

Citizenship and Immigration Services Ombudsman

Executive Summary

EB-5 Immigrant Investor Program Stakeholder Meeting

The Office of the Citizenship and Immigration Services Ombudsman (Ombudsman's Office) held a stakeholder meeting on the EB-5 Immigrant Investor Program on March 5, 2013.

Opening Remarks

Ombudsman Maria Odom began her remarks by emphasizing that the purpose of the meeting was to discuss solutions to challenges in the EB-5 Immigrant Investor Program. She noted that the EB-5 program can be an engine of economic growth and spur job creation. Ms. Odom reported the following:

- Today, there are over 243 approved EB-5 Regional Centers in 40 states and two territories, compared to just 25 EB-5 Regional Centers in 2006;
- Investor interest in the program is spreading not just in Asia, but from all corners of the globe;
- EB-5 filings have surged year after year for the past three years; and
- In FY 2012, over 7,400 EB-5 visas were issued.

Ms. Odom recognized the leadership and efforts of U.S. Citizenship and Immigration Services (USCIS) Director Alejandro Mayorkas and the agency over the past several years to make improvements to the EB-5 program, but noted that there is still work to be done. Since October 2012, the Ombudsman's Office has received nearly 400 requests for assistance on EB-5 cases, with the vast majority of the cases presented involving filings that are beyond posted processing times.

In concluding her opening remarks, Ms. Odom noted that many of the challenges that are with us today were previously identified in the [Ombudsman's 2009 EB-5 program recommendations](#).

Panelists Remarks

A panel comprised of Peter Joseph, Association to Invest in the USA (IIUSA); Lincoln Stone, Stone & Grzegorek, LLP; and William Yates, W.R. Yates & Associates, provided the following perspectives:

- The EB-5 program faces stiff competition from countries with more predictable and speedy immigrant entrepreneur programs.
- To compete, the EB-5 program needs stability and predictability that allows for reasonable commercial risk taking.
- Fairness, due process, increased transparency in policy formation, and predictability in adjudications should be hallmarks of the EB-5 program.



- Future EB-5 policy development must be conducted in coordination with business realities and align with commercial reasonableness, but should not excessively intrude into business decision making.
- A clear and binding project pre-approval process followed by actual adjudication deference is key to EB-5 reform.
- Actual processing times that approach or exceed one year are undermining the program's success.
- Communication through multiple Requests for Evidence (RFE) is inefficient, causes delay, and damages the program.
- Program integrity is critical, and the agency should use existing USCIS Fraud Detection and National Security resources to identify and take action as warranted.
- The planned movement of the EB-5 adjudication unit to Washington, D.C. may, in the short-term, exacerbate adjudication inconsistencies and delays. Participants hope USCIS will publish its transition plan as soon as possible.
- In addition to Director Mayorkas' commitment to improving the EB-5 program, a program leader is needed to manage the new Washington, DC-based adjudication unit and ensure quality, timely adjudications in accordance with the preponderance of evidence legal standard.

Open Forum Session

Communications

- Participants were critical of the dedicated EB-5 program email box, due to lack of responsiveness or personalized responses.
- Stakeholders seek more direct communications with adjudicators via telephone and email.

Processing Delays

- Many participants noted that posted processing times are unreliable. They also expressed frustration over receipt of multiple RFEs.
- It was emphasized that adjudication delays affect both investors and project developers.

Quality, Consistency, Predictability

- Participants suggested that the quality of USCIS decisions varies widely.
- Participants expressed concern that new policy guidance is regularly implemented retroactively without notice.



Other Comments

- One participant stated that the current administration of the EB-5 process is hurting “Brand USA,” and foreign investors are taking advantage of immigrant investor programs offered by other countries.
- Another pointed out that many individuals who obtain EB-5 visas make significant investments over time in the U.S. economy and culture; the initial investment made under the EB-5 program is just the start.
- It was suggested that if USCIS had a predictable pre-approval process, projects would be able to eliminate the current convention of placing funds in escrow during the adjudication process, thereby advancing project funding and speeding up job creation.
- Several participants urged that USCIS reevaluate the timing of the job creation requirements for EB-5 regional center program investors, and whether such requirements are needed or are practical.
- Another specific area of concern raised by several participants is a recent focus they believe is being wrongfully placed by USCIS adjudicators on North American Industry Classification System (NAICS) codes; they stated that the level of specificity currently required by adjudicators is impeding regional center growth.

Stakeholder Suggestions

- Several participants expressed a desire to know what information USCIS wants in EB-5 submissions, suggesting that the agency provide filing checklists.
- Several participants called for USCIS to convene a meeting between economists representing the government and those representing the regional centers to identify and discuss unresolved issues concerning job creation. Issues include tenant occupancy models and phased construction projects that span multiple years.
- A representative of the Small Business Administration, Office of Advocacy was in the audience and encouraged attendees to contact her office to discuss the impact of changes in USCIS policy guidance to small businesses. The representative also stated that the SBA is interested in hearing from stakeholders regarding USCIS’s efforts to reform the EB5 program through policy guidance instead of rulemaking.

