



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

September 11, 2023

Ms. Alissa Emmel  
Chief  
Immigrant Investor Program Office  
U.S. Citizenship and Immigration Services  
5900 Capital Gateway Drive,  
Camp Springs, MD 20588-0009

**RE: Request for clarification on the processing times for Form I-526E Petitions for Rural/TEA Projects**

Dear Ms. Emmel:

In recent weeks, the EB-5 community has received reports of expedited processing of certain Form I-526E petitions. It appears that certain petitions filed for projects in rural areas have been adjudicated in less than one year. While the American Immigration Lawyers Association (AILA) is appreciative of any and all USCIS efforts to reduce processing times in EB-5 and other adjudications, the absence of timely communication from USCIS about the vast difference in processing times has resulted in extensive speculation about the basis and implications of this apparent new rural priority adjudication policy. Unfortunately, this is causing significant and unnecessary instability in the EB-5 capital fundraising markets.

AILA requests clarification and transparency on processing policies for Form I-526E petitions filed under the EB-5 Immigrant Investor Program (EB-5 Program) that have resulted in shorter processing times for projects in rural areas. In addition, AILA requests that USCIS ensure that other EB-5 processing times are not adversely impacted by this apparent prioritization and that USCIS work to meet the statutory processing times for all I-526E petitions.

**Background**

On August 28, 2023, Forbes Magazine published an article titled, [\*Why Rural EB-5 Projects Are Best For Investor Immigrants\*](#) which offers the following advice to readers:

*With the investment, the investor files the I-526E petition, providing details about the investment and its job creation potential. Due to the priority processing for rural projects, this petition can be processed quickly. There are no published expected processing times for USCIS approval of such projects to date. However, based on early anecdotal evidence of approvals so far, they can be approved as quickly as in one year.*

**AILA National Office**

1331 G Street NW, Suite 300, Washington, DC 20005

Phone: 202.507.7600 | Fax: 202.783.7853 | [www.aila.org](http://www.aila.org)

That same article includes a step-by-step EB-5 process graphic stating “Approval of petition about 1 year.” But Forbes is not the only media to carry such reporting.

On August 10, 2023, EB5 Investors Magazine published an article titled “[Less than a year wait for EB-5 green cards](#)”<sup>1</sup> which includes the following quote:

*While exact timeframes for approval have not been established by the USCIS, EB-5 industry stakeholders estimate an I-526E approval of between 12 and 18 months. The current less-than-a-year timeframe is encouraging, with stakeholders saying it is an opportunity for investors to take advantage of priority processing, particularly in rural projects.*

The obvious consequence of this news is that investors with long-pending Form I-526 applications are concerned that their applications will be further delayed with no information on how this reprioritization will affect them. The 1-year processing times stand in stark contrast to the USCIS reported average processing time of 55.5 months<sup>2</sup> for all other cases. AILA believes that transparency into the processing policies and public guidance will help prevent further instability.

In order to address the growing concerns within the EB-5 community, we respectfully request the following information:

- 1. Confirmation of Implementation of Priority Processing:** Kindly confirm *publicly* whether USCIS has implemented priority processing of Form I-526E Petitions specifically for petitioners investing in rural projects. If such a policy change has occurred, please also confirm when this policy was first implemented.
- 2. Clarification of How Cases are being Prioritized.** We recognize section 103(A)(1)(ii) of the Reform and Integrity Act<sup>3</sup> (RIA) directs USCIS to prioritize adjudication of Form I-526E petitions for rural areas.<sup>4</sup> Importantly, however, the RIA does not define the scope and method of *prioritization* for rural cases, and instead the law gives USCIS discretion to formulate a new policy to implement the “*manner and order*” of such prioritization.

If rural priority processing is now occurring, there is ambiguity in whether USCIS has formulated a more confined policy that accords Form I-526E/Rural TEA petitions precedence over other I-526E petitions, or if it has established a broader

---

<sup>1</sup> [EB5 Investors Magazine: Less than a year wait for EB-5 green cards \(Aug 10, 2023\)](#)

<sup>2</sup> <https://egov.uscis.gov/processing-times/>

<sup>3</sup> Div. BB of the Consolidated Appropriations Act of 2022, Pub. L. 117-103, 136 Stat. 49 (March 15, 2022).

<sup>4</sup> RIA Sec 103(A)(1)(ii) provides: “*In processing petitions under section 204(a)(1)(H) for classification under this paragraph, the Secretary of Homeland Security— (I) shall prioritize the processing and adjudication of petitions for rural areas; (II) may process petitions in a manner and order established by the Secretary . . .*”

policy that grants priority to rural processing over ALL categories of EB-5 petitions – encompassing even the pending I-526 petitions with visa availability.


We respectfully request clear guidance on the extent of any prioritization of Form I-526E petitions and the consideration given to the equities of long-standing Form I-526 petitioners and the broader implications of this prioritization on the EB-5 community. We believe that time is of the essence in publicly announcing any policy change to end growing speculation within the investor community.

3. **Request for Confirmation that Prioritization will not Result in Slowdown of Processing of All Non-Rural Cases (Forms I-526/I-526E).** As there are widespread concerns that the reallocation of adjudicators to prioritize processing of Form I-526E rural petitions may result in slower processing for all non-rural petitions (Forms I-526 and I-526E cases), which are already reporting processing times for all petitions of 55.5 months, we respectfully request confirmation of USCIS’ plan to ensure that processing times for non-rural cases and Form I-526E petitions will not be adversely affected by any prioritization of rural petitions.
  
