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September 9, 2016

VIA EMAIL – USCISFRComment@uscis.dhs.gov
SUBJECT: OMB Control Number 1615-0026
DOCKET ID: USCIS-2007-0021

RE: Comments and Recommendations for Form I-526

Dear Ms. Samantha Deshommes:

Thank you for the opportunity to provide comments and recommendations to the form I-526. Please accept this letter with comments and suggestions on behalf of Invest In the USA (IIUSA), the national not-for-profit trade association of the EB-5 Regional Center industry with a mission of advocacy, education, industry development, and research. The organization represents more than 275 Regional Centers and 200 Associate members, collectively representing big and small projects, urban and rural economic development, and industry sectors ranging from real estate and manufacturing to energy and infrastructure. IIUSA's members are engines of economic growth and job creation, accounting for a vast majority of capital flowing through the Program. Learn more at iiousa.org.

Overarching Comments

- 1) While well-intended, this complex and multifaceted form at times borders upon overreaching by placing an obligation on the investor to provide sensitive information that was not relevant to the I-526 filing.
- 2) The Form was too long and unnecessarily complicated.
- 3) The Form would require assistance from project's counsel. There should be two separate documents, one for information on the New Commercial Enterprise (NCE) and/or Job Creating Enterprise (JCE) that would only need to be filled out once per project. This portion would then be affixed to with the investor-specific information of the form. This would ensure

consistency in the business section(s) of the petition while allowing for adequate attention to be paid to the investor-specific information of the I-526. It also would cut back on adjudication time as adjudicators would not need to review the same information on the business side of the petition for each individual investor. Two Form G-28's (indicating legal representation for both the project portion as well as the investor specific portion) should accompany Form I-526.

- 4) There should either be a separate section or an alternative form for direct entrepreneur and direct pooled filings.

<i>Comments on Specific Sections and Questions</i>

- **Pages 2-3, Part 1:** Physical Address and Employment History for the last five years:
 - This is burdensome and unnecessary because it is something that would come up at the Consular Processing/Adjustment stage, and would need to be filed in again at that point. Further, the other employment-based immigrant petition (I-140) does not ask for this information from the beneficiary.
- **Page 4, Part 1, Q.26-28:** Your Entry into the United States
 - Is this implying that the petitioner is already in the U.S.? Or is it assuming that a petitioner will know years in advance of entering the U.S. the means by which they will do so? These questions need more clarity.
- **Page 4, Part 2, Q.4:** Information About Your Investment
 - Is this the receipt number for the original I-924 approval, exemplar, or amended I-924? What if there is a pending approval?
 - A suggestion would be to give check box options for what type of receipt the receipt number the petition relates to.
- **Page 4, Part 2 Q. 5:** Information About Your Investment
 - Is this asking for the employer identification number (EIN)? If yes, then it is suggested to call it that instead.
- **Page 5, Part 2, Q.6:** Petition Type and Required Capital Investment

- If the JCE and NCE are the same entity, then the petitioner should only need to answer it once. If they are separate entities, then it doesn't matter where the NCE is located because its location does not affect TEA designation.
- **Page 5, Part 2, Q.7:** Upward Adjustment Area
 - This policy implementation has not been discussed for EB-5 therefore how can it be included in this form?
- **Page 5, Part 2, Q. 9-12:** Composition of Your Investment and Your Income
 - Please clarify exactly what information is being sought in this section. Part 2 questions on income and net worth at different stages of investment seem redundant and may be burdensome for ordinary investors.
- **Page 5, Part 2, Q. 15-18:** Composition of Your Investment and Your Income
 - Part 2. Questions 15-20 - asks for gross income, net income and net worth both at time of application and at time of investment. This seems to be to verify accredited investor status for offerings conducted under Reg. D. USCIS may then begin asking for proof to verify these figures. Further, they may begin to ask for investors to show the source of funds for ALL of their assets, which is not required under any law.
 - These questions seem to delve into the realm of securities. It is unclear if this is the intention of these questions, but raises the question as to what agency is adjudicating the petition.
 - Problematic because there are conflating securities laws, that USCIS does not have expertise in, and immigration law. For example, an investor does not need to be accredited for Reg. S offerings so these figures should not be required if the investor is making an investment under Reg. S.
- **Part 3, 15c** asks question about the investor's status (I-526 pending or I-526 approval). However, an entity may hold a percentage ownership of the NCE. It means, when answering the status question, the entity should check N/A box. However, there is no N/A checkbox for this question.

- **Page 7 , “Multiple investors”**
 - This would be problematic, as most investors ask for anonymity. Further each filing attorney will have to be sure they receive the investor's information from other attorneys.
- **Page 8, Part 5, Q. 3-7: Employment Creation Information**
 - These questions seem to be specific to the Direct EB-5 Program. There needs to be questions that address JCE job creation that would occur in the Regional Center EB-5 Program.
- **Page 8, Part 5, Q. 4: What are the costs for benefits you receive in your current position in the NCE**
 - What does this question mean? The information is repeated in an earlier question.
- **Page 8, Part 5, Q. 5: Number of full-time direct and qualifying employees in the NCE at the time of your initial investment**
 - This number will be difficult to keep updating for projects that have investors submitting their I-526s over a period of time and not all at once.
 - Please define what a “qualifying employee” means
- **Page 8, Part 5, Q. 6: Current number of full-time direct and qualifying employees in the NCE**
 - It is unclear why this information matters for this petition.
 - Also, this would theoretically change over time and is not a constant number.
 - Please define what a “qualifying employee” means.
- **Page 8, Part 5, Q. 11: Total amount of capital derived from investors who have not sought and are not seeking classification as alien entrepreneurs**
 - This question is unclear. Is it asking for the entire capital stack or just investors in the NCE?
- **Page 9, Part 7: Information on Petitioner’s Spouse and Children**

- The questions about “Applying for Adjustment of Status” and “Applying for Visa Abroad” may change over time due to the gap between submitting an I-526 and Consular processing. A family member could change his/her mind or the situation may change during that time period.
- **Page 12, Part 10, Q. 8: Preparer’s Certification**
 - This is read to say that the petitioner has told the preparer the information and documents are correct and true.

Sincerely,

A handwritten signature in black ink that reads "Peter D. Joseph". The signature is written in a cursive, flowing style.

Peter D. Joseph
Executive Director