

EB-5 Resources **New Web Content**

[Internal Note: These FAQs will be posted on the public USCIS website EB-5 Resources page at: <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-resources>]

EB-5 Visa Petition Processing

Questions and Answers: Visa Availability Approach to Prioritizing Immigrant Petitions by Alien Investor (Form I-526).

Q1. What is the visa availability approach to prioritizing adjudication of Form I-526?

A1. Instead of taking a first-in, first-out (FIFO) approach to processing pending I-526 petitions, USCIS will now first process petitions for investors for whom a visa is either now or soon will be available.

Form I-526 captures a petitioner's country of birth, which will be compared with Chart B of the Department of State Monthly Visa Bulletin, indicating visa availability for that country. USCIS will use this information, along with other factors, to determine which Form I-526 petitions should be processed first.

Petitioners can check when to expect processing of their Form I-526 petition on the [USCIS Processing Times page](#) that will be revised.

Q2. How is a visa availability approach different from the current FIFO approach?

A2. The significance of this processing change is that, rather than taking a first-in, first-out approach for adjudications of pending I-526 petitions, USCIS will now first process petitions for investors for whom a visa is either now or will soon be available. Under the current FIFO process, generally USCIS processes Form I-526 petitions in the order received. Under the FIFO process, consequently, petitioners without visa numbers available would tend to be processed ahead of those with visa numbers available, given that the oldest Form I-526 petitions are primarily from countries that are now oversubscribed. ("Oversubscribed" means that a country's visa demand exceeds the supply of visa numbers available for allocation in a given classification from the U.S. Department of State).

Q3. What petitions does this change affect?

A3. 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.

Q4. Why is USCIS implementing this visa availability approach?

A4. This change in Form I-526 prioritization aligns EB-5 processing with certain other USCIS operations and programs that involve numerical caps for visa availability (for example, preference category family visa petitions). This change will align better with congressional intent for visa allocation and increase fairness in the administration of the EB-5 immigrant investor program.

Q5. How often will USCIS assess visa availability throughout the year?

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A5. The USCIS Immigrant Investor Program Office (IPO) will assess visa availability monthly by reviewing the Department of State [Monthly Visa Bulletin](#).

Q6. How will USCIS report Form I-526 processing times?

A6. 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.

Q7. Agency priorities and resources may change. Does the new visa availability approach apply indefinitely or only for fiscal year 2020?

A7. USCIS will implement the visa availability approach beginning March 31, 2020. USCIS is unable to speculate on future changes.

Q8. How will USCIS handle expedite requests for Form I-526 petitions when a visa is not immediately available or available soon?

A8. 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.

Q9. How will USCIS respond to case inquiries for cases when a visa is not immediately available or available soon?

A9. 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.

Q10. Has USCIS considered the impacts of the change to petitions submitted before this update?

A10. USCIS has considered potential adverse impacts and reliance interests, such as delays for those with already pending petitions from oversubscribed countries. USCIS sees many benefits to changing to a visa availability approach, specifically for petitioners from countries where visas are immediately available, because these petitioners would be better positioned to use their annual per-country allocation of EB-5 visas. Additionally, this change increases parity with other agency practices, aligns with congressional intent, and provides immediate relief for certain petitioners from underrepresented countries currently subject to significant wait times due to the current process. Moreover, this change does not create legally binding rights or penalties and does not change eligibility requirements.

Q11. 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?

A11. 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 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.

Q12. 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?

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A12. 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).

Q13. How many adjudicators has USCIS currently assigned to IPO, and how many adjudicators will USCIS allocate to adjudicating Form I-526?

A13. 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.

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