



U.S. Citizenship  
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## Update to Visa Availability Approach for Form I-526

U.S. Citizenship and Immigration Services (USCIS) is announcing an update to the visa availability approach to managing the inventory of Form I-526, Immigrant Petition by Alien Investor. The visa availability approach applies to pre-EB-5 Reform and Integrity Act of 2022 Form I-526 petitions and prioritizes the assignment of such petitions for investors with an available visa or a visa that will be available soon. The USCIS Immigrant Investor Program Office (IPO) manages this Form I-526 petition inventory through workflow queues factoring in whether: a visa is available (or will be available soon) and the underlying project has been reviewed. Workflow queues are generally managed in first-in, first-out (FIFO) order when a visa is available or will be available soon. Effective July 2023, IPO will update this approach by grouping petitions by new commercial enterprise (NCE) with filing dates on or before Nov. 30, 2019, within the workflow queue of petitions where the project has been reviewed and there is a visa available or soon to be available, to gain greater processing efficiencies.

### Purpose

The purpose of updating the visa availability approach is to enable USCIS to increase productivity and more efficiently process Form I-526 petitions. As described in more detail below, IPO will group petitions in the third queue by NCE with filing dates on or before Nov. 30, 2019, because adjudicators can process Form I-526 petitions more efficiently when they are working multiple petitions associated with the same NCE given the overlap in project documents and issues presented.

### Updated Process Description and Rationale

Under the visa availability inventory management approach, IPO determines visa availability and queues up the Form I-526 inventory into three workflows on a monthly basis as discussed [here \(PDF, 238.48 KB\)](#).

- The **first queue** contains Form I-526 petitions where a visa is not yet available and not soon to be available and is ordered first-in, first-out.
- The **second queue** contains petitions related to projects that IPO has not previously reviewed and have a visa immediately available or soon to be available. IPO reviews projects in the second queue in order from oldest to newest.
- The **third queue** contains Form I-526 petitions that have an available (or soon to be available) visa and either a reviewed project or “non-pooled” (single investor) standalone project. This queue is organized by receipt date of the Form I-526 petition (from oldest to newest). This is the queue from which Form I-526 petitions are assigned to officers for adjudication. Form I-526 petitions have generally been assigned to officers in first-in, first-out order.

The update to the visa availability approach is effective July 18, 2023. IPO will group petitions by NCE with filing dates on or before Nov. 30, 2019, within the third queue. These petitions will be assigned by NCE using a FIFO methodology, namely, by date of the earliest filed petition in that queue for each NCE. Given the large volume of petitions filed shortly before the EB-5 modernization rule had taken effect in November 2019 and because the project documents are often the same, assigning multiple petitions associated with the same NCE to the same adjudicator(s) will enable IPO to gain greater processing efficiencies, reduce the backlog and Form I-526 completion times, and support consistency and accuracy in adjudications, while maintaining fairness given the closeness in the filing dates of these petitions.

USCIS is committed to reducing its Form I-526 petition backlog and completion times and has determined that this update to the visa availability approach will help the agency achieve this goal.

Last Reviewed/Updated: 07/18/2023

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**Alissa Emmel, Chief, Immigrant Investor Program Office**

Thank you, Amanda Atkinson. Good afternoon and thank you for taking the time to join us for today's engagement.

This is a great opportunity for me to tell you about the important work of the Immigrant Investor Program Office—or IPO, for short—over these past several months. We also want to hear from you!

Today, I would like to give you updates on the implementation of the EB-5 Reform and Integrity Act of 2022, on our staffing, and on the IPO digitization initiative.

I am also happy to let you know that some members of the IPO leadership team are with me today. They will introduce themselves and talk about their respective roles within IPO.

We have a rather packed schedule today, so let's get started.

On September 1<sup>st</sup>, as part of a court case settlement, USCIS agreed that regional centers that were designated before the passage of the Integrity Act would remain designated.

However, to keep their designation for the purpose of sponsoring new projects and new investors under the Integrity Act, previously approved regional centers will need to file a Form I-956 (Application for Regional Center Designation) amendment and show that they are in compliance with all of the requirements under that Act.

Further, a previously approved regional center does not need to wait for the adjudication of the I-956 to file and receive adjudication from USCIS on any other form such as the I-956F (Application for Approval of an Investment in a Commercial Enterprise) or the I-956G (Regional Center Annual Statement).

