



October 6, 2022

PA-2022-23

Policy Alert

SUBJECT: EB-5 Reform and Integrity Act of 2022

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to incorporate changes resulting from the EB-5 Reform and Integrity Act of 2022.¹

Background

The Immigration and Nationality Act (INA) makes immigrant visas available in the employment-based 5th preference (EB-5) category to qualified investors who will contribute to the economic growth of the United States by investing in U.S. businesses and creating jobs for U.S. workers.

EB-5 investors have historically had the option of participating in the Regional Center Program, which allows an investor to rely on indirect job creation when they invest through a USCIS-designated regional center. Authorization related to the Regional Center Program lapsed at the end of the day on June 30, 2021.

On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in INA 203(b)(5), and adding significant new integrity provisions. The law also made certain changes affecting applicants seeking adjustment of status based on the EB-5 category.

This guidance, contained in Volumes 6 and 7 of the Policy Manual, amends the Policy Manual to align it with certain changes made by the new law, such as the new investment amounts and definitions. USCIS anticipates making future updates to this guidance as we develop policy. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

Policy Highlights

- Incorporates changes to investment amounts and targeted employment area definitions, as well as new definitions for infrastructure projects, capital, and new commercial enterprise resulting from the EB-5 Reform and Integrity Act of 2022 for petitions filed on or after March 15, 2022.
- Aligns USCIS policy on further deployment with the new statute.

¹ See Div. BB of the Consolidated Appropriations Act of 2022, [Pub. L. 117-103](#), 136 Stat. 49 (March 15, 2022).

- Explains that, by statute, for petitions filed on or after March 15, 2022, investors pooling their investments with other EB-5 investors must do so through the Regional Center Program.
- Reflects the statutory requirement that, on or after May 14, 2022,² investors may only file new regional center-based petitions (Immigrant Petition by Regional Center Investor ([Form I-526E](#))) once the regional center has filed an Application for Approval of an Investment in a Commercial Enterprise ([Form I-956F](#)) and that a specified percent of the claimed jobs must be direct jobs, which can be estimated by economically and statistically valid methodologies. In addition, indirect jobs may include those estimated to be created under a methodology that attributes jobs to prospective tenants provided they are not relocated existing jobs.
- Incorporates new statutory provisions for redemption provisions and lawful source of funds for petitions filed on or after May 14, 2022.
- Incorporates statutory changes permitting concurrent filing for adjustment of status, priority date retention, and eligibility for the INA 245(k) exemption.
- Revises the name of the Form I-526 from Immigrant Petition by Alien Entrepreneur to Immigrant Petition by Standalone Investor and adds references to the Immigrant Petition by Regional Center Investor (Form I-526E).

Summary of Changes

Affected Section: Volume 6 > Part G > Chapter 1, Purpose and Background

- Removes all three alert boxes.
- Revises Section A (Purpose) in full.
- In Section B, retitles Subsections 2 (now Creation of the Original Regional Center Program) and 3 (now Program Evolution) and makes revisions throughout.
- Revises Section C (Legal Authorities) to include legislative changes.
- Makes technical revisions to statutory, regulatory, and other citations throughout footnotes.

Affected Section: Volume 6 > Part G > Chapter 2, Eligibility Requirements

- Removes all three alert boxes.

² These provisions of the law took effect 60 days after enactment. See Section 103(b)(2) of the EB-5 Reform and Integrity Act of 2022, Div. BB, of the Consolidated Appropriations Act of 2022, [Pub. L. 117-103](#), 136 Stat. 49 (March 15, 2022).

- Makes substantial revisions throughout to clarify eligibility for petitions filed before and after the effective date of the provisions in the EB-5 Reform and Integrity Act of 2022.
- Makes technical revisions to statutory, regulatory, and other citations throughout footnotes.

Affected Section: Volume 7 > Part A > Chapter 3 > Section C, Concurrent Filings

- Revises the third bullet point.

Affected Section: Volume 7 > Part A > Chapter 6 > Section C > Subsection 3, Priority Dates

- Removes alert box.
- Under the subheading “Using Earlier Priority Dates,” replaces last sentence in first paragraph and removes the footnote after the first bullet in the list under the subheading “When Earlier Priority Dates May Not Be Used.”
- Removes subheading “For Employment-Based 5th Preference Cases” and related content.

Affected Section: Volume 7 > Part A > Chapter 7 > Section B, Child Status Protection Act Applicability

- Under subheading “Effective Date,” revises form name in fourth bullet and adds new fifth bullet.

Affected Section: Volume 7 > Part B > Chapter 2 > Section C > Subsection 1, General Eligibility for an Immigrant Visa

- Revises fourth row and adds new fifth row in table.

Affected Section: Volume 7 > Part B > Chapter 8 > Section E, Employment-Based Exemption under INA 245(k)

- Under Subsection 2 (Employment-Based Applicants), adds a fourth bullet point.

Affected Section: Volume 8 > Part G > Appendix: Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications

- Replaces “Fifth: I-526 Immigrant Petition by Alien Entrepreneur (EB-5)” with “Fifth: Investors” on the last row of the table and updates the form name in accordance with legislative changes in the related footnote.

Citation

Volume 6: Immigrants, Part G, Investors, Chapter 1, Purpose and Background [[6 USCIS-PM G.1](#)]; and Chapter 2, Eligibility Requirements [[6 USCIS-PM G.2](#)].

Volume 7: Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions [[7 USCIS-PM A.3](#)]; Chapter 6, Adjudicative Review [[7 USCIS-PM A.6](#)]; and Chapter 7, Child Status Protection Act [[7 USCIS-PM A.7](#)]; and Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements [[7 USCIS-PM B.2](#)] and Chapter 8, Inapplicability of Bars to Adjustment [[7 USCIS-PM B.8](#)].

Volume 8, Admissibility > Part G, Public Charge Ground of Inadmissibility > [Appendix: Applicability of INA 212\(a\)\(4\) to Employment-Based Adjustment of Status Applications](#).