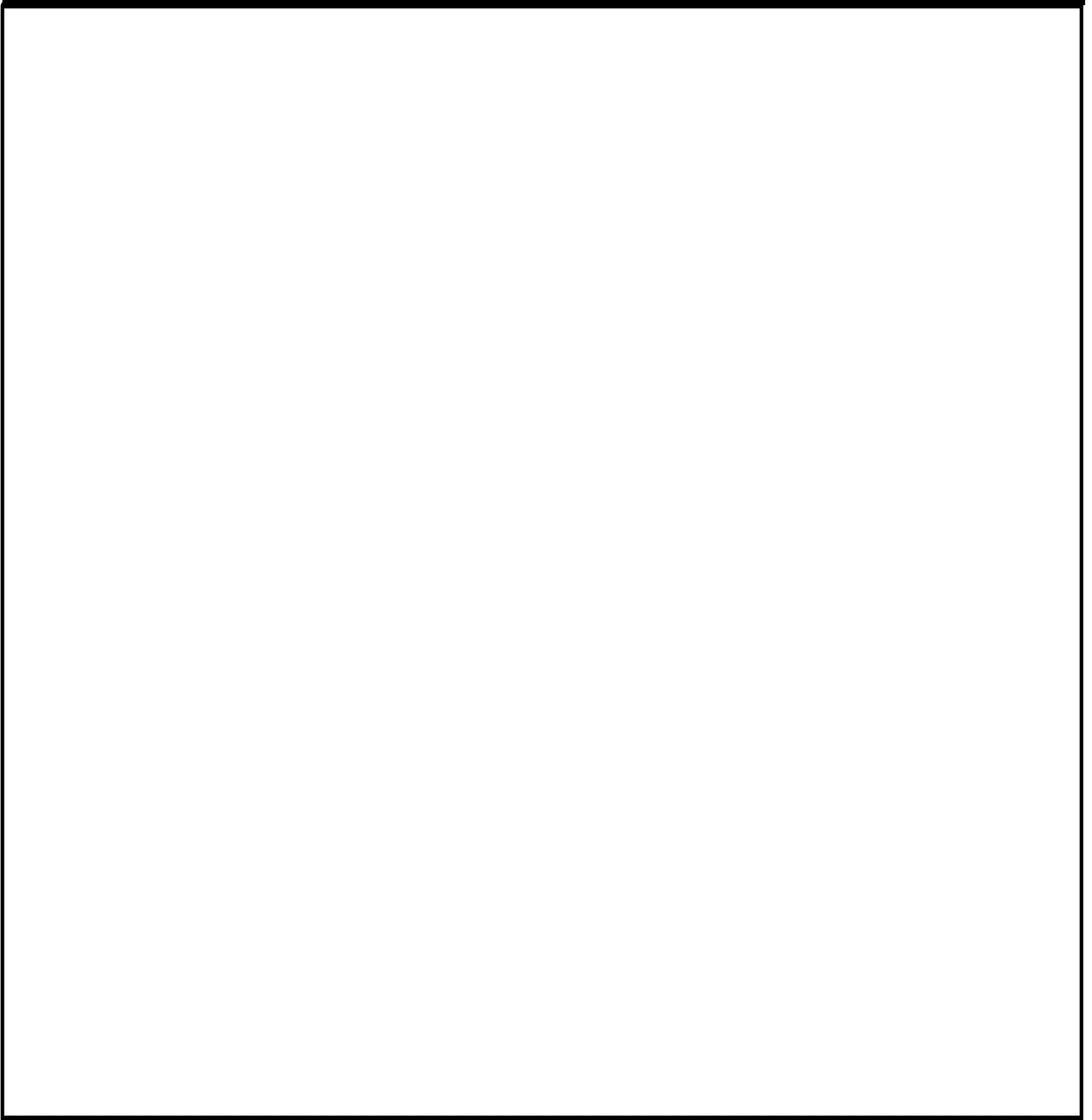
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Common Issues:



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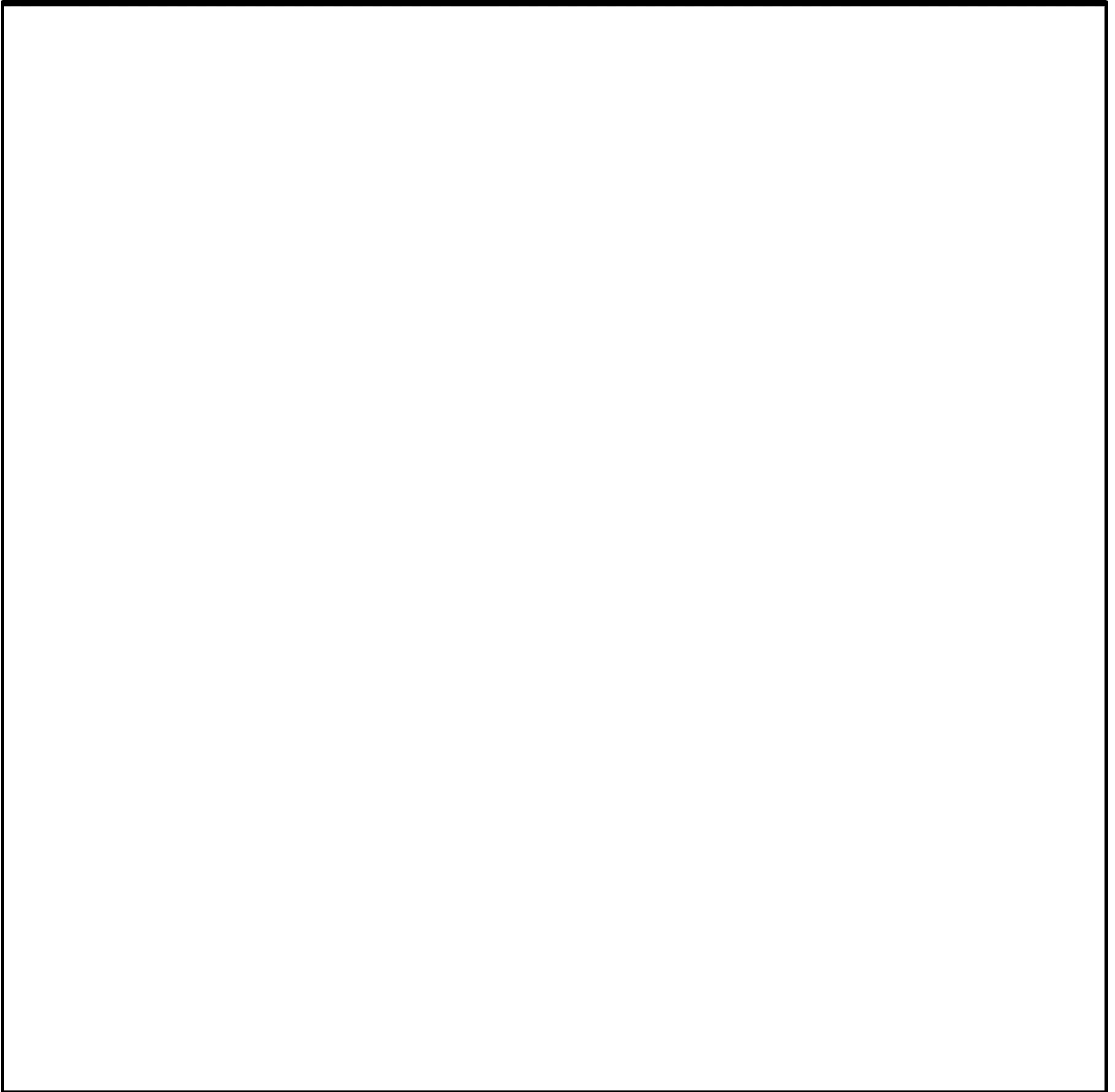
Resolving Issues:



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Its All About the Time:

(b)(5)



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Traditionally Seasonal Industries:

- Employment must be both full-time and permanent. *Matter of Ho*, 22 I&N Dec. 206 (AAO 1998).
- USCIS has interpreted the full-time employment requirement to exclude jobs that are intermittent, temporary, seasonal or transient in nature. *See, e.g., Spencer Enterprises v. U.S.*, 229 F. Supp. 2d 1025 (E.D. Cal. 2001).
- Historically, construction jobs have not been counted toward job creation because they are seen as intermittent, temporary, seasonal and transient rather than permanent. USCIS, however, now interprets that direct construction jobs may count as permanent jobs if they:
 - Are created by the petitioner's investment; and
 - Are expected to last at least two years, inclusive of when the petitioner's Form I-829 is filed.



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Independent Contractors:

Independent contractors are not “employees” according to the regulations. Companies generally report payments to independent contractors on Forms 1099. Companies also do not pay or withhold payroll taxes for these workers. To verify if a worker is an independent contractor, check:

- Whether the wages are reported on a W-2 or 1099;
- If payroll taxes were paid directly by the employer; and
- The company’s tax returns for any reported payments to contractors.



New Jobs:

In *Matter of Soffici*, the AAO required a petitioner who acquired a pre-existing business to show that the investment created or would create at least ten new full-time jobs, in addition to those existing before acquisition.

If an investor invests into an existing business, you must obtain evidence of any existing jobs prior to the investment. Existing jobs can be documented through the same types of evidence discussed before.

Keep in mind, even if the investor has not created any new jobs at the time he/she files the I-526 petition, **YOU MUST OBTAIN EVIDENCE OF ANY EXISTING JOBS** because this evidence is needed when the investor files Form I-829.



Pooled Investments:

8 CFR § 204.6(g): Multiple investors –

(1) General. A new commercial enterprise may be used as the basis of an EB-5 petition for classification by more than one investor, provided each petitioning investor:

- has invested or is actively in the process of investing the required amount for the area in which the new commercial enterprise is principally doing business,
- and provided each individual investment results in the creation of at least ten full-time positions for qualifying employees. The new commercial enterprise may be used as the basis of a petition for classification as an EB-5 investor even if there are several owners, natural or non-natural (i.e. corporate entities), of the enterprise, provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means.



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Pooled Investments:

8 CFR § 204.6(g), cont'd:

(2) Employment creation allocation. The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526.

- This means that even if the EB-5 capital investment into a new commercial enterprise is a fraction of the total investment capital into a project, the EB-5 investors can claim all the jobs (direct and indirect) created by the project.
- USCIS shall recognize any reasonable agreement made among the investors in regard to the identification and allocation of such qualifying positions.



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Troubled Business:

Regulatory Definition - 8 CFR § 204.6(e):

Troubled business means 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 percent 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.



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Troubled Business, Cont'd:

Regulatory Definition - 8 CFR 204.6(j)(4)(ii):

Troubled business. To show that a new commercial enterprise which has been established through a capital investment in a troubled business meets the statutory employment creation requirement, the petition must be accompanied by:

- Evidence that the number of existing employees is being or will be maintained at no less than the pre-investment level for a period of at least two years.
- Photocopies of tax records, Forms I-9, or other relevant documents for the qualifying employees and a comprehensive business plan shall be submitted in support of the petition.



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Troubled Business, Cont'd:

Please note, the “troubled business” concept is often confused with the “substantial change” concept, however, both phrases are different and separate from each other.

- Troubled business pertains to job creation for an existing business.

AND

- Substantial change pertains to establishing in a new commercial enterprise and it refers to the change in net worth or number of employees of an existing business (Requirement to establish a new commercial enterprise).



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Questions?



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About this Presentation

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EB-5 OVERVIEW



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EB-5 Overview

- Introduction
- EB-5 Legal Authorities
- EB-5 Policy Memo
- EB-5 Processes



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Introduction

Congress established the EB-5 Program in 1990 to bring new investment capital into the country and to create new jobs for U.S. workers.

The Immigration Act of 1990 (IMMACT 90) created section 203(b)(5) of the Immigration and Nationality Act (INA) and allocated 10,000 employment-based fifth-preference “EB-5” immigrant visas per year.

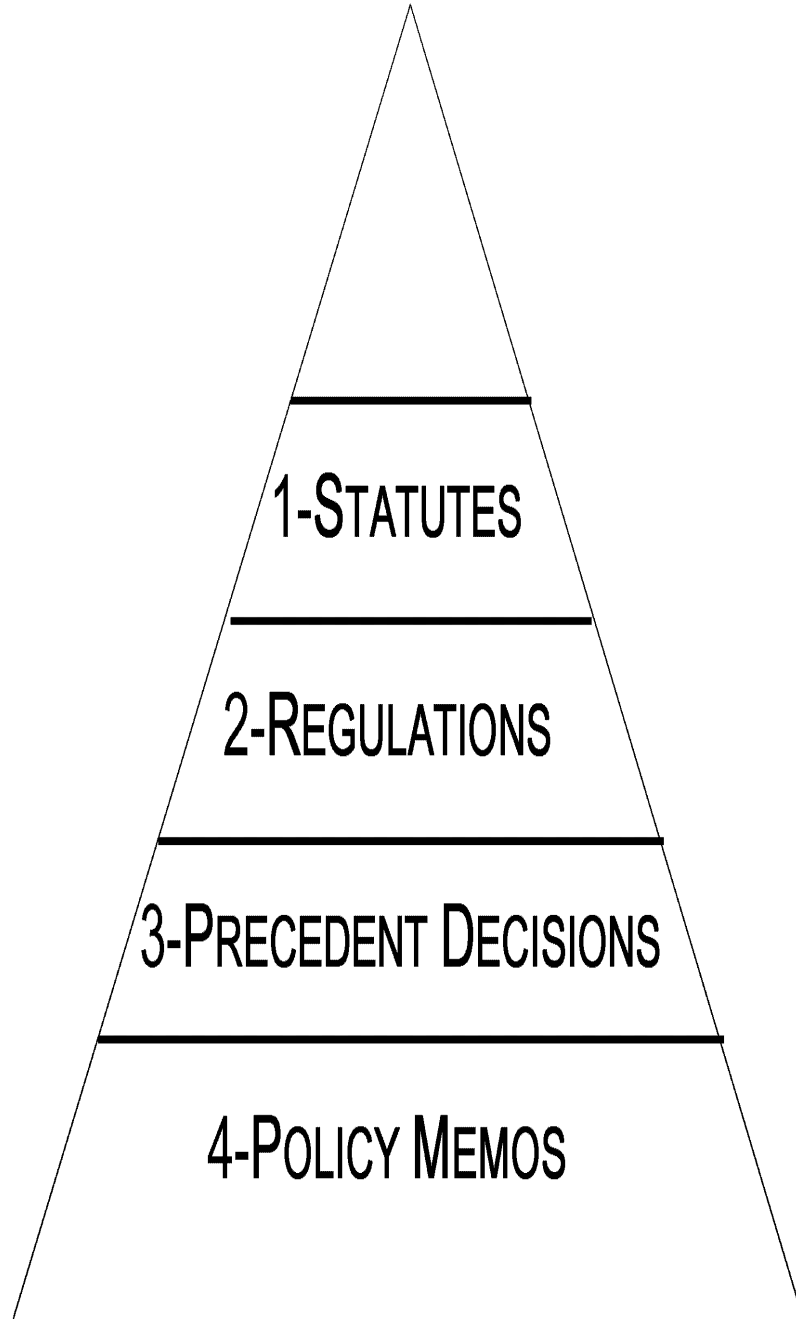
EB-5 investors may be eligible for an EB-5 immigrant visa if they have invested – or are actively in the process of investing – the required amount of capital into a new commercial enterprise and required job creation results.



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EB-5 Legal Authorities

HIERARCHY OF LEGAL AUTHORITIES



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EB-5 Legal Authorities

1. STATUTES-

Definition: Laws enacted by the legislative branch of government.

Federal statutes are codified in the United States Code (USC).

The statutes specific to the EB-5 visa program are found in the Immigration and Nationality Act (INA) at INA § 203(b)(5), also cited as 8 USC § 1153(b)(5). The statute governing the removal of conditions for EB-5 conditional permanent residents can be found at INA § 216A.

Statutes are the most authoritative legal authority specific to the EB-5 program.



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EB-5 Legal Authorities

2. REGULATIONS-

Definition: Rules passed by government agencies that have the statutory authority to do so.

Federal regulations are collected in the Code of Federal Regulations (CFR). Regulations tend to be more detailed than statutes.

The regulations specific to the EB-5 program are found at 8 CFR § 204.6 and 8 CFR § 216.6.

Regulations are less authoritative than statutes, but have more authority than precedent decisions or policy memos.



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EB-5 Legal Authorities

3. PRECEDENT DECISIONS-

Definition: Published decisions of an appellate body.

IPO decisions are appealed to the Administrative Appeals Office (AAO).

There are only four precedent AAO decisions relating to EB-5:

- *Matter of Soffici*, 22 I&N Dec. 158 (Assoc. Comm'r 1998)
- *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998)
- *Matter of Hsiung*, 22 I&N Dec. 201 (Assoc. Comm'r 1998)
- *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998)

These are less authoritative than statutes and regulations, but more authoritative than policy memos.



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EB-5 Legal Authorities

4. POLICY MEMOS-

Definition: Publicly available memoranda that give guidance regarding policy and procedural matters to adjudicators.

The May 30, 2013 Policy Memorandum on EB-5 Adjudications Policy (Policy Memo) is the most recent memo that focuses specifically on EB-5.

Policy memos are less authoritative than statutes, regulations, and precedent decisions.



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Policy Memo

- The May 2013 Policy Memo on EB-5 Adjudications provides a good overview of the substantive legal issues typically involved in adjudicating EB-5 applications and petitions.
- All IPO adjudicators should be familiar with the May 2013 Policy Memo.
- The next several slides track the content of the Policy Memo as an overview of the legal requirements associated with the EB-5 program.



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Policy Memo

The Preponderance of the Evidence Standard

- In the EB-5 program, the petitioner or applicant must establish each element by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).
- That means that the petitioner or applicant must show that the claim is **more likely than not or probably true**. This is also sometimes referred to as a **greater than 50% likelihood** of being true.
- This is a lower standard of proof than both the “clear and convincing” and “beyond a reasonable doubt” standards that typically apply to criminal cases.



Policy Memo

Elements of the EB-5 Program

The EB-5 Program is based on three main elements:

- (1) the immigrant's investment of capital,
- (2) in a new commercial enterprise,
- (3) that creates jobs.



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Policy Memo: Investment of capital

What is capital?

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the immigrant investor, provided that the immigrant investor is personally and primarily liable. See 8 C.F.R. § 204.6(e).

Additional requirements of qualifying capital:

- The immigrant investor must be the legal owner of the capital invested. *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998).
- All capital shall be valued at fair market value in U.S. dollars. 8 C.F.R. § 204.6(e).



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Policy Memo: Investment of capital

Additional requirements of qualifying capital(continued):

- Capital must be lawfully acquired.

Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

8 C.F.R. § 204(6)(e).

Adjudicators review I-526 petitions to determine if the petitioner has demonstrated the lawful source of investment funds.

We refer to this as the SOURCE OF FUNDS analysis.



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Policy Memo: Investment of capital

How much capital must be invested?

- Unless otherwise specified, the amount of capital necessary to make a qualifying investment in the United States is \$1,000,000.
8 C.F.R. § 204.6(f)(1).
- However, in the case of an investment in a new commercial enterprise that is principally doing business in and creates jobs in a “targeted employment area,” the investor must invest at least \$500,000. 8 C.F.R. § 204.6(f)(2).



Policy Memo: Investment of capital

Targeted Employment Areas (TEAs)

A Targeted Employment Area is 1) a rural area, or 2) a high unemployment area.

Rural area: any area not within either a metropolitan statistical area (as defined by OMB) or the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census).

High unemployment area: any area that has experienced unemployment of at least 150 percent of the national average rate.

Congress expressly provided for a reduced investment requirement in TEAs in order to encourage investment in areas with the greatest economic need.



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Policy Memo: Investment of capital

The immigrant investor must demonstrate that the area in which he is investing qualifies as a TEA either at **the time of investment** (if the investment was made prior to filing) or **at the time of filing** the I-526 petition (if the petitioner is actively in the process of investing in the new commercial enterprise at the time the petition was filed).

This can be demonstrated by providing:

- 1) *Evidence that the area is outside of a metropolitan statistical area and outside of a city or town having a population of 20,000 or more;*
- 2) *Unemployment data for the relevant metropolitan statistical area or county; or*
- 3) *A letter from the state government designating a geographic or political subdivision as a high unemployment area.*

8 C.F.R. § 204.6(j)(6).



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Policy Memo: Investment of capital

Letters from state governments designating TEAs based on high unemployment

Before a state may designate a TEA, the state must notify USCIS of the agency, board, or governmental body of that state delegated the authority to certify geographic or political subdivisions as high unemployment areas.

The geographic or political subdivisions most frequently used are census tracts. States may group multiple census tracts together to form a TEA.

We defer to state determinations of the boundaries that constitute TEAs, however, we do review the methods states use in determining that the area qualifies as a high unemployment area.



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Policy Memo: Investment of capital

What does it mean to “invest”?

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the immigrant investor and the new commercial enterprise does not constitute a contribution of capital.

8 C.F.R. § 204.6(e).

An immigrant investor must have invested or *be actively in the process of investing* the required amount of capital at the time of filing the I-526 petition.



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Policy Memo: Investment of capital

Qualifying investment requirements

Evidence of a mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The immigrant investor must show actual commitment of the required amount of capital.

To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the investment.

8 C.F.R. § 204.6(j)(2).



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Policy Memo

The EB-5 Program is based on three main elements:

(1) the immigrant's investment of capital,

(2) in a new commercial enterprise,

(3) that creates jobs.



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Policy Memo: New commercial enterprise

What is a New Commercial Enterprise (NCE)?

Commercial enterprise is defined as any for-profit activity formed for the ongoing conduct of lawful business.

Examples of these are sole proprietorships, partnerships (limited or general), holding companies, corporations, joint ventures, and business trusts.

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.

A commercial enterprise must be one designed to make a profit, unlike some charitable organizations, and it does not include noncommercial activity, such as owning and operating a personal residence.



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See 8 C.F.R. § 204.6(e).

Policy Memo: New commercial enterprise

New is defined as a commercial enterprise that:

1) was formed after November 29, 1990, or,

if formed on or prior to November 29, 1990:

2) has since restructured or reorganized such that a new commercial enterprise results (8 C.F.R. § 204.6(h)(2)); or

3) has been expanded such that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means 140% pre-investment levels. 8 C.F.R. § 204.6(h)(3).



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Policy Memo

The EB-5 Program is based on three main elements:

(1) the immigrant's investment of capital,

(2) in a new commercial enterprise,

(3) that creates jobs.



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Policy Memo: Job creation

Each EB-5 investor must demonstrate that their capital investment will create at least ten (10) permanent, full-time jobs for qualifying U.S. workers within the United States.

Full-time means a position that requires a minimum of 35 working hours per week.

Qualifying U.S. workers are U.S. citizens, LPRs, or other immigrants lawfully authorized to be employed in the U.S. (e.g., conditional residents, asylees, or refugees).

Qualifying U.S. workers do not include the EB-5 investor, the investor's spouse, sons, and daughters, or any nonimmigrant.



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Policy Memo: Job creation

Demonstrating job creation

To demonstrate that a new commercial enterprise will create full-time positions for at least ten qualifying employees within two years, a petitioner must provide:

- Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for 10 qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise;

OR

- A copy of a comprehensive business plan showing that, due to the nature and projected size of the NCE, the need for at least 10 qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

8 C.F.R. § 204.6(j)(4)(i).



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Policy Memo: Job creation

There are three ways to measure job creation in the EB-5 Program depending on the type of new commercial enterprise involved:

1. Troubled business.
2. New Commercial Enterprise not associated with a Regional Center.
3. New Commercial Enterprise associated with a Regional Center.



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Policy Memo: Job creation

1. Troubled business.

Definition: A business that has been in existence for at least 2 years, and that during the 12 or 24 month period prior to the priority date on the I-526 has incurred a net loss equal to at least 20% of the business's net worth prior to the loss. See 8 C.F.R. § 204.6(e).

In the case of a “troubled business,” an investor may count not only newly *created* jobs, but also existing pre-investment jobs. Existing jobs must be maintained at no fewer than the pre-investment level for a period of at least 2 years.

The required number of full-time positions does not change in the case of a troubled business. An investor must therefore show either 10 created jobs, 10 maintained jobs, or 10 jobs that are some combination of created and maintained (e.g. 4 newly created jobs + 6 maintained jobs would be sufficient).



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Policy Memo: Job creation

2. New Commercial Enterprise not associated with a Regional Center (i.e. “stand-alones”)

The 10 full-time positions must be created directly by the new commercial enterprise. This means that the new commercial enterprise must be the employer of the qualified employee.

These are referred to as direct jobs.

The NCE must demonstrate that the 10 positions have been or will be created, and that the positions will be full-time and for qualified U.S. workers.



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Policy Memo: Job creation

3. New Commercial Enterprise associated with a Regional Center

The Immigrant Investor Program (formerly known as the “Immigrant Investor Pilot Program”) was created in 1992. It allows for investment into new commercial enterprises affiliated with “regional centers.”

In the case of a new commercial enterprise associated with a Regional Center, an immigrant investor may count not only direct, but also indirect jobs created.



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Policy Memo: Job creation

Calculating indirect jobs

Indirect jobs are those that are held outside of the NCE but are created as a result of the NCE. They may include, but are not limited to employees of the producers of materials, equipment, or services used by the NCE.

Indirect jobs can qualify and be counted if they are based on reasonable economic methodologies.

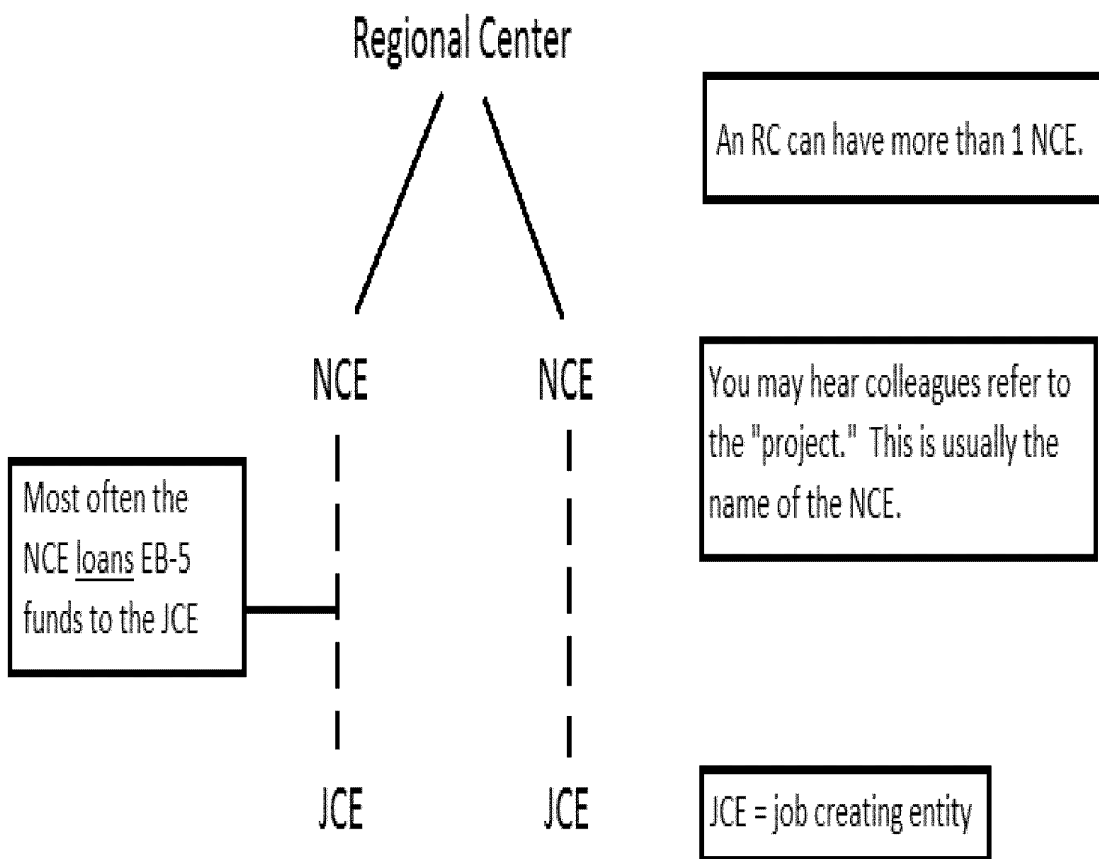
When economic models are used, USCIS relies upon the models to determine that it is more likely than not that the indirect jobs are created and that the indirect jobs created, or to be created, are full-time or permanent.



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Policy Memo: Job creation

Sample Regional Center model



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Policy Memo: Job creation

Sample Regional Center model

In many cases, EB-5 money is just one of a project's funding sources.

Example: The JCE is constructing a new soccer stadium in Washington DC.

Total project cost: \$300 million

→ Washington DC gov't: \$100 million

→ developer equity: \$50 million

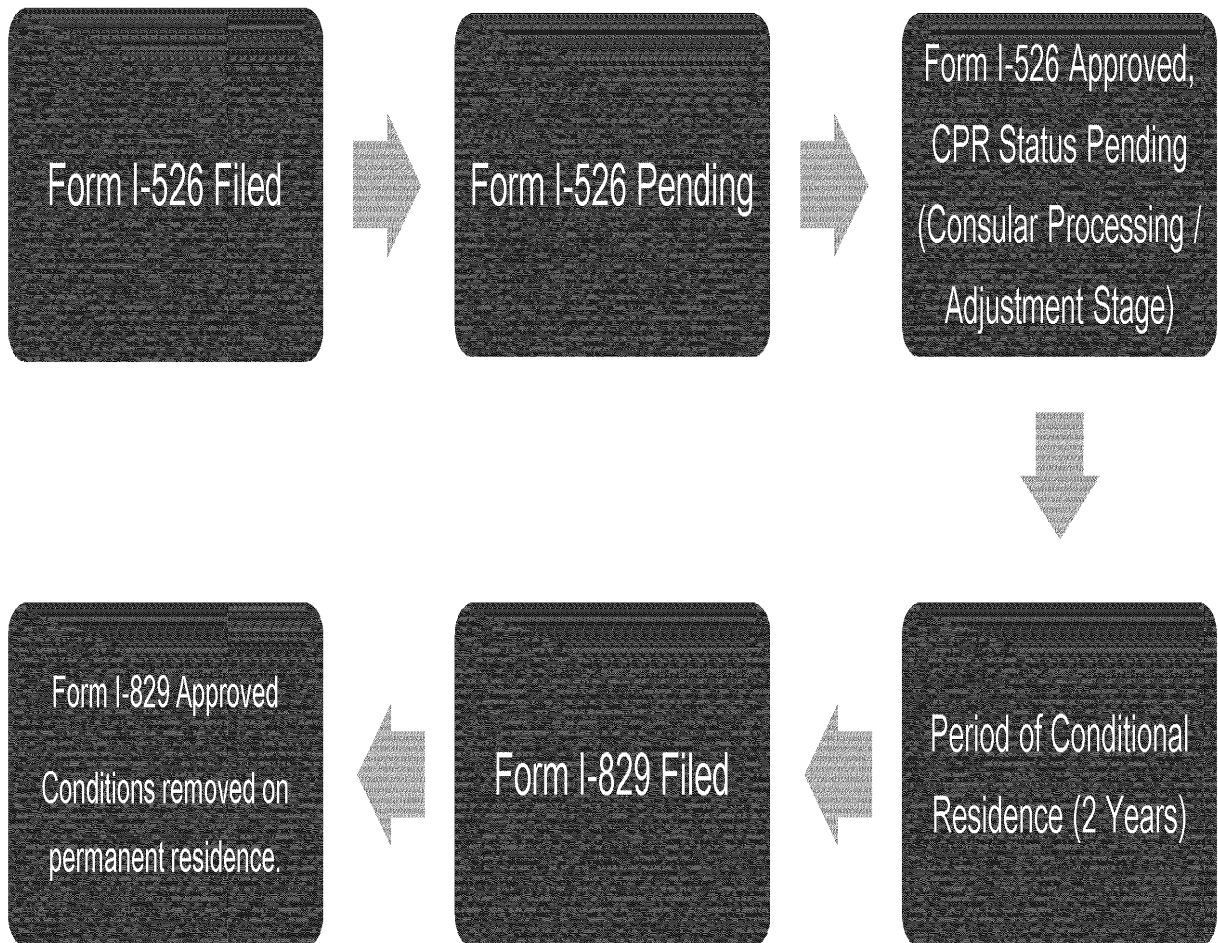
→ EB-5 loan: \$100 million

→ bank loan: \$50 million



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Overview of EB-5 Process



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EB-5 Processes

FORM TYPES ADJUDICATED AT IPO

- Form I-924: Application for Regional Center under the Immigrant Investor Pilot Program.
- Form I-924A: Supplement to Form I-924.
- Form I-526: Immigrant Petition by Alien Entrepreneur.
- Form I-829: Petition by Entrepreneur to Remove Conditions.



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EB-5 Processes

Form I-924: Application for Regional Center under the Immigrant Investor Pilot Program.

- Filed by the Regional Center principal as:
 - 1) An initial I-924—to request designation as a Regional Center by USCIS, or
 - 2) An I-924 amendment— to request approval of an amendment to a previously approved regional center designation. (e.g., to make changes to regional center organizational structure or administration or capital investment projects (including introducing new projects))
- Adjudicated by IPO economists.
- Filing fee = \$6,230.



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EB-5 Processes

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

- Requirement: Each designated Regional Center entity must file a Form I-924A on or before December 29 of each calendar year to demonstrate continued eligibility for the designation.
- Effective November 23, 2010, the failure to file a Form I-924A will result in the issuance of a *notice of intent to terminate* the regional center's designation, which may ultimately result in the termination of the regional center's designation.
- Adjudicated by IPO economists.
- No filing fee.



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EB-5 Processes

Form I-526: Immigrant Petition by Alien Entrepreneur.

- Filed by immigrant investors to obtain immigrant status under the EB-5 program.
- May be filed on the basis of investments that are associated with a regional center project, or as a “stand-alone” petition.
- Must show by a preponderance of the evidence the petitioner’s commitment to invest the required amount of capital in an NCE and that the necessary job creation will result.
- Adjudicated by IPO adjudicators.
- Filing fee = \$1,500.



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EB-5 Processes

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

- Filed by a immigrant investors to request removal of the conditions on their permanent resident status under the EB-5 program.
- Must be filed 90 days before the 2nd anniversary of the petitioner's conditional permanent resident status.
- Petitioner must show by a preponderance of the evidence that the necessary job creation occurred or will occur within a reasonable time and that his or her investment in the NCE was sustained.
- Adjudicated by IPO adjudicators.
- Filing fee = \$3,750 + \$85 biometric fee for each person.



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EB-5 Processes

STAND-ALONE INVESTOR FILING PROGRESSION

1. Form I-526
 - filed by Immigrant Investor

2. Form I-829
 - filed by Immigrant Investor
 - can be filed 90 days before the 2nd anniversary of the petitioner's conditional permanent resident status



EB-5 Processes

REGIONAL CENTER ASSOCIATED INVESTOR FILING PROGRESSION

1. Form I-924
 - filed by RC principal

2. Form I-526
 - filed by Immigrant Investor
 - can be filed once initial I-924 is approved or in conjunction with a Form I-924 as an exemplar.

3. Form I-829
 - filed by Immigrant Investor
 - filed within 90 days before the 2nd anniversary of the petitioner's conditional permanent resident status



EB-5 Processes

As of February 2, 2015, USCIS had approved approximately 630 regional centers.

The list of approved regional centers is published on the USCIS website at: <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>

In 2014, 97% of EB5 visas used were for petitioners investing in regional center-associated new commercial enterprises.



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EB-5 Processes

In summary:

In the EB-5 Program, immigrants who invest their capital in job-creating businesses and projects in the U.S. may file a Form I-526 and obtain conditional permanent resident status for a two-year period.

After two years of obtaining conditional permanent resident status, if the immigrants have satisfied the conditions and other criteria of eligibility and upon approval of their Form I-829, the conditions are removed and the immigrants become unconditional lawful permanent residents of the U.S.



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EB-5 Processes

Form I-526 Process

The Form I-526 is an underlying petition. This means that even after a petitioner is approved, the petitioner must apply for admission to the United States.

- If an immigrant investor is *already in the U.S.*, he or she can file a Form I-485 to adjust status.
- If an immigrant investor is *abroad*, he or she can go to the local consulate and file a Form DC-230 to consular process.

The issue of admissibility will be adjudicated at the time of adjustment or consular processing.



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EB-5 Processes

Form I-829 Process

The Form I-829 removes the conditional status of an immigrant investor's conditional permanent residence.

- If the Form I-829 is *approved*, the petitioner receives his lawful permanent resident (green) card.
- If the Form I-829 is *denied*, IPO issues a Notice to Appear (NTA) for the petitioner to appear in immigration court.