Failure to file the requisite Form I-956 by December 29, 2022, will not prevent the adjudication of related Form I-526 (Immigrant Petition by Alien Entrepreneur) and Form I-829 (Petition by Investor to Remove Conditions on Permanent Resident Status) petitions filed before the passage of the Integrity Act. Although the regional center may risk losing its designation if it fails to file in order to show compliance with the requirements of the Integrity Act, it will not be a basis for denial of either the I-526 or I-829 petitions.

A previously designated regional center may also file a Form I-956F for project approval, which will then allow the petitioners to file the individual Form I-526E petition. If a regional center does not receive a Form I-956F receipt notice within 10 calendar days of physical delivery of filing, investors filing Form I-526E may instead include a copy of the Form I-956F lockbox notice and the first six pages of the associated Form I-956F, or they may include a copy of proof of cashed check or credit card charge followed by an interfiling of the Form I-956F receipt notice when received.

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The Integrity Act established the EB-5 Integrity Fund. USCIS will use this integrity fund for specified purposes related to program integrity, including:

- Detecting and investigating fraud or other crimes;
- Determining whether regional centers, new commercial enterprises, and job-creating entities, as well as investors and their spouses and noncitizen children, comply with the immigration laws;
- Conducting audits and site visits; and
- Undertaking other actions as the Secretary of Homeland Secretary determines necessary, including monitoring compliance with the requirements under section 107 of the Integrity Act.

As a reminder, the Integrity Act requires that regional centers pay an annual fee of either \$20,000 or \$10,000, depending on the number of total investors in the regional center's New Commercial Enterprises (NCEs) in the preceding fiscal year.

The Integrity Act also requires the payment of an additional \$1,000 fee for regional center investor petitions by Form I-526E filed on or after October 1, 2022.

A Federal Register notice will be published to explain the requirement for the fee, when the fee will need to be paid, and the process for how it is to be paid. USCIS will not charge a late penalty fee in 2022. Regional centers must pay the fee electronically by using Pay.gov.

So now we move into our next topic: staffing. We often receive questions on how many employees we have and how many are working on adjudicating petitions at any given time.

IPO has a unique set-up. In addition to working on case files, we require dedicated teams to handle policy, quality assurance, training, communications, human resources, etc.

All told, we have around 180 IPO staff and 36 IPO Fraud Detection and National Security staff for a total of 216 employees on-board as of October 1, 2022. This number includes adjudicators, economists, managers, auditors, compliance officers, management and program analysts, support staff, and others.

Our adjudication officers take on several mandatory responsibilities in addition to adjudication. Examples include responding to Freedom of Information Act (FOIA) requests, developing and attending training, mentoring new hires, reviewing data integrity in systems, and providing subject matter expertise on systems as well as statutory, regulatory, policy, and new business requirements.

The office of the chief of staff is responsible for functions such as records management, adjudicative quality reviews, human resources, budgets, property management, and a training branch that develops and delivers training for all IPO staff.

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As is true for most of USCIS generally, IPO is prioritizing the hiring of additional staff to reach the authorized level. We have a high number of vacancies in our office, many of which are for adjudication officers. I am very happy to announce that we are in the process of onboarding new staff.

Combined with filling vacant positions, proper staffing will allow us to decrease the backlog of pending EB-5 petitions, work toward meeting new statutory processing time goals and implement other provisions under the new EB-5 law, and perform other necessary administrative functions such as data entry for new applications and petitions. Up until this point, however, we have needed to implement the legislation without additional staff, reassigning staff from other priorities to accomplish the goals of form production, receipting, training, review, and adjudication of the new forms.

Since its inception, IPO has had to rely on voluminous paper files for adjudication. Current IPO file holdings comprise more than 27 million pieces of paper, and that number grows every day! The size and weight of the physical files significantly impacts employee safety *[Show an image of an I-829 file]*, and frankly our ability to efficiently adjudicate.

USCIS has initiated multiple, separate initiatives to mitigate these challenges. For example, I am happy to report that, in response to the aforementioned challenges, USCIS has signed a contract with a service provider to begin digitally scanning pending Form I-829s. The transferring of physical files to be scanned began in late June, and we have delivered more than 6,000 files to the contractor to be scanned.