4. **Provide Expanded Processing Times Data:** If USCIS has implemented priority processing for rural TEA projects under the EB-5 Reform and Integrity Act of 2022, we request USCIS update its Processing Times website as soon as possible to reflect current processing times for Form I-526E including for rural cases, as it does for Form I-526 Petitions filed prior to June 30, 2021. Accurate processing time estimates are crucial for applicants, investors, and project developers for informed decision-making. For example, USCIS should provide Form I-526E data by subcategory, (Non-TEA, TEA/Rural, TEA/High Unemployment, and TEA/Infrastructure) in order to report separate processing times by category and minimize further industry confusion.

**Suggested Reporting Template (Excerpt)**

| EB-5 Case Type               | General Processing Time (Visa Availability) | China |
|------------------------------|---|-------|
| I-526                        |   |       |
| I-526E (non-TEA)             |   |       |
| I-526E TEA/Rural             |   |       |
| I-526E TEA/High Unemployment |   |       |
| I-526E TEA/Infrastructure    |   |       |

USCIS should also revise the quarterly and annual data reporting for Form I-526E related to receipts, approvals, denials, totals, and pending. As shown in the recent USCIS data report ([FY2023 Q2 EB-5 \(Form I-526\) Data Report](#)) copied below, Form I-526E is a single catch-all reporting group. Given the apparent rural prioritization, we request that USCIS separate each of the Form I-526E classifications (1. Non-TEA, 2. TEA/Rural, 3. TEA/High Unemployment, 4. TEA/Infrastructure.) Moreover, we recommend that USCIS also report expanded data by country of chargeability.

| Number of Service-wide Forms<br>By Quarter, Form Status, and Processing Time<br>January 1, 2023 - March 31, 2023 |  |                             |                       |                     |                    |                      |                              |                       |           |        |       |         | <br>U.S. Citizenship<br>and Immigration<br>Services |  |
|--|--|-----------------------------|-----------------------|---------------------|--------------------|----------------------|------------------------------|-----------------------|-----------|--------|-------|---------|--|--|
| Category and Form Number   | Description                                    | 2nd Quarter                 |                       |                     |                    |                      |                              | Fiscal Year - To Date |           |        |       |         |  |  |
|  |  | Forms Received <sup>1</sup> | Completed             |                     |                    | Pending <sup>5</sup> | Processing Time <sup>6</sup> | Forms Received        | Completed |        |       | Pending |  |  |
|  |  |                             | Approved <sup>2</sup> | Denied <sup>3</sup> | Total <sup>4</sup> |                      |                              |                       | Approved  | Denied | Total |         |  |  |
| I-526 <sup>a</sup>   | Immigrant Petition by Alien Investor (Legacy)  | -                           | 406                   | 498                 | 904                | 11,602               | 50.1                         | -                     | 677       | 627    | 1,304 | 11,602  |  |  |
| I-526  | Immigrant Petition by Standalone Investor      | 40                          | N/A                   | N/A                 | N/A                | 90                   | N/A                          | 77                    | N/A       | N/A    | N/A   | 90      |  |  |
| I-526E   | Immigrant Petition by Regional Center Investor | 495                         | N/A                   | N/A                 | N/A                | 1,127                | N/A                          | 965                   | N/A       | N/A    | N/A   | 1,127   |  |  |

This revised reporting would ensure greater compatibility with current I-526/I-526E data issued by the Department of State in the monthly Visa Bulletin,<sup>5</sup> as noted below:

| Employment-based                          | All Chargeability Areas Except Those Listed | CHINA-mainland born |
|---|---|---------------------|
| 5th Unreserved (including C5, T5, I5, R5) | C   | 08SEP15             |
| 5th Set Aside: Rural (20%)                | C   | C                   |
| 5th Set Aside: High Unemployment (10%)    | C   | C                   |
| 5th Set Aside: Infrastructure (2%)        | C   | C                   |

- Finalize the RIA mandated Fee Study and publish a plan on how USCIS will meet Congressionally established EB-5 case processing goals.** Congress specifically directed USCIS in Section 106 of the RIA to complete a Fee Study not later than 365 days after enactment and then adjust EB-5 filing fees to achieve the “*goal of completing adjudications, on average, not later than*” of 120 days for Form I-526E/TEA petitions and 240 days for all other Form I-526E petitions (non-TEA). Although more than a year has passed since the enactment of the RIA, no fee study has yet been published, which creates significant and growing concerns with respect to the ability of USCIS to process all EB-5

<sup>5</sup> For example: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-september-2023.html>

petitions within Congressionally established goals - including prioritizing Form I-526E rural petitions.

We request that USCIS finalize the Section 106 Fee Study as it directly and materially impacts the ability of USCIS to expand adjudication resources (a) to meet Congressionally established processing target times, while also (b) allowing significant backlog processing of the nearly 11,000 pending Forms I-526 and I-526E with a 55.5-month processing time.

It is critical that USCIS provide confirmation of any new rural processing policies and updated adjudication timelines as the lack in information is driving potential EB5 investors to make major investment and immigration decisions based largely upon marketplace speculation. As such, we urgently request written confirmation of any prioritization of rural Form I-526E petitions as well as agreement on the requests and recommendations stated above.

Thank you for your attention to this urgent matter. Please do not hesitate to contact Sharvari (Shev) Dalal-Dheini, AILA Director of Government Relations by email at [sdalal-dheini@aila.org](mailto:sdalal-dheini@aila.org) or David Morris, Chair of the AILA EB-5 Investor Committee by email at [morris@visalawgroup.com](mailto:morris@visalawgroup.com), if you would like to discuss this important issue in more detail.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CC: Doug Rand, Senior Advisor to the Director

Michael Valverde, Associate Director, Field Operations Directorate