



EB-5 Visa Program

First Half, Fiscal Year 2015

November 19, 2015

Fiscal Year 2015 Report to Congress



Homeland
Security

U.S. Citizenship and Immigration Services

Message from the Director

NOV 19 2015

I am pleased to present the following report, "EB-5 Visa Program," prepared by U.S. Citizenship and Immigration Services.

This report was compiled pursuant to language set forth in Senate Report 113-77 accompanying the *Fiscal Year (FY) 2014 Department of Homeland Security (DHS) Appropriations Act* (P.L. 113-76), and Senate Report 113-198 accompanying the *FY 2015 DHS Appropriations Act* (P.L. 114-4).

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:



The Honorable John R. Carter
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Hoeven
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jeanne Shaheen
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I am pleased to respond to any questions you may have. Please do not hesitate to contact me at (202) 272-1000 or the Department's Deputy Under Secretary for Management and Chief Financial Officer, Chip Fulghum, at (202) 447-5751.

Sincerely,

A handwritten signature in blue ink, which appears to be "Leon Rodriguez". The signature is fluid and stylized, with a long horizontal stroke extending to the right.

León Rodríguez
Director
U.S. Citizenship and Immigration Services

Executive Summary

This report responds to the Senate Appropriations Committee request for information on the EB-5 visa program, including the number of applications pending, the period of time that each application has been under review, benchmark review periods for the economic evaluation of projects and suitability of petitioners, a description of any additional resources necessary to administer the program efficiently, and the number of applications that are approved or denied each period with an accompanying explanation of the applications' disposition.

Interest in the EB-5 program has grown significantly in recent years and continues to expand, as indicated in the below table:

Number of Petitions/Applications Received in FY 2007 Compared to FY 2014 and FY 2015 (through March 31, 2015)

Petition/Application	FY 2007	FY 2014	FY 2014 (Through 3/31/14)	FY 2015 (Through 3/31/15)
Form I-526 (Immigrant Petition by Alien Entrepreneur)	776	10,923	4,683	5,250
Form I-829 (Petition by Entrepreneur to Remove Conditions)	196	2,516	872	1,503
Form I-924 (Application for Regional Center Under the Immigrant Investor Pilot Program) ¹	-	277	127	167

There has been an increase in receipts for each form type for the first half of FY 2015 compared to the first half of FY 2014, including a 12-percent increase for Form I-526, a 72-percent increase for Form I-829, and a nearly 32-percent increase for form I-924. Based on applications received through March 31, 2015, overall 2015 receipts appear on track to meet or exceed FY 2014 levels.

In addition to the growth in receipts mentioned above, the number of approved Regional Centers has grown from 11 in FY 2007 to 646, as of March 31, 2015.

¹ Note that Form I-924 did not exist in 2007; it was not in use until 2011. Prior to 2011, requests for regional centers were submitted via letter.

Applications Pending by Time Period as of March 31, 2015

Petition/Application	0–6 months	6+ to 12 months	12+ months	Total
Form I-526	5,099	5,083	3,479	13,661
Form I-829	1,514	1,155	854	3,523
Form I-924	164	101	65	330

Data derived using the “Received Date” as the starting date and computing the age through the end of the reporting period.

Processing Time² Goals Compared to Actual Processing Times (Months)

Petition/Application	Target	Actual (as of 3/31/15)
Form I-526	5	14.0
Form I-829	6	12.7
Form I-924	4	12.1

U.S. Citizenship and Immigration Services (USCIS) continues to forecast increases in EB-5 petitions and applications. However, as a result of significant program management initiatives described in Section V of this report and increases in the Immigrant Investor Program Office (IPO) authorized staffing level to 136 positions, processing times within the program for all forms are expected to improve over time. At this time, USCIS believes the authorized staffing level is sufficient to manage the existing and projected level of application and petition filings. USCIS will continue to monitor the staffing level and projected and actual receipt volumes for this program to ensure that resources are appropriate to manage the workload requirements.

Additional increases in processing times for Forms I-829, the adjudication of which were transitioned to IPO on September 30, 2014, may occur in the short term until program office staffing reaches the level needed to process the increased form volumes, new employees are trained and experienced in adjudicating Form I-829, and additional efficiencies are identified and institutionalized.