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EB-5 Processes

EB-5 INDIVIDUAL PETITIONS RECEIVED

Fiscal Year	Form I-526s	Form I-829s
2014	10,923	2,516
2013	6,550	1,217
2012	6,132	712
2011	3,771	2,345
2010	1,955	768
2009	1,028	437
2008	1,257	390
2007	776	194
2006	486	89
2005	332	37



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EB-5 Processes

APPROVAL AND DENIAL RATES FORM I-526 PETITIONS

Fiscal Year	Approvals	Final Action %	Denials	Final Action %
2014	4,925	81%	1,169	19%
2013	3,881	79%	1,015	21%
2012	3,742	79%	991	21%
2011	1,421	83%	288	17%
2010	1,271	89%	153	11%
2009	1,262	86%	207	14%
2008	640	84%	120	16%
2007	473	76%	148	24%
2006	336	73%	124	27%
2005	179	53%	156	47%



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EB-5 Processes

APPROVAL AND DENIAL RATES FORM I-829 PETITIONS

Fiscal Year	Approvals	Final Action %	Denials	Final Action %
2014	1,603	90%	178	10%
2013	844	95%	43	5%
2012	736	92%	60	8%
2011	1,067	96%	46	4%
2010	253	83%	52	17%
2009	347	86%	56	14%
2008	159	70%	68	30%
2007	111	69%	49	31%
2006	106	64%	59	36%
2005	184	62%	112	38%



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EB-5 Processes

Fiscal Year	Visas Issued
2014	10,692
2013	8,564
2012	7,641
2011	3,463
2010	1,885
2009	4,218
2008	1,443
2007	793
2006	802



U.S. Citizenship
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EB-5 Processes

TOP 10 NATIONALITIES OF EB-5 PETITIONERS IN 2014

of 10,692 total visas:

Rank	Country	# of visas	% of total
1	China	9,128	85.4%
2	South Korea	225	2.1%
3	Mexico	129	1.2%
4	Taiwan	126	1.2%
5	Vietnam	121	1.1%
6	Russia	100	.9%
7	Venezuela	96	.9%
8	India	96	.9%
9	Iran	76	.7%
10	Canada	52	.5%



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EB-5 Processes

Retrogression

Prior to 2014, we had never reached the 10,000 visa limit.

The number 10,000 refers to the number of visas issued. A single approved I-526 may result in the issuance of 5 visas if a petitioner has 1 spouse and 3 children as derivatives.

For visa categories where the annual cap is reached, each country is limited to 7.1% of the total visas. China is the only country for which this is an issue.

In 2015, *retrogression* will become an issue for Chinese petitioners.



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EB-5 Legal Overview

Questions?



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Indirect Job Creation For Adjudicators



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We Will Cover:

- Overview
- Regional Centers
- Indirect Job Creation
- Economic Models
- Economic Impact Analysis



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Overview:

- This is a **brief** introduction to indirect job creation
- Adjudicators should be aware of the information needed by economists to determine indirect job creation and should have an understanding of the vocabulary economists use
- Determining indirect job creation is the responsibility of the economist reviewing the RC exemplar or actual project



Regional Centers:

Regional Centers are USCIS-designated entities that pool investments of EB-5 petitioners in a limited geographic area.

Petitioners investing in an NCE associated with a Regional Center may establish the required job creation by showing indirect job creation in addition to direct job creation



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Regional Centers, Cont'd:

An immigrant investing in a new commercial enterprise associated with and located within the boundaries of the regional center is **not** required to demonstrate that the new commercial enterprise itself directly employs ten U.S. workers.

A showing of indirect job creation will suffice.



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Regional Centers, Cont'd:

An immigrant investing in a new commercial enterprise affiliated with and located within the boundaries of the regional center may demonstrate indirect job creation by using **reasonable methodologies** to estimate the number of jobs created indirectly.



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Indirect Jobs:

Direct jobs are:

- those jobs that establish an employer-employee relationship between the new commercial enterprise and the persons that it employs.

Indirect jobs are:

- jobs (other than direct jobs) that would not have been created but for the economic activity of the EB-5 commercial enterprise.
- jobs held by persons who work for the producers of materials, equipment, and services that are used in a commercial enterprise's capital investment project, but who are not directly employed by the commercial enterprise, such as steel producers or outside firms that provide accounting services.
- induced jobs created when direct and indirect employees go out and spend their increased incomes on consumer goods and services.



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Indirect Jobs, Cont'd:

Unlike direct job creation, which involves an actual person being hired for a specific job, indirect job creation may be estimated by economic models and may involve the mathematical abstraction that jobs will be created if certain events occur (such as an NCE expending money).

- If the jobs derive from a model, there is no way for USCIS to ensure they are filled by qualifying employees or are even full-time positions.
- Rather, the NCE's job creation estimates must be supported by accepted economic models or other data.
- Also, note that indirect jobs can be created anywhere, not just within the geographical boundaries of a TEA or regional center.



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Indirect Jobs, Cont'd:

There is no established or preferred method of estimating indirect job creation. The NCE can use any reasonable methodology it chooses.



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Types of Indirect Job Creation:

- There are three types of indirect job creation estimated by economic models: direct, indirect and induced
 - **Economically Direct Jobs** are generally jobs that establish an employer-employee relationship between the job-creating entity and the persons that they employ.
 - **Economically Indirect Jobs** are generally the jobs held by persons who work for the producers of materials, equipment, and services that are used in a commercial enterprise's capital investment project, but who are not directly employed by the commercial enterprise (supply chain jobs).
 - **Economically Induced Jobs** are those jobs created when direct and indirect employees go out and spend their increased incomes on consumer goods and services (increased spending jobs).



Intro to Economic Models:

- Economists use economic models to estimate indirect and induced jobs.
- Regional Centers typically use the REDYN, REMI, RIMS II or IMPLAN economic models to estimate the number of indirect jobs that will be created through investments in the regional center's investment projects.



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Input-Output Models:

- Most economic models seen in EB-5 projects use some sort of input-output formula to estimate indirect job creation.
- Two commonly used inputs are expenditures and jobs.
- The estimate or output is calculated by multiplying the input against an industry-specific multiplier.



Input-Output Models, Cont'd:



Possible Inputs: expenditures, direct jobs, factory output

Multipliers: RIMS II, REDYN, IMPLAN, etc.



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Input-Output Models, Cont'd:

- Model using expenditures as inputs.
 - $(\text{Expenditures}) \times (\text{multiplier}) = (\text{direct, indirect, induced jobs})$
 - Reasonableness of expenditure as an input must be justified
 - Jobs resulting from expenditures relating to construction lasting less than two years are generally excluded

- Model using direct jobs as inputs.
 - $(\text{Direct jobs}) \times (\text{multiplier}) = (\text{indirect and induced jobs})$
 - Reasonable of direct job estimate must be justified
 - Direct jobs that do not meet EB-5 requirements may still be used as input



Input-Output Models, Cont'd:

Table 1.5. Total Multipliers								
Bellingham, WA Metropolitan Statistical Area (Type II)								
	Industry	Final-demand Output /1/ (dollars)	Final-demand Earnings /2/ (dollars)	Final-demand Employment /3/ (number of jobs)	Final-demand Value-added /4/ (dollars)	Direct-effect Earnings /5/ (dollars)	Direct-effect Employment /6/ (number of jobs)	
311615	Poultry processing	1.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
311700	Seafood product preparation and packaging	1.5311	0.2898	6.5286	0.4628	2.0526	2.2974	
311810	Bread and bakery product manufacturing	1.6185	0.4347	13.2728	0.6976	1.6738	1.5461	
311820	Cookie, cracker, and pasta manufacturing	1.4656	0.2657	5.6478	0.5629	1.9273	2.2998	

- Industries will have different multipliers based on the input used and the output sought
- Different economic models will have different multipliers for the same industry



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NAICS Codes:

- Generally, the multiplier is determined by the North American Industry Classification System (NAICS) codes for the specific industry.
- The longer a NAICS code, the more specific the industry and the more exact the multiplier.
- There may be different multipliers for an industry, based on what input is being used and what sort of output is sought.
- Economists review the business plan and economic impact analysis to make sure the NCE is using the appropriate NAICS codes.



NAICS Multipliers:

- The value of the NAICS code multipliers vary by location. The multiplier for a truck mechanic in Pittsburgh will be different than the multiplier for a truck mechanic doing identical work in Green Bay.
- The values of NAICS code multipliers for closely related industries can be quite different.
 - “Women and Girls Cut and Sew Apparel Manufacturing “ has a multiplier of **16.832977**
 - “Men and Boys Cut and Sew Apparel Manufacturing” has a multiplier of **5.930808**



Example:

➤ 10 EB-5 investors invest \$1 million each in a Regional Center-associated NCE. The business plan indicates it will create clothing for both men and women, but only uses the multiplier for women's apparel manufacturing.

- $10 \times 16.832977 = 168.33$ jobs
- $10 \times 5.930808 = 59.31$ jobs



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Economic Models:

- Not everything an NCE spends money on can be counted towards job creation
- Certain expenses are not considered to create employment, such as real estate purchases, taxes, or permit and license fees
- Economists will review the business plan to make sure all claimed expenditures create jobs



Economic Impact Analysis:

NCEs submit an Economic Impact Analysis (EIA) to support the creation of jobs indicated in the business plan.

The EIA will contain the models, predictions, and/or forecasts for job creation based on reasonable methodologies (economically or statistically valid tools).



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Model-Derived Construction Jobs:

- Generally, all model-derived jobs (direct, indirect, and induced) may be credited to an investor if the construction lasts at least two years.
- In certain cases, an investor may be able to claim credit for indirect and induced jobs derived from a model, even when construction lasts less than two years.



Tenant Occupancy:

- Suppose an NCE intends to renovate and operate a shopping mall. Can the NCE count, as indirect jobs, the jobs created by the tenant shops in the mall?
- Technically, yes. The task for the applicants and petitioners is to project the number of newly created jobs that would not have been created but for the economic activity of the EB-5 commercial enterprise. For additional information, see the Guidance Memorandum on Tenant Occupancy, dated December 20, 2012.



Questions?



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Introduction to Standalone I-526 Adjudication

Hold on to your seats, ya'll

Agenda

- Introduction
- Adjudicating Standalones
 - Capital at Risk
 - NCE
 - Job Creation
- Procedural Issues
- Q&A



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Introduction

Difference between regional center and standalone I-526s:

- No indirect job creation allowed
- Generally, no prior review of business plan by economist

Pooled investments – multiple stand-alone investors for one NCE



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Adjudicating Stand-Alone I-526s



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Capital Issues



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Capital Issues

- Qualifying Amount of Capital
 - TEA
 - Nature of Capital Contribution
- Capital Must be Placed at Risk
 - Business Activity
 - Redemption Agreements
 - Guaranteed Returns
- Capital Made Available to Entity Most Closely Associated with Job Creation



Required Amount of Capital:

The investor is required to show that he/she has invested or is actively in the process of investing the required amount of capital:

- \$500,000 if the NCE is located in a Targeted Employment Area (TEA)
- \$1,000,000 if the NCE is not located in a TEA



Definition of Capital:

204.6(e) defines capital as:

...cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section (203(b)(5) of the Act.



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Actual Business Activities:

The AAO determined that merely establishing a commercial enterprise and signing a lease is not sufficient evidence of capital at risk (*Matter of Ho*).

In other words, simply formulating an idea for future business activities, without taking any meaningful concrete action, is not sufficient to establish that the capital investment has been placed at risk with the NCE.



Redemption Agreements:

A redemption agreement is an agreement found in the investment documents which would require the NCE to repurchase the investor's equity at a certain time or upon some other triggering event. Because this constitutes a debt arrangement, capital invested in exchange for a redemption agreement is not properly "invested" and is not at risk (*Matter of Izummi*).

Example:

A "sell option" clause in the limited partnership agreement or offering memorandum that gives the investor the right to require the NCE to repurchase the investor's ownership interest in the NCE upon approval of the I-829.



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Guaranteed Returns:

A guaranteed return is any agreement or arrangement found in the investment or project documents which entitles the investor to a certain amount of money or other economic benefit beyond those afforded to a typical equity investor.

If an investor is guaranteed the return of a portion of his or her investment, or is guaranteed a rate of return on a portion of his or her investment, then the amount of such guaranteed return is not at risk.



Capital Made Available:

The full amount of the investment must be made available to the business most closely responsible for creating the employment upon which the petition is based (*Matter of Izummi*).

In order for the investor to establish that capital was placed at risk, he/she must present evidence that the capital was invested into the NCE and was subsequently made available to the JCE for the actual undertaking of business activity. Without this evidence there is no assurance that the funds will in fact be used to carry out the business activities and create jobs.



New Commercial Enterprise Issues



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New Commercial Enterprise:

The immigrant investor may establish an NCE through:

1. The creation of an original business after 11/29/1990;
2. The purchase of an existing (pre-11/29/1990) business that is simultaneously or subsequently restructured or reorganized; or
3. The expansion of an existing (pre-11/29/1990) business so that there is a substantial (40%) increase in either the net worth of the business or the number of employees of the business compared to pre-expansion levels.

See 8 CFR § 204.6(h).



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New Commercial Enterprise, Cont'd:

Merely organizing a new company and then purchasing an existing business as the job-creating entity (JCE) does not mean that a NCE has been established.

In *Matter of Soffici*, the AAO held that an investor cannot simply organize a new business (such as a holding company) that then purchases an existing business and have a “new” commercial enterprise for the purposes of the EB-5 program.



Restructured or Reorganized:

For an existing business to qualify as an NCE, the investor may show that there has been a “restructuring or reorganization of an existing business such that a new commercial enterprise results.” 8 CFR § 204.6(h)(2).

- Must be more than cosmetic changes or a simple change in ownership.
- For example, simply putting a fresh coat of paint on a hotel and continuing to operate it as a hotel is not enough (*Matter of Soffici*).



Restructured or Reorganized, Cont'd:

- On the other hand, converting a restaurant into a nightclub or adding crop production to a livestock farm may be sufficient to qualify as a NCE.

- Each NCE is different and will require different evidence and analysis.
 - If an investor has purchased an existing business, he or she must provide evidence of when that original business was created.
 - Evidence of a business that has been in operation for many years and has only recently changed names or reopened after being closed for a short time may also be relevant.



Expanded Business:

For an existing business to qualify as a NCE, the investor may instead show that—due to the investor’s investment—there has been at least a 40% increase to either:

- The net worth or
- The number of employees

Compared to the pre-investment levels.

See 8 CFR § 204.6(h)(3)



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Expanded Business, Cont'd:

Petitioners must include evidence of the investment and the net worth or number of employees before and after investment, such as:

- Stock purchase and/or investment agreements
- Certified financial reports
- Payroll records or similar instruments such as state quarterly wage reports, forms W-2, tax returns, and audited financial statements.



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Active Management of the NCE:

The EB-5 Program requires the immigrant investor to be engaged in the management of the NCE.

This means that the petitioner must be engaged in either:

- The day-to-day managerial control of the business; or
- Policy formulation that affects the business.

The investor cannot have a purely passive role in regard to his or her investment. See 8 CFR § 204.6(j)(5).



Job Creation Issues



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Topics

- Direct Job Creation Review
- Reviewing the Business Plan



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Regulatory Job Creation Definitions:

8 CFR § 204.6 (e) – “Employee”

Employee means an individual who provides services or labor for the new commercial enterprise (NCE) and who receives wages or other remuneration directly from the NCE.

8 CFR § 204.6 (e) – “Full-Time Employment”

Full-time employment means employment of a qualifying employee by the NCE in a position that requires a minimum of 35 working hours per week.



Regulatory Job Creation Definitions, Cont'd:

8 CFR § 204.6 (e) – “Full-Time Employment”

- A job-sharing arrangement whereby two or more qualifying employees share a full-time position shall count as full-time employment provided the hourly requirement per week is met.
- This definition shall not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week.



Regulatory Job Creation Definitions, Cont'd:

8 CFR § 204.6 (e) – “Qualifying Employee”

- Means a United States citizen, lawful permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation.
- This definition does not include the investor, the investor’s spouse, sons, or daughters, or any nonimmigrants.



Examples of Accepted Documentation:

Acceptable documentation for both employees already hired following the establishment of the new commercial enterprise, and existing employees at a troubled business include, but are not limited to:

- Photocopies of tax records
- Forms I-9
 - Should be requested when analyzing direct job creation, but not required.
 - EB-5 adjudication is not an I-9 enforcement action.
 - If you suspect that the EB-5 employer hired undocumented workers, refer the case to FDNS.
- Company payroll documentation
- State or federal payroll documentation



Reviewing Business Plans

Legal Authority – *Matter of Ho*

- *Matter of Ho* provides the clearest guidance on what elements a CBP “should” contain
- A CBP does **NOT** have to include every element listed to be acceptable. However, the more elements and details the CBP contains, the more likely it is that the CBP will be considered comprehensive
- “To be ‘comprehensive’ a business plan must be sufficiently detailed to permit the Service to draw reasonable inferences about the job-creation potential. Mere conclusory assertions do not enable the Service to determine whether the job-creation projections are any more reliable than hopeful speculation.” *Matter of Ho*
- Most important factor is CREDIBILITY



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Matter of Ho Elements

- Description of the business, its products and/or services, and its objectives

- Market analysis, including:
 - the names of competing businesses and their relative strengths and weaknesses;
 - a comparison of the competition's products and pricing structures; and
 - a description of the target market/prospective customers of the new commercial enterprise.



Matter of Ho Elements - Cont'd

- Required permits and licenses obtained (or in the process of obtaining)

- Manufacturing or production process, if applicable.
 - the materials required, and the supply sources

- Contracts executed for the supply of materials and/or the distribution of products



Matter of Ho Elements – Cont'd:

- Marketing strategy of the business
 - including pricing, advertising, and servicing

- Business organizational structure and its personnel's experience

- Business's staffing requirements
 - timetable for hiring
 - job descriptions for all positions



Matter of Ho Elements – Cont'd

- Sales, cost, and income projections and the detailed bases therefor

- Credibility
 - Is the business feasible?
 - Are the assumptions described in the CBP reasonable?
 - Is it more likely than not that the NCE will create 10 qualifying jobs per investor?



Troubled Business

Troubled Business:

Regulatory Definition - 8 CFR § 204.6(e):

Troubled business means 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 percent 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.



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Troubled Business, Cont'd:

Regulatory Definition - 8 CFR 204.6(j)(4)(ii):

Troubled business. To show that a new commercial enterprise which has been established through a capital investment in a troubled business meets the statutory employment creation requirement, the petition must be accompanied by:

- Evidence that the number of existing employees is being or will be maintained at no less than the pre-investment level for a period of at least two years.
- Photocopies of tax records, Forms I-9, or other relevant documents for the qualifying employees and a comprehensive business plan shall be submitted in support of the petition.



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Troubled Business, Cont'd:

Please note, the “troubled business” concept is often confused with the “substantial change” concept, however, both phrases are different and separate from each other.