Our scanning initiatives will continue as this IPO-led effort garnered traction and support throughout the agency and was used as a baseline to develop a scanning contract for an agency-wide transformation project to scan more files for FY 2023 and beyond. This means in the future we may receive fewer files from the National Records Center and other parts of USCIS because the files may be scanned and uploaded into digital systems instead of physically mailed.

In addition to the commencement of scanning of the form I-829s this year, USCIS has prioritized migrating certain IPO form types into the Agency's ELIS case management system. Several teams across USCIS kicked off the initiatives this summer and are all working diligently to migrate EB-5 related forms into ELIS.

The simultaneous scanning of existing paper forms and migrating EB-5 related forms into ELIS brings the agency closer to paperless processing and will greatly improve a variety of things at IPO, including efficiency of adjudications leading to shorter processing times.

The introduction of ELIS will provide petitioners with the ability to set up a myUSCIS account. This will allow them to upload documents directly rather than mail in paper both for initial requirements as well as respond to USCIS correspondence. More information on this will be made available as soon as we finalize the policy and process components.

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Finally, before we begin today's question-and-answer session, I want you to meet some of the IPO leadership team. They are our subject matter experts, and they are vitally important to the success of the EB-5 program. Without further delay, I will turn it over to my Deputy Chief, Karan Karas.

**Karan Karas, Deputy Chief**

I am Karan Karas, known throughout my USCIS career as "KK," and I have served as Deputy Chief of the Immigrant Investor Program since October of 2019. I joined USCIS in January 2005 and have spent most of my DHS career in adjudications, both overseas and domestically.

My main area of focus is IPO Operations. We are responsible for completing the adjudications processes for all USCIS EB-5 forms.

The Compliance Division and the Policy Team support the integrity and consistency of adjudications in the two divisions responsible for reviewing and adjudicating Form I-526, I-526E and I-829 petitions, as well as associated Form I-290B motions, Form I-824 applications pertaining to Form I-526 petitions and I-941 (Entrepreneurial Parole) applications.

As of October 1<sup>st</sup>, approximately 100 USCIS employees are assigned to IPO Operations to facilitate the adjudication processes of these forms. Currently we have employees assigned to each form type, and some officers split time between forms.

To tackle the wide range of cases we review, we draw on the great abilities of our talented staff, who routinely collaborate on many of the cases that come through IPO. They really are superstars.

For instance, a case may require research and analysis by our compliance officers;

- our background check unit performs mandatory security checks and investigative work;
- and our economists use their expertise in economics to evaluate commercial enterprises and job creating entities and their business plans and organizational documents.
- Auditors in our organization previously performed compliance reviews, and, with the EB5 Reform and Integrity Act of 2022, will perform audits.

All of these important tasks and others support the work by adjudications officers to make the final eligibility determination for the various forms that IPO adjudicates.

Next you will meet the IPO Operations senior management team. Each is enthusiastic about their portfolio, and more important, understand the team dynamics that occur in our adjudicative process. We continue to seek efficiencies, to onboard employees, and to take steps to ensure consistent application of all eligibility requirements. I will now turn it over to Paul.

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**Paul Egan, Acting Policy Division Chief**

Good afternoon. I have been the IPO Policy Division Chief since December of last year. Previously, I served as a branch chief in the I-526 Division. I joined IPO as an officer in 2013. Before that I worked in various capacities at the Vermont Service Center and Minneapolis International Airport.

The IPO Policy team provides expert advice, guidance, and interpretation on policy issues relating to the EB-5 Program.

We also draft and implement changes to a variety of program documents, including guidance for the CHAP (or Consolidated Handbook of Adjudication Procedures), as well as Policy Manual updates, templates, and other documents. Additionally, we provide policy guidance and clarification to the Adjudications teams in order to achieve a consistent application of the law.

The team is taking a leading role in the drafting of complex regulations related to the EB-5 Reform and Integrity Act of 2022. We are working closely with the Office of Policy and Strategy's Regulatory Coordination Division and numerous other components, both inside IPO and beyond.

Our ongoing Notice of Public Rule Making effort incorporates input from the May listening session. The regulation drafting will continue into next year, including a formal clearance process and the public commenting period. USCIS is targeting final publication for late in the calendar year 2023.

