[redacted]

From: [redacted]
Sent: Wednesday, February 27, 2013 4:58 PM
To: [redacted] L
Subject: RE: Gulf Coast Renewable & Redevelopment LLC

[redacted]

Thanks for your feedback and for the additional information.

1. I believe Gulf Coast submitted a proposal from MDA indicating they could potentially receive incentives for this project valued at $29 mil or $10.7 mil over a 10 year period – the amount was stated differently in certain parts of the record.

2. We have not reached out to the State of Mississippi and we do not know the location of the solar plant. We asked the applicant to provide the specific location – and their response did not specify a location – the response was vague.

We can discuss further when we all meet tomorrow.

Thank you,
[redacted]

From: [redacted]
Sent: Tuesday, February 26, 2013 11:00 AM
To: [redacted]
Cc: [redacted]
Subject: RE: Gulf Coast Renewable & Redevelopment LLC

This actually looks pretty good.

1. I was curious whether Gulf Coast had applied for special tax treatment in Mississippi (See Franchise Tax Exemption for Clean Energy Business Enterprises) which typically applies to "clean energy" manufacturing so long as there is a minimum of a 50 million dollar investment and so long as 250 jobs are created. The Franchise Tax Exemption for Clean Energy Business Enterprises is authorized under Miss. Code Ann. Section 57-113-1 et seq.

More information is available from "Mississippi Development Authority, Financial Resources Division, Post Office Box 849, Jackson, Mississippi 39205; financial@mississippi.org."
Looking through the Mississippi revenue code, I noticed that there were instructions on how to apply for the incentive:

HOW TO APPLY FOR THE INCENTIVE
Before construction or acquisition of the buildings for the location or expansion of the business enterprise begins, you must apply to the MDA for certification of eligibility for the incentive. The application to MDA must contain the following information:
• An overview of the project, including:
MS Tax Incentives October 2011
o the selected site,
o the number of jobs proposed, and
, the length of time necessary for the company to meet its investment and employment requirements;
• A two (2) year business plan, which shall include pro forma financial statements for the project;

- Data supporting the expertise of the project's principals:
- An acknowledgment that the business entity will be required to provide annual documentation to demonstrate that he minimum job requirement is being maintained; and
  Such other information as may be requested by the MDA.

It may be worth having someone check with the State of Mississippi as to whether any such application has been tendered... might be a possible location for additional information... or perhaps the applicants already discussed this? I only ask because I cannot imagine they would pass up an opportunity to be "tax free."

2. I was also curious about the building permit/licensing issue. Has USCIS reached out to the State of Mississippi (or the relevant city authority) directly to discuss this? **For example**, in the city of Jackson Mississippi, "The Building Permit Office issues construction permits, demolition and sign permits. *A permit is required whenever an owner or the owner's authorized agent (usually a contractor) propose to construct, enlarge, repair, move, demolish, or change the occupancy of a building or structure*, including electrical, plumbing, gas, heating and air conditioning, fire sprinkler and fire extinguishing systems, signs, elevators, incinerators, furnaces or boilers. A permit is also required for fences, tents satellite dishes or portable storage buildings." See http://www.city.jackson.ms.us/government/planning/buildingpermits
   So I cannot say for certain what may be required in another location outside of Jackson...

From: [redacted]
Sent: Monday, February 25, 2013 2:21 PM
To: [redacted]
Cc: [redacted]
ubject: FW: Gulf Coast Renewable & Redevelopment LLC
Importance: High

[redacted]

Please see attached [redacted]'s Supplemental Analysis of NOID Response that addresses three economic issues. In addition, [redacted] has listed below four adjudicative issues that we would like to raise during the interview. Would you please assist in reviewing and let us know if we are on the right track?

I'd appreciate your input/feedback by Monday, 3/4.

Thanks,

[redacted]

From: [redacted] S
Sent: Monday, February 04, 2013 3:45 PM
To: [redacted]
Subject: RE: Gulf Coast Renewable & Redevelopment LLC

[redacted]

In addition to requesting RC designation, the applicant also seeks approval of an actual project w/ an exemplar I-526. See below re: issues discussed in the NOID (my responses are in green):

- **NOID:** The business plan does not provide a detailed, credible and verifiable expenditure plan that delineates how the EB-5 funds will be spent by the JCE in the job creating activities; In response to the NOID, it is still unclear how all of the EB-5 funds will be infused into the project. The applicant seeks $22.5 million in EB-5 funding. The applicant shows where part of the EB-5 funds will go ($15.76 million), but does not specify how the rest of the EB-5 funds ($6.74 million) will be used (Adjudicative and Econ issue).

- **NOID:** The record indicates that the manufacturing plant will be constructed in either the City of Poplarville or Picayune in Pearl River County, Mississippi. If the applicant is requesting the approval of an exemplar Form I-526, the location of the manufacturing plant should have been selected; The project location is still unspecified. The initial location of the project plant was in Louisiana. In response to the RFE, the applicant indicates that there has been a change in the location from Louisiana to Mississippi. Still, the applicant does not indicate a specific location in response to the NOID. The applicant indicates that the project will be in Poplarville, MS – but, does not provide a specific address. A construction estimate is provided for a building in Poplarville, MS – but, the estimate does not include an address and the applicant does not specify that this is where the project plant will be located. Thus, it is unclear where the job-creating activity will ultimately take place and that it will be in a TEA (Adjudicative issue).

- **NOID:** The record lacks evidence that the Regional Center has obtained the requisite permits necessary to move forward with construction of the manufacturing plant in the event of the approval of the Regional Center; The applicant provided an email from a representative of the Mississippi Development Authority that indicates that no permits and licenses are necessary to modify an existing building. However, the email is vague and does not specify what building is being discussed. In addition to not knowing where the project will be, this evidence is insufficient in establishing that no permits and licenses are required (Adjudicative issue).

- **NOID:** The business plan indicates that of the total $38 million cost of the project, $22.5 million will be funded by EB-5 investors and $15.5 million will come from non EB-5 funds. However, the record does not contain evidence that any of the required $15.5 million has been secured by the Regional Center. In addition to this issue, the total project cost is inconsistent and unclear in the record. A RFE and NOID were issued, and it appears that w/ each response to USCIS' requests for evidence, there have been changes to the project – including the total project cost. Thus, it is unclear how much non-EB-5 funding is needed for the project. In response to the NOID, it appears that the applicant will obtain non-EB-5 funding from Mississippi Development Authority's Proposal for tax incentives for the project over a 10-year period. However, this evidence is insufficient in showing that the funds have been secured, as it is a proposal (Adjudicative issue).

Thanks,

[redacted]

[redacted]

rom: [redacted] on behalf of EB5 Counsel Review
Sent: Wednesday, July 31, 2013 2:22 PM
To: [redacted]
Subject: FW: LA Film IV denial review (Korean escrow)
Attachments: Los Angeles County Reg Cntr IV Denial (Korean Escrow) (OCC Comments 130122).doc

[redacted]

Hi [redacted]

[redacted] Unless you or the officers have any questions, no need for me to review again.

Thanks,

[redacted]
Department of Homeland Security
U.S. Citizenship and Immigration Services
)ffice of Chief Counsel – [redacted]
E-Mail: [redacted]
Tel (Direct): [redacted]

From: [redacted]
Sent: Thursday, January 17, 2013 1:53 PM
To: EB5 Counsel Review
Cc: [redacted]
Subject: LA Film IV denial review (Korean escrow)

Please review the LA Films IV denial for Korean escrow accounts. [redacted]

If you have any questions, please feel free to contact me.

Thank you,

[redacted]
California Service Center
[redacted]

[redacted]

From: USCIS Immigrant Investor Program
Sent: Wednesday, March 13, 2013 9:54 AM
To: [redacted]
Subject: FW: Expedite Request for SLS Lender, LLC
Attachments: expedite request; RE: Expedite Request - SLS Lender; RE: Expedite Request for [redacted] expedite request

[redacted], attached are the four e-mails requesting more information that were sent out to the attorneys for SLS Lender.

[redacted]

From: USCIS Immigrant Investor Program
Sent: Thursday, January 24, 2013 10:53 AM
To: [redacted] for SLS Lender, LLC

Okay, all the e-mails have been sent out (see attached).

[redacted]

From: [redacted]
Sent: Thursday, January 24, 2013 9:51 AM
To: [redacted]; USCIS Immigrant Investor Program
Subject: FW: Expedite Request for SLS Lender, LLC

[redacted] can you please make sure that the following email gets sent out to all the respective attorneys and [redacted] the principal petitioner for the Las Vegas Regional Center today.

Here is the approved language:

Mr. / Ms. ,

At this time, additional information is required to facilitate the adjudication of your request for expedited processing of the I-526 petition(s) associated with SLS Lender, LLC. Please provide the following:

- Copies of the executed agreement with JP Morgan securing funds held in escrow awaiting twenty three (23) EB-5 approvals.
- Explanation and evidence of efforts made to obtain an extension on the agreement with JP Morgan. If this is not an option for SLS Lender LLC, please provide an explanation with supporting evidence as to why this is not feasible.
- The expedite request indicates potential for severe financial loss and that expediting the adjudication of the petitions is of compelling interest to the US. Considering the nature and investment requirements of the immigrant investor program, please explain and provide evidence that demonstrates how this potential for loss is extraordinary and should mandate the prioritization of these petitions over other EB-5 investor petitions.

Respectfully,
USCIS Immigrant Investor Program

Thank you.

[redacted]
[redacted]/EB5
California Service Center
O: [redacted]
BB: [redacted]

From: [redacted]
Sent: Wednesday, January 23, 2013 5:34 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Expedite Request for SLS Lender, LLC

Hi [redacted]

This looks great. Thanks for all your hard work on this.

Thanks,
[redacted]

From: [redacted]
Sent: Wednesday, January 23, 2013 08:26 PM Eastern Standard Time
To: [redacted]
Cc: [redacted] W
Subject: FW: Expedite Request for SLS Lender, LLC

[redacted]
We have received several expedite requests submitted for the Las Vegas Regional Center (NCE SLS Lender, LLC). My last count was 17 requests. (There also appears to be several different names being used for the NCE, but we have confirmed all the requests are related.) We are planning to send the same response to all requesters using the Immigrant Investor Mailbox. Just as a side note, there are currently only 47 of the potential 230 I-526 petitions filed at this time.

[redacted]

FW: Gulf Coast/GreenTech

From: [redacted] <USCIS/EXCHANGE ADMINISTRATIVE GROUP [redacted]>
Sent: 5/23/2013 3:04:23 PM +00:00
To: [redacted] <USCIS/EXCHANGE ADMINISTRATIVE GROUP [redacted]>
Subject: FW: Gulf Coast/GreenTech

Let's discuss before we move forward.

[redacted]

[redacted]

U.S. Citizenship and Immigration Services

From: [redacted]
Sent: Thursday, May 23, 2013 11:03 AM
To: [redacted]
Cc: [redacted]
Subject: Gulf Coast/GreenTech

[redacted]

CSC is clear to continue processing files associated with Gulf Coast. Let's make sure we frame the fraud related concerns with this case so they can be considered during the adjudicative process.

[redacted]

I have included you on this message as this RC has received some press. I think USCIS should prepare for potential negative press if we approve any investors.

[redacted]

[redacted]

HQ/FDNS

PR_RIM_MSG_ON_DEVICE_3_6: true
PR_RIM_MSG_REF_ID: -1759571556

[redacted]

PR_RIM_PAGER_TX_FLAG:	true
PR_RIM_MSG_STATUS:	1
PR_RIM_MSG_FOLDER_ID:	-226
PR_RIM_INTERNET_MESSAGE_ID:	<2774F848E51B5841B2345CF31E5755950BA393084E@DC2-EXMB-C1-07.cis1.cisr.uscis.dhs.gov>

[redacted]

[redacted]

Subject: FW: Deference Review Memo - LA Films IV
Attachments: Los Angeles County Regional Center IV.pdf

From: [redacted]
Sent: Friday, March 22, 2013 4:50 AM
To: [redacted]
Cc: [redacted]
Subject: Deference Review Memo - LA Films IV

Please find attached the deference review memo related to LA Films IV. I would appreciate any estimate of the processing timeframe for the affected cases. Provided the cases are not otherwise on hold, I believe it important to provide timely action on these cases.

Further, since the Korean escrow issue was not involved in the prior favorable determination (according to the call), thus deference is not applicable, please advise if it would be helpful to have a separate discussion on those 12 or so cases.

[redacted]
Department of Homeland Security | U.S. Citizenship and Immigration Services

[redacted]

From: [redacted]
Sent: Wednesday, December 05, 2012 12:34 PM
To: [redacted] USCIS Immigrant Investor Program; [redacted]
Cc: [redacted]
Subject: Re: SLS Las Vegas

[redacted], as always, you ROCK!! This is exactly the answer I was looking for. I will tell to file the expedite if they want but will add that given the history of this project, there is absolutely no guarantee it will be expedited, as it would not be fair to others including others in NV that filed before them.

Thanks again, as always.

[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 05, 2012 03:18 PM Eastern Standard Time
To: [redacted] USCIS Immigrant Investor Program; [redacted]
Cc: [redacted]
Subject: RE: SLS Las Vegas

[redacted]:

As you can imagine, this is an impossible question to answer. Similar to any adjudication/decision to expedite/etc., we can never say "yeah" or "neah" without actual items/reasons to review and adjudicate. In general, if an entire project is at the risk of being lost because of an articulable reason, that would go a long way to an argument of severe financial loss.

That said, this Regional Center was approved in May 2010 and they just started filing individual investor filings... The earliest according to iCLAIMS being filed October 2, 2012. After a quick read of the document, they reference a May 2012 Credit agreement that provided the November 2, 2012 deadline and the February 4, 2013 extension option. In my humble opinion, if they didn't have investors lined up when they signed that agreement, and they didn't start filing individual investor filings until October 2012, I think it is fair to say that USCIS has not caused any of this to happen (i.e. long delays, TO holds, etc.) and therefore, how much do we exercise our discretion to grant expedites when it appears that it was their business/contractual agreements and negotiations that lead to the issue? Why would you sign a May 2012 document with a deadline to secure investors by November 2012 if you don't have the investors? If you do, then why did it take from May to October to get investors to file 526's? I just think I would have a lot of questions as to why we at USCIS should expedite something based on what could possibly be argued a bad business deal/negotiation?

I provide this analysis only as my "off the record" thoughts and these by no means should be used as any type of decision. The fact is, it is up to the Director of the CSC to make decisions regarding expedites. As such, if this RC wants to file expedite requests, they should do so formally and then everything can be weighed in its entirety by the CSC.

I have looped in [redacted] as the [redacted] for [redacted] visibility.

Hope that helps.

[redacted]

From: [redacted]
Sent: Wednesday, December 05, 2012 2:04 PM
To: [redacted]; USCIS Immigrant Investor Program
Cc: [redacted] E
Subject: Fw: SLS Las Vegas

Hey [redacted]:

Hope you guys are well. Can you do me a favor and please see the email below from Senator Reid's staffer and please let me know if any of the issues he states below would meet any of our Expedite criteria? I need to call him back this afternoon to let him know, so that I can let him know the petioners need to file the expedite request through normal channels, as always, but as you can imagine they want to able to let them know whether it can or can't be expedited for any of those reasons.
Thanks as always in advance.

[redacted]

[redacted]

From: [redacted] (Reid) [redacted]@reid.senate.gov]
Sent: Wednesday, December 05, 2012 12:37 PM Eastern Standard Time
To: [redacted]
Subject: SLS Las Vegas

Hi [redacted] –
I left you a message yesterday. Here's the information on the EB-5 petitions I was talking about on Friday for the SLS Resort, formerly the Sahara Hotel.

The new owners of the hotel are working with the American Dream Fund - Las Vegas Regional Center. I know that in Los Angeles, this group has been rather successful with the Immigrant Investor program. LVRC has submitted 25 I-526s, and is in the process of submitting 205 more petitions. The petitions support the $415M project, using a blend of financing from JP Morgan Chase (about $300M) and the EB-5 Program ($115M) to finance the project.

There are two main things that you need to know about here and necessitate the expedite of the processing of those 25 visas. First, JP Morgan Chase has said that if they don't see 10% of the visas approved by mid-January (so they can release the money from escrow in early February), then they will pull the financing from the project. The attorneys for the project sent me the whole financing agreement, and I can send it to you if you want, but it is about 200 pages long. For your convenience, I pulled out the section with the pertinent information and included it in the attachment.

Second, the project has secured several permits and licenses from Clark County that will expire in January. Complicating things, the ordinances that govern the permits have changed, so if the money is not released and construction does not start by early February, the project will be forced to redo many of its permits. These things aren't cheap either; it could cost the project several hundred thousand dollars if they are forced to replace expired permits.

I'll follow up with a phone call, but I wanted to make sure that you had all this information. Do you think that USCIS could expedite these petitions?

[redacted] | [redacted] | U.S. Senator Harry Reid

ADF | American Dream Fund, LLC
Los Angeles | Orlando | Las Vegas | Portland | EB-5 Regional Centers

December 5, 2012

Sent via Email

[redacted]
Office of the Honorable Senator Harry Reid
[redacted]
Carson City, NV 89701

RE: SLS Hotel & Casino Las Vegas | EB-5 Project Timeline

[redacted]

My name is [redacted] and I am one of the principals of the American Dream Fund, LLC ("ADF"), the proprietors of the USCIS designated Las Vegas Regional Center encompassing Clark County, Nevada. Pursuant to your request, I am delighted to provide some background and context regarding the events leading up to our current request for the expedited adjudication of twenty three (23) I-526 visa petitions currently pending with the United States Citizenship and Immigration Service ("USCIS") for the SLS Hotel & Casino Las Vegas. The total project will involve two hundred thirty investors (230), but the approval of a small minority, twenty three (23) EB-5 visa petitions, is critical to secure the project's senior financing that will permit the reconstruction and rebranding of the historic Sahara Hotel and Casino on Las Vegas Boulevard. If approval of the 23 investors does not occur prior to February 4, 2013, the senior financing capital currently held in escrow will be withdrawn from the project and the entire project, including all 230 investors, will be in jeopardy. The old Sahara Hotel closed in 2011 and its renovation and reopening as the SLS Hotel & Casino will create eight thousand six hundred (8,600) new fulltime, permanent jobs in Clark County, Nevada.

Document Preparation

The EB-5 visa petition must be accompanied by a series of business, economic, and securities offering documents that describe the details of the new commercial enterprise, how the enterprise will create full time, permanent employment, and how investment meets and obeys the relevant immigration and securities regulations. Last spring, Stockbridge engaged ADF and EB-5 professionals to prepare the required, and otherwise necessary, project documents. Stockbridge engaged H. Ronald Klasko, former Chair of the EB-5 Committee of the American Immigration Lawyers Association and named partner with the law firm of Klasko, Rulon, Stock & Seltzer, LLP. Mr. Klasko led a team of highly qualified and experienced EB-5 professionals, which included [redacted] of Evans, Carroll & Associates to provide the economic modeling and job creation analysis; [redacted] of Arnstein & Lehr, LLP to provide the relevant securities and corporate formation documents; and [redacted] of Davis, Polk & Wardwell, LLP to provide corporate transaction and secured lending documents. In total, the project documents exceed a thousand pages in length and required several months to complete, which lead into early summer of 2012.

Impacts of Evolving USCIS Policies

Shortly before the business plan, economic analysis, and offering document were prepared for the SLS project, in late February 2012, USCIS published a memorandum announcing the recent addition of professional economists to its EB-5 review board, who revisited the topic of whether specific categories of job creation could be credited toward the requirements of the individual investors pursuing the EB-5 visa. This is commonly referred to as 'Tenant Occupancy.' Little guidance was provided and only through unpublished individual Requests for Evidence issued to other projects where greater details of the new Tenant Occupancy policy made known to the EB-5 community.

During the course of the SLS Hotel & Casino project document preparation, many of the project professionals attended the May 1st, 2012 USCIS quarterly stakeholder meeting held in Laguna Niguel, California in order to learn about what may be needed in order for the SLS project to comply with Tenant Occupancy. At such time, USCIS announced that Tenant Occupancy questions would be deferred to a special stakeholder meeting involving the recently added USCIS economists. On June 22nd, 2012, USCIS hosted a public engagement featuring two economists who work for the EB-5 immigration program. The economists outlined new requirements of EB-5 projects necessitating extrinsic evidence of market demand (critical to verification of "new" jobs and not job shifting), market and competitor analysis, pro forma financial data, and validation of construction timelines. The economic analysis accompanying the EB-5 business plan must reflect the financial and market data obtained through non-related outside sources.

As a result, ADF engaged PKF Consulting, a national firm of management consultants, industry specialists, and appraisers who provide a full range of services to the hospitality, real estate, and tourism industries. During the month of July, PKF prepared an appraisal and market feasibility study for the SLS Hotel & Casino Las Vegas. The results of which were provided to [redacted] to incorporate and revise the economic analysis in accordance with new USCIS requirements. This resulted in an overall superior job creation analysis, but at the expense of a substantial delay.

The Offering and Subscription Process

The SLS Hotel and Casino became available for subscription in earnest in early August after the project documents were finalized to reflect the new Tenant Occupancy requirements. Following their own, independent due diligence, several investors from China subscribed and began the process of preparing their individual I-526 visa petition. Two significant factors influence the speed for which the individual investor can prepare their visa application: (i) the source of funds analysis to evidence the lawful sources of EB-5 investment capital, and (ii) currency constraints that limit the amounts of capital that can be expatriated out of China. These two factors typically take up to 90 days to prepare correctly. Given the importance of timeliness approvals and in order to gain twenty-three (23) approvals as quickly as possible, Mr. Klasko was instructed to "go the extra mile" to produce high caliber/readily approvable EB-5 visa petitions to facilitate smooth adjudications. Beginning in September, and leading into the

forthcoming new year, EB-5 investors continue to subscribe and file I-526 visa petitions for investment into the SLS Hotel & Casino Las Vegas.

Conclusion

The SLS Hotel and Casino will reinvigorate a historic Sahara Hotel & Casino, a Las Vegas icon, and bring robust job creation to Clark County, which currently experiences unemployment in excess of one hundred fifty percent (150%) of the national average. Unexpected delays and increasing EB-5 processing times, however, now threaten the three hundred million ($300,000,000) senior financing secured by JP Morgan that is held in escrow waiting for twenty-three (23) EB-5 approvals. The capital together is required to launch and complete the construction of the SLS Hotel and Casino. In the event that twenty-three (23) investors are not approved in time, EB-5 capital will not be available for the venture's use by February 4, 2013 and the senior construction facility proceeds will be returned to the JP Morgan lenders, the related credit agreement will be terminated, which will result in an indefinite delay of the project, loss of job creation, loss of investment and put all 230 investor's immigration status in jeopardy.

We appreciate expedited processing in limited special cases, and for this reason, we do not ask that all EB-5 cases be reviewed ahead of other immigration filings. Rather, we seek only to get a critical mass, twenty three (23) cases approved, after which, the remaining two hundred cases (200) can be processed under the traditional first-in, first-out basis which governs USCIS case handling.

We appreciate your attention to the matter and any assistance that can be provided in furtherance of creating jobs in the greater Las Vegas area.

Kindest Regards,

[redacted]

Principal | American Dream Fund, LLC
Las Vegas Regional Center

Attachment: Timeline of Dates & Events

From: [redacted]
Sent: Tuesday, January 29, 2013 4:09 PM
To: [redacted]
Cc: [redacted]
Subject: RE: SLS Las Vegas USCIS Response Letters

All:

I think it is important to note that any decision to expedite solely means that we will make a decision on a case as expeditiously as possible, but will still require security checks to be cleared, case otherwise must be approvable, etc. As such, even if the decision to expedite was granted, we still would work each case to 100% completion before issuing a decision. That means that some might get expedited RFE's, approvals, denials, security checks, etc., but it shouldn't mean that we have otherwise determined every case is approvable.

Hope that helps.

[redacted]

[redacted]
Service Center Operations
U.S. Citizenship and Immigration Services
Department of Homeland Security
[redacted]

From: [redacted]
Sent: Tuesday, January 29, 2013 4:04 PM
To: [redacted]
Cc: [redacted]
Subject: RE: SLS Las Vegas USCIS Response Letters

[redacted] – can you confirm that the expedite request has been granted?

From: [redacted]
Sent: Tuesday, January 29, 2013 3:51 PM
To: [redacted]
Cc: [redacted]
Subject: Re: SLS Las Vegas USCIS Response Letters
Importance: High

[redacted]

You indicated that the expedite request has been approved, is this true?
I don't know of any circumstance in which expedite request are approved prior to security checks being conducted and cleared; are you sure that the request was approved?
We have received information that there are significant security/criminal suspicions on several of the I-526 applicants. This is just on the few that we have checked, there is high side information on one applicant and others have highly suspicious money transfersj such that the FBI has recommended that USCIS review the BSA data prior to approving these cases. Due to these finding, I highly recommend denying the request and submitting every applicant filing under

[redacted]

From: [redacted]
Sent: Monday, December 17, 2012 2:28 PM
To: [redacted]
Cc:
Subject: [redacted]

Attachments: Los Angeles County Reg Cntr IV Mandamus Denial WAC1190602566.doc

[redacted]

Attached is the denial for [redacted]. We intended to deny all LA Film IV cases (that is the denial template that [redacted] references below). The denial that is attached is specifically written for [redacted] to incorporate the NCE issues as well as the source of funds issues related to this case. Please let me know if you have any questions.

As a side note, the other two cases listed in the subject line are currently with our clerical staff being updated. I will forward you PDF copies of the RFEs as soon as I receive them.

Thanks,
[redacted]

From: [redacted]
Sent: Friday, December 14, 2012 11:45 AM
To: [redacted]

[redacted]

Hello [redacted]

Can you please see [redacted] response below and email response related to this case. It seems that with some minor suggestions, the notice was ok to move forward with? Let me know what CSC's next steps are? (e.g. Does CSC agree that the notice is ready and final? If so, OCC will start reviewing it for clearance and coordinate with DOJ for the litigation). Thanks!

[redacted]

(Adding [redacted] since the earlier email appears addressed to her).

From: [redacted]
Sent: Friday, December 14, 2012 11:00 AM
To: [redacted]

[redacted]

Hi [redacted]

Please see attached email where I told the CSC that the notice was good to go based on the limited issues that I had previously raised. Not sure why they still think that the matter rests with me.

(I did just check the previous draft back in on the ECN, which I guess I previously forgot to do.)

Hope all is well.

Thanks,

[redacted]

From: [redacted]
Sent: Friday, December 14, 2012 1:34 PM
To: [redacted]
[redacted]

[redacted]

1. We are in litigation over the following case: [redacted] (WAC11-906-02566)
2. It appears that a proposed decision was forwarded to SCOPS for review/approval?
   a. [redacted] had checked out a draft proposed decision in ECN which may still be "checked out" ?).
   b. Can you tell me if you are finishing your review, or if it is being handed off? (I have to get that decision ready for issuing since we have a lawsuit.)

Thanks [redacted] and [redacted]. I just need to know what to tell CSC and what CSC thinks it is allowed to do to move forward.

[redacted]

From: [redacted]
Sent: Thursday, December 13, 2012 7:18 AM
To: [redacted]

Hi [redacted]

I had a chance to review #2 file. Although there is no TECS record in the file, it appears that the originating office is [redacted] office. I contacted [redacted] to confirm but I got his out of office reply. This petition was not filed by suspect attorney mentioned in the notes; as such, his petition "should not be given a high sense of scrutiny" where source of funds is concerned. However, since there are other issues related to the project itself, petitions will most likely end up being denied once the notice has been cleared by SCOPS.

P.S. The petitioner was in the U.S. between Nov 3-22, 2012. He is currently outside the U.S (...not sure if this is even relevant).

[redacted]

From: [redacted]
Sent: Wednesday, December 12, 2012 2:58 PM
To: [redacted]
Cc: [redacted]

Responses are in purple.

From: [redacted]
Sent: Wednesday, December 12, 2012 1:56 PM
To: [redacted]

Thanks [redacted]

1. [redacted] **(WAC12-901-89824)**
   a. Please let me know when the RFE is prepared. Do you know how quickly this can be accomplished? I will need to see it **BEFORE** it is issued.

   I've talked to [redacted] (CFDO) who has the file. He willreturn it to us. We should be able to get an RFE within a week. We will email it to you before it goes out.

2. [redacted] **(WAC11-906-02566)**

Please let me know "who" at SCOPS is reviewing. I will need to clear the notice **BEFORE** it is issued.

   a. This document was re-posted in ECN on 11/7/2012. [redacted] had checked out and reviewed an earlier version which is still "checked out" to [redacted]. There has been no action since November 7.
   b. Can you tell me who the originating office for the TECS record is?

   I have to pull the file and review before I can respond. I will go ahead and request [redacted] file

3. [redacted] **(WAC12-901-84108)**
   a. Please let me know when the RFE is prepared. Do you know how quickly this can be accomplished? I will need to see it **BEFORE** it is issued.

   Same as above. [redacted] has the file but will return it to me.

4. Can you give me an estimate for the total number of cases on "hold" which relate to the CFDO/BCU hold for the RC principal? (For #s 1 and #3 above-below)(How many I-526s, etc., are awaiting resolution for the RC principal?)

#1 petitioner invested in Neil Reid Atlanta LLP. 5 petitions were received and two of them were denied. There is not sufficient notes in iClaims to tell how many investors are expected to invest. #3 NCE is Promised Land GCFID Partners LP. 5 pets receieved and all of them are pending. Per iClaims notes, 12 investors are expected to invest.

(Adding [redacted]. Adding [redacted]

Thanks again.

[redacted]

From: [redacted]
Sent: Wednesday, December 12, 2012 1:06 PM
To: [redacted]

Importance: High

[redacted]

1. This petition was received on 2/10/2012. The investment has been made into a RC whose principal is of suspect. Both CFDO and BCU have requested that we hold any approvals - RFEs and Denials can go out. According to notes in

iClaims, NCE was not established as a legal entitity, and it was one of the issues for denial of 3 other cases. Since we cannot approve it anyway (eligibility at the time of filing), this can be be adjudicated (RFE and denial) immediately.

2. This pet. was received on 8/8/2011. It was RFEd and a response was received - LA Films IV. The RC is the subject of a TECS record. Attorney of record and the company that prepares reports for petitoner's financial ability to invest are suspected to be involved in fraudulent filings. It appears that these cases will eventually be denied - a denial notice has been prepared and is being reviewed by SCOPS.

3. This was received on 2/7/2012. This belongs with the same RC as No. 1 but with a different NCE. As such, there is an adj hold by CFDO and BCU for the RC principal. However, we have recently issued (Dec 7 and 12) RFEs on 2 or 3 other cases. We can issue one for this petitoner as well.

As stated earlier, #1 and #3 can be issued RFEs. Please let us know if you want us to proceed with such action.

[redacted]

From: [redacted]
Sent: Wednesday, December 12, 2012 11:10 AM
To: [redacted]
Importance: High

Hi [redacted]:

We have (3) new EB-5 litigation cases. Copies of the federal complaints attached. Can your team provide us with the status for each of these cases and whether they might relate to any significant pending EB5 issue (e.g. Tenant Occupancy, etc.)? Thanks.

1. [redacted] (WAC12-901-89824) – pending since February 2012?
2. [redacted] (WAC11-906-02566) – pending since August 2011?
3. [redacted] (WAC12-901-84108 – pending since February 2012?

Adding [redacted] (EB5 litigation POC?). Thanks again.

[redacted]

[redacted]
Office of Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
[redacted]

[redacted]

From: [redacted]
Sent: Friday, January 28, 2011 9:52 AM
To: 'luried@[redacted]
Subject: [redacted]
Attachments: GCFM Decision dated 012811.pdf

[redacted],

Yes please call my office number [redacted] today at 11 am EST.

Please find a courtesy copy of the GCFM decision that will be mailed by the California Service Center Director to your attention today.

Thank you,

[redacted]
Service Center Operations

From: luried@[redacted]
Sent: Friday, January 28, 2011 9:28 AM
To: [redacted]
Subject: Re: [redacted]

We are on for 11am. What number should I call?

Dawn

From: Lurie, Dawn (Shld-TCO-Imm)
To: '[redacted]
Sent: Thu Jan 27 14:31:12 2011
Subject: Re: [redacted]

Sorry I missed your call. I tried you back. [redacted]

[redacted]

This is very important of course so I will make it work. If there is any way to have a quick call today to update me on the Director's "plan", it would be much appreciated. I received a very high end recollection of the discussion. My goal is facilitate closing this out in the most efficient manner possible.
If not we can do tomorrow if I don't leave, or if I do then late afternoon.
Thanks for your patience.

Many thanks,
I am out trying to stay warm and heading to my office.

Dawn

From: [redacted]
To: Lurie, Dawn (Shld-TCO-Imm)
Sent: Thu Jan 27 12:41:31 2011
Subject: FW: [redacted]

Dawn,

Per my voice messages on your office and cell phone, I am reaching out to you see what your availability for tomorrow (@11 am Friday, January 28, 2011) is for a phone call to discuss.

Please let me know if at your earliest convenience.

Thank you,

[redacted]
Service Center Operations
[redacted]

From: [redacted]
Sent: Tuesday, January 25, 2011 11:43 AM
To: [redacted]
Subject: RE: [redacted]

Dawn,

Unfortunately, I do not have an update as to meeting or outcome on a decision.

As soon as I get any information, I will let you know.

Thank you,

[redacted]
Service Center Operations
[redacted]

From: luried@[redacted]
Sent: Monday, January 24, 2011 10:55 PM
To: [redacted]
Cc: [redacted]
Subject: RE: [redacted]

Dear [redacted]:

I was wondering if you had any news for me today? I dared not call Gulf today without anything to tell them:)
Would it be possible to update me on the meeting between Director Mayorkas and Secretary Napolitano that was scheduled for today?
As you know we are desperately seeking an adjudication of the request to reconsider the Regional Center amendment request.

Thank you so very much for your call on Friday-it was very gracious of you to reach out directly and the importance of that gesture was not lost on me.