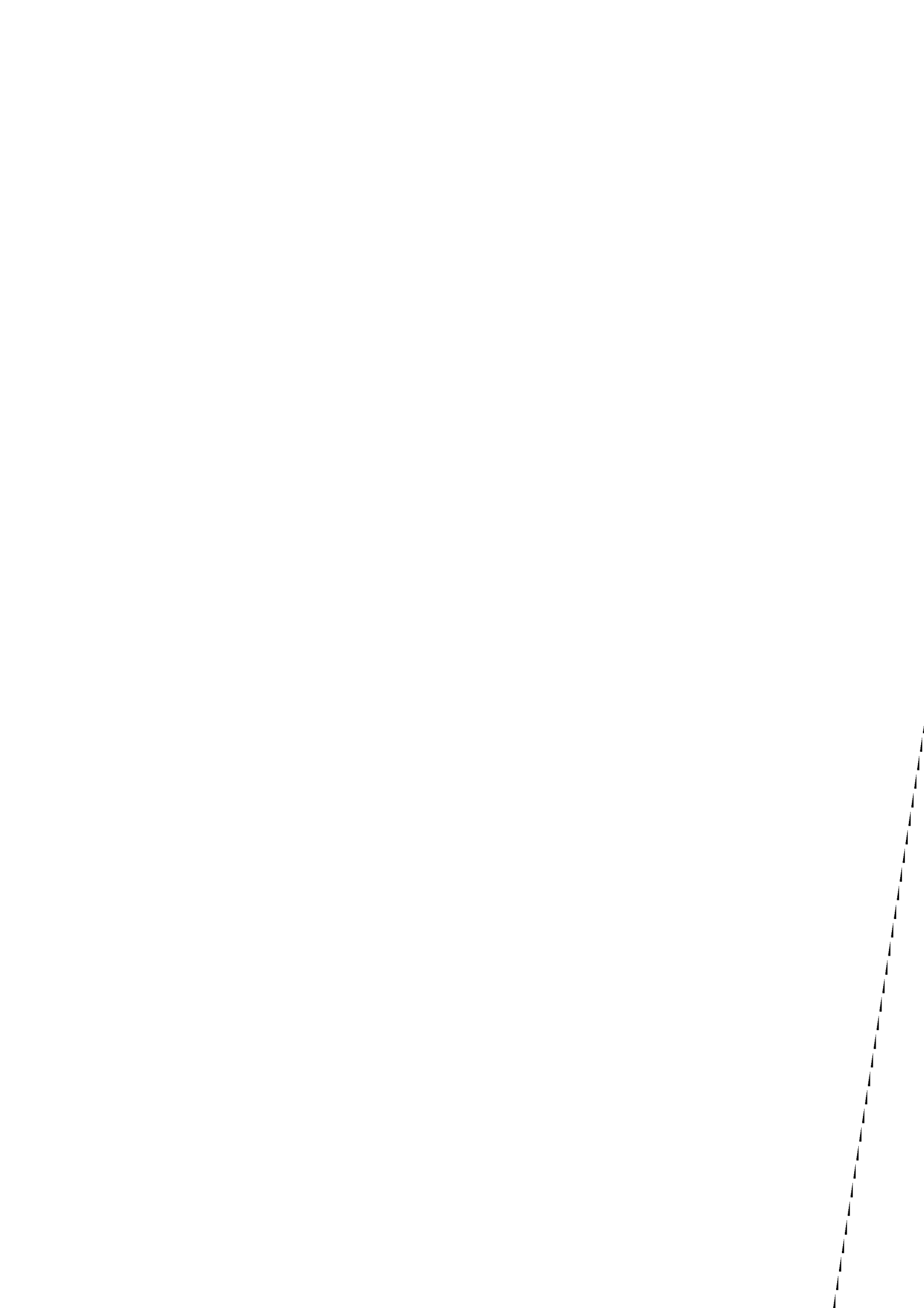
- Troubled business pertains to job creation for an existing business.

AND

- Substantial change pertains to establishing in a new commercial enterprise and it refers to the change in net worth or number of employees of an existing business (Requirement to establish a new commercial enterprise).



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IPO OVERVIEW



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We Will Cover:

➤ Introduction & EB-5 Basics

➤ History

➤ Organization

➤ Partners



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IPO Introduction:

The Immigrant Investor Program Office (IPO) is located in Washington, D.C. and adjudicates applications and petitions associated with the EB-5 program.



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EB-5 Basics:

The EB-5 program allows foreign individuals to obtain permanent resident status in the U.S. by investing in U.S. businesses and creating jobs for qualified workers.



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EB-5 Basics, Cont'd:

“EB-5” stands for “employment-based, fifth preference.” It is a category of immigrant visas related to employment and job-creation.

There are 10,000 total EB-5 visas available each year, worldwide.



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EB-5 Basics, Cont'd:

EB-5 investors can qualify for the program if they invest \$1,000,000 into a new commercial enterprise and create at least 10 permanent jobs for qualified workers.

In rural areas or areas with high unemployment as those terms are defined in the regulations, the investment requirement is reduced to \$500,000.



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EB-5 Basics, Cont'd:

Investors may invest in their own, stand-alone business or in a business associated with a Regional Center.

- A Regional Center (RC) is a specially USCIS-designated organization that promotes economic growth in a particular geographical area and business sectors.
- IPO adjudicates applications for Regional Center designations (Form I-924).



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EB-5 Basics, Cont'd:

If an investor's petition is approved, he or she is eligible for conditional permanent residence in the U.S., through consular processing or adjustment of status, for a two-year period.

The investor's spouse and minor children may receive conditional permanent resident status along with the investor.



EB-5 Basics, Cont'd:

After two years, the immigrant investor must submit a petition to remove conditions on his or her residence.

To remove conditions, the immigrant investor must file Form I-829 and show that he or she has invested or is in the process of investing, has sustained his investment and has created or can be expected to create, within a reasonable amount of time, the required jobs.



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EB-5 Basics Forms:

- I-924 - Application for Regional Center Under the Immigrant Investor Pilot Program
- I-924A – Supplement to I-924 (annual update)
- I-526 - Immigrant Petition by Alien Entrepreneur
- I-829 - Petition by Alien Entrepreneur to Remove Conditions



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History of IPO:

- EB-5 program was authorized by the Immigration Act of 1990
- Immigrant Investor Pilot Program began operations in 1992
- From 1992 – 2010, the EB-5 program was administered by several service centers, including Vermont, Texas, and California.



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History of IPO, Cont'd:

- June 17, 2009 – USCIS issued the first thorough policy memo (“Aytes memo”) regarding EB-5 eligibility and adjudications.
- 2010 – All EB-5 adjudications moved to California Service Center exclusively.



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History of IPO, Cont'd:

- May 2013 – Immigrant Investor Program Office created at USCIS Headquarters in Washington, D.C.
- May 30, 2013 – USCIS releases comprehensive EB-5 Adjudications Policy Memorandum.
- December 2013 – IPO moves from Service Center Operations Directorate (SCOPS) to Field Operations Directorate (FOD).



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History of IPO, Cont'd:

- February 2014 – California Service Center ceases EB-5 program activities and all EB-5 related forms and adjudications are moved to IPO.
- August 2014 – For the first time, China exceeds the number of allowable EB-5 visas for a fiscal year.



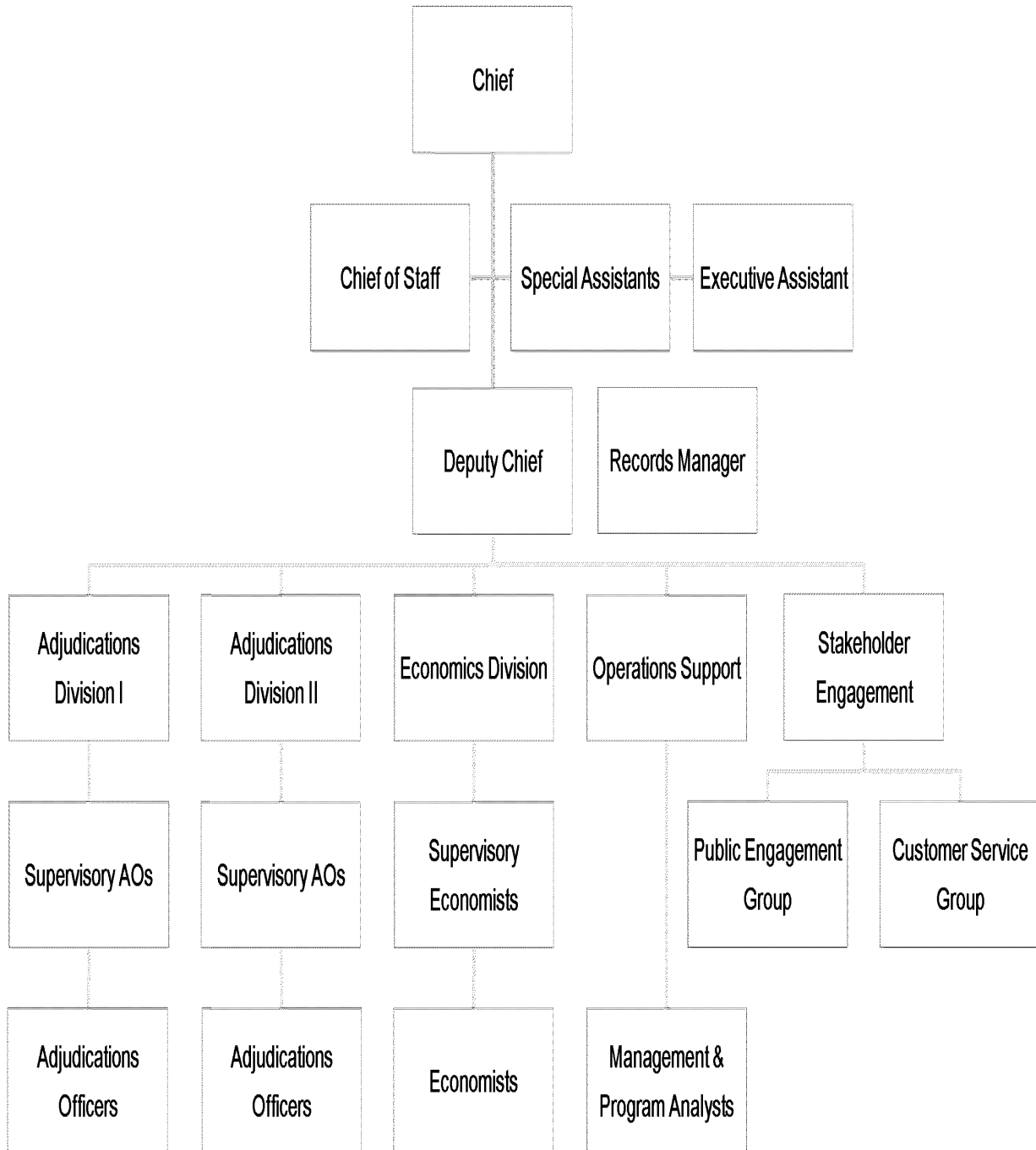
IPO Organization:

- The Immigrant Investor Program Office is a part of the Field Operations Directorate at USCIS Headquarters.
- IPO has a chief, deputy chief, and five divisions.
- As of June 2015, IPO is still growing.*



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IPO Organizational Chart:



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IPO Leadership:

- Chief
- Deputy Chief
- Supported by
 - Chief of Staff
 - Executive Assistant
 - Special Assistants
 - Records Manager



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Adjudications Divisions:

- Two Division Chiefs
- Eight Supervisory Adjudications Officers (SAOs)
- 51 Adjudications Officers (AOs)

(March 2015)



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Adjudications Divisions, Cont'd:

- Officers adjudicate all I-526 and I-829 petitions.
- Consult with economists on I-924 and I-526 adjudications.
- Conduct training for all new IPO personnel.



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Economics Division:

- Division Chief
- Three Supervisory Economists (SECs)
- 17 Economists

(March 2015)



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Economics Division, Cont'd:

- Review and adjudicate all I-924 applications.
- Evaluate and perform due diligence on new projects filed with I-526 petitions.
- Review Regional Center annual supplements to ensure compliance with EB-5 program requirements.
- Conduct training for economists and adjudicators.



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Operations Support:

- Chief
- Six Management & Program Analysts
- Two Mission Support Specialists

(March 2015)



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Operations Support, Cont'd:

- Manages human resources, IPO operating budget, property & equipment, inventory, and acquisitions.
- Collects statistics on IPO activities and makes projections and recommendations for future needs.
- Creates and maintains standard operating procedures for IPO.
- And much, much more!



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Stakeholder Engagement:

- Chief
- Three Management and Program Analysts
- Three Adjudications Officers
- One Adjudicative Team Leader/advisor
- One Student Assistant

(March 2015)



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Stakeholder Engagement, Cont'd:

- Manages customer service functions, including the IPO e-mail inbox.
- Coordinates public engagement activities and public outreach.
- Handles Congressional inquiries.
- Helps expedite special requests and address customers' concerns with individual cases.



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IPO Records Management:

- Records Manager
- Files and record maintenance and movement controlled by Dextera contractors.
- Contractors fulfill work order requests, file requests from other offices, mail room functions, and much more!



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IPO Partners:

- Office of Chief Counsel (OCC)
 - Approximately 10 OCC attorneys are devoted exclusively to EB-5 issues.

- Fraud Detection & National Security (FDNS)
 - IPO has its own dedicated FDNS unit with approximately 16 Immigration Officers and Intelligence Research Specialists.



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Office of Chief Counsel:

- Reviews IPO policy and regulations.
- Counsels on IPO interpretation of policies, regulations, and statutes.
- Provides guidance on specific case scenarios.
- Conducts legal research and training on various legal topics related to EB-5.



FDNS:

- Conducts investigations on possible fraud and national security concerns related to EB-5 petitions and applications.
- Coordinates with other federal, state, and local agencies for EB-5-related investigations.
- Acts as liaison between IPO and other agencies.



Other Government Agencies:

IPO regularly works with many different agencies, especially:

- Immigration & Customs Enforcement (ICE) and Homeland Security Investigations (HSI).
- Departments of Commerce, Justice, Labor, and State.
- Securities & Exchange Commission (SEC)
- Financial Crimes Enforcement Network (FinCEN).



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Questions?



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In-Depth Lawful Source of Capital Issues



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We Will Cover:

- 1) What is Capital?
- 2) What are “Lawful Means”?
- 3) Evaluating Evidence
- 4) EB-5 Investment Capital Earned from Income
- 5) EB-5 Funds Derived from Real Property
- 6) Loans from a Company as the Source of Funds
- 7) Path of Funds
- 8) Gifts
- 9) Office of Foreign Asset Control (OFAC)
- 10) Money Laundering



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What is Capital?

- Definition of Capital
- Regional Center Context
- Standalone Context



What is Capital?

Definition of “Capital” from 8 C.F.R. § 204.6(e):

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness ...Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.



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What is Capital?

Indebtedness Analysis

The indebtedness analysis must be done on all cases where the funds for the capital investment were obtained from a loan.

In either the regional center or standalone context, cash proceeds from indebtedness are often invested in the NCE. In those circumstances, the investor must show that:

- the investor is personally and primarily liable for any loan obtained to get money for the capital investment; and
- any loan obtained to get money for the capital investment is secured by assets owned by the investor.

If the investor is not personally and primarily liable for the loan, or does not own the assets securing the loan, or if the value of the investor's assets securing the loan is not equal to the required investment amount, the case will need to be denied.



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What is Capital?

Regional Center Context:

The capital used in regional center cases will almost always be cash or cash proceeds of indebtedness. Due to the normal set-up of the NCEs, they require the capital investment to be in cash in order to loan the combined investors funds to a JCE.

In these cases, the petitioner will deposit cash or cash proceeds of indebtedness into the NCE's account, or the escrow account set up by the NCE.



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What is Capital?

Standalone Context:

In standalone cases, we see much more variety in what capital is invested:

- Cash or Cash Proceeds of Indebtedness - Directly infused into the NCE;
- Property - An office or warehouse for the NCE to conduct business, or machinery or other tangible items needed by the NCE; or
- Inventory – Products for the NCE to use.



What are “Lawful Means”?

- How to determine “lawful means”
- Documentation listed in the regulations that can be used to show that capital is lawfully obtained
- Catch-all provision of 8 C.F.R. § 204.6(j)(3)
- How far back must you go in tracing the funds to determine if they are from lawful means?



What are “Lawful Means”?

According to the regulations the capital investment must be from assets acquired through lawful means.

To make this determination the adjudicator must track the capital from the original source to determine that the funds were (1) acquired through lawful means and (2) not obtained from any illegal source.

Generally, the original source is income earned by the petitioner or his or her spouse.



What are “Lawful Means”?

Examples of Unlawful Means:

Funds obtained through criminal activity:

- Funds obtained from the sale of drugs
- Funds obtained from theft, bribes, or other illegal activities

Funds obtained by fraud:

- Funds obtained from a loan where the petitioner lied to the bank about how the funds would be used

Funds which are the proceeds of money laundering:

- Funds which were originally obtained by unlawful means but have been invested in a company, or other asset for the purpose of legitimizing the money



What are “Lawful Means”?

8 C.F.R. § 204.6(j)(3) discusses the following evidence that can be submitted to show the capital was lawfully obtained:

- Foreign Business Registration Records
- Tax Returns (either personal, corporate, or partnership)
- Certified Copies of any Judgments or Pending Governmental Civil or Criminal Actions within the Past 15 years
- Evidence Identifying any Other Sources of Capital



What are “Lawful Means”?

The catch-all provision in 8 C.F.R. § 204.6(j)(3)(iii) specifically allows the petitioner to provide evidence of “any other source(s) of capital.”

Many times the evidence submitted by the petitioner consists of items not specifically listed in the regulation. All evidence provided should be reviewed for credibility and the adjudicator should determine how probative the evidence is.



