



# EB-5 Visa Program

Second Semiannual, Fiscal Year 2015

*May 25, 2016*

Fiscal Year 2015 Report to Congress



Homeland  
Security

*U.S. Citizenship and Immigration Services*

## Message from the Director

I am pleased to present the following report, “EB-5 Visa Program,” prepared by U.S. Citizenship and Immigration Services.

This report was compiled pursuant to language set forth in Senate Report 113-77 accompanying the *Fiscal Year (FY) 2014 Department of Homeland Security (DHS) Appropriations Act* (P.L. 113-76), and Senate Report 113-198 accompanying the *FY 2015 DHS Appropriations Act* (P.L. 114-4).

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable John R. Carter  
Chairman, House Appropriations Subcommittee on Homeland Security

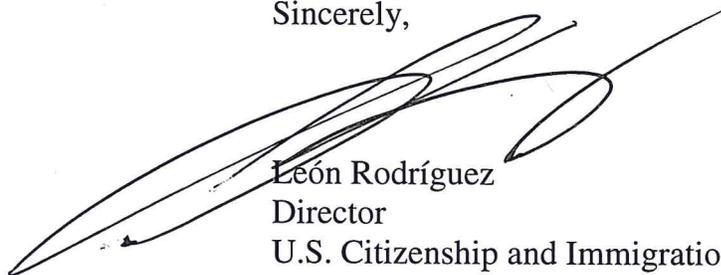
The Honorable Lucille Roybal-Allard  
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Hoeven  
Chairman, Senate Appropriations Subcommittee on Homeland Security

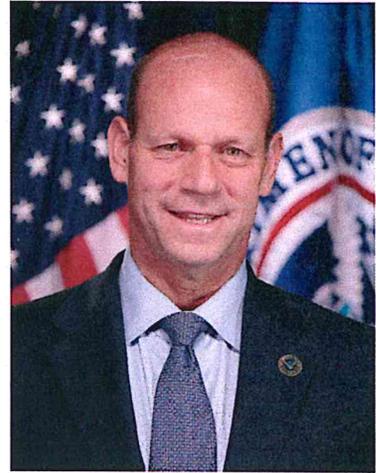
The Honorable Jeanne Shaheen  
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I am pleased to respond to any questions you may have. Please do not hesitate to contact me at (202) 272-1000 or the Department’s Deputy Under Secretary for Management and Chief Financial Officer, Chip Fulghum, at (202) 447-5751.

Sincerely,



León Rodríguez  
Director  
U.S. Citizenship and Immigration Services



## Executive Summary

This report responds to the Senate Appropriations Committee request for information on the EB-5 visa program, including the number of applications pending, the period of time that each application has been under review, benchmark review periods for the economic evaluation of projects and suitability of petitioners, a description of any additional resources necessary to administer the program efficiently, and the number of applications that are approved or denied each period with an accompanying explanation of the applications' disposition.

Interest in the EB-5 program has grown significantly in recent years and continues to expand, as indicated in the below table:

### Number of Petitions/Applications Received in FY 2007 Compared to FY 2014 and FY 2015

<b>Petition/Application</b>	<b>FY 2007</b>	<b>FY 2014</b>	<b>FY 2015</b>
Form I-526 (Immigrant Petition by Alien Entrepreneur)	776	10,923	14,373
Form I-829 (Petition by Entrepreneur to Remove Conditions)	196	2,516	2,767
Form I-924 (Application for Regional Center Under the Immigrant Investor Pilot Program) <sup>1</sup>	-	277	803

Filings for these form types increased by 31 percent overall from FY 2014 to FY 2015, with a marked increase in such filings as FY 2015 drew to a close. In addition to the growth in receipts mentioned above, the number of approved regional centers (RC) has grown from 11 in FY 2007 to 743 as of September 30, 2015.

### Applications Pending by Time Period as of September 30, 2015

<b>Petition/Application</b>	<b>0–6 months</b>	<b>6+ to 12 months</b>	<b>12+ months</b>	<b>Total</b>
Form I-526	9,652	4,220	3,495	17,367
Form I-829	1,417	1,258	1,370	4,045
Form I-924	630	121	53	804

Data derived using the "Received Date" as the starting date and computing the age through the end of the reporting period.