I am in my DC office tomorrow and can be reached on Cell any time or my office can find me-numbers below.

Dawn M. Lurie
Shareholder
Greenberg Traurig LLP | 1750 Tysons Boulevard, Suite 1200 | Tysons Corner, VA 22102
2101 L Street, Suite 1000 | Washington D.C. 20037
Tel [redacted]
[redacted] | www.gtlaw.com

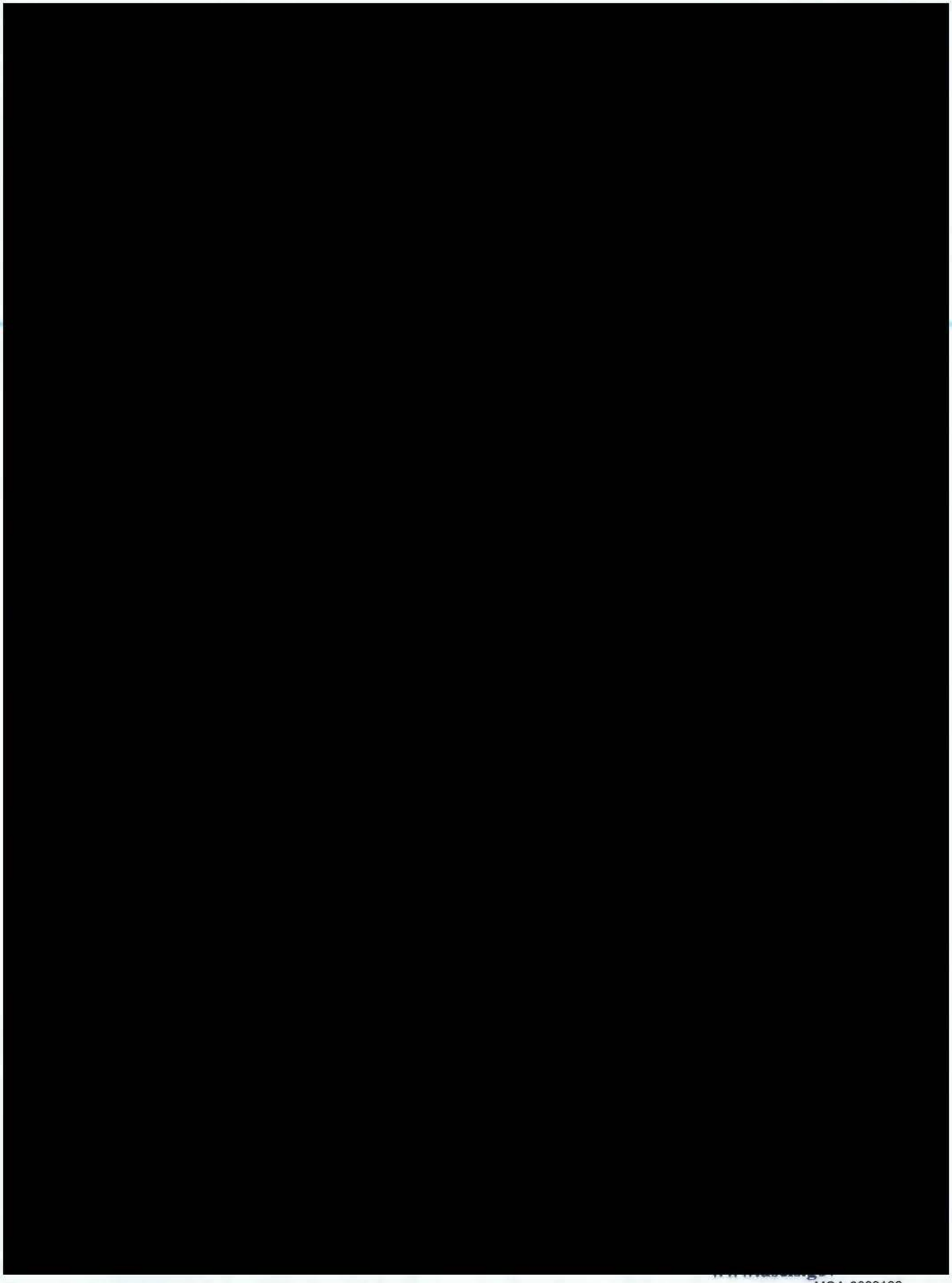
From: [redacted]
Sent: Friday, January 21, 2011 12:12 PM
To: Lurie, Dawn (Shld-TCO-Imm)
Subject: [redacted]

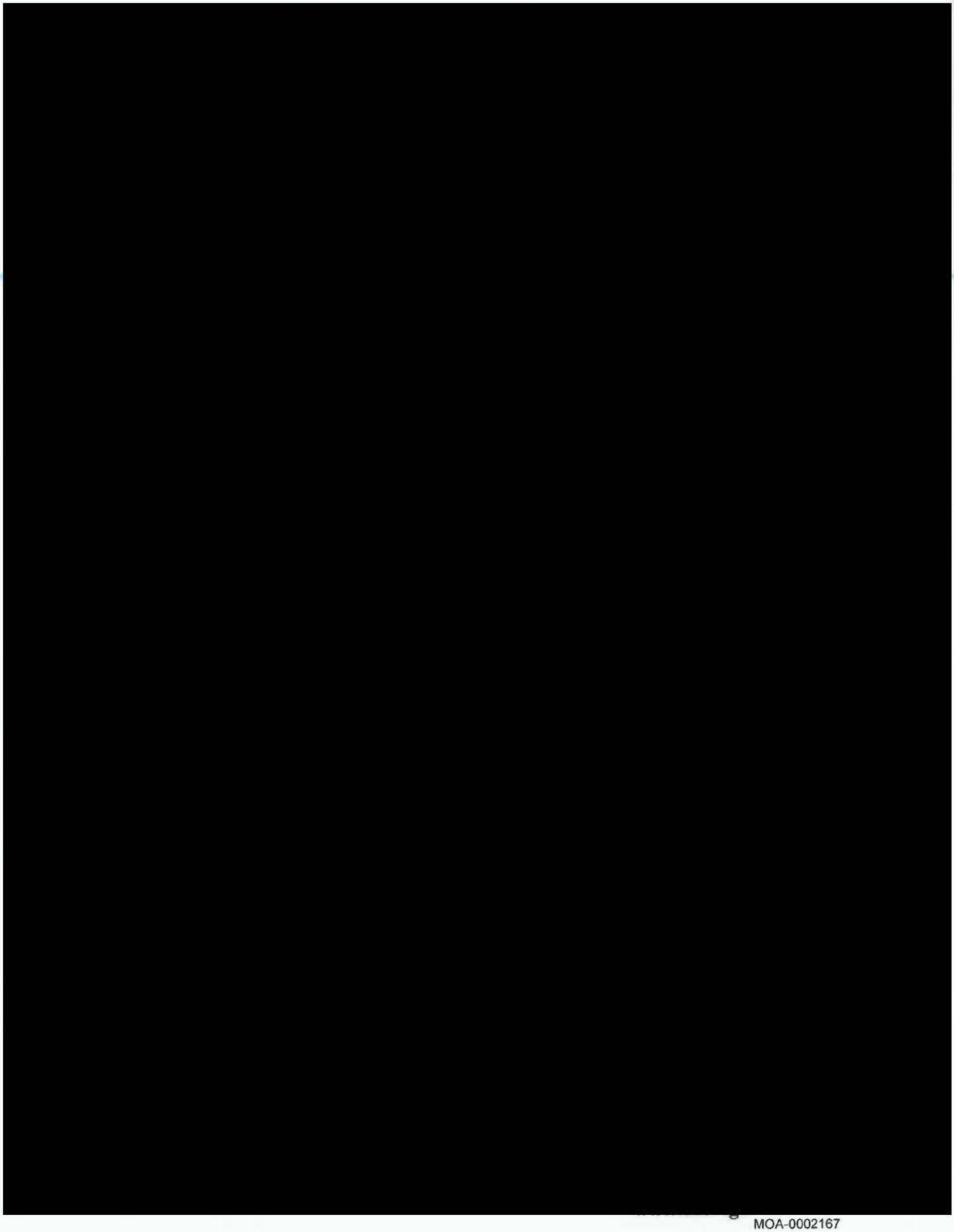
Dawn,

Please find my email address: [redacted]

Thank you,

[redacted]
Service Center Operations
[redacted]





Attachment:

From: Gofman, Steve [mailto[redacted]]
Sent: Thursday, November 10, 2011 08:43 PM
To: [redacted]
Subject: EB-5 program / Sony Pictures Entertainment

Dear [redacted]

Following up on our conversation this morning, I can confirm the following answers to your questions:

1. Sony Pictures Entertainment does still intend to borrow under the loan agreement
2. Sony Pictures Entertainment is committed to matching the EB-5 funds per the program guidelines.

Please let me know if you have any questions.

Best regards,
Steve

STEVE GOFMAN | Senior Vice President, Legal Affairs
Corporate Legal Department
SONY PICTURES ENTERTAINMENT INC.
[redacted]
Culver City, CA 90232
[redacted]
Email: s[redacted]

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

APR 02 2010

Memorandum

TO: USCIS Employees

FROM: Alejandro N. Mayorkas
Director

SUBJECT: Ethics and Integrity Memorandum No. 2: Preferential Treatment

A government position is a public trust requiring an employee to act impartially in the performance of his or her duties. The "Standards of Ethical Conduct for Employees of the Executive Branch" (5 CFR 2635) regulates the conduct of Federal Government employees and prohibits preferential treatment as a form of "Misuse of Position." Subpart G of the Standards of Ethical Conduct states:

> "An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations."

Purpose

This memorandum provides guidance to USCIS employees on avoiding and preventing situations that could be, or appear to be, preferential treatment. It also provides information on obtaining further guidance, and on how to report suspected misconduct.

Guidance

Each USCIS employee has the duty to act impartially in the performance of his or her official duties. Any occurrence of actual or perceived preferential treatment, e.g., treating similarly-situated applicants differently, can call into question our ability to implement our Nation's immigration laws fairly, honestly, and properly.

A USCIS employee could violate the prohibitions against preferential treatment in a number of ways, by:

- Working on, or in any way attempting to expedite or otherwise influence the processing of, an immigration application, petition, or benefit for a friend, relative, neighbor or acquaintance;
- Meeting with certain stakeholders to the exclusion of others;
- Writing contract requirements that favor one organization over another;
- Referring applicants to a particular immigration practitioner or vendor;

- Using his or her official position or title in a manner that could reasonably be construed to imply that USCIS or the Government sanctions or endorses his or her personal activities;
- Using USCIS letterhead or his or her official position or title to:
  - Provide a letter of recommendation for an individual;[1] or
  - Endorse any organization, product, service, or enterprise.

Often the appearance of preferential treatment can be as damaging to our Agency's reputation as actual preferential treatment; therefore, a USCIS employee should avoid matters (e.g., cases or applications) if his or her participation may cause a reasonable person to question the employee's impartiality. Should a question arise about whether an employee's action(s) might be seen as providing preferential treatment, the employee should discuss his or her concerns with a supervisor or USCIS Ethics Officer before acting on the matter.

Failure to adhere to the standards or the guidance set forth in this memorandum may subject the employee to disciplinary penalties, up to and including removal from employment. Such disciplinary action may be in addition to any criminal or civil action or penalty prescribed by law.

Contact Information

If you have questions related to ethical standards applicable to your position, please discuss the issue with your supervisor or contact a USCIS Ethics Officer. For further information on ethics rules please go to http://ethics.uscis.dhs.gov, or contact the Ethics Division at USCIS.Ethics@dhs.gov.

To report a suspected violation of ethics rules or any other allegation of misconduct, contact the Office of Security and Integrity by any of the following methods:

1. Online through the USCIS intranet at http://osi.uscis.dhs.gov/Forms/Complaint;
2. Fax at (202) 233-2453; or
3. Mail at the following address:
   Chief, Investigations Division
   Office of Security and Integrity MS 2275
   U.S. Citizenship and Immigration Services
   633 Third Street, NW, 3rd Floor
   Washington, DC 20529-2275

Questions should be posed and reports should be made immediately upon identifying an issue or concern.

[1] USCIS employees may sign a letter of recommendation using their official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom the USCIS employee has dealt in the course of Federal employment or whom he is recommending for Federal employment.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Domestic Operations (MS-2010)
Washington, DC 20529-2010

U.S. Citizenship and Immigration Services

HQ 70/6.2
AD 09-38

DEC 17 2009

Memorandum

TO: Field Leadership

FROM: Donald Neufeld
Acting Associate Director, Domestic Operations

SUBJECT: Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829 Petitions; Adjudicators Field Manual (AFM) Update to Chapters 22.4 and 25.2 (AD09-38)

I. Purpose

This memorandum provides instruction to California Service Center (CSC) personnel involved in the adjudication of EB-5 Regional Center Proposals, and affiliated Forms I-526, Immigrant Petition by Alien Entrepreneur and Forms I-829, Petition by Entrepreneur to Remove Conditions. This memorandum rescinds in its entirety the USCIS memorandum, *Establishment of an Investor and Regional Center Unit*, dated January 19, 2005, and provides guidance regarding:

- The timing of the adjudication of EB-5 eligibility issues;
- The procedures to be used when there appears to be a material change in circumstances relating to an eligibility issue following the issue's prior adjudicative resolution;
- Targeted Employment Area (TEA) determinations;
- How an alien may seek approval of a new Form I-526 petition in order to change the focus of his or her investment to a new capital investment project or commercial enterprise; and
- The respective EB-5 program responsibilities of CSC and Service Center Operations (SCOPS) personnel.

This memorandum also addresses the issue of communication with non-USCIS individuals or entities regarding case specific information.

II. Background

The Immigrant Investor Program, also known as "EB-5", was created by Congress in 1990 under § 203(b)(5) of the Immigration and Nationality Act (INA) to stimulate the U.S. economy through job creation and capital investment by alien investors. Alien investors have the opportunity to obtain lawful permanent residence in the United States for themselves, their spouses, and their minor unmarried children by making a certain level of capital investments and associated job creation or preservation.

There are two distinct EB-5 pathways for an alien investor to gain lawful permanent residence, the Basic Program and the Regional Center Pilot Program. Both programs require that the alien investor make a capital investment of either $500,000 or $1,000,000 (depending on whether the investment is in a TEA or not) in a new commercial enterprise located within the United States. The new commercial enterprise must create or preserve 10 full-time jobs for qualifying U.S. workers within two years of the alien investor's admission to the United States as a Conditional Permanent Resident (CPR).[1] When making an investment in a new commercial enterprise affiliated with a USCIS-designated regional center under the Regional Center Pilot Program, an alien investor may satisfy the job creation requirements of the program through the creation of either direct or indirect jobs. Notably, an alien investing in a new commercial enterprise under the Basic Program may only satisfy the job creation requirements through the creation of direct jobs.

Note: *Direct jobs* are those jobs that establish an employer-employee relationship between the newly established commercial enterprise and the persons that they employ.

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[1] The statutory framework for the EB-5 program can be found at INA sections 203(b)(5) and 216A, which were modified by:

- Section 610 of Pub. L. 102-395, as amended by section 116(a)(l) of Pub. L. 105-119 and section 402(a) of Pub. L. 106-396;
- Section 4 of Pub. L. 108-156, relating to the Regional Center Pilot Program; and
- Sections 11031-11034 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273, relating to certain aliens with conditional resident status who filed I-829 petitions before November 2, 2002.

The regulatory framework for the EB-5 program can be found at 8 CFR 204.6 and 8 CFR 216.6.

There are also four EB-5 precedent decisions:

- *Matter of Soffici*, 22 I&N Dec. 158 (BIA 1998);
- *Matter of Izummi*, 22 I&N Dec. 169 (BIA 1998). **Note:** Pub. L. 107-273 eliminated the requirement set forth in *Izummi* that, in order for a petitioner to be considered to have "created" an original business, he or she must have had a hand in its actual creation. Under the new law, an alien may invest in an existing business at any time following its creation, provided he or she meets all other requirements of the regulations;
- *Matter of Hsiung*, 22 I&N, Dec. 201 (BIA 1998); and
- *Matter of Ho*, 22 I&N Dec. 206 (BIA 1998).

Indirect jobs are the jobs held by persons who work outside the newly established commercial enterprise. For example, indirect jobs include employees of the producers of materials, equipment, and services that are used by the commercial enterprise. There is also a sub-set of indirect jobs that are calculated using economic models that are known as induced jobs. *Induced jobs* are those jobs created when direct and indirect employees go out and spend their increased incomes on consumer goods and services.

Under the Regional Center Pilot Program, an individual or entity must file a Regional Center Proposal[2] with the CSC to request USCIS approval of the proposal and designation of the entity that filed the proposal as a regional center. A "Regional Center" is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment. The Regional Center Proposal must provide a framework within which individual alien investors affiliated with the regional center can satisfy the EB-5 eligibility requirement and create qualifying EB-5 jobs.

The Regional Center Proposal may also include copies of the commercial enterprise's organizational documents, capital investment offering memoranda, and transfer of capital mechanisms for the transfer of the alien investor's capital into the job creating enterprise so that USCIS may determine if they are in compliance with established EB-5 eligibility requirements. Providing these documents may facilitate the adjudication of the related I-526 petitions by identifying any issues that could pose problems when USCIS is adjudicating the actual petitions. For example, if a new commercial enterprise's limited partnership (LP) agreement contains a redemption clause guaranteeing the return of the alien investor's capital investment, then the alien investor's capital investment will not be a qualifying "at-risk" investment for EB-5 purposes. Likewise, if the LP agreement requires the payment of fees from the alien investor's capital investment of $1,000,000 (or $500,000 if in a TEA) to such extent that the investment will be eroded below the qualifying level, preventing the full infusion of sufficient capital into the job creating enterprise, then the alien investor's capital investment will not meet the required EB-5 level of investment. The approval of a Regional Center Proposal containing defects such as these is not in the best interest of the prospective regional center or the USCIS EB-5 program as the end result will most likely be the denial of the individual alien investor's Form I-526 petition.

Any individual Form I-526 and Form I-829 petitions claiming new commercial enterprise affiliation with a regional center and thus EB-5 eligibility based on indirect job creation must be denied if they are filed prior to the approval of the Regional Center Proposal.

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[2] USCIS is developing a Regional Center Proposal form through the standard Office of Management and Budget (OMB) form development process. The new form will require the submission of a filing fee for the filing of an initial Regional Center Proposal and for Proposal Amendments that are filed subsequent to the initial approval and designation of the regional center. There is no filing fee for the submission of Regional Center Proposals and Proposal Amendments at the present time.

Each alien investor must file an individual Form I-526 petition to establish his or her eligibility for classification as an EB-5 alien investor under either the Basic Program or the Regional Center Pilot Program. If the Form I-526 petition is approved, then the alien must file a Form I-485, Application to Register Permanent Residence or Adjust Status, to adjust status in the United States, or apply for an immigrant visa abroad, in order to obtain CPR status. The alien investor must file a Form I-829 petition within the 90-day period immediately preceding the two-year anniversary of his or her admission to the United States or adjustment of status as a CPR. The Form I-829 petition must demonstrate that all of the terms and conditions of the EB-5 program have been met by the alien investor in order for the conditions on his or her permanent residence to be removed.

III. Rationale for Updated Field Guidance

A. Streamlining EB-5 Case Processing.

USCIS wishes to streamline the Regional Center Proposal and EB-5 petitioning processes. Distinct EB-5 eligibility requirements must be met at each stage of the EB-5 immigration process. If USCIS evaluates and approves certain aspects of an EB-5 investment, that favorable determination should generally be given deference at a subsequent stage in the EB-5 process. However, a previously favorable decision may not be relied upon in later proceedings where, for example, the underlying facts upon which a favorable decision was made have materially changed, there is evidence of fraud or misrepresentation in the record of proceeding, or the previously favorable decision is determined to be legally deficient.

USCIS is aware that there are times when Immigration Service Officers (ISOs) question whether a previously established EB-5 eligibility requirement has been met at a later stage in the process even though the facts of the case have not changed. USCIS is also aware that some designated regional centers have subsequently made material alterations to documentation initially provided in support of the regional center proposal. For example, there have been cases where a regional center has made significant changes to the organizational documentation, the transfer of capital mechanisms, or other aspects of the new commercial enterprise after approval of the regional center proposal. This documentation was changed to such a degree that it no longer resembled the documentation upon which USCIS based the approval of the Regional Center Proposal, and it appeared that the new commercial enterprise would no longer comply with EB-5 Program requirements.

In some instances, the adjudication of EB-5 petitions has been prolonged due to the issuance of requests for evidence (RFEs) that inappropriately seek to revalidate previously favorable determinations. Likewise, the finalization of EB-5 petitions have

been delayed due to the material alteration of documentation vetted during the Regional Center Proposal Process, requiring that previously decided issues be re-adjudicated within the EB-5 petitioning processes. This has prompted USCIS to deny EB-5 petitions.[3] Information provided in support of EB-5 petitions may also prompt USCIS to reopen a Regional Center Proposal and ultimately terminate the regional center designation under 8 CFR 204.6(m)(6) if the regional center is shown to be operating in a manner not in accordance with section §610(a) of Public Law 102-395.

In light of the above, USCIS is incorporating guidance into the AFM that highlights the adjudicative issues to be resolved at each stage of the Regional Center Proposal and EB-5 petitioning processes. In addition, the guidance outlines the factors that should be in place in order to revisit previously approved EB-5 eligibility requirements at a later stage in the process. USCIS is also adding guidance into the AFM update that explains how a regional center may provide an exemplar Form I-526 with the supporting documentation required by 8 CFR 204.6 in order to determine if the documentation is EB-5 compliant, and thus can generally be favorably acted upon if submitted unaltered in support of an actual Form I-526 petition.

B. Changes in Form I-526 Business Plans.

USCIS is aware that some EB-5 aliens may encounter difficulties when unforeseen circumstances cast doubt on the achievement of the requisite job creation as outlined in an approved Form I-526 petition. This may occur when the job creating capital investment project or commercial enterprise that was relied upon for the approval of the Form I-526 petition fails, or otherwise cannot be completed, within the alien's two-year period of conditional residence. The statutory structure of the EB-5 program and relevant precedent decisions limit an alien entrepreneur's options when a planned investment project fails. The capital investment project identified in the business plan in the approved Form I-526 petition must serve as the basis for determining at the Form I-829 petition stage whether the requisite capital investment has been sustained throughout the alien's two year period of conditional residency and that at least ten jobs have been or will be created within a reasonable period of time as a result of the alien's capital investment.[4] The business plan in the Form I-526 petition may not be materially changed after the petition has been filed.[5] In addition, USCIS may not act favorably on requests to delay the filing or adjudication of Form I-829 petitions beyond the timeframes outlined in INA section 216A(d)(2) and 8 CFR 216.6(a) and (c).

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[3] EB-5 petitioners must establish eligibility as of the date of filing of the petition. See 8 CFR 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Note also that a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. at 175.

[4] See 8 CFR 216.6(c).

[5] See *Matter of Izummi*, 22 I&N Dec. 169 (BIA 1998) and 8 CFR 103.2(b).

As a result, USCIS is incorporating guidance into the AFM outlining the procedures for an ISO to follow when adjudicating:

- A new Form I-526 petition seeking to change the capital investment and job creation scheme outlined in an alien's previously filed Form I-526 petition; and
- If such new Form I-526 petition is approved, a Form I-485 application requesting re-adjustment of status.

C. Communication with EB-5 External Stakeholders.

It is critically important that all USCIS staff involved in the EB-5 Program understand that any case-specific communication with non-agency stakeholders may not be considered in the adjudication of an application or petition unless it is included in the record of proceeding of the case. USCIS may only provide information about specific cases to:

- The affected party in the proceeding; and
- The representative of the affected party, if any, who is identified on a properly executed Form G-28.[6] The agency will only recognize one attorney of record at a time as reflected in the most current Form G-28 available in the record.[7]

If USCIS receives evidence about a specific case from anyone other than an affected party or his or her representative, such information is not part of the record of proceeding and cannot be considered in adjudicative proceedings, unless the affected party has been given notice of such evidence and, if such evidence is derogatory, he or she has been given an opportunity to respond to the evidence as required in 8 CFR 103.2(b)(16). Note that the opinion of a USCIS official outside of the adjudicative process is not binding and no USCIS officer has the authority to pre-adjudicate a Regional Center Proposal or an EB-5 petition. *Matter of Izummi*, 22 I&N Dec. at 196.

In light of the above, USCIS staff is directed to include in the record of proceeding copies of all case-specific written communication with external stakeholders involving receipt of information relating to specific EB-5 Regional Center Proposals or individual petitions pending on or after the date of this memorandum. In the very limited instances where oral communication takes place between USCIS staff and external stakeholders regarding specific EB-5 cases, the conversation must either be recorded, or detailed minutes of the session must be taken and included in the record of proceeding. As provided above, if the documentary or oral evidence was not provided by the affected party or his or her representative, the party must be notified of the evidence.

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[6] See 8 CFR 103.3(a)(iii)(B), 103.2(a)(3). See also sections §§551(14) and 557(d) of the Administrative Procedures Act (APA).

[7] See 8 CFR 292.4(a) providing for substitution of counsel via subsequent execution and submission of a new G-28. See also 8 CFR 292.5(a) and (b), 103.2(a)(3), and 103.2(b)(11), all of which refer to a singular "attorney" or "representative" permitted to represent the petitioner or applicant.

The EB-5 program maintains an e-mail account at USCIS.ImmigrantInvestorProgram@dhs.gov for external stakeholders to use when seeking general EB-5 program information, inquiring about the status of pending cases, or requesting the expedite of a pending EB-5 case. USCIS personnel are instructed to direct all case-specific and general EB-5 related communications with external stakeholders through this email account, or through other established communication channels, such as the National Customer Service Center (NCSC), or the USCIS Office of Public Engagement.

USCIS believes that transparency in the administration of this program is critical to its success. USCIS is aware that some external stakeholders routinely contact SCOPS HQ personnel with questions regarding general EB-5 eligibility issues. SCOPS HQ has routinely responded directly to the external stakeholders in accordance with the EB-5 oversight authority delegated to the Investor and Regional Center Unit in the USCIS memorandum, *Establishment of an Investor and Regional Center Unit*, dated January 19, 2005. Unfortunately this method of communication is very resource intensive and only serves to inform the external stakeholders who contact SCOPS HQ. USCIS is formally rescinding the January 19, 2005, memo. SCOPS HQ will no longer respond to questions from external stakeholders regarding EB-5 eligibility issues that have not been vetted through the National Customer Service Center at (800) 375-5283, the EB-5 email account at USCIS.ImmigrantInvestorProgram@dhs.gov, or are raised through other established USCIS communication channels.

EB-5 eligibility issues that are raised through the EB-5 email account will be reviewed by the CSC EB-5 staff who will:

- Respond to those that involve routine EB-5 questions; and
- Raise issues involving novel adjudicative questions to SCOPS HQ personnel.

SCOPS HQ will publish EB-5 FAQs and in some cases, policy memoranda, on the USCIS website to address novel adjudicative issues raised by external stakeholders. This method of communication will promote transparency and the free flow of EB-5 related information in a manner that makes all EB-5 external stakeholders privy to the information, not just a select few.

IV. Field Guidance

USCIS EB-5 program staff are directed to follow the guidance provided in this memorandum in the adjudication of all Regional Center Proposals and EB-5 petitions pending or filed as of the date of this memo.

V. AFM Update

The Adjudicator's Field Manual is revised as follows:

1. Chapter 22.4(a)(2) of the AFM is revised to read as follows:

(2) Regional Center Pilot Program.

(A) Program Overview. The Regional Center Pilot Program was first instituted in 1992. Three thousand of the 10,000 total available EB-5 visas are set aside for aliens who invest in a USCIS designated "regional center" in the United States organized "for the promotion of economic growth, including improved regional productivity, job creation, and increased domestic capital investment." Section 610 of Pub. L. 102-395, as amended by section 116(a)(l) of Pub. L. 105-119 and section 402(a) of Pub. L. 106-396.

An alien investing in a new commercial enterprise affiliated with and located in a regional center is not required to demonstrate that the new commercial enterprise itself directly employs ten U.S. workers; a showing of indirect job creation and improved regional productivity will suffice. Implementing regulations for the Pilot Program are found at 8 CFR 204.6(m).

Note: *Direct jobs* are those jobs that establish an employer-employee relationship between the commercial enterprise and the persons that they employ. Regional centers typically use the RIMS II or IMPLAN economic models to determine the number of indirect jobs that will be created through investments in the regional center's investment projects. *Indirect jobs* are the jobs held by persons who work for the producers of materials, equipment, and services that are used in a commercial enterprise's capital investment project, but who are not directly employed by the commercial enterprise, such as steel producers or outside firms that provide accounting services. There is a sub-set of indirect jobs that are calculated using economic models that are known as induced jobs. *Induced jobs* are those jobs created when direct and indirect employees go out and spend their increased incomes on consumer goods and services.

A Regional Center Proposal must be filed with the CSC to request USCIS approval of the proposal and designation of the entity that filed the proposal as a regional center. A "Regional Center" is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment. The Regional Center Proposal must demonstrate that capital investments made by individual alien investors within the geographic area of the regional center will satisfy the EB-5

eligibility requirements in order to create qualifying EB-5 jobs. The Regional Center Proposal should also demonstrate that the new commercial enterprise's organizational documents, capital investment offering memoranda, and transfer of capital mechanisms for the transfer of the alien investor's capital into the job creating enterprise are in compliance with established EB-5 eligibility requirements.

(B) Regional Center Proposal EB-5 Eligibility Requirements. Regional Center Proposals must demonstrate the following EB-5 eligibility requirements in order to be approved:

(i) A clearly identified, contiguous geographical area for the regional center. If the regional center proposal bases its predictions regarding the number of direct or indirect jobs that will be created through EB-5 investments in the regional center, in whole or in part, by offering investment opportunities to EB-5 investors with the reduced $500,000 threshold, then the Targeted Employment Areas (TEAs), Rural Areas (areas with populations under 20,000 people) and areas of high unemployment (areas with unemployment rates 150% or more of the national rate), should be identified. Note: An alien filing a regional center affiliated Form I-526 must still establish that the investment will be made in a TEA at the time of filing of the alien's Form I-526 petition, or at the time of the investment, whichever occurs first, to qualify for the reduced $500,000 capital investment threshold.

(ii) A detailed description of how EB-5 capital investment within the geographic area of the regional center will create qualifying EB-5 jobs, either directly or indirectly. This analysis must be supported by economically and statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported [if any], and/or multiplier tables.

(iii) A detailed prediction of the proposed regional center's predicted impact regionally or nationally on household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and outside of the geographic area of the proposed Regional Center.

(iv) A description of the plans to administer, oversee, and manage the proposed Regional Center, including but not limited to how the regional center will:

- Be promoted to attract EB-5 alien investors, including a description of the budget for the promotional activity;
- Identify, assess and evaluate proposed immigrant investor projects and enterprises;
- Structure its investment capital, e.g., whether the investment capital to be sought will consist solely of alien investor capital or a combination of alien investor capital and domestic capital, and how the distribution of the investment capital will be structured, e.g. loans to developers, venture capital, etc.; and
- Oversee all investment activities affiliated with, through or under the sponsorship of the proposed Regional Center.

(C) The Regional Center Proposal may also include an "exemplar" Form I-526 petition that contains copies of the commercial enterprise's organizational documents, capital investment offering memoranda, and transfer of capital mechanisms for the transfer of the alien investor's capital into the job creating enterprise. USCIS will review the documentation to determine if they are in compliance with established EB-5 eligibility requirements. Providing these documents may facilitate the adjudication of the related I-526 petitions by identifying any issues that could pose problems when USCIS is adjudicating the actual petitions. For example, if a new commercial enterprise's limited partnership (LP) agreement contains a buy-back agreement (i.e. a redemption clause guaranteeing the return of the alien investor's capital investment), then the alien investor's capital investment will not be a qualifying "at-risk" investment for EB-5 purposes. Likewise, if the LP agreement requires the payment of fees from the alien investor's capital investment of $1,000,000 or $500,000, respectively, to the extent that the investment will be eroded below the qualifying level, preventing the full infusion of the capital into the job creating enterprise, then the alien investor's capital investment will not meet the required EB-5 level of investment. The approval of a Regional Center Proposal containing defects such as these is not in the best interest of the prospective regional center or the USCIS EB-5 program as the end result will most likely be the denial of the individual alien investor's Form I-526 petition.

Any individual Form I-526 and Form I-829 petitions claiming new commercial enterprise affiliation with a regional center and thus EB-5 eligibility based on indirect job creation must be denied if they are filed prior to the approval of the regional center's Regional Center Proposal.

(D) Regional Center Proposal and Amendment Request Processing. There are two general workflows for the adjudication of Regional Center

Proposals, one for Initial Regional Center Proposals and one for Regional Center Amendment requests. ISOs adjudicate cases within these workflows in "first in, first out" order, unless an expedite request is granted by the CSC director in accordance with the routine expedite criteria that is used for all cases filed with USCIS.

(E) Amended Regional Center Proposals.

(i) Amendments Due to Material Changes in EB-5 Related Organizational Structure or Capital Investment Instruments. Designated regional centers may elect to file an amended Regional Center Proposal and receive an updated approval of the regional center designation prior to the filing of individual EB-5 petitions that use supporting documentation relating to EB-5 eligibility issues that has been materially altered or is inconsistent with the documentation used as the basis for the approval of the regional center designation. Doing so, may assist in the streamlining of the adjudication of affiliated individual EB-5 petitions, as the altered documentation may otherwise need to be re-evaluated within the individual EB-5 petitions to determine if they still EB-5 compliant.

(ii) Other Amendments. Some Regional Center Proposals are approved for an industry segment using a hypothetical investment project in order to demonstrate how an actual investment project will be capitalized and operate in a manner that will create at least 10 direct or indirect jobs per alien investor. Individual Form I-526 petitions are then filed with copies of the business plan for the hypothetical investment project as well as the regional center's actual investment project. If the actual investment project is not different in a material way from the exemplar investment project, then the job creating efficacy of the investment project, if carried through as specified in the business plan will generally be established.

