



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

August 8, 2022

Alissa Emmel  
Chief, Immigrant Investor Program Office  
U.S. Citizenship and Immigration Services  
131 M Street NE  
3<sup>rd</sup> Floor, Mailstop 2235  
Washington, D.C. 20529

Dear Ms. Emmel:

On behalf of the American Immigration Lawyers Association (AILA) EB-5 Investor Committee, we write to express our growing concern over the lack of USCIS receipt notices issued in response to the filing of Form I-956F, Application for Approval of Investment in a Commercial Enterprise. AILA members have reported that they have not received Form I-956F receipt notices for applications filed 30-45 days ago. The failure to issue I-956F receipt notices appears to be consistent across the regional center industry and, to the best of AILA's knowledge based on its membership reports, no regional center applicant filing an I-956F has received a USCIS receipt notice. This purely administrative delay, in turn, has prevented the filing of new Form I-526E Petitions by EB-5 investors, well past the EB-5 Reform and Integrity Act of 2022's effective date of May 14, 2022.

Founded in 1946, AILA is a voluntary bar association of more than 16,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. AILA's EB-5 Investor Committee is comprised of EB-5 practitioners who represent foreign investors and EB-5 regional centers. These practitioners have a wealth of experience and are considered experts in EB-5 law and policy.

On July 12, 2022, USCIS announced the publication of Form I-526E, Immigrant Petition by Regional Center Investor, with accompanying instructions<sup>1</sup>. The instructions which, absent judicial or legislative intervention have the force of regulation, contain ultra vires requirements and even threaten to reject I-526E filings that do not meet these requirements. The I-526E instructions state:

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<sup>11</sup> <https://www.uscis.gov/newsroom/alerts/uscis-releases-new-forms-for-immigrant-investor-program-0> (last visited August 5, 2022).

## Part 4. Information About Your Regional Center and Project Application

**Item Numbers 1. – 3. Regional Center Association.** Provide the receipt number for the approved regional center application and the receipt number for the Form I-956F, Application for Approval of an Investment in a Commercial Enterprise, upon which your petition is based. Also, provide the NCE identification number (NCEID) associated with the NCE into which you have invested or are actively in the process of investing, if available. USCIS assigns an NCEID to an NCE at the time of issuing the receipt notice for a Form I-956F application for an NCE. Petitioners can obtain the NCEID from the regional center. **NOTE: *If the regional center has not yet received a receipt notice for its Form I-956F, USCIS will reject your application.***<sup>2</sup> (emphasis added).

**According to reports from AILA’s members, USCIS has not issued any Form I-956F receipt notices containing the requisite unique receipt number for Form I-956F or the new commercial enterprise identification number (“NCEID”), making it impossible for EB-5 investors to file compliant Form I-526E petitions.** The actions of USCIS have effectively made it impossible for EB-5 investors to comply with the instructions to Form I-526E and have forced regional center operations around EB-5 investor filings to come to a halt.

These actions, we believe, violate the preliminary injunction issued by the U.S. District Court on June 24, 2022 in the matter of Behring Regional Center LLC v. Mayorkas,<sup>3</sup> which ordered that regional centers “must presently be permitted to operate within the regime created by the Act. This includes processing new I-526 petitions from immigrants investing through previously authorized regional centers like Behring, just as the agency would do for a newly approved regional center.” The failure to produce a timely receipt notice for Form I-956F is effectively preventing regional centers and immigrant investors from filing a Form I-526E and thus is not compliant with the plain language of the preliminary injunction.

By failing to issue Form I-956F receipts, USCIS is causing irreparable harm to EB-5 regional centers and individual EB-5 investors. As just one example, EB-5 investors whose circumstances require filing in order to avoid the age-out of a child are now forced to make the difficult decision of waiting for the Form I-956F receipt while their child ages out or filing the Form I-526E now with proof of delivery of the Form I-956F application knowing USCIS will reject the filing, potentially embarking on a long road of litigation to defend their priority date and eligibility of their child to immigrate with them as a family.