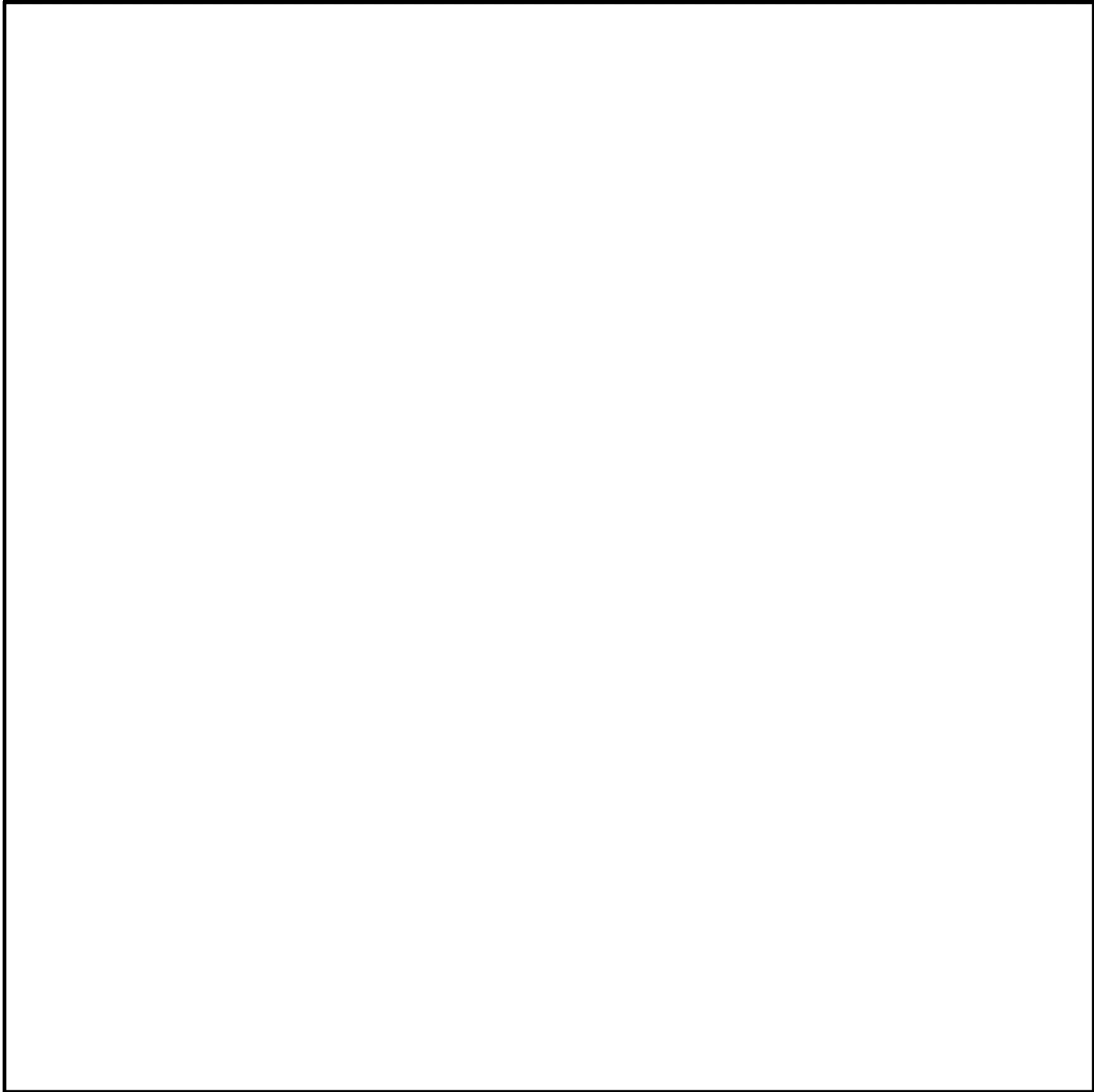
Evaluating Evidence:

- Statements
- Corroborating Evidence
- Fraudulent Evidence

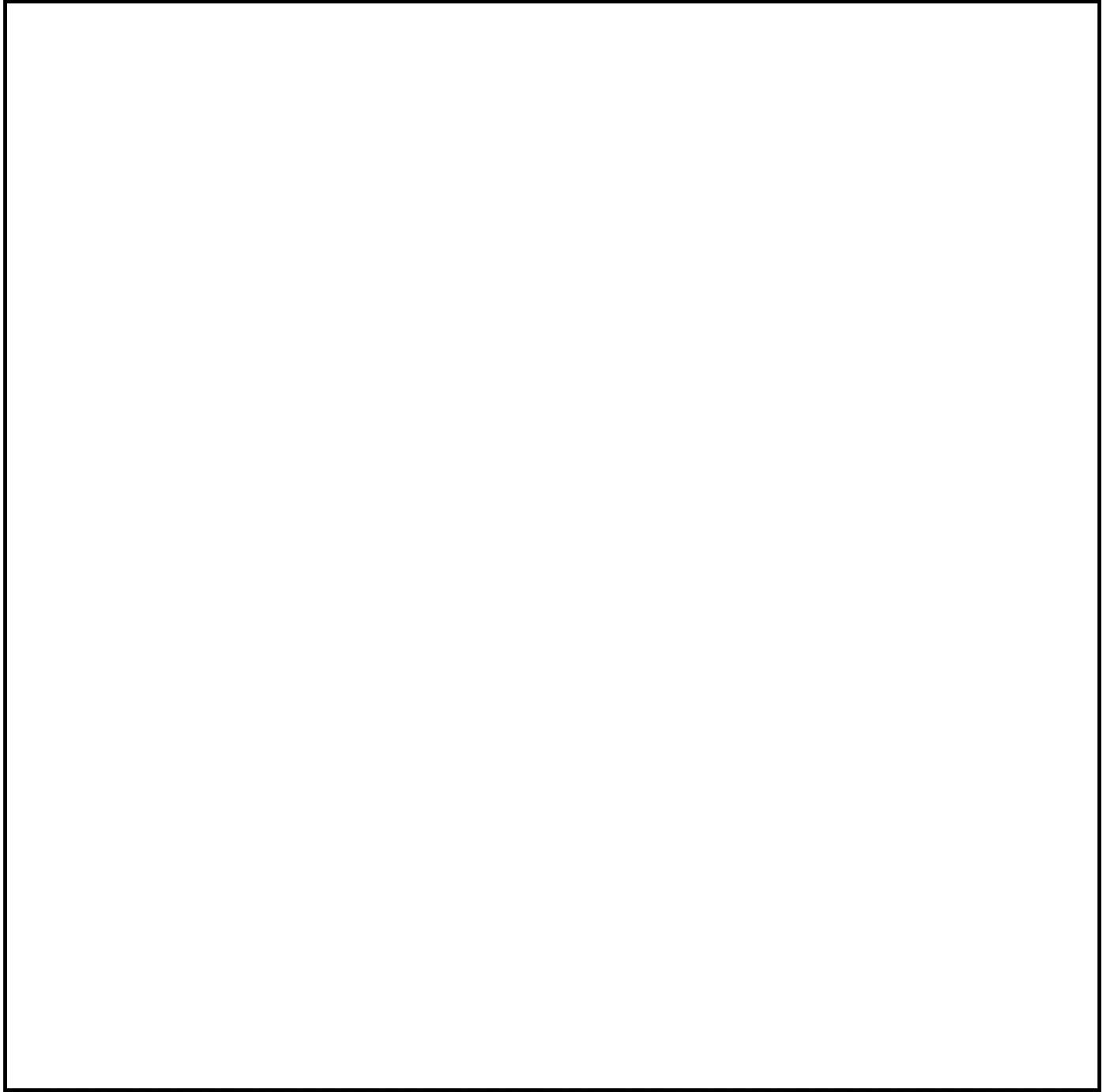


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Evaluating Evidence:

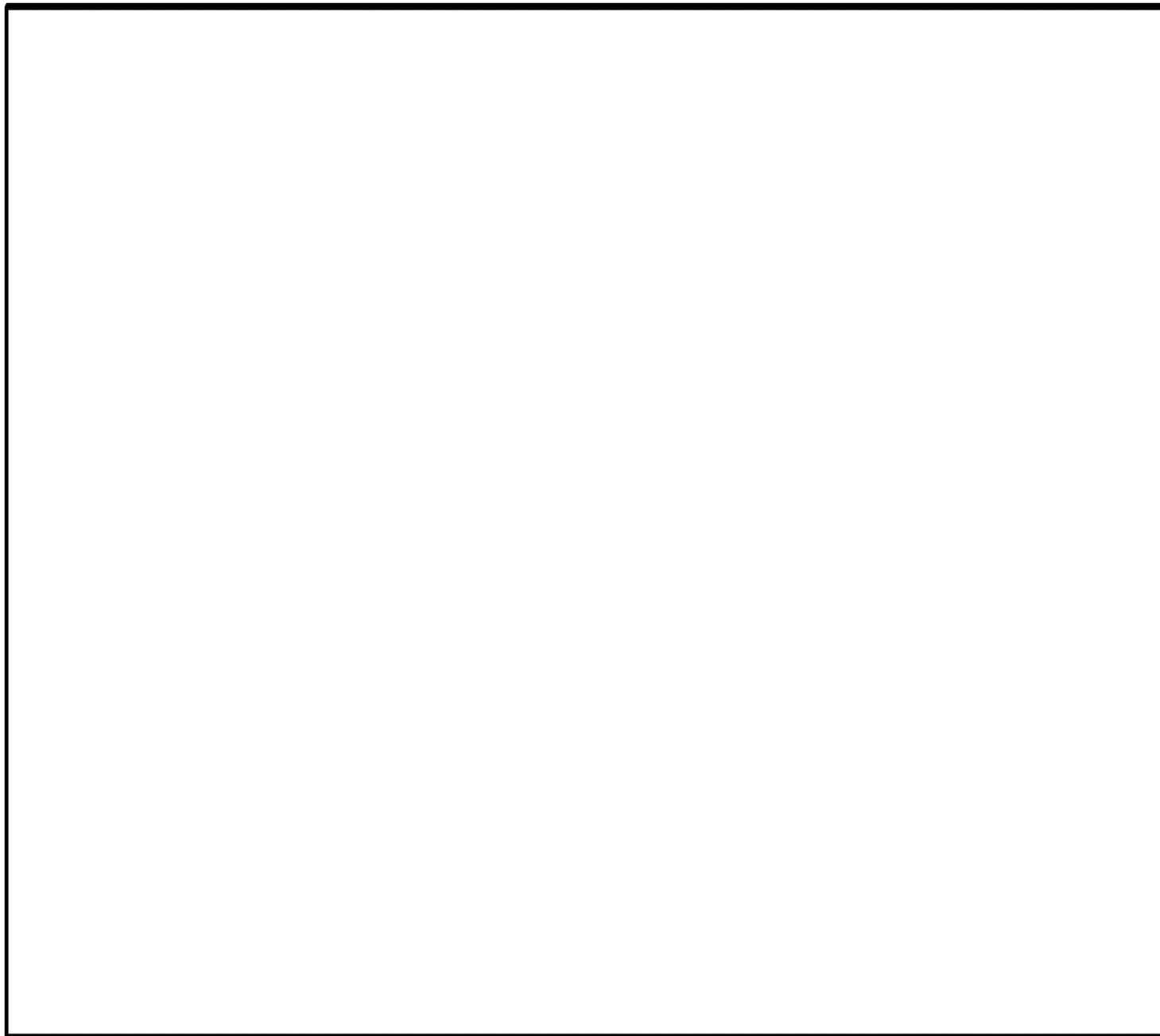


Evaluating Evidence:



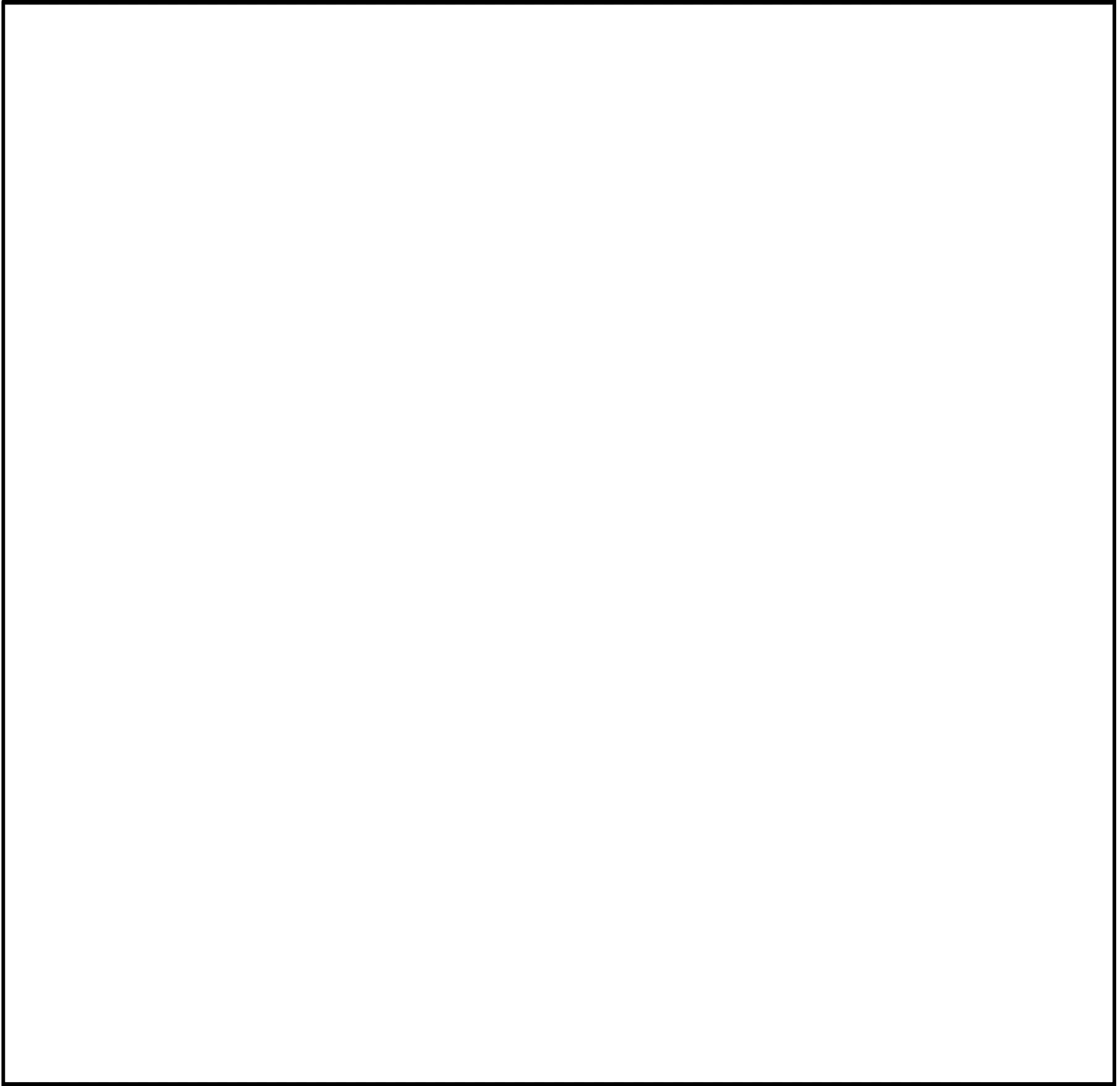
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Evaluating Evidence:

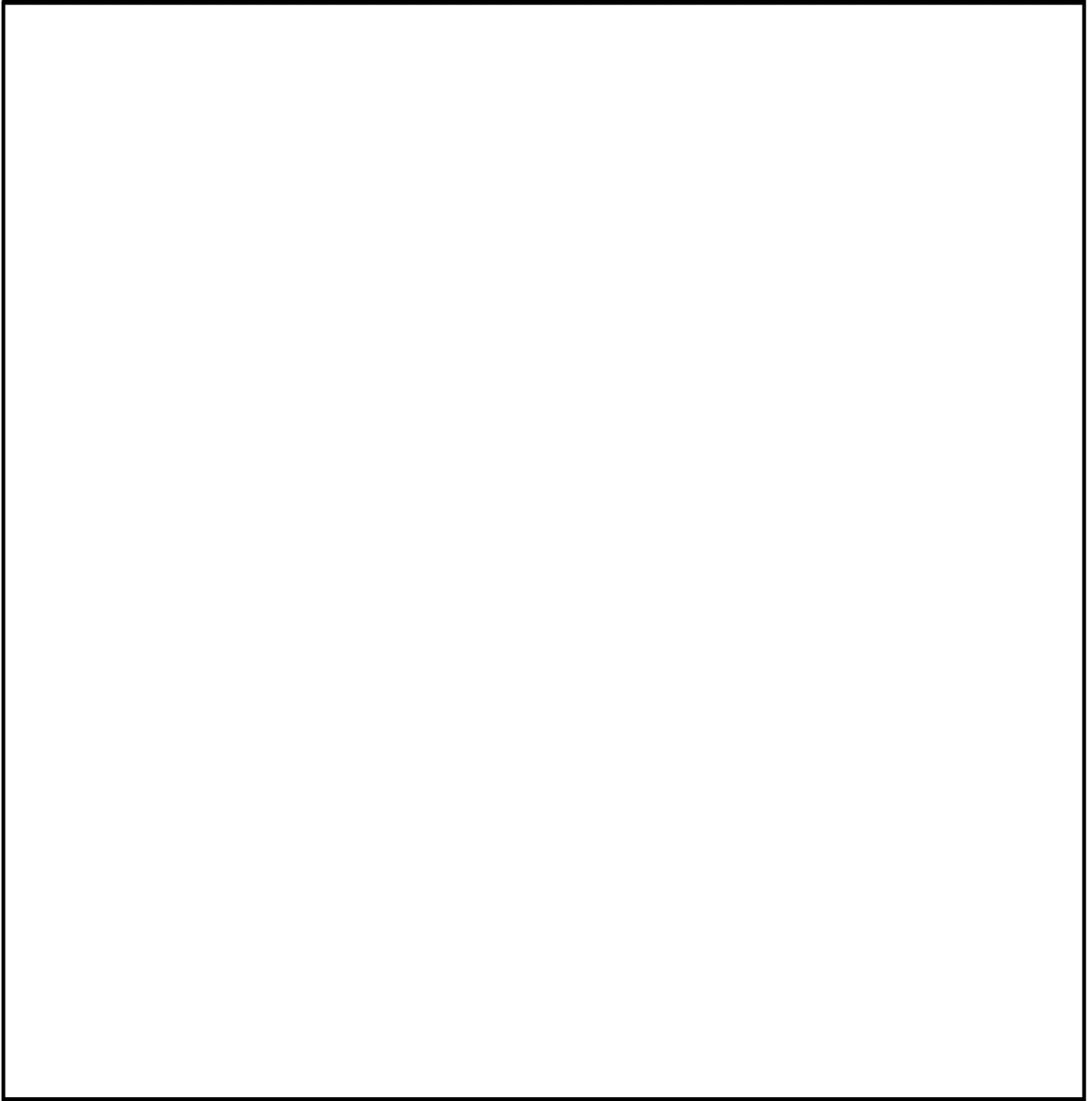


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Evaluating Evidence:



Evaluating Evidence:



EB-5 Investment Capital Earned from Income:

- Documenting Income
- Common Uses of Income



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EB-5 Investment Capital Earned from Income:

Most of our petitioners have obtained their EB-5 investment, at some level, from income earned by either themselves or their spouse.

This is generally earned through employment, either in the form of salary, bonuses, or commissions.



EB-5 Investment Capital Earned from Income:

To show employment income as the source of the funds, petitioners often provide the following:

- Self-declarations, or declarations from co-workers, attesting to the positions held and salary;
- Resume from the petitioner describing the positions held and salary figures;
- Certificates, affidavits, or letters from current or past employers attesting to petitioner's income and position;
- Documents showing income taxes are paid; or
- Bank Statements showing the deposit of income.



