



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

December 27, 2018

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

Submitted via email: dhsdeskofficer@omb.eop.gov

Re: OMB Control Number 1615-0061

USCIS Notice and Request for Comments:

Application for Regional Center Under the Immigrant Investor Program and Supplement,
Revision of a Currently Approved Collection

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-referenced notice and request for comments relating to Forms I-924 and Form I-924A published in the Federal Register on September 13, 2018.¹ The comment period has been extended until December 27, 2018.²

AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this notice and believe that our members' collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

Technical Suggestions

AILA recommends that Forms I-924 and I-924A, and associated initial processes, should include these changes:

- Enable the identification in the I-924 filing fee receipt of any new commercial enterprise(s) included in the I-924 application.

¹ 83 Fed. Reg. 24346508 (Sep. 13, 2018).

² 83 Fed. Reg. 60888 (Nov. 27, 2018).

- Enable applicants to track the status of the I-924 application on the USCIS Case Status online page at <https://egov.uscis.gov/casestatus/landing.do>
- Enable applicants to enter numbers, letters, and symbols in Form I-924 data fields. Currently, regional center entity names that contain numbers cannot be entered in some fields. In addition, the instructions direct applicants to put “N/A” or “None” as appropriate, but many data fields will not allow entry of “N/A” or “None.” An example would be Form I-924, Part 1, Item 6.
- A glitch in Form I-924A results in only allowing one bulleted item to be selected throughout the entire form. This should be fixed to allow checking all the applicable bulleted items on the Form.

Form I-924 and Instructions

Form I-924 Instructions, Page 1, Item 2.A. (1) – What is the Purpose of Form I-924?

As a preliminary matter, we request clarification on when amendments are mandatory and when they are optional, particularly regarding organizational changes. The Form I-924, the Instructions, and the accompanying text on the USCIS website (“Form I-924 Guidance”) contain ambiguities and redundancies, making discernment of when an amendment “must” be filed inadequately distinct from when it “may” be filed.

As discussed below, we recommend that USCIS clarify that organizational changes are to be reported either by (1) e-mail, or (2) by Form I-924 or I-924A without fee, or (3) by Form I-924 or I-924A with reduced fee in view of the reduced level of review involved when compared with actual project related amendments such as an exemplar I-526 petition.

If a Form is required to be filed, AILA recommends that USCIS clearly indicate which Form is to be used. The USCIS website indicates that USCIS “may require or recommend, as appropriate, the regional center to file an I-924 Amendment”; but in prior public stakeholder engagements, USCIS Investor Program Office (IPO) officers have referenced the Form I-924A rather than the Form I-924 for this purpose.

To address the substantive point of whether Form I-924 with full fee should be required for regional center organizational changes, AILA believes that receiving and processing information regarding a change in name, organizational structure, ownership, or administration requires far fewer USCIS resources than the adjudication of a request for regional center designation or approval of an exemplar I-526 petition. Yet all require the same \$17,795 filing fee for Form I-924. This filing fee seems to be out of alignment with the greatly reduced resources involved in adjudicating a regional center’s organizational changes as compared with the resources required to review and consider the substantial information and supporting documentation contained in a

typical application for regional center designation or request for approval of an exemplar I-526 petition.

Moreover, there may be multiple changes or a series of organizational changes in regional center organization over time. The Form I-924 guidance indicates both that an amendment “must” be filed for “changes to the regional center’s name, ownership, or organizational structure, or any changes to the regional center’s administration that affects its oversight... or to add or remove any of the regional center’s principals” and that a regional center “may” file an amendment “to notify USCIS” of similar changes: “changes in the name, organizational structure or administration.” The Form I-924, itself, does not resolve this ambiguity of when an amendment is required or optional. In fact, adding to the confusion, there are two checkboxes that may be applicable to the same kind of changes: the second check box (“Amendment to the regional center’s name, organizational structure, ownership, or organization”) and the sixth checkbox (“Amendment to notify USCIS of changes in the name, organizational structure or administration”).

Finally, the ambiguity in when an organizational amendment is required further hampers regional center operations, because it is unclear whether such an amendment must first be approved before associated I-526 petitions may be filed. Given current processing times, requiring amendments before I-526 petitions may be filed should be limited to exemplar I-526 petitions and geographic amendments as clarified under prior policy guidance.

Instituting only a single manner of notification without fee or with appropriately reduced fee would provide needed clarity and encourage timely notification to USCIS. Both are critical policy goals to ensure EB-5 regional center program integrity.

Form I-924 Instructions, Page 1, Item 2.B. (2)

USCIS should delete the words, “before individual entrepreneurs file their petitions,” located on Page 1 at Item 2.B.(2) of the Form I-924 Instructions, as there may be circumstances making it necessary to file an I-924 after individual entrepreneurs have filed I-526 petitions. As AILA has commented on prior occasions, a prior approval of any new commercial enterprise or exemplar Form I-526 petition should only be instituted if and when premium processing is available for the Form I-924.

