

June 17, 2011

VIA EMAIL - [opefeedback@uscis.dhs.gov](mailto:opefeedback@uscis.dhs.gov)  
U.S. Department of Homeland Security (DHS)  
U.S. Citizenship and Immigration Services (USCIS)  
Office of Public Engagement - Feedback

**RE: Comments on “Proposed Changes to USCIS’s Processing of EB-5 Cases”**

Dear USCIS Office of Public Engagement:

My comments respond to the “Background” and “Proposed Step 1: Accelerated and Premium Processing” sections of the 5/19/2011 Proposal for Comment.

1. I applaud the attempt to deal with processing challenges and to provide the public with a strong incentive to file clear applications and petitions.
2. I have practical and legal reasons for recommending change to the background description and processing time changes on pages 1-2 of the 5/19/2011 Proposal.

**A. PRACTICAL CONCERNS**

- a. The term “shovel-ready” should be avoided. It will be very difficult for USCIS to strictly define and for EB-5 practitioners to figure out exactly what “shovel-ready” means for a variety of different non-real estate industries and in the EB-5 context, which must take into account USCIS processing times and time for marketing and investor screening as well as the project timeline. (Also see the history of difficulty in implementing this concept as a standard for privileging projects to receive stimulus funding under ARRA.)
- b. The term “exemplar” should be avoided. It is ambiguous, having appeared in various USCIS communications to sometimes mean “a plan for a hypothetical project that demonstrates how an actual investment project would be capitalized and operate in a manner that would create jobs,” sometimes “a fully developed I-526 plan being filed for pre-approval, not with an investor petition,” and sometimes “a plan for an actual project that’s not fully developed yet.”

**B. CONCERNS ROOTED IN THE REGULATIONS**

The current proposed changes offer huge incentive for Regional Center applications to focus on one shovel-ready project, and seem in fact designed to make the I-924 as much like the I-526 as possible. Any RC applicants who have on the table a range of projects in various stages of development will be punished by being pushed to the back of the line, not only at the I-924 but at I-526 as the premium processing option is denied to all its

investors. Is that Congressional intent for the Regional Center program? The RC program was established and indirect job creation offered based precisely on the realization that concentrating investment in multiple projects/industries in a limited geographic area would have a more far-reaching economic and job-creating benefit than the isolated investments possible through the stand-alone EB-5 program. To quote Congressional intent:

Public Law 107-273 (2002) SEC. 11037(a)

A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

USCIS should look for ways to encourage the public to file clearer Regional Center applications, but it must keep in mind what the “Regional Center” concept means, and what makes Regional Center EB-5 different from stand-alone EB-5. If the 5/19/2011 proposal is implemented as is, Public Law 107-273 will have to be changed as follows:

Public Law 107-273 (2002) SEC. 11037(a)

A regional center shall have ~~jurisdiction over a limited geographic area~~ *actual projects to offer participating investors*, which shall be described in the proposal and consistent with the purpose of ~~concentrating pooled investment in defined economic zones~~ *getting eligible shovel-ready business projects underway as quickly as possible*. The establishment of a regional center may be based on ~~general predictions~~ *a Matter of Ho-compliant business plan*, contained in the proposal, concerning ~~the kinds of~~ *precisely which* commercial enterprises ~~that~~ will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

3. I have an alternate suggestion for improving processing times that is based on actually improving the process rather than changing (artificially simplifying) petition content. The main feature of my suggestion is to establish a separate workflow for RC amendments. Creating a form specifically for RC amendments (with a lower fee and shorter processing time than the I-924 form) would have the effect of simplifying both I-924 petitions and I-526 petitions and make the whole process more efficient. First, RC applicants will be less likely to overload their initial I-924 application with every industry/geographic area/project/methodology they might possibly ever want if an efficient amendment process provides them a time-and-cost-effective way to make additions later as and when needed. Second, I-526 petitions for EB-5 investors will be much easier to adjudicate if the documentation included exactly matches what was previously approved in the context of an amendment or initial proposal. (The amendment option is important because an active RC will not long exactly match its initial proposal.) Active RCs encounter many changes and updates and new projects over time, and an efficient amendment process will make it possible for them to report all those updates and get approval prior to filing batches of investor I-526 petitions. (The amendment option currently offered is not effective

because of the too-long processing time. Most Regional Centers with live projects can't afford an additional six-month processing wait and so have to gamble with presenting new items in investor I-526 petitions, which is risky and inefficient for everyone.) With an efficient amendment process, USCIS could consistently adjudicate Regional Center documents (business plan, offering documents, economic analysis) once in the I-924/amendment and not repeatedly (and sometimes inconsistently) within each individual investor I-526 petition. Processing times will naturally decrease for all Regional Center I-526 petitions if only investor-specific documents and TEA documentation need be adjudicated at that point. And Regional Center amendments are naturally less complex than initial filings, so the processing time and fee could reasonably be lower than that required for the I-924 form. In my proposal I suggest holding "actual" project I-924 adjudications to within two months but not offering premium processing at that stage, because 2 months is not too long for most projects to wait and because I-924 applications are inevitably complex and careful review is necessary to avoid problems in later stages.

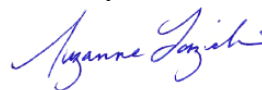
		Suggested Processing Time	PPS Available?
<b>Regional Center Proposals</b>			
1	I-924 based on "actual" project(s) only	2 months	N
2	I-924 including actual and/or "hypothetical" projects	4 months	N
<b>Regional Center Amendments</b>			
3	I-XXX** (exemplar I-526 petition to add one new project)	1 month	Y
4	I- XXX (to amend approved economic methodology, and/or offering documents)	1 month	Y
5	I- XXX (to expand geographic area/industries, presenting more than one new actual project)	2 months	Y
<b>Investor Petitions</b>			
6	I-526 for Regional Center investment with RC documentation identical to what was approved with the I-924 or an amendment	2 months	Y
7	I-526 for Regional Center investment when RC documentation is NOT identical to what was approved with the I-924 or an amendment	4 months	N
8	I-526 for Stand-alone investment	4 months	N

\* "actual" and "hypothetical" as defined in the 12/11/2009 Neufeld Memo

\*\* I-XXX would be a new form, specifically for RC amendments and with lower processing fee than I-924

These suggestions are based on my experience since 2009 in writing business plans for Regional Centers. Please contact me at [suzanne@lucidtext.com](mailto:suzanne@lucidtext.com) with any questions.

Sincerely,



Suzanne Lazicki