EB-5 Investment Capital Earned from Income:

Most common uses of Income in the EB-5 Context:

- 1) Accumulated Funds for the EB-5 Investment
- 2) Purchase of Property
- 3) Investment into a Business



EB-5 Investment Capital Earned from Income:

Accumulated Funds for the EB-5 Investment

Occasionally, the petitioner will have saved income sufficient for the EB-5 capital investment. In these cases, it is necessary for the petitioner to show:

- 1) Proof of Income
- 2) Accumulation of Funds



EB-5 Investment Capital Earned from Income:

Use of Income

Purchase of Property – Petitioner’s source of funds is derived in some way from real property. In these property related instances a petitioner must demonstrate sufficient income to purchase the property in the first place.

Investment into a Business – Petitioner’s source of funds is obtained from his/her ownership interest in a business (e.g. obtains capital from the sale or liquidation of an investment in a business or obtains capital from dividends or other distributions of profits). Petitioner must provide evidence of income to show that the funds used to purchase his/her interest in the company were obtained lawfully.



EB-5 Funds Derived from Real Property:

- Property Purchase
- Property Sale
- Property used as Collateral for a Loan



EB-5 Funds Derived from Real Property:

Property Purchase

Regardless of whether a petitioner ultimately sells a property or uses it as the security for a loan, the petitioner needs to show that he or she owns or at one point owned the property in question.



EB-5 Funds Derived from Real Property:

Examples of documents we typically see and consider probative evidence of property ownership include:

- Ownership Registration Documents
- Purchase Contract
- Mortgage Contract
- Sales Tax or Transfer Tax Payment Receipts
- Bank Receipts or other Financial Transaction Records Evidencing Payment

Keep in mind, this is not an exclusive list of all credible evidence and is also not meant to be a checklist of required documentation. These are just some examples of typical documents which assist petitioners in meeting their burden of proof.



EB-5 Funds Derived from Real Property:

Property Sale

In a source of funds analysis where the capital was obtained from a property sale, a petitioner must first show that they owned the property at the time it was sold. Once ownership is established, it must be determined that the sale proceeds were sufficient to cover the investment into the NCE, and that those specific funds were used to invest into the NCE.



EB-5 Funds Derived from Real Property:

Documentation we typically see to support a property sale includes, but is not limited to:

- Sales Contract – This is largely relied on to dictate what we expect to see with other evidence. For example, other evidence provided should corroborate what the sales contract says in terms of actual description of the property, method and time of payment, etc.
- Evidence of Payment Received
- Sales Tax and/or Transfer Tax Receipts
- Property Ownership Registration Showing Transfer to the Buyer
- Appraisal of Property Value



EB-5 Funds Derived from Real Property:

Property as Collateral

A petitioner must first show ownership of the underlying property used to secure the loan. Once ownership is established, the adjudicator must evaluate the loan itself.

The adjudicator must determine that the basic terms of the loan are provided and evidence that the property used as collateral is owned by the petitioner and has sufficient value to secure the loan.



EB-5 Funds Derived from Real Property:

Evidence generally submitted in scenarios where the loan is secured by property includes, but is not limited to, the following:

- Loan Contract
- Mortgage Contract
- Evidence of the transfer of money from the lender to the petitioner
- Evidence of the value of the property
- Notation of lien against the property on ownership documents



Loans from a Company as the Source of Funds:

Shareholder Loans

A common scenario for source of funds is where the petitioner executes a loan contract with a company (other than the NCE) using his/her ownership interest in the lending company as collateral for the loan.



Loans from a Company as the Source of Funds:

In this scenario, the petitioner who is using his/her ownership interest in a company as the collateral for the loan will typically submit:

Evidence of the establishment and operations of the company which issues the loan

- Business License
- Financial Audit Reports
- Tax Returns
- Bank Statements

Continued on next slide



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Loans from a Company as the Source of Funds:

- Evidence of the petitioner's ownership in the company which issues the loan
 - Capital Verification Reports
 - Receipts from the company confirming petitioner's contribution
 - Financial audit reports
- Evidence of the petitioner's ownership in the company has sufficient value to secure the loan.
- Petitioner must establish that he/she is personally and primarily liable for the loan and that the loan was authorized by the company
 - Loan Contract between petitioner and the company
 - Shareholder meeting minutes
- Evidence that the initial contribution to the company was obtained through lawful means.



Path of Funds:

- Tracing the Path of Funds
- Common Scenarios



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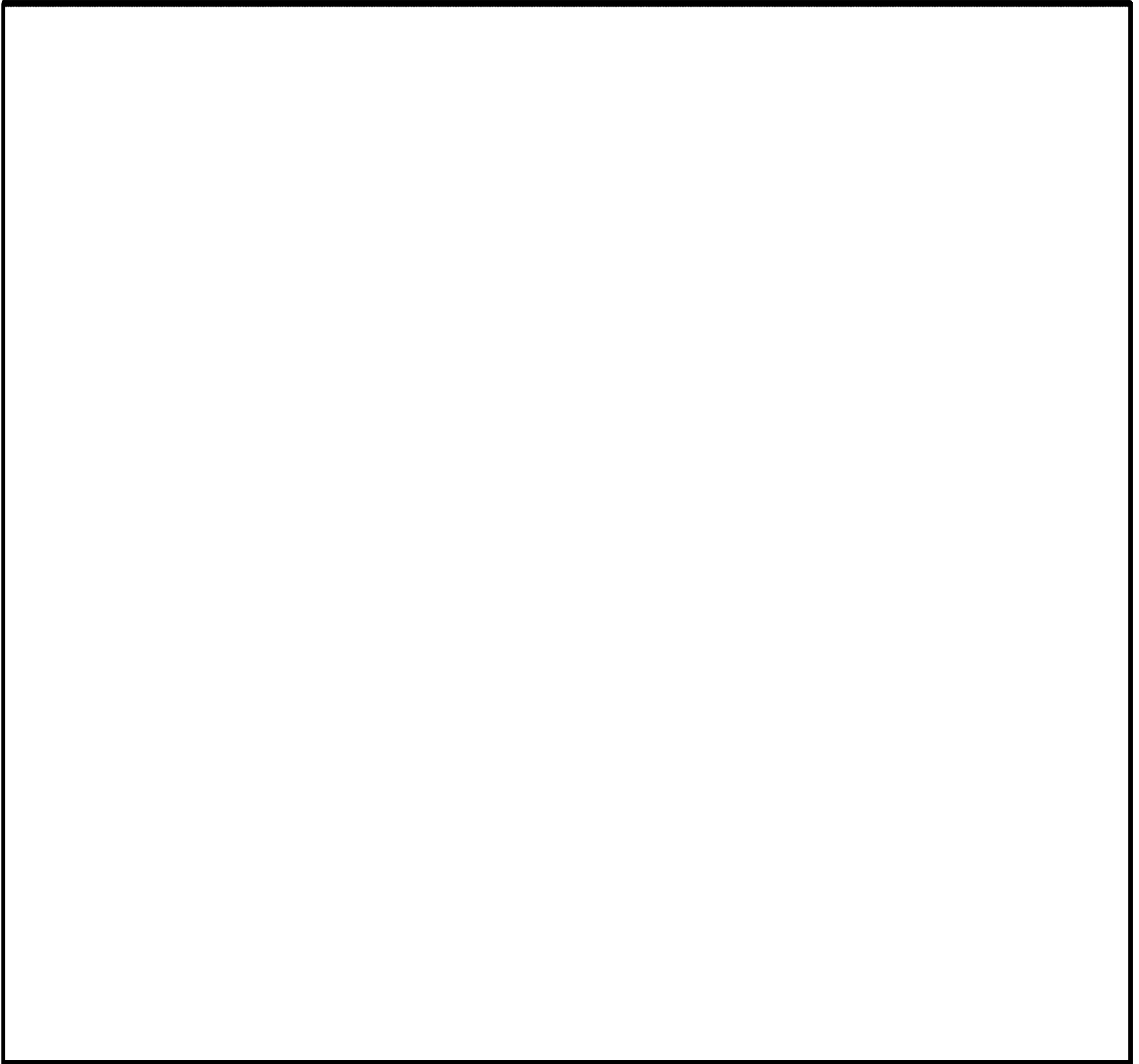
Path of Funds:

The path of funds includes not only how the funds were accumulated or obtained, as previously described, but also how the funds travelled from the original source all the way to the NCE, or the NCE's escrow account. This is known as the “path of funds.”



Path of Funds:

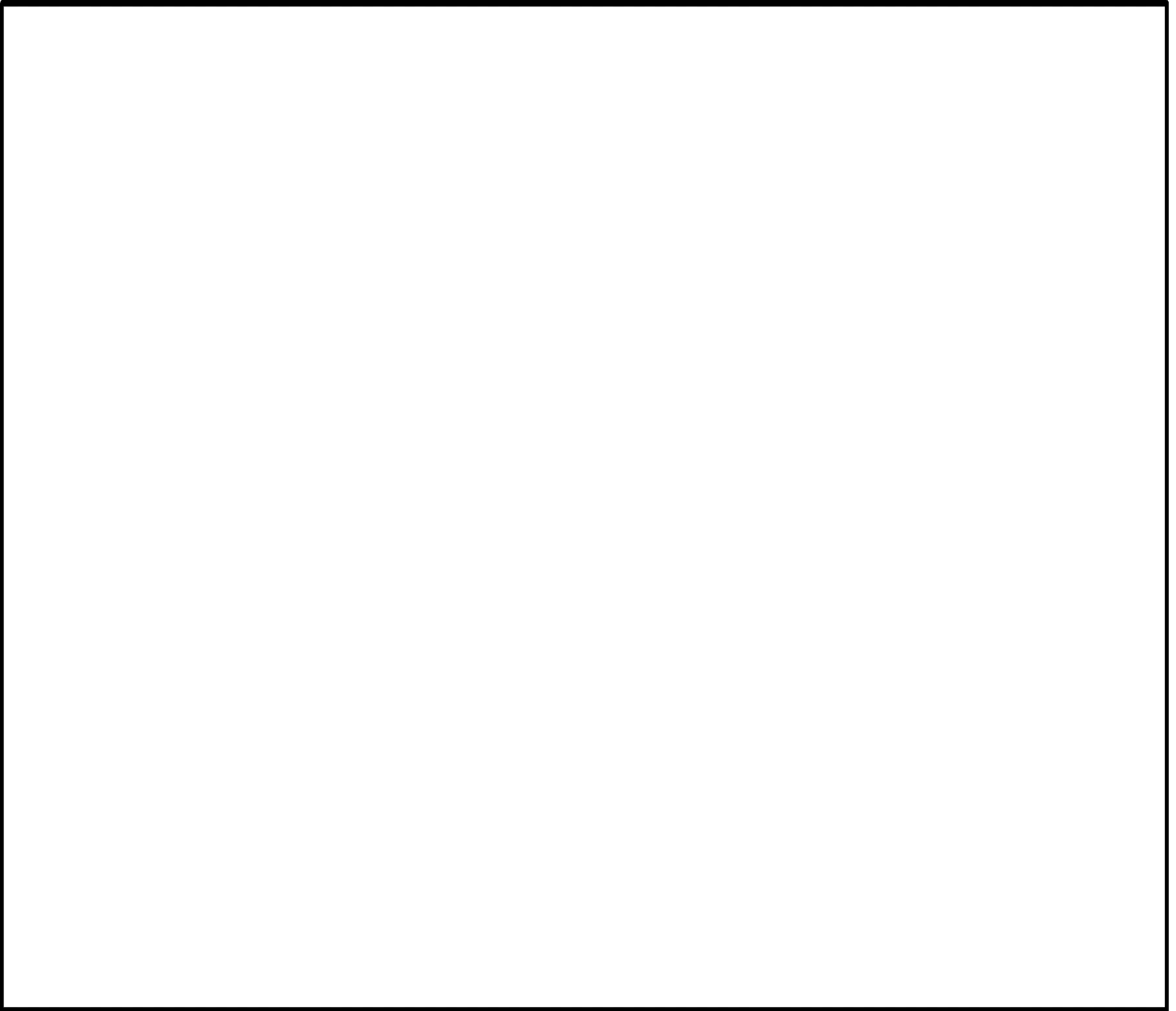
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Path of Funds:

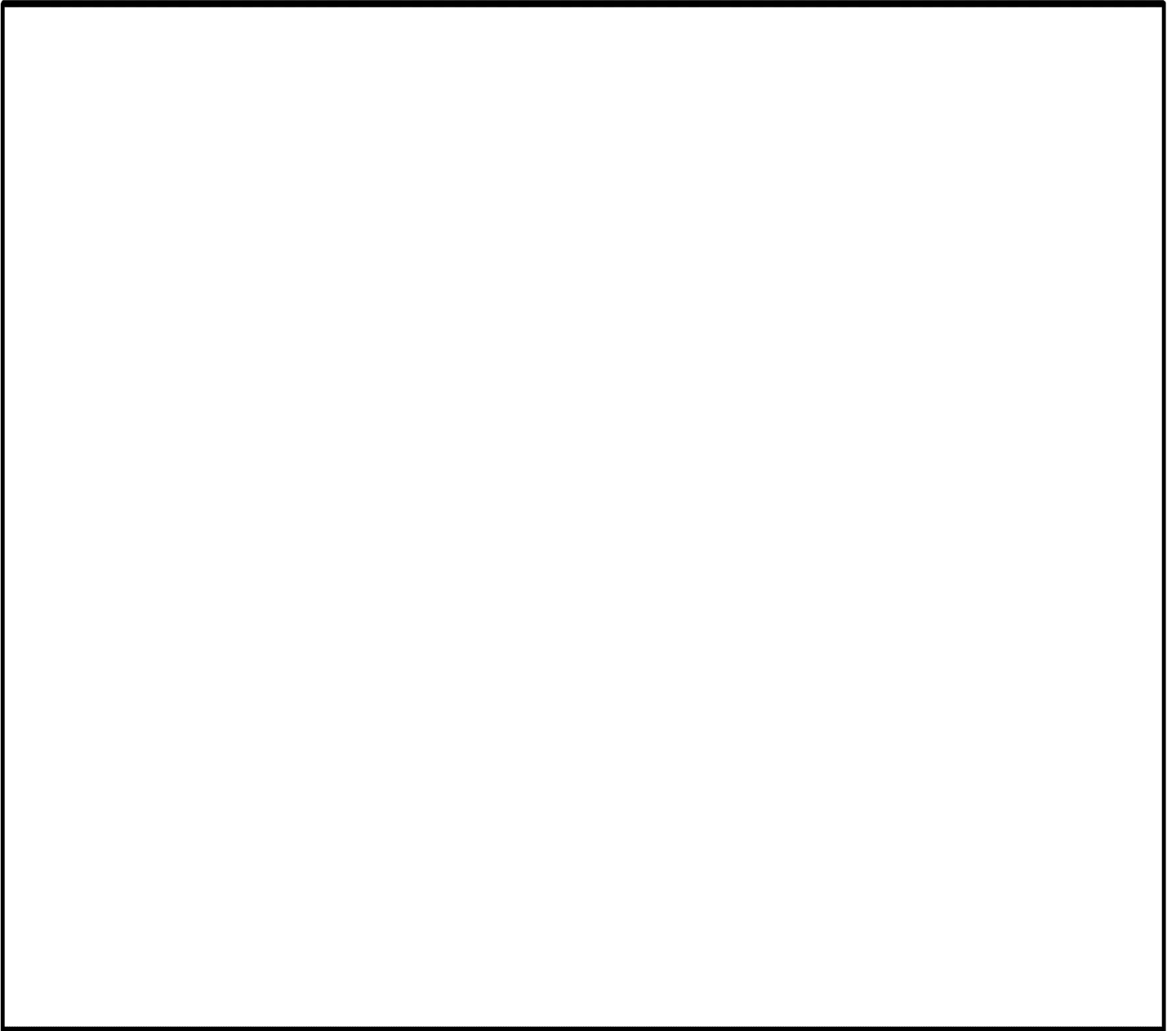
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Path of Funds:

(b)(5)



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Gifts:

- Husband and Wife
- Third-Party Gifts
- Gift Letter
- Source of Funds



Gifts:

Husband and Wife

For the purposes of the source of funds analysis, the adjudicator can consider a husband and wife's funds as joint marital property. Both the husband and wife have the ability to use these funds, despite the funds being earned by the other person. It is unnecessary for a husband to gift funds to the wife, and vice versa.

Note: It is necessary for the petitioner to demonstrate the couple is in a marital relationship. Review the file for marriage certificate, or other documentation of the relationship.



Gifts:

Third-Party Gifts

Often we see a petitioner's EB-5 capital coming from a third party. In these cases, it is necessary for the record to include a gift letter confirming the gift and stating that the funds are able to be used by the petitioner. Without a letter or declaration gifting the funds to the petitioner, the funds have not been established as the property of the petitioner. Therefore, they cannot be used as the EB-5 capital investment.

Most gifts are given between family members, however there is nothing that prevents an unrelated third party from gifting funds to the petitioner. In all cases, the petitioner must still establish that the gifted funds came from a lawful source.



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Gifts:

Gift Letter

When reviewing the gift letter or declaration it is important to determine that the capital received is actually a gift and that no conditions exist and that no repayment is required.

If the letter or declaration requires the capital to be returned, or if there are specific conditions placed on the gift, the gift may actually be a loan. Loans not secured by assets belonging to the petitioner do not meet the regulatory definition of “capital”.



Gifts:

Source of Funds

The adjudicator is still required to determine that the gifted funds come from a lawful source.

In gift situations, it may be difficult for the petitioner to show where the funds came from, as the funds have not always been in the possession of the petitioner. However, the petitioner must still demonstrate how the donor obtained the funds.



Office of Foreign Asset Control (OFAC):

- What is OFAC?
- Countries facing United States Sanctions
- EB-5 OFAC Issues



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OFAC:

What is OFAC?

The Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions against targeted foreign countries and regimes, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

Presidential powers allow OFAC to freeze assets under U.S. jurisdiction and impose controls on transactions.



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OFAC:

Countries facing United States Sanctions

For adjudication purposes, please be mindful of cases adjudicated from countries such as:

- Iran
- Venezuela
- North Korea

If you are assigned a case from these countries please see a supervisor before adjudication. These cases may require additional documentation to show the EB-5 capital investment was transferred to the United States legally.



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OFAC:

EB-5 OFAC Issues

- Cases filed after October 22, 2012 do not require an OFAC license, whereas, cases filed prior to this date must include an OFAC license authorizing the transaction/investment.
- Cases filed after October 22, 2012 allow investment funds to have passed through prohibited banks. Funds coming directly from a prohibited bank are still prohibited.
- Be mindful of the classification of “WMD” on the prohibited bank list. These cases may require review by OCC and FDNS before proceeding.
- For current lists of prohibited banks, please check the OFAC website.