Now, I'll speak briefly about the new statute itself. The statute includes visa set-asides for rural areas, high unemployment areas, and infrastructure projects, as well as rural case processing prioritization. These provisions allow investors who are willing to invest in these priority areas to receive visas sooner than those investing in other areas and benefits regional centers that develop projects in these areas by making them more attractive to investors.

The new law also resolves some policy issues, such as the construction and designation of high unemployment area Targeted Employment Area (or TEAs). These TEA changes will increase public confidence in the Immigrant Investor Program by ensuring that regional centers and investors who receive the benefit of a reduced investment amount are investing in truly distressed areas. Similarly, the statute modifies the sustainment requirements for new investors filing Form I-526 petitions on or after the enactment date of the 2022 Act. These modifications relieve the burden on new investors of maintaining their investment at-risk for long timeframes well beyond the scope of the investment project.

New statutory provisions also increase efficiencies for USCIS, regional centers, and investors by creating a process of regional centers applying for investment offerings and projects before

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regional center investors file I-526 E petitions and allows for those investors to incorporate offering and project documents into their petitions. USCIS gains adjudication efficiency from this process because we will no longer have to review project documents and issue notices requesting additional evidence on each individual investor petition. Instead, we will review and adjudicate the project based on one project application submission. Regional centers and investors will benefit from reduced processing times resulting from this efficiency. Investors benefit further by not needing to submit project documentation with their petition, as the documents submitted by the regional center for the project application will be incorporated by reference into the investor petitions.

Finally, USCIS has created new forms and updated other EB-5 related forms, which will provide more clarity up-front in the process and will contribute to future processing efficiencies. We plan to provide filing tips and host future engagements to review these new forms with you.

I thank you for your time and will now pass over the flight controls to Todd Young, our Chief of IPO's Communications & Liaison.

**Todd Young, Chief of the IPO Communications and Liaison Team (ICL)**

Good afternoon. My name is Todd Young, and I have been a member of the legacy Immigration and Naturalization Service and U.S. Citizenship and Immigration Services team for over 20 years. I began my career as an adjudication officer at the Vermont Service Center and have served in numerous adjudication and managerial positions in nearly each operational component of USCIS, including in the Director's Office as a senior advisor to the Deputy Director and as the USCIS Deputy Chief of Staff. I was also the acting Chief of IPO while the agency was recruiting for the permanent chief.

I have been with IPO for a few years and created the IPO Communications and Liaison Team, or ICL. ICL is a small team composed of management and program analysts, a Congressional Liaison Specialist, and others. The mission of the team is to respond to customer service emails received in our public inquiry mailbox and those referred to us by the USCIS Contact Centers; respond to Congressional inquiries and participate in Congressional meetings; coordinate stakeholder events; and manage internal and external communications including updating website content.

As of the end of September, the team has responded to over 15,000 public inquiries this fiscal year, which is a considerable accomplishment given that the inquiry management team consists of three employees and one supervisor. While response times are dependent upon several factors, something that would be helpful with the process is to please include the receipt number, when available, in the subject line of your email message. Thank you to the many of you who do this already.



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We have also assisted with two engagement sessions, the first in April after the passage of the new legislation and a follow-up event in May for stakeholders to provide individual input on rulemaking related to the implementation of the legislation.

I am also very pleased to let you know that IPO and our colleagues with the Office of Citizenship, Partnership, and Engagement are developing an engagement strategy that will reinstate a regularized schedule of engagement sessions that will use a variety of strategies, including telephonic and video sessions, on-demand videos, and new website content.

The IPO team is currently working on videos that provide an overview of the new form types introduced with the EB-5 Reform and Integrity Act of 2022, and we will be publishing those in the coming months. We are very much looking forward to increasing our dialogue with the EB-5 stakeholder community!

Thank you for participating in today's event and I look forward to speaking with you again. I will now hand the virtual stage over to Andrew Diroll-Black.

**Andrew Diroll-Black, Acting Division Chief of IPO Division 1, Compliance**

I have been in the Division Chief position since July of this year. Normally, I am a branch chief in the Compliance Division, where I oversee the Regional Center Adjudications Branch. I joined IPO as an officer in 2013 and became part of the Compliance Division in 2016. Before joining IPO, I worked at the New York City Field Office where I specialized in N-400 and N-600 naturalization and citizenship applications, as well as cases involving multiple identity fraud.