Regional centers may opt to file an amendment of their Regional Center Proposal in order to eliminate the uncertainty as to whether the actual investment project is different in a material way from the exemplar investment project that was approved in the Regional Center Proposal. The filing of these amendments is in the best interest of the EB-5 program as it may assist in the streamlining of the adjudication of the individual Form I-526 petitions. These amendments should be supported by detailed documentation relating to the actual investment project. Once approved, then only the documentation relating to the actual approved project would be provided in support of the Form I-526

petition, eliminating the uncertainty regarding whether the actual project meets EB-5 eligibility requirements.

A regional center may also file an amendment in order to provide an exemplar Form I-526 with the supporting documentation required by 8 CFR 204.6 in order for USCIS to determine if the documentation is EB-5 compliant, and thus facilitate adjudication of an actual but identical Form I-526 petition, if the evidence of record otherwise establishes EB-5 eligibility.

Note: If the Regional Center requirements are met and a determination of eligibility is made, then the favorable determination regarding regional center eligibility requirements for the capital investment structure and job creation should generally be given deference and not revisited in the adjudication of individual EB-5 petitions, as long as the underlying facts upon which the favorable decision was made remain unchanged. The CSC EB-5 program manager should be notified to determine the appropriate action to take if an ISO discovers during the adjudication of an EB-5 petition that:

- Documentation relating to the regional center's capital investment structure or job creation methodologies, or the exemplar Form I-526 petition has materially changed since the most recent approval of the regional center designation;
- The record contains evidence of fraud or misrepresentation; or
- The evidence of record indicates that the previously favorable decision to approve the regional center proposal (or amendment) to include the determination that the exemplar Form I-526 petition is EB-5 compliant was legally deficient.

2. Chapter 22.4(c)(3) of the AFM is revised to read as follows:

(3) General Review. Review the Form I-526 petition for completeness and signature of the petitioner.

- Verify that the name given in Part 1 (Information about you) is identical to the signature in Part 7 (Signature block).

- Remember that the petition can only be signed by the petitioner and not by his or her authorized representative.

The following EB-5 eligibility requirements must be established in the Form I-526 petition:

- The capital investment is in a new commercial enterprise;
- If the petitioner claims that the capital investment qualifies for the reduced capital investment threshold of $500,000, that the new commercial enterprise is located in a TEA;
- The investment capital was obtained by the alien through lawful means;
- The required amount of capital has been fully committed to the new commercial enterprise;
- The new commercial enterprise will create not fewer than 10 full-time positions; and
- The alien investor will be engaged in the management of the new commercial enterprise.

Note: If the new commercial enterprise identified in the petition is affiliated with a regional center, then the petitioner must provide with the Form I-526 petition a copy of the regional center's:

- Most recently issued approval letter; and
- Documentation relating to its approved capital investment structure and job creation methodology.

If the evidence provided remains unchanged from the documentation that was the basis for the approval of the regional center proposal, then the prior approval of the capital investment structure and the job creation methodology should generally be given deference. The CSC EB-5 program manager should be notified to determine the appropriate action to take if an ISO discovers during the adjudication of Form I-526 petition that:

- Documentation relating to the regional center's capital investment structure or job creation methodologies has materially changed since the approval of the regional center designation;
- The record contains evidence of fraud or misrepresentation; or
- The evidence of record indicates that the previously favorable decision to approve the regional center proposal (or amendment) to include the determination that the exemplar Form I-526 petition is EB-5 compliant was legally deficient.

3. Chapter 22.4(c)(4)(D)(iii) of the AFM is revised to read as follows:

(iii) Clarification of the Meaning of Full-time Position. Section 203(b)(5) of the INA requires that the investment in a new commercial enterprise will create full-time employment for not fewer than 10 qualified employees. The INA further defines full-time employment as "employment in a position that requires at least 35 hours or service per week at any time, regardless of who fills the position." Adjudicating ISOs should keep the following points in mind when determining if positions meet this requirement:

- Economic input/output (I/O) models, such as RIMS II or IMPLAN, used to evaluate the calculation of the number of indirect jobs (including induced jobs) created through a commercial enterprise affiliated with a regional center do not distinguish between full-time and part-time jobs. In other words, the job creation results of the multipliers in the economic I/O models do not distinguish between the full-time and part-time nature of the positions. Therefore, the number of indirect jobs quantified through the I/O model analysis will be considered to be full-time and qualifying for EB-5 purposes. Accordingly, determinations regarding whether jobs qualify as "full-time" are only relevant to the analysis of direct jobs created by a commercial enterprise claiming the creation of direct jobs as a result of the EB-5 capital investment.

- USCIS has interpreted the full-time employment requirement to exclude jobs that are intermittent, temporary, seasonal or transient in nature. See, e.g., Spencer Enterprises v. U.S., 229 F.Supp.2d 1025 (E.D. Cal. 2001). Historically, construction jobs have not been counted toward job creation because they are seen as intermittent, temporary, seasonal and transient rather than permanent. USCIS, however, now interprets that direct construction jobs may now count as permanent jobs if they:
    - Are created by the petitioner's investment; and
    - Are expected to last at least two years, inclusive of when the petitioner's Form I-829 is filed.

  Although employment in some industries such as construction or tourism can be intermittent, temporary, seasonal or transient, officers should not exclude jobs simply because they fall into such industries. Rather, the focus of the adjudication should be on whether the direct positions, as described in the petition, are continuous full-time employment rather than intermittent, temporary, seasonal or transient.

For example, if a petition reasonably describes the need to directly employ general laborers in a construction project that is expected to last several years and require a minimum of 35 hours per week over the course of that project, the positions would meet the full-time employment requirement. However, if the same project called for electrical workers to provide services as direct employees during three to four five week periods over the course of the project, such positions would be properly deemed to be intermittent and not meet the definition of full-time employment.

- Generally, it is the position that is critical to the full-time direct employment criterion, not the employee. Accordingly, the fact that the position may be filled by more than one employee does not exclude a position from consideration as full-time employment.

  For example, the positions described in the above bullet would not be excluded from being considered full-time employment if the general laborers needed to fill the positions varied from day to day or week to week, as long as the need to directly employ general laborers in the position remains constant. This interpretation is consistent with 8 CFR 204.6(e), which includes job sharing arrangements as part of the regulatory definition of full-time employment.

- It is important to note, however, that this interpretation does not override the regulatory definitions of employee and full-time employment at 8 CFR 204.6(e). Thus, direct jobs must still be filled by qualifying employees and not by independent contractors. Positions filled by independent contractors are not qualifying direct jobs and may only be credited for EB-5 job creation purposes in petitions involving commercial enterprises that are affiliated with a regional center. In addition, multiple part-time positions may not be combined to create one full-time position, unless those part-time jobs can be shown to be part of a job-sharing arrangement.

- Full-time employment relating to the creation of direct jobs as defined in 8 CFR 204.6(e) means year-round employment and not seasonal full-time employment. Full-time employment consists of 35 hours a week. Seasonal positions do not qualify for purposes of the full-time employment requirement for direct jobs.

4. Chapter 22.4(c)(4)(F) of the AFM is revised to read as follows:

(F) New Commercial Enterprise in a Targeted Employment Area (TEA). A TEA is either a rural area or an area experiencing a high unemployment rate at the time of the capital investment or the time of filing of the Form I-526 petition, whichever occurs first. If the petitioner shows that the area where he or she is investing is a rural area, the petitioner need not also establish that the area has high employment. Conversely, if the area is a high unemployment area, the petitioner need not also show that it is a rural area.

INA 203(b)(5)(B) and 8 CFR 204.6(e) require that in order to establish eligibility for the reduced EB-5 investment threshold of $500,000, the area in which the alien makes a capital investment must qualify as an rural area or an area of high unemployment when the investment is made. *Matter of Soffici*, 22 I&N Dec. 158 (BIA 1998) provides in pertinent part that:

> A petitioner has the burden to establish that his enterprise does business in an area that is considered "targeted" as of the date he files his [Form I-526] petition. The fact that a business may be located in an area that was once rural, for example, does not mean that the area is still rural.

A conflict between the statutory and regulatory requirements, and *Matter of Soffici* may arise when an alien makes a capital investment at a point in time prior to the filing of the Form I-526 petition when the area in which the investment is made qualifies as a TEA, only to have the area no longer qualify as a TEA at the time of filing of the Form I-526 petition. In order to promote predictability in the capital investment process and to reconcile the potential conflict outlined above, ISOs must identify the appropriate date to examine in order to determine that the alien's capital investment qualifies for the reduced $500,000 threshold according to the following "if, then" table:

TEA "if then" Table	
If the Investment…	Then…
Is made into the commercial enterprise's job creating project prior to the filing of the Form I-526 petition…	The TEA analysis should focus on whether the location of the investment qualifies as a TEA at the time of the investment.
Has yet to be committed to the commercial enterprise's job	The TEA analysis should focus on whether the location of the

creating project at the time of filing of the I-526, i.e. is still in escrow or is otherwise not irrevocably invested into the commercial enterprise pending the approval of the I-526 petition...	investment qualifies as a TEA at the time of the filing of the I-526 petition.

Note: In some instances, an alien may request eligibility for the reduced investment threshold based on the fact that other EB-5 aliens who previously invested in the same project qualified for the $500,000 minimum investment, even though the area did not qualify at the time of the instant alien's investment or the filing of his or her Form I-526. Each alien must establish that his or her capital investment qualifies for the reduced investment threshold, and cannot rely on previous TEA determinations made based on facts that have subsequently changed.

Note also that the area where the new commercial enterprise is located may qualify as a TEA at the time the capital investment is made or the I-526 petition is filed, (whichever occurs first), but may cease to qualify by the time the Form I-829 petition is filed. Changes in population size or unemployment rates within the area during the alien investor's period of conditional permanent residence are acceptable as increased job creation is the primary goal of the EB-5 program.

(i) Rural Area Defined. The term "rural area" means any area that is both outside of a metropolitan statistical area (MSA) and outside of a city or town having a population of 20,000 or more based on the most recent decennial census of the United States. See INA § 203(b)(5)(B)(iii) and 8 CFR §204.6(j)(6)(i). MSAs are designated by the Office of Management and Budget and can be found at www.census.gov.

(ii) Definition of High Unemployment Area. The term "high unemployment area" means an area which has experienced unemployment of at least 150 percent of the national average rate. See INA § 203(b)(5)(B)(ii). The I-526 petitioner must demonstrate that, at the time the capital investment is made or the petition is filed (whichever occurs first), there has been an unemployment rate of at least 150% of the national unemployment rate within the MSA or other non-rural area in which the commercial enterprise that will create or preserve jobs is located. This should be based on the most recent information available to the general public from federal or state governmental sources as of the time the I-526 petition is submitted.

In some instances I-526 petitioners may claim high unemployment in only a portion or portions of a geographic area or political subdivision for which distinct unemployment data is not readily available to the general public from federal or state governmental sources. This may be indicative of an attempt by the petitioner to "gerrymander" a finding of high unemployment when in fact the area does not qualify as being a high unemployment area. Such a claim is not sufficient to establish that the area is a high unemployment area unless it is accompanied by a designation from an authorized authority of the state government. (State designations are discussed below in (iii) of this section.)

The Bureau of Labor Statistics (BLS) provides data regarding the national average rate of unemployment at www.bls.gov/cps/. BLS's **Local Area Unemployment Statistics (LAUS)** program produces monthly and annual unemployment and other labor force data for census regions and divisions, states, counties, metropolitan areas, and many cities, by place of residence. This information can be found at www.bls.gov/lau/. States, the District of Columbia, and the U.S. territories may also publish local area unemployment statistics on their government websites.

(iii) State Designation of a High Unemployment Area. The state government of any state of the United States may designate a particular geographic area or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such a state as an area of high unemployment. Before any such designation is made, an official of the state must notify USCIS of the agency, board, or other appropriate governmental body of the state which shall be delegated the authority to certify that the geographic or political subdivision is a high unemployment area. Evidence of such a designation, including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained, may be submitted in support of the Form I-526 petition in lieu of other documentary evidence of high unemployment in the area where the new commercial enterprise is located. See 8 CFR 204.6(i). The statistics used in the analysis must reflect the national and local unemployment rates for these regions at the time of the alien investor's capital investment. See 8 CFR 204.6(e).

The designation of high unemployment areas are within the purview of each U.S. state governor, or if applicable, his or her designee. USCIS

personnel have no substantive authority to question or challenge such high unemployment designations, and therefore must rely on the high unemployment designations that conform to the requirements outlined above that are made by a U.S. state governor or his or her designee. ISOs should notify the CSC EB-5 program manager and seek guidance regarding how to address the TEA issue in petitions that contains a state designation letter that does not conform to the requirements of 8 CFR 204.6(i), utilizes statistics that do not reflect the national and local unemployment rates at the time of the alien investor's capital investment, or has been issued by an official of a state that has not notified USCIS regarding who in the state government has the authority to issue such designations.

Note: State designations of high unemployment areas also include designations issued by the appointed government body with authority to make such certifications by the governors of the U.S. territories or the mayor of the District of Columbia.

5. Chapter 22.4(c)(4)(G) of the AFM is added as follows:

(G) Eligibility Requirements for the Review of a Form I-526 Petition that Seeks Consideration of a Business Plan that Differs from the Business Plan in a Previously Approved Form I-526 Petition.

Some EB-5 aliens may encounter difficulties when unforeseen circumstances cause the achievement of the requisite job creation outlined in the Form I-526 petition to be cast in doubt. This may occur when the job creating capital investment project or commercial enterprise that was relied upon for the approval of the Form I-526 petition fails or otherwise cannot be completed within the alien's two-year period of conditional residence. The structure of the EB-5 program is inflexible in that the capital investment project identified in the business plan in the approved Form I-526 petition must serve as the basis for determining at the Form I-829 petition stage whether the requisite capital investment has been sustained throughout the alien's two year period of conditional residency and that at least ten jobs have been or will be created within a reasonable period of time as a result of the alien's capital investment. The business plan in the Form I-526 petition may not be materially changed after the petition has been filed. In addition, USCIS may not act favorably on requests to delay the filing or adjudication of Form I-829 petitions beyond the timeframes outlined in 8 CFR 216.6(a) and (c).

The following "if, then" table explains how an EB-5 investor can seek consideration of a business plan that differs from the business plan in a previously approved Form I-526 petition.

New Form I-526 Petition "If, Then" Table	
If…	Then…
The alien wishes to change the business plan from the business plan outlined in a previously filed Form I-526 petition…	S/he may file a new Form I-526 petition with fee that is supported by the new business plan and addresses all requirements of the I-526 petition.
If the new Form I-526 Petition is Filed…	Then…
Before the alien adjusts status (AOS) or is issued an immigrant visa (IV)…	The new petition, if approved, will be the basis for the AOS or the IV and the new business plan will be used as the basis for evaluating EB-5 eligibility at the I-829 stage.
After the alien adjusts status or is issued an IV, but before the due date of the filing of the I-829 petition (90 days prior to the end of the two-year CPR period).	Upon approval of the new Form I-526 petition, S/he may file Form I-407 with a Form I-485 adjustment application. The prior CPR status will be terminated and the new AOS application will be approved, if otherwise approvable, granting a new two year period of CPR status. The new I-526 petition will be used as the basis when evaluating eligibility at the I-829 stage. If the new Form I-526 is denied, then the alien will have to file the I-829 petition and use the initial Form I-526 petition as the basis for the eligibility evaluation in the Form I-829 petition.
After the alien adjusts status or is issued an IV on or after the due date for the filing of the I-829 petition.	If the new I-526 is approved, S/he may request the withdrawal of the initial I-829 petition and file an AOS application. The prior CPR status will be terminated and the new AOS application will be approved, if otherwise approvable, granting a new two year period of CPR status. The new I-526 petition will be used as the

	basis when evaluating eligibility at the second I-829 stage. If the new I-526 petition is denied, then the initial Form I-829 petition will be adjudicated using the project plan in the initial I-526 petition as the basis for the initial I-829 eligibility evaluation.
Note: Dependents will have to file I-407s at the same time as required for the principals as well as Form I-485 applications in order to terminate their CPR status and be "re-adjusted" to CPR anew. The dependents must be eligible to be classified as EB-5 dependents at the time of the filing of new Form I-485 application, i.e. the dependents must be the spouse or unmarried child under the age of 21 years of the EB-5 principal alien	

6. Chapter 25.2(e)(4) of the AFM is revised by adding new paragraph (E) to read as follows:

(E) I-829 Consideration of Form I-526 EB-5 Eligibility Requirements. Pursuant to section 216A(c)(3) of the Act, USCIS must determine that the facts and information contained in the petition are true. ISOs should generally give deference to the approval of EB-5 eligibility requirements previously made in the alien investor's Form I-526 petition and affiliated regional center designation, as applicable, if the facts presented in the earlier proceedings remain unchanged to include:

- The new commercial enterprise's capital investment structure;
- That the commercial enterprise qualifies as "new" for EB-5 purposes;
- If the commercial enterprise is affiliated with a regional center, the direct and indirect job creation methodology;
- If the Form I-526 petition was approved for reduced capital investment threshold of $500,000, that the new commercial enterprise was located in a TEA at the time of filing of the Form I-526, and;
- That the alien investor's investment capital was lawfully obtained.

The CSC EB-5 program manager should be notified to determine the appropriate action to take if an ISO discovers during the adjudication of the Form I-829 petition that:

- Documentation relating to the regional center's capital investment structure or job creation methodologies or the eligibility requirements favorably decided-upon in the Form I-526 petition have materially changed post-approval of the regional center designation or Form I-526 petition;
- The record contains evidence of fraud or misrepresentation; or
- The evidence of record indicates that the previously favorable decision to approve the regional center proposal (or amendment) was legally deficient.

If the documentation of record presents material inconsistencies that impact the alien investor's EB-5 eligibility, then ISOs should require the petitioner to resolve the inconsistencies prior making a favorable determination in the case. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Note: EB-5 petitioners must establish eligibility as of the date of filing of the petition. See 8 CFR 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Note also that a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. at 175.

7. The AFM **Transmittal Memoranda** button is revised by adding a new entry, in numerical order, to read:

AD09-38	Chapter 22 and Chapter 25	This memorandum revises Chapters 22 and 25 of the *Adjudicator's Field Manual* (*AFM*) by amending sections 22.4 and 25.2 to clarify issues pertaining to EB-5 (Immigrant Investor) Regional Center Proposal petitions for classification (Form I-526) and petitions for removal of conditions (Form I-829).

VI. Use

This memorandum is intended solely for the instruction and guidance of USCIS personnel in performing their duties relative to adjudications. It is not intended to, does

not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

VII. Questions

Questions regarding this memorandum should be directed through appropriate channels to [redacted] in the Business and Employment Services Team of Service Center Operations.

Distribution List:

Regional Directors
Service Center Directors
District Directors
Field Office Directors
National Benefits Center Director
Chief, Service Center Operations
Chief, Field Operations

[redacted]

From: [redacted]
Sent: Tuesday, June 08, 2010 4:18 PM
To: [redacted]
Cc: [redacted]
Subject: RE: EB-5 Alien Investor program - letter to Senator Warner from Sussex County re: GTA - GCFM

Adding [redacted]

From: [redacted]
Sent: Tuesday, June 08, 2010 12:34 PM
To: [redacted]
Cc: [redacted]
Subject: RE: EB-5 Alien Investor program - letter to Senator Warner from Sussex County re: GTA - GCFM

Yes. The issue relates to a specific capital investment plan. The project plan has not identified a specific location, and location will be a key factor in determining feasibility of the project. Will the project require 1,000 or 2,000 investors? Will the regional center be able to recruit sufficient number of investors? Will there be sufficient unemployed in the area to support the direct job creation? Are the key transportation hubs, railroad and seaport, actually going to be located in close proximity to the auto plant as shown in the business plan? The answers to these questions are key to determining whether the project is feasible.

[redacted]

From: [redacted]
Sent: Tuesday, June 08, 2010 10:41 AM
To: [redacted]
Cc: [redacted]
Subject: FW: EB-5 Alien Investor program - letter to Senator Warner from Sussex County re: GTA - GCFM

[redacted] Thanks.

From: [redacted]
Sent: Tuesday, June 08, 2010 10:41 AM
To: [redacted]
Cc: [redacted]
Subject: RE: EB-5 Alien Investor program - letter to Senator Warner from Sussex County re: GTA - GCFM

I believe the reference to TEA is to determine whether the capital investment plan (the reduced amt of $500K) is feasible and will create the requisite jobs, but I will confirm with the officer and let you know.

From: [redacted]
Sent: Tuesday, June 08, 2010 9:02 AM
To: [redacted]
Cc: [redacted]
Subject: RE: EB-5 Alien Investor program - letter to Senator Warner from Sussex County re: GTA - GCFM

Hi,

One issue of concern that I have with the case synopsis provided below is that it appears that the CSC is requesting documentary evidence that a prospective area within a proposed RC qualifies as a TEA. The CSC should not be asking for documentary evidence that the area where the investments are to be made is a TEA in an RC proposal or amendment that involves a new geographic area of focus for the RC. The TEA determination must be made at the time the alien investor makes his/her investment or at the time of filing of the Form I-526 petition, whichever is earlier, per our published guidance and Matter of Soffici. We discussed this at length when I was at the CSC in March and I also provided a reminder on this issue in the attached email. Basically, we need to know if the investment will be $500k or $1 mil when reviewing the RC business plan and economic analysis to assist in the determination that the capital investment plan is feasible and will create the requisite jobs.

Do you think that the RFE in this case needs to be amended to remove that part of the request for evidence? If the TEA evidence was put in the RFE as an aside, then we can probably let it go – particularly since tempers are flying high around this case. But, if it is one of the main focuses of the RFE then we might consider issuing an amended RFE.

In any case, I will add this topic to the final agenda for our call on Wednesday, which I will be sending out tomorrow.

Thanks,

[redacted]

From: [redacted]
Sent: Tuesday, June 08, 2010 10:03 AM
To: [redacted]
Cc: [redacted]
Subject: RE: EB-5 Alien Investor program - letter to Senator Warner from Sussex County re: GTA - GCFM

[redacted]

Thank you for the update on the case. We received the letter informally and have not been asked to provide a formal response. However, I wanted to ensure we had the information readily at hand in case we were asked for a status.

SCOPS at this time is not personally talking to individuals regarding the adjudication of their EB-5 cases. They are being asked to go through the EB-5 mailbox. Hopefully the era of he said/she said will come to an end as we have now evolved to a more formalized process.

Thanks everyone for your help on this case. If we need anything else, we will let you know.

[redacted]

[redacted]
[redacted])
Service Center Operations
[redacted]
Washington, DC 20529-2060
([redacted]

From: [redacted]
Sent: Monday, June 07, 2010 7:17 PM
To: [redacted]

Cc: [redacted]
Subject: RE: EB-5 Alien Investor program - letter to Senator Warner from Sussex County re: GTA - GCFM

I echo [redacted] comments and add that we wouldn't have plainly said "no" to the expedite request. As general policy and courtesy, amendments are on a higher priority tier and we do adjudicate those more promptly and ahead of normal queue. I don't know who he spoke to or inquired with, a search for communication in our EB5 mailbox is turning up negative so far. It is possible he bypassed the established inquiry process as outlined in the 12.11.09 memo, which states that all case inquiries and expedite requests are be sent to the EB5 mailbox.

[redacted] – How did you receive this inquiry? Was it a congressional? Who are we responding to? Please provide the particulars so we can better manage, track and respond to this inquiry. Thanks.

Regarding the status of the amendment, an RFE was issued 5/13/0 and response is still pending. Below is a summary of the case facts and deficiencies (thanks [redacted]) addressed in the RFE for your information.

The RC wants to expand its geographic region and also add projects not covered in the original approval. The new geographic areas are not clearly delineated, but it is clear they are not contiguous, as required. The Amendment plans to create two investment funds, one fund for a single project and another fund to invest in multiple projects.

The projects lack adequate business plans and an economic analysis showing the promotion of growth through increased productivity, job creation and increased capital investment. An updated economic analysis is needed to for the new geographic areas and new kinds of businesses. The business plan submitted does not identify total costs of development, number of investors, sources of other financing, permits and licenses, etc...

The amendment proposal assumes all of the investment will be done in targeted areas but provide no MSA information showing the proposed areas actually are rural or high unemployment. Evidence the projects will be in TEAs was requested.

The Operational Plan was RFE'd as deficient because the proposed auto plant will take between 1 to 10 billion dollars to develop, more than is possible by EB-5 investors alone (1 billion dollars = 2000 $500,000 investors or twice as many I-526s as we approved for all of 2009). Information was requested as to other sources of financing and whether recruitment and promotional efforts are up to the task.

The organizational documents were samples only and the applicant was advised that if he wants final versions of the documents to be reviewed, he should submit and date them.

The case is not approvable as filed.

From: [redacted]
Sent: Monday, June 07, 2010 7:16 AM
To: [redacted]
Cc: [redacted]
Subject: RE: EB-5 Alien Investor program - letter to Senator Warner from Sussex County re: GTA - GCFM

Hi,

This letter is tangible proof that it is a poison pill for EB-5 staff at the CSC or at HQ to provide comments/guidance/advice relating to any prospective EB-5 application. The same goes for providing published answers to hyper-technical "what if" questions that are posed to the agency, such as many of the questions posed in advance of the December 2009 stakeholder's meeting.

With that said, it is disingenuous for this promoter to state that he was unaware that the geographic area of an RC has to be contiguous. That has always been our interpretation regarding the geographic area of an RC, and I can only think that this promoter took [redacted] statements out of context.

Thanks,

[redacted]

From: [redacted]
Sent: Monday, June 07, 2010 8:45 AM
To: [redacted]
Cc: [redacted] P
Subject: FW: EB-5 Alien Investor program - letter to Senator Warner from Sussex County re: GTA - GCFM
Importance: High

CSC,
Can you please check on this case and let me know where we are in the processing?
Thanks,
[redacted]

[redacted]
Service Center Operations
[redacted]
Washington, DC 20529-2060
[redacted]

[redacted]

From: [redacted]
Sent: Thursday, September 23, 2010 2:11 PM
To: [redacted]
Subject: RE: Gulf Coast Funds: amendment denial

Hi yes, both [redacted] and I reviewed this denial. Without going into too much detail I agreed that the RC did not provide specific relevant statistical data for the geographic area involved. Let me know if you need anything else. thanks

-----Original Message-----
From: [redacted]
Sent: Thursday, September 23, 2010 6:44 AM
To: [redacted]
Subject: Fw: Gulf Coast Funds: amendment denial

One thing I can do as I sit around watching HGTV. Here is where [redacted] cleared.

Sorry to have dumped out on both of you. I hope to be back on the job next week.

[redacted]

[redacted] Original Message -----
From: [redacted]
To: [redacted]
Cc: [redacted]
Sent: Fri Aug 27 10:56:00 2010
Subject: RE: Gulf Coast Funds: amendment denial

[redacted]
We agree denial is appropriate and looks good to go as written.
Thanks
[redacted]
-----Original Message-----
From: [redacted]
Sent: Wednesday, August 25, 2010 11:34 AM
To: [redacted]
Subject: FW: Gulf Coast Funds: amendment denial

[redacted]

Great. If possible can OCC review and provide an opinion to on our decision?

[redacted]

[redacted]
[redacted]
[redacted]

[redacted]

[redacted]

[redacted]
Washington, D.C. 20529-2060

-----Original Message-----
From: [redacted]
Sent: Wednesday, August 25, 2010 12:45 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Gulf Coast Funds: amendment denial

Thanks [redacted]

I'm also adding [redacted] and [redacted] who are helping me with EB-5 issues now.

[redacted]

[redacted]
USCIS
Department of Homeland Security
[redacted]

-----Original Message-----
From: [redacted] A
Sent: Wednesday, August 25, 2010 11:41 AM
To: [redacted]
Subject: FW: Gulf Coast Funds: amendment denial

[redacted]

Due to SCOPS receiving and responding to Front Office interest in this case,

I am including you in on this CSC: Gulf Coast RC amendment denial.

Perhaps you are familiar with this already; however, I just wanted to loop you in if additional inquiries are made.

Thank you,

[redacted]
Service Center Operations

U.S. Citizenship and Immigration Services
[redacted]
Washington, D.C. 20529-2060

-----Original Message-----
From: [redacted]
Sent: Tuesday, August 24, 2010 11:56 AM
To: [redacted]
[redacted]
Subject: FW: Gulf Coast Funds: amendment denial

I apologize I didn't immediately forward this to you. Here is [redacted] take on the appropriateness of the denial. Please let me know if you have any questions.
Thanks,
[redacted]

-----Original Message-----
From: [redacted]
Sent: Thursday, August 19, 2010 11:59 AM
To: [redacted]
Cc: [redacted]
Subject: RE: Gulf Coast Funds: amendment denial

Hi [redacted],

I have added [redacted] since you are in training today.

The CSC sent me a copy of the denial after it was sent - I thought that I had forwarded it to you - sorry if I forgot to. I agree with their decision to deny the amendment. The basic issues in the case are:

1. The EB5 Regional Center statutory framework requires that the geographic focus of a regional center must be on a contiguous area. Currently Gulf Coast's (GC) approved geographic area is the State of Louisiana and the State of Mississippi. A couple of years ago GC asked SCOPS (back when we were unfortunately entertaining these types of discussions) if they could add the State of Virginia to their geographic scope. SCOPS told them that USCIS couldn't approve this request because VA is not contiguous to LA and MS.

GC has now requested to add the State of Tennessee and certain counties in the State of Virginia to their geographic area in order to "link up" LA and MS to VA. However, the economic analysis provided does not provide data for the requested area; instead it simply focuses on three select counties located in MS, TN and VA. GC has not demonstrated that they will actually focus EB-5 capital investment activities within the requested expanded region.

2. The economic analysis is flawed because it mixes national data with county-level data (compares apples to oranges), and relies on estimated production levels for the project for 2019, nine years from now. This analysis did not use "reasonable methodologies" in developing the job creation estimates and the other estimated economic impacts that will result from EB-5 capital investments through GC as required by the statutory and regulatory framework.

Recommendation: [redacted] should file an appeal if he feels that the CSC's decision to deny was inappropriate. If he files a brief and supporting evidence with the appeal then the CSC will review the documentation to see if it overcomes the denial of the amendment. If it doesn't then the case will be sent to the AAO will perform a de novo review.

Thanks,

[redacted]

----- Original Message -----
From: [redacted]

To: [redacted]
Cc: [redacted]
Sent: Thu Aug 19 10:54:47 2010
Subject: FW: Gulf Coast Funds: amendment denial

[redacted] – Please have someone take a look at this and let me know if we erred in any way. To be clear, there is no desire to influence the outcome; simply to understand if there is any basis for the complaint.

[redacted]

From: [redacted]
Sent: Thursday, December 30, 2010 9:33 AM
To: [redacted]

Subject: RE: [REVISED TASK] DUE NLT 4:00 PM Monday January 3rd: Draft S1 Response and Cover Memo re Project Mastiff - EB-5 (WF 891401)

I would suggest changing the sentence:

The AAO has committed to making their decision as quickly as possible and generally makes expeditious decisions within six months of receipt.

to

The AAO has committed to issuing a decision as quickly as possible, although case processing for these types of cases generally averages six months.

[redacted]

From: [redacted]
Sent: Thursday, December 30, 2010 8:57 AM
To: [redacted]
Subject: RE: [REVISED TASK] DUE NLT 4:00 PM Monday January 3rd: Draft S1 Response and Cover Memo re Project Mastiff - EB-5 (WF 891401)
Importance: High

OPS, OCC and AAO,
Please find attached the draft cover letter and response for S1 to sign. As this needs to be back with Exec Sec by 4:00PM on Monday, we would like to request to have OPS and AAO edits/comments by 2:00PM today so OCC has Monday morning to make any final edits. SCOPS can then do a final clean-up and hopefully have up to ExecSec on time.

We thank you for helping out with this. Please call me if you have any questions.

Happy New Year!

[redacted]

[redacted]
Service Center Operations
[redacted]
Washington, DC 20529-2060
[redacted]

From: [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Wednesday, December 29, 2010 7:20 AM

20 Massachusetts Ave., NW Suite 2000
Washington, DC 20529-2060
[redacted]

From: [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Wednesday, December 29, 2010 7:20 AM
To: [redacted]
Cc: Ma[redacted] Dona[redacted]
Subject: [REVISED TASK] DUE NLT 4:00 PM Monday January 3rd: Draft S1 Response and Cover Memo re Project Mastiff - EB-5 (WF 891401)
Importance: High

SCOPS and AAO:

DHS informed us that the response will now be signed by S1 not D1. Please prepare a response and cover memo using the attached templates.

The deadline has also been shortened. Please return OCC-cleared drafts by 4:00 PM, Monday, January 3rd to:

[redacted]

[redacted]

[redacted]

[redacted]

USCIS Office of the Executive Secretariat

[redacted]

Please send all official actions to [redacted] ***and, if applicable, attach a completed G-1056. Thank you.***

From: [redacted] **On Behalf Of** USCIS Exec Sec
Sent: Monday, December 27, 2010 3:49 PM
To: [redacted]
Cc: [redacted]
Subject: DUE NLT 5:00 PM Wednesday January 5th: Draft D1 Response re Project Mastiff - EB-5 (WF 891401)

SCOPS:

Please draft a response to be signed by D1 to the attached letter from GreenTech Automotive regarding an EB-5 denial. Please coordinate with OCC and P&S as appropriate.

Send an OCC-cleared draft of the letter by 5:00 PM, Wednesday, January 5th to:

[redacted]

[redacted]

Thank you.