In FY 2015, USCIS began to improve the processing time for Forms I-526, decreasing it from 14.3 months as of the end of FY 2014 to the current rate of 14.0 months as of March

²Processing time or cycle time is calculated on the basis of a monthly average number of receipts for the last 12 months and then by determining how many months are needed to equal the active pending volume. Therefore, some cases could be pending longer than the cycle time because of issues such as the need to request additional information from the petitioner or applicant.

31, 2015. USCIS anticipates improvements in the processing time for Forms I-924 in the coming months.

The approval rates for all adjudicated applications (i.e., approvals and denials), as well as the percentage of all adjudicated applications that required additional evidence in FY 2014 and FY 2015 through March 31, 2015 are as follows:

Rates of Approval and Request for Evidence

Disposition	I-526		I-829		I-924	
	FY 2014	FY 2015	FY 2014	FY 2015	FY 2014	FY 2015
Approved	81%	90%	90%	99% ³	90%	83%
Request for Evidence	49%	46%	17%	28%	31%	34%

³The increase in the Form I-829 approval rate in FY 2015 is related to the transition of the adjudication of this form type to the IPO. The increase was due to a temporary focus on adjudicating approvable projects. The approval rate is expected to decrease in coming months to levels more consistent with past approval rates.



EB-5 Visa Program

Table of Contents

I.	Legislative Language	1
II.	Background	2
III.	USCIS Review of the EB-5 Program Application Status	4
	Applications Pending by Time Period as of March 31, 2015	4
	Program Benchmarks for the Economic Evaluation of Projects and Suitability of Petitioners	4
	Number of Applications that were Approved or Denied for FY 2014 and Q1/Q2 FY 2015	5
IV.	Explanation of Requests for Evidence	6
	I-924	6
	I-526	7
	I-829	7
V.	Description of Resources and Program Enhancements	8
	Resources	8
	Enhancements to the EB-5 Program	8

I. Legislative Language

This document has been compiled in response to language in Senate Report 113-77 accompanying the *FY 2014 Department of Homeland Security (DHS) Appropriations Act* (P.L. 113-76), and Senate Report 113-198 accompanying the *FY 2015 DHS Appropriations Act* (P.L. 114-4).

Senate Report 113-77 includes the following:

E–B5 VISA PROGRAM

The Director of United States Citizenship and Immigration Services is directed to provide a report to the committee on the E-B5 [sic] visa program within 90 days of the date of enactment of this act, and every 180 days thereafter, that includes the number of applications pending, the period of time each application has been under review, benchmark review periods for the economic evaluation of projects and suitability of petitioners, a description of any additional resources necessary to efficiently administer the program, and the number of applications that are approved or denied each period with an accompanying explanation of their disposition.

Senate Report 113-198 includes the following:

E–B5 VISA PROGRAM

In fiscal year 2014, USCIS was directed to provide a report to the Committee on the E–B5 (sic) visa program within 90 days of the date of enactment of Public Law 113–76, and every 180 days thereafter. This report was to include the number of applications pending, the period of time each application has been under review, benchmark review periods for the economic evaluation of projects and suitability of petitioners, a description of any additional resources necessary to efficiently administer the program, and the number of applications that are approved or denied each period with an accompanying explanation of their disposition. This first report is overdue. The Committee expects prompt receipt of this report and for USCIS to meet the twice yearly reporting requirement in the future.

II. Background

United States Citizenship and Immigration Services (USCIS) administers the Immigrant Investor Program, also known as the EB-5 program, which was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. There are two distinct EB-5 pathways for immigrant investors to gain lawful permanent residence for themselves and their eligible spouses and children—the basic program and the Regional Center (RC) program. The basic EB-5 program was enacted in 1990. Two years later, the RC program was enacted as a pilot program. Since 1992, the RC program has been reauthorized continuously on a bipartisan basis. In September 2012, an extension of the RC program eliminated the term “pilot” and extended the program through September 2015. In September 2015, Congress passed a continuing resolution that included an extension of the RC program’s authorization through December 2015.

To qualify for an EB-5 immigrant visa, the foreign investor must invest at least \$1 million (or \$500,000 if the investment is in a Targeted Employment Area, defined as a rural area or area of high unemployment) in a new commercial enterprise (NCE) in the United States. The required capital investment must be at risk and must be derived from a lawful source.