The Compliance Division has four branches and about 25 employees. Our branches are the Research & Analysis branch, the Audit Team, the Background Check Unit, and the Regional Center Adjudications branch. We have a multidisciplinary staff of adjudication officers, economists, compliance officers, management and program analysts, auditors, and immigration service specialists. Our staff also includes Certified Public Accountants, Certified Fraud Examiners, Certified Anti Money Laundering Specialists, and Certified Global Sanctions Specialists.

The purpose of the Compliance Division is to promote compliance with applicable eligibility rules for regional centers in the EB-5 Program. To do that, we conduct research into the eligibility of regional center applicants, make decisions on initial regional center applications and amendments, and make decisions on terminating regional center designations. We also review regional centers' annual reports, conduct audits and compliance reviews, and provide overall background check and research support for all of IPO. We wear a lot of hats.

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While we are responsible for terminating and sanctioning noncompliant regional centers, our goal remains to promote greater compliance in the program. We hope that our notices and actions promote compliance with the eligibility requirements for regional centers and provide examples of actions that run afoul of program requirements. That being the case, we are greatly looking forward to the new tools that have been authorized under the EB-5 Reform and Integrity Act of 2022. We now have explicit statutory authority to conduct full audits of regional centers, issue sanctions to noncompliant regional centers, terminate regional centers for an expanded set of noncompliance reasons, and permanently bar regional centers and associated persons, such as those who engage in acts that threaten national security.

I'm happy to report that the Compliance Division has begun the process of reviewing and making determinations on the Form I-956 application for regional center designation. This has involved developing training for the new regional center application forms and eligibility requirements, as well as developing new decision templates and procedures. We are also involved in the process of developing regulations for implementing the EB-5 Reform and Integrity Act of 2022.

I would like to take this opportunity to provide an update on the regional center related forms:

- Form I-956, Application for Regional Center Designation
- Form I-956F, Application for Approval of Investment in a Commercial Enterprise
- Form I-956G, Regional Center Annual Statement
- Form I-956H, Bona Fides of Persons Involved with Regional Center Program

As was mentioned, we anticipate publishing form overviews, in video form, on our website for Forms I-956, I-956F, I-956G and I-956H. Like the Form I-924 and I-924A overviews that we have done in the past, these videos will explain and demonstrate how to complete each of these new forms. The videos will highlight important features of the forms and provide additional clarity and tips on how to provide required information.

Next, on September 2, we published a 60-day Federal Register Notice, or FRN, for these new forms, and we are accepting comments on these forms through November 1, 2022. The FRN announces the new I-956, F, G, and H forms and provides a description of the kinds of information we collect in those forms. You can find the Federal Register Notice by going to [regulations.gov](https://www.regulations.gov) and searching for "I-956." The current notice should be one of the first few results, titled "Agency Information Collection Activities; New Collection."

<https://www.regulations.gov/document/USCIS-2022-0010-0001>

We will not accept or address any FRN comments or questions today. If you have any comments regarding these new forms, I encourage you to submit them via the Federal Register notice for them to be properly received.

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Before turning this over to my colleagues, I wanted to provide additional context and helpful information.

The main advice we have for all our applicants and stakeholders is this—please pay close attention to the form instructions and fill out the forms as completely as possible. Avoid inserting “See attached” for fields where the instructions indicate that answers are required. This helps us collect data efficiently and effectively and helps to make our review of applications more efficient.

The biggest challenges we’ve run into with adjudicating the I-956 so far relate to who should file an I-956H, and scheduling biometrics appointments.

To clarify, anyone involved in the regional center who is, directly or indirectly, in a position of substantive authority to make operational or managerial decisions over pooling, securitization, investment, release, acceptance, or control or use of any funding that was procured under the program MUST file an I-956H and appear for biometrics collection. Nearly all of our requests for evidence for I-956s so far involve requesting that persons who work directly or indirectly for the applicant, with titles such as “Chief Lending Officer” or “Director of Investor Services,” file a form I-956H. These titles and job descriptions appear to fall within the definition of persons required to file the I-956H, and so we encourage regional centers to be prepared to file I-956H forms for those people.