[redacted]

USCIS Office of the Executive Secretariat

[redacted]

[redacted]

Please send all official actions to [redacted] *and, if applicable, attach a completed G-1056. Thank you.*

4/DB

GreenTech Automotive

SCANNED/RECEIVED
BY EXEC SEC
2010 DEC 27 AM 10: 19

December 15, 2010

Via USPS mail

Janet Napolitano
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Re: GreenTech Automotive and EB-5: USCIS Should Help, not Hurt, Job Creation for U.S. Workers

Dear Secretary Napolitano:

I know you have many duties, including supervising the U.S. immigration system in a way that stimulates our economy. Unfortunately, the U.S. Citizenship and Immigration Services (USCIS) is standing in the way of creating thousands of jobs for U.S. workers. USCIS erroneously denied a request to expand a major green automotive manufacturing facility into economically depressed areas of Tennessee and Virginia. I urge you to reverse this decision so we can help grow the U.S. economy with green jobs.

I am chairman of WM GreenTech Automotive (GTA) (http://www.wmgta.com/), a U.S.-based company that is developing and producing green, affordable hybrid and electric vehicles. We are building a large automobile manufacturing series of facilities in economically depressed areas in several states that should ultimately create up to 34,500 new high-paying automotive jobs for U.S. workers.

GTA plans to build a motor vehicle parts manufacturing plant in Virginia, a warehouse building in Tennessee, and a motor vehicle assembly plant in Mississippi. The overall project is called Project Mastiff.

GTA has targeted full production capacity at one million vehicles annually by 2019. Overall, GTA plans to invest approximately $10 billion to develop the facilities in Virginia, Tennessee and Mississippi and to build a distribution network and production. GTA already has a 400,000 square foot facility in Mississippi.

GTA recently acquired EuAuto, an existing neighborhood electric vehicle (NEV) manufacturer. As EuAuto becomes part of GTA, EuAuto's existing orders from European countries and worldwide distribution must be fulfilled immediately. GTA needs to launch the production of this NEV product (GTA-MyCar) for 10,000-20,000

units in 2011. Therefore, GTA will immediately start the NEV assembly in Mississippi to address current GTA-MyCar orders from European countries. Once these immediate needs are met, GTA-MyCar operations will be incorporated into the future GTA manufacturing facility to be completed in Mississippi by the end of 2012. This is the only viable approach for GTA to produce GTA-MyCar products in the United States while waiting for the Mississippi facility to be completed. This course of action will enable GTA to begin installing equipment and hiring assembly workers in early 2011. The estimated initial job creation will be 300 automotive workers for green assembly operations.

Construction for Project Mastiff was expected to start in 2010, with the first phase completed by 2012. USCIS, however, has halted Project Mastiff in its tracks.

Project Mastiff is partially funded by foreign investors through the EB-5 green card category. Each EB-5 investor must invest $500,000 in the United States and create 10 jobs for U.S. workers. EB-5 investors in the GTA project are investing their money through Gulf Coast Funds Management (GCFM), an existing EB-5 regional center already approved by USCIS for the states of Louisiana and Mississippi. GCFM filed an amendment for approval of the Mississippi part of Project Mastiff in April 2009. USCIS approved that amendment in July 2009.

In February 2010 GCFM filed an amendment application to expand its regional center to include the Tennessee and Virginia parts of Project Mastiff. The USCIS denied that amendment in August 2010. GTA promptly filed a motion to reopen. That motion has been pending for over three months.

The USCIS denial of GCFM's amendment request was vague. To the extent that GTA could discern the specific bases for denial, the USCIS erred by misinterpreting the economic reports submitted with the amendment. [redacted] prepared both the original and updated economic reports. [redacted] has drafted more than 60 economic reports for EB-5 projects and regional center applications, perhaps more than any other economist. [redacted] is thus well aware of how to apply standard economic methodologies to EB-5 projects.

USCIS previously accepted [redacted] economic analysis and agreed that Project Mastiff's Mississippi operation will significantly benefit the regional and national economy by creating thousands of automotive jobs. However, when the same economic analysis was applied to the same project's Virginia and Tennessee operations, USCIS failed to see the same economic impact, even though Project Mastiff will also create several thousand new automotive jobs for U.S. workers in Virginia and Tennessee.

GCFM's motion to reopen should be approved as soon as possible so that it can fund GTA's operations and job creation in Virginia and Tennessee. USCIS should also expedite adjudication of all EB-5 petitions for investors in Project Mastiff. GTA has more than 200 EB-5 investors already committed to invest in Project Mastiff. Investors cannot file their petitions, however, until USCIS approves GCFM's amendment. The EB-5 money, although only a small part of the overall financing for Project Mastiff, is crucial. GTA needs the EB-5 financing to get Project Mastiff off the ground so that it can then obtain financing from other sources.

Sincerely,

Terence R. McAuliffe
Chairman

[redacted]

FRI 17 DEC 2010

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Janet Napolitano
Secretary of Homeland Secur
U.S. Dept. of Homeland Securit
Washington, D.C. 20528

[redacted]

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MOA-0003552

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE SECRETARY

FROM: Alejandro N. Mayorkas
Director

SUBJECT: **Response to Terence McAuliffe's December 15, 2010 Letter regarding an EB-5 denial (WF 891401)**

Action Requested: Secretary's signature on the attached letter.

Context: The letter from Terence R. McAuliffe (chairman of WM GreenTech Automotive (GTA)) states that USCIS erroneously denied a request to expand the Gulf Coast Funds Management Regional Center (GCFM), which proposed to expand the jurisdiction of the GCFM to the entire State of Tennessee, along with the southeastern corner of the Commonwealth of Virginia, in order to offer capital investment opportunities to EB-5 investors in a major green automotive manufacturing project. Mr. McAuliffe is not a party in the instant case. He is the chairman of GTA which is one of the projects contemplated by the Gulf Coast Funds Management (GCFM) Regional Center. While we are not able to share any information with Mr. McAuliffe, the below is for the Secretary's information.

Mr. McAuliffe's claim that the case was erroneously denied is without merit. Prior to issuance of the denial, HQ staff within Service Center Operations (SCOPS) and the Office of the Chief Counsel (OCC) reviewed and approved the issuance of the denial. Based on a review of the entire record, with the exception of one legal interpretation included as only part of the basis of the denial, USCIS believes that the denial of the Regional Center amendment request was appropriate and based on the proper application of law and USCIS policy, as follows:

Case Background: A Regional Center may be granted jurisdiction over a limited geographic area for the purpose of concentrating pooled investment in defined economic zones. A Regional Center's geographic area must be contiguous.

GCFM is approved for the geographic area of the State of Louisiana (LA) and the State of Mississippi (MS). About two years ago, GCFM asked USCIS to add the Commonwealth of Virginia (VA) to the geographic scope of their regional center. USCIS could not approve this request because VA is not contiguous to either LA or MS. In February 2010, GCFM requested to add the State of Tennessee (TN) and the southeastern corner of VA to their geographic area in order to "link up" LA and MS to VA. GCFM did not demonstrate that they planned to actually focus EB-5 capital investment activities throughout the requested expanded region.

The August 2010 denial of the amendment request concluded that a Regional Center's economic impacts must be demonstrated at either a national or regional level. USCIS now believes that this regulatory interpretation is overly restrictive given that some Regional Centers may have investment projects with impacts that are solely regional in nature, along with larger projects that may have national impacts.

After receiving the denial in August 2010, on September 10, 2010 GCFM filed a motion requesting that USCIS reopen the decision to deny the amendment request. USCIS has reviewed the motion to reopen and plans to grant the motion to reopen request as new facts have been presented. USCIS plans to render a decision by January 25, 2011.

It is of note that the regional center has already successfully offered EB-5 capital investment opportunities to EB-5 investors to invest in the automotive plant to be constructed within the State of Mississippi, which is currently within the geographic bounds of the approved regional center. Thus, these economic development plans are moving forward under the regional center's current designation. USCIS must adjudicate each regional center designation or amendment request as put forth by the regional center promoter. Further, such proposals may not be "pre-adjudicated" in advance of filing. However, USCIS did state to the regional center in correspondence issued earlier in 2010 that any denial of the regional center's multi-state expansion request would be without prejudice to the filing of a separate regional center proposal seeking designation of a regional center within the targeted bounds of the State of Tennessee or the Commonwealth of Virginia. USCIS believes that such separate proposals, if properly documented with the economic impacts of the planned automotive plant or transportation hub in the Commonwealth of Virginia or the State of Tennessee, respectively could be approvable. USCIS also believes that it might be reasonable for GCFM to request an expansion of the geographic area of its regional center to include the portion of the State of Tennessee that encompasses the location of the planned transportation hub. This area falls within the Memphis Metropolitan Statistical Area ("MSA") and is in close proximity to the planned automotive plant in Tunica, Mississippi, which is also in the Memphis MSA.

Coordination: This proposed response has been coordinated within USCIS's Operational, Chief Financial Office, Policy and Strategy and Chief Counsel components.

Timeliness: Due to coordination efforts with the various USCIS components on the inquiry and the underlying decision, USCIS was unable to provide a decision within the five day business day standard.

Executive Secretariat Recommendation: I recommend you sign the enclosed letter.

_____ _____

[redacted], Executive Secretary Date

DO NOT DISLOSE

Terence R. McAuliffe
WM GreenTech Automotive Corp.
[redacted]
McLean, VA 22102

Dear Mr. McAuliffe:

Thank you for your December 15, 2010 letter regarding WM GreenTech Automotive Corporation and your concerns with the decision U.S. Citizenship and Immigration Services (USCIS) rendered with respect to the Gulf Coast Funds Management (GCFM) regional center's request to amend the scope of the regional center.

Due to privacy concerns, I may not discuss the substance of the GCFM case with anyone other than GCFM and its representatives. However, I have forwarded your letter to Alejandro Mayorkas, the Director of USCIS for any appropriate action.

I would like to assure you that the Department of Homeland Security through USCIS is committed to the success of the EB-5 Program, and I thank you again for your letter.

Sincerely,

Janet Napolitano

[redacted]

From: [redacted]
Sent: Monday, January 24, 2011 2:18 PM
To: [redacted]
Subject: FW: GCFM EB-5 Materials

Heads Up- I may have to call you. :)

From: [redacted]
Sent: Monday, January 24, 2011 2:15 PM
To: [redacted]
Subject: FW: GCFM EB-5 Materials

Heads up.

From: Mayorkas, Alejandro N
Sent: Monday, January 24, 2011 2:12 PM
To: [redacted]
Subject: RE: GCFM EB-5 Materials

Thank you, [redacted] I have read the talking points and have some questions. With whom should I discuss?
Thanks. Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

From: [redacted]
Sent: Monday, January 24, 2011 12:41 PM
To: Mayorkas, Alejandro N; [redacted]
Subject: GCFM EB-5 Materials

Ali [redacted]

The materials were forwarded to ExecSec about 11:00 a.m. with a reminder that you need them urgently for a call this afternoon with S1. If you want to discuss further in advance of your call, please let me know. The materials include the response to Mr. McAuliffe's letter, a cover memo to S1, and talking points for Ali. The denial is not included in the materials but is ready for issuance upon receiving the go ahead. If you'd like to see that as well, please let me know.

Thanks,

[redacted]

[redacted]

From: [redacted]
Sent: Monday, January 24, 2011 2:18 PM
To: [redacted]
Subject: FW: GCFM EB-5 Materials

Heads Up- I may have to call you. :)

From: [redacted]
Sent: Monday, January 24, 2011 2:15 PM
To: [redacted]
Subject: FW: GCFM EB-5 Materials

Heads up.

From: Mayorkas, Alejandro N
Sent: Monday, January 24, 2011 2:12 PM
To: [redacted]
Subject: RE: GCFM EB-5 Materials

Thank you, [redacted] I have read the talking points and have some questions. With whom should I discuss?
Thanks. Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave., N.W.
Washington, DC 20529
[redacted]

From: [redacted]
Sent: Monday, January 24, 2011 12:41 PM
To: Mayorkas, Alejandro N; [redacted]
Subject: GCFM EB-5 Materials

Ali [redacted],

The materials were forwarded to ExecSec about 11:00 a.m. with a reminder that you need them urgently for a call this afternoon with S1. If you want to discuss further in advance of your call, please let me know. The materials include the response to Mr. McAuliffe's letter, a cover memo to S1, and talking points for Ali. The denial is not included in the materials but is ready for issuance upon receiving the go ahead. If you'd like to see that as well, please let me know.

Thanks,

[redacted]

[redacted]

From: [redacted]
Sent: Monday, July 11, 2011 10:19 AM
To: [redacted]
Cc: [redacted]
Subject: FW: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)
Attachments: RE: Greentech; GCFM Decision dated 012811.pdf

Hi [redacted]

Does GCFM understand that we are holding these in abeyance while we await an AAO decision on these two issues that are common to all? If they know that, and still want to press for action, we would likely proceed with RFEs. However, before doing so, I would also like to make one last attempt to get AAO to speed up their decision. Do you have a reference number I can use to discuss this with [redacted]

From: [redacted]
Sent: Friday, July 08, 2011 4:52 PM
[redacted]
Subject: FW: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

Hi [redacted],

CSC looked into the systems errors issues raised by Dawn Lurie below through pulling the actual files to see whether there are system data mismatches with the physical files. The CLAIMS information matches the information in the paper record, so the error appears to be in the atty's records, not in USCIS's records.

Note that CSC has been holding these I-526 petitions since two of the issues in the GCFM motion denial certification that we sent to AAO in January specifically impact these cases. The issues are redemption agreements and whether the LLC documentation is not compliant with the managerial oversight requirement at 8 CFR 204.6(j)(5) that were not caught at the RC proposal stage (sigh).

I contacted the AAO today to see what the status of the certification decision is and I was told that they will have a decision issued within the next two weeks.

Our options at this point are:

#1: Go forward with RFEs that address the issues above. The pro for #1 is that CSC could get notices issued next week which would address the complaint of inaction in these cases. The cons are (a) that the RC would undoubtedly call foul because these codicils were in the documentation reviewed at the RC stage, and (b) the AAO may have a different take on these issues when they issue the certification decision.

#2: Wait for the AAO decision as we specifically asked to have these two issues examined in the certification (attached.) The pro and cons for #2 are the inverse of the pro and cons for #1.

Please let me know your thoughts on this so that I can provide advice to the CSC.

Thanks,

[redacted]

From: [redacted]
Sent: Thursday, July 07, 2011 2:21 PM
[redacted]
Subject: FW: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

FYI - It appears that there is a claim to a systems error regarding Name and WAC receipt number.

Can you check this out in addition to the issues that I raised in my GCFM email of a few minutes ago.

Thanks,

[redacted]

From: [redacted]
Sent: Thursday, July 07, 2011 5:15 PM
[redacted]
Subject: FW: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

FYI

From: Mayorkas, Alejandro N
Sent: Thursday, July 07, 2011 5:04 PM
To: [redacted]
Subject: FW: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

Fyi.

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

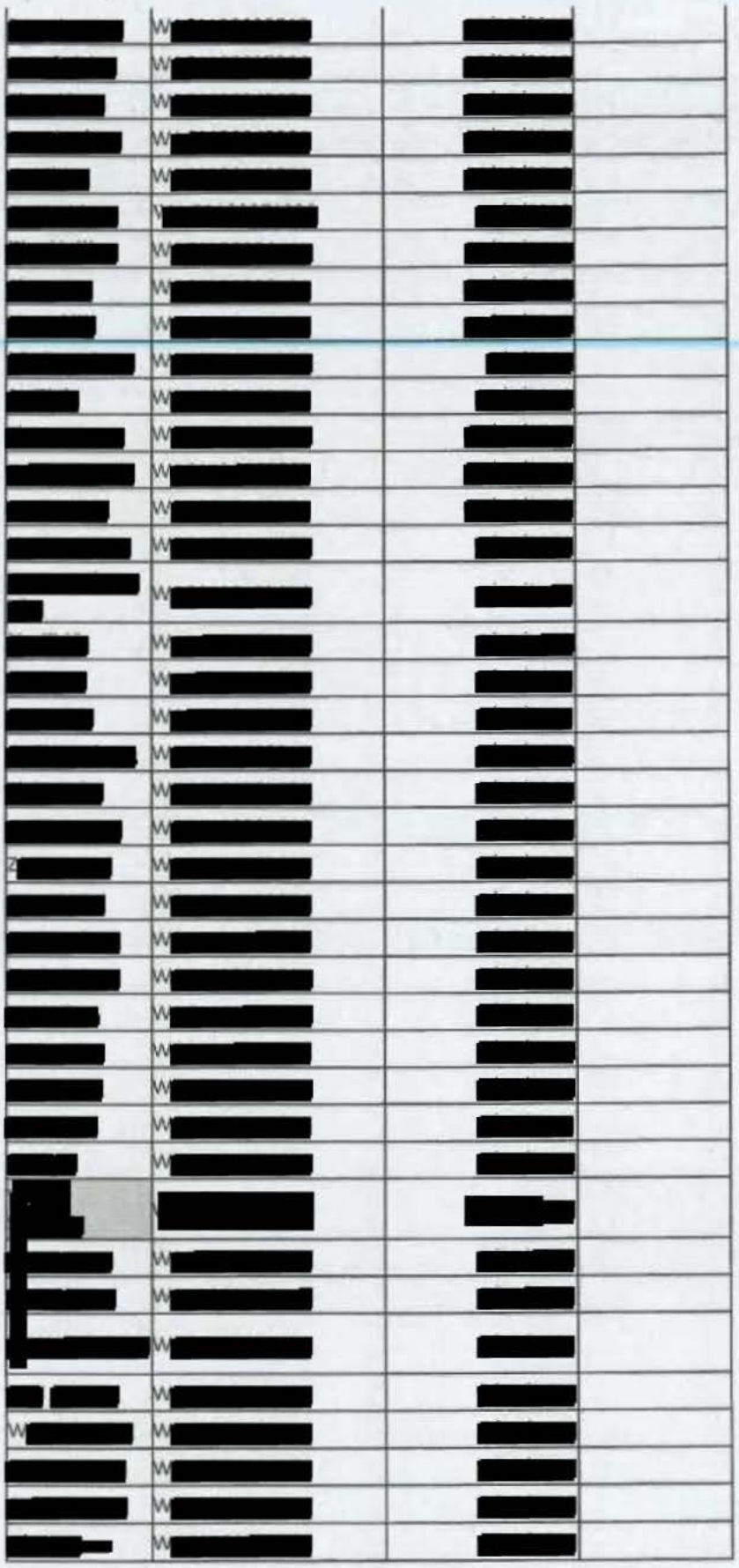
From: luried@[redacted]
Sent: Thursday, July 07, 2011 4:42 PM
To: Mayorkas, Alejandro N
Subject: RE: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

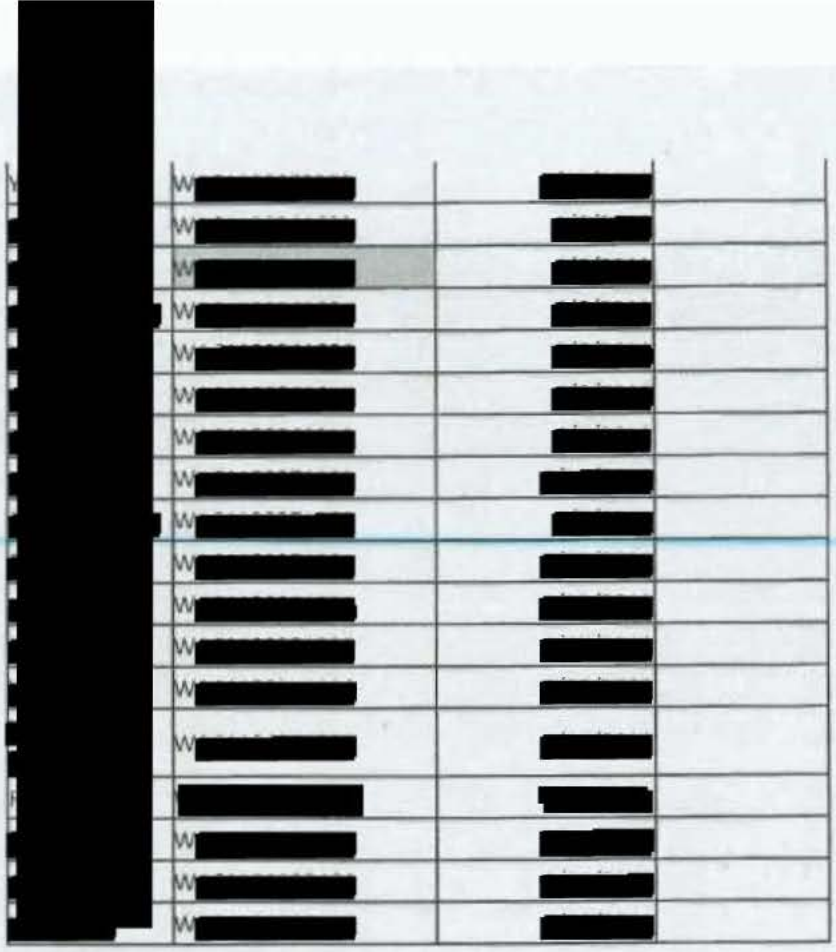
Thank you for your quick response. I am including below the updated chart that highlights the two errors I mentioned on the name and WAC.

Dawn

[redacted]	W[redacted]	[redacted]	[redacted]

[redacted]





Dawn M. Lurie
Shareholder
Greenberg Traurig LLP | [redacted] | Tysons Corner, VA 22102
Tel [redacted] www.gtlaw.com

From: Mayorkas, Alejandro N [mailto[redacted]]
Sent: Thursday, July 07, 2011 4:32 PM
To: Lurie, Dawn (Shld-TCO-Imm); Mayorkas, Alejandro N
Subject: RE: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

Dawn,
Thank you for your e-mail below, which you and I just discussed by telephone. I will follow up.
Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]

Washington, DC 20529
[redacted]

From: luried@[redacted]]
Sent: Thursday, July 07, 2011 4:09 PM
To: Mayorkas, Alejandro N
Cc: [redacted]
Subject: RE: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)
Importance: High

Dear Director Mayorkas,

The Regional Center notified me earlier this week that they have received word of a possible lawsuit being filed against them for the delays associated with the I-526 petitions. I had not wanted to bother you with the concerns but feel the sense of urgency has escalated and requires your attention. Today they received word that investors are requesting refunds of their funds.
Please see quotes below from their offices in China:

"Have you got any positive news after the meeting with USCIS?? When do we expect to see the next I526, we ran out of excuses already.

Because of the slow issuance of the I526, we are facing many unhappy agents"

...we are facing extreme pressure fr agents and clients. I am afraid if the I-526 situation cannot ratify in the very near future, clients will WD fr the program. Since the government had made announcement the fast processing of shelve ready project, five month I-526 and one month RFEs, why can't we take affirmative action base on this?

Is there anything we can do to have the RFE's adjudicated and direction provided on the remaining cases? The first RFE response was received on February 16, 2011 by the Service. The petitions that have not received RFE's are pending as far out as one year.

The framework of the entire EB-5 programcould be threatened if there is a report of unrest combined with legal action taken against the Center and the GTA project. We want to avoid this and move forward on creating jobs while making green cars in the U.S.

Thank you for your time.

Dawn M. Lurie
Shareholder
Greenberg Traurig LLP | [redacted] | Tysons Corner, VA 22102
[redacted]

[redacted]

From: [redacted]
Sent: Tuesday, July 12, 2011 9:45 AM
To: [redacted]

We have a final decision on GCMA but cannot issue it. [redacted] gave a draft to the director, who wants to read it. He will be out of town this week, and [redacted] just said he will let me know when we can send it out.

[redacted]

From: [redacted]
Sent: Wednesday, July 13, 2011 10:22 AM
To: [redacted]
[redacted] W
Subject: RE: Update on GCFM certification to the AAO

Is this GCMA or GCFM?

From: [redacted]
Sent: Tuesday, July 12, 2011 11:48 AM
To: [redacted]
Subject: Update on GCFM certification to the AAO

[redacted]

Note that AAO has a final decision on the Gulf Coast motion denial that we certified to the AAO, but D1 wants to read it so it is with him at this point.

Thanks,

[redacted]

From: [redacted]
Sent: Tuesday, July 12, 2011 9:45 AM
To: [redacted]

We have a final decision on GCMA but cannot issue it. [redacted] gave a draft to the director, who wants to read it. He will be out of town this week, and [redacted] just said he will let me know when we can send it out.

[redacted]

From: [redacted]
Sent: Wednesday, July 13, 2011 10:59 AM
To: [redacted]
[redacted]
Subject: RE: EB5 Va case, I think it's Gulf Coast?

Thanks. This is one we need to monitor and provide updates to the front office. Please let us know when we get the RFE response.

From: [redacted]
Sent: Wednesday, July 13, 2011 10:33 AM
To: [redacted]
[redacted]
Subject: RE: EB5 Va case, I think it's Gulf Coast?

Hi [redacted]

We did issue an RFE in the case, which caused a bit of a flap for which [redacted] responded to the front office about (see attached). At this point we are waiting for their RFE response to the best of my knowledge.

Thanks,

[redacted]

From: [redacted]
Sent: Wednesday, July 13, 2011 10:27 AM
To: [redacted]
[redacted]
Subject: RE: EB5 Va case, I think it's Gulf Coast?

Ok – another follow up. This time it is the VA case that arose from the GCFM case. As I recall we agreed to expedite and then there were some issues we needed resolved through an RFE.

From: [redacted]
Sent: Wednesday, July 13, 2011 10:15 AM
To: [redacted]
Subject: EB5 Va case, I think it's Gulf Coast?

[redacted]

Do you know where we are in the process on this case? Ali was asking.

Thanks
[redacted]

[redacted]

From: [redacted]
Sent: Monday, August 15, 2011 7:55 PM
To: [redacted]
Subject: Re: GCFM Pending I-526 Petitions for GTA project

If it's our [redacted], then yes. Would you like me to call tomorrow and find out?

By the way, I believe we were holding the GC cases for the AAO decision which we thought would be issued a couple of weeks ago.

From: [redacted]
Sent: Monday, August 15, 2011 07:51 PM
To: [redacted]
Subject: Fw: GCFM Pending I-526 Petitions for GTA project

Is this also a former cis employee?

From: [redacted]
Sent: Monday, August 15, 2011 07:37 PM
To: [redacted]
Subject: FW: GCFM Pending I-526 Petitions for GTA project

FYI. I think there are more cases here.

From: Mayorkas, Alejandro N [redacted]
Sent: Monday, August 15, 2011 11:28 AM
To: [redacted]
Subject: FW: GCFM Pending I-526 Petitions for GTA project
Importance: High

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

From: Smith, Douglas A [redacted]v]
Sent: Monday, August 15, 2011 11:09 AM
To: Mayorkas, Alejandro N
Subject: Fw: GCFM Pending I-526 Petitions for GTA project
Importance: High

Thoughts on this? Thanks!

Douglas A. Smith
Assistant Secretary

Office of the Private Sector
Department of Homeland Security
[redacted]

From: [redacted]
Sent: Wednesday, August 10, 2011 03:37 PM
To: douglas.a.smith[redacted] <[redacted]>
Cc: Terry McAuliffe <[redacted]
Subject: GCFM Pending I-526 Petitions for GTA project

Hello Doug,

Please see the summary below and details in the attached spreadsheet regarding 83 pending cases/investor's applications.

In EB-5 program, it means $41.5 million foreign capital can be utilized to invest in the US to create 830 jobs in the most economically depressed area such as Tunica MS. The stake of so many jobs created in green manufacturing space has won great support from MS State government, and Tunica County as well as senators/congressman. At current stage of economy, it becomes even more critical to expedite EB-5 adjudication process to help GTA revitalize local economy. Your attention on the this matter is highly appreciated!

Best regards

[redacted]

From: [redacted]
Sent: Wednesday, August 10, 2011 11:37 AM
To: [redacted] Terry McAuliffe
Cc: [redacted]
Subject: GTA Pending I-526 Petitions

All –

Below is a breakdown of the currently pending I-526 petitions with USCIS. Let me know if you need anything else.

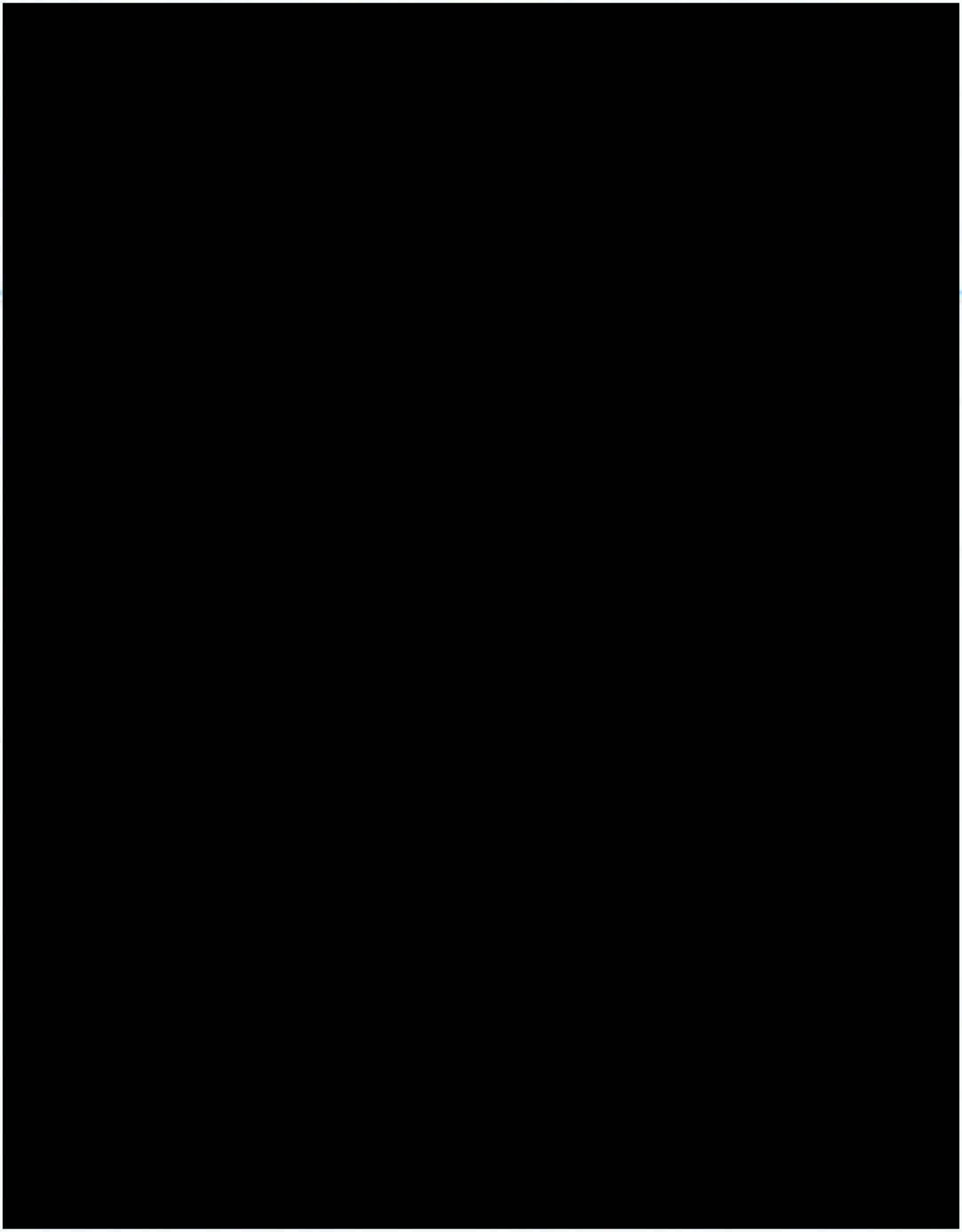
Thank you

[redacted]

Filing timeframe	Number of Months Pending	Total Petitions	Pending RFEs
June 2010 – July 2010	13-14 months	7	4 of the 7 have been issued RFEs. Responses were filed.
August 2010 – October 2010	10-12 months	21	
November 2010 – February 2011	6-9 months	36	
April 2011 – July 2011	1-5 months	19	
		83 Pending Petitions	

[redacted]

From: [redacted]
Sent: Thursday, August 25, 2011 2:01 PM
To: [redacted]
Attachments: GCFM RFE.pdf



[redacted]

From: [redacted]
Sent: Tuesday, September 13, 2011 4:58 PM
To: [redacted]
Subject: FW: GCFM

Fyi

From: Mayorkas, Alejandro N
Sent: Tuesday, September 13, 2011 4:54 PM
To: [redacted]
Cc: [redacted]
Subject: Re: GCFM

Thank you, [redacted]. I would like the opportunity. I am available tomorrow. Thanks. Ali

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From: [redacted]
Sent: Tuesday, September 13, 2011 04:50 PM
To: Mayorkas, Alejandro N; [redacted]
Cc: [redacted]
Subject: GCFM

All of the pending I-526s need some form of individual review before decisions can be rendered. After clarifying issues with the AAO yesterday related to their recent decision, our team has been working on a "roadmap" to share with adjudicators laying out how these cases should be reviewed in light of the AAO decision. That roadmap should be completed tomorrow and we can share that with you if you like before sending it to CSC. We can begin adjudicating cases this week if we are able to issue this guidance tomorrow or Thursday.

[redacted]

From: [redacted]
Sent: Wednesday, September 21, 2011 4:34 PM
To: [redacted]
Subject: FW: GCFM
Attachments: USCIS Response 9.21.11 GCFM.pdf

Importance: High

FYI – This write up actually helps point to where the redemption agreement may be overturned... Should I respond (Ali was cc'ed)? If so, proposed response:

Dawn:

Yes, I can confirm receipt of your emails, thank you very much. I will make sure the attachment is reviewed and given due consideration. I can also confirm that I did speak with [redacted] associate ([redacted] was not in the office) this morning and informed him of how we are proceeding with the 526's. If you have any questions relating to that, please contact [redacted] office.

Thanks again for taking the time to send the following write-up and if we have any further questions regarding the overall structure, we will be in contact.

Thanks again.