Under the basic EB-5 program, the immigrant’s investment must result in the creation of at least 10 direct jobs by the NCE. Under the RC program, the immigrant’s investment through the RC must result in the creation of at least 10 direct or indirect jobs. Under either program, job preservation in lieu of job creation is allowed in the case of investment in a troubled business. Generally, direct jobs are full-time positions located within the NCE into which the EB-5 investor has invested, whereas indirect jobs are full-time positions that are held outside the NCE but are created as a result of the NCE. To establish eligibility based on indirect job creation, Department regulations permit reliance on economically or statistically valid forecasting tools. *See* 8 C.F.R. §§ 204.6(j)(4)(iii), (m)(3).

RCs are public or private entities designated by USCIS to promote economic growth and to pool investment in defined economic zones. To apply for RC designation, an individual with authority to act on behalf of the RC entity must submit a Form I-924 to USCIS. To qualify for RC designation, the applicant must establish that the RC economic unit will be involved in promotion of economic growth and must identify a limited geographic area over which the RC will have jurisdiction. The Form I-924 application also must include a proposal that shows how jobs will be created in verifiable detail, describes the amount and source of capital committed to the RC and the promotional efforts taken and planned, and contains a prediction of how the RC will have

a positive impact on the regional or national economy, and must be supported by economically valid forecasting tools.

Approval of the Form I-924 does not confer any immigration status on any individual, nor does it constitute endorsement of the activities of the RC. All approved RCs must file a Form I-924A, Supplement to Form I-924, annually. The Form I-924A was first implemented in FY 2011 as a required filing by every designated RC for purposes of demonstrating continued eligibility for the designation. Failure to file the Form I-924A may result in termination of RC designation.

Form I-526 is filed by all immigrant investors, including those investing in an NCE associated with an RC (approximately 88 percent of all immigrant investor filings as of 3/31/2015). As supporting evidence, the investor must submit documents related to the investment, and evidence that the invested capital was acquired through lawful sources. Approval of the I-526 petition does not in itself confer immigrant status to the investor, but merely classifies the investor under section 203(b)(5) of the Immigration and Nationality Act so that he or she (and his or her derivative beneficiaries) can apply for an immigrant visa through the Department of State abroad or for adjustment of status to conditional permanent resident (CPR) if present in the United States and otherwise eligible. Authority exists to deny an application for an immigrant visa or adjustment of status when an individual is inadmissible to the United States based upon criminal, national security, or other legal grounds.

Immigrant investors and their derivative beneficiaries first obtain permanent resident status on a conditional basis. For removal of conditions on permanent residence, the investor must file a Form I-829 within 90 days of the 2-year anniversary of his or her admission or adjustment as a CPR. Failure to timely file a Form I-829 will lead to termination of the CPR status. To qualify for approval of the Form I-829 and removal of the conditions on his or her CPR status, the investor must show that he or she invested or was actively in the process of investing the requisite capital, that he or she sustained those actions for the entire 2-year period of conditional permanent residence, and that job creation requirements were met or will be met within a reasonable time. If approved, the CPR becomes a lawful permanent resident of the United States without conditions. If eligibility for removal of the conditions is not established, the petition is denied. When USCIS denies an I-829 petition, or if an individual's CPR status is terminated for failure to timely file the Form I-829, USCIS will issue a Notice to Appear and forward the petitioner's file (A-file) to U.S. Immigration and Customs Enforcement.

For more information and additional resources about the EB-5 program, see <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor>.

III. USCIS Review of the EB-5 Program Application Status

Petitions/Applications Pending by Time Period as of March 31, 2015

Petition/Application	0–6 months	6+ to 12 months	12+ months	Total
Form I-526	5,099	5,083	3,479	13,661
Form I-829	1,514	1,155	854	3,523
Form I-924	164	101	65	330

Data derived by using the “Received Date” as the starting date and computing the age through the end of the reporting period.

Program Benchmarks for the Economic Evaluation of Projects and Suitability of Petitioners

The Investor Program Office (IPO) strives to review and adjudicate petitions and applications within the timeframes listed in the table below. The actual processing times, as of March 31, 2015, also are listed in the table.

