



December 8th, 2011

Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Service
20 Massachusetts Ave, NW
Washington, D.C, 20529

RE: Request for Comment on TEA Methodology Guidance

Dear Director Mayorkas:

I am writing to follow up with you from the November 9th, 2011, call regarding the EB-5 draft policy memorandum. Your focus on process improvement and policy clarification is greatly appreciated now more than ever. Although our industry has expanded, we have not yet matured. I sincerely applaud your timely efforts. EB-5 practitioners, including myself, need clear guidance and enforcement. As Wall Street continues to weather one embarrassing costly scandal after another, EB-5 sits in a largely unregulated, unmonitored environment. We do not wish to attract bad actors nor do those of us who have strong practices wish to fall subject to their scandal. The EB-5 Regional Center Pilot Program is an excellent opportunity for public/private partnership. Providing clarification and guidance on the TEA issue will unlock millions for job creation throughout the United States.

As Congress now debates the permanent authorization or extension of the EB-5 Program, it presents a great opportunity to modify the program in order to make it as effective and efficient as possible. The core of this program is the job-creation requirement, which makes it different from other countries' immigrant investor programs. Since almost all EB-5 investments are now made in Targeted Employment Areas (TEAs), where \$500,000 of investment must translate to at least 10 full-time jobs, the issue of TEAs has come up continuously in USCIS teleconferences and stakeholder meetings, as well as within our own industry internal discussions and with IIUSA.

I would first like to thank you for being so open for comments regarding the draft policy memorandum; the Question & Answer portion of the calls, along with the *Conversations with Director Mayorkas* meeting on September 15th, have been especially helpful. During the Question & Answer portion of the November 9th call, I asked the following question regarding TEAs.

Angelique Brunner: Regarding USCIS' deference to state TEA designations, will you also specify requirements for each state to use, such as BLS data? Or will you leave it open to the states to select their own methods and applications?

Director Mayorkas: I can't answer that right now. Please submit your question to us, and also submit your comments to your own questions.

For the duration of this letter, I would like to comment on this question as you requested, and hopefully my response can help frame the necessary modifications to the TEA guidelines as we move towards permanent authorization.

This response will focus on three factors relative to the Targeted Employment Area definition and designation:

1. USCIS Guidelines for Accepted Methodology;
2. Alignment of the TEA definition with other Federal and State definitions of Disadvantage;
3. The Inelasticity of the \$500,000 Investment.

Professional Background

Although we have met a few times at the stakeholder events, please allow me to introduce my qualifications and experience in EB-5 and especially on the TEA issue. I am a trained policy professional and urban planner with a strong background in economics and finance. I received my Master in Policy and Certificate in Urban Planning from the Woodrow Wilson School at Princeton in 1997. I have both private and public sector experience, including working for Public Financial Management (PFM), where I placed \$2 billion in public debt. I also served as Finance Director for NCRC, where I assisted with the disposition of Washington, D.C.'s multi-billion land portfolios. More recently, I have presented to both the U.S. Chamber of Commerce and the Brookings Institute on EB-5 law and policy.

I have been in the EB-5 industry since 2006 when I funded the *Sugarbush Ski Resort* in Vermont in conjunction with the state-owned Vermont Regional Center. This was one of the first EB5 projects, along with the *Jay Peak Ski Resort*, to have been completed after USCIS took over and re-established the program. In 2011, we applied and received the beginning of our Form I-829 Petition approvals for EB5Sugarbush which we funded through the State of Vermont Regional Center. This project received 'Troubled Business Status', which we received through adjustment and a favorable AAO decision. It is my understanding that favorable AAO decisions are rare. We have no denials and no unresolved RFEs. Due to the EB-5 investments in Vermont, Senator Leahy has always been a big proponent of EB-5, and he is now in the forefront for permanent authorization. I have been asked to submit written testimony regarding the December 7th Senate Judiciary hearing on EB-5. I am proud to have worked with Vermont to fund their projects in rural parts of their state.

In 2008, at the first California Service Center stakeholder meeting in California, I stood up and publicly requested regulation. At the time, I was not popular among my peers. I welcome your increased guidance and enforcement. As a founding member of the Best

Practices committee for IIUSA, I have begun to condition our membership to the need for both self-policing and intentional over-site from USCIS and other appropriate agencies.

Currently I focus my efforts on large mixed-use projects under the D.C. Regional Center, which I co-own. I have been successfully funding projects with EB-5 investments since 2007. I am now funding \$20 million to the *City Market at O Street* project, which President Obama has selected as 1 of 14 job-creating projects that he has fast-tracked for federal funding (the project received a significant HUD 220 loan)

Additionally, I co-authored an article in 2009, which was published in *Bender's Immigration Bulletin*, about an 'integrated Targeted Employment Area definition'. I will discuss the thesis of the article at length below under *Alignment of TEA Definition with Federal and State Definitions*. I have received TEA designations in Washington, D.C., Vermont, California, and Florida, and I was the first EB-5 practitioner to use the 2009 BLS LAUS memorandum as a TEA methodology, which I used to qualify most of Washington, D.C.

1. USCIS Guidelines for Accepted Methodology

The Targeted Employment Area (TEA) provision, which was enacted in 1991, allows for a reduced \$500,000 investment. In all of my TEA requests, I have used *census-share disaggregation*, which is a standard U.S. Bureau of Labor Statistics procedure used to calculate rates for small sub-county areas. In discussions with state representatives, it has become clear that some EB-5 practitioners are not using a methodology and not citing the methodology if one is used. Consistency and certainty are very important to the integrity of the program, and it is imperative that both states and practitioners aren't left to devise their own methodologies. There are a number of federally defined methodologies that can and have been used.

In the interim, while the EB-5 industry and Congress pushes for permanent reauthorization, I suggest that USCIS consider providing clear guidelines to all states and practitioners regarding standard procedures for TEA requests, and to enforce these guidelines in a consistent fashion. ***USCIS could provide guidance similar to the guidance provided on accepted methods of economic analysis.*** USCIS provides clear guidance regarding job creation with regards to RIMS II, IMPLAN, and REDYN.

For your quick reference, I am including an excerpt from BLS regarding guidance that they provide to states. I bold-faced part of the third bullet point which is at the core of my analytical method.

ASU Qualification Requirements: An area must meet three requirements to be an ASU:

- *Unemployment rate* - the 12-month average unemployment rate for the reference period (July 2008 benchmarked-June 2009 preliminary) must be at least 6.5

- percent. Note that ASU *parts* do not need to meet these requirements individually - only the *whole* ASU must meet them;
- *Population* - its population must be at least 10,000 persons based on Census Bureau figures, as described below; and
 - *Geography* - **it must be a contiguous geographic area composed of any combination of counties, balance of counties, cities, census tracts, or other areas within a State.** Contiguity may be accomplished if two areas are separated by a body of water (for example, river, lake, ocean) if the two areas are directly across the body of water from one another.

It is useful if USCIS and all states conform to federal definitions. BLS authorized the grouping of census tracts in 2009 as an acceptable methodology to determine unemployment. I agree that states should be allowed latitude in deciding whether a census-tract grouping is appropriate, but it is important for the industry to follow federally defined methodologies such as BLS.

2. Alignment of the TEA definition with other Federal and State definitions of Disadvantage

Additionally, and most infamously, I co-authored an article in 2009, which was published in *Bender's Immigration Bulletin*, about an 'integrated Targeted Employment Area definition'. The thesis of the article was that Congress should borrow regulations from other agencies which have put the same rigor into economic development that USCIS has put into immigration. The thesis was adopted by then-freshman Congressman Polis of Colorado for EB-5 legislation he introduced. I had written the article with the intent of finding a way to expand the impact of EB-5. My goals were to align the USCIS definition with other federal definitions of disadvantage. Such realignment with other federal definitions would increase job-creation impact by increasing the number of geographies qualified for \$500,000 investment. My industry lobby, including IIUSA, lobbied against this change because it would increase the number of qualified projects.

I understand that this change in definition is a legislative issue and therefore is not the focus of this document; however, it is an important reference.

The fact that the TEA definition does not conform to any state or federal definition of disadvantage is the heart of the current issue. The federal and state governments recognize a matrix of factors that qualify an area for investment incentives based on their relative disadvantage. Unemployment is simply one factor included in the measurements. I detail the range and value of these definitions in my TEA article. I am including the article for reference.

I asked in the article, "Why are some federal- and state-defined blighted and distressed areas not included in the TEA definition?" It is necessary to have a conforming definition for TEAs. Both Congress and state governments have targeted certain areas

for economic incentives so that businesses will situate there. In the article, I suggest expanding the definition of the Targeted Employment Area to include:

... all State and Federally defined economic development incentive program including, but not limited to, areas defined as Enterprise Zones, Renewal Communities, and Empowerment Zones

Most importantly, these designations last for 10 years, approximately the amount of time it takes to revitalize an area. A neighborhood is revitalized one block at a time; annual reauthorizations are difficult once a neighborhood begins to revitalize. If the investment incentive programs work, a neighborhood may have trouble qualifying towards the end of its revitalization. The current definition of "Targeted Employment Area" is unique to the EB-5 program, and does not include other federal or state economic-incentive designations designed to promote economic development. These designations already carry tax incentives, wage credits, or other investment incentives.

3. The Inelasticity of the \$500,000 Investment.

Lastly, I would like to suggest an alternative policy for consideration. This would require a change in law. Since there is virtually no market for \$1 million EB-5 projects in non-TEAs, projects in non-TEAs have no access to EB-5 funds. However, in our modern economy people travel farther for employment. For example, a new hotel in Bethesda, Maryland, which is located in Montgomery County, would likely attract employees from nearby Prince George's County, which is predominately a TEA. The median household income for Bethesda residents in 2009 was \$129,440; the median household income for Prince George's county in 2009 was \$69,947 but is largely driven up by a few isolated middle-class areas. A new hotel project in Bethesda would create a significant number of jobs, and most of these moderate wage jobs would be going to residents of less affluent areas.

In order to differentiate between projects in non-TEAs and TEAs, a better solution might be to raise the job requirement as opposed to the investment amount. Within the current paradigm, a \$1 million project will never get funded, regardless of the location. However, if a project in Bethesda were made available, with a 20:1 job ratio per investor, it would be able to source EB-5 funding which would provide jobs to the residents in the TEAs nearby.

Summary

I again thank you for requesting my comments to my own questions from our November 9th call. It was a pleasure meeting with you in our *Conversations* discussion, which I thought was quite spirited. I trust my brief biography above provides enough assurance that I consider myself knowledgeable and passionate about this issue.

In summary, I propose the following three items:

- Provide consistent and clear guidelines to practitioners about preferred federally defined methodologies similar to the guidance provided for economic methodologies;
- Align the TEA definition with other state and federal definitions of economic disadvantage;
Consider making both TEA and non-TEA investments equal amounts, but increase the job ratio 20:1 for non-TEA projects.

Thank you for your time and opportunity to comment on this issue.

Sincerely,



Angelique G. Brunner

President, EB-5 Capital
Co-owner, DC Regional Center

Attachments:

“Realizing the Economic-Development Goals of EB-5 Through an Integrated Targeted Employment Area”
Congressman Polis Legislation – Fact Sheet