

## **EB-5 STAKEHOLDER ENGAGEMENT (MARCH 13, 2020) – Talking Points**

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### **AGENDA**

1. Welcome
2. Background
3. New Visa Availability Approach
4. Updates
5. Conclusion

## 1. WELCOME

- Thank you Kathryn. Good morning everyone and thank you for joining us today.
- IPO has committed itself to two stakeholder engagements this fiscal year and I'm happy to have a chance to meet with you today at our first engagement for the calendar year.
- Our main topic today is our agency's decision to pivot from the processing of I-526s from a first-in, first-out approach to a visa-availability approach. USCIS published the announcement on January 29, 2020, and I'd like to spend some time today discussing the change.
- I will also touch upon some updates and reminders we have on regional centers, fraud reporting, and the EB-5 Immigrant Investor Program Modernization rule, which went into effect in November 2019.
- We are fortunate to be joined by Mr. Charles Oppenheim, Chief of the Visa Controls Office, here today. He will address the current situation with the availability of visas and oversubscription. We'd like to express our thanks to the Department of State for their participation.
- We received questions from you in advance of this engagement; thank you for taking the time to submit them. We selected a few of those questions we felt would be helpful to respond to, and I will be providing those after the updates and reminders.
- We will also have some time to take questions from engagement participants. Let's get started.

## 2. BACKGROUND

- Generally, IPO has followed a first-in, first-out – or FIFO-based approach - with groupings of petitions that relate to the same new commercial enterprise when it leveraged operational efficiencies.
- Over the past several years, petitioners from a few countries have submitted the vast majority of I-526 petitions. This has led to an oversubscription and caused significant visa wait times of the employment-based 5<sup>th</sup> preference category for China, India and Vietnam. In some cases, the wait time has reached several years. For example, as the Department of State reported last year, as of April, there were 32,169 approved Chinese petitions at the National Visa Center awaiting visa availability. State estimated that the wait time for a visa number for an I-526 petition filed in May of 2019 by a Chinese investor was approximately 16.5 years.
- Under the per-country limit established by Congress, individuals born in a single country can receive no more than 7 percent of any employment-based visa allocation, unless cap numbers would otherwise go unused.
- Under a FIFO-based approach to work distribution, petitions for which visa numbers are available would be routinely processed after petitions that may have been filed earlier, but for which visa numbers are not available.

## 3. NEW VISA AVAILABILITY APPROACH

- After careful consideration, as announced on **Jan 29, 2020**, IPO is moving to an inventory management approach that will prioritize the processing of Form I-526 petitions where visas are immediately available or soon to be available, effective **March 31, 2020**.

- USCIS considered potential adverse impacts, such as delays for those with already pending petitions from oversubscribed countries, because this change would apply to all I-526 petitions not assigned as of March 31, 2020, including those currently in the pipeline. However, we determined that the new inventory management approach comes with a number of benefits.
- First and foremost, this change better aligns with congressional intent in terms of visa allocation.
- By prioritizing petitions where visas are available or will soon be available, petitioners from countries where visas are immediately available will be better able to use their annual per-country allocation of EB-5 visas and will no longer wait to have their Form I-526 processed behind petitioners from oversubscribed countries without visas currently available or visas soon to be available.
- Additionally, this change aligns EB-5 processing with other USCIS operations and programs that involve numerical limits for visa availability, such as inventory management for Form I-130, Petition for Alien Relative.
- USCIS's Office of Performance and Quality will be revising the EB-5 processing times to reflect the new methodology.
- In using this approach, our inventory distribution will now give priority to petitioners who have a visa available or a visa soon will be available.
- There will be no change to the USCIS expedite process because of the new visa availability inventory distribution. Consistent with our past practice, should your case receive an approval for expedited treatment, your case will be immediately distributed for review.

- In reaching the decision to pivot to prioritizing petitions where visas are available or soon to be available, USCIS did consult with the Department of State to seek input on the effect this change would have on visa distribution. Ultimately, this decision was solely a USCIS decision. We are fortunate today, as Mr. Charlie Oppenheim, Chief of the Visa Controls Office at the U.S. Department of State, is present to provide his agency's analysis of this change's effect on visa distribution and its effect on overall wait times for oversubscribed categories. Thank you for joining us, Charlie!