Money Laundering:

- EB-5 and Money Laundering
- Safeguarding against Money Laundering
- Three-step Process of Money Laundering
- Where EB-5 May See Money Laundering



Money Laundering:

Because the investment of capital in the EB-5 program context often involves many transfers of significant amounts of money, we must be aware of the possibility of *money laundering*.

Money laundering is the act of ‘cleaning dirty money,’ or taking illegally obtained money and inserting it into legitimate businesses or investments so it looks like it was obtained from legal activities.



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Money Laundering:

Safeguarding against Money Laundering

To safeguard the banking system, the Financial Crimes Enforcement Network (FinCEN), federal banking regulators, and the federal law enforcement community work closely with the banking industry to fight money laundering.

If you encounter a case where you suspect money laundering, contact your supervisor and complete an FDNS referral sheet explaining, in detail, why you suspect money laundering.



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Money Laundering:

Three-Step Process of Money Laundering

- 1. Placement** – The launderer inserts the illegally obtained money into a legitimate financial institution. Often, this is in cash deposits. This is the riskiest stage of the laundering process.
- 2. Layering** – This involves sending the money through various financial transactions to change its form and make it difficult to follow. This is done to make the original funds as hard to trace as possible.
- 3. Integration** – The money re-enters the mainstream economy in a legitimate looking form. It is very difficult to catch a money launderer at this stage if there is no documentation during the previous stages. (Generally this is the stage the EB-5 investment capital would be in, if the money was laundered.)



Money Laundering:

Where EB-5 May See Money Laundering

Underground / Alternative Banking – This includes the “Hawala” system used in the Middle East, Africa, India and Pakistan, and the “Fie Chen” system used in China. These networks allow for undocumented deposits, withdrawals and transfers. They are trust-based systems, which leave no paper trail and operate outside of government control.

Shell Companies – These are incorporated companies that do not have any significant assets or operations. To launder money, a shell company will often take in dirty money for nonexistent goods or services. This creates the appearance of legitimate transactions.



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Formation of a New Commercial Enterprise (NCE) and Active Management of the NCE



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We Will Cover:

1. Introduction
2. What is an NCE?
3. Active management of the NCE
4. Types of business entities
5. Evidentiary requirements



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Introduction:

In order to qualify for status under the EB-5 program, a person must invest or be in the process of investing the required amount of capital into a *new commercial enterprise* (NCE) and be actively involved in the management of that NCE.



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Definition of “NCE”:

Under 8 CFR § 204.6(e), a new commercial enterprise must be:

1. A business entity
2. Conducting (or that intends to conduct) lawful, for-profit activity
3. Established after November 29, 1990*

* Note that under 8 CFR § 204.6(h), restructuring or reorganization of or expansion of an existing business may qualify as establishing an NCE.

For clarity, we will go over these requirements in reverse order.



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New Commercial Enterprise:

The immigrant investor may establish an NCE through:

1. The creation of an original business after 11/29/1990;
2. The purchase of an existing (pre-11/29/1990) business that is simultaneously or subsequently restructured or reorganized; or
3. The expansion of an existing (pre-11/29/1990) business so that there is a substantial (40%) increase in either the net worth of the business or the number of employees of the business compared to pre-expansion levels.

See 8 CFR § 204.6(h).



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New Commercial Enterprise, Cont'd:

- In the Immigration and Nationality Act of 1990, Congress required that potential EB-5 immigrants invest in a new commercial enterprise. Congress specified the day the law was enacted (November 29, 1990) as the earliest possible date for EB-5 investment.
- Originally, the statute required that an immigrant investor investing in a TEA personally “establish” the enterprise. This requirement was removed in 2002 and replaced by the current requirement that a petitioner “invest in” the NCE.



New Commercial Enterprise, Cont'd:

Merely organizing a new company and then purchasing an existing business as the job-creating entity (JCE) does not mean that a NCE has been established.

In *Matter of Soffici*, the AAO held that an investor cannot simply organize a new business (such as a holding company) that then purchases an existing business and have a “new” commercial enterprise for the purposes of the EB-5 program.



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For-Profit Activity:

Regulations require that the NCE be engaged in for-profit activity.

Note that the for-profit focus is on the type of activity conducted by the NCE, rather than an express restriction on the type of business organization. The regulation provides that the commercial enterprise must be one that is designed to make a profit, unlike, for example, some charitable organizations, and it does not include “a noncommercial activity such as owning and operating a personal residence.” 8 C.F.R. § 204.6(e).



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Restructured or Reorganized:

For an existing business to qualify as an NCE, the investor may show that there has been a “restructuring or reorganization of an existing business such that a new commercial enterprise results.” 8 CFR § 204.6(h)(2).

- Must be more than cosmetic changes or a simple change in ownership.
- For example, simply putting a fresh coat of paint on a hotel and continuing to operate it as a hotel is not enough (*Matter of Soffici*).



Restructured or Reorganized, Cont'd:

- On the other hand, converting a restaurant into a nightclub or adding crop production to a livestock farm may be sufficient to qualify as a NCE.

- Each NCE is different and will require different evidence and analysis.
 - If an investor has purchased an existing business, he or she must provide evidence of when that original business was created.
 - Evidence of a business that has been in operation for many years and has only recently changed names or reopened after being closed for a short time may also be relevant.



Expanded Business:

For an existing business to qualify as a NCE, the investor may instead show that—due to the investor’s investment—there has been at least a 40% increase to either:

- The net worth or
- The number of employees

Compared to the pre-investment levels.

See 8 CFR § 204.6(h)(3)



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Expanded Business, Cont'd:

EXAMPLE: Ricky decides to invest in a long-established plumbing company. When Ricky invests in the company, there are five employees.

In order to qualify as a NCE, Ricky's business would have to hire at least two more employees (5 employees x 40% = 2)

Therefore, before Ricky files a petition, his business would need at least seven total employees (5 pre-investment employees + 2 post-investment = 7)*

* Please note, the hiring of 2 new employees in this example is to establish a new NCE and does not waive the job creation requirement (At least 10 new full-time jobs); however, the new hires can be counted towards the job creation count.



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Expanded Business, Cont'd:

EXAMPLE: Laura decides to invest in a long-established dairy farm. At the time of Laura's investment, the net worth of the farm is \$1,000,000.

- In order to qualify as a NCE, the net worth of Laura's farm would have to increase by \$400,000 ($\$1,000,000 \times 40\% = \$400,000$).
- Therefore, before Laura files a petition, she would have to show that the net worth of the farm was at least \$1,400,000 ($\$1,000,000$ pre-investment net worth + \$400,000 post-investment = \$1,400,000).



Expanded Business, Cont'd:

Petitioners must include evidence of the investment and the net worth or number of employees before and after investment, such as:

- Stock purchase and/or investment agreements
- Certified financial reports
- Payroll records or similar instruments such as state quarterly wage reports, forms W-2, tax returns, and audited financial statements.



Active Management of the NCE:

The EB-5 Program requires the immigrant investor to be engaged in the management of the NCE.

This means that the petitioner must be engaged in either:

- The day-to-day managerial control of the business; or
- Policy formulation that affects the business.

The investor cannot have a purely passive role in regard to his or her investment. See 8 CFR § 204.6(j)(5).



Active Management of the NCE, Cont'd:

To show that the investor is involved in the active management of the NCE, he or she can show that:

- The investor's job description in the NCE includes managerial duties or policy-making abilities;
- The investor is a corporate officer or a member of the board of directors; or
- If the NCE is a partnership, evidence that the investor is engaged in management or policy-making activities. If the investor is a limited partner and the limited partnership agreement provides the investor with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act (ULPA).



Active Management of the NCE, Cont'd:

It is important to note that the investor only has to demonstrate the *ability* to exercise managerial control or affect the business's policies—the investor is not required to show performance of such duties.



Active Management of the NCE, Cont'd:

EXAMPLE: Phil is a limited partner in an NCE. The limited partnership agreement states that limited partners may attend business meetings and vote on policies, but Phil never actually attends those meetings.

For EB-5 purposes, showing that he has the powers of a limited partner is sufficient to demonstrate Phil's engagement in the management of the NCE.



Job Descriptions:

The investor may show that he or she is involved in the active management of the NCE if his or her position in the NCE requires those duties.

EXAMPLE: In her new business, Ande is listed as the general manager. Her job description includes the duties of hiring and firing employees, setting policies, purchasing inventory, and managing the company's bank accounts. This is probably sufficient for the EB-5 requirements.



Corporate Officer or Board Member:

A corporate officer or board member usually has the ability to directly manage a company or is involved in policy making activities and so, the regulations allow evidence that a petitioner fills one of these roles to satisfy the management criteria.

EXAMPLE: Patrick is the Chief Financial Officer of his new company. While Patrick leaves most of the real bookkeeping and decision making to his secretary, Patrick's position as a corporate officer satisfies the active management requirement for EB-5.



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Status as partner, shareholder or member of the NCE:

The NCE's organizational documents may grant the investor the management or policy-making ability to meet EB-5 requirements.

If an investor is a limited partner and has the rights normally granted to limited partners under the ULPA, the investor will be considered to have met the active management requirements of the EB-5 program.

The ULPA provides that limited partners may call into and attend meetings and vote on business matters including policies consistent with their limited partnership agreement. The ULPA addresses how such functions should be performed.



Types of Business Organizations:

The regulation provides a list of examples of business organizations that qualify as commercial enterprises. 8 CFR § 204.6(e).

This presentation will describe the business organizations most commonly seen in the EB-5 program.



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Common Types of Business Organizations:

The most common types of business organizations we see in the EB-5 program include (in no particular order):

- Sole Proprietorship
- General Partnership
- Limited Partnership
- Limited Liability Company (LLC)



Sole Proprietorship:

Any individual person who goes into business for himself/herself may be a sole proprietor.

- Owned and run by one natural person (or sometimes a married couple)
- Virtually no separation of asset ownership or liabilities from the sole proprietor and the business
- May not have to file with state authorities to operate business, depending on the jurisdiction
- May have a trade name or “doing business as” (DBA) name for the business



Sole Proprietorship, Cont'd:

Since a sole proprietor is the only owner of a business, he or she is almost always the only director or manager of the business as well.

Almost all sole proprietors will easily satisfy the active management requirements of the EB-5 program.



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General Partnership:

A general partnership is formed when two or more persons agree to begin a business venture together.

- Can be a partnership of natural persons or companies
- Can be established formally (contract) or informally (handshake)
- Very little division between the assets and liabilities of the partnership and the individual partners



General Partnership, Cont'd:

- General partners are usually directors or managers of the business and should be able to meet the active management requirement of the EB-5 program easily, but...
- There are no uniform rules governing partnerships
 - State-by-state rules
 - Can have any distribution of ownership: equal partners, interests, percentages, etc.
 - Look out for partnership agreements that limit or exclude certain partners from management or decision making.



Limited Partnership:

A limited partnership (LP) is similar to a general partnership except that there are at least two classes of owners/partners:

- General partner(s) – authorized to perform the management functions of the partnership and liable for the partnership's debts and obligations
- Limited partner(s) – restricted from participating in day-to-day management of the business in exchange for protection from lawsuits against and other liabilities of the partnership



Limited Partnership, Cont'd:

- LPs are allowed through operation of law
 - Federal: Uniform Limited Partnership Act (ULPA)
 - States may have their own LP rules that may expand on ULPA standards

- LPs must generally file a certificate of limited partnership with the state where they are formed

- LPs are created through a contract between the partners
 - Usually between the general partner and the individual limited partner(s)

- Most common business entity in EB-5 program



Limited Liability Company (LLC):

A limited liability company (LLC) is a business entity that has features of both a partnership and a corporation.

- LLCs are formed under specific state laws
- There is no uniform federal law governing LLCs
- LLCs are generally formed by filing “Articles of Organization” with the relevant state authority
- May have virtually any organizational structure



LLC, Cont'd:

LLCs most frequently encountered in EB-5 are usually organized as:

- One or more managing members
 - Similar powers as a limited partnership's general partner
- One or more classes of limited members
 - Each class of limited members can have different rights and liabilities
 - Some classes will be able to attend meetings, vote on business matters, others will be purely passive investors



LLC, Cont'd:

Adjudicators must review LLC organizational documents to determine whether a LLC member has the required amount of managerial or policy-making ability for active management requirement.

Generally, if the LLC operating agreement grants the investor at least the powers normally granted to a limited partner under the ULPA, this will be sufficient.



Other Business Organizations:

While rarely seen as a NCE, many other business types may be involved in the petition, such as:

- Corporations
- Business trusts
- Holding companies

Adjudicators are encouraged to become familiar with these other business organizations to help in understanding features of individual projects or petitioners' sources of funds.



Evidentiary Requirements:

Required evidence of NCE formation is set forth at 8 CFR § 204.6(j)(1). The types of evidence submitted to show NCE formation may include:

- Business registration documents, or applicable charter documents filed with state and local authorities
- Business licenses
- Tax records including tax returns, quarterly filings, etc.
- Partnership agreements, operating agreements, or other applicable governing documents
- Public reports or news articles on the business
- Etc.



Common EB-5 Project Documents:

Formation of NCEs is often accompanied by a series of agreements and other documents, which an adjudicator* must review:

- Organizational documents: Partnership agreement or operating agreement
- Investment documents: Offering memorandum or private placement memorandum (PPM), subscription agreement

* Please note the IPO Economist reviews all organizational documents when reviewing the project as a whole. However, adjudicators should familiarize themselves with all submitted documents.



Operating Agreement/Partnership Agreement:

An operating agreement for a LLC or partnership agreement for a partnership is the contract that sets forth how a NCE will be governed.

- Lays out the rights and duties of all owners/partners/members of the NCE, including the involvement in management;
- Usually requires signature from the investor and acceptance by the general manager or general partner of the NCE;
- Provides rules for how the investor can leave the NCE and get his or her investment funds back.



Offering Memorandum:

An offering memorandum or a private placement memorandum (PPM) is a document issued by a company to solicit investments.

- Includes a project overview, terms of the investment, and description of the issuer's organization.
- The Securities and Exchange Commission (SEC) provides rules for how investment offering documents may be created, whether the offering must be registered with the SEC, and what information may be included in the offering documents.
- Does not create a contractual relationship with the investor but usually is binding with respect to representations and disclosures made by the issuer.



Subscription Agreement:

The subscription agreement is a contract, usually between the investor and the NCE, where the investor agrees to purchase shares or interests of the issuer in exchange for his or her investment funds.

➤ Generally describes:

- amount of the capital investment and how investors will contribute these funds to the NCE,
- what the NCE will do with those funds, and
- what share or interest of the NCE the investors will receive in return.

➤ Should be signed by the investor and a representative of the NCE.



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Evaluating EB-5 Project Docs:

Each of those documents may include information about:

- The date the NCE was established;
- The requirements for joining the NCE;
- The rights and duties of the investor;
- And other important project concerns such as capital-at-risk and job creation.



Evaluating Docs, Cont'd:

- Adjudicators must become familiar with the various documents related to the establishment and governance of an NCE and how they interact.
- In day 3 of the training, we will discuss in more detail ‘what to watch for’ as it pertains to these documents when we discuss capital-at-risk.
- Economists perform the initial review of these documents for most projects.
- Discrepancies between the documents are common and should be resolved before final adjudication.
- Some documents have more legal or evidentiary weight than others.
- OCC attorneys are available to review complicated documents if needed (see your supervisor).



Questions?



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Reviewing the Economist Due Diligence Summary



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Introduction:

The Economist Due Diligence Summary (EDDS) is a document created by an economist after reviewing a Regional Center (RC)-affiliated project.

The project may be introduced for the first time at the Form I-924 or at the Form I-526 stage.

The economist will examine the business plan, economic impact analysis, and other organizational documents as part of his or her review.



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Introduction, Cont'd:

Upon being assigned to a project, the economist will review either the Form I-924 or the Form I-526 that introduces the project.

After completing his or her review, the economist will draft the EDDS. If reviewing a Form I-924, the economist will also draft the recommended notice (approval, RFE, NOID, denial). The EDDS and notice (if applicable) are then sent to a supervisory economist for review.

Once the supervisory economist concurs with the EDDS, the EDDS is finalized. In the case of a Form I-924, the notice is sent out once it also has received supervisory concurrence (Economist Supervisor). In the case of a Form I-526, the project is released to adjudicators once the EDDS is finalized.



Parts of the EDDS:

- Overview
- Part A – Case Summary
- Part B – Regional Center Summary
- Part C – Targeted Employment Area (TEA) Designation
- Part D – Project Analysis and Approval
- Conclusion



Parts of the EDDS:

Please note that the names and order of the parts may vary from one EDDS to another, but all the required information should be there.

Older EDDS documents may be structured differently.

Similarly, the contents and appearance of the EDDS may change and alter over time as program needs develop and change.



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The Overview:

- Provides info on the regional center, the new commercial enterprise (“NCE”), the job creating entity (if applicable) and the project

- Should identify the receipt number of the file reviewed
 - Sometimes useful when looking for exemplar documents on the ECN or searching for which economist completed the review



Part A – Case Summary

- Contains more detailed information on the NCE and its formation
 - Identifies if it's a NCE through creation of an original business, purchase and restructuring or reorganization of an existing business, or expansion of an existing business
- Should contain economist's general summary of the project
- Review for possible issues



Part B – Regional Center Summary:

- Provides information on the regional center (RC) and the relationship between the RC and the NCE
- Lists NAICS Codes for job creation
- Lists documents related to the formation of the RC



Part C – Targeted Employment Area (TEA) Designation:

- If the project is claiming to be within a TEA, then the economist will review the TEA letter to ensure compliance with the statutory requirement.

- Economist will review TEA evidence to ensure:
 - That employment is being created in the TEA
 - That methodology used to calculate high unemployment is valid



Part D – Project Analysis and Approval:

- This is the lengthiest and most detailed section of the EDDS.

- The Project Analysis and Approval part contains:
 - Organizational Documents
 - Business Plan Analysis
 - Economic Impact Analysis
 - Approval Checklist
 - Conclusions
 - Issues to RFE



Part D – Project Analysis and Approval, Cont'd:

Business Plan Analysis

- Contains a series of checklists to assist the economist in reviewing the business plan, with additional space for comments

- Divided into 4 general sections with tables/comments
 - Market Research and Competitor Analysis
 - Credibility
 - Financial Analysis (includes pro forma review)
 - Tenant Occupancy Analysis



Part D – Project Analysis and Approval, Cont'd:

Economic Impact Analysis (EIA)

- Economists will review the EIA forecasts for job creation accuracy
- Review claimed NAICS codes
- Review construction costs and timeline, for cases seeking to use construction jobs



Part D – Project Analysis and Approval, Cont'd:

- Approval Checklist
 - Includes full list of exemplar documents

- Conclusion
 - Brief statement summarizing economist's evaluation of the project

- Issues to RFE
 - Place for economist to identify and explain any issues they feel should be included in a RFE



EDDS Review:

- Please read the EDDS thoroughly.
 - Sometimes important information is included in blocks on the checklist and might be overlooked.