<sup>1</sup> Note that Form I-924 did not exist in 2007; it was not in use until 2011. Prior to 2011, requests for RCs were submitted via letter.

## Processing Time<sup>2</sup> Goals Compared to Actual Processing Times (Months)

<b>Petition/Application</b>	<b>Target</b>	<b>Actual (as of 9/30/2015)</b>
Form I-526	5	14.4
Form I-829	6	15.4
Form I-924	4	11.6

USCIS continues to forecast large volumes of EB-5 petitions and applications. In preparation, USCIS has increased its EB-5 authorized staffing level to 171, to maintain pace with receipts and to help reduce the current backlog of cases. USCIS works to fill all positions to the authorized staffing level, and will continue to monitor both the staffing level and projected and actual receipt volumes for this program to ensure that resources are appropriate to manage the workload.

The approval rates for all adjudicated applications (i.e., approvals and denials), as well as the percentage of all adjudicated applications that required additional evidence in FY 2014 and FY 2015 are as follows:

### Rates of Approval and Request for Evidence

<b>Disposition</b>	<b>Form I-526</b>		<b>Form I-829</b>		<b>Form I-924</b>	
	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2014</b>	<b>FY 2015</b>
Approved	81%	89%	90%	99% <sup>3</sup>	90%	88%
Request for Evidence	49%	37%	17%	22%	31%	32%

<sup>2</sup> Processing time, or cycle time, is calculated by determining how many prior months of receipts for a form type are needed to equal the active pending volume. Therefore, some cases could be pending longer than the cycle time because of issues such as the need to request additional information from the petitioner or applicant.

<sup>3</sup> The increase in the Form I-829 approval rate in FY 2015 is related to the transition of the adjudication of this form type to the Immigrant Investor Program Office. The increase was due to a temporary focus on adjudicating approvable projects, which continued through FY 2015. The approval rate is expected to decrease in FY 2016 to levels more consistent with past approval rates.



## EB-5 Visa Program

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# I. Legislative Language

This document has been compiled in response to language in Senate Report 113-77 accompanying the *Fiscal Year (FY) 2014 Department of Homeland Security (DHS) Appropriations Act* (P.L. 113-76), and Senate Report 113-198 accompanying the *FY 2015 DHS Appropriations Act* (P.L. 114-4).

Senate Report 113-77 includes the following:

## E–B5 [sic] VISA PROGRAM

The Director of United States Citizenship and Immigration Services is directed to provide a report to the committee on the E-B5 [sic] visa program within 90 days of the date of enactment of this act, and every 180 days thereafter, that includes the number of applications pending, the period of time each application has been under review, benchmark review periods for the economic evaluation of projects and suitability of petitioners, a description of any additional resources necessary to efficiently administer the program, and the number of applications that are approved or denied each period with an accompanying explanation of their disposition.

Senate Report 113-198 includes the following:

## E–B5 [sic] VISA PROGRAM

In fiscal year 2014, USCIS was directed to provide a report to the Committee on the E–B5 [sic] visa program within 90 days of the date of enactment of Public Law 113–76, and every 180 days thereafter. This report was to include the number of applications pending, the period of time each application has been under review, benchmark review periods for the economic evaluation of projects and suitability of petitioners, a description of any additional resources necessary to efficiently administer the program, and the number of applications that are approved or denied each period with an accompanying explanation of their disposition. This first report is overdue. The Committee expects prompt receipt of this report and for USCIS to meet the twice yearly reporting requirement in the future.

## II. Background

United States Citizenship and Immigration Services (USCIS) administers the Immigrant Investor Program, also known as the EB-5 program, which was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. There are two distinct EB-5 pathways for immigrant investors to gain lawful permanent residence for themselves and their eligible spouses and children—the basic program and the Regional Center (RC) program. The basic EB-5 program was enacted in 1990. Two years later, the RC program was enacted as a pilot program. Since 1992, the RC program has been reauthorized continuously on a bipartisan basis. In September 2012, an extension of the RC program eliminated the term “pilot,” and the RC program most recently has been extended through September 30, 2016.

