



U.S. Citizenship
and Immigration
Services

OG-602.06-001

May 8, 2012

Operational Guidance

SUBJECT: Guidance on EB-5 Adjudications Involving the Tenant-Occupancy Methodology

Our agency has established guidance regarding the deference we should give to prior adjudications. This guidance is set forth in many of our policy memoranda, including in our December 11, 2009 policy memorandum and AFM update regarding the EB-5 program. Our deference policy provides generally that a prior favorable decision will be relied upon in later proceedings unless the facts underlying the prior decision have materially changed, there is evidence of fraud or misrepresentation in the record of proceedings, or the previously favorable decision is determined to be legally deficient.

Recently, the question has arisen how our agency's practice of giving deference to prior adjudications should be implemented in an EB-5 case in which the petitioner has used the "tenant-occupancy" economic methodology to prove the required creation of U.S. jobs. This guidance answers that question.

A decision on the economic methodology presented in an EB-5 case is a very fact-specific and fact-dependent one. Consistent with our deference policy, ISOs should rely on a previous determination that the economic methodology is reasonable when the methodology is presented to us in a later proceeding based on materially similar facts. For example:

If we approved a Form I-924 regional center application based on a specifically identified project, including the specific location and industry involved, we will not revisit the determination that the economic model and underlying business plan were reasonable when adjudicating related Form I-526 petitions, Form I-485 applications, or Form I-829 petitions.

If we approved a Form I-526 petition for an immigrant investor based on a specifically identified project not associated with a regional center, we will not revisit the

determination that the business plan was reasonable when adjudicating the investor's related Form I-485 application or Form I-829 petition.

If, however, the facts underlying application of the economic methodology have materially changed, then we will conduct a fresh review of the new facts to determine whether the petitioner or applicant has complied with the requirements of the EB-5 program, including the job creation requirement.