There is no statutory requirement to provide a USCIS-issued Form I-956F receipt notice in order to file a Form I-526E Petition. The statute only requires that the Form I-956F be filed, which is accomplished upon confirmation of delivery of the application to USCIS. Federal regulations at 8 CFR §103.2(a)(7)(i) confirm that an application is deemed filed on “the actual date of receipt at

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<sup>2</sup> Available at: <https://www.uscis.gov/i-526e> (last visited August 5, 2022).

<sup>3</sup> BEHRING REGIONAL CENTER LLC, Plaintiff, v. ALEJANDRO MAYORKAS, et al., U.S. District Court for the Northern District of California, Case No. 22-cv-02487-VC

the location designated for filing such benefit request whether electronically or in paper format.” A delivery confirmation from a reputable courier service such as FedEx or the US Postal Service establishes by a preponderance of the evidence that the I-956F application has been received by USCIS, and it is not necessary to wait for the USCIS-issued receipt notice to meet the statutory requirement of filing Form I-956F.

In light of our mutual interest in ensuring the efficient and fair administration of the EB-5 program and the avoidance of unnecessary litigation, we respectfully request that USCIS publish revised guidance stating it will accept Form I-526E petitions accompanied by either a Form I-956F filing receipt or other alternative proof of the regional center’s Form I-956F filing and will not reject Form I-526E petitions that submit such alternative evidence of Form I-956F filing.

We look forward to your prompt response to our request and reiterate our invitation to engage in a constructive dialogue between AILA and the Immigrant Investor Program Office, as so many other USCIS departments have done for many years, to facilitate a more efficient and compliant EB-5 program.

If you have any questions, please contact Sharvari Dalal-Dheini, AILA’s Director of Government Relations, by telephone at (202) 507-7621 or by email at [SDalal-Dheini@aila.org](mailto:SDalal-Dheini@aila.org).

Thank you for your time and consideration.

Sincerely,

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

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

cc: Ur M. Jaddou, Director U.S. Citizenship and Immigration Services  
Michael Valverde, Associate Director, Field Operations Directorate  
Emilie Hyams, Senior Advisor to the Director  
Cara M. Selby, Acting Associate Director, External Affairs Directorate  
Carlos Muñoz-Acevedo, Chief, Public Engagement  
Phyllis Coven, Ombudsman, Office of the Citizenship and Immigration Services  
Ombudsman  
Nathan Stiefel, Deputy Ombudsman, Office of the Citizenship and Immigration Services  
Ombudsman  
Elissa McGovern, Chief of Policy, Office of the Citizenship and Immigration Services  
Ombudsman



**U.S. Citizenship  
and Immigration  
Services**

September 21, 2022

Sharvari Dalal-Dheini  
Director of Government Relations  
American Immigration Lawyers Association  
1331 G Street NW, Suite 300  
Washington, DC 20005

Dear Ms. Dalal-Dheini:

Thank you for your August 8, 2022 letter regarding the lack of receipt notices for filings of Form I-956F, Application for Approval of an Investment in a Commercial Enterprise.

U.S. Citizenship and Immigration Services (USCIS) is fully dedicated to upholding its promise to treat all we serve with fairness, integrity and respect. As we move forward with the implementation of the EB-5 Reform and Integrity Act of 2022, we are working on efficiencies, while at the same time ensuring that receipt notices are accurately issued.

USCIS recognizes the desire of investors to file their Form I-526E, Immigrant Petition by Regional Center Investor, as soon as possible. To that end, we would like to share that as of September 12, 2022, receipt notices are being issued for all properly filed Form I-956F applications filed by September 2, 2022.

Thank you for your patience as we work to bring our systems up to speed to allow for more efficient receipting of these new forms. Should you require any additional assistance, please do not hesitate to contact the Immigrant Investor Program by sending an email to [uscis.immigrantinvestorprogram@uscis.dhs.gov](mailto:uscis.immigrantinvestorprogram@uscis.dhs.gov).

Sincerely,

A handwritten signature in black ink that reads "Ur M. Jaddou". The signature is written in a cursive style with a long horizontal line extending to the right.

Ur M. Jaddou  
Director