To qualify for an EB-5 immigrant visa, the foreign investor must invest at least \$1 million (or \$500,000 if the investment is in a Targeted Employment Area, defined as a rural area or area of high unemployment) in a new commercial enterprise (NCE) in the United States. The required capital investment must be at risk and must be derived from a lawful source.

Under the basic EB-5 program, the immigrant’s investment must result in the creation of at least 10 direct jobs by the NCE. Under the RC program, the immigrant’s investment through the RC must result in the creation of at least 10 direct or indirect jobs. Under either program, job preservation in lieu of job creation is allowed in the case of investment in a troubled business. Generally, direct jobs are full-time positions located within the NCE into which the EB-5 investor has invested, whereas indirect jobs are full-time positions that are held outside the NCE but are created as a result of the NCE. To establish eligibility based on indirect job creation, DHS regulations permit reliance on economically or statistically valid forecasting tools. *See* 8 C.F.R. §§ 204.6(j)(4)(iii), (m)(3).

RCs are public or private entities designated by USCIS to promote economic growth and to pool investment in defined economic zones. To apply for RC designation, an individual with authority to act on behalf of the RC entity must submit a Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program, to USCIS. To qualify for RC designation, the applicant must establish that the RC economic unit will be involved in promotion of economic growth and must identify a limited geographic area over which the RC will have jurisdiction. Form I-924 also must include a proposal that shows how jobs will be created in verifiable detail, describe the amount and source of capital committed to the RC and the promotional efforts taken and planned, contain a prediction of how the RC will have a positive impact on the regional or national economy, and must be supported by economically valid forecasting tools.

Approval of Form I-924 does not confer any immigration status on any individual, nor does it constitute endorsement of the activities of the RC. All approved RCs must file a Form I-924A, Supplement to Form I-924, annually. Form I-924A was first implemented in FY 2011 as a required filing by every designated RC for purposes of demonstrating continued eligibility for the designation. Failure to file Form I-924A may result in termination of RC designation.

Form I-526, Immigrant Petition by Alien Entrepreneur, is filed by all immigrant investors, including those investing in an NCE associated with an RC (approximately 92 percent of all immigrant investor filings in FY 2015). As supporting evidence, the investor must submit documents related to the investment, and evidence that the invested capital was acquired through lawful sources. Approval of Form I-526 does not in itself confer immigrant status to the investor, but merely classifies the investor under section 203(b)(5) of the *Immigration and Nationality Act* so that he or she (and his or her derivative beneficiaries) can apply for an immigrant visa through the Department of State abroad or for adjustment of status to conditional permanent resident (CPR) if present in the United States and otherwise eligible. Authority exists to deny an application for an immigrant visa or adjustment of status when an individual is inadmissible to the United States based upon criminal, national security, or other legal grounds.

Immigrant investors and their derivative beneficiaries first obtain permanent resident status on a conditional basis. For removal of conditions on permanent residence, the investor must file a Form I-829, Petition by Entrepreneur to Remove Conditions, within 90 days of the 2-year anniversary of his or her admission or adjustment as a CPR. Failure to timely file a Form I-829 will lead to termination of the CPR status. To qualify for approval of the Form I-829 and removal of the conditions on his or her CPR status, the investor must show that he or she invested or was actively in the process of investing the requisite capital, that he or she sustained those actions for the entire 2-year period of conditional permanent residence, and that job creation requirements were met or will be met within a reasonable time. If approved, the CPR becomes a lawful permanent resident of the United States without conditions. If eligibility for removal of the conditions is not established, the petition is denied. When USCIS denies an I-829 petition, or if an individual's CPR status is terminated for failure to timely file the Form I-829, USCIS will issue a Notice to Appear and forward the petitioner's alien file (A-file) to U.S. Immigration and Customs Enforcement.

For more information and additional resources about the EB-5 program, see <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor>.