- If you have any concerns about anything in the EDDS, please communicate with the economist.

- Include a copy of the EDDS in the file, on the record side, under your Form I-526 analysis template.



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Targeted Employment Area (TEA)



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We Will Cover:

- Overview
- Adjudication Overview
- Geographic Area of the TEA
- Types of TEAS
- Timeframe for TEA Designation



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Adjudication Overview:

- TEAs are rural areas or areas that have experienced high unemployment. The legislation encourages EB-5 investment in TEAs by reducing the minimum amount of capital required to qualify for an EB-5 visa to \$500,000.
- Petitioner will indicate on page 1 of the Form I-526 that they are claiming to have invested in a TEA
- To qualify for the reduced minimum capital investment, each petitioner must establish at the time of their investment or at the time they file an I-526 petition (if actively in the process of investing), that their investment is in a NCE or JCE principally doing business in a TEA.



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Overview

INA 203(b)(5)(C) establishes the amount of capital an EB-5 petitioner needs to invest.

- Generally, an EB-5 petitioner is required to invest a minimum of \$1,000,000 to qualify for an EB-5 visa.
- Adjustment for TEAs – in the case of an investment in a TEA, an EB-5 petitioner is required to invest a minimum of \$500,000.



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Some Definitions:

INA 203(b)(5)(B)(ii) defines a TEA as either an high unemployment area or a rural area.

- **High Unemployment Area** - an area which has experienced high unemployment (of at least 150 percent of the national average rate).
- **Rural Area** - any area that is not within a metropolitan statistical area (MSA) or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).



Adjudication Overview:

Steps for reviewing TEAs

3 Questions: Where, how, and when?

1. Where is the NCE/JCE “principally doing business”?
2. How does the petitioner show that the NCE/JCE is principally doing business in a TEA?
3. When does the area need to be a TEA?



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Where the NCE/JCE is “Principally doing Business”:

- Generally speaking, the petitioner must establish that the NCE /JCE is “principally doing business” within a TEA
- A NCE/JCE is “principally doing business” in the location where it regularly, systematically, and continuously provides goods or services that support job creation



Where the NCE/JCE is “Principally doing Business” - Cont’d:

- If the NCE provides such goods or services in more than one location, it will be deemed to be “principally doing business” in the location that is most significantly related to the job creation.

- Factors to be considered in making this determination may include, but are not limited to,
 - the location of any jobs directly created by the new commercial enterprise;
 - the location of any expenditure of capital related to the creation of jobs;
 - where the new commercial enterprise conducts its day-to-day operation; and
 - where the new commercial enterprise maintains its assets that are utilized in the creation of jobs.



Where the NCE/JCE is “Principally doing Business” -
Cont’d:

- For investments made through a regional center if the petitioner claims indirect job creation at a job-creating entity (JCE), then the term “principally doing business” will apply to the JCE



How to show that NCE/JCE is principally doing business in a TEA:

- There are two types of TEAs: rural areas and high unemployment areas
- Each type requires different evidence to show that the NCE/JCE is principally doing business in a TEA
- High unemployment TEAs are more commonly the basis for the reduced capital investment amount.



How to show that the NCE/JCE is principally doing business in a TEA – High Unemployment

- To qualify as a high unemployment area, the area must have an unemployment rate of at least 150% of the national average.

- To demonstrate that a location is in a high unemployment area, the petitioner can submit:
 - unemployment data for the relevant metropolitan statistical area or county; or
 - a letter from the state government designating a geographic or political subdivision located outside a rural area but within its own boundaries as a high unemployment area.



High Unemployment Areas – State Letters:

- The government of a state (typically the governor's office) must notify USCIS if they designate a governmental body of the state to certify high unemployment areas.
- Once the governmental body is given the authority by the state to certify high unemployment areas, then a petitioner may submit a letter from that governmental body as evidence of the high unemployment area.



High Unemployment Areas – State Letters, Cont’d:

Review of state letters:

- USCIS defers to state determinations of the appropriate boundaries of a geographic or political subdivision that constitutes the targeted employment area.
- 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.
- Acceptable data sources for purposes of calculating unemployment include U.S. Census Bureau data (including data from the American Community Survey) and data from the Bureau of Labor Statistics (including data from the Local Area Unemployment Statistics



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High Unemployment Areas – State Letters, Cont'd:

- Some state letters designating an area as a TEA may indicate how long the designation is valid, such as California
- Usually, state letters designating a TEA are valid for one year from the date of the letter.
- If a petition contains an outdated TEA letter, adjudicators can request an updated letter



How to show that the NCE/JCE is principally doing business in a TEA – Rural Area

- Location must meet two requirements to qualify as a rural area:
 - Must be outside a metropolitan statistical area **AND**
 - Must be outside the boundaries of any city or town having a population of 20,000 or more (based on the most recent census)

- If the location meets one, but not both, then it does not qualify as a rural area



What is an MSA?

- Metropolitan statistical areas are geographic entities delineated by the Office of Management and Budget (OMB) for use by Federal statistical agencies in collecting, tabulating, and publishing Federal statistics.
- Easy way to check to see if a location is in an MSA is to search the address on the Census.gov website:

Geographies containing 131 M St NE, WASHINGTON, DC, 20002:

Select geographies to add to Your Selections

Geography Results:		
Geography Name	Geography Type	Geography Code
District of Columbia	State	040
District of Columbia; District of Columbia	County	050
Washington city, District of Columbia, District of Columbia	County Subdivision	060
Block 2021, Block Group 2, Census Tract 106, District of Columbia, District of Columbia	Block	100
Census Tract 106, District of Columbia, District of Columbia	Census Tract	140
Block Group 2, Census Tract 106, District of Columbia, District of Columbia	Block Group within Census Tract	150
Washington city, District of Columbia	Place within State	160
Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Area	Metro/Micro Statistical Area	310
Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Division; Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Area	Metro Division within Metro Statistical Area	314



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When does the area need to be a TEA?

If the petitioner claims to have invested in a TEA, then the petitioner must establish that the area in which he or she invested qualifies as a TEA at either:

- The time of the investment: If the petitioner invests in the new commercial enterprise prior to filing of the I-526 petition, the TEA analysis should focus on whether the area was a TEA at the time of the investment, OR
- The time the I-526 petition was filed: If the petitioner is actively in the process of investing in the new commercial enterprise at the time of filing the I-526 petition, e.g. the capital is still in escrow, the TEA analysis should focus on whether the area was a TEA at the time that the I-526 petition was filed.



When does the area need to be a TEA – Cont'd?

Changes to the area over time.

- City and MSA boundaries can change, populations increase.
 - Local and national unemployment data change constantly
-
- Therefore, if the petitioner claims to have invested in a TEA, the petitioner must establish that the TEA requirements were met at the appropriate time.



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When does the area need to be a TEA – Cont'd?

Note: In some instances, a petitioner may request eligibility for the reduced investment threshold based on the fact that other EB-5 petitioners who previously invested in the same project qualified for the \$500,000 minimum investment. However, each alien must establish that his or her capital investment qualifies for the reduced investment threshold, i.e., the area continues to be a rural or high unemployment area. Petitioners cannot rely upon TEA determinations made with respect to other I-526 petitions.



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TEA Determination:

- If you determine that a petitioner did not invest in a TEA, then petitioner must establish that they have invested the full \$1,000,000 in EB-5 capital
- If petitioner cannot establish that they have invested the full \$1,000,000 then the petition can be denied for failure to invest the required amount of capital



About this Presentation

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U.S. Citizenship and Immigration Services (USCIS) Overview



U.S. Citizenship
and Immigration
Services

We Will Cover:

- Mission
- History
- Organization
- Operations
- Partners



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USCIS Mission:

“USCIS will secure America’s promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.”



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Granting Benefits:

USCIS officers are charged with

- providing the right benefit
- to the right person
- at the right time, and
- ensuring that immigration benefits are not granted to the wrong person.



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Providing Information:

- High quality and responsive customer service.
- Timely responses and adjudications.
- Clear, concise, and accurate decisions.



Providing Awareness:

- Engaging customers and stakeholders in public outreach.
- Accessible and informational website.
- Advertising campaigns (“I am USCIS”).
Citizenship ceremonies open to the public.



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Ensuring Integrity:

- USCIS fosters a culture of integrity and responsibility.
- All USCIS employees have annual training requirements, including ethics, national security, and information security.
- The Office of Policy and Strategy continually reviews policies, regulations and statutes and how to implement them.
- USCIS has an active Fraud Detection and National Security directorate that monitors and investigates threats to and exploitation of the immigration system.



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USCIS Core Values:

INTEGRITY

- Act with honesty, consistency, and transparency.

RESPECT

- Treat others with dignity, courtesy, and fairness and represent yourself and the agency with professionalism.

VIGILANCE

- Maintain awareness of threats and take action to prevent or mitigate harm.

INGENUITY

- Use resourcefulness, creativity, wisdom, and enthusiasm to continually improve the efforts of USCIS.



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History of USCIS

- Originally part of the Immigration and Naturalization Service (INS), under the Department of Justice.
- INS was created through the Immigration and Nationality Act of 1952.



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History of USCIS – Cont'd:

- After the 9/11 attacks, the Department of Homeland Security was created.

- On March 1, 2003 INS was dissolved and its functions were broken into three separate agencies:
 - Customs & Border Protection (CBP)
 - Immigration & Customs Enforcement (ICE)
 - U.S. Citizenship and Immigration Services (USCIS)

- All three agencies were integrated into the new Department of Homeland Security.



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History of USCIS – Cont’d:

- CBP and ICE were given the duties of enforcing immigration law and protecting U.S. borders.
- USCIS was designed as a more customer service-oriented, benefits-granting agency.
- Former INS is sometimes referred to as “Legacy INS.”



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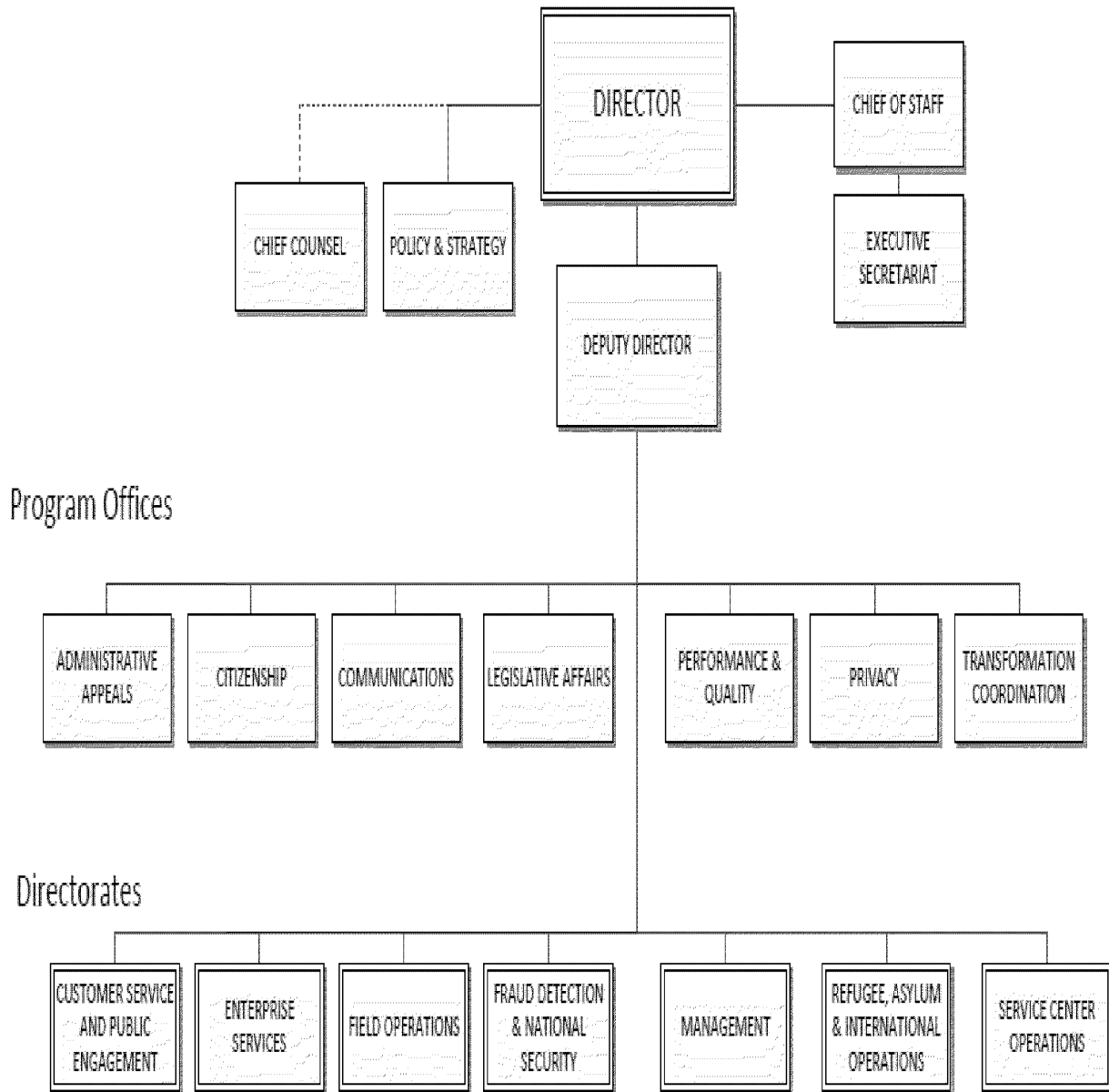
USCIS Organization:

- Leadership & Front Office.
 - Includes: Director, Deputy Director, Chief of Staff & Executive Secretariat, Office of Chief Counsel (OCC), Office of Policy and Strategy.
- Seven Directorates.
- Seven Program Offices.



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USCIS Organizational Chart:



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USCIS Directorates:

- Field Operations (FOD or OFO)
- Customer Service & Public Engagement
- Enterprise Services
- Fraud Detection & National Security (FDNS)
- Management
- Refugee, Asylum & International Operations (RAIO)
- Service Center Operations (SCOPS)



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Field Operations:

- Ensures that information and benefits decisions are provided to customers in a timely, accurate, consistent, courteous and professional manner.
- Operational face of USCIS – most customers interact with officers and agents in this directorate during an interview, at a customer service counter, or at a public event.



Field Operations – Cont'd:

- Includes five divisions and IPO.
- Each division is responsible for various USCIS operations, such as:
 - Division 1: FDNS Operations, Adjustment of Status, I-Forms, & Special Adjudications.
- IPO is the only Headquarters Program Office



Field Operations – Cont'd:

- Four Regions in the U.S.
- 26 District Offices in the U.S., 3 Overseas
- 83 Field Offices in the U.S., 27 Overseas
- National Benefits Center



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Customer Service and Public Engagement:

- Sets policies and coordinates customer service and public outreach activities with all USCIS components.
- Oversees National Customer Service Call Centers.



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Enterprise Services:

- Oversees verification programs (i.e. E-Verify).
- Manages National Records Center.
- Receives and processes Freedom of Information Act (FOIA) and genealogy information requests.
- Manages Application Support Centers, which provide biometrics services and adjudicate some forms (I-90, I-800A/I-600A)



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Fraud Detection & National Security (FDNS):

- Conducts research and investigations to identify threats to national security, public safety, and the immigration system.
- Acts as the primary conduit between USCIS and other law enforcement and intelligence agencies.
- Made up of four branches: Fraud Detection, National Security, Intelligence, and Mission Support.



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Management Directorate:

- Oversees USCIS Headquarters Offices:
 - Chief Financial Officer
 - Chief Information Officer
 - Security and Integrity
 - Human Capital and Training
 - Administration
 - Equal Opportunity and Inclusion
 - Office of Intake and Document Production
(including Lockbox Operations, forms design and production, etc.)



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Refugee, Asylum and International Operations (RAIO):

- Oversees the adjudication process for asylum and refugee applications and the overseas operations of USCIS.
- Operational Divisions include: Asylum, Refugee Affairs, and International Operations.
- Headquarters in Washington D.C., 8 Asylum Offices in the U.S., 25 international offices.



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Service Center Operations (SCOPS):

- Service Centers receive, process, and adjudicate a large variety of applications and petitions.
- Application and petition types are distributed between Service Centers by subject matter rather than geographic region.
- SCOPS directorate and 10 branches at USCIS Headquarters in Washington D.C.



SCOPS – Cont'd:

➤ Four Service Centers:

- California Service Center (CSC, WSC, WAC)
 - In Laguna Nigel, California
- Nebraska Service Center (NSC, LIN)
 - In Lincoln, Nebraska
- Texas Service Center (TSC, SSC)
 - In Dallas, Texas
- Vermont Service Center (VSC, ESC, EAC)
 - In St. Albans, Vermont



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Program Offices:

- Administrative Appeals
- Citizenship
- Communications
- Legislative Affairs
- Performance & Quality
- Privacy
- Transformation Coordination



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USCIS Operations:

- USCIS has over 18,000 employees.
- We are a fee-funded organization, obtaining the bulk of our funding from fees paid for applications and petitions.
- USCIS receives *millions* of applications for benefits every year.
- .



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USCIS Operations, Cont'd:

- Almost every action taken by USCIS involves input from several directorates and program offices.
- For example, an EB-5 petition is filed by the petitioner at a Lockbox facility (Enterprise Services and Management Directorates), processed by the California Service Center (SCOPS), adjudicated by IPO (Field Operations), which is advised by OCC and so on.



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USCIS Partners:

- In addition to ICE and CBP, USCIS shares the duty of administering the immigration system with several other Departments and Agencies throughout the federal government.
- CBP maintains the Treasury Enforcement Communications System (TECS), used for background checks and law enforcement information.



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USCIS Partners – Cont'd:

Department of State

- Issues visas abroad except for certain diplomatic classifications which can be issued domestically.
- Provides security and investigations for overseas operations.
- Issues passports for U.S. citizens at home and abroad.



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USCIS Partners – Cont'd:

- Department of Labor
 - Provides labor certifications for employment-based immigration applications.
- Department of Justice
 - Provides background checks and fingerprint analyses through the F.B.I.
 - Reviews immigration cases, conducts removal proceedings, and creates precedent decisions through the Board of Immigration Appeals (BIA).
 - Represents USCIS in matters litigated in federal court.



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USCIS Partners – Cont'd:

USCIS relies on many other federal, state, and local agencies, Congressional offices, non-profit organizations and individual stakeholders for information and coordination for all sorts of activities.



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Questions?



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