

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Congressional Relations
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

CO 703.1318

OCT 22 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20515



Dear Chairman Leahy:

Thank you for your letter of September 16, 2008 regarding U.S. Citizenship and Immigration Services' (USCIS) interpretation of regulations governing the administration of the EB-5 Immigrant Investor Regional Center Program. Your letter states serious concerns about the time frame during which the necessary ten jobs per approved investor should be expected to be created.

USCIS recognizes the flexibility the Regional Center Program's authorizing statute provides for determining the number of jobs created. It has been the agency's view that it is consistent with the statute and regulations to require that an alien seeking to immigrate as an EB-5 investor show, at the time USCIS adjudicates the immigrant petition (Form I-526, Immigrant Petition by Alien Entrepreneur), that the jobs will be created within two years. See Section 610(b) of Pub. L. 102-395, as amended (8 U.S.C.A. § 1153 note); 8 C.F.R. § 204.6(j)(4)(B). A business plan that does not, even using indirect methodologies, contemplate the job creation within the time frame Congress has provided for conditional status is not one that appears reasonably from the outset to be calculated to fulfill the basic job creation purpose of EB-5 investment. USCIS regulations do, however, provide some flexibility to respond to changed conditions at the time the conditional permanent resident applies to remove the conditions (Form I-829 Petition by Entrepreneur to Remove Conditions) by permitting conditions to be removed from alien investors' permanent residence based upon a showing that the jobs will be created within a reasonable time. 8 C.F.R. § 216.6(a)(4)(iv).

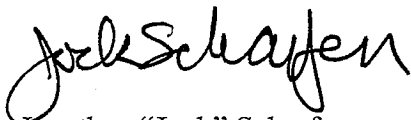
Until recently, despite the current vigorous interest in EB-5 investment in regional centers, USCIS has not encountered cases where petitioners seek approval of Form I-526 immigrant petitions without submitting evidence that the jobs will be created during the 2 year period. In those few cases where this has come up, petitioners have amended their proposals to comply with the agency's interpretation. Thus, the agency's requirement that a petitioner show at the time of

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Form I-526 immigrant petition adjudication that the jobs will be created within 2 years has not been a significant disincentive to participation. While USCIS is taking all appropriate steps to encourage broad participation in a strong and valuable EB-5 Regional Center Program that benefits investors, we also recognize that actual job creation benefiting the United States communities where regional centers are located is the fundamental purpose of the program, and potentially weakening links between the incentive of lawful permanent resident status and the requirement to create those jobs has the potential to reduce that benefit.

We appreciate your original sponsorship and longtime strong support of the EB-5 Regional Center Program, and take your concerns very seriously. We hope this response adequately explains our administration of the Program to date with respect to the important issue you raise, and assure you that we are carefully reviewing our Regional Center Program interpretations and policies in light of your letter and concerns raised by others, with a view toward further appropriate clarification.

Sincerely,

A handwritten signature in black ink that reads "Jock Scharfen". The signature is written in a cursive, somewhat stylized font.

Jonathan "Jock" Scharfen
Acting Director