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IMMIGRATION
LAWYERS
ASSOCIATION

September 11, 2024

Via Email

Carrie Selby
Associate Director, External Affairs Directorate
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20588-0009

Re: AILA Request for EB-5 Processing Improvements

Dear Ms. Selby:

We are respectfully submitting this letter identifying several ongoing and repeated technical and customer service issues related to the EB-5 process. We ask for simple technology updates, better coordination between the Immigrant Investor Program Office (IPO) and other USCIS offices, and other administrative fixes to the EB-5 visa classification. We believe these simple changes will keep immigrant investors, regional centers, and their immigration attorneys on the same playing field as the rest of immigration applicants serviced by USCIS and will reduce administrative inquiries to uscis.immigrantinvestorprogram@uscis.dhs.gov, reduce USCIS' workload to resolve such matters, provide better customer service, and better effectuate congressional intent as indicated in the EB-5 Reform and Integrity Act of 2022 (RIA). We appreciate your attention to these recommendations, as you have done with past customer service and technology recommendations for other program areas in an effort to best serve all USCIS stakeholders.

Our specific questions are as follows:

1. USCIS' Case Status Check Online Tool. This online USCIS tool does not work for Form I-526, Form I-526E, Form I-956, or Form I-956F filed after the EB-5 Reform and Integrity Act of 2022. When a receipt number starting with IOE or INF is entered, the following message is shown:

AILA believes that this tool should be made accessible for all EB-5 stakeholders and that it should not be replaced with MyUSCIS.

2. USCIS’ “Check Case Status Processing Times” Webpage. This website does not include any estimated processing times for Form I-526E or Form I-956. It should also distinguish between Forms I-526E based on an investment in *each* of the four EB-5 visa categories to account for the prioritized processing USCIS implements for the Form I-526Es associated with investments in rural areas.

Additionally, even though there is a Final Action Date for the India Unreserved category, the legacy Form I-526 processing times do not account for IPO’s visa availability approach for these immigrant investors as it only lists mainland-China separately.

3. Form I-526E Receipt Errors and Delays. Stakeholders have shared that the receipting of Form I-526E petitions is increasingly inconsistent. For many I-526E petitions, USCIS is taking three months or longer to issue official receipt notices. In other instances, USCIS has not issued receipt notices within six (6) months, or at all. Additionally, stakeholders have communicated to us that Form I-526E receipt notices contain errors such as the incorrect or missing name of the petitioner, incorrect priority dates (USCIS has erroneously listed petitioners’ prior I-140 priority dates as the priority date in the I-526E), or unrelated information not typically found on receipt notices, such as parts of RFE language. Additionally, while the Form I-526E fee receipt lists the applicable visa category, the I-526E receipt notices only state “targeted employment area.” Both for Form I-526E receipt notices and approval notices should clearly indicate the appropriate visa category – unreserved, rural, high unemployment, or infrastructure – to ensure that USCIS’ adjustment of status teams know the applicable visa category for the immigrant investor.

While we understand that mistakes happen, we encourage USCIS to consider the following options to aid in the reissuance of corrected receipt notices:

- Similar to Premium Processing, create a stakeholder specific email address at IPO that allows stakeholders to request the reissuance of receipt notices that contain material government errors.
- Add the Form I-526E receipt number to the Fee Confirmation Receipt or resume stamping the back of filing fee checks with the receipt number.
- Consider implementing electronic receipt notices emailed to attorneys of record similar to Premium Processing receipt notices in other types of USCIS petitions.
- Encourage stakeholders to use the Form G-1145 and train the lockbox team to email or text the filing party with the receipt number. This will allow USCIS more time to create and distribute the actual Form I-526E receipt notice to petitioners and their attorneys of record.
- USCIS should timely post Form I-526/I-526E receipts based on country of birth and type of investment on a monthly basis, as it is the only way to properly advise immigrant investors on EB-5 wait times.

4. USCIS Account Access Emails. USCIS has been sending USCIS Account Access Notices for immigrant investors to their attorneys, about four to five weeks after issuing the official Form I-526/I-526E receipt notice. When the immigrant investor uses the access coded provided, USCIS' system indicates it was issued for a legal representative.

 Wrong Account Type

The code you entered is for a representative account. You are currently in an applicant account. If you are an applicant and want to continue setting up in your applicant account please check that you are using the Online Access Code from the USCIS Online Account Access Notice addressed to your name.

We ask that USCIS send all Account Access Notices with the official Form I-526/I-526E receipt notice. Further, USCIS has indicated via email that it will not send these USCIS Account Access Notices to immigrant investors located outside the United States. Accordingly, if USCIS needs to mail separate account access notices to petitioners and lawyers, AILA requests that USCIS send both copies to the lawyer of record so that the Petitioner's account access notice can be forwarded timely to the applicant.