Processing Time Goals Compared to Actual Processing Times (Months)

Petition/Application	Target	Actual (as of 3/31/15)
Form I-526	5	14.0
Form I-829	6	12.7
Form I-924	4	12.1

As noted in the program report for the second half of FY 2014, the transition of the program to IPO combined with unexpectedly high form volumes in FY 2014 caused an increase in processing times for Forms I-526 from January to September 2014. In FY 2014, United States Citizenship and Immigration Services (USCIS) received 37 percent more Forms I-526 than it had projected for the fiscal year and 72 percent more than were received in FY 2013. In the first two quarters of FY 2015, receipt volumes continue to reflect a significant year-to-year increase:

Petition/Application	Q1Q2 FY 2014	Q1Q2 FY 2015	% Increase
Form I-526	4,683	5,250	12.1%
Form I-829	872	1,503	72.4%
Form I-924	127	167	31.5%

Additional increases in processing times for Form I-829, the adjudication of which transitioned to IPO on September 30, 2014, may occur in the short term until program office staffing reaches the level needed to process the increased form volumes, new employees are trained and experienced in adjudicating Form I-829, and additional efficiencies are identified and institutionalized.

In FY 2015, USCIS began to improve the processing time for Form I-526, decreasing it from 14.3 months as of the end of FY 2014 to the current rate of 14.0 months as of March 31, 2015. USCIS anticipates improvements in the processing time for Form I-924 in the coming months.

Number of Petitions/Applications that were Approved or Denied for FY 2014 and FY 2015 through March 31, 2015

Disposition	Form I-526		Form I-829		Form I-924	
	FY 2014	FY 2015	FY 2014	FY 2015	FY 2014	FY 2015
Approved	4,925	3,630	1,611	338	293	112
Denied	1,169	406	178	2	31	23
Request for Evidence	3,001	1,843	302	95	99	46

IV. Explanation of Requests for Evidence

In January 2015, United States Citizenship and Immigration Services (USCIS) began to utilize a correspondence tracker to capture the reasons for issuance of Requests for Evidence (RFE) for most Form I-526 and many Form I-829 RFEs to allow for contemporaneous analysis and to facilitate guidance to stakeholders. USCIS intends to increase the use of this correspondence tracker to include data related to Form I-924 RFEs for the remainder of FY 2015. Below are the most commonly cited reasons for RFE issuance by form type.

I-924

Although correspondence tracker data on Form I-924 RFEs was not available for FY 2015 Q1/Q2, USCIS analyzed all RFEs issued between January and September 2014 associated with Forms I-924 to identify the most common reasons for issuance of Form I-924 RFEs. 80 percent of RFEs were issued for the following information:

1. Evidence that all of the calculations and explanations in the economic model are sufficiently transparent to accept the conclusions drawn from them.
2. Evidence regarding indirect job creation, including, but not limited to:
 - Evidence that the economic models used to forecast job creation correctly incorporate the data and projections of the comprehensive business plan.
 - Evidence regarding the revenue and expense categories on which the job creation estimates are based.
 - Evidence that job creation estimates correctly account for jobs that are in industries known to involve employment that can be transient or temporary.
 - Evidence that jobs created from tenants who occupy commercial space built by a project are “new” jobs and not simply the relocation of existing jobs.
3. The commercial enterprise’s organizational documents, including but not limited to:
 - Evidence that the administrative fees payable to the new commercial enterprise (NCE) and the Regional Center (RC) are structured so that they do not erode the EB-5 investor’s minimum required capital investment.
 - Evidence that the individual components of the comprehensive business plan, when taken together (e.g., market and competitor analysis, financial projections, identification of competitors, and the target demographic), make the business plan credible.

4. The RC's operational plan, including but not limited to:
 - o Evidence indicating the amount and source of capital committed to the RC and additional evidence regarding its promotional/marketing efforts.
5. Evidence that the RC is an established legal entity.

I-526

USCIS captured data on 810 RFEs issued and finalized in connection with Form I-526 between January and March 2015. The most common types of information requested in those RFEs were as follows:⁴

1. Evidence that the capital invested or actively in the process of being invested was obtained through lawful means.
2. Evidence related to the required comprehensive business plan.
3. Updated exemplar documents.
4. Evidence that the NCE will create at least 10 full-time positions for qualifying employees.
5. Evidence that the NCE or Job-Creating Entity is principally doing business in a Targeted Employment Area.
6. Translated documents that comply with the requirements of 8 C.F.R. § 103.2(b)(3).
7. Evidence that the capital invested or actively in the process of being invested has been placed at risk.