[redacted]

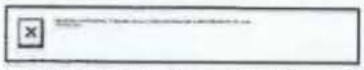
++++++++++++++++++++++
[redacted]
Service Center Operations
[redacted]
Washington, D.C. 20529-2060
[redacted]

From: luried@[redacted]
Sent: Wednesday, September 21, 2011 12:58 PM
To: [redacted]
Cc: Mayorkas, Alejandro N
Subject: FW: GCFM
Importance: High

[redacted]

Once again your e-mail correspondence was much appreciated. I have received a call from GCFM stating that you spoke to [redacted] this morning. Please confirm receipt of my e-mails and ensure that our response is forwarded to the correct individuals. I cannot stress how important a review of these applications are. That said if there are any further questions on the overall structure of the fund please have your team reach out to us to ensure there is clarity on the fund structure.

Dawn M. Lurie
Shareholder
Greenberg Traurig LLP | [redacted] | Tysons Corner, VA 22102
[redacted]



From: Lurie, Dawn (Shld-TCO-Imm)
Sent: Wednesday, September 21, 2011 10:50 AM
To: Cc: [redacted]
Subject: Re: GCFM

Dear [redacted]

Thank you very much for the ability to respond directly on behalf of GCFM and the GTA project. As you know timing is critical and we ask that both the A-1 and A-2 funds be giving priority in adjudication. I am attaching a response on the corporate related issues the Service raised on Monday night. Please contact me upon receipt.

Dawn M. Lurie
Shareholder
Greenberg Traurig LLP | [redacted] | Tysons Corner, VA 22102
[redacted]

<hr size=2 width="100%" align=center tabIndex=-1>

GT GreenbergTraurig

Dawn M. Lurie
Admitted to Practice only in the District of Columbia and NJ
[redacted]

September 21, 2011

[redacted]
Service Center Operations
[redacted]

Re: Gulf Coast Funds Management, LLC;
GTA Fund A-1 and GTA Fund A-2.

Dear [redacted]

Thank you for your email regarding the status of your review of the I-526 petitions currently before the USCIS for GTA Fund A-1 and GTA Fund A-2. We are extremely concerned about the proposed timeline for review of the A-1 filings and will be considering a mandamus action in federal court if this cannot be resolved quickly. While we fully appreciate the extent of sophisticated corporate review required by this matter, the timing involved has prohibited the GreenTech Automotive project from moving forward and has delayed much needed job creation in one of the poorest counties in Mississippi. Furthermore, the Regional Center has lost an extensive amount of credibility with current and prospective investors, due to these ongoing delays. In fact we have began to receive requests for return of investment funds. These damages illustrate the inability for businesses to truly utilize the EB-5 program pursuant to congressional intent. We urge the Service to review the response included below clarifying the agreement and structure of the A-1 fund and the investment into GTA which have no impermissible redemption. The funds will remain at risk through the I-829 stage. Furthermore we ask that the Service dedicate the necessary resources to adjudicate the A-1 petitions immediately.

The purpose of this letter is to respond to your concern that the language of Section 8.2 of the Operating Agreement for GTA Fund A-1 may create an impermissible redemption agreement.

AAO Has Determined There Are No Impermissible Redemption Agreements

The issue of whether an impermissible redemption agreement exists with respect to GTA Fund A-1 and GTA Fund A-2 has already been addressed by the Administrative Appeals Office ("AAO"). Specifically, on September 2, 2011, the AAO ruled that no impermissible redemption agreement exists with respect to GTA Fund A-1 and GTA Fund A-2.

The AAO, in delivering its ruling, expressly stated that it had reviewed the operating agreements for both GTA Fund A-1 and GTA Fund A-2 (along with 5 other documents) and specifically

reviewed whether the "funds' conversion of preferred stock to common stock" and their subsequent distribution of "common stock to the members" constituted "an impermissible redemption agreement." *See page 12 of the AAO ruling*. Furthermore, despite expressly noting the additional language included in Section 8.2 of the Operating Agreement of GTA Fund A-2 (which is now the focus of your current communication), the AAO concluded that "no impermissible redemption agreement exists" with respect to GTA Fund A-1 and GTA Fund A-2. *See page 19 of the AAO ruling*.

Based on the foregoing, the Service Center should accept the AAO's ruling that "no impermissible redemption agreement exists" with respect to GTA Fund A-1 and GTA Fund A-2. If, however, the Service Center is inclined to disregard the AAO's clear ruling on the issue of an impermissible redemption agreement, for the reasons stated below, there exists no impermissible redemption agreement with respect to GTA Fund A-1.

Superfluous and Unnecessary Language

You have indicated that the omission of the phrase "...after the last Member's Preferred Share is converted" in Section 8.2 of the operating agreement of GTA Fund A-1 (the "Operating Agreement") may somehow create an impermissible redemption agreement. After reviewing both the Articles of Incorporation (the "Articles") of GreenTech Automotive, Inc. ("GreenTech") and the Operating Agreement, we have confirmed, as discussed below, that the "missing language" in Section 8.2 is superfluous and unnecessary.

The Operating Agreement and the Articles, must be taken together in their application to the right, duties and obligations of the members. Together these two documents contain prophylactic language ***preventing the liquidation*** of GTA Fund A-1 until all of the Preferred Shares have been converted into common stock and such common stock has been distributed to the Members. This conversion can occur ***only after the fifth anniversary*** of the date of the issuance of the Preferred Shares to GTA Fund A-1 as noted and supported in various sections of both the Operating Agreement and the Articles. Specifically, the three sections described below are, in fact, the equivalent of the statement "after the last Members Preferred Share is converted."

Section 5B.(2)(a) of the Articles provides, in relevant part:

> "Each Preferred Share shall be converted automatically, without any action required on the part of the holder or GreenTech, ***five years from the date of issue***, into that number of shares of common stock having a 'fair market value' of $555,000." [Emphasis added]

The articles of incorporation of a corporate issuer set forth the rights, privileges and restrictions of its securities, including those relating to the conversion of any preferred stock. Accordingly, the Articles provide that the Preferred Shares may only be converted into common stock five (5) years after such shares have been issued to and held by GTA Fund A-1. Therefore, there is no ambiguity, nor possibility, that any individual investor will be in a position to liquidate his

investments in Fund A-1 before the two year period referenced in your e-mail communication.. In fact, the minimum time frame referenced in the Articles is five years. This will ensure that no investment is liquidated prior to requisite job creation and adjudication of the removal of conditions on permanent residency.

Section 2.3 of the Operating Agreement provides, in relevant part:

> "The Company is organized to invest in the Preferred Shares until the Preferred Shares are converted into common stock, ***at which time the common stock will be distributed to the Members and the Company will liquidate.***" [Emphasis added]

As noted in the Section 5B.(2)(a) referenced above, the conversion into common stock will occur "five years from the date of issue." Therefore, the EB-5 investor will have maintained their investment for at least five years prior to this conversion.

Section 6.1 of the Operating Agreement provides, in relevant part:

> "***After the Preferred Shares convert to common stock, which is distributed to the Members in redemption of their interest in the Company***, the Manager shall have the authority to take any action that the Manager deems appropriate to liquidate or wind up the affairs and corporate existence of the Company." [Emphasis added]

Based on Section 2.3 of the Operating Agreement, the purpose of GTA Fund A-1 is to invest in the Preferred Shares until the shares have been converted into common stock and, once the Preferred Shares have been converted into common stock, to distribute the common stock to the Members. Only after all of the Preferred Shares have been converted to common stock and such common stock is distributed to the Members will GTA Fund A-1 have satisfied its stated purpose. If GTA Fund A-1 were to liquidate prior to a conversion of all of the Preferred Shares, then the liquidation would be contrary to the purpose of GTA Fund A-1 specified in Section 2.3 (i.e., it would still be holding Preferred Shares at the time of its liquidation) and the Manager would be in breach of the Operating Agreement. Since the Section 5B.(2)(a) of the Articles specifically state that the conversion will five year from date of issuance, again each investor will have maintained their investment for more than two years before any such action to liquidate may be taken.

Furthermore, Section 2.3 does not permit an early distribution of common stock, because such distribution must be followed with a liquidation of GTA Fund A-1, the occurrence of which would contravene the Operating Agreement unless all Preferred Shares have first been converted to common stock. The conversion of the Preferred Shares, as set forth in the Articles, can take place only after five (5) years following the date of the purchase by GTA Fund A-1.

Accordingly, any distribution of common stock to the Members may occur only following the expiration of five (5) years following the date of the last purchase of Preferred Shares by GTA Fund A-1.

Additionally, under Section 6.1 of the Operating Agreement, the Manager does not have authority to liquidate GTA Fund A-1 until "[a]fter the Preferred Shares convert to common stock, which is [then] distributed to the Members in redemption of their interest in [GTA Fund A-1] . . . ." Because the Articles provide that the Preferred Shares cannot be converted to common stock until the five (5) year period discussed above has passed, a liquidation of the GTA Fund A-1 can only occur at such time as all of the Preferred Shares purchased by GTA Fund A-1 have been issued and held by GTA Fund A-1 for at least five (5) years.

Additionally, Section 8.2 of the Operation Agreement, by its terms, cannot be effectuated unless all Preferred Shares have been converted to common stock. Section 8.2 of the Operating Agreement provides:

> "At the time that the Preferred Shares convert to common stock of the issuer thereof, the Manager shall distribute such common stock to each Member, in equal portions, and such distribution shall be in redemption of each Member's Unit. Thereafter, the Company shall be dissolved."

Accordingly, based on the language of Section 8.2, if GTA Fund A-1, for example, held 10 Preferred Shares and 9 Preferred Shares were converted to common stock, GTA Fund A-1 could not functionally distribute the common stock, in equal portions, to the Members in redemption of their units and thereafter liquidate without causing the Manager to be in breach of the Operating Agreement. Specifically, there would be, in this example, 1 remaining Preferred Share and no Members to whom to make the distribution (as they would have been redeemed out of membership). Further, upon liquidation "thereafter" there would be 1 Preferred Share remaining in violation of Section 2.3 of the Operating Agreement.

Based on the above-discussed provisions of the Operating Agreement and the Articles, no shares of common stock may be distributed to the Members in redemption of their units until all of the Preferred Shares have been converted into common stock, which, based on the Articles, could not occur prior to the fifth anniversary of the purchase of the last share of Preferred Stock acquired by GTA Fund A-1. To permit otherwise would be in contravention of the Operating Agreement and a breach of the Manager's fiduciary and contractual obligations thereunder.

To illustrate the application of these sections to the investments, below is a chart identifying the first ten investors in GTA Fund A-1 and the corresponding conversion dates:

Name	Petition Receipt #	Pref Stock Certificate #	Pref Stock Issue Date	Pref Stock Expected Conversion Date	I-526 Petition Approval Date
[redacted]					

If there were only these ten (10) investors in GTA Fund A-1, the earliest the funds could be liquidated would be after June 27, 2015. This would be five (5) years after the date the last preferred stock was issued. Clearly, all of these investors have their funds irrevocably invested for a minimum of five (5) years, indeed all but the last would have their funds invested in excess of five (5) years.

Exchange of Units for Common Stock is not an Impermissible Redemption for Purposes of The EB-5 Program

While this issue was not directly mentioned in the email communication, we wish to ensure this information is provided to the service. The distribution of common stock to the Members is not an impermissible redemption for purposes of the EB-5 Program. In the present situation, each investor (as a member of GTA Fund A-1) placed his or her investment at risk at the time such investment was made in GTA Fund A-1 (it being understood that the pooled investment proceeds of such members would purchase GreenTech Preferred Shares -- which might become worthless or otherwise decline in value). Such investment will continue to remain at risk following the conversion of Preferred Stock to common stock and the subsequent distribution of the common stock to the investors because there was and is no assurance or guaranty that the value of such common stock would not become worthless or otherwise decline in value.

Accordingly, even if GTA Fund A-1 were to liquidate prior to the conversion of all Preferred Shares to common stock (which would be in contravention of the Operating Agreement) or distribute shares of common stock in redemption of the Members' units and not liquidate thereafter (again, in contravention of the Operating Agreement), each investment of the Members receiving common stock for their units would remain at risk. While the Members would then be holding common stock of GreenTech directly as opposed to units in GTA Fund A-1, their investment nonetheless would still be subject to the same risk that GreenTech will not be a successful business endeavor and the same possibility that the value of his or her investment in the common stock would decline or become worthless.

For the reasons set forth above, the USCIS should find that Section 8.2 of the Operating Agreement does not result in an impermissible redemption agreement for purposes of the EB-5 Program.

Respectfully submitted,
GREENBERG TRAURIG, LLP

Dawn Lurie
[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, July 13, 2011 9:06 AM
To: [redacted]
Subject: RE: LA Film I-526 denials

It is important that we accurately track all LA Film III denials. Please do not forget to data-enter each case into the spreadsheet. We are obliged to submit a report to SCOPS every Friday. The accuracy of the report depends on you. You may want to print out this e-mail and keep it near your computer for future reference.

Thanks,

[redacted]
California Service Center
U.S. Citizenship and Immigration Services
[redacted]

From: [redacted]
Sent: Wednesday, July 13, 2011 8:22 AM
[redacted]
Subject: LA Film I-526 denials

You can start using the I-526 LA Film III denial template in O:\ADJ_div\ADJ_EB5_I-526_I-526 Templates\I-526 Denial\Specific Denial Templates\LA Films. When you do one of these denials, you will have to enter it on the spreadsheet at O:\ADJ_div\ADJ_EB5_I-526\I-526 RC Tracking\LA Film\Denial.

[redacted]

From: [redacted]
Sent: Friday, July 15, 2011 12:52 PM
To: [redacted]
Subject: FW: LA Films
Importance: High

Please see below. Please do NOT deny any LA Film cases. Please return whatever LA Film I-526's you have to [redacted].

If a case has already been denied, please issue a Service MTR to place the case in a pending status. Please return the file to [redacted] after the Service MTR has been granted.

[redacted]
California Service Center
U.S. Citizenship and Immigration Services
[redacted]

From: [redacted]
Sent: Friday, July 15, 2011 12:47 PM
To: [redacted]
Subject: RE: LA Films

To be clear, we are not asking them to be approved, they are simply to be reopened pending further review.

[redacted]

From: [redacted]
Sent: Friday, July 15, 2011 3:45 PM
To: [redacted]
Subject: RE: LA Films

Understood. We will halt further denials until we hear otherwise. We will inform the petitioners today to disregard the denial and issue Service MTR's.

[redacted]
California Service Center
U.S. Citizenship and Immigration Services
[redacted]

-----Original Message-----
From: [redacted]
Sent: Friday, July 15, 2011 12:24 PM
To: [redacted]
Subject: RE: LA Films

Just so we're on the same page - Ali has asked that we reopen any denials for this Regional Center that were recently issued. The mechanics of that may simply be an email message today asking them to disregard as we will be doing a Service MTR while we reconsider. If actual MTR's can be done today; all the better. But they need to hear from us today.

Thanks,

[redacted]

-----Original Message-----
From: [redacted]
Sent: Friday, July 15, 2011 3:19 PM
To: [redacted]
Subject: Re: LA Films

Never mind- I found the emails on this and understand CSC has sent out denials. We will keep you apprised if anything changes.
Thanks,
[redacted]

----- Original Message -----
From: [redacted]
Sent: Friday, July 15, 2011 03:16 PM
To: [redacted] P
Subject: LA Films

[redacted],
We need to know ASAP if the LA Films denial went out. I believe we were holding, but want to verify. [redacted] needs to know quickly.
Thanks,
[redacted]

[redacted]

[redacted]

[redacted]

From: [redacted]
Sent: Thursday, January 31, 2013 4:18 PM
To: [redacted]
Subject: RE: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

[redacted], I want these cases fast tracked and the economic reviews need to be expedited through the Economists as these are of interest to counsel and HQ. Please get with your respective supervisors.

Supervisors, are you all aware if the I-829s are being pulled from JIT and who they are being assigned to. Let's plan on meeting next week to discuss work assignments.

[redacted]

[redacted]
California Service Center
[redacted]

From: [redacted]
Sent: Thursday, January 31, 2013 1:34 PM
To: [redacted] C
Subject: RE: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

Hi [redacted]

[redacted] and I met last week to discuss the economist report for the I-829. We have requested all the I-829s for this NCE so that we can adjudicate them together. The NCE is significantly behind schedule. Once the files have been delivered we will meet again.

The response to the 526 RFE came back and we (the team) will meet again after the economists review the response to the RFE.

Thanks,

[redacted]

From: [redacted]
Sent: Wednesday, January 30, 2013 4:48 PM
To: [redacted]
Subject: RE: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

What is going on with these cases for Green Tech Automotive? I'm getting inquiries from counsel.

Thanks,

[redacted]
California Service Center

From: [redacted]
Sent: Monday, January 07, 2013 1:06 PM
To: [redacted]
Cc: [redacted]
Subject: RE: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

The members are me, [redacted], and [redacted]. However [redacted] and we may need another member. I just looked at the watchlist and it appears that the economist review for the I-829 was just completed on 1/2/13. I wasn't aware the review had been completed yet. I was out sick for most of last week.

I have been the team leader as I have written the request for economist reviews (I-526 and I-829), and the RFE for the I-526.

[redacted] will review the I-829 RFE. The I-526 RFE was reviewed by [redacted] and [redacted] before it was sent out.

Thanks,

[redacted]

From: [redacted]
Sent: Monday, January 07, 2013 12:47 PM
To: [redacted]
Subject: RE: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

Who are the team members? How long has it been pending with the Team? Is there a Team leader? And what supervisor will review the RFEs?

Thanks.

[redacted]
California Service Center

From: [redacted]
Sent: Monday, January 07, 2013 12:42 PM
To: [redacted] C
Subject: RE: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

The I-526 has gone out; the I-829 has not gone out. The RFE still has to be reviewed by the team, and submitted for supervisory approval.

From: [redacted]
Sent: Monday, January 07, 2013 10:52 AM
To: [redacted]
Subject: FW: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

[redacted], can you please confirm if the RFEs went out especially for the I-829. I lost my access to MFAS. I know that the I-526 RFE was sent on 12/4/12.

Thanks.

[redacted]
California Service Center

From: [redacted]
Sent: Monday, January 07, 2013 10:28 AM
To: [redacted]
Subject: FW: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

Can you confirm the RFE has been sent out?
Thanks!

From: [redacted]
Sent: Friday, December 07, 2012 6:02 PM
To: [redacted]
Subject: FW: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

I'm so confused ... [redacted] already gave us the status on these. I was just checking to see if we were response to the first inquiry, which we were.

Thanks.

[redacted]
California Service Center

From: [redacted]
Sent: Thursday, November 29, 2012 12:53 PM
To: [redacted]
Subject: RE: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

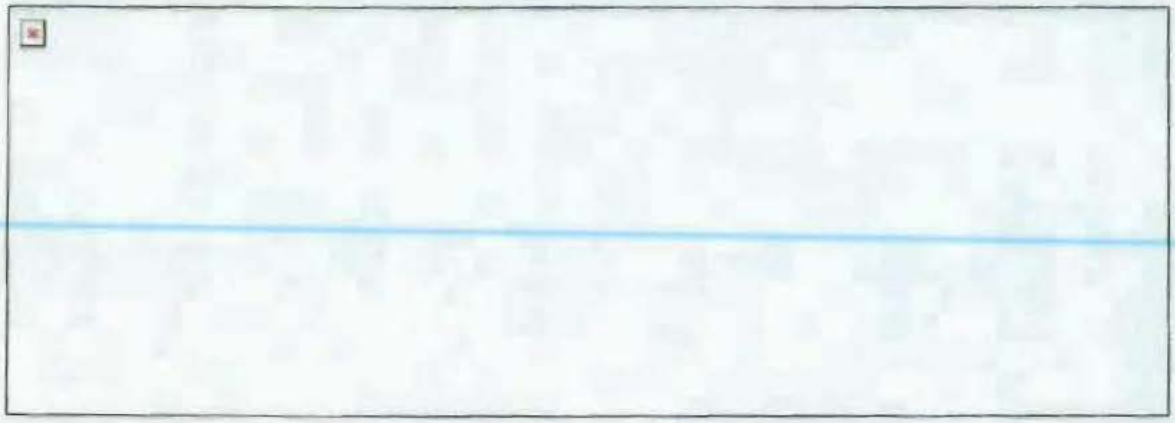
These files are both involve GreenTech Automotive. The I-529 (A-3 Fund) has been to the economist for review and they found numerous problems with the job creation calculations. I prepared an RFE for the I-526. [redacted] has reviewed the RFE ([redacted] was away for the week) and she made corrections; I sent it back to [redacted] with her edits included and I am waiting for her response. As soon as the RFE template is approved the RFE is ready to be sent out. The file was previously issued an RFE for source of funds only.

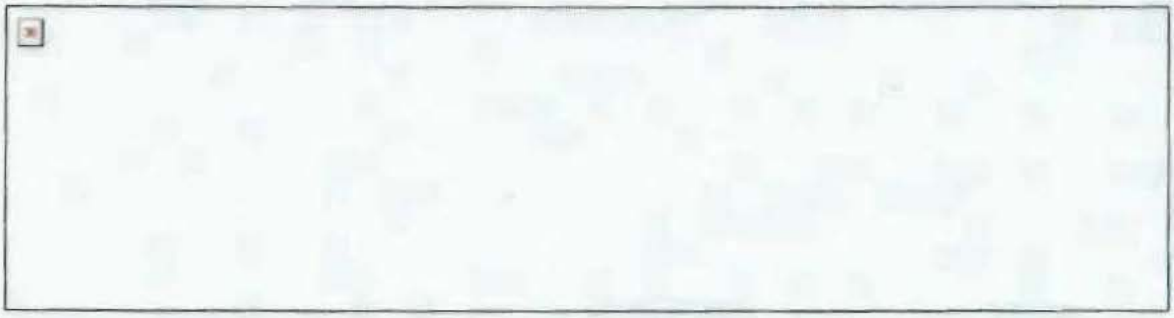
The I-829 (A-1 Fund) will require an RFE too. I will schedule a meeting for the members of the specialization team for the I-829. The issue for the I-829 is that there have been no jobs created at their permanent site as they are significantly behind schedule. In the new filings (the A-3 fund) there is even talk of refunding the investment funds for the members of the A-1 and A-2 funds.

From: [redacted]
Sent: Thursday, November 29, 2012 12:34 PM
To: [redacted]
Subject: FW: EB-5 Inquiries - WAC 1209100217/A60921785 (I-829) and WAC 1290320340 (I-526)

Please provide a status update as to where you are on the adjudication of these two referenced files below. NFTS indicates that you originally got the A-file in mid-March and the receipt file in May, and recently got them back in October. Please provide a brief update by 3:00 pm today.

If an RFE was sent out, what did we request and is there anything else that may cause a significant hold up on these.





Many thanks.

[redacted]
California Service Center
[redacted]

From: [redacted]
Sent: Wednesday, November 28, 2012 2:41 PM
To: [redacted]
Subject: FW: EB-5 Inquiries

Can you provide an update on these?
Thanks,
[redacted]

Sent: Wednesday, November 28, 2012 2:12 PM
Subject: EB-5 Inquiries

Sorry to bother you with this, but I need a status report on the following cases:

WAC 1209100217 (I-829)
WAC 1290320340 (I-526)

This should not be interpreted in any way as having "HQ Interest". The allegation is simply that they are outside normal processing times and we need to respond. If they are held up for T/O or other issues, that is fine – just let me know. Similarly, if they are within normal processing times that is fine too.

[redacted]

[redacted]

[redacted]

From: [redacted]
Sent: Friday, February 01, 2013 11:12 AM
To: [redacted]
Subject: FW: EMERGENCY re Gulf Coast Funds Management and GreenTech Automotive Inc.

Below is the inquiry that is currently pending with Director Mayorkas and the reason for the rush. Please keep on top of your old cases and be prepared to continue to provide status update on them if they have been pending for more that the target timeframes of 4, 5 and 6 months from when receipted.

Thank you.

[redacted]
California Service Center
[redacted]

From: Simone Williams [redacted]
Sent: Friday, February 01, 2013 10:41 AM
To: Smith, Douglas A
Subject: EMERGENCY re Gulf Coast Funds Management and GreenTech Automotive Inc.

Doug,

Per our discussion, see details below. Please call me back at [redacted] for any status updates. I can't emphasize enough that this is an emergency situation for the Company so we really appreciate your efforts in helping to get these cases adjudicated as soon as possible. Case details below. Long pending cases highlighted. Thanks much, Simone

	Investor Name	Type of Petition	Date Filed	Receipt Notice Date	Receipt Number	R
1	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	2 Ju D 2(
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Y(
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Y(

8	[redacted]	[redacted]	[redacted]	[redacted]	Ye
9	[redacted]	[redacted]	[redacted]	[redacted]	Ye
10	[redacted]	[redacted]	[redacted]	[redacted]	
11	[redacted]	[redacted]	[redacted]	[redacted]	Ye
12	[redacted]	[redacted]	[redacted]	[redacted]	Ye

D. Simone Williams
General Counsel
Gulf Coast Funds Management, LLC
[redacted]
McLean, VA 22102
[redacted]
www.gulfcoastfunds.com

D. Simone Williams
General Counsel
Gulf Coast Funds Management, LLC
[redacted]
McLean, VA 22102
[redacted]
www.gulfcoastfunds.com

From: Simone Williams
Sent: Tuesday, January 29, 2013 10:21 AM
To: douglas.a.smith[redacted]
Subject: Further to our conversation today re Gulf Coast Funds Management and GreenTech Automotive Inc.
Importance: High

Hello Doug,

As we discussed, we received another 6 RFEs from USCIS requesting basically the same information as the first RFE we received for [redacted] (Receipt #: WAC-12-903-20340).
Furthermore, as you are aware, we still have an I-829 Petition that has remained pending for over one year ([redacted]; Receipt #: WAC 12-091-00217). This I-829 petition was filed on December 30, 2011 and has been pending for over one year, despite the fact that this petition does not involve any tenant-occupancy issues. Obviously, USCIS's undue delay in issuing a decision in our I-829 and I-526 RFE cases, is becoming a serious issue for us. In fact, the delay continues to threaten the ongoing operations of GTA because GTA relies on EB-5 investors as a key source of funding for its projects and (i) such delay is hampering our ability to bring in new EB-5 investors and (ii) the EB-5 money raised in our current offering is being held in escrow pending approval of the I-526 petitions.

We need USCIS to issue a decision on the I-829 and RFE for [redacted] as soon as possible. Please note that three of the four issues raised in [redacted] RFE and the subsequent 6 RFEs were already reviewed and accepted by USCIS when they approved 92 of our previous I-526 petitions. Our response to the 4 issues raised in the RFE can be summarized as follows:

a. The RFE requests evidence that our temporary facility (the "Pilot Production Facility") in Horn Lake, Mississippi is located in a TEA.
Our response: The funds raised by the New Commercial Enterprise (NCE) will be used for the continuation of the design and construction of the JCE's permanent automobile manufacturing facility in Tunica County, Mississippi, and for the

purchase and installation of certain fixtures. GTA has not changed its plan to build a manufacturing facility on 100 acres of land it owns in Tunica, Mississippi (the "Permanent Facility"). GTA will transfer all its employees at the Pilot Production Facility to the Permanent Facility in Tunica once it is complete. The temporary positions in Horn Lake will not be counted toward the total job creation. Those positions will only be created when such employees are permanently relocated to the permanent facility. Accordingly, it is not necessary to demonstrate that Horn Lake is located in a TEA.

b. The RFE requests that the Economic report by Evans, Carroll & Associates should clearly show that indirect employment effects were not double counted.

Our response: We submitted a supplement to the economic report, prepared by [redacted] which clearly shows, that indirect employment effects were not double counted. The average automobile considered by the IMPLAN multipliers has a gas engine for power and utilizes a small and inexpensive lead-acid battery mainly to start the car before the engine provides the power. Electric vehicles actually have two batteries: the first is the same in function and price to the battery above, the second (the "EV Battery") provides the energy to power the vehicle. EV Batteries cost approximately 100 to 200 times more than the cost of a traditional car battery, and range from 35% and 74% of the cost of the entire vehicle. Only the first small battery to start the car is included in the IMPLAN multiplier, so no portion of the multiplier for the EV Battery is included in the IMPLAN multiplier and therefore there is no double counting.

c. The RFE asks that we submit a comprehensive business plan specific to GreenTech Automotive Partnership A-3 LP.

Our response: Pursuant to this request, we provided the Overall Business Plan prepared with the PPM for this NCE. The Overall Business Plan is compliant with Matter of Ho, supra and includes a market analysis; the manufacturing process; materials required and supply sources; marketing strategy; the business' organizational structure; and its personnel's experience. The plan also specifies the employees at the Pilot Production Facility as of the date of the plan (who will be transferred to the permanent plant), and the anticipated direct employees to be hired listed by job title, description, and average wage. The plan includes timelines and income projections.

d. The RFE requests further information regarding a section of the PPM for the NCE regarding "Prior Financing."

Our response: We explain why this language should not be read to indicate that rescission rights are likely or are expected to materially affect the business of the JCE. In addition, we provided a list of transactions that the JCE is currently engaged in, which could be used to pay such rescission rights; in the unlikely event that all or a large portion of the investors were issued and exercised rescission rights.

We really appreciate your assistance in looking into this matter for us and any help you can offer. If you need anything further, please do not hesitate to contact me at [redacted]

Thanks much,
Simone

D. Simone Williams
General Counsel
Gulf Coast Funds Management, LLC
[redacted]
McLean, VA 22102
[redacted]
www.gulfcoastfunds.com

[redacted]

From: [redacted]
Sent: Wednesday, February 02, 2011 5:38 PM
To: 'Mayorkas, Alejandro N'
Subject: RE: Meeting Tomorrow

Thanks Ali. While it would have been better, as you note below, for you not to be involved in this type of meeting - given the current situation – what you outline below is the most appropriate course of action. I do not see any harm in indicating that the agency has been in touch with the regional center's attorney of record and that that will remain the avenue for any agency communications on this matter.

[redacted]
U.S. Citizenship & Immigration Services
[redacted]

From: Mayorkas, Alejandro N [redacted]
Sent: Wednesday, February 02, 2011 5:26 PM
To: [redacted]
Subject: Meeting Tomorrow

[redacted]
I have been requested by S1's office to join a meeting with Terry McAuliffe about the EB-5 program. I believe Mr. McAuliffe, whom I have not met before, has an interest in particular cases that are pending with us. Previously I requested that I not join such a meeting given the pendency of the cases. I now have been asked to join the meeting. I will not discuss the cases or provide information about them. I will be in listen-only mode. May I, though, inform him only that our agency representatives recently had a discussion with the attorney of record?
Thank you. Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

[redacted]

From: Mayorkas, Alejandro N <A[redacted]
Sent: Thursday, February 03, 2011 9:25 PM
To: [redacted]
Subject: Report of Meeting Today

[redacted]

Earlier this afternoon, I honored a Dept. request and met with Terry McAuliffe. I entered the meeting with the knowledge that I could not talk about the specifics of the EB-5 case pending before us, and that I would just listen.

When I met with Mr. McAuliffe, I learned that he was joined by two individuals who work for WM Greentech Automotive Corp., [redacted] and [redacted] and an attorney whose name I believe is [redacted] of Greenberg Traurig.

The substance of the meeting proceeded as follows:

Mr. McAuliffe indicated that counsel had an excellent conference call with USCIS officials, and they were all grateful. The attorney confirmed the value of the meeting and appreciation for it. She indicated that USCIS had said that the new petition would receive expedited treatment (approximately 60-90 days).

Mr. McAuliffe expressed his wish that this call would have occurred some time ago; it would have, he said, saved a good deal of time and energy. He said that he learned of the flaws in the petition, which could have been cured earlier. (He made a quick comment that they originally filed as they did based on the expressed views of [redacted]).

Mr. McAuliffe indicated that he did not want to review what had transpired earlier, nor did he want to discuss the case. Rather, he wanted to emphasize the value and importance of the EB-5 program (foreign investment to create American jobs) and the need for institutionalizing dialogue of the type that occurred in the conference call recently held. Mr. McAuliffe spoke of the value of the EB-5 program for a few minutes.

I shared with everyone what I said about the EB-5 program during yesterday's national stakeholder engagement. Mr. McAuliffe was very pleased to hear that.

Thanks. Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

From: [redacted]
Sent: Thursday, August 19, 2010 5:33 PM
To: [redacted]
Cc: Mayorkas, Alejandro N; [redacted]
Subject: RE: Call from Governor Rendell re: EB-5

All

Here are the Governor's letters.

Respectfully,

[redacted]

USCIS Office of the Executive Secretariat

[redacted]

Please send all official actions to [redacted] *and, if applicable, attach a completed G-1056. Thank you.*

From: [redacted]
Sent: Thursday, August 19, 2010 4:03 PM
To: [redacted]
Cc: Mayorkas, Alejandro [redacted]
Subject: RE: Call from Governor Rendell re: EB-5

For tomorrow's call, we need to be prepared to specifically address the two letters that Governor Rendell has sent to Ali. Can Exec Sec send them to this distribution, in case not everyone has them?

Are we going to be ready?

From: [redacted]
Sent: Thursday, August 19, 2010 3:56 PM
To: [redacted]
Cc: Mayorkas, Alejandro N; [redacted]
Subject: RE: Call from Governor Rendell re: EB-5

Adding Policy and Strategy as they had the lead in responding to these policy suggestions/concerns.

From: [redacted]
Sent: Thursday, August 19, 2010 3:27 PM
To: [redacted]
Cc: Mayorkas, Alejandro [redacted]
Subject: RE: Call from Governor Rendell re: EB-5

This call between D1 and Gov. Rendell is tomorrow afternoon. Is someone preparing an update/briefing for Ali? Please send to me, thanks.

From: [redacted]
Sent: Monday, August 16, 2010 11:45 AM
To: [redacted]
Cc: Mayorkas, Alejandro N; [redacted]
Subject: FW: Call from Governor Rendell re: EB-5

Re-sending.

From: [redacted]
Sent: Monday, August 16, 2010 11:43 AM
To: [redacted]
Cc: Mayorkas, Alejandro N; [redacted]
Subject: RE: Call from Governor Rendell re: EB-5

D1 has received another letter from Governor Rendell. It is attached. Can someone provide an update on the response to the July 15th letter (referenced in the below thread, and also attached), which was on the same topic?

Also, based on the below thread, it looks like Ali owes him a call - [redacted], I will work with you to schedule.

From: [redacted]
Sent: Thursday, July 22, 2010 2:01 PM
To: [redacted]
Cc: Mayorkas, Alejandro N; [redacted]
Subject: Re: Call from Governor Rendell re: EB-5

Thanks [redacted] you be sure (or SCOPs) that OLA sees the letter before it goes to Ali and [redacted]

Thanks very much.

[redacted]
U.S. Citizenship & Immigration Services
Department of Homeland Security
[redacted]

----- Original Message -----
From: [redacted]
To: [redacted]
Cc: Mayorkas, Alejandro N; [redacted]
Sent: Wed Jul 21 17:38:03 2010
Subject: RE: Call from Governor Rendell re: EB-5

[redacted]

As requested I've attached a copy of Governor Rendell's letter. We are tasking to SCOPS to prepare a response for Ali's signature. Is that approach still correct?

Respectfully,

[redacted]

[redacted]
USCIS Office of the Executive Secretariat
[redacted]
[redacted]
[redacted]

Please send all official actions to [redacted] and, if applicable, attach a completed G-1056. Thank you.

From: [redacted]
Sent: Wednesday, July 21, 2010 4:52 PM

To: [redacted]
Cc: Mayorkas, Alejandro N; [redacted]
Subject: Call from Governor Rendell re: EB-5

Hi [redacted]

I believe [redacted] had passed to you a letter to Ali from Governor Rendell. Coincidentally, the Governor called Ali today and they spoke about the contents of the letter. Ali committed to following up and touching base with the Governor at the beginning of next week.

Can you send a copy of the letter to [redacted] and me? It would be great if [redacted] and [redacted] could look into the issue over the next couple of days, and then prepare a briefing for Ali in preparation for next week's call with the Governor (heads up to the Scheduling Team – this will need to be scheduled).

Let me know if questions.

Thanks,

[redacted]

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

THE GOVERNOR

June 15, 2010

The Honorable Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529-2150

Dear Director Mayorkas:

I am writing to you with respect to the EB-5 Immigrant Investor Visa Program (the Program) and the U.S. Citizenship and Immigration Service (USCIS) administrative procedures memorandum dated December 11, 2009, which provides guidelines for USCIS adjudicators to follow in allowing for the consideration of alternate EB-5 investments.

Unfortunately, the new procedures provide for a *new* as opposed to an *amended* Form I-526, *Immigrant Petition for Alien Entrepreneur*, even in cases where the capital investment and job creation requirements of the Program are anticipated to be satisfied within the time period for filing Form I-829, *Petition by Entrepreneur to Remove Conditions*.

As you know, the immigration laws were designed with a strong policy imperative to keep family units intact and the statues provide for family members who are minors to be included with an immigrant's application. If new I-526 applications are filed, many of those minors will no longer qualify because they have now reached the age of 21.

As a result of the recent severe economic recession, three Pennsylvania Regional Center Partnerships made alternate investments to insure that investors successfully created the required jobs for their I-829 petitions. These partnerships include 19 children of investors who obtained conditional residency status, but who are now 21 years of age or older and will not qualify if their parents were to file a *new* I-526 application. The approved I-526 petitions and accompanying business plans for these three partnerships specifically provided for alternate investments by a unanimous vote from the limited partners. Although my constituents sincerely believe that their approved business plans anticipated a USCIS review of any alternate investment at the time an investor files Form I-829, they wish to comply with the Services' new procedure requiring that alternate investments be reviewed prior to the filing of an I-829 application.

I am confident that had the problems of aging minors been considered, the memorandum establishing the new procedures would have been worded differently. I am advised that for the purposes of the H1-B, EB-2, and EB-3 visas, an amendment procedure is permitted within the

same statutory framework, and that there is nothing in the statutes or regulations that would prevent an amended I-526 application within the context of the new procedures. In my view, just as the new procedures were established by administrative practice, they may be similarly altered and this will help avoid considerable and obvious hardship.

There is no intention to circumvent either a detailed adjudication of the alternate investments or the requirement for proof of job creation within the permitted time frame on an I-829 petition.

Pennsylvania's government affiliated regional centers – The Pennsylvania Department of Community and Economic Development (DCED) and the Philadelphia Industrial Development Corporation (PIDC) – are two of the most successful regional centers in the nation. To date, they have collectively raised more than $600 million that facilitated investments totaling $2.75 billion and created more than 6,500 jobs with the expectation that an additional 6,000 jobs will be created in the near future.

I fear, with good reason, that the negative publicity that would surround the inability of these family members to obtain immigrant status may well have a significant, adverse impact on these financing efforts. Given these difficult economic times for my state, the loss of this significant job creation would be a terrible blow.

I look forward to a favorable response.

Sincerely yours,

Edward G. Rendell

Edward G. Rendell
Governor

OFFICE OF THE GOVERNOR
HARRISBURG, PENNSYLVANIA
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The Honorable Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services
Washington, DC 20529-2150

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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

THE GOVERNOR

August 2, 2010

The Honorable Alejandro (Ali) Mayorkas
Director U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529-2150

Dear Director Mayorkas:

I am writing to reinforce my concern in my letter dated June 15, 2010, and to communicate my growing concern that the USCIS' administrative guidelines dated December 11, 2009 (Guidelines) allowing for the consideration of alternate EB-5 investments will adversely impact the EB-5 Program.

As you know, I share your enthusiasm for the EB-5 Program, especially in these trying economic times. The Program has proven to be an incontrovertibly important and effective job creating economic development tool for Pennsylvania and many other states and cities throughout the nation. In fact, at a time when businesses and development projects are finding it almost impossible to get the funding they need from private sources this program has played a vital role in filling those funding gaps.

While I fundamentally and enthusiastically applaud the intention of the Guidelines to add predictability and bolster the EB-5 Program, there is one particular circumstance that I believe requires special and swift attention. As I highlighted in my June 15 correspondence, the Guidelines require investors who have made alternate investments to submit a *new* Form I-526, *Immigrant Petition for Alien Entrepreneur* (I-526 petition). The current Guidelines do not permit investors to submit an *amended* I-526 petition, *even in cases where the alternate investment was made and the capital and job requirements of the Program satisfied within the statutory period for filing Form I-829, Petition by Entrepreneur to Remove Conditions (I-829 petition).*

Unfortunately, pursuant to these current Guidelines, all investors' conditional resident children—who are no longer under the age of 21, fall through the cracks, finding themselves subject to removal from the United States. This could separate families, undermine the primary familial goals of the investors and result in significant hardship. I'm advised that adopting an amendment procedure, which is not an uncommon practice for your agency, can mitigate this unfair and unfortunate outcome. While it is understood that your administrative flexibility is restricted by statute (and therefore an amendment procedure would not apply in all instances), an effort to provide an amendment option where legislatively permissible, would significantly ameliorate the situation and convey good faith to all EB-5 stakeholders.

The important economic benefits resulting from the EB-5 Program can continue to be realized only if investors believe that their legitimate concerns are addressed in a just and timely manner. The longer parents are required to speculate about the future of their children, the more the Program is endangered. Quick attention to this matter is therefore essential to the reputation and effectiveness of the EB5 Program.

I strongly urge you to consider a swift amendment procedure to prevent the Philadelphia and Pennsylvania Regional Center programs from being damaged, the interests of the City, Commonwealth, and Nation from being harmed, and innocent investors and their families from being separated. In addition, doing so would promote confidence in the Program and support its policy goals and those of our immigration laws.

Thank you for your anticipated cooperation.

Sincerely,

Edward G Rendell

Edward G. Rendell
Governor

Alejandro - This is very important to us!

Ed

From: Mayorkas, Alejandro N [redacted]
Sent: Friday, October 22, 2010 7:10 PM
[redacted]
Subject: Re: Monday Meeting for which Counsel Presence is Ideal

[redacted] connected with Mr. Rosenthal and confirmed the message. I believe [redacted] a forwarded Mr. Rosenthal to [redacted] voicemail.
Thank you, [redacted] for staying late and addressing this. Thank you, [redacted], for your -- as always -- wise counsel.
A great weekend to all.
Ali

----- Original Message -----
From: [redacted]
To: Mayorkas, Alejandro N [redacted]
[redacted]
Sent: Fri Oct 22 17:54:26 2010
Subject: Re: Monday Meeting for which Counsel Presence is Ideal

Perfect.

----- Original Message -----
From: Mayorkas, Alejandro N [redacted]
To: Mayorkas, Alejandro N [redacted]
[redacted]
Sent: Fri Oct 22 17:48:18 2010
Subject: RE: Monday Meeting for which Counsel Presence is Ideal

[redacted] left the following substantive message on Mr. Rosenthal's cell phone:

"This message is for Mr. Tom Rosenthal. We need to cancel Monday's meeting. Ali was just informed that this issue is the subject of litigation and that therefore the issue needs to be handled by the agency's lawyers. He is sorry for the need to cancel the meeting, but it is necessary to do so."

I will keep you posted. I may try Mr. Rosenthal to ensure that the message has been received. If I do so, I will say nothing more than the above

Thanks very much. Ali

Alejandro N. Mayorkas

Director

United States Citizenship and Immigration Services

[redacted]

Washington, DC 20529

[redacted]

[redacted]

From: Mayorkas, Alejandro N [redacted]
Sent: Friday, October 22, 2010 [redacted] 25 PM
To: [redacted]
[redacted]

Subject: RE: Monday Meeting for which Counsel Presence is Ideal

Thank you. [redacted]ll call right now. I will confirm once that call is made.

Thank you [redacted]. Ali

Alejandro N. Mayorkas

Director

United States Citizenship and Immigration Services

[redacted]

Washington, DC 20529

[redacted]

From: [redacted]
Sent: Friday, October 22, 2010 5:23 PM
To: Mayorkas, Alejandro N; [redacted]
Cc: [redacted]
Subject: Re: Monday Meeting for which Counsel Presence is Ideal

Thanks Ali! I think it is best for someone on the front office staff to call.

----- Original Message -----
From: Mayorkas, Alejandro N
To: [redacted]
Sent: Fri Oct 22 17:20:32 2010
Subject: RE: Monday Meeting for which Counsel Presence is Ideal

[redacted], would you be willing to call? Or, because you are an attorney and the name/number I have may be that of the litigant, should I or [redacted] of my office? Or [redacted]? Please advise. I have the name and number. Ali

Alejandro N. Mayorkas

Director

United States Citizenship and Immigration Services

20 Massachusetts Avenue NW, Suite 5110

Washington, DC 20529

[redacted]

[redacted]

From: [redacted]
Sent: Friday, October 22, 2010 4:19 PM
To: Mayorkas, Alejandro N; [redacted]
Subject: Re: Monday Meeting for which Counsel Presence is Ideal

Importance: High

My strongest recommendation is that this meeting be canceled. The attendees recently filed litigation against USCIS on this topic and the case is actively pending in the district court.

----- Original Message -----
From: Mayorkas, Alejandro N [redacted]
To: [redacted]
Sent: Fri Oct 22 13:24:06 2010
Subject: RE: Monday Meeting for which Counsel Presence is Ideal

I don't know the case and do not intend to talk about a specific case. [redacted] can provide greater visibility into the issue. I understand it to be specific to the issue of age-out in the EB-5 arena. [redacted] who will be present? Adding [redacted]

Thanks. Ali

Alejandro N. Mayorkas

Director

United States Citizenship and Immigration Services

20 Massachusetts Avenue NW, Suite 5110

Washington, DC 20529

[redacted]

[redacted]

From: [redacted]
Sent: Friday, October 22, 2010 1:03 PM
To: Mayorkas, Alejandro N.; [redacted]
Subject: Re: Monday Meeting for which Counsel Presence is Ideal

Can you let me know the name of the case and who the attendees will be at the meeting on Monday? If it is a children's age-out issue it may be a different attorney expertise than EB-5 expertise. What is the best way to get all the relevant background?

[redacted]

Sent: Fri Oct 22 12:51:12 2010
Subject: Monday Meeting for which Counsel Presence is Ideal

[redacted]

I need a counsel with expertise or knowledge in the EB-5 program to be present (ideally, in person; okay by telephone) for a 2 p.m. meeting on Monday regarding a specific EB-5 issue (age-out of children). [redacted] is aware of the meeting and issue (we participated in a related call) and believes that, since it is a legal issue, counsel should be the one present. I concur. Who can participate in person, preferably?
Thanks. Ali

Alejandro N. Mayorkas

Director

United States Citizenship and Immigration Services

From: [redacted]
Sent: Monday, January 24, 2011 11:16 AM
To: [redacted]
Subject: EB-5 GCFM Documents

[redacted]

The attached documents have been drafted in response to the letter from Terry McAuliffe to S1. In addition to the response for S1's signature and a cover memo, we have drafted talking points per Ali's request Friday afternoon. Apparently, Ali has a telephone call with S1 this afternoon and he is anxious to have these documents this morning. These have been cleared by OCC and SCOPS, as well as the economist in [redacted] shop. Please let me know if you need anything from us – we appreciate you reviewing since these have been edited many times and a set of fresh eyes may catch typos or grammatical errors that were missed. Ali said not to worry about format or grammar on his bullets since they've been drafted very quickly.

Hopefully you have the original letter as I just realized it is not included. We'll get that to you right away if you need it.

Thanks!

[redacted]

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

MEMORANDUM FOR THE SECRETARY

FROM: Alejandro N. Mayorkas
Director

SUBJECT: **Response to Terence McAuliffe's December 15, 2010 Letter regarding an EB-5 denial (WF 891401)**

Action Requested: Secretary's signature on the attached letter.

Context: The letter from Terence R. McAuliffe (chairman of WM GreenTech Automotive (GTA)) states that USCIS erroneously denied a request to expand the Gulf Coast Funds Management Regional Center (GCFM), which proposed to expand the jurisdiction of the GCFM to the entire State of Tennessee, along with the southeastern corner of the Commonwealth of Virginia, in order to offer capital investment opportunities to EB-5 investors in a major green automotive manufacturing project. Mr. McAuliffe is not a party in the instant case. He is the chairman of GTA which is one of the projects contemplated by the Gulf Coast Funds Management (GCFM) Regional Center. While we are not able to share any information with Mr. McAuliffe, the below is for the Secretary's information.

Mr. McAuliffe's claim that the case was erroneously denied is without merit. Prior to issuance of the denial, HQ staff within Service Center Operations (SCOPS) and the Office of the Chief Counsel (OCC) reviewed and approved the issuance of the denial. Based on a review of the entire record, with the exception of one legal interpretation included as only part of the basis of the denial, USCIS believes that the denial of the Regional Center amendment request was appropriate and based on the proper application of law and USCIS policy, as follows:

Case Background: A Regional Center may be granted jurisdiction over a limited geographic area for the purpose of concentrating pooled investment in defined economic zones. A Regional Center's geographic area must be contiguous.

GCFM is approved for the geographic area of the State of Louisiana (LA) and the State of Mississippi (MS). About two years ago, GCFM asked USCIS to add the Commonwealth of Virginia (VA) to the geographic scope of their regional center. USCIS could not approve this request because VA is not contiguous to either LA or MS. In February 2010, GCFM requested to add the State of Tennessee (TN) and the southeastern corner of VA to their geographic area in order to "link up" LA and MS to VA. GCFM did not demonstrate that they planned to actually focus EB-5 capital investment activities throughout the requested expanded region.

The August 2010 denial of the amendment request concluded that a Regional Center's economic impacts must be demonstrated at either a national or regional level. USCIS now believes that this regulatory interpretation is overly restrictive given that some Regional Centers may have investment projects with impacts that are solely regional in nature, along with larger projects that may have national impacts.

After receiving the denial in August 2010, on September 10, 2010 GCFM filed a motion requesting that USCIS reopen the decision to deny the amendment request. USCIS has reviewed the motion to reopen and plans to grant the motion to reopen request as new facts have been presented. USCIS plans to render a decision by January 25, 2011.

It is of note that the regional center has already successfully offered EB-5 capital investment opportunities to EB-5 investors to invest in the automotive plant to be constructed within the State of Mississippi, which is currently within the geographic bounds of the approved regional center. Thus, these economic development plans are moving forward under the regional center's current designation. USCIS must adjudicate each regional center designation or amendment request as put forth by the regional center promoter. Further, such proposals may not be "pre-adjudicated" in advance of filing. However, USCIS did state to the regional center in correspondence issued earlier in 2010 that any denial of the regional center's multi-state expansion request would be without prejudice to the filing of a separate regional center proposal seeking designation of a regional center within the targeted bounds of the State of Tennessee or the Commonwealth of Virginia. USCIS believes that such separate proposals, if properly documented with the economic impacts of the planned automotive plant or transportation hub in the Commonwealth of Virginia or the State of Tennessee, respectively could be approvable. USCIS also believes that it might be reasonable for GCFM to request an expansion of the geographic area of its regional center to include the portion of the State of Tennessee that encompasses the location of the planned transportation hub. This area falls within the Memphis Metropolitan Statistical Area ("MSA") and is in close proximity to the planned automotive plant in Tunica, Mississippi, which is also in the Memphis MSA.

Coordination: This proposed response has been coordinated within USCIS's Operational, Chief Financial Office, Policy and Strategy and Chief Counsel components.

Timeliness: Due to coordination efforts with the various USCIS components on the inquiry and the underlying decision, USCIS was unable to provide a decision within the five day business day standard.

Executive Secretariat Recommendation I recommend you sign the enclosed letter

[redacted], Executive Secretary Date

DO NOT DISLOSE

Terence R. McAuliffe
WM GreenTech Automotive Corp.
[redacted]
McLean, VA 22102

Dear Mr. McAuliffe:

Thank you for your December 15, 2010 letter regarding WM GreenTech Automotive Corporation and your concerns with the decision U.S. Citizenship and Immigration Services (USCIS) rendered with respect to the Gulf Coast Funds Management (GCFM) regional center's request to amend the scope of the regional center.

Due to privacy concerns, I may not discuss the substance of the GCFM case with anyone other than GCFM and its representatives. However, I have forwarded your letter to Alejandro Mayorkas, the Director of USCIS for any appropriate action.

I would like to assure you that the Department of Homeland Security through USCIS is committed to the success of the EB-5 Program, and I thank you again for your letter.

Sincerely,

Janet Napolitano

January 24, 2011

GCFM Talking Points

Background:

- GCFM is an approved regional center that encompasses the states of Mississippi and Louisiana.
- One of GCFM's current projects involves the assembly of "green" automobiles in a plant in Mississippi owned and operated by GreenTech Automotive (GTA).
- Under GCFM's current scope, USCIS is currently adjudicating (and where appropriate approving) petitions related to investment in the Mississippi plant.
- GCFM requested an amendment to expand the geographic scope of their regional center in 2009 to include a parts manufacturing plant in southeastern Virginia.
- USCIS denied the request because it has interpreted the appropriate statute and regulations to require that a regional center be a contiguous geographic area.
- On February 2010, a new amendment request was filed seeking to expand the GCFM to include the state of Tennessee and the southern and southeastern portions of Virginia.
- In August 2010, USCIS denied the amendment request.
- On September 10, 2010, GCFM filed a motion to reopen the denied amendment request.

McAuliffe Letter

- On December 15, 2010, Terence R. McAuliffe (chairman of GTA) sent a letter to S1 arguing that the August 2010 denial of the amendment request was inappropriate.
- Because Mr. McAuliffe is not a party to the application before USCIS, we cannot discuss the specifics of the case with him.
- A short response letter to Mr. McAuliffe has been drafted for S1 signature along with a cover memorandum with more background.

Motion and New Decision

- After considering the evidence submitted with the Motion to Reopen, USCIS acknowledges that the August 10, 2010 decision relied in part upon a narrow interpretation of its regulations.
- USCIS believes that it is appropriate to interpret the regulation more broadly.
- However, there are still issues with GCFM's request to expand its regional center.
- GCFM's current request to expand the scope of the regional center appears to be an attempt to satisfy the "contiguous geographic area" requirement by including the entire state of Tennessee and the tobacco dependent counties of southern Virginia.
- The proposed amendment, however, only discusses the regional center's intent to provide capital to one commercial enterprise to be located in one county in the southwestern corner of Tennessee and one commercial enterprise located in one county in the southeastern corner of Virginia. There is no evidence to suggest that the regional center intends to focus on any of the remaining areas of Tennessee or Virginia.
- USCIS is prepared to conclude that GCFM has failed to demonstrate that it will focus on a limited geographical area that functions as an economic unit.
- Other issues that may be surmountable:
    - The documents submitted suggest that the structure of the regional center's proposed amendments will serve as an investment agent for the individual investors not as an enterprise concentrating pooled resources and then investing those pooled resources as a unit into individual companies or projects.
    - The sample business documents appear to contain an impermissible redemption agreement such that the investors' capital is not truly at risk.
    - The sample business documents do not demonstrate that the investors will be engaged in the management of the new commercial enterprise.

Other Options for GFCM or GTA

- USCIS believes that it might be reasonable for GCFM to request an expansion of the geographic area of its regional center to include the portion of the State of Tennessee that encompasses the location of the planned transportation hub. This area falls within the Memphis Metropolitan Statistical Area ("MSA") and is in close proximity to the planned automotive plant in Tunica, Mississippi, which is also in the Memphis MSA.
- USCIS believes that separate proposals, if properly documented with the economic impacts of the planned automotive parts plant or transportation hub in the Commonwealth of Virginia or the State of Tennessee could be approvable as separate regional centers.

From: [redacted]
Sent: Monday, January 24, 2011 11:32 AM
To: [redacted]
Subject: RE: EB-5 GCFM Documents
Importance: High

Added a quick bullet to the talkers that the decision will be certified to the AAO under the Motion and New Decision Header.
Thanks.
[redacted]

[redacted]
Service Center Operations
20 Massachusetts Ave., NW Suite 2000
Washington, DC 20529-2060
[redacted]

From: [redacted]
Sent: Monday, January 24, 2011 11:19 AM
To: [redacted]
Subject: FW: EB-5 GCFM Documents

Adding the original letter from Terry McAuliffe.

From: [redacted]
Sent: Monday, January 24, 2011 11:16 AM
To: [redacted]
Subject: EB-5 GCFM Documents

[redacted]

The attached documents have been drafted in response to the letter from Terry McAuliffe to S1. In addition to the response for S1's signature and a cover memo, we have drafted talking points per Ali's request Friday afternoon. Apparently, Ali has a telephone call with S1 this afternoon and he is anxious to have these documents this morning. These have been cleared by OCC and SCOPS, as well as the economist in [redacted]'s shop. Please let me know if you need anything from us – we appreciate you reviewing since these have been edited many times and a set of fresh eyes may catch typos or grammatical errors that were missed. Ali said not to worry about format or grammar on his bullets since they've been drafted very quickly.

Hopefully you have the original letter as I just realized it is not included. We'll get that to you right away if you need it.

Thanks!

[redacted]

January 24, 2011

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- The proposed amendment, however, only discusses the regional center's intent to provide capital to one commercial enterprise to be located in one county in the southwestern corner of Tennessee and one commercial enterprise located in one county in the southeastern corner of Virginia. There is no evidence to suggest that the regional center intends to focus on any of the remaining areas of Tennessee or Virginia.
- USCIS is prepared to conclude that GCFM has failed to demonstrate that it will focus on a limited geographical area that functions as an economic unit.
- USCIS will certify the denial to the Administrative Appeals Office (AAO).
- Other issues that may be surmountable:
    - The documents submitted suggest that the structure of the regional center's proposed amendments will serve as an investment agent for the individual investors not as an enterprise concentrating pooled resources and then investing those pooled resources as a unit into individual companies or projects.
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- USCIS believes that separate proposals, if properly documented with the economic impacts of the planned automotive parts plant or transportation hub in the Commonwealth of Virginia or the State of Tennessee could be approvable as separate regional centers.

From: Mayorkas, Alejandro N [redacted]
Sent: Tuesday, January 25, 2011 4:03 PM
[redacted]
Subject: Is there any way we can meet for 10 minutes at 5:15? --

I apologize for the imposition. Please let me know.
It concerns EB-5.

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

From: Mayorkas, Alejandro N [redacted]
Sent: Wednesday, January 26, 2011 7:44 AM
[redacted]
Subject: Thank You

[redacted]

Thank you for taking the time yesterday evening to discuss the difficult EB-5 issues, especially on such short notice. I know how much you have going on, and I appreciate your time and sage advice.
Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

From: Mayorkas, Alejandro N [redacted]
Sent: Tuesday, June 21, 2011 6:29 PM
To: [redacted]
Subject: Re: EB-5

Thank you for sharing, [redacted]. This does underscore [redacted] point. I look forward to discussing.
Ali

From: [redacted]
Sent: Tuesday, June 21, 2011 06:21 PM
To: Mayorkas, Alejandro N [redacted]
Subject: RE: EB-5

Consistent with [redacted] concerns, earlier today I encountered the following in the public comments we received in response to the recent EB-5 proposal:

> "I would like to respectfully submit that the Regional Centers themselves have not been given the type of unprecedented access to USCIS officials as that of the "Law Lobby". I have concerns here and they grow out of the varied interests within the EB-5 community. As a Regional Center Principal I believe the immigration attorneys are being, and have been, granted unprecedented access to the USCIS at all levels."

The commenter actually goes on for almost two pages about his concerns in this respect.

[redacted]
Department of Homeland Security
[redacted]

From: Mayorkas, Alejandro N [redacted]
Sent: Tuesday, June 21, 2011 6:01 PM
To: [redacted]
Subject: Re: EB-5

Thanks, [redacted]
We don't have an agenda yet. I look forward to discussing.
Ali

From: [redacted]
Sent: Tuesday, June 21, 2011 05:55 PM
To: Mayorkas, Alejandro N [redacted]
Subject: RE: EB-5

Is there any chance this meeting can be noticed to the public and opened up for all interested stakeholders? This is the second meeting with this group and the wording of these agenda items causes me a great deal of angst.

[redacted]
U.S. Citizenship & Immigration Services
[redacted]

From: Mayorkas, Alejandro N [redacted]
Sent: Tuesday, June 21, 2011 1:49 PM
To: [redacted]

[redacted]
Subject: FW: EB-5

Everyone,
I believe I transmitted these earlier. I do so again to ensure that you have received them.
I would like to meet with the AILA EB-5 committee on July 21 or 22. Please let me know of your (and your team's) availability, either in person or via teleconference.
Thanks very much. Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

From: H. Ronald Klasko [redacted]
Sent: Friday, May 20, 2011 4:39 PM
To: Mayorkas, Alejandro N
Cc: [redacted] EB-5 committee
Subject: EB-5

Dear Ali:

I believe that the proposal circulated for comment yesterday is an important step forward toward achieving the goal of maximizing the potential of the EB-5 program. Our Committee will be preparing comments that we hope you will find constructive as you finalize this bold step forward.

In the meantime, I wish to follow up on our last communication as follows:

1. I am attaching issue papers that we would like to discuss with you and your staff. I look forward to hearing from you regarding scheduling a date for sharing views on these important issues at your earliest convenience.
2. I am attaching a potential job description for the "economic development specialist" position that we had suggested should be part of the team reviewing regional center designation applications and project pre-approval petitions.
3. You requested our feedback on actual processing times for the I-924 regional center designation applications and regional center amendments. No member of our Committee has seen or heard of an adjudication since the implementation of that form in November. That would seem to indicate that there is at least a six month processing time. Actually, as best as we can tell, applications from October 2010 are still being processed. It is our view that these timelines are unrealistic for "shovel ready" job-creating projects, especially when coupled with the seven or eight month processing times for the I-526 petition. Your proposal to deal with this problem is certainly welcome.
4. As part of the ongoing training process, we would be pleased to provide regional center developers and/or members of our Committee to provide a different prospective on the EB-5 process. On a personal note, I can tell you that I did this a number of times at the request of the Department of State during the mid-level training program for consular officers.
5. Our Committee would appreciate an update on the status of your office's review of the comments received to the December 2009 "material change" memorandum and the timing of a more formal response. This is a critical issue affecting the program.

On behalf of our Committee, I want to extend our sincere appreciation for your committed efforts to make this complex and important program work as efficiently and promptly as possible, consistent with federal oversight responsibilities, for the stakeholder community.

Regards,

Ron

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

H. Ronald Klasko, Esq.
Klasko, Rulon, Stock & Seltzer, LLP
[redacted]
Philadelphia, PA 19103
[redacted]
Websites:
www.klaskolaw.com
www.eb5immigration.com
www.eb1immigration.com
www.worksite-compliance.com
http://blog.klaskolaw.com
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

From: [redacted]
Sent: Wednesday, June 29, 2011 8:33 AM
To: [redacted]
Subject: RE: URGENT - Los Angeles Film Regional Center, a USCIS-designated EB-5 regional center

[redacted]

We have denial notices that recently cleared OCC. Ali has indicated his desire to review the legal standards that are being applied in these cases, so I think the next step is to share the actual draft decision notices with him and provide an opportunity for OCC to answer any questions he has on the legal standards. I have asked for a copy of the cleared draft notice – as soon as I receive that we can coordinate a briefing with Ali.

[redacted]

From: [redacted]
Sent: Tuesday, June 28, 2011 10:19 PM
To: [redacted]
Subject: FW: URGENT - Los Angeles Film Regional Center, a USCIS-designated EB-5 regional center

Hey Guys,

Are we close to issuing something on this case?
I seem to remember it was looking like it would need an RFE.

[redacted]

[redacted]

Subject: FW: URGENT - Los Angeles Film Regional Center, a USCIS-designated EB-5 regional center

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

From: katherine hennigan [redacted]
Sent: Tuesday, June 28, 2011 8:50 PM
To: Mayorkas, Alejandro N
Cc: matt karatz
Subject: Re: URGENT - Los Angeles Film Regional Center, a USCIS-designated EB-5 regional center

Thank you. This deal is really close to falling through. The Mayor appreciates your assistance with this matter. We know you receive thousands of requests but this is important for Los Angeles, California, and the U.S. overall. We don't want to loose filming to bordering countries!!!

Sincerely,
Katherine Hennigan

On Tue, Jun 28, 2011 at 5:38 PM, Mayorkas, Alejandro N [redacted] wrote:

Kate,

I have brought your communications to the attention of my colleagues. I will do the same again now.

Thank you. Ali

Alejandro N. Mayorkas

Director

U.S. Citizenship and Immigration Services

[redacted]

Washington, DC 20529

[redacted]

[redacted]

From: katherine hennigan [redacted]
Sent: Tuesday, June 28, 2011 2:44 PM
To: Mayorkas, Alejandro N
Subject: Re: URGENT - Los Angeles Film Regional Center, a USCIS-designated EB-5 regional center

Hello Alejandro,

Any updates? Please let me know. Thanks

Kate-

On Mon, Jun 13, 2011 at 4:10 PM, katherine hennigan [redacted] wrote:

Hello Mr. Mayorkas,

I am writing in support of the Los Angeles Film Regional Center, a USCIS-designated EB-5 regional center based in Los Angeles. The Mayor views the Los Angeles Film Regional Center as an important partner in helping keep film production jobs in our city. Los Angeles is a city dedicated to both the retention and creation of film production jobs. We have seen too many of these jobs leave our boundaries over the past few years and we need all the tools available to reverse this trend.

We understand that the processing of investor applications related to the Los Angeles Film Regional Center's current project with Sony Entertainment are being delayed because of an apparent misunderstanding of what the standard financing practices in the film/TV industry are (reference attached letter from Amy Lemisch, Executive Director, California Film Commission). We have also been advised that these delays are now starting to jeopardize the attractiveness of this vital program to our local Film Studios, who are by far the largest generators of production jobs in Los Angeles. We strongly urge your cooperation in expeditiously reviewing these applications in a manner consistent with industry standards so we can keep this valuable program going and thus help keep valuable jobs in Los Angeles. Our city needs these jobs, and as such we need programs like the EB-5 Program to continue to operate effectively. Please feel free to call me with any questions. Thank you for your prompt action.

Sincerely,

Katherine Hennigan

--
Katherine Hennigan
Senior Policy Director
Mayor Antonio R. Villaraigosa Office of Economic & Business Policy
[redacted]
Los Angeles, CA 90012
[redacted]

From: [redacted]
Sent: Thursday, July 07, 2011 5:32 PM
To: [redacted]
Subject: FW: URGENT - Los Angeles Film Regional Center, a USCIS-designated EB-5 regional center

Just following up - Ali said to go ahead and issue the denials without any further briefings or meetings

---

From: [redacted]
Sent: Wednesday, June 29, 2011 10:26 AM
To: Mayorkas, Alejandro N
Cc: [redacted]
Subject: FW: URGENT - Los Angeles Film Regional Center, a USCIS-designated EB-5 regional center

Ali,

Attached is the unissued denial notice that was collaboratively drafted with OCC. You previously indicated interest in reviewing the legal standards that are being applied in these I-526 cases filed under the Los Angeles Film Regional Center. My recommendation would be to schedule a briefing with OCC and SCOPS once you've had a chance to look at the legal analysis outlined in the draft decision. Would you like us to coordinate that with [redacted]

[redacted]

From: [redacted]
Sent: Tuesday, June 28, 2011 10:19 PM
To: [redacted]
Subject: FW: URGENT - Los Angeles Film Regional Center, a USCIS-designated EB-5 regional center

Hey Guys,

Are we close to issuing something on this case?
I seem to remember it was looking like it would need an RFE

[redacted]

From: Mayorkas, Alejandro N [redacted]
Sent: Tuesday, June 28, 2011 08:52 PM
To: [redacted]

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

From: katherine hennigan [redacted]
Sent: Tuesday, June 28, 2011 8:50 PM
To: Mayorkas, Alejandro N
Cc: [redacted]
Subject: Re: URGENT - Los Angeles Film Regional Center, a USCIS-designated EB-5 regional center

Thank you. This deal is really close to falling through. The Mayor appreciates your assistance with this matter. We know you receive thousands of requests but this is important for Los Angeles, California, and the U.S. overall. We don't want to loose filming to bordering countries!!!