Charlie

#### **4. UPDATES**

- Thank you, Charlie, for providing our stakeholders with this helpful information.
- Now I have additional operational updates and a couple of reminders that I will cover.
- I would like to talk for a few minutes about case completion rates which are being widely discussed in the stakeholder community.
- During our listening session in September, I mentioned that IPO has taken significant steps in building more robust quality assurance and control programs, leading to more consistent adjudication practices, and also completed an extensive training session for all Form I-526 and Form I-829 adjudicators and economists.
- Over the past several months, IPO has also focused on enhancing the integrity of the program and working to find ways to protect the program from abusive actors. This focus has meant greater coordination with agencies in the law enforcement community and with other partners. In the last year, both our FDNS and Compliance

teams have presented training to and worked with a larger number of outside agencies than in all years past.

- USCIS leadership views these initiatives as **absolutely vital** to the success of the EB-5 program.
- We acknowledge that case completion rates have decreased, partly because of these activities, and we understand the concerns that this has on our stakeholders. With a lot of the infrastructure development mentioned above now behind us, IPO is better situated to improve productivity. In fact, preliminary production data for February shows a step in the right direction. The USCIS Office of Performance and Quality anticipates publishing new data in the coming months.
- Many of our stakeholders have engaged with IPO via our publically available email address, [USCIS.ImmigrantInvestorProgram@uscis.dhs.gov](mailto:USCIS.ImmigrantInvestorProgram@uscis.dhs.gov). As a result, we have emphasized improved response time performance. I am very pleased to share with you that our inquiry management team is responding to public email inquiries within approximately 9 days. I'd like to thank the inquiry management team who works very diligently in responding to emails as quickly as possible.
- I'd like to now give you an update on regional centers. USCIS continues to heavily monitor compliance and will take action when a regional center has failed to meet the terms and conditions of the EB-5 program.
- This year, **100 Regional Centers failed to file their Form I-924A** and were issued Notices of Intent to Terminate, also known as a NOIT. If your regional center received a NOIT for failing to filing an I-924A, it is important to both properly file your I-924As and timely respond to the NOIT. Form I-924As should be mailed to the California Service Center in Laguna Niguel, California and not to IPO

in Washington, DC. If you mail your I-924A and check to IPO, we will reject it as improperly filed.

- As required in 8 CFR 204.6(m)(6), Regional Centers must provide information annually or as required by USCIS to maintain their status as a designated regional center. Therefore, if you fail to properly file your I-924A, we will terminate your regional center designation. In addition to the 100 centers that have so far been issued a Notice of Intent to Terminate in FY20, in FY19, 70 regional center designations were terminated as a result of failing to file the I-924A.
- While I'm on the topic of Form I-924As, there are steps you can take to reduce the chances of receiving Requests for Clarification/Requests for Evidence from USCIS regarding the Form I-924A, including:
  - Make sure the information in the form is accurate and that the form is completely filled out. If the form is not filled out in accordance with the instructions, and/or it contains incomplete or inaccurate data, USCIS may issue a Notice of Intent to Terminate for failure to provide required information. If there are inconsistencies between what is provided on the Form I-924A and what was previously provided to USCIS, take time to explain why something is different.
  - The form instructions note that there are specific documents USCIS requires be included in Form I-924A submissions. For example, Regional Centers are required to include government-issued photo identification for all principals. Last year, a significant number of submissions lacked the required photo identification. Please review the form requirements and make sure that your submission is complete. This review will save us time and you time; and
  - Regional Centers **must** report changes to the Regional Center's name, ownership, organizational structure, principals or

geographic area, among other things, by properly filing a Form I-924 amendment and paying the associated fee.

- Submit a Form G-28 with your Form I-924A filing if you wish us to contact an attorney.
- Moving on, I'd like to speak to you for a few moments on legislative amendment discussions, including program integrity measures.
- USCIS has consistently provided technical assistance to Congressional leaders that focuses on strengthening our ability to administer the program with integrity.
- Members of Congress have introduced bipartisan bills that would make strides towards addressing issues that USCIS leaders have long articulated regarding the need to shore up the agency's authority to address fraud, misrepresentation, criminal misuse, and other nefarious concerns found in the EB-5 caseload.
- Some of these bills include proposals to collect additional fees from regional centers and investors, which would be allocated to DHS to perform site inspections and require records maintenance to assist IPO with program integrity management activities.
- Some proposed legislative language we have seen would require background checks more broadly for individuals associated with regional centers.
- While we continue to implement the EB-5 Immigrant Investor Program Modernization Final Rule, we continue to place importance on continually assessing and improving the EB-5 program's integrity.
- We have received questions in the past on how to report fraud and abuse. USCIS has a dedicated page on our website that is specifically for reporting EB-5 fraud. We appreciate the tips we have received, and work with our partners across the government to investigate and prosecute wrongdoing.