I-829

USCIS captured data on 28 RFEs issued and finalized in connection with Form I-829 between January and March 2015. The most common reasons for RFEs were as follows:⁴

1. Evidence that the investment in the NCE has been sustained for the requisite period.
2. Evidence that the NCE has created or will create in a reasonable period of time at least 10 full-time positions for qualifying employees or evidence that the NCE maintained the number of existing employees in a troubled business.

Other common reasons for RFEs that adjudicators previously reported⁵ in adjudicating this form type include:

- Evidence that the minimum required amount of capital has been invested or was actively in the process of being invested.

⁴ Items are listed in order of frequency of occurrence.

⁵ Because of the relatively small number of Form I-829 RFEs finalized between January and March 2015, USCIS included historically common reasons for Form I-829 RFEs identified by the California Service Center.

- Explanation of late filing.
- Biometrics update and criminal history clearances.

V. Description of Resources and Program Enhancements

Resources

As of March 31, 2015, the Investor Program Office (IPO) included approximately 96 federal employees permanently assigned for management and adjudications, and 19 contractors for support and records management. The IPO was augmented by 13 United States Citizenship and Immigration Services (USCIS) Fraud Detection and National Security (FDNS) EB-5 personnel, and 12 attorneys from the USCIS Office of Chief Counsel. Staffing levels will continue to grow as USCIS hires and on-boards new staff to reach the target staffing level of 136 positions for this program. The target staffing level excludes the FDNS EB-5 and Office of Chief Counsel positions that support the EB-5 program. USCIS believes the additional resources dedicated to the EB-5 program will be sufficient to manage current and projected receipts, reduce the backlog of pending cases and associated processing times, and safeguard the quality and integrity of our adjudicative review process.

Enhancements to the EB-5 Program

Throughout 2014 and continuing into 2015, USCIS made many changes to the EB-5 program to: keep pace with the increase in filings and complexity of issues involved in EB-5 cases; improve processing times; improve consistency and predictability; and further strengthen the integrity of the program. Enhancements to the EB-5 program over the past several years have included:

- Realigning the EB-5 program into the IPO in Washington, D.C. USCIS completed the transfer of EB-5-specific workload to the program office on September 30, 2014, when the adjudication of Form I-829 transitioned from the California Service Center to the IPO.
- Investing in the expertise and personnel needed to manage the complex EB-5 caseload. In addition to hiring a singularly focused Senior Executive Service chief to administer the program, USCIS has hired experienced adjudications officers and economists. USCIS continues to hire additional personnel to adjudicate EB-5 applications and petitions and improve processes and procedures, and had approximately 96 permanently assigned federal employees working for the EB-5 program by March 31, 2015, an increase of 64 percent since March 31, 2014. The on-board level excludes the FDNS EB-5 and Office of Chief Counsel positions that support the EB-5 program.

- Expanding security checks to cover Regional Center (RC) businesses and certain executives participating in the program, thereby strengthening the vetting process. Security check enhancements now include the ability to query financial intelligence.
- Partnering with other government agencies to strengthen the EB-5 program. IPO and FDNS EB-5 have hosted case agents from several agencies to collaborate in furtherance of the agencies' individual missions.
- Publishing an updated Intelligence Assessment of the EB-5 program based on coordination between FDNS EB-5 and DHS Office of Intelligence and Analysis, which was cleared throughout the intelligence community in February 2015.
- Holding quarterly stakeholder engagements, including in December 2014 and February 2015, to identify and understand issues and develop solutions. These engagements averaged more than 600 telephonic attendees.
- Establishing a customer service team in April 2014 to address inquiries and requests for assistance and to manage the IPO's stakeholder engagement plan. This team, which responded to more than 8,450 customer inquiries in the first half of FY 2015, complements outreach efforts through the timely identification and elevation of issues requiring action or stakeholder engagement.
- Terminating more RCs in FY 2014 and FY 2015 than in the entire prior history of the program. USCIS undertook a robust review of existing RCs and terminated those that failed to submit required information and/or promote economic growth. A list of terminations is posted on the USCIS website to improve program transparency and facilitate investor due diligence.