### III. USCIS Review of the EB-5 Program Application Status

Petitions/Applications Pending by Time Period as of September 30, 2015

<b>Petition/Application</b>	<b>0–6 months</b>	<b>6+ to 12 months</b>	<b>12+ months</b>	<b>Total</b>
Form I-526	9,652	4,220	3,495	17,367
Form I-829	1,417	1,258	1,370	4,045
Form I-924	630	121	53	804

Data derived by using the “Received Date” as the starting date and computing the age through the end of the reporting period.

#### Program Benchmarks for the Economic Evaluation of Projects and Suitability of Petitioners

The Investor Program Office (IPO) strives to review and adjudicate petitions and applications within the timeframes listed in the table below. The actual processing times, as of September 30, 2015, also are listed in the table.

#### Processing Time Goals Compared to Actual Processing Times (Months)

<b>Petition/Application</b>	<b>Target</b>	<b>Actual (as of 9/30/2015)</b>
Form I-526	5	14.4
Form I-829	6	15.4
Form I-924	4	11.6

As noted in previous program reports, the transition of the program to the IPO combined with unexpectedly high form volumes in FY 2014 and FY 2015 resulted in an increase in processing times for Forms I-526 and I-924. In FY 2015, USCIS received 14.8 percent more Forms I-526 than it had projected for the fiscal year and 31.6 percent more than were received in FY 2014. USCIS received 139 percent more Forms I-924 than it had projected for the fiscal year and 189.9 percent more than were received in FY 2014. The second half of FY 2015, particularly September, brought a spike in filings of both Forms I-526 and Forms I-924.

Processing times for Form I-829 increased in FY 2015 following the transition of its adjudication to the IPO on September 30, 2014, while staffing reached the level needed to

process the increased form volumes and new employees were trained and gained experience in adjudicating Form I-829.

Despite the increased filing volumes that are expected for the EB-5 form types in the coming fiscal year, USCIS anticipates improvements in processing times for all form types due to improved processes and efficiencies, the increase in the experience of adjudicators, and overall increase in staffing assigned to the program.

### Number of Petitions/Applications that were Approved or Denied for FY 2014 and FY 2015

<b>Disposition</b>	<b>Form I-526</b>		<b>Form I-829</b>		<b>Form I-924</b>	
	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2014</b>	<b>FY 2015</b>
Approved	4,925	8,756	1,611	1,067	293	262
Denied	1,169	1,051	178	11	31	36
Request for Evidence	3,001	3,592	302	240	99	95

## IV. Explanation of Requests for Evidence

In January 2015, USCIS began to utilize a correspondence tracker to capture the reasons for issuance of requests for evidence (RFE) for most Form I-526, Form I-829, and Form I-924 RFEs to allow for contemporaneous analysis and to facilitate guidance to stakeholders. Below are the commonly cited reasons for RFE issuance by form type.

### Form I-924

The most common types of information requested in RFEs issued in connection with Form I-924 applications between April and September 2015 were as follows:<sup>4</sup>

1. Evidence regarding indirect job creation.
2. Evidence related to the business plan.
3. Evidence in support of the RC's promotion of economic growth within the selected geographic area.
4. Evidence relating to the RC's plan of operation.
5. Evidence relating to the NCE's organizational documents.
6. Evidence regarding administrative oversight of the RC.

### Form I-526

The most common types of information requested in RFEs issued in connection with Form I-526 petitions between April and September 2015 were as follows:<sup>4</sup>

1. Evidence that the capital invested or actively in the process of being invested was obtained through lawful means.
2. Evidence related to the required comprehensive business plan.
3. Evidence that the NCE will create at least 10 full-time positions for qualifying employees.
4. Updated exemplar documents, such as subscription agreements and private placement memoranda.
5. Evidence that the capital invested or actively in the process of being invested has been placed at risk.
6. Evidence that the NCE or job creating entity is principally doing business in a Targeted Employment Area.

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<sup>4</sup> Items are listed in order of frequency of occurrence.