When filing the I-956H, the person filing the form should indicate their actual address, as it will be the address that we use for the purpose of scheduling biometrics appointments. If the regional center is in California, but the person filing the I-956H is in New York, then the I-956H should reflect that the person is in New York. Otherwise, the biometrics appointment will be scheduled for California and will likely have to be rescheduled. All of these things slow down the adjudication of the I-956 forms and require a lot of administrative work by our staff.

Next, I would like to remind everyone that we are in the regional center annual report filing season. Any regional center that has an approved designation before October 1, 2022, must file Form I-956G. As with the old Form I-924A, the new Form I-956G must be filed between October 1, 2022, and December 29, 2022. If a regional center was terminated before October 1, 2022, or gained approval after October 1, 2022, then the regional center is not required to file the I-956G this year.

An important feature of the reformed Regional Center Program is that, under the statute, applications and petitions must be filed in order. Specifically, a regional center cannot file a Form I-956F until it is designated. Then, individual investors cannot file an I-526E related to a particular investment offering until the regional center has filed an I-956F for that offering. This is important because the petitioner will have to identify the specific I-956F filing that their investment is related to.

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If an I-956F is filed before a regional center designation is approved, or if an I-526E is filed before a related I-956F is filed, those applications or petitions will be ineligible and may be rejected or denied.

Finally, you will receive two receipt notices for the I-956 forms, including Forms I-956, F, G, and H. The first notice you should expect to receive will be from the USCIS Lockbox, acknowledging receipt of your I-956 and the total fee amount received and processed. Then, USCIS will issue a formal receipt notice, which will include the assigned receipt number for this application when data entry has been completed.

Thank you for your time, I'll now turn it over to Kevin Muck.

**Kevin Muck, Division Chief of IPO Division 2, I-526**

Hello, everyone. My name is Kevin Muck. I am the Division Chief of the Form I-526 Division of the Immigrant Investor Program since May of 2020. Before joining IPO in 2013 as an Economist, I served for 8 years at the Bureau of Economic Analysis in the U.S. Department of Commerce, where I was part of the team that creates the national-level Input-Output tables and GDP by Industry statistics.

Division 2 principally adjudicates Form I-526 petitions. Five teams made up of both Adjudications Officers and Economists work collaboratively to handle this complex adjudication.

As of October 1st, we have approximately 40 staff allocated to review and adjudicate Form I-526 petitions, as well as associated Form I-290B motions, Form I-824 applications pertaining to Form I-526 petitions, and I-941 (Entrepreneurial Parole) applications. These staffing numbers are a significant drop from Fiscal Year 2018, when we had approximately 67 employees allocated for reviewing and adjudicating Form I-526 petitions. Thankfully, as Alissa indicated, we are in the process of onboarding adjudicators.

I know that there have been some questions as to how USCIS manages I-526 inventory, so I'd like to take this opportunity to share with you a little bit about our process.

IPO follows the visa availability approach to manage its Form I-526 petition inventory. Under the visa availability inventory management approach, IPO determines visa availability as follows.

Once a month, IPO uses the updated U.S. Department of State Visa Bulletin to establish which Form I-526 petitions are considered to have a visa available or soon to be available. This calculation is based on Chart B of the U.S. Department of State Visa Bulletin as well as the number of visas allocated to each country, a dependent multiplier, a "will not act" rate with respect to the percentage of approved Form I-526 petitions whose petitioners do not obtain a

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visa, and the target inventory level maintained by the U.S. Department of State for the EB-5 visa category. This calculation indicates which Form I-526 petitions associated with each oversubscribed country have visas available or soon to be available for purposes of the visa availability approach.

Based on the above determinations regarding visa availability, IPO queues up its I-526 inventory into the following three workflows on a monthly basis.

- The first queue contains Form I-526 petitions where a visa is not yet available or soon to be available and is ordered first-in, first-out. These cases are added into the second or third queues (described below) each month if visa availability is established according to the calculation described above. If so, at the beginning of each month, petitions move into the second queue if a project review is required, or into the third queue if a project review has been completed or if the petition is a non-pooled (single investor) “standalone” case (that is, not associated with a regional center).
- The second queue contains petitions related to projects that IPO has not previously reviewed and have a visa immediately available or soon to be available. This includes “pooled standalone” cases (that is, cases where multiple petitioners have invested into the same new commercial enterprise that is not associated with a regional center). The second queue is organized by the filing date of the oldest pending petition associated with the project in that queue. In other words, IPO reviews projects in the second queue in order from oldest to newest. After the project review is complete, any petitions from the second queue associated with that same project will be added to the third queue to be assigned out for adjudication so long as a visa is still available or soon to be available. The purpose of reviewing the project is so that USCIS may examine evidence that may apply across multiple Form I-526 petitions up front (that is, before the associated petitions are assigned to various adjudicators).
- The third queue contains I-526 petitions that have an available (or soon to be available) visa and either a reviewed project or “non-pooled” (single investor) standalone project. This queue is organized by receipt date of the I-526 petition (from oldest to newest). This is the queue from which Form I-526 petitions are assigned to officers for adjudication. Petitions are generally assigned to officers in first-in, first-out order.