- For more information on how to report EB-5 fraud, please visit **[uscis.gov/report-fraud](https://uscis.gov/report-fraud)**. You can click on EB-5 Fraud link and this will take you to information about reporting fraud in the EB-5 program.
- Finally, as a result of the new modernization rule that became effective on November 21<sup>st</sup>, USCIS published some FAQs on the USCIS website on March 4<sup>th</sup> that you might find helpful, including many questions you submitted for previous engagements.
- You can also visit the website to review the remarks made at the September 2019 stakeholder meeting, as well as those made at IIUSA's Forum held last October, which focus on the modernization rule.

## 5. CONCLUSION

- I would like to now provide responses to a few of the questions we received in advance. We will be making these questions and answers available on our website after the engagement, along with these talking points.

- What petitions does this change affect?

USCIS will apply the visa availability approach to all pending Form I-526 petitions. At the same time, USCIS will continue to work on Form I-526 petitions assigned for adjudication before March 31, 2020.

- How often will USCIS assess visa availability throughout the year?

The USCIS Immigrant Investor Program Office (IPO) will assess visa availability monthly by reviewing the Department of State Monthly Visa Bulletin.

- How will USCIS report Form I-526 processing times?

The USCIS Office of Performance and Quality will report processing times online, using a method similar to that of other operational components of USCIS that use a visa availability processing model.

- Agency priorities and resources may change. Does the new visa availability approach apply indefinitely or only for fiscal year 2020?

USCIS will implement the visa availability approach beginning March 31, 2020. USCIS is unable to speculate on future changes.

- How will USCIS handle expedite requests for Form I-526 petitions when a visa is not immediately available or available soon?

USCIS will review the expedite request in line with the agency's standard guidelines. An approved expedite means that USCIS will expedite processing by taking the application or petition out of order. Once USCIS has assigned the petition to an officer, the timeline for reaching an adjudicative decision will vary.

- How will USCIS respond to case inquiries for cases when a visa is not immediately available or available soon?

USCIS will create standard language for responses to such inquiries, which will inform the petitioner that the case remains pending and direct the petitioner to the USCIS processing time page.

- How will USCIS handle cases where the investor may be eligible to charge his or her immigrant visa to a country other than the investor's country of birth?

If the investor would be eligible to charge his or her immigrant visa to a country other than the investor's country of birth, the investor should email IPO at [uscis.immigrantinvestorprogram@uscis.dhs.gov](mailto:uscis.immigrantinvestorprogram@uscis.dhs.gov) and identify the foreign state of cross-chargeability and the basis of cross-chargeability (for example, his or her spouse's country of birth). If the investor provides sufficient information or documentation, IPO will consider visa availability associated with the foreign state of cross-chargeability when determining whether to assign the Form I-526 petition for adjudication.

- If a petition remains pending for a year while awaiting immigrant visa availability and is ultimately denied because of a material change that occurs within that year, will the petition retain its priority date?

A petitioner may only retain a priority date from a previously approved petition. Denied petitions will not retain a priority date. See 8 CFR 204.6(d).

- How many adjudicators has USCIS currently assigned to IPO, and how many adjudicators will USCIS allocate to adjudicating Form I-526?

At the beginning of FY 2020, IPO had about 245 dedicated personnel, including support staff, adjudicators, economists, Fraud Detection and National Security personnel, and other positions vital to the IPO mission. The number of adjudicative resources and personnel assigned to each EB-5 form type varies according to workload demands and agency priorities.

- I hope the information we have covered today has been helpful for you to better understand the visa availability inventory management approach for Form I-526 petitions.
- You will find much of the information discussed today on the USCIS website and in other communications sent on this subject earlier this year.
- Thank you for your attention this morning. We appreciate your interest in this program.
- I'll now hand the call back over to Kathryn for a few remarks and provide an opportunity for participants to ask questions.