7. Translated documents that comply with the requirements of 8 C.F.R. § 103.2(b)(3)<sup>5</sup>.

## Form I-829

The most common types of information requested in RFEs issued in connection with Form I-829 petitions between April and September 2015 were as follows:<sup>4</sup>

1. Evidence that the investment in the NCE has been sustained for the requisite period.
2. Evidence that the NCE has created, or will create, in a reasonable period of time, at least 10 full-time positions for qualifying employees or evidence that the NCE maintained the number of existing employees in a troubled business.
3. Evidence that the minimum required amount of capital has been invested or was actively in the process of being invested.
4. Biometrics update and criminal history clearances.

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<sup>5</sup> 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

## V. Description of Resources and Program Enhancements

### Resources

As of September 30, 2015, IPO included 109 federal employees permanently assigned for management and adjudications, and 27 contractors for support and records management. IPO was augmented by 16 USCIS Fraud Detection and National Security (FDNS) EB-5 personnel, and 12 attorneys from the USCIS Office of Chief Counsel (OCC). Staffing levels will continue to grow as USCIS hires and onboards new staff to reach the target staffing level of 171 positions for this program. The target staffing level excludes the FDNS EB-5 and OCC positions that support the EB-5 program. USCIS continues to forecast large volumes of EB-5 petitions and applications. In preparation, USCIS is working to fill positions to reach the target staffing level, and will continue to monitor the staffing level and projected and actual receipt volumes for this program to ensure that resources are appropriate to manage the workload requirements.

### Enhancements to the EB-5 Program

Throughout 2015, USCIS made many changes to the EB-5 program to: keep pace with the increase in filings and complexity of issues involved in EB-5 cases; improve processing times; improve consistency and predictability; and further strengthen the integrity of the program. Enhancements to the EB-5 program over the past several years have included:

- Realigning the EB-5 program into the IPO in Washington, D.C. USCIS completed the transfer of EB-5-specific workload to the program office on September 30, 2014, when the adjudication of Form I-829 transitioned from the California Service Center to the IPO.
- Investing in personnel possessing the expertise needed to manage the complex EB-5 caseload. In addition to hiring a singularly focused senior executive service chief to administer the program, USCIS has hired experienced adjudications officers and economists. USCIS continues to hire additional personnel to adjudicate EB-5 applications and petitions and improve processes and procedures, and had 109 permanently assigned federal employees working for the EB-5 program by September 30, 2015, an increase of 31 percent since September 30, 2014. This number of permanently assigned federal employees excludes the FDNS EB-5 and OCC positions that support the EB-5 program.
- Expanding security checks to cover RC entities and certain executives participating in the EB-5 program, thereby strengthening the vetting process.

Security check enhancements now include the ability to query financial intelligence.

- Partnering with other government agencies to strengthen the EB-5 program. IPO and FDNS EB-5 have hosted case agents from several agencies to collaborate in furtherance of the agencies' individual missions.
- Published an updated intelligence assessment of the EB-5 program based on coordination between FDNS EB-5 and DHS Office of Intelligence and Analysis, which was cleared throughout the intelligence community in February 2015.
- Implemented protocols approved in April 2015 by the Secretary of Homeland Security related to the ethical administration of the EB-5 program. USCIS provided training on these protocols to all DHS and USCIS employees and contractors involved in policymaking, evaluation, or review of the EB-5 program or the adjudication of any EB-5-related petitions or applications. The protocol training slides are posted on the USCIS.gov Web site for additional transparency.
- Held frequent EB-5 program stakeholder engagements, including in June, August, and September of 2015, to identify and understand issues and develop solutions. These engagements each averaged more than 600 telephonic attendees.
- Established a customer service team in April 2014 to address inquiries and requests for assistance and to manage IPO's stakeholder engagement plan. This team, which responded to more than 11,710 customer inquiries in the second half of FY 2015, complements outreach efforts through the timely identification and elevation of issues requiring action or stakeholder engagement.
- Terminated more RCs in FY 2014 (10) and FY 2015 (19) than in the entire prior history of the program (5). USCIS undertook a robust review of existing RCs and terminated those that failed to submit required information and/or promote economic growth. A list of terminations is posted on the USCIS website to improve program transparency and facilitate investor due diligence.