Sincerely,
Katherine Hennigan

On Tue, Jun 28, 2011 at 5:38 PM, Mayorkas, Alejandro N [redacted] wrote:

Kate,

From: Mayorkas, Alejandro N [redacted]
Sent: Thursday, September 01, 2011 9:52 AM
To: [redacted]
Subject: Fw: Follow up

From: Mayorkas, Alejandro N
Sent: Thursday, September 01, 2011 09:52 AM
To: [redacted]
Subject: Re: Follow up

John,
As I stated previously, I am focused on improving our administration of the EB-5 program as one of our top priorities, and I am not involved in the adjudication of particular cases. I will not deviate from this.
Thank you. Ali

From: [redacted]
Sent: Thursday, September 01, 2011 01:12 AM
To: Mayorkas, Alejandro N [redacted]
Subject: Follow up

Ali: No need to respond to me, but it looks like time is running out on the issue we discussed. Just fyi. Thanks. John
----- Forwarded by John Emerson/PIM/CGTC/CAPITAL on 08/31/2011 02:11 PM -----

From: Tom Rosenfeld [redacted]
Sent: Wednesday, August 31, 2011 07:19 AM
To: John Dellaverson
Subject: Sony

Hi John,

Do you think John Emerson would be willing to contact Ali Mayorkas again to get a status on the Sony cases, if he is uncomfortable, I understand and sincerely appreciate both your and his efforts to date.

The problem is that it's been 7 weeks since Ali Mayorkas has acknowledged the importance of resolving this matter and, after 16 months of waiting, both investors and Sony are losing confidence... This matter just appears to be sitting at USCIS... As expected, in the past two weeks, we have lost about 15% of our investors and the withdrawal rate will be much higher next week after Labor Day.

The USCIS' concern - that it will be unable to verify whether new jobs will be created within a two-year period - is further undermined by the fact that the agency recently approved 75 "unconditional" I-829 visa petitions (supported by credible audit report evidence of job creation) for similarly structured Lionsgate and Warner Brothers film projects. No one seems to understand why resolving this matter is taking so long, particularly since the Sony project was pre-approved by the USCIS and 350 similar "conditional" I-526 petitions for other studio projects have been approved.

I am happy to call you and discuss, at your convenience.

As always, thanks.
Tom

Tom Rosenfeld
President & CEO
CityAm Enterprises, LLC
[redacted]
New York, N.Y. 10005
[redacted]

From: Mayorkas, Alejandro N
Sent: Friday, November 16, 2012 11:58 AM
To: [redacted]
Subject: Fw: Urgent Matter/ Los Angeles Regional Center

[redacted]
For your handling as you deem appropriate. I am copying [redacted] as I seem to recall that Tom Rosenfeld is involved in a pending litigation
Thank you. Ali

From: Mayorkas, Alejandro N
Sent: Friday, November 16, 2012 11:56 AM Eastern Standard Time
To: "Trosenfeld@[redacted]
Subject: Re: Urgent Matter/ Los Angeles Regional Center

Tom,
I cannot speak with you about a pending matter. I will forward your message to the appropriate individual in the agency
Thank you. Ali

From: Tom Rosenfeld[redacted]
Sent: Thursday, November 15, 2012 06:09 PM Eastern Standard Time
To: Alejandro[redacted]
Subject: Urgent Matter/ Los Angeles Regional Center

Dear Ali,

I really need your help... Please accept that I am **not** seeking your help with respect to any case-specific substantive issue.

Ali, it has now been about 18 months since initial applications for the $250 million Time Warner Project involving 240 investor families (many with aged-out children) have been submitted. Moreover, both the investors and Time Warner have evidenced their firm commitment to the Project by diligently preparing and providing the USCIS with everything requested and cooperating with our repeated pleas for patience and extension requests. The latest extension with Time Warner ends on November 30 (only 2 weeks; one of which is Thanksgiving). Time Warner, who has been very cooperative, has advised that it is discouraged by the 18 month process and not likely to facilitate any further extension. This is a very large EB-5 Project and the substantial harm to the 240 investor families, the loss of more than 2,500 new indirect jobs and the damage to CanAm and the integrity of the EB-5 Program is likely to be significant.

I was unsuccessful in reaching you by phone and am reaching out via this email... I would very much appreciate the opportunity to speak to you and obtain your general advice and guidance. I am working at home because, in spite of the tireless efforts of the City and our building management, we still do not have access to our offices as a result of the damage caused by the recent hurricane (sympathy vote). Please let me know when I can call or please feel free to call my cell at anytime [redacted]

In all sincerity, this matter has evolved into a very precarious situation that I sincerely believe can be salvaged with your appropriate assistance.

Thank you,
Tom Rosenfeld

Tom Rosenfeld
President & CEO
CanAm Enterprises, LLC
[redacted]
New York, N.Y. 10005
[redacted]

From: [redacted] H
Sent: Monday, February 04, 2013 5:43 PM
To: [redacted]
Subject: RE: Emergency Issues re Gulf Coast Funds Management and GreenTech Automotive Inc.

[redacted]

If I am reading this correctly, you are saying that we should not have changed the approach and possibly did not change it for other similar cases. And, that these two cases should not have been handled outside of current policy guidelines. It appears that the senior official may have shown favoritism, a misuse of position, and the actions may fall under OSI's list of USCIS-specific indicators of fraudulent activity. So, I would concur with [redacted] this is something that should be referred to OSI or OIG for additional investigation. Thanks Fred

[redacted]

From: [redacted]
Sent: Monday, February 04, 2013 5:11 PM
To: [redacted]
Subject: RE: Emergency Issues re Gulf Coast Funds Management and GreenTech Automotive Inc.

[redacted] may have additional thoughts. As we just discussed – if you have any question about the conduct of the agency you should not hesitate to refer the matter for review by the IG. That is always the best advice we can give to any agency employee. I hope this helps.

[redacted]
U.S. Citizenship & Immigration Services
[redacted]

From: [redacted]
Sent: Monday, February 04, 2013 1:56 PM
To: [redacted]
Subject: FW: Emergency Issues re Gulf Coast Funds Management and GreenTech Automotive Inc.

[redacted] the below guidance is very helpful and insightful. I have an added wrinkle and would like to understand if a certain scenario I will pose to you is inappropriate, and whether I am under any type of an obligation as a senior management official to report this activity if I become aware of it.

An attorney contacts a senior management official to discuss his/her specific case and indicates to the senior manager that USCIS has not followed its own internal guidance. The senior official purportedly states that they cannot speak to the specific facts of the case. In what appears to be in response to this conversation, the senior official tells operations to set up a new practice to provide relief to those parties who are potentially adversely impacted by the agency's alleged failure to comply with a previous policy (the same policy raised by the attorney).

The operational solution, as outlined by this senior official, is to set up a type of a review border where impacted parties can have a "hearing" on their case or cases to address the perceived deference. Once this senior official outlines the terms of this new structure, operations is told to almost immediately send out notice to two impacted parties who are identified by this same senior official. Operations is not told how or why these parties are selected for this new form of relief. One of the two identified parties is the same entity represented by the attorney who contacted the senior official. It is important to further note that this attorney is also party to pending litigation on related matters.

After the order to send out the notices was given, the same senior official takes a call from the attorney to advise him/her that they would be receiving notification of this new "hearing". This is done prior to the process being operationally set up, without any type of protocols being established as to how cases would be identified or any type of outreach to other impacted parties that this new process was being established. Internally, there was virtually no discussion or process put into place and the next day after reviewing the two entities that appear to have been handpicked by the senior official, operations identifies law enforcement concerns with both entities. Unfortunately at least one notice was to the attorney who initiated inquiry and within hours had accepted.

From my vantage point, I am concerned about the appearance of impropriety and the level of access coupled with what appear to be immediate and extraordinary results. What if any guidance can you provide me as to what the appropriate steps are that I should take as a [redacted] to this type of activity. Any insight or guidance you can provide me would be appreciated since this is causing me and my subordinates a fair amount of stress and angst.

Thanking you for your continued support.

[redacted]

From: [redacted]
Sent: Friday, February 01, 2013 8:36 AM

[redacted]

From: [redacted]
Sent: Wednesday, January 30, 2013 3:24 PM
To: [redacted]C
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

Yeah, I know it is a self-petition, but the 8 CFR 103.2(b)(9), gives the agency the authority to request the appearance of persons other than the petitioner. Specifically, we can request the appearance of another "individual residing in the United States." The language in quite broad. Moreover, 8 CFR 103.2(b)(7) suggests that USCIS may require the taking of testimony and may direct "any necessary investigation." These regulations suggest that USCIS has some authority to gather information to adjudicate petitions beyond the information provided by petitioner. I think that this authority would be limited to information gathering relevant to the petition being adjudicated (such that requiring it is not arbitrary and capricious), but getting information from the RC would be relevant when determining deference to its business plans/economic forecasting.

From: [redacted]
Sent: Wednesday, January 30, 2013 3:01 PM
To: [redacted]
Subject: Re: EB-5 Deference Policy and Adjudication Reversals

Perhaps I'm a bit confused? See 8 cfr 204.6(c). The only "party" to the I-526 is the alien petitioner. There is no other party to the petition. This is more akin to a self-petition.

From: [redacted]
Sent: Wednesday, January 30, 2013 02:19 PM Eastern Standard Time
To: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

[redacted]

I'm not sure that the I-526 petitioner retains the authority to refuse the appearance of another without withdrawing his or her petition. See the regulatory authority below. Are you referring to a different provision?

8 CFR 103.2(b)(9) Request for appearance. An applicant, a petitioner, a sponsor, a beneficiary, or other individual residing in the United States at the time of filing an application or petition may be required to appear for fingerprinting or for an interview. A petitioner shall also be notified when a fingerprinting notice or an interview notice is mailed or issued to a beneficiary, sponsor, or other individual. The applicant, petitioner, sponsor, beneficiary, or other individual may appear as requested by USCIS, or prior to the dates and times for fingerprinting or of the date and time of interview: (Introductory text amended effective 11/28/11; 76 FR 53764 ; amended 6/18/07; 72 FR 19100)

(i) The individual to be fingerprinted or interviewed may, for good cause, request that the fingerprinting or interview be rescheduled; or

(ii) The applicant or petitioner may withdraw the benefit request. (Paragraph (b)(9) revised effective 3/29/98; 63 FR 12979) (Paragraph (b)(9)(ii) amended effective 11/28/11; 76 FR 53764)

From: [redacted]
Sent: Wednesday, January 30, 2013 2:02 PM
To: [redacted]
Subject: Re: EB-5 Deference Policy and Adjudication Reversals

Just thinking off the cuff,

In noticing the 526 individual, applicant, we would specifically request the attendance of the relevant RC/NCE/JCE representative.

However, keep in mind, the 526 applicant retains the power to refuse that representatives attendance/participation.

But then we would just move along till we had someone who consents and arranges for that representative to be present.

From: [redacted]
Sent: Wednesday, January 30, 2013 01:58 PM Eastern Standard Time
To: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

I like the approach too. If there is a way (legally) for the official of the RC to appear, and address the issues affecting the I-526s, while at the same time providing notice to affected investors to know what is happening, I think that makes sense.

From: [redacted]
Sent: Wednesday, January 30, 2013 1:52 PM
To: [redacted]
Subject: Re: EB-5 Deference Policy and Adjudication Reversals

[redacted]

I actually think your suggestion is the best I've seen thus far. It avoids privacy issues, the protects the other investors by allowing a representation of the "nexus" which binds each of them. We could then provide a courtesy notice to affected investors to let them know what is going on... But without inviting their specific participation.

FWIW.

[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, January 30, 2013 01:38 PM Eastern Standard Time
To: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

I proposed the following alternative, but I don't think it gets to the director's goal of allowing impacted investors an opportunity to be heard by USCIS with respect to deference.

8 CFR 103.2(b)(9) permits USCIS to request the appearance of "an applicant, petitioner, a sponsor , a beneficiary or other individual residing in the U.S. at the time of filing" for an interview. We could request that the principal officer of the RC or his/her representative appear. The same regulations require notice to the petitioner/investor of the request for an appearance. As an alternative to having the petitioners select representatives, USCIS could request that a representative from the RC/JCE appear and allow investors to listen to the call. However, this approach would not provide an opportunity for the affected parties – the investors – to be heard in person.

Is there some way we can work in the affected investors as well while maintaining a streamlined interview? If we allow all investors to participate in the interview, the process will be bogged down and the interview unwieldy.

From: [redacted]
Sent: Wednesday, January 30, 2013 1:02 PM
To: [redacted]
Subject: Re: EB-5 Deference Policy and Adjudication Reversals

Agree. My concern was the "mix." My question is: what complaint or concern do we hope to address with sending the notice as drafted? What problem is it intended to solve? That may help to know the answer to these questions - and to see if better alternatives exist.

From: [redacted] C
Sent: Wednesday, January 30, 2013 12:58 PM Eastern Standard Time
To: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

[redacted]
So if it is an interview in conjunction with their application/petition as per 103.2(b)(9) then that means we are keeping them separate, right? So review board for I-924 and RC principal/representative, and review board for I-526 and investor/representative? I didn't see any problem with having them separate. I saw a problem with mixing them. Under 103.2(b)(9) the individual appearing can also withdraw the application for benefit- but an investor can't withdraw an RC's exemplar I-526 and an RC principal can't withdraw an investor's I-526. And the list of other problems I sent [redacted] earlier were strictly related to mixing the two cases.
I am more in favor of holding the review board interview on the RC I-526 exemplar and posting the results for the investors to see: (for example)
"after review, it's determined that your I-526 exemplar is deficient for these reasons, so you're advised to consult with your counsel to see how it affects your case" or "after review it's determined that your I-526 exemplar is good to go so please consult your attny to make sure you submit the necessary supporting docs with it"

From: [redacted]
Sent: Wednesday, January 30, 2013 9:55 AM
To: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

I am just the messenger...

From: [redacted]
Sent: Wednesday, January 30, 2013 12:50 PM

To: [redacted]
[redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

Good point. Not unless someone disagrees. [redacted] said that if OCC does not agree with the Notice, that alternatives need to be offered. I think there are problems with the Notice and it looks like you all think that too. Do we need a call to agree on the alternatives, though maybe for that one, I'm not necessary---not sure.

From: [redacted]
Sent: Wednesday, January 30, 2013 12:41 PM
To: [redacted]
[redacted]
Subject: Re: EB-5 Deference Policy and Adjudication Reversals

So do you no longer need the call with us today?

From: [redacted]
Sent: Wednesday, January 30, 2013 12:29 PM Eastern Standard Time
To: [redacted]
Cc: [redacted]@[redacted]
[redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

Just had a call with [redacted] and [redacted] and I am feeling better about this now. Thanks for alerting me to 103.2(b)(9), which I can't believe I forgot about, which is the authority to call anyone in for an interview in connection with a benefit request. Therefore, what I understand this Review Board process to be is not establishing a new substantive right, such as an appeal right, but it is about our exercise of authority to call someone into the office in connection with the adjudication of a benefit request. (The authority to resolve derogatory information can also be used.) [redacted] checked the I-526 and it does provide notice of this possibility, so the potential PRA and FR notice problems I alluded to below are not present.

The other issue we discussed on the phone is that an entire group will be notified of the "hearing," but only a few people will be able to attend. So are the people attending in relation to that one I-526, or is it in connection with their individual I-526s? In other words, how are we exercising our authority in 103.2(b)(9)? Also, there may be privacy issues when calling in others to a proceeding that is about one EB-5 petitioner.

The regulatory interview authority is very broad and covers anyone, so I am satisfied that there are no APA problems with the Review Board set-up. There may be problems with providing notice to all affected individuals regarding the "hearing." If their only option to appear is through a designated representative, that appears problematic, unless we are only applying 103.2(b)(9) authority with respect to one EB-5 petitioner. If we are applying 103.2(b)(9) to all of those who get notice, then they should all have a chance to "be interviewed" and appear in some fashion (even by phone like a stakeholder meeting). [redacted] suggested an alternative solution--that the notice is not a notice of the hearing but a notice that their cases are on hold (pending resolution of the issue). That seems like a better alternative. RFEs can be issued for the other cases to give them a chance to present their information individually if we wanted it to be super fair.

It would be better if the notice did not call it a "hearing" and if all those provided notice would have an opportunity to appear in some form or fashion. Reviewing courts look at the words agencies use when describing their action, so "hearing" denotes rights and isn't an obvious link to the interview authority in 103.2(b)(9). If we called it an interview, I'd be much happier.

I think Privacy needs to be involved to take a look at this. If we release PII (e.g., name) of the one EB-5 person to the other EB-5 petitioners without consent, that could be a Privacy Act problem.

[redacted]

From: [redacted]
Sent: Wednesday, January 30, 2013 9:31 AM
To: [redacted]
Cc: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

Sorry—I was off yesterday. Am I to review the attachment and add something to it, or did you want just general comments? I recall looking at the issue a while back, though I'm not sure what it is right now based on the e-mails below.

I think I commented before on the idea of a Review Board. I said that it could be considered procedural and not subject to the APA because they would be internal agency procedures. Having the investors be a part of the process strikes me initially as problematic, but I recall a case on an agency's move to change how the public presents themselves in the application process (in that case, removing the opportunity for the public to meet in person on their application) and the court said that it was only procedural, so the agency could do it without triggering notice and comment rulemaking requirements. If we would be selecting people to appear, then that could be a problem. Calling it and treating it like a hearing to me is problematic as well. On the one hand, its procedural, on the other hand, it could be viewed as creating additional rights. Appeal rights, for example, are generally viewed as substantive rights triggering notice and comment rulemaking. If they will call investors over only in those cases in which we are thinking of not deferring, then it's sort of like a right of rebuttal or appeal and I would say that notice and comment to establish that process is advisable. Is 8 CFR 103.2(b)(16)(i) involved? I'm thinking that the answer is no because the deference process is not a benefit (right?), though it looks like the more they attach procedures to it, the more it looks like a new benefit.

By the way, the APA requires that how the public presents themselves to the agency needs to be published in the FR. The PRA requires new information collections (the appearance to present their case) to go through the FR notice and OMB approval process. So, even if they want to take the risk of not amending the regs to incorporate this Review Board process, then they still have to comply with the PRA and FR notice requirements.

Could someone call me today to go over what the Review Board is all about?

From: [redacted]
Sent: Tuesday, January 29, 2013 3:53 PM
To: [redacted]
Cc: [redacted]
Subject: FW: EB-5 Deference Policy and Adjudication Reversals
Importance: High

Hey [redacted],

Not like you have nothing else to do ... I'm sorry. But this was a RUSH and [redacted] did raise a very good point. Could you take a look at the attached? I think you may find it interesting and up your alley. What [redacted] said internally in OCC was ....

I would really caution that promising this sort of procedural process should be run by [redacted] before OCC approves it. I am less familiar with the parameters of the APA than she is... and I cannot quite decide whether we are creating a process or not. By bringing non-governmental stakeholders into the matter, it seems like it could be process creation absent a rule.

And yes [redacted], we discussed with [redacted] some of the novel ways we would be inviting new litigation claims. [redacted] was worried about that too but thought that if we're headed down the road towards denial anyway, this process is designed to give an opportunity to change USCIS's mind. Of course, we all know that no good deed goes unpunished. In the end [redacted] wanted us to focus more on whether the process was legal (the APA question you raise above) and less on whether it would avoid litigation or create litigation etc. She said we should point those out as risks, of course.

From: [redacted]
Sent: Tuesday, January 29, 2013 11:40 AM
To: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

Just another fun thing to consider- in LA Films, for example, none of the investors know each other (or have any way of getting in touch with each other, or even speak the same language), some are Russian, some are Chinese- what if they don't have an attorney? Can they bring a translator? What if an investor RSVPs to our notice and we say "sorry, no room for you" or "sorry, no interpreter for you" can they appeal that decision? Well, yes they can- in federal district court. I am really uncomfortable with creating a hearing process that is not grounded in statute and regs- we can be sued six ways til sunday

[redacted]
Department of Homeland Security
USCIS Chief Counsel's Office
[redacted]

From: [redacted]
Sent: Tuesday, January 29, 2013 3:40 PM
To: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals
Importance: High

Hi [redacted],

Please find in the attached our general comments as well as redlines to the "notice". Please let me know if you have any questions. Thank you.

[redacted]

[redacted]
Department of Homeland Security
USCIS Chief Counsel's Office
[redacted]

From: [redacted]
Sent: Tuesday, January 29, 2013 12:32 PM
To: [redacted]
Cc: Leg[redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

That works for me. Thanks!

[redacted]

From: [redacted]
Sent: Tuesday, January 29, 2013 12:30 PM
To: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

We just finished meeting to go over our comments. If you could wait just a bit longer – you could send Ali a copy with our comments incorporated. Will that work?

[redacted]
U.S. Citizenship & Immigration Services
[redacted]

From: [redacted]
Sent: Tuesday, January 29, 2013 12:26 PM
To: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

Hi all,

Given the Director's desire to send out the notices today, and understanding that you are all still reviewing the template, please let me know if you have any objections to sharing the attached draft template (it is the same one you all have I just deleted the name of the RC and one of the comments) with the Director so he can see where this stands. I think it may help our review to give the Director visibility into some of the questions we have and whether the current draft is consistent with his vision.

Thanks,
[redacted]

From: [redacted]
Sent: Monday, January 28, 2013 4:41 PM
To: [redacted]
Cc: [redacted]
Subject: FW: EB-5 Deference Policy and Adjudication Reversals

Hi OCC,

Attached please find a very rough draft notice of review board hearing (when the issue involves multiple I-526 investors) for your review. Some folks here (and at CSC) continue to review the document, but given the short timeframe I wanted to forward to you the initial draft so you can start considering some of the legal challenges that we may face in sending out the notice and conducting the review board hearing.

One of the biggest challenges we face is developing a process to allow for representatives of the investors (when the issue of deference involves I-526 investors) to attend the review board hearing. There are various possibilities, but we are uncertain which would be legally viable (e.g. just selecting one I-526 to appear and address the issue and then use that hearing to make a deference determination on all others similarly situated, send the notice to the regional center to have their representatives address the issues, etc). There are challenges with each possible approach, so it may be best to meet to discuss the options and decide on an approach that works best legally and operationally.

The current draft was written under the assumption that the notice would be sent to all of the investors who may be affected by a particular change on a prior determination, but this will need to be reworked if it is determined that an alternative approach is better (e.g. selecting the next in line I-526 to address whether deference is owed to their petition, and by extension, all of the rest in the line with the same facts/issues).

Thanks,
[redacted]

From: Mayorkas, Alejandro N
Sent: Friday, January 25, 2013 9:29 AM
To: [redacted]
Subject: EB-5 Deference Policy and Adjudication Reversals

[redacted]

As you know, I am concerned with the agency's adjudication reversals in EB-5 cases and the related substance and application of our deference policy. While I do not know the specific facts/merits of the particular reversals, I am of the opinion that we have not communicated adequately to the impacted parties. We must fully realize that when we approve a petition, EB-5 investors/job creators may rely on that approval and pursue additional investments or expenditures as a result. When we subsequently reverse course, possible inequities and adverse consequences to legitimate investors/job creators may follow.

I would like to take the following steps:

- Institute a policy, effective immediately, that when we intend to reverse course in a matter, we provide the impacted parties with an opportunity to be heard in person before the decision board.
    - Representation before the decision board is simple when the impacted party is a regional center petitioner. However, when the impacted parties are individual 526 petitioners, representation is not as simple. I propose that the 526 petitioners each receive an identical letter informing each that they must, as a group, select a representative to appear on their collective behalf before the decision board. (I think this is workable in light of the commonality of issues and representation that we have observed in EB-5 cases.).
    - The decision board should be comprised of EB-5 experts. An example of an able decision board: [redacted]
    - [redacted] We should draft our template letter of notice and invitation to appear before the decision board immediately. I would like the new letter to be transmitted to parties impacted by recent reversals no later than Tuesday. I would like to review the draft proposed letter.
- I would like SCOPS and OCC leadership to review our deference policy and determine whether it needs to be revised so that its intent is fully realized. If the determination is made that it needs to be revised, I would like the proposed revisions to be presented no later than Wednesday, as we hope to publish our draft policy memorandum later next week.

I am available to meet today or Monday to discuss further. I am working on some proposals to present to you regarding the immediate transformation of the EB-5 office.

Thanks very much.
Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

Homeland Security

MEMORANDUM OF ACTIVITY

Type of Activity: Other – Receipt and Review of AT&T Wireless Telephone Records

Case Number: [redacted]	***Case Title***: Unknown Management and Counsel

On April 15, 2014, [redacted], Senior Special Agent, U.S. Department of Homeland Security (DHS), Office of Inspector General (OIG), Washington, DC, received the wireless telephone records related to cellular telephone number [redacted]3 (hereafter referred to as target number) for the period of October 6, 2010, through January 8, 2014, from AT&T Mobility Subpoena Compliance, 308 S. Ackard Street, 14th Floor-M, Dallas, TX 75202. (Attachment 1) The records were provided pursuant to DHS-OIG subpoena #2412 and in conjunction to an investigation involving allegations concerning potential misconduct by Alejandro Mayorkas, former Director, DHS, United States Citizenship and Immigration Services (USCIS), Washington, DC, and other USCIS senior-level managers and counsels in the administration of the EB-5 program.

The target number appeared on the previously subpoenaed telephone records of Mayorkas' government issued blackberry device with an assigned telephone number of [redacted]. Mayorkas' blackberry telephone records revealed three incoming calls were received from the target number on the following dates: November 16, 2012, February 4, 2013, and February 18, 2013. The duration of the incoming calls was one, three and five minutes, respectively. A Lexis Nexis real-time phone search indicated that the target number was associated with the name "A Greentech." (Attachment 2)

A review of the AT&T records identified the billing party and user information for the target number as follows:

Billing Party

Account Number: [redacted]
Name: Greentech Automotive
Billing Address: [redacted] Tunica, MS 38676
Account Status: Active

User Information

Number: [redacted]
Active: October 6, 2010, through January 8, 2014
Name: Terry McAuliffe [redacted]

[redacted]

User Address: [redacted] McLean, VA 22102

[redacted]

From: [redacted] (Reid) <[redacted]>
Sent: Thursday, January 17, 2013 12:01 PM
To: [redacted] (Reid)
Subject: RE: SLS Las Vegas

Importance: High

Hey [redacted] –
It's been more than a week since Senator Reid called the Director. Can you check up on this? If this deal is to move forward, they need to know the outcome of these petitions very soon. Sorry to keep bugging you, but the constituents are understandably antsy.
Thanks –
[redacted]

From: [redacted]
Sent: Monday, January 14, 2013 1:08 PM
To: [redacted] (Reid)
Cc: [redacted]
Subject: RE: SLS Las Vegas

Hey [redacted]

No worries. The issue of the expedite request is still being reviewed, as the Director promised the Senator during their call last week. As soon as I have any news whatsoever, you will be the first I let know.

[redacted]

[redacted]
USCIS-HQ
[redacted]

[redacted]

From: [redacted] (Reid) [redacted]
Sent: Monday, January 14, 2013 4:01 PM
To: [redacted]

Cc: [redacted]
Subject: RE: SLS Las Vegas

Hey [redacted]–
Sorry to keep bugging you on this. Our constituents are bugging us. Any news?
[redacted]

[redacted] | U.S. Senator Harry Reid | [redacted]

From: [redacted] (Reid)
Sent: Friday, January 11, 2013 12:20 PM
To: [redacted]
Subject: RE: SLS Las Vegas

Just checking in. Any update? I know that the Director agreed that the expedite requests should be reconsidered. What is the timeframe for their reconsideration? If this project is to move forward, the adjudications need to start coming pretty quickly...

From: [redacted]
Sent: Wednesday, January 09, 2013 5:39 AM
To: [redacted] (Reid)
Cc: [redacted]
Subject: Re: SLS Las Vegas

Hey [redacted]. Thanks, we had briefed him for a possible call just before the holidays. I heard the call went well.

Thanks again.

[redacted]

[redacted]

From: [redacted] (Reid) [redacted]
Sent: Tuesday, January 08, 2013 01:50 PM Eastern Standard Time
To: [redacted]
Subject: RE: SLS Las Vegas

Hey [redacted]
Left you a message, but I see that you still might be on vacation. We just confirmed that Senator Reid will be placing a call to Director Mayorkas at 130pm PT/430 pm ET about the petitions associated with the SLS Las Vegas. I just wanted to give you all a heads up in case you wanted to brief your boss on this.

Thanks –
[redacted]

[redacted] | [redacted] | U.S. Senator Harry Reid | [redacted]

From: [redacted]
Sent: Tuesday, December 18, 2012 9:57 AM
To: [redacted] (Reid)
Cc: [redacted]
Subject: FW: SLS Las Vegas

Hey [redacted]:

Good afternoon. The attached notices were sent out to the attorneys of record late last night by the USCIS California Service Center EB-5 unit. If you need to discuss, I am running out of the office and then have a 2:00pm meeting, but will return to my desk around 3:00pm.

[redacted]

[redacted]

From: USCIS Immigrant Investor Program
Sent: Monday, December 17, 2012 8:11 PM
To: [redacted]
Subject: RE: SLS Las Vegas

The expedite request for the I-526 petitions associated with SLS Lender LLC has been denied. We received expedite requests from four different law offices so we responded to all of them and e-mailed them the attached letters. Let me know if you need anything else.

[redacted]

From: [redacted]
Sent: Monday, December 17, 2012 3:49 PM
To: USCIS Immigrant Investor Program
Cc: [redacted]
Subject: Fw: SLS Las Vegas

[redacted]

Please see the clarification from Sen. Reid's staffer below and the attached spreadsheet with all of the related cases on this expedite request; there are actually 26 I-526 applications in total. I asked him to make sure their constituent alerts us once they receive Receipt numbers so that you/we can track them.

Thanks again, as always.

[redacted]

From: [redacted] (Reid) [redacted]
Sent: Monday, December 17, 2012 05:46 PM Eastern Standard Time
[redacted]
Subject: RE: SLS Las Vegas

There are actually 26; they just don't have all the receipt numbers yet, so they have only filed expedite requests for the 24 petitions that do have receipt numbers. Here's a comprehensive spread sheet as of last Thursday.
Thanks for following up; please let me know if there is anything else they are looking for.

From: [redacted]
Sent: Monday, December 17, 2012 2:14 PM
To: [redacted] (Reid)
Cc: [redacted]
Subject: FW: SLS Las Vegas
Importance: High

Hi again, [redacted].. FYI...see interim response below. You mentioned in your emails/requests that there were 25 cases and we are only showing 24 received. Can you please check with your constituents to make sure whether one more expedite request is still to be sent to us, or if there were only 24 instead of 25, as originally stated?

I will keep you posted and let you know as soon as a decision has been made on the expedite request/s.

[redacted]

[redacted]

reliance upon) the information contained in this email is strictly prohibited. If you are not the intended recipient, please notify the sender and delete or destroy all copies. **For all casework inquiries, please attach a signed Privacy Act Release, signed by the person for whom the information is being sought.**

From: USCIS Immigrant Investor Program
Sent: Monday, December 17, 2012 4:53 PM
To: [redacted]
Subject: RE: SLS Las Vegas

We received expedite requests for 24 I-526 petitions associated with RCW-10-319-10181 (Las Vegas Regional Center). Also, there are only 24 petitions referenced in the e-mails below. We are in the process of reviewing the expedite requests and we should have a decision on that soon. We will provide you with a copy of the decision once it is done.

[redacted]

From: [redacted] (Reid)
Sent: Wednesday, December 12, 2012 05:57 PM Eastern Standard Time
To: [redacted]
Subject: RE: SLS Las Vegas

[redacted]

Here's a Privacy Release Form for [redacted], WAC 1390180685, one of SLS's British investors. Can you tell me when they decide on the expedite request for her petition? Assume that if they agree to expedite hers, they would also expedite the rest as the reasons are exactly the same.
Take care –

[redacted]

From: [redacted] (Reid)
Sent: Wednesday, December 12, 2012 9:44 AM
To: [redacted]
Subject: RE: SLS Las Vegas

[redacted] –
Here are the expedite requests for all but one of the rest.

[redacted]

As of today, 24 of the 25 outstanding petitioners associated with the SLS Las Vegas project have asked that their petitions be expedited. I should have the last few and at least one PRF today.

One other thing that I wanted to bring to your attention – I found out some more information about the delay in getting these petitions filed. [redacted] the principal of the Regional Center, sent me the attached timeline of events leading up to where we are today. To summarize, a confluence of events led us to this point. First, the credit facility was only secured in May of this year, and JP Morgan initially only gave them to November to get 10% of the visas processed.

Around the same time as the credit facility was secured, USCIS was still dealing with the tenant-occupancy issue. I remember being on the call at the May 1, EB-5 Public Engagement, and recall that the tenant-occupancy issue was a very hot topic. Clearly, a development like this has the potential to run into tenant-occupancy issues, so the counsel for the Regional Center, H. Ronald Klasko, engaged USCIS in a series of discussions about the project. As a result of those discussions, the Regional Center did additional studies in an effort to avoid the issue all together.

The Las Vegas Regional Center and Stockbridge formalized their business relationships in June after these studies were conducted, and they started recruiting EB-5 investors in earnest in late June. Because of several different factors in China, not the least being the uncertainty of a lot of people because of the Communist Party leadership transition, it took them until September to file the first I-526.

Hope this sheds some light on the situation for you all.

[redacted]

From: [redacted]
Sent: Tuesday, December 11, 2012 4:18 PM
To: [redacted]
Cc: [redacted]
Subject: Re: SLS Las Vegas

Ok, thanks again [redacted]. I will track and will look forward to getting the privacy releases so I can keep you posted on the progress of the request.

