



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

WRITTEN TESTIMONY

OF

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FOR A HEARING ON

**“Is the Investor Visa Program an
Underperforming Asset?”**

BEFORE

THE HOUSE COMMITTEE ON THE JUDICIARY

FEBRUARY 11, 2016

2:00pm

**2141 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC**

INTRODUCTION

Chairman Goodlatte, Ranking Member Conyers and distinguished Members of the Committee, I am pleased to be here today to speak with you about the EB-5 Immigrant Investor Program, which is the fifth preference employment-based immigrant program, also known as the “EB-5 program” and to discuss issues important to this Committee. My name is Nicholas Colucci and I am the Chief of the Immigrant Investor Program Office for U.S. Citizenship and Immigration Services (USCIS). The Immigrant Investor Program Office (IPO) is responsible for the management and oversight of the EB-5 program. I have served in this position since December 2013. I came to USCIS with more than 21 years of regulatory and law enforcement experience with the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Department of the Treasury Financial Crimes Enforcement Network (FinCEN), where I managed diverse teams dedicated to combatting money laundering, fraud, and terrorism financing. I share the Committee’s focus on reducing the risk for fraud, preserving our national security, increasing the transparency and consistency of EB-5 visa adjudications, and further strengthening the operations and integrity of the EB-5 program. USCIS has supported these goals as we worked closely with staff from both the Senate and House Judiciary Committees from February through December 2015, providing technical drafting assistance and comments to the language of the EB-5 reform legislation that was drafted by Chairman Goodlatte and Ranking Member Conyers. As you know, the EB-5 reform language was not included in the Omnibus this past December, but instead, Congress extended the EB-5 regional center program without any changes until September 30, 2016. I want to thank the Chairman and the Committee for your support and continued interest in strengthening the EB-5 program.

OVERVIEW OF THE PROGRAM

Congress created the EB-5 visa program in 1990 as a tool to stimulate the U.S. economy by encouraging foreign capital investments and job creation. The EB-5 program makes immigrant visas and subsequent “green cards” available to foreign nationals who invest at least \$1,000,000 in a new commercial enterprise (NCE) that will create or preserve at least ten full-time jobs in the United States. A foreign national may invest \$500,000 if the investment is in a targeted employment area (TEA), defined to include certain rural areas and areas of high unemployment.

The regional center program, first enacted in 1992, provides an allocation of EB-5 visas to be set aside for investors in regional centers designated by USCIS. A regional center is an economic entity, public or private, which promotes economic growth, regional productivity, job creation, and increased domestic capital investment. A primary benefit of the regional center program for immigrant investors is the ability to count jobs created indirectly toward statutory job creation requirements based on economic projections, relying on reasonable methodologies, rather than only counting jobs directly created by the NCE.

There are currently 796 regional centers. This is up from about 588 at the end of fiscal year (FY) 2014, and 11 at the end of 2007. I’ll talk more about our efforts to regulate this quickly growing segment of the EB-5 community in a few moments.

Applicants for regional center designation must establish that the regional center will be involved in the promotion of economic growth and must identify a limited geographic area over which the regional center will have jurisdiction. Approved regional centers file a supplement annually to demonstrate continued eligibility for the designation.

All immigrant investors must file individual petitions supported by evidence that their investment capital was fully invested or is actively in the process of being invested, which requires the capital to have been placed at risk, and also that the invested capital was acquired through lawful sources.

If approved, the immigrant investor may ultimately be admitted to the United States as a conditional permanent resident. Approximately two years after admission as a conditional permanent resident, the immigrant investor is required to petition USCIS for the removal of conditions, at which time 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 period of residence in the United States, and that job creation requirements were met or will be met within a reasonable time. If approved, the conditions on the investor's permanent residence are removed.

CURRENT STATE OF THE PROGRAM

Over the past few years, USCIS has taken a number of steps to improve the administration of the EB-5 program. In 2013, USCIS realigned the EB-5 program into the Immigrant Investor Program Office, and relocated it from USCIS' California Service Center, which adjudicates various immigration benefits, to Washington, D.C., with a Chief dedicated exclusively to EB-5 adjudications. As the United States Government Accountability Office (GAO) noted in its August 2015 report to Congressional requesters on the EB-5 program, this move was part of a restructuring to help USCIS better detect fraud. USCIS also created a Fraud Detection and National Security EB-5 Division (FDNS EB-5) and embedded its personnel within IPO to work alongside adjudications officers. Additionally, a dedicated team of attorneys from the USCIS Office of Chief Counsel advise on program-related legal matters.

In May 2013, USCIS published a comprehensive EB-5 policy memorandum to guide EB-5 adjudications, improve consistency among cases, and provide foundational policy interpretation for guiding the administration of the program's eligibility requirements. The policy memorandum, which was finalized after two rounds of public comment, serves as guidance to USCIS officers adjudicating EB-5 cases and is available to the public for reference. The policy memorandum clarified USCIS policy in several areas, including the job creation and investment requirements of the program; the USCIS deference policy for the adjudication of Form I-526 and Form I-829 petitions;¹ and the effect of material changes on adjudications, in recognition of the fluidity of the business world.

¹ Form I-526, Petition for Immigrant Investor, is filed by all immigrant investors. Approval classifies the investor under section 203(b)(5) of the Immigration and Nationality Act so that he or she (and derivative beneficiaries) can apply for an immigrant visa or for adjustment of status to conditional permanent resident. If admitted as an immigrant or adjustment of status is approved, the immigrant investor generally must then file Form I-829, Petition

In staffing the IPO, USCIS has, and continues to invest in the specialties needed to manage the complex EB-5 caseload by hiring staff with expertise in economics, law, business, finance, securities and banking to review cases and to enhance consistency, timeliness, and integrity within the program. IPO is currently staffed with 110 employees,² up from 22 at the close of FY 2013. Staffing includes 60 adjudications officers, 28 economists and 22 additional staff responsible for the direct support and management of the program, in addition to teams of Fraud Detection and National Security (FDNS) professionals and counsel dedicated to the program. We are currently recruiting to fill vacancies to bring IPO to its FY 2016 authorized staffing level of 171 in an effort to reduce our backlog.

USCIS has taken its responsibility to administer the EB-5 program very earnestly, through its specialized staffing devoted solely to this program and its extensive efforts to regulate the quickly growing regional center program. However, no agency can do this alone. The EB-5 program necessitates collaboration with several other agencies, and the establishment of IPO in Washington, D.C. allows USCIS to work closely with partners such as the U.S. Securities and Exchange Commission (SEC), with whom IPO shares a robust collaborative relationship. USCIS also works closely with its sister agency, U.S. Immigration and Customs Enforcement (ICE), as well as with the Federal Bureau of Investigation (FBI) and the U.S. Department of State, in support of our oversight of the EB-5 program. In September 2014, IPO hosted an EB-5 Interagency Symposium with representatives from more than 20 federal agencies to encourage collaboration among the government partners that have a stake in the EB-5 program. More recently, IPO engaged with counterparts at SEC, ICE, and FBI in Los Angeles at an outreach engagement in August 2015.

STATISTICS

In FY 2013, USCIS approved a total of:

- 3,699 Form I-526 petitions (Immigrant Petition by Alien Entrepreneur)
- 844 Form I-829 petitions (Petition by Entrepreneur to Remove Conditions)
- 118 Form I-924 applications (Application for Regional Center Under the Immigrant Investor Program)

In FY 2014, USCIS approved a total of:

- 4,925 I-526 petitions
- 1,603 I-829 petitions
- 294 I-924 applications

In FY 2015, USCIS approved a total of:

- 8,756 I-526 petitions

by Entrepreneur to Remove Conditions, within 90 days of the two year anniversary of his or her admission or adjustment as a conditional permanent resident. Other EB-5-specific forms include Form I-924, Application For Regional Center Under the Immigrant Investor Pilot Program, which is used to apply for regional center designation, and Form I-924A, Supplement to Form I-924, which approved regional centers file annually to demonstrate continued eligibility for the designation.

² Current and authorized IPO staffing numbers do not include FDNS and Office of Chief Counsel employees embedded in and dedicated to the EB-5 program.

- 1,067 I-829 petitions
- 262 I-924 applications

Based on these numbers, it is estimated that at least \$8.7 billion has been invested into the U.S. economy through the EB-5 program since October 1, 2012. In terms of job creation, based on the number of approvals of Form I-829 to remove conditions on permanent residence since October 1, 2012, it is estimated that an aggregate total of an estimated 35,140 jobs have been created for U.S. workers through foreign investment via the EB-5 program. While these are rough estimates, USCIS is working to refine data systems to better collect program performance data and has entered into an agreement with the Department of Commerce to conduct a valuation study of the EB-5 program which we expect to receive in the second quarter of FY2016.

ONGOING AND PLANNED INITIATIVES

Since establishing IPO to oversee the EB-5 program, USCIS has undertaken and planned several initiatives to strengthen the program. These initiatives include:

- More than doubling the number of embedded FDNS EB-5 staff in FY 2015 and more than tripling the number of overseas verification requests sent to post in support of combatting fraud in the adjudication of EB-5 applications and petitions. Additionally, USCIS provides ongoing anti-fraud related training to IPO staff to increase awareness and understanding of potential fraud schemes and scenarios, including those that may be unique to the EB-5 program.
- Expanding USCIS's random site visit program to include EB-5-related adjudications in FY2016.
- Removing regional centers from the EB-5 program that no longer meet the program requirements. USCIS undertook a robust review of existing regional centers 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. USCIS terminated 10 regional centers in FY 2014 and 19 regional centers in FY 2015, which is more terminations than in the entire prior history of the program.
- As an outgrowth of the regional center review, creating a Regional Center Compliance Unit dedicated to enhancing regulatory compliance, decreasing fraud risks, and increasing the efficiency of administration actions.
- Expanding security checks to cover regional center businesses and certain executives participating in the EB-5 program, thereby strengthening the vetting process. Security check enhancements now include the ability to query financial intelligence, such as the Bank Secrecy Act data collected and possessed by the Department of Treasury's Financial Crimes Enforcement Network (FinCEN).
- Drafting potential regulatory changes to clarify eligibility requirements and provide additional tools, to the extent allowed by statute, to strengthen the integrity of the program. Although these regulatory changes were eventually set aside in anticipation of reform legislation, USCIS is renewing its efforts to publish a new EB-5 regulation, as I will discuss shortly.

- Publishing an updated, classified Intelligence Assessment of the EB-5 program in 2015 that was cleared throughout the intelligence community and was the product of close collaboration between FDNS EB-5 and the DHS Office of Intelligence and Analysis.
- Implementing protocols approved in April 2015 by the Secretary of Homeland Security related to the ethical administration of the EB-5 program. USCIS provided training on these protocols to all DHS and USCIS employees and contractors involved in policymaking, evaluation, or review of the EB-5 program or the adjudication of any EB-5 related petitions or applications. The protocol training slides are posted on the USCIS.gov website for additional transparency.
- Establishing a Customer Service and Stakeholder Engagement team dedicated to the EB-5 program in April 2014 to address inquiries and requests for assistance, enhance transparency and customer service, and manage IPO's stakeholder engagement plan. This team, which responded to more than 25,000 customer inquiries in FY 2015, complements outreach efforts through timely identifying and appropriately elevating issues requiring action or stakeholder engagement. USCIS holds EB-5 stakeholder engagements on at least a quarterly basis to identify and understand issues and develop solutions. These engagements averaged more than 600 participants per engagement in FY 2015.
- Establishing a new EB-5 Policy and Performance Division within IPO in FY 2016 to devote additional staff in support of the EB-5 program's increasingly complex policy and regulatory requirements.
- Also in FY 2016, USCIS is working to develop an audit program to increase its oversight of regional centers, and is planning to increase interviews with EB-5 petitioners at the I-829 petition stage.

NECESSARY ENHANCEMENTS

As Secretary Johnson noted in both his April 15, 2015 letter to Chairman Grassley and Ranking Member Leahy and his May 1, 2015 letter to Chairman Goodlatte and Ranking Member Conyers, the EB-5 program is not without its challenges. Although we have accomplished much to strengthen the integrity of this program, there is still more to do, much of which requires Congress' help.

USCIS has worked closely with Congressional staff to identify key enhancements that would strengthen the integrity of the program and reduce the challenges that USCIS faces in administering the EB-5 program.

Potential regulatory action to strengthen the program that USCIS plans to propose includes changes to improve the integrity of targeted employment areas; increase minimum investment amounts that have remained unchanged for 25 years; and require business plan filings in advance of investor filings to improve program efficiencies and reduce the potential for investor fraud.

In other areas, legislative reform would greatly benefit the integrity of the EB-5 program include:

Authorizing USCIS to Act Quickly on Criminal and Security Concerns: USCIS lacks explicit statutory authority to terminate a regional center for criminal or security

concerns. Under current regulations, USCIS may terminate a regional center's designation if the regional center is no longer promoting economic growth or fails to submit required information to USCIS (on an annual basis, on a cumulative basis, and/or as otherwise requested) on Form I-924A. Criminal activity or national security concerns are not provided as a basis to terminate a regional center. Currently, in instances where USCIS has criminal or security concerns about a regional center, USCIS has to either demonstrate these concerns are related to the regional center's failure to promote economic growth or demonstrate the regional center's failure to promote economic growth separately from any criminal or security concerns, which is an unnecessarily lengthy and circuitous route to terminate a regional center.

Protecting Investors by Regulating Regional Center Principals and Associated Commercial Enterprises: USCIS should be specifically authorized to prohibit persons from participating in regional centers and associated commercial enterprises based upon certain criminal violations and fraud or securities-related civil violations. In addition, all regional center principals should be required to be U.S. citizens or lawful permanent residents. Currently, USCIS is able to vet regional center principals; however, USCIS does not have the authority to exclude individuals from operating as regional center principals solely on the basis of their past criminal history, though this factor could come into play in assessing whether a regional center should be designated or terminated.

Enhancing Reporting and Auditing: USCIS should be authorized to enhance the regional center annual reporting process, including requiring, as appropriate, certification of the regional center's continued compliance with U.S. securities laws; disclosure of any pending litigation; details of how investor funds were utilized in a project; an accounting of jobs created; and the progress toward completion of the investment project.

Providing Sanction Authority: USCIS needs sanction authority to act proportionately where warranted, and should be authorized to sanction regional centers with fines or temporary suspensions where appropriate.

CONCLUSION

If implemented, I believe these common sense reforms would create immeasurable benefits for the EB-5 program. With the continued support of this Committee, I am confident that we can overcome the challenges that face the EB-5 program and ensure that it fully realizes its goal of stimulating the U.S. economy through job creation and capital investment by foreign investors, while safeguarding national security and the integrity of this valuable immigration program.

We at USCIS look forward to continuing to assist Congress, working closely with staff from both the Senate and the House to provide technical assistance and comments to the language of any EB-5 reform legislation.

Once again, I appreciate the opportunity to be here today. I am happy to answer any questions you may have. Thank you.