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To: regulations.gov – U.S. Citizenship and Immigration Services
Fee Schedule Docket Folder

U.S. Citizenship and Immigration Services – Dept. of Homeland Security
Attn: Ms. Sunday Aigbe, Chief, Regulatory Products Division
111 Massachusetts Avenue, NW, Room 3008
Washington, DC 20529-2210

RE: Yale-Loehr comments on proposed Forms I-924, I-924A, and fee rule

Dear Sir or Madam:

My colleagues and I here at Miller Mayer, LLP have filed over 25 EB-5 regional center applications. We are also preparing an additional 16 regional center applications. As such, we have probably filed more regional center applications than any other law firm and have considerable knowledge and experience about the process. It is with this expertise that I submit the following comments.

As a general matter, I agree with the comments submitted by the Invest In the USA (IIUSA) trade association of EB-5 regional centers. I incorporate those comments into this letter.

Comments on Form I-924

* What are the standards for re-designating an approved regional center as mentioned in Part 2 of the form? The EB-5 regulations do not discuss redesignation. What standards are being implemented that require approved regional centers to apply for re-designation after five years from approval, or 5 years from the date of last re-designation? Will all documents required for an initial regional center application be required for a regional center re-designation application? Is the fee the same for re-designation as for an initial regional center application? The USCIS needs to provide specific standards for re-designation. Moreover, this kind of change must go through the Administrative Procedure Act rulemaking process; it should not be done by creating a form.

* Form I-924 will also be used for regional center amendment requests. Will there be a reduced fee for regional center amendment requests, or will it be the same as the initial fee? Many regional center amendments require fewer documents to be submitted, depending on the amendment being sought, and thus would require less work to adjudicate than an initial regional center application. Additionally, since the supporting documents required for a regional center amendments are specific to what is being sought to be amended, do all sections of the form I-924 need to be filled out for an amendment application, or just the applicable sections?

Also, The USCIS, like all federal agencies, must follow Office of Management and Budget (“OMB”) Circular No. A-25 (<http://www.whitehouse.gov/omb/rewrite/circulars/a025/a025.html>) when determining fees to charge for its services. I do not believe that USCIS has followed this OMB circular in determining a fee for regional center amendments. In A12d of the *Supporting Statement: Application for Regional Center under the Immigrant Investor Pilot Program: Form I-924, and Form I-924A* (OMB No. 1615-NEW), USCIS states that the adjudication of amendments to Regional Center designations requires 10 hours of work per response, compared to 40 hours for initial designation. Based on this difference, USCIS should charge a lower fee for amendments than for original regional center applications.

* I do not fully understand the language of the Purposes section in the instructions for form I-924. Page 1, section B describes when a regional center amendment may be filed for preliminary project approval. Subsection B.1 mentions an exemplar form and seems to follow the USCIS December 11, 2009 memo on that issue. Subsection B.2 states, "An actual investment project where an exemplar investment project that is materially the same as the actual investment project was previously approved for use by the regional center for EB-5 capital investments." What does that mean?

* Form I-924 and the instructions fail to define what constitutes a material change, which would require a regional center amendment (as to the regional center itself or as to a project approval). Thus, regional centers have no way of knowing when they are required to file an amendment. What happens if a regional center thought a change was not material but USCIS later determines it was material? USCIS should define material change narrowly to only apply when changes in the business plan lower the total job creation prediction below ten per investor.

* Page 1 of the draft I-924 instructions would allow USCIS to readjudicate a regional center project if its original determination was "legally deficient." If the project developer, investors and everyone else involved in the project relied on USCIS' original approval, USCIS should not be able to reverse its decision. To allow a readjudication would violate *Chang v. United States*, 327 F.3d 911 (9th Cir. 2003), in which the Ninth Circuit held that the immigration agency could not retroactively change its EB-5 interpretations.

- * Do all questions need to be answered on the form, or can we reference attached supporting materials (i.e. for Part 3 Question 5 could re say "see exhibit 3 attached" instead of using the box provided).
- * Part 3(A) asks for the Social Security # of the Regional Center. Shouldn't this be an EIN instead?
- * Part 3(D) asks for the name of "other agent." Should this be completed for the managing principal(s)?
- * Part 3(D)(9)(c) asks whether the Regional Center or any of its principals or agents has received or will receive fees, profits, surcharges, or other like remittances through EB-5 capital investment activities from this commercial enterprise. Does this refer to the administrative fees charged to investors on top of the capital contribution of \$500,000 or \$1 million, or something else?
- * Part 5, Signature of Attorney, fails to provide space for the firm name and address of the attorney.
- * Lastly, in the draft I-924 instructions, on page 4, item 4 there is a verb missing from the last sentence which states, "... investment projects will from lawful sources."

Comments on Form I-924A

- * It appears that no fee is required to submit the I-924A form each year. However, every five years the I-924A would have to be filed with form I-924, and the proposed \$6,230 filing fee must be paid at that time. The fee seems excessive, especially for not-for-profit regional centers that are strictly for economic development and job creation. Is there a fee exemption for the not-for-profit regional centers? USCIS should consider an initial filing fee exemption for not-for-profits, much like not-for-profits are exempt from the H-1B training fee.
- * In part 3, number 3 the form asks for information concerning the job creating commercial enterprise located within the geographic scope of the Regional Center that has received EB-5 investor capital. Is that for I-526 specific projects?
- * Also in Part 3, item number 5 contains a note that states: "USCIS may require case-specific data relating to individual EB-5 petitions and the job creation determination and further information regarding the allocation methodologies utilized by a regional center in certain instances in order to verify the aggregate data provided above (I-526/I-829 petitions approved/denied/revoked)." It is unclear what this means.
- * USICS should publish data on regional centers only on a collective basis, not individually. While one might wish for more transparency, there are several potential

problems with publishing regional center specific data, as these statistics could be misleading, confusing, etc.

* Finally, part 5 fails to provide space for the law firm's name and address.

Comments on I-526 and I-829 fee increases

The proposed fee increases for I-526 and I-829 petitions are 14% (from \$1435 to \$1500) and 43% (from \$2850 to \$3750), respectively. This is considerably more than the average 10% increase form-wide. In particular, USCIS has not offered any justification for why it is increasing I-829 application fees so much. In my experience, I-829 petitions frequently take less work to prepare (and presumably to adjudicate) than I-526 petitions. I therefore do not believe that a 43% fee increase is justifiable for I-829 applications. Nor has USCIS presented any evidence justifying the I-829 application fee increase. This violates OMB Circular A-25.

Please contact me at 607-273-4200 or SWY1@cornell.edu if you have any questions about these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Yale-Loehr', followed by a horizontal line extending to the right.

Stephen Yale-Loehr