

Program Integrity Remains Dominant IPO Theme in First EB-5 Teleconference of 2016

During USCIS's first EB-5 Immigrant Investor Program teleconference of 2016 held on February 3, 2016, the Immigrant Investor Program Office (IPO) emphasized its increasing efforts to strengthen program integrity amid its continued growth. IPO Chief Nicholas Colucci—who had just testified the day before in a Senate Judiciary Committee hearing that stressed the problem of fraud in connection with the EB-5 Regional Center Program—highlighted three initiatives IPO is carrying out in response to fraud concerns. First, IPO is working with USCIS's Fraud Detection and National Security Directorate (FDNS) to include EB-5 as part of USCIS's Administrative Site Visit and Verification Program (ASVVP), which currently covers only religious worker petitions, H-1B petitions and L-1 petitions. Under the ASVVP, FDNS officers conduct unannounced site visits on randomly selected petitions to collect information as part of a compliance review. Second, IPO plans to increase the number of interviews conducted at the Form I-829 petition stage. Lori MacKenzie, Chief of IPO's new Policy and Performance Division, noted that IPO anticipates giving I-829 petitioners the option to have representatives from the regional center present at their interviews. Third, IPO is in the process of developing a regional center audit program to further promote compliance with program requirements.

Mr. Colucci also reminded stakeholders of IPO's recently created Compliance Unit, and announced that its review of Fiscal Year 2014 I-924A filings resulted in the issuance of 85 Notices of Intent to Terminate (NOIT) for failure to submit required information or failure to promote economic growth. In addition, IPO has independently issued 7 NOITs for failure to promote economic growth, including some to regional centers with underlying fraud or criminal concerns. Mr. Colucci also referred to the SEC's recent complaints filed against regional center principals and managers for alleged misappropriation of EB-5 investor funds, and said USCIS is continuing to work closely with the SEC and other enforcement agencies on those actions.

As is standard, the February 3, 2016, quarterly EB-5 stakeholder call included updates on IPO's staffing and case processing. IPO presently has 113 staff members and has been approved for a Fiscal Year 2016 staffing increase to 171, which Mr. Colucci said will help IPO reduce the number of pending cases. According to preliminary data as of January 26, 2016, IPO reported a pending caseload of 21,790 I-526 petitions, 902 I-924 applications, and 4,314 I-829 petitions, reflecting unprecedented surges in filings just before the September 30, 2015, and December 11, 2015, (former) sunset dates of the Regional Center Program. Processing times are expected to start increasing "a little bit" due to the growth in pending cases, but IPO's heavy investment in training adjudicators is anticipated to yield an increased rate of adjudication going forward, per Mr. Colucci. He also noted that USCIS finished transitioning the Form I-829 workload to IPO in the past few months, and that IPO has spent considerable time developing processes and training for I-829 cases.

Other aspects of IPO's expansion announced on the teleconference include the hiring of its first Chief of Staff to assist Mr. Colucci and IPO Deputy Chief Julia Harrison with strategy and operations, and the creation of a new "Policy and Performance Division" within IPO. Headed by



Lori MacKenzie (formerly Lori Melton, who was previously an IPO Adjudications Division Chief), the Policy and Performance Division is tasked with providing more policy guidance and enhanced transparency in IPO's performance. Ms. MacKenzie said her Division has reviewed public comments provided on IPO's Draft Policy Memo on Job Creation and Investment Sustainment issued (Draft PM-602-0121, issued on August 10, 2015) and is currently considering revisions before posting a final memo. Her team will also be working on updates to Forms I-924, I-924A, and I-526 in Fiscal Year 2016.

With respect to the EB-5 Regional Center Program's current September 30, 2016, expiration date, Ms. MacKenzie said USCIS is prepared to issue guidance to stakeholders if the program sunsets. She also said USCIS has provided technical assistance to Congress on the EB-5 program in connection with its ongoing legislative reform efforts. ("Technical assistance," she clarified, involves "providing technical corrections or advice, as well as commenting on the impact of proposed legislation on USCIS operations, but not proactively developing ideas for Congress.") During the Q&A portion of the teleconference, IPO Deputy Chief Julia Harrison conveyed IPO's current view on a variety of issues, including the following:

Source of Funds

- **Private money exchange:** USCIS permits private money exchange, provided that the petitioner clearly demonstrates the lawful source and path of funds. Depending on the circumstances, USCIS might require evidence from the petitioner to validate the lawful source of third-party funds involved in the transaction.
- **Gifts:** To be used as the source of EB-5 investment, gifts of capital do not need to be from family members of the petitioner. However, the petitioner must sufficiently demonstrate that there are no terms of repayment associated with the capital.
- **Authentication:** USCIS currently does not require authenticated evidence of source of funds (authenticated tax returns, bank statements, etc.), but will continue to require the submission of information or documentation as needed to authenticate questionable documents.

Regional Centers

- **Termination:** If the regional center through which an investor made his/her investment is terminated and he/she has already obtained conditional resident status, that investor's conditional resident status will not be automatically terminated. The investor will continue to have the opportunity to demonstrate compliance with EB-5 program requirements. IPO is not yet ready to discuss particulars, however, because its policy team is still actively working on guidance related to the impact of regional center termination on investors.
- **Ownership and Managerial Changes:** Designated regional centers must notify the agency within 30 days of any changes in the operation or administration of the regional

center, including ownership and managerial changes. Notification can be made by sending an email to the EB-5 program mailbox, but USCIS recommends that the regional center also file a Form I-924 amendment in order to more fully assess the change and its impact on the regional center's designation. Ownership or management change at the regional center level does not affect an investor's ability to file an I-526 petition and does not relieve a conditional resident of the obligation to file an I-829 petition during the 90-day period before the second anniversary of obtaining permanent resident status.

- **I-924 Processing Times:** The I-924 processing time posted on USCIS's website is based on a mathematical formula that accounts for all of the various types of I-924 applications (initial designation requests, amendments, and exemplars). USCIS does not currently have the ability to break out I-924 processing times by application type, but will look at breaking those out in the future as it continues to improve its processes.

Peng & Weber has prepared a complete transcript of the February 3, 2016, EB-5 teleconference and is making it available at <http://www.greencardlawyers.com/news/Newsletter/2016-2-3 EB-5 call transcript.pdf> as a courtesy.