



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION



The Real Estate Roundtable



March 17, 2016

By e-mail

Lori S. MacKenzie
Division Chief, Operations, Policy & Performance
Immigrant Investor Program
USCIS/DHS
131 M Street, NE
Washington, DC 20529-2200

Requesting extension of comment period for Docket USCIS 2016-0008; Regulatory Changes to the EB-5 Regional Center Program and, Docket USCIS-2016-0006; EB-5 Immigrant Investor Program Modernization

Dear Ms. MacKenzie,

We are a consortium of stakeholders comprised of U.S. enterprises utilizing the EB-5 visa program and representatives of such enterprises and investors. As you know, the EB-5 program allows foreign investors to obtain conditional residency by contributing capital to U.S. job-creating projects. On January 11, 2017 and January 13, 2017, respectively, the Department of Homeland Security (“DHS”) published an advance notice of proposed rulemaking (82 FR 3211, the “ANPRM”) and a notice of proposed rulemaking (85 FR 4738, the “NPRM”) to consider and propose significant regulatory changes to the EB-5 Immigrant Investor Regional Center Program. Comments to both the ANPRM and NPRM are due April 11, 2017. We request that DHS extend the comment period to both the ANPRM and NPRM by 90 days to July 9, 2017.

First, a 90 day extension for comments is consistent with the White House memorandum dated January 20, 2017 placing a moratorium on new regulations. As you know, “regulation” as that term is used in the memorandum includes advance notices of proposed rulemaking and notices of proposed rulemaking. Extending the comment period allows the new administration and DHS to confirm regulatory priorities consistent with the January 20 directive and the January 30 Executive Order on reducing regulations.

Second, the current comment period closes just as new legislation may head toward enactment. Congress must reauthorize the EB-5 “regional center” program before it lapses with the current continuing resolution on April 28, 2017. Commenting by April 11, 2017 on regulations that will likely be superseded by legislation shortly thereafter wastes valuable government as well as private sector resources.

Third, the NPRM specifically requested data-based comments to items such as the significant increase in investment levels. DHS stated that it could not fully consider the economic impacts of the new investment amounts nor measure how they might hinder U.S. job benefits. Stakeholders need a longer time frame to provide reliable data-based forecasts to these complex questions.

Substantively, we note that the NPRM contemplates raising EB-5 investments to levels far exceeding those that Congress is considering under new EB-5 legislation. Substantial increases unaccompanied by any transition period will shock the program and chill EB-5 investment into U.S. projects and/or developments indefinitely. We are concerned that such a change could put our country at a serious disadvantage in the highly competitive global marketplace to compete for foreign resources and bring them to our shores.

Finally, we see no logic in bifurcating the equally weighty issues in the ANPRM with the NPRM. We request and recommend that EB-5 Program changes contemplated in both the NPRM and ANPRM be consolidated and comprehensively addressed in one rulemaking action.

The U.S. Department of Commerce recently released a report citing significant economic and job creation benefits from the EB-5 program. Commerce concluded that EB-5 investors provided \$5.8 billion in capital to invest in 562 projects located in the United States. Using data from FY12-FY13, these projects were expected to create an estimated 174,039 jobs for U.S. workers. A period of time commensurate with the complexity of forecasting impacts to this significant economic activity requires an extension of at least 90 days from the current deadline.

For these reasons, we respectfully request an extension to July 9, 2017 to comment on the ANPRM and the NPRM. We thank you in advance for your consideration and look forward to working with you on EB-5 program enhancements.