

## *Danger of Skipping Dummy I-526 as I-924 Amendment*

By Joseph P. Whalen (Saturday, May 16, 2015)

As I have previously written, espoused, and advocated; there is a great danger in failing to seek an *advance vetting* of an EB-5 Regional Center Project.<sup>1</sup> Quartzburg Gold, L.P. via the Idaho State Regional Center, LLC (“ISRC”), *which is an Idaho limited liability company and a USCIS-designated regional center*, is an unfortunate example of what can happen when this vital step is ignored. In that venture, the alien investors filed their I-526 petitions *en masse* without having the security and comfort afforded by a **Project-Specific Provisional Approval** attained via an I-924 Amendment containing an I-526 Exemplar or “Dummy I-526”. The lawsuit filed on February 27, 2015 as 1:2015-cv-00273 by the investors is captioned as: [\*Does 1 - 42 v. United States Citizenship & Immigration Services et al\*](#), and was filed in the District Of Columbia District Court. While the vast majority of the docket is sealed, the voluminous Complaint and Exhibits were available in PACER.

The above case appears to **involve 42 investors** but additional information shows that they were **seeking 160 investors**. It seems to be a blessing that only about one-quarter of the desired investors were involved. One of the exhibits is a letter explaining changes made to an agreement, which is also attached. It would have meant more if it had been in response to an RFE or NOID pertaining to an I-924 rather than the individual I-526 visa petitions. I suppose that I must once again become the “broken record” of the EB-5 Stakeholder community, and reiterate some simple facts and offer a suggestion.

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<sup>1</sup> See: <http://www.slideshare.net/BigJoe5/proper-consideration-of-form-i-924> ; <http://www.slideshare.net/BigJoe5/inappropriate-rigidity-in-regional-center-designation-appeals-to-aa0> ; <http://www.slideshare.net/BigJoe5/aa0-reform-and-i-924-appellate-review-expanded-discussion> ; <http://www.slideshare.net/BigJoe5/i-526-as-rc-amendment> ; <http://www.slideshare.net/BigJoe5/taking-on-the-eb5-communitys-confusion-about-exemplars> ; <http://www.slideshare.net/BigJoe5/consequences-of-skipping-the-exemplar-or-dummy-i526> ; <http://www.slideshare.net/BigJoe5/advantages-to-i-526-exemplar-petition-approval-via-an-i924-amendment-application> ; (an example) <http://www.slideshare.net/BigJoe5/i-924exemplarapprovallettersobeeb5rc> ; (a hope) <http://www.slideshare.net/BigJoe5/another-potential-use-for-uscis-form-i924-the-exemplar-i829-for-materially-changed-projects>

- The “filing date” of a visa petition will transform into a “priority date” for visa allocation and issuance purposes if that visa petition is approved.
- EB-5 visas for China, Mainland born, now has a minimum two-year wait for the I-526 priority date to become “current” on the [Visa Bulletin](#).
- The I-526 is a REAL visa petition and as such it has a priority date involve. This means it cannot be seriously fixed after filing.
- The I-924 is an application which has no priority date nor any numerical limits whatsoever.
- The I-924 is fully amenable to significant changes post-filing.
- The I-924 is subject to *perfection* after filing.
- The I-924 only has one filing prerequisite. The “entity” that applies must actually legally exist.
- *Regional center* means any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. See [8 C.F.R. § 204.6\(e\)](#).
- The I-924 may be used to submit a Regional Center project for advance vetting before the investors file real visa petitions.
- The above case is precisely what I have been warning folks about for the last seven years or so.

One of the measures that Secretary Johnson requested from Congress is a statutory change that would require this step but USCIS intends to pursue it via regulation if necessary. I suggest that USCIS-ELIS be made available for **all** I-924 filings. I suggest that practitioners and Regional Centers quit bitching and get on board or else be left behind.

***Require Business Plan Filings in Advance of Investor Filings.*** To improve program efficiencies and reduce the potential for investor fraud, users should be authorized to require regional centers to file investment proposals with business plans and other organizational documents in advance of individual investor filings. USCIS intends to propose this filing structure by regulation, but a change via statute would expedite and codify any such regulatory reform.

[Secretary’s Letter to Congress, April 27, 2015](#), at p. 4.



***Dated this 16<sup>th</sup> day of May, 2015***

**X**

*/s/ Joseph P. Whalen*

***That’s my two-cents, for now!***