5. Better Coordination Between IPO and Other USCIS Offices Regarding Adjustment of Status. The RIA allows eligible immigrant investors and their derivative beneficiaries to concurrently file an adjustment of status at the time a Form I-526E is filed, if a visa is available. Stakeholders are reporting erroneous rejections of concurrently filed Forms I-485, where the mailroom claims that the underlying Form I-526E is missing or not provided, despite the petition and applications being filed together. The Dallas Lockbox is also incorrectly rejecting Forms I-485 based on I-526E set aside petitions because they claim that "priority date is not current," even though it has always been current.

These erroneous rejections also include instances where attorneys have received a rejection notice without the original submission being returned to counsel, or a letter stating rejection due to incorrect or insufficient fees for the adjustment of status application, when the rejected packet returned to counsel includes all requisite fees in the proper and correct amounts. Based on a review of the rejections, this appears to be an issue of inadequate training for mailroom employees.

Additionally, it is unclear how IPO communicates with the California Service Center or other USCIS offices once a Form I-526E has been approved and a visa is available. Stakeholders report being placed in a loop when making inquiries to USCIS, as customer service representatives state the Form I-485 is with IPO, and IPO has responded that they cannot provide any updates on pending Form I-485 applications, as that is outside the purview of its office. The same issues occur (or no response at all), regarding requests to transfer the underlying basis for a Form I-485 to a pending or approved Form I-526E.

Finally, USCIS has been losing photographs submitted with Forms I-765 and Forms I-131 and issuing RFEs for "missing photos," thus creating processing longer backlogs, more unnecessary

work for USCIS, and inconvenience for USCIS customers. The Dallas Lockbox must be better trained to put photographs with each application to prevent this unnecessary tasks.

We strongly recommend that USCIS consider the following options:

- Retraining or periodic reminders of the changes allowed by RIA to ameliorate the issue of erroneous rejections.
- Coordination between IPO, USCIS offices adjudicating Forms I-485, and customer service on concurrently filed AOS applications so that applicants and their counsel can conduct status checks to ensure a smooth processing timeline for pending applications.

6. Inexplicable Delays on Transfers to National Visa Center (NVC). The U.S. Department of State (DOS) has previously indicated¹ that it receives approved petitions electronically via email. This transfer process is beset by irregularities and delays, and for approved I-526/I-526Es, it takes entirely too long for this process to occur, with some waiting up to six months for the case to be transferred (case examples available on request). When inquiring with NVC with respect to the receipt of the file, NVC provides a standard (and inaccurate) response that it usually only takes 30 days for USCIS to transfer a file, creating unrealistic expectations for immigrant investors. These systematic delays are preventing DOS from issuing the reserved visa allocations for the past two years and causing family separation through child “age-outs”. We strongly recommend that the IPO send the transfer email to NVC within two weeks of the Form I-526/I-526E approval. Relatedly, we note another potential training issue that involves multiple instances in which the IPO transferred a case to NVC even though there is an adjustment of status application currently pending (or even approved) with USCIS, as indicated on the Form I-526/I-526E.

7. Issuance of Conditional Permanent Residency Cards Following Entry with Immigrant Visa. In our collective experience, it is regularly taking USCIS more than 3-4 months, and in some cases over 6 months, after an immigrant investor’s first entry into the United States to produce and ship the physical green card. Receipt of the physical green card is critically important to immigrant investors and we strongly request that USCIS provide significantly faster service in this area. It also appears to delay the issuance of social security cards as well, which prevents immigrant investors and their families from becoming fully productive participants in the United States economy.

8. Adding Derivative Beneficiary to Pending Form I-829. USCIS stated in May 2024² that it allows eligible derivative beneficiaries to be added to a pending Form I-829 by emailing the IPO Customer Service website, placing “Request to Add Derivative to Form I-829” in the subject line, and emailing such documentation to IPO directly. Yet, when following these instructions, IPO has directed stakeholders to file a paper copy with the Lockbox and to pay an

¹ <https://travel.state.gov/content/dam/visas/AILA/AILA-Agenda-02-09-2023.pdf>

² See General Questions, Question 6 at <https://www.uscis.gov/sites/default/files/document/questions-and-answers/EB5QAs.pdf> (“Beginning on May 23, 2024, you must submit the supplemental documentation listed above for each dependent by email only.”).

\$85 biometrics fee. We ask that USCIS issue final guidance that will be followed by all USCIS officers on how to add a derivative beneficiary to a pending Form I-829. We also note that no biometric fee is now required for a principal or derivative beneficiary of a Form I-829.

In conclusion, we thank you for your prompt attention to these urgent and time-sensitive matters. If you have any questions, please contact Sharvari (Shev) Dalal-Dheini, Senior Director of Government Relations at (202) 507-7621 or by email at SDalal-Dheini@aila.org or Michael Turansick, Supervisory Policy and Practice Counsel at (202) 507-7627 or mturansick@aila.org.

Thank you for your time and consideration.

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CC: Bitta Mostofi, Senior Advisor to the USCIS Director
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