Since the statutory authorization related to the regional center program was renewed, my division has also focused on adjudicating the I-526 petitions that were already in the process of being adjudicated pre-sunset (for example, cases where USCIS has already issued an RFE or a NOID).

Talking about the new legislation, I want to share some updates:

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First, on July 12, 2022, USCIS published the new I-526/ I-526E forms on our website. These forms allow USCIS to collect the information that we need right now as authorized by the EB-5 Reform and Integrity Act of 2022 while we go through the official Paperwork Reduction Act process. As part of that process, the forms are published in the Federal Register Notice, or FRN, for public comment. On August 23, 2022, we published the FRN, and we are accepting comments on these forms through October 24, 2022. You may find the FRN at [www.regulations.gov](http://www.regulations.gov) by searching for USCIS-2007-0021-0072. We will also post the link in the WebEx chat.

We will not accept or address any FRN comments or questions today. Therefore, if you have any comments regarding these new forms, I encouraged you to submit them via the Federal Register notice for them to be properly received.

Before turning this over to my colleagues, I wanted to share a bit more information:

First, once an approved regional center files an I-956F, an investor can file an I-526E. Petitioners do not need to wait for the I-956F to be adjudicated before submitting their I-526E.

If a regional center does not receive a Form I-956F receipt notice within 10 calendar days of physical delivery of filing, investors filing Form I-526E based on such Form I-956F may instead include a copy of the Form I-956F lockbox notice and the first six pages of the associated Form I-956F. Or they may include a copy of proof of cashed check or credit card charge followed by an interfiling of the Form I-956F receipt notice when received.

Second, there have been several changes to requirements for I-526 petitioners resulting from the new legislation. We will continue to evaluate petitions that were filed before enactment of the reform and integrity act under the eligibility requirements in place at the time of filing. But, for new petitioners, I want to highlight three changes:

#### **Pooled Investments**

All EB-5 investors seeking to pool their investments with other EB-5 investors must do so under the Regional Center Program. and may only file their I-526E petitions after the Regional Center has filed an associated I-956F for the particular investment offering and capital investment project.

#### **Indirect Job Limits**

In general, Regional Center investors can count indirect jobs for up to 90 percent of the job creation requirement and the remaining 10 percent must be direct jobs (which may also be estimated based on appropriate methodologies). If the jobs are created by construction activity lasting less than 2 years, Regional Center investors can claim only 75% of the jobs' creation requirement from indirect jobs and only a fraction of estimated direct jobs based on the length of activity.

#### **Tenant occupancy job creation**

This change covers something that was previously disallowed but is now allowed. Jobs attributed to prospective tenants occupying commercial real estate created or improved by EB-5

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investment now can be used to fulfill job creation requirements under certain circumstances, as long as the jobs are not existing jobs that have been relocated.

**Tsa Weatherl, Division Chief of IPO Division 3, I-829**

Hello. My name is Tsa Weatherl, and I've been serving as Division Chief of the Form-I-829 Petition by Investor to Remove Conditions on Permanent Resident Status, Division of the Immigrant Investor Program since June 2017. I started at IPO in March 2014 as an adjudications officer.

Before my time at IPO, I joined USCIS in 2003 as an adjudications officer at the Vermont Service Center. I worked for the Baltimore Field Office as well as USCIS' Rome and Frankfurt offices, where I assisted with military naturalization and family-based immigration petition adjudication. I have also worked as a Congressional Liaison Specialist in the Office of Legislative Affairs.

My Division consists of approximately 35 employees, and we are responsible for adjudicating Form I-829 petitions, which remove the conditions from conditional permanent resident status. Additionally, we provide subject matter expertise in response to inquiries relating to the Form I-829.

The Division is tasked with examining EB-5 projects and petitioner eligibility at this juncture to ensure that petitioners meet program requirements, including job creation.

Adjudications Officers and Economists who provide subject matter expertise regarding economic analysis, petitioner eligibility requirements and other issues pertaining to Form I-829 work in collaboration to manage Form I-829 project review and adjudication.

The Form I-829 is the conclusion of the EB-5 process. Normally, when the Form I-829s are filed, projects have been completed or are nearing completion. My division's team members see the end results of the EB-5 investment and the positive impacts these investments have made to states and communities across the country. The approval of the Form I-829 removes the conditions on the permanent resident status of the petitioner and their eligible family members (spouse and children).

IPO has focused on adjudicating the oldest Form I-829s, first. For example, in late 2021, IPO published an alert on its website asking Form I-829 petitioners who meet the Public Law criteria to contact USCIS and update their contact information (to enable the further processing of their petitions). The public law criteria is:

- The Form I-829 petition was filed before Nov. 2, 2002;
- The Form I-829 petition was based on a Form I-526 that was approved between Jan. 1, 1995 and Aug. 31, 1998; and
- The Form I-829 petition remained pending with USCIS.

I'm happy to report that IPO has almost completely worked through the public law cases.

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In addition to working on adjudicating our oldest pending cases, as mentioned earlier in our engagement, USCIS has begun the electronic adjudication of Form I-829s, using a digitization platform. We expect that this new process will result in greater efficiencies in our Form I-829 adjudications.

Because the Form I-829 allows for the removal of conditions on not only the petitioner but also qualifying derivatives, it is necessary that adjudications officers can adjudicate the principal petitioner and derivatives requests separately. To do this, we use the split decision functionality in our system of record. We use split decisions when, for example, a derivative does not submit the necessary information to qualify for the removal of conditions, such as failure to submit biometrics.

Agency-wide completion reports are calculated when a Form I-829 adjudication results in an approval or a denial of the principal petitioner. A Form I-829 can have multiple actions taken on it, including actions taken with respect to derivatives, but only one completion. Therefore, the completion reports do not reflect all the time, effort, and work that our officers put into the adjudication of a Form I-829 and all the actions taken for each petitioner and qualifying derivative associated with a Form I-829 in order to reach a completion.

There have been multiple changes to requirements for Form I-829s petitioners resulting from the EB-5 Reform and Integrity Act of 2022. However, Form I-829 Petitions associated with Form I-526 petitions that were filed before enactment of the new legislation will continue to be evaluated under the eligibility requirements at the time of filing. I want to highlight one change already explained on our website's FAQs regarding redeployment:

The EB-5 Reform and Integrity Act of 2022 allows for further deployment of capital anywhere in the United States or its territories. Therefore, including for petitions filed pre-enactment, further deployment is not required within the same regional center or within any regional center's geographic area.

Before I turn this over to my colleagues, I wanted to share some helpful information and advice to help streamline the efficiencies in the submission of evidence for Form I-829 adjudications:

1. Become thoroughly familiar with the eligibility requirements and evidence you need to submit with the filing of your Form I-829.
2. Submit documentation and evidence pertaining to the petitioner and/or derivatives required by the Form I-829 Instructions. Specifically, include documentation to establish sustainment of the investment during the 2-year period of conditional permanent residence status. Documentation available at the time of filing **must be** submitted to establish eligibility. More information regarding appropriate evidentiary documentation



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is available on our website at [USCIS.gov](https://uscis.gov) on the "Suggested Order of Form I-829 Documentation" page in item number 8 of the page's dropdown list. Item number 8 is titled "Evidence that the investor sustained his or her investment throughout the period of conditional residence" dropdown.

3. Tab and label all evidence so it is easily identifiable.

**Alissa Emmel, Chief, Immigrant Investor Program Office**

I hope the information we have covered today has been helpful in giving you a better understanding of the EB-5 program. You will also find much of this information on the USCIS website and in other communications USCIS sent on this subject earlier this year. Please check the website regularly because we will continue to update it as we move forward with implementation.

I'm very appreciative of everyone's participation in today's engagement, and I'm looking forward to hearing your thoughts and questions. Ok turning it back over to you Amanda!