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Homeland Security

Questions and Answers

The CIS Ombudsman's Webinar Series: Engagement with USCIS on the EB-5 Immigrant Investor Program

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If you have additional questions or feedback regarding the EB-5 Immigrant Investor Program, please email us at CISOmbudsman.publicaffairs@hq.dhs.gov.

Questions regarding the EB-5 Regional Center Program

Q1. Is there a list of approved regional centers on USCIS' website?

A1. Yes, you can see them on USCIS' View the list of current approved EB-5 regional centers by state page.

Questions regarding the termination of regional centers

Q1. If a pre-RIA regional center chooses to wind down and not pay the integrity fund fee or file Form I-956G, *Regional Center Annual Statement*, will USCIS terminate the regional center based on "administrative noncompliance"?

A1. For regional centers that fail to file Form I-956G by the required filing date, INA 203(b)(5)(G)(iii) states that USCIS shall sanction designated regional centers that do not file the required annual statement (which DHS designated as Form I-956G). In accordance with this statutory directive, USCIS will sanction regional centers who fail to comply with the requirement to file their Form I-956G, up to and including termination from the Regional Center Program.

Per INA 203(b)(5)(J)(II)(i), on Oct. 1, 2022, and each Oct. 1 thereafter, each regional center must pay into the Integrity Fund. USCIS announced via Federal Register Notice that the first fee payments were due beginning on March 2, 2023 (88 Fed. Reg. 13141). The payment

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amount required depends on the number of investors under the sponsorship of all the regional center's new commercial enterprises in the preceding fiscal year. USCIS will terminate the designation of any regional center that does not pay the fee required within 90 days after the date on which such fee is due.

In October 2023, USCIS issued guidance explaining that when a regional center is terminated for purely administrative noncompliance, the agency may determine that the termination would generally not adversely affect a pre-RIA investor's basic eligibility because their investment and resulting job creation would remain undisturbed. The phrase "purely administrative noncompliance" is not intended to be a new termination category, or a term defined by USCIS, but rather a plain language description of the potential circumstances of noncompliance on the part of regional centers that are not typically related to petitioner eligibility (illustrated in the context of failure to pay the EB-5 Integrity Fund fee required by the RIA). USCIS will evaluate the potential impact of noncompliance by regional centers on associated investors on a case-by-case basis.

Q2. Under the pre-RIA material change policy, regional center termination affected investors differently depending on if the termination was before or after they received conditional permanent residence. How does termination of a Regional Center impact its associated Form I-526E, *Immigration Petition by Regional Center Investor*. petitioners?

A2. Following the termination or debarment from the program of a regional center, new commercial enterprise, or job creating entity, investors with a pending or approved petition, including petitions filed prior to enactment of the EB-5 Reform and Integrity Act of 2022, may retain eligibility under certain circumstances.

In the case of the termination of a regional center, the investor may retain eligibility if their new commercial enterprise associates with an approved new regional center (regardless of its approved geographical boundaries) or if the investor makes a qualifying investment in another new commercial enterprise (INA 203(b)(5)(M)(ii)(I)).

In the case of debarment of a new commercial enterprise or job-creating entity, the investor may retain eligibility if they associate with a new commercial enterprise in good standing and invest additional capital solely to the extent necessary to satisfy remaining job creation requirements (INA 203(b)(5)(M)(ii)(II)).

The petitioner must generally file an amendment to their petition or otherwise notify USCIS that they continue to meet applicable eligibility requirements notwithstanding termination or debarment, as applicable, no later than 180 days after notification of termination or debarment (INA 203(b)(5)(M)(iii)).

In these circumstances, investors may amend their petitions to demonstrate that they meet applicable eligibility requirements. For purposes of determining eligibility, USCIS will not consider changes to the business plan underlying the amendment as a material change. In addition, the investor may include any funds obtained or recovered by the investor, directly or indirectly, from claims against third parties, including insurance proceeds, or any

additional investment capital provided by the investor, as their investment capital (INA 203(b)(5)(M)(iii)).

Petitions that continue to meet applicable eligibility requirements in these circumstances, including following an amendment, retain the immigrant visa priority date related to the original petition and prevent age-out of derivative beneficiaries. USCIS may hold these petitions in abeyance and extend any applicable deadlines (INA 203(b)(5)(M)(v)(I)).

USCIS may not approve an investor petition or remove the conditions of a conditional resident investor if, after providing notice and an opportunity to respond, it has reason to believe that the investor was a knowing participant in the conduct that led to the termination or debarment of a regional center, new commercial enterprise, or job-creating entity (INA 203(b)(5)(M)(vi)).

Questions regarding pre-RIA investors

Q1. How does section 104(b)(2)(B) of the RIA limit the sustainment period changes in section 102(a)(1) of the RIA, not extending them to pre-RIA investors?

A1. Changes made to INA 203(b)(5)(A)(i) by the RIA regarding the required investment timeframe apply to petitions filed on or after March 15, 2022. Similarly, section 104(b)(2)(B) of the RIA specifies that the changes made to INA 216A (including removal of the requirement to sustain investment throughout the conditional residence period) do not apply to petitions for removal of conditions filed by immigrant investors whose underlying EB-5 immigrant petition was filed before March 15, 2022.

Q2. Can pre-RIA investors withdraw funds while a Form I-829, *Petition by Investor to Remove Conditions on Permanent Resident Status*, is pending?

A2. Generally, yes, potentially subject to INA 203(b)(5)(M)(iv). Pre-RIA investors will continue to otherwise be subject to pre-RIA requirements for removal of conditions; their sustainment period under INA 216A is tied to the two-year period of their conditional permanent residence. The investor's investment capital must remain at risk in the new commercial enterprise throughout the two-year sustainment period. If the investor's capital was deployed in a manner such that it will not remain at risk before completing the two-year sustainment period, the investment capital must be further deployed to remain at risk. USCIS reviews the investor's evidence to ensure sustainment of the investment for two years from the date the investor obtained conditional permanent residence, subject to INA 203(b)(5)(M)(iv) if applicable. An investor does not need to maintain his or her investment beyond the sustainment period.

Q3. Do the RIA's requirements regarding segregated accounts and flow of funds apply to investments made and projects from before March 15, 2022?

A3. No. The requirements of INA 203(b)(5)(Q) regarding segregated accounts and flow of funds do not apply to petitions or applications filed before March 15, 2022.

Standalone investors and Form I-526, *Immigrant Petition by Standalone Investor*

Q1. How long may an investment be made before the investor files their post-RIA petition for classification?

A1. An investor filing an EB-5 immigrant visa petition after enactment of the RIA must have invested, or be in the process of investing, the required amount of capital in a new commercial enterprise in the U.S. and expect to maintain that investment for not less than two years, provided job creation requirements have been met. Though the statute does not explicitly specify when the two-year period under INA 203(b)(5)(A)(i) begins, USCIS interprets the start date to generally be the date that the full amount of qualifying investment is made to the new commercial enterprise and placed at risk under applicable requirements, including being made available to the job creating entity, as appropriate. If the investor invested more than two years before filing the Form I-526 or Form I-526E petition, the investment should generally still be maintained at the time the Form I-526 or Form I-526E is properly filed, for us to appropriately evaluate eligibility.

Q2. If a post-RIA investor's petition is backlogged at USCIS, may they receive their investment back before USCIS approves their Form I-526 or Form I-526E?

A2. Potentially yes assuming that sufficient jobs were created while the investment remained invested and no other circumstances impacting eligibility apply, such as those contemplated by INA 203(b)(5)(M). For purposes of evaluating the expected investment timeframe required under INA 203(b)(5)(A)(i), USCIS generally will use the date that the requisite amount of qualifying investment is made to the new commercial enterprise and placed at risk under applicable requirements, including being made available to the job creating entity, as appropriate. However, petitioners must submit evidence to establish the required capital was invested for the required timeframe.

Q3. Can the rural set-aside category expedite Form I-526 processing?

A3. No. While both standalone and regional center investors filing petitions for classification after enactment of the RIA may qualify for the visas reserved under INA 203(b)(5)(B)(i)(I)(aa) for investment in rural areas, that provision is separate from INA 203(b)(5)(E)(ii)(I), which USCIS interprets to permit priority processing and adjudication of petitions for rural areas when processing I-526E petitions associated with Regional Centers.