Form I-924 Instructions, Page 1 – When Must Form I-924A, Annual Certification of Regional Center, Be Filed?

The Form I-924 Instructions, perhaps in error, contains information relevant only to the Form I-924A. This information starts on the bottom of page 1, under the subtitle “When Must Form I-924A, Annual Certification of Regional Center, Be Filed,” and continues to the top of page 2. AILA suggests removing this information from the Form I-924 Instructions to avoid confusion.

Form I-924 Instructions, Page 4 – Project Type

USCIS should amend the instructions to define key terms such as “Hypothetical,” “Actual,” and “Exemplar”. A reference to the USCIS Policy Manual, Volume 6, Part G, Chapter 3 would be helpful here.

Form I-924 Instructions, Part 4, Page 6, Item 40. – Administration, Oversight, and Management Functions

Although this item on the Form I-924 Instructions calls for the submission of a document describing a regional center’s “administration, oversight, and management functions ... to monitor all capital investment activities and the allocation of the jobs created or maintained,” there is currently no written, specific guidance as to what constitutes “sufficient management, oversight and administrative functions.”

AILA notes that in January 2017, USCIS published an advanced notice of proposed rulemaking (ANPRM) on changes to EB-5 regional center program.³ However, nearly two years have passed without USCIS taking any further actions to respond to comments submitted by the public or to propose a rule defining regional center monitoring standards. This is highly unfortunate. The USCIS should treat this campaign with the same high priority assigned to its compliance and EB-5 enforcement initiatives; it deserves nothing less. In the absence of regulatory action, and in the absence of any other existing guidance, regional centers lack sufficient information about their compliance obligations and responsibilities in order to avoid termination. To that point, how can the USCIS request an I-924 applicant to provide information and details to Item 40 describing a regional center’s “administration, oversight, and management functions ...” when the USCIS has never defined these obligations? This lack of guidance is particularly detrimental when coupled with the consequence of potential regional center termination and the recent policy change categorizing regional center terminations as “material change.” At a minimum, regional centers need adequate guidance and notice regarding their obligations and responsibilities in order to avoid termination and the harsh consequences visited upon good faith investors.

Form I-924 Instructions, Part 6, Page 8, Items 4. through 11.e. - Ownership

Ownership of up to 100 percent of the typical regional center-affiliated NCE is gradually acquired by EB-5 investors. The questions in Part 6, however, appear aimed toward new commercial enterprise owners who are not also EB-5 investors. We recommend making that clear by adding at the end of item 3 the language in **bold underscore**: “List and provide the required information

³ 82 Fed. Reg. 3211 (Jan. 11, 2017).

for all persons or legal entities or organizations that own or have a percentage of ownership in the new commercial enterprise **other than immigrant investors seeking EB-5 classification.**”

Form I-924 Instructions, Page 12 – Processing Information

The Form I-924 Instructions state on page 12:

Approval.** If you have established that you qualify for the benefit sought, USCIS will approve your application. The approval notice will provide information about the responsibilities and obligations of your USCIS designated regional center. **It will also list the evidence to submit in support of regional center-associated individual EB-5 petitions, as well as details on the reporting and oversight requirements for regional centers.

(Emphasis added)

AILA notes, however, that recent I-924 exemplar approvals issued by USCIS do not have the list of documents expected to be included with associated I-526 petitions. Accordingly, AILA recommends that the Form I-924 Instructions be harmonized with actual approval notices issued by USCIS as a preliminary matter. Substantively, the approvals should continue to contain instructions on which documents should be included with associated I-526 petitions for notice and clarity.

Form I-924A and Instructions

Form I-924A Instructions, Page 1, Part 1– Information about the Regional Center

The instructions should clarify what information is sought in Part 1, Item 4 of Form I-924A for the subsection entitled “Regional Center Receipt Number.” It appears USCIS is seeking the receipt number for the initial I-924 application for regional center designation, if its designation post-dates the Form I-924. However, AILA is concerned that USCIS may in fact intend to request other receipt numbers, such as the receipt number for any pending I-924 applications or the most recently approved I-924 amendment application. AILA respectfully requests that USCIS clarify in the Form I-924A Instruction what information USCIS is seeking in this subsection of the form.

Form I-924A Instructions, Page 2, Part 3 – Reporting Period for the Regional Center Activity

The Form I-924A Instructions ask the regional center to indicate the period of time the form is meant to cover (i.e., “a *single* federal Fiscal year or for a *series* of Federal fiscal years.”) (emphasis added). This denotes a defined period of time, usually a single federal fiscal year. Yet page 4 of the Form I-924A Instructions advises that “(w)hen reporting job creation, the numbers should reflect the aggregate direct, indirect, and/or induced jobs that have actually been created by all

sponsored projects *to date*.” (Emphasis added). This inconsistency should be resolved by deleting the words “to date” on the Form I-924A Instructions, in order to create consistency with the instructions found elsewhere on the Form I-924A Instructions, which indicate on page 2 that the data collected references “the period of time the form is meant to cover regarding reporting for the regional center.”

Form I-924A, Page 4, Part 5 – Information about the Regional Center’s Operations, Aggregate Capital Investment and Job Creation

USCIS should provide guidance as to when EB-5 capital is considered “investment” for purposes of Part 5 and throughout the Form I-924A. Consistent with the statutory and regulatory framework, AILA recommends that “investment” be clarified to mean when immigrant investor capital is contributed to the new commercial enterprise, either directly or via escrow. Prior Form I-924A guidance had provided clarity on this point by indicating that investor funds in escrow are “invested.”

Similar clarification is needed for Part 5, Items 2, 8, and 14 pertaining to the determination of when non-EB-5 capital is deemed “investment capital.” In many cases, the non-EB-5 capital is never transferred into the NCE, but into the job creating entity by a developer entity. Or the job creating entity might receive construction loan funding from a bank. Does USCIS consider such funds “capital investment” with respect to the regional center data requested in Part 5? If not, what category of funds should be captured in these data fields? AILA recommends that USCIS provide clarification on these issues.

Form I-924A, Pages 4-5, Parts 5 and 6 – Industries and Resulting Aggregate Capital Investment and Job Creation

Name of Industry; NAICS Code for the Industry Category. In Parts 5 and 6, the same questions are asked regarding the industries associated with aggregate capital investment and job creation for the regional center and each new commercial enterprise, respectively.

In the case of a “loan model,” i.e., where the purpose of the NCE is to raise EB-5 funds to provide financial support (a loan or capital contribution to the job creating entity) for a development project, it is unclear whether the regional center should indicate “real estate financing,” which might be the NCE’s business as an industry in Item 5 on page 4, or the business industry of the job creating entity, or the job-creating activity undertaken by the job creating entity, for example “construction.” It is unclear whether, in the case of a developer building a hotel, for example, USCIS is seeking data that would be used as the inputs to a job creation model, and thus the industry in item 4 should be listed separately according to those that would use the same multiplier, i.e., one group would be construction (NAICS 2361 and 2362), another A&E (NAICS 5413), and

so on, or whether USCIS seeks data about the eventual industry the business will operate in when construction is complete, i.e., the hotel industry (NAICS 7211).

Similarly, with regard to Items 6 and 7 of the same section, it is unclear whether USCIS is seeking data pertaining to the various components of construction expenditure-related industries, i.e., hard costs, A&E, and FF&E, or, whether USCIS wants to identify the industries of the development project's multiple end uses, such as hotels, restaurants, and retail sales.

AILA members report listing the names of industries and NAICS codes reported in an NCE's economic impact study for job creation purposes. This makes sense as these industries and NAICS codes represent the job creation impacts claimed by a particular new commercial enterprise and its project. We request confirmation, either in the Form I-924 Instructions or on the Form I-924, itself, that this practice comports with the data USCIS seeks for Parts 5 and 6. If this is not the data USCIS intends to be reported, AILA requests that USCIS clarify the information sought in the Form I-924A Instructions and Form, as current guidance is open a number of different interpretations.

Aggregate Number of Direct, Indirect, and/or Induced Jobs Created. AILA notes that because the job creation figures for a fiscal year may be associated with EB-5 capital investment from prior years, or later years in the case of bridge financing, there will not always be a "match" between the capital investment figures reported and the job creation reported for a given fiscal year. For example, there may be no EB-5 capital investment for a fiscal year, yet there may still be job creation for the same new commercial enterprise, if there is job creation by bridge financing or from operations after construction. Written recognition of this fact in the Form I-924, Form I-924 Instructions, or accompanying USCIS website would be helpful to stakeholders.

Form I-924A, Page 4, Part 6. – Information About the New Commercial Enterprise

Currently, it is unclear whether Items 1 through 10 seek information pertaining to all new commercial enterprises under regional center affiliation during the reporting period, only those that received EB-5 investor capital during the reporting period specified in Part 3, Item 1 of Form I-924A, or another category. AILA believes that this question should, consistent with the defined reporting period covered by the Form, capture only the new commercial enterprises that have received EB-5 investor capital during the reporting period. Please confirm in the Instructions or the Form, itself.

Conclusion

AILA appreciates the opportunity to comment on Forms I-924 and I-924A and its instructions, and look forward to a continuing dialogue with USCIS on these issues.

Comments: Forms I-924 and I-924A

December 27, 2018

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Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION