

April 2, 2007

Via email: OSComments@dhs.gov

Director, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW
Washington, DC 20529

Re: DHS Docket No. USCIS--2006-0044

Dear Sir/Madame:

The Immigrant Investors Association (IIA) is a 501(c)(6) trade association formed to promote the interests of foreign nationals investing in the United States through the employment-based fifth (EB-5) immigrant investor green card category. IIA members include regional centers that seek capital from foreign investors, state and local economic development agencies, developers, and attorneys.

The IIA is writing to oppose the proposal of the U.S. Citizenship and Immigration Services (USCIS) to radically increase EB-5 fees set forth at 72 Fed. Reg. 4888, 4911 (Feb. 5, 2007). The USCIS proposes raising the filing fee for I-526 petitions from \$480 to \$1,435, a 298% increase. The USCIS proposes raising the filing fee for I-829 petitions from \$475 to \$2,850, a 600% increase. These proposed fee increases are unconscionable and unjustified.

Relatively few people apply for EB-5 green cards each year. In FY 2005, the most current year for which statistics are publicly available, only 346 people obtained conditional resident status in the EB-5 category. Office of Immigration Statistics, U.S. Dep't of Homeland Security, 2005 Yearbook of Immigration Statistics 19 (2006) (Table 6), *at* http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/OIS_2005_Yearbook.pdf (last visited Mar. 29, 2007). Of that total, 158 were principal investors; 188 were family members. Phone conversation with Office of Immigration Statistics, U.S. Department of Homeland Security (Mar. 15, 2007). In FY 2006, 108 I-829 petitions were approved; another 108 I-829 petitions were denied. *Id.* Moreover, over half of all EB-5 petitions are filed through regional centers, where many investors invest in the same project. This makes it easier for USCIS adjudicators to decide these petitions, since the economic information for each project is all the same.

EB-5 petitions already generate a large amount of money for the USCIS, even though few people apply in this category. According to the proposed rule, in FY 2006 the I-526 petition generated over \$548,000 in fee paying volume, more than I-129 temporary worker petitions, for example. 72 Fed. Reg. at 4905 (Table 7). This shows that the USCIS is receiving large amounts of money compared to the few I-526 petitions it receives.

The USCIS fee proposal is incorrect about certain EB-5 activities. For example, Table 9 at 72 Fed. Reg. 4908 indicates a completion rate of 2.38 at local offices for I-526 petitions. But I-526 petitions are only adjudicated at two regional service centers (California and Texas), not local offices. Similarly, the same table indicates a completion rate of 4.45 at local USCIS offices for I-829 petitions. It is true that some older I-829 petitions are still languishing at local USCIS offices. But almost all current I-829 petitions are adjudicated at the California and Texas service centers, and relatively quickly. Thus, the underlying bases for the proposed EB-5 fee increases are not justified.

Only one other proposed fee increase (for I-698 petitions) is higher percentage-wise than the proposed percentage increase for I-526 and I-829 fees. And the proposed I-829 and I-526 fees are the highest of any of the proposed fees. The USCIS has not shown why the percentage increase for EB-5 filing fees should be higher than others. There is no projected change in workload per application that would justify such a high fee increase.

The proposed fee increase for I-829 petitions is particularly outrageous. Currently, the filing fee for I-829 petitions is slightly lower than for I-526 petitions (\$475 v. \$480). The proposed rule would increase the I-829 filing fee to \$2,850, more than double the proposed fee for I-526 petitions. The USCIS has given no justification for why I-829 petition fees should increase so much. Based on the experience of IIA members, I-829 petitions generally should take less time to adjudicate than I-526 petitions. I-526 petitions require an investor, among other things, to show the proposed project in which he or she has invested or plans to invest, his or her lawful source of funds, and a detailed business plan showing how the money invested is or will be at risk in a new commercial enterprise and how the investment will create or save at least ten jobs. 8 C.F.R. § 204.6. By contrast, I-829 petitions merely require an investor to show that his or her money has been invested and at risk for two years, and that the necessary number of jobs has been created or saved. 8 C.F.R. § 216.6. Based on the sheer quantity of paper submitted with I-526 petitions compared with I-829 petitions, the filing fee for I-829 petitions should be half the I-526

fee, not twice as much.

In sum, the proposed I-526 and I-829 fee increases are too high and unjustified. The USCIS should not raise its fees on the backs of EB-5 investors. The fee proposal should be withdrawn and reconsidered.

Sincerely,

Stephen Yale-Loehr
IIA Executive Director