



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

May 21, 2026

Mr. Joseph B. Edlow
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20588-0009

Via Email: uscisdirector@uscis.dhs.gov

**Re: Urgent Requests to Avoid Wasting EB-5 Reserved Visa Numbers
and Other EB-5 Process Improvement Requests**

Dear Director Edlow:

We are writing to request your assistance with an *urgent and time-sensitive issue*. Specifically, we are requesting immediate action by USCIS to prevent thousands of available reserved or “set aside” EB-5 immigrant visa numbers from being lost prior to the end of FY 2026 on September 30, 2026. Additionally, we request consideration of issues that have impacted immigrant investors navigating the post-EB-5 Reform and Integrity Act of 2022 (RIA) implementation of the EB-5 Regional Center program. Finally, we request that USCIS reconsider its interpretation of Section 107 of the RIA, which was intended to promote fair treatment and access to information, not as a blanket prohibition to shut down good-faith and constructive engagement with stakeholders.

1. Steps to Maximize FY 2026 Reserved Visa Use

The Immigration and Nationality Act (INA) limits the number of employment-based preference immigrant visas that may be issued within a fiscal year. Specifically, INA 203(b)(5) provides that the annual limit for EB-5 visas is 7.1 percent of the worldwide employment limit, and under the RIA, 32% of which are available for reserved or “set aside” visa categories (rural, high unemployment area, and infrastructure). Any of these set-aside visas that go unused are held in the same set-aside category for one more fiscal year. After the second fiscal year, any remaining unused numbers in these set-aside categories are released to the unreserved EB 5 category during the third fiscal year.

According to DHS and DOS statistics, despite having nearly 15,000 reserved visa numbers allocated since FY 2023, **fewer than 2,000 of them have been used and over 10,000 have been lost to reserved visa applicants forever.** We believe this to be inconsistent with congressional intent as indicated in the RIA, which prioritized processing and incentivized investments in these categories. Untimely action by USCIS to adjudicate Forms I-485 based on approved Form I-526Es

in the reserved categories before the end of the current fiscal year will result in longer visa wait times in the future. This would be an entirely avoidable and disappointing development following fair notice and ability to execute in the coming months.

We respectfully request that your office reallocate appropriate resources to identify and adjudicate, in order of filing date, all pending and readily approvable Forms I-485 based on approved Forms I-526E in reserved categories by September 30, 2026, thus effectuating congressional intent to use all statutorily allocated visa numbers in a fiscal year. We have also sent a parallel request to DOS, asking for adjudication of pending immigrant visa applications for approved EB-5 beneficiaries in reserved categories by September 30, 2026.

2. Election to Unreserved Visa Category When Current¹

To keep the EB-5 program working well as a tool for U.S. economic development, **USCIS must allow immediate visa category choice at the adjustment stage when a Form I-526/E is approved.** The State Department already allows investors to choose unreserved after I-526/E approval. This would provide immigrant investors with the option to proceed with an adjustment using the desired visa category based on the dual visa approval codes in the Form I-526/E notice.

For example, right now, Rest of World (ROW) investors can obtain conditional permanent residency using both the reserved and unreserved categories. But when Final Action Dates for the reserved categories are imposed (due to low numerical limits), these investors will be able to obtain the immigration status faster using the unreserved category, which is likely to remain current (due to the higher numerical limit). Without a way to choose, they may end up sitting in a reserved visa backlog, even when a visa number is available in the unreserved category. Further, if ROW investors use reserved visas by default, it reduces the number of reserved visas that could otherwise be allocated to immigrant investors from countries with a high number of applicants who are more likely to need them and already subject to backlogs in the unreserved category.

If ROW investors could simply choose unreserved after I-526/E approval (like they can in consular processing), it would offer the following benefits: (a) unreserved visas will be used more efficiently while they're available, (b) more visa availability for high applicant countries, and (c) the imposition of Final Action Dates in the reserved categories would be delayed.

At the same time, this flexibility should work both ways. When reserved categories later develop backlogs, investors should be able to move into unreserved, if that category is more favorable at that time. This flexibility helps the whole system adjust over time to maximize EB-5 visa use. Allowing real-time category choice is a straightforward fix that supports all of these goals. A simple process could easily be established using the [e-Request - Self Service Tools](#) or by contacting the IPO via email and asking them to coordinate the change in EB-5 visa category with USCIS's California Service Center where employment-based Forms I-485 are adjudicated.

¹ AILA previously raised this issue to USCIS in May 2025 but received no response. Correspondence, *AILA Letter to USCIS Urgently Requesting Adjudication of EB-5 Reserved Category Forms I-485* (Jul 22, 2025), [AILA Doc. No. 25072302](#).

3. Request for Receipt Notice After Option 3 Response to Notice of Regional Center Termination

USCIS should consider updating case status systems and issuing revised notices for petitioners who filed an amendment to his/her Form I-829 to demonstrate compliance with Section 203(b)(5)(M)(iii) of the INA within 183 days after USCIS provided notification of the regional center termination. As currently implemented, many such individuals remain in ambiguous or outdated status classifications, despite having taken affirmative steps contemplated by statute and USCIS policy guidance to preserve eligibility. This creates unnecessary uncertainty for petitioners, employers, and adjudicators, and increases the risk of inconsistent downstream decisions (e.g., RFEs, NOIDs, or NTA issuance).

Providing a uniform case status update and standardized notice acknowledging the petitioner's election of Option 3 would better align with the statutory intent to allow continued processing following Regional Center termination. It would also promote transparency, reduce administrative burden caused by repeated inquiries and duplicative filings, and ensure more consistent adjudications across USCIS offices. Importantly, such updates would not confer any new substantive benefit but would simply document an already-authorized pathway and recognize continued lawful presence during the pendency of the election. Clarifying this in official systems and notices would mitigate due process concerns and avoid penalizing petitioners for agency processing delays or system limitations and provides immigrant investors with continued assurance of their lawful status in the United States.

4. Request for Structured Stakeholder Engagement to Advance EB-5 Program Efficiency

Section 107 of the EB-5 Reform and Integrity Act of 2022 was enacted to promote transparency, integrity, and public confidence in the EB-5 program. It was not intended to foreclose meaningful, structured engagement between the agency and stakeholders. An overly broad reading of Section 107 risks being interpreted as a de facto prohibition on communication, which undermines both EB-5 program efficiency and the statutory purpose of the RIA and has several unintended consequences. First, it eliminates real-time feedback loops that help identify recurring adjudicatory issues before they proliferate into systemic inefficiencies. Second, it contributes to inconsistent adjudications, as similarly situated filings are evaluated without the benefit of clarified agency positions. Third, it increases the volume of Requests for Evidence and Notices of Intent to Deny, placing additional burdens on both the agency and petitioners.

Section 107 can and should be implemented in a manner that preserves safeguards against improper influence while allowing for structured, transparent, and broadly accessible stakeholder engagement. Such engagement is not only consistent with the statute, but essential to effective program administration. To that end, we respectfully request that USCIS, under the leadership of Sarah Kendall, adopt a formalized stakeholder engagement framework for the EB-5 program, consisting of the following components:

1. Annual Stakeholder Meetings – Regular, agenda-driven meetings hosted by the Immigrant Investor Program Office, with participation coordinated through recognized

organizations. Questions and topics would be submitted in advance, ensuring transparency and compliance with Section 107.

2. Prior Notice to Public Guidance Updates – A commitment to issuing clarifications or policy updates with prior notice, informed by stakeholder engagement, prior to implementation will reduce ambiguity and improve submission quality across the EB-5 Program.

3. Issue-Specific Working Groups – Time-limited working groups focused on discrete topics designed to surface technical issues and develop clarifying guidance. Meeting minutes could be made publicly available online.

This framework would fully align with Section 107 by ensuring that all engagement is transparent, structured, and equally accessible, while also restoring the collaborative mechanisms necessary for efficient program administration. Importantly, it would reduce adjudicative friction, improve consistency, and ultimately conserve agency resources. We welcome the opportunity to engage further on this proposal and would appreciate the establishment of a regular meeting cadence with IPO leadership to support these shared objectives.

In conclusion, we thank you for your prompt attention to this urgent and time-sensitive matter. 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.

Thank you for your time and consideration.

Sincerely,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CC: USCIS Public Engagement
USCIS Feedback