

PUBLIC SUBMISSION

As of: September 24, 2012 Received: September 24, 2012 Status: Posted Posted: September 24, 2012 Tracking No. 81125a82 Comments Due: September 20, 2012 Submission Type: E-mail
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Docket: USCIS-2007-0046

Agency Information Collection Activities; OMB 1615-0061; Form I-924

Comment On: USCIS-2007-0046-0019

Agency Information Collection Activities: Application for Regional Center Under the Immigrant Investor Pilot Program, Form I-924 and Form I-924A; Extension, Without Change, of a Currently Approved Collection

Document: USCIS-2007-0046-0024

Comment Submitted by Peter Sullivan, The LCP Group

Submitter Information

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General Comment

See attached file(s)

Attachments

Comment Submitted by Peter Sullivan, The LCP Group- Attachment

From: Peter Sullivan [mailto:psullivan@lcpgroup.com]
Sent: Wednesday, September 19, 2012 3:18 PM
To: USCISFRComment@dhs.gov
Cc: Adam Greene; Robyn Prince
Subject: OMB Control Number 1615-0061

To Whom it May Concern,

Please accept the following attachment as The LCP Group, L.P.'s response to the Agency Information Collection Activities: Form I-924; Extension of an Existing Information Collection; Comment Request, as listed on the Federal Register

(<https://www.federalregister.gov/articles/2012/05/10/2012-11318/agency-information-collection-activities-form-i-924-extension-of-an-existing-information-collection>), OMB Control Number 1615-0061. Thank you for your consideration.

Regards,

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To: DHS, USCIS
Chief, Regulatory Coordination Division
Office of Policy and Strategy
20 Massachusetts Avenue NW
Washington, D.C. 20529-2020
From: Peter Sullivan
CC: Robert Roskind
Adam Greene
Robyn Prince
Date: September 18, 2012
Re: Comments on Form I-924

Memo

The following comments on Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program are made in response to USCIS' notice on the Federal Register dated May 10, 2012, and extended until September 20, 2012. The comments are broken up into four requested sections:

- (1) Evaluation of whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluation of the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhancement of the quality, utility, and clarity of the information to be collected; and
- (4) Minimization of the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

1. Necessary Information for the Proper Performance of the Functions of the Agency

It would be helpful for the Service to clarify the documentation required in order to complete a regional center's application for designation. The current Instructions for Form I-924 and Form I-924 at certain points require, request, or allude to specific documents; however, it would be helpful to form a checklist of the documents required in support of a Form I-924. Such a checklist based on current requests may appear as follows:

1. Form I-924
2. A business plan(s) of a job creating capital investment project(s), either,
 - a. "Exemplar" (Hypothetical), containing materials pertinent to the validation of inputs into an economic model; or,
 - b. "Actual," containing a Matter of Ho compliant description of the business
3. An economic analysis for each submitted business plan of a job creating capital investment project
4. Legal Documentation
 - a. Regional Center
 - i. Articles of Incorporation, Formation, etc.
 - b. Proposed Commercial Enterprise
 - i. Draft Capital Investment Offering Instruments
 - ii. Operating Agreements
 - iii. Draft subscription agreement for investment into the commercial enterprise
 - iv. Draft escrow agreement and instructions, if any

- v. List of proposed financial institutions that will serve as the Escrow Agent, if any
- vi. Draft memorandum of understanding, interagency agreement, contract, letter of intent, or similar agreement to be entered into with any other party, agency or organization to engage in activities on behalf of or in the name of the regional center.

It is my opinion that the documents listed under 4.b are not necessary to the evaluation of a regional center that is applying for designation solely with a business plan(s) describing an exemplar capital investment project(s) because of each project's hypothetical nature. To require business documentation of a hypothetical entity has no practical application.

In addition, item 4.b.vi above is not relevant to all regional centers.

The Instructions to Form I-924 also does not limit the legal documentation to the above documents. It does not seem logical for an applicant to submit a countless amount of legal documents for adjudication. I recommend you eliminate the request for additional documents.

2. Burden of the Collection of Information

The application of the Matter of Ho precedent decision causes many timing issues for alien investors. The sum of current processing times for regional centers and I-526 adjudications can easily amount to over 1.5 years. It is an insurmountable task for any new business to be able to predict all of the information required by Matter of Ho for this extended period without some form of material change existing. For example, in a recent regional center application, there has been an actual project denial based on lack of permitting for the project; however, should the permitting have been completed by the time of submission of the Form I-924, it would have had to be recompleted by the time investors would be able to file their Forms I-526. The 21-24 month period before the filing of the alien investor's Form I-829 only adds to this uncertainty. It is my opinion that a much more relaxed standard for business plans of actual capital investment projects must be adopted.

It is also my opinion that any regional center that is applying for designation solely with a business plan(s) describing an exemplar capital investment project(s) needs not to submit all of the information required by the Matter of Ho precedent decision. Inclusion of items such as "required and obtained permits" does not have a practical application for a hypothetical entity. The business plan for an exemplar project should be required to include only a summary of the business, relevant inputs into the presented economic forecasting model (such as a construction budget and operating revenues in the case of a real estate development), and a short market study verifying the relevant inputs.

3. Enhancement of the Quality, Utility, and Clarity of the Information to be Collected

This section has been broken up into two sections, comments on the information required on (a) the Instructions to Form I-924 and (b) the Form I-924.

Comments on the Instructions to Form I-924:

Section:	Text:
Initial Evidence Requirements, Item 3.	"Provide an economic analysis that relies on statistically valid forecasting tools that shows and describes how jobs will be created for each industrial category of economic activity (for example, manufacturing, food production/ processing, warehousing, tourism and hospitality, transportation, power generation, agriculture, etc.)"

None of the examples listed as "industrial categories" correspond to NAICS codes or any other part of the regional center application process, including categories associated with the commonly used Input-Output models, RIMS II and IMPLAN. Please clarify this definition of "industrial category."

Section:	Text:
Initial Evidence Requirements, Item 3.	"The business plan should also identify any and all fees, profits, surcharges, or other like remittances that will be paid to the regional center or any of its principals or agents through EB-5 capital investment activities."

The business plan referred to above describes a capital investment project in support of a requested category of economic activity. It is likely that a regional center is to be paid remittances outside of the business of the capital investment project by each alien investor (outside of each alien investor's required minimum capital contribution) for certain services rendered, commonly referred to as "Administrative Fees." Should these Administrative Fees be outlined in such a business plan?

Similarly, regional centers (and affiliated entities) that participate in loans to third party capital investment projects often are paid remittances based on the outstanding loan. This too falls outside of the scope of the above described business plan. Should these loan proceeds be outlined in such a business plan?

Section:	Text:
Initial Evidence Requirements, Item 3.	“The application should be supported by a statement from the principal of the Regional Center that explains the methodologies that the Regional Center will use to track the infusion of each EB-5 alien investor's capital into the job creating enterprise, and to allocate the jobs created through the EB-5 investments in the job creating enterprise to each associated EB-5 alien investor. The anticipated minimum capital investment threshold (either \$1,000,000 or \$500,000) for each investor should also be identified.”

Please provide a method for including such information. What if a regional center plans to participate in investments in both thresholds?

Section:	Text:
Initial Evidence Requirements, Item 5.	“Provide a general prediction which addresses the prospective impact of the capital investment projects sponsored by the regional center, regionally or nationally, with respect to increases in household earnings; greater demand for business services, utilities, maintenance and repair; and construction both within and without the regional center.”

The Service requests predictions “regionally or nationally.” Please explain the significance of including “nationally.”

Please clarify the meaning of “within and without the regional center” and which requested predictions that the phrase is intended to modify.

Section:	Text:
Initial Evidence Requirements, Item 6.	“In addition, it is helpful for the regional center to show that the capital investment offering instruments, business structure, and operating agreements of the proposed commercial enterprises that will be affiliated with the regional center are compliant with the EB-5 statutory and regulatory requirements, as well as the binding EB-5 precedent decisions.”

It is been debated whether or not each regional center is approved and designated to sponsor a particular method and structure (e.g. loans to third party enterprises) of investments based on the draft documents submitted with the regional center. Please clarify, if so.

If a regional center is applying for designation with multiple actual or exemplar capital investment projects, is the Service requesting documentation for each of the projects, or will one set suffice? What if the entities involved are similarly structured to each other?

If a regional center is only applying for designation with business plans for exemplar capital investment projects, and thus is not proposing investment into any actual commercial enterprises, is the above mentioned documentation required?

Section:	Text:
Initial Evidence Requirements, Item 6.	Draft memorandum of understanding, interagency agreement, contract, letter of intent, or similar agreement to be entered into with any other party, agency or organization to engage in activities on behalf of or in the name of the regional center.

Many regional center applicants may not have such a document due to the nature of their organizations; therefore, is this document required?

Comments on the Form I-924:

Section:	Text:
Part 3, item 8a.	“Describe and document the current and/or prospective structure of ownership and control of the commercial entity(s) in which the EB-5 alien investors have or will make their capital investments.”

May a regional center use a structure of ownership and control different than the one proposed in its application?

Section:	Text:
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Part 3, item 8c.	"Organization Structure for commercial enterprise:"
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May a regional center apply for multiple organizational structures? If so, is it required to submit the draft documents described in the Instructions to Form I-924: Initial Requests for Evidence, Item 6 for each for each requested structure? What if the structures are similar, such as a limited partnership and limited liability company?

4. Minimization of the Burden of the Collection of Information on Those Who are to Respond

It is my opinion that secure electronic submissions and communications should be incorporated in all aspects of the application, request for evidence, and adjudication stages of the Form I-924.

Respectfully Submitted,

Peter Sullivan