[redacted]

[redacted]

From: [redacted] (Reid) [redacted]
Sent: Tuesday, December 11, 2012 07:13 PM Eastern Standard Time
To: [redacted]
Subject: RE: SLS Las Vegas

[redacted]

Yes, they were. The attorneys submitted them directly to the USCIS Investor Visa Program email address. I'm getting the Privacy Releases and the rest of the expedite requests lined up.

As an aside, the COO of Stockbridge/SBE Investments, the parent company of the SLS Las Vegas, will be in DC on Thursday to talk about this project. As you can imagine, this project is pretty important to Southern Nevada. It will probably be the only "new" property opening up on the Strip for some time, and if their $300 million senior lending facility from JP Morgan Chase expires because these visas aren't processed expeditiously, it will be a huge setback for the project and the 8600 jobs associated with it.

Appreciate your efforts.

[redacted]

[redacted] | [redacted] | U.S. Senator Harry Reid

From: [redacted]
Sent: Tuesday, December 11, 2012 3:54 PM
To: [redacted]
Subject: Re: SLS Las Vegas
Importance: High

Hi [redacted]

Thanks for the heads up. Was this expedite request formally submitted by your constituent to the EB-5 Unit as we discussed last week on the phone? If they were, I will begin to track it/them for you and let you know as soon as our EB-5 Unit has reviewed it/them and decided on the requests to expedite. Also, as you know, before we can discuss the cases in any specificity, I/we will also need privacy releases signed by at least one of the I-526 applicants, as we also discussed on the phone, and not signed by the attorney/s.

If these expedite requests have not been formally submitted by your constituent to the EB-5 Unit, I will ask that you please ask them to do so, as we cannot accept any pleading on any case. Once they have done so, I/we will be glad to follow/track it/them for you and as I mentioned above, will let you know once it has been decided on.

Thanks again.

[redacted]

From: [redacted] (Reid)[redacted]
Sent: Tuesday, December 11, 2012 06:11 PM Eastern Standard Time
To: [redacted]
Subject: RE: SLS Las Vegas

[redacted]
For your reference, here are the formal requests to expedite 11 of the 25 I-526s that we talked about last week. They are for the following investors:

[redacted]	WAC 1390069145
[redacted]	WAC 1390192119
[redacted]	WAC 1390011387
[redacted]	WAC 1390022191
[redacted]	WAC 1390075332
[redacted]	WAC 1390087031
[redacted]	WAC 1390096358
[redacted]	WAC 1390192006
[redacted]	WAC 1390214886
[redacted]	WAC 1390231377
[redacted]	WAC 1390180685

I think that the other attorney (representing the balance of the 25 petitions) will be submitting his letter sometime today.
[redacted]

From: [redacted] (Reid)
Sent: Wednesday, December 05, 2012 10:59 AM
To: [redacted]
Subject: RE: SLS Las Vegas

It's [redacted]. Thanks man.

From: [redacted]
Sent: Wednesday, December 05, 2012 10:58 AM
To: [redacted] (Reid)
Subject: Re: SLS Las Vegas

Hey [redacted] but will give you a call later this afternoon. What's the best number to call you on?

[redacted]

[redacted]

From: [redacted] (Reid) [redacted]
Sent: Wednesday, December 05, 2012 12:37 PM Eastern Standard Time
To: [redacted]
Subject: SLS Las Vegas

H[redacted] –
I left you a message yesterday. Here's the information on the EB-5 petitions I was talking about on Friday for the SLS Resort, formerly the Sahara Hotel.

The new owners of the hotel are working with the American Dream Fund - Las Vegas Regional Center. I know that in Los Angeles, this group has been rather successful with the Immigrant Investor program. LVRC has submitted 25 I-526s, and is in the process of submitting 205 more petitions. The petitions support the $415M project, using a blend of financing from JP Morgan Chase (about $300M) and the EB-5 Program ($115M) to finance the project.

There are two main things that you need to know about here and necessitate the expedite of the processing of those 25 visas. First, JP Morgan Chase has said that if they don't see 10% of the visas approved by mid-January (so they can release the money from escrow in early February), then they will pull the financing from the project. The attorneys for the project sent me the whole financing agreement, and I can send it to you if you want, but it is about 200 pages long. For your convenience, I pulled out the section with the pertinent information and included it in the attachment.

Second, the project has secured several permits and licenses from Clark County that will expire in January. Complicating things, the ordinances that govern the permits have changed, so if the money is not released and construction does not start by early February, the project will be forced to redo many of its permits. These things aren't cheap either; it could cost the project several hundred thousand dollars if they are forced to replace expired permits.

I'll follow up with a phone call, but I wanted to make sure that you had all this information. Do you think that USCIS could expedite these petitions?

[redacted] | [redacted] | U.S. Senator Harry Reid

[redacted]

From: [redacted]
Sent: Wednesday, January 30, 2013 12:20 PM
To: [redacted]
Subject: Re: EB-5 Deference Policy and Adjudication Reversals

I haven't read their comments but we should be sure to chime in on anything operational. I just want to make sure the pain of delivering potentially unwelcome news is shared and bourne by the appropriate parties.

From: [redacted]
Sent: Wednesday, January 30, 2013 09:05 AM
To: [redacted]
Subject: Re: EB-5 Deference Policy and Adjudication Reversals

Got it. I agree with OCC, though, and think the they raise many concerns pertaining to operations.

From: [redacted]
Sent: Wednesday, January 30, 2013 11:38 AM
To: [redacted]
Subject: Re: EB-5 Deference Policy and Adjudication Reversals

Thanks, [redacted]. I understand it is a tough place for OCC given Ali's interest to move quickly but they need to carry their own water.

From: [redacted]
Sent: Wednesday, January 30, 2013 07:03 AM
To: [redacted]
Subject: Re: EB-5 Deference Policy and Adjudication Reversals

I don't know if you had a chance to look at OCC's comments, but they blew the paper out of the water on numerous legal and policy grounds. Considering the severity and substantial nature of their comments, I can't imagine them being resolved today.

I will talk to OCC about how they want to proceed.

Thanks,
[redacted]

From: [redacted]
Sent: Wednesday, January 30, 2013 10:01 AM
To: [redacted]
Subject: Re: EB-5 Deference Policy and Adjudication Reversals

You may be right, but that will need to be explained to Ali since he set the deadline. OCC should be prepared to present their concerns in today's meeting.

From: [redacted]
Sent: Wednesday, January 30, 2013 06:56 AM
To: [redacted]

Subject: Fw: EB-5 Deference Policy and Adjudication Reversals

This really needs to slow down. OCC had major comments and legal issues. I understand that Ali wants it immediately, but at what cost?

From: [redacted]
Sent: Wednesday, January 30, 2013 09:47 AM
To: [redacted]
Subject: FW: EB-5 Deference Policy and Adjudication Reversals

Do you have time to meet this morning to go through these issues and narrow this down for a meeting with Ali to finalize the notice (or present alternative proposals for him to review)? Given the need to send these out today, and his schedule today, it would be great if we could all resolve these issues asap and then meet with him just to confirm any last minute details that remain unresolved. Can we have a quick meeting at 10:00 to go over the remaining issues and figure out what, if anything, will need to be resolved in a 15 minute meeting with Ali?

Thanks,
[redacted]

From: Mayorkas, Alejandro N
Sent: Wednesday, January 30, 2013 9:31 AM
To: [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

Thank you. I just reviewed this. I am available to meet today and can resolve these issues in a 15-minute meeting, if necessary. The notices are to be issued today. My preliminary comments are below, drafted rapidly as I am incredibly busy this morning. Thanks. Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[redacted]
Washington, DC 20529
[redacted]

From: [redacted]
Sent: Tuesday, January 29, 2013 6:09 PM
To: Mayorkas, Alejandro N; [redacted]
Subject: RE: EB-5 Deference Policy and Adjudication Reversals

Ali,

We have drafted up a notice for a review board hearing, consistent with the framework you proposed below, in cases where USCIS is changing course on an issue which applies to a group of I-526 investors similarly situated under a regional center project. For your reference I have attached the version with OCC's comments (and some comments I originally posed) as well a clean version for ease of reading. OCC has reviewed the draft and raised some concerns about the process involved:

- Risk of establishing such a mechanism without notice and comment rulemaking is mitigated somewhat by the fact that participation in the process is voluntary and adds an opportunity for the petitioners to be heard. OCC previously cleared the previously-announced decision board process. This is not an issue.

- The new process could essentially confer a type of "standing" on I-526 petitioners in relation to regional center adjudications. USCIS has traditionally argued that individual investors do not have standing to be represented, i.e., they are not treated as a recognized party in regional center proceedings. To the extent that this process may be viewed as treating the investors as parties to the regional center proceedings it would then give the investors that authority to inspect the entire record per 8 CFR 294.2, which would likely meet with resistance from the regional center if it has protected business information in the file. This is mistaken. If it is a decision reversal in the regional center adjudication itself, then the regional center petitioner is the party in interest and there is no issue. If it is a decision reversal in the 526 context, then the affected 526 community is, collectively, the party in interest to the extent that the decision reversal involves questions/issues common to the 526 community. How the 526 community is to be represented before the decision board is a valid question to be discussed.

- The agency should consider issuing guidance to the adjudicators to aid in determining which cases are appropriate for the Review Board. For example, will every case that does not receive deference be afforded the opportunity to appear before the Review Board or will the Review Board be implemented based on specific criteria (number of affected investors, issues specific to the business plan, etc.)? Reversal of prior decision is the standard. New deference policy language being drafted, should mirror the concept of "law of the case."

- Determining who will represent the affected investors presents a significant logistical hurdle as well as legal concerns. Individual investor information is protected by the Privacy Act. It is not clear precisely how each investor will actually acquire the names of the other investors for purposes of selecting representatives. It is possible that the regional center could coordinate the selection of the representatives, but the interests of the regional center may at some point diverge from those of the investors, particularly in circumstances where a regional center business plan is the focus of the inquiry. Additionally, 8 CFR 292.4(a) states that in order for an appearance by a representative to be recognized by DHS, an appearance must be filed on the appropriate form (G-28), signed by the petitioner or applicant. It is not clear whether the selected representatives can properly represent the rest of the EB-5 investors, without a revised G-28 from the affected investors. We can discuss. I need to know some facts to assess how realistic an issue this is, as opposed to academic. For example, is it common for each 526 investor to have distinct representation, or is it more common that one counsel represents the majority of 526 investors, or are they generally unrepresented? I have some ideas as to how to handle; to be discussed.

- If USCIS relies upon the regional center to coordinate selection of the representatives, what method will be used to verify that the investors chose the representatives that appear before the agency? See above. OCC should present proposed solutions to this line of inquiry asap today, as notices are being issued today.

- Does the Review Board process contemplate notice to the regional center as well as the investors? If the regional center is coordinating representation, USCIS will need to draft a notice for the regional center as well. Why not same notice, cc'ing regional center.

- The success of the Review Board will depend upon the specificity with which the critical issues are identified for the investors We should meet that standard of quality.

In light of the concerns raised, please let us know if you would still like to proceed with this approach/framework or if you wish to engage in further discussions with the group in terms of the procedural aspects of the review board hearing. I am available for a 15-minute meeting today. Proposals should be in hand. Thanks.

Thanks,
[redacted]

From: Mayorkas, Alejandro N
Sent: Friday, January 25, 2013 9:29 AM
To: [redacted]
Subject: EB-5 Deference Policy and Adjudication Reversals

[redacted]

As you know, I am concerned with the agency's adjudication reversals in EB-5 cases and the related substance and application of our deference policy. While I do not know the specific facts/merits of the particular reversals, I am of the opinion that we have not communicated adequately to the impacted parties. We must fully realize that when we approve a petition, EB-5 investors/job creators may rely on that approval and pursue additional investments or expenditures as a result. When we subsequently reverse course, possible inequities and adverse consequences to legitimate investors/job creators may follow.

I would like to take the following steps:

- Institute a policy, effective immediately, that when we intend to reverse course in a matter, we provide the impacted parties with an opportunity to be heard in person before the decision board.
    - Representation before the decision board is simple when the impacted party is a regional center petitioner. However, when the impacted parties are individual 526 petitioners, representation is not as simple. I propose that the 526 petitioners each receive an identical letter informing each that they must, as a group, select a representative to appear on their collective behalf before the decision board. (I think this is workable in light of the commonality of issues and representation that we have observed in EB-5 cases.).
    - The decision board should be comprised of EB-5 experts. An example of an able decision board: [redacted]
    - We should draft our template letter of notice and invitation to appear before the decision board immediately. I would like the new letter to be transmitted to parties impacted by recent reversals no later than Tuesday. I would like to review the draft proposed letter.
- I would like SCOPS and OCC leadership to review our deference policy and determine whether it needs to be revised so that its intent is fully realized. If the determination is made that it needs to be revised, I would like the proposed revisions to be presented no later than Wednesday, as we hope to publish our draft policy memorandum later next week.

I am available to meet today or Monday to discuss further. I am working on some proposals to present to you regarding the immediate transformation of the EB-5 office.

Thanks very much.
Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services

[redacted]
Washington, DC 20529
[redacted]

[redacted]

From: [redacted]
Sent: Thursday, January 31, 2013 12:04 AM
To: [redacted]
[redacted]
Subject: Re: EB-5 litigation

Thanks, [redacted]. The whole thing is unsettling. Hopefully we can wash our hands soon. Thanks for taking the copious notes.

----- Original Message -----
From: [redacted]
Sent: Wednesday, January 30, 2013 08:06 PM
To: [redacted]
[redacted]
Subject: EB-5 litigation

Hi [redacted] - I attended a 4pm EB-5 mtg for you today. [redacted] attended as well, though he was not invited via the initial invite or by me. [redacted]t stayed after the meeting to listen in on a call Ali had with a private sector attorney.

[redacted]
Summary judgment motions are due Fri.

From a strategic position, the lawyers believe [redacted]
They also noted that the judge seems to want this case to go to trial.

The lawyer[redacted]
seems, on [redacted]
precedent, namely are we going to retroactively apply policy guidance that is favorable?

[redacted]We
may see MTRs once the new guidance comes out.

Our tasks: (1) determine what relief we could give; and (2) give some sort of time frame to adjudicate the cases. Settlement won't impact resolution of the cases (we adjudicate normally, just eliminate material change as a basis for denial).

In addition, the hold on the 110 cases involving pending I-526s and material change may be lifted because there is no legal basis for material change during the pendency of the I-526.

We also discussed the review board. Ali insists that the notices go out tomorrow so that the public knows we are taking action when a reversal results in inequity. Ali thought [redacted] notice was superb. OCC said nothing about their significant objections, so I stayed quiet.

Ali commented that [redacted] were taking "copious notes.". I'm not sure why this concerned him. I knew I needed to report the details to you. The comment was unsettling.

Please let me know if you want more information.

Thanks,
[redacted]

[redacted]

From: Mayorkas, Alejandro N
Sent: Friday, July 22, 2011 8:04 AM
To: [redacted]
Subject: RE: Gulf Coast follow up - Matter of Izummi

[redacted]

Thank you, and thank you to everyone, for the time and energy you dedicated yesterday afternoon to the complex issues presented in the EB-5 case.
[redacted] I too have concerns with what the definition of "limited geographic area" should be, and I well understand the reasoning behind the decision to define it as requiring contiguity. I gave this further thought yesterday evening and have been reading additional materials this morning. While I continue to believe that contiguity is an added requirement not found in the applicable regulation (and one that should not be imposed), this issue is by no means settled. I would welcome the chance to speak with you further on this subject. I will be available this afternoon if you wish. My direct line is [redacted]

Thank you again. Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave., N.W.
Washington, DC 20529
[redacted]

From: [redacted]
Sent: Friday, July 22, 2011 7:53 AM
To: Mayorkas, Alejandro N; [redacted]
Subject: Gulf Coast follow up - Matter of Izummi

Pursuant to yesterday's meeting, I am sending a copy of *Matter of Izummi* as requested. While it is an extensive decision that discusses most pooled investment issues, it does not, in fact, actually address the necessary management rights for a limited partner. I am taking the liberty of attaching the regulatory language on this issue as well. I apologize for not sending it right after the meeting, but I work out of [redacted] and did not return to that office until this morning.

Once [redacted] gets in with the file, I will check the RFE response to see if they ever addressed the stock conversion price (rather than a specific number of shares) or the management issue. I always address RFE response arguments on appeal or certification even if not reasserted on appeal or certification, so I will certainly make sure I did not miss any such discussion of these issues. A thought that occurs to me now, I assume that we are going to take their word that no market will exist at the time of conversion.

I will vet my lingering concerns with allowing a regional center to include multiple unconnected geographic areas with [redacted], which crystallized upon reflection after the meeting, to see if they warrant further discussion if only for the purpose of assuring we considered all counterarguments and found them unpersuasive. I certainly have no wish to waste anyone's time rehashing a settled issue.

Thank you for your time,

[redacted]
AAO

[redacted]

From: [redacted]
Sent: Friday, July 22, 2011 9:53 AM
To: [redacted]
Subject: GCFM

Good morning. I have been thinking about the 2 issues discussed yesterday during the GCFM meeting. However, I still having a difficult time understanding these two issues in regards to this case:

1. Management- [redacted]
2. Stock Conversion- [redacted]

This decision will not only affect the GCFM Regional Center, but also the 526 cases that we currently have on hold as well as all future cases so I would like to ensure I have good understanding of the overall interpretation. Perhaps when I see the AAO decision on this I will have a better grasp. If you would like to talk, feel free to give me a call at [redacted]

Thanks,
[redacted]

[redacted]

From: [redacted]
Sent: Friday, July 22, 2011 4:21 PM
To: [redacted]
Subject: Gulf Coast Management Funds

[redacted]

I apologize for sending this later in the day. I also attended a second session of yesterday's SPC meeting on EB5 this afternoon (nothing significant, will result mostly in outreach to talk about potential changes to TEA designation process).

The following people attended last night's meeting on GCMA: Dir. Mayorkas, [redacted]

The Director stated that he believes that nothing is more important to the United States at this time than the creation of jobs for U.S. workers. This will inform how he views every classification. So, if the regional center claims that it will create jobs for U.S. workers, he will read the statute and the regs as generously as possible. For other classifications, such as H-1B, where there are statutory provisions designed to ensure that U.S. workers are protected, he will read the statute and regs more narrowly. The director noted several times that these cases are affiliated with "people of influence" and "people with money" and that he has several more of these on his radar. It seemed clear to me that since "people of influence" have raised other cases to him (or a higher authority at DHS or the White House), the AAO will be requested to defend our draft I-924 and EB5 decisions to the Director in the future, prior to issuance.

The director advised that he had read the AAO's draft on GCMA and found it well written but he has a different point of view about the following conclusions:

- Must the regional center's geographic location be comprised of contiguous areas? AAO and SCOPs have consistently said "yes."

Director Mayorkas explained that while the statute requires the regional center to be in "a geographic location," he does not believe that we should be requiring the regional center to be composed of contiguous areas. He did agree that for this petitioner to suggest that the "geographic area" in this case is Mississippi, Louisiana, Tennessee and Virginia is "a sham." In this case, the petitioner's only intended projects are in Mississippi, Louisiana, and Virginia, with the entire state of Tennessee requested in order to link the areas where the actual projects are located.

- Is the agreement to provide investors with $550,000 worth of common stock an impermissible redemption agreement? The AAO affirmed CSC's finding that it is impermissible because the amount of money is guaranteed. The AAO's position is that while it would be acceptable to guarantee X number of preferred shares converting to a certain number of common stocks without knowing what their value could be in the future, guaranteeing the value of the common stock you will provide creates an impermissible redemption agreement.

The Director explained that he believes that because one can't know whether there will be a market for the common stock in the future, the regional center really can't guarantee that common stock will be worth anything at all; therefore, the money is completely at risk and there is no guarantee of redemption of the investment.

- Is the evidence of record sufficient to meet the requirement that the investors have a managerial role? CSC and the AAO found that there is not sufficient evidence.

The Director asked whether the investors need some or complete managerial control, and in his view having some control is sufficient.

We found his arguments (the discussion is lengthier than I can recapture here), helpful. We can agree to the last point, and are tentatively in agreement with the first two points. [redacted] is working on a new draft. Frankly, I can't say that we will be able to convince ourselves to agree with his first two points in writing, in which case we know that we will have to go back to the table. He agreed that none of this is decided and that we should feel free to contact him with any questions.

At the end, he asked [redacted] to contact the petitioner and ask them to withdraw their appeal because there is a new, pending regional center petition from the same regional center that appears to be approvable and for different reasons has overcome the above issues. Then he asked [redacted] to send e-mail guidance to the service center telling CSC that these issues are all decided and that they should adjudicate their pending I-526 cases in accordance with his views above. [redacted] said that this would have the appearance of a "directed decision," a practice that USCIS does not currently follow. I suggested that the Service Centers are comfortable with the AAO decisions and that it would be more appropriate not to ask the petitioner to withdraw. Instead, allow the AAO to adjudicate the pending certification as usual. [redacted] agreed that the service centers "absolutely" are comfortable with AAO decisions and that this would be appropriate. The director agreed that USCIS would not contact the petitioner and that we would adjudicate. He then asked whether I would give him the file and whether he could write the decision himself. He stated that he felt bad about asking the AAO to do more work. I said: "Please let us write it. I will give a draft to everyone at the table and we can talk about this again." Frankly, this entire turn of events made me extremely uncomfortable.

[redacted]

[redacted]

From: [redacted]
Sent: Friday, July 22, 2011 7:14 PM
To: [redacted]
Subject: Re: Gulf Coast Management Funds

Thank you, [redacted] for this update. At least SCOPS seemed to agree with us. This is assuredly the Director's way of dealing with the reality of the situation he find's himself in.

From: [redacted]
Sent: Friday, July 22, 2011 04:21 PM
To: [redacted]
Subject: Gulf Coast Management Funds

[redacted]

I apologize for sending this later in the day. I also attended a second session of yesterday's SPC meeting on EB5 this afternoon (nothing significant, will result mostly in outreach to talk about potential changes to TEA designation process).

The following people attended last night's meeting on GCMA: Dir. Mayorkas, [redacted].

The Director stated that he believes that nothing is more important to the United States at this time than the creation of jobs for U.S. workers. This will inform how he views every classification. So, if the regional center claims that it will create jobs for U.S. workers, he will read the statute and the regs as generously as possible. For other classifications, such as H-1B, where there are statutory provisions designed to ensure that U.S. workers are protected, he will read the statute and regs more narrowly. The director noted several times that these cases are affiliated with "people of influence" and "people with money" and that he has several more of these on his radar. It seemed clear to me that since "people of influence" have raised other cases to him (or a higher authority at DHS or the White House), the AAO will be requested to defend our draft I-924 and EB5 decisions to the Director in the future, prior to issuance.

The director advised that he had read the AAO's draft on GCMA and found it well written but he has a different point of view about the following conclusions:

- Must the regional center's geographic location be comprised of contiguous areas? AAO and SCOPs have consistently said "yes."

Director Mayorkas explained that while the statute requires the regional center to be in "a geographic location," he does not believe that we should be requiring the regional center to be composed of contiguous areas. He did agree that for this petitioner to suggest that the "geographic area" in this case is Mississippi, Louisiana, Tennessee and Virginia is "a sham." In this case, the petitioner's only intended projects are in Mississippi, Louisiana, and Virginia, with the entire state of Tennessee requested in order to link the areas where the actual projects are located.

- Is the agreement to provide investors with $550,000 worth of common stock an impermissible redemption agreement? The AAO affirmed CSC's finding that it is impermissible because the amount of money is guaranteed. The AAO's position is that while it would be acceptable to guarantee X number of preferred shares converting to a certain number of common stocks without knowing what their value could be in the future, guaranteeing the value of the common stock you will provide creates an impermissible redemption agreement.

The Director explained that he believes that because one can't know whether there will be a market for the common stock in the future, the regional center really can't guarantee that common stock will be worth anything at all; therefore, the money is completely at risk and there is no guarantee of redemption of the investment.

- Is the evidence of record sufficient to meet the requirement that the investors have a managerial role? CSC and the AAO found that there is not sufficient evidence.

The Director asked whether the investors need some or complete managerial control, and in his view having some control is sufficient.

We found his arguments (the discussion is lengthier than I can recapture here), helpful. We can agree to the last point, and are tentatively in agreement with the first two points. [redacted] is working on a new draft. Frankly, I can't say that we will be able to convince ourselves to agree with his first two points in writing, in which case we know that we will have to go back to the table. He agreed that none of this is decided and that we should feel free to contact him with any questions.

At the end, he asked [redacted] to contact the petitioner and ask them to withdraw their appeal because there is a new, pending regional center petition from the same regional center that appears to be approvable and for different reasons has overcome the above issues. Then he asked [redacted] to send e-mail guidance to the service center telling CSC that these issues are all decided and that they should adjudicate their pending I-526 cases in accordance with his views above. [redacted] said that this would have the appearance of a "directed decision," a practice that USCIS does not currently follow. I suggested that the Service Centers are comfortable with the AAO decisions and that it would be more appropriate not to ask the petitioner to withdraw. Instead, allow the AAO to adjudicate the pending certification as usual. [redacted] agreed that the service centers "absolutely" are comfortable with AAO decisions and that this would be appropriate. The director agreed that USCIS would not contact the petitioner and that we would adjudicate. He then asked whether I would give him the file and whether he could write the decision himself. He stated that he felt bad about asking the AAO to do more work. I said: "Please let us write it. I will give a draft to everyone at the table and we can talk about this again." Frankly, this entire turn of events made me extremely uncomfortable.

[redacted]

[redacted]

From: [redacted]
Sent: Monday, August 01, 2011 3:15 PM
To: [redacted]
Subject: RE: GCFM Decision

Sure.

From: [redacted]
Sent: Monday, August 01, 2011 3:14 PM
To: [redacted]
Subject: RE: GCFM Decision

Thanks [redacted]. If possible I'd like to see it sometime tomorrow.

Thanks again.
[redacted]

From: [redacted]
Sent: Monday, August 01, 2011 3:13 PM
To: [redacted]
Subject: RE: GCFM Decision

[redacted]

[redacted] turned in a final draft of the decision this morning. We are reviewing it now.

[redacted]

From: [redacted]
Sent: Monday, August 01, 2011 2:49 PM
To: [redacted]
Subject: GCFM Decision

H[redacted]

Have you finished the rewrite on this decision?

Thanks
[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, August 17, 2011 8:23 AM
To: [redacted]
Subject: FW: [redacted]!

[redacted]

Please send me the latest draft of the Gulf Coast decision a.s.a.p. I need to digest it quickly since I'm already getting questions about it.

[redacted]

From: [redacted]
Sent: Tuesday, August 16, 2011 5:13 PM
To: [redacted]
Subject: Re: [redacted]!

I could delay the start of the 10:00 tomorrow and call you. Would that work?

The answer to # 3 is yes.

The answer to # 2 is molt likely yes, but we don't (or haven't).

Yes to #1. Who is setting up the meeting? Me?

If 10:00 works for me to call, just give me a number. Probably best to keep my other remarks and questions out of an email.

From: [redacted]
Sent: Tuesday, August 16, 2011 05:02 PM
To: [redacted] J
Subject: RE: [redacted]

Nope. I'm having lunch with Ali.

O.K. I'm going to try to do this over the email and since you are just back you likely won't know what I'm talking about but here goes.

1. Gulf Coast draft decision. Ali would like to talk to the AAO adjudicator who wrote the section (iii) Term of the Option. The sooner the better and I wish I could be there but will likely still be on travel but I would appreciate getting an invite with a call in number in case I can join you.
2. Does the AAO have the authority to issue a proposed or tentative decision? Courts will often propose a decision and give the parties the opportunity to comment.
3. Does the AAO have the authority to hold an oral argument?

Thanks [redacted].

[redacted]

From: [redacted]
Sent: Tuesday, August 16, 2011 4:56 PM

[redacted]

From: [redacted]
Sent: Monday, August 22, 2011 4:44 PM
To:
Cc: [redacted] L
Subject: RFE ASAP

[redacted]

I just spoke with [redacted] and Ali. I want the RFE transmitted to the attorney as an attached .pdf document and followed up with a hard copy. How quickly can it go out?

[redacted]

[redacted]

From: [redacted]
Sent: Tuesday, August 23, 2011 5:59 PM
To: [redacted] F
Subject: Fw: FYI

Just so you know what I'm dealing with. Please do everything possible to get that RFE emailed as soon as possible tomorrow morning and let me know when it is sent.

I was told today this is consuming an inordinate portion of the Director's time.

Thank you for your patience with the repeated inquiries.

----- Original Message -----
From: [redacted]
Sent: Tuesday, August 23, 2011 05:50 PM
To: [redacted]
Subject: Re: FYI

They don't have the file. The building is closed for inspections.

----- Original Message -----
From: [redacted]
Sent: Tuesday, August 23, 2011 04:51 PM
To: [redacted]
Subject: RE: FYI

[redacted]

Can't they send it from home?

[redacted]

-----Original Message-----
From: [redacted]
Sent: Tuesday, August 23, 2011 3:15 PM
To: [redacted]
Subject: FYI

Our building in [redacted] has been cleared and they are only allowing people back in to retrieve keys. The RFE will go out in the morning . . . barring another act of God!

[redacted]

From: [redacted]
Sent: Wednesday, August 24, 2011 11:58 AM
To: [redacted]
Subject: RE: Update
Attachments: GCFM RFE.PDF

Attached is a pdf.

Fax copy to attorney of record Dawn Lurie - confirmed.

The file room is mailing hard copies of the RFE to the attorney of record and to the regional center by mail today.

[redacted]

-----Original Message-----
From: [redacted]
Sent: Wednesday, August 24, 2011 11:47 AM
To: [redacted]
Subject: Re: Update

Thank you. Let me know when you have the confirmation, please, and send me a .pdf of the RFE.

----- Original Message -----
From: [redacted] F
Sent: Wednesday, August 24, 2011 11:45 AM
To: [redacted] K
Subject: RE: Update

We're about to fax it to the attorney. We'll have the fax confirmation well before noon.

-----Original Message-----
From: [redacted]
Sent: Wednesday, August 24, 2011 11:41 AM
To: [redacted]
Subject: Re: Update

Sorry to be so persistent, but any update? I do not want to have to ezplain a delay to him at this point.

----- Original Message -----
From: [redacted]
Sent: Wednesday, August 24, 2011 11:31 AM
To: [redacted] K
Subject: Update

Did the RFE go out? I will be asked at noon,

[redacted]

From: [redacted] J
Sent: Tuesday, August 30, 2011 1:16 PM
To: [redacted]
Subject: FW: AAO RESPONSE PART I
Attachments: GTA RFE Response filing.pdf

Just in case we have not received it, yet.

From: [redacted]
Sent: Tuesday, August 30, 2011 1:07 PM
To: [redacted]
Subject: FW: AAO RESPONSE PART I

H[redacted]

FYI, attached is a copy of GreenburgTraurig's response to the RFE that you sent her the other day. Dawn Laurie's message is below.

Thanks, [redacted]

[redacted]

[redacted] | [redacted] | [redacted] |
U.S. Citizenship and Immigration Services (USCIS) | U.S. Department of Homeland Security (DHS) |
[redacted]

From: [redacted]]
Sent: Tuesday, August 30, 2011 12:39 PM
To: [redacted]
Subject: AAO RESPONSE PART I

Dear [redacted]
I sent this yesterday to you but it was apparently returned b/c the file was too big.

This is what was filed with AAO in response to the RFE.

Thanks.

Dawn M. Lurie
Shareholder
Greenberg Traurig LLP | [redacted] | Tysons Corner, VA 22102
[redacted]

GT GreenbergTraurig

GT GreenbergTraurig

Dawn M. Lurie
Admitted to Practice only in the District of Columbia and NJ
[redacted]

August 29, 2010

VIA FEDERAL EXPRESS
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
[redacted]
Washington, DC 20529-2090

Re: Response to Request for Evidence
Applicant: Gulf Coast Fund Management, LLC
File RCW 1031910314
Response Due: November 19, 2011

Dear Sir/Madam:

This letter constitutes a timely response to your notice dated August 24, 2011, in connection with a request to amend a previously approved regional center that is currently pending review before the Administrative Appeals Office (hereinafter referred to as "AAO") on certification.

Background

The AAO states, "In reaffirming the denial of the amendment request on motion, the director determined (1) that the investors would have reduced management rights; (2) that the purchase of stock undermined the congressional intent to promote pooled investment; (3) that the amendment did not propose investments in a distinct, contiguous geographic region; and (4) that the agreement to convert each membership unit of preferred stock to an estimated price of $550,000 in stock in five years constituted an impermissible redemption agreement. The AAO believes that the record of proceeding fully addresses the first three issues; however, documents that would fully explain the relationship between Gulf Coast Funds Management, LLC, each of the proposed funds, and GreenTech Automotive, Inc. and WM GreenTech Automotive Corp. are absent from the record." Furthermore, the record should note that Gulf Coast Funds Management, LLC ("GCFM") believes that it assisted United States Citizenship and Immigration Service ("USCIS") in clarifying the record in terms of the first two issues in responding to several requests for evidence focusing on individual GCFM I-526s and that issue

number 3 was reviewed internally by USCIS as the regulations are silent on contiguous geographic region investments. Accordingly, this response focuses on resolving the last issue dealing with an alleged impermissible redemption agreement.

Historical Corporate Structure

Since much of the confusion stems from the corporate agreements and structure of entities involved in filings by GCFM, undersigned counsel believes that a brief history of the relationship of Hybrid Kinetic Automotive Corp. ("Hybrid Kinetic"), GreenTech Automotive, Inc. ("GreenTech") a Mississippi corporation, GCFM, a Louisiana Limited Liability Company, Capital Wealth Holdings Limited ("CWH"), a British Virgin Islands entity, and WM GreenTech Automotive Corp. ("WMGTA") a Virginia Corporation, will assist the AAO in evaluating the matter.

Formation Dates

1. CWH was formed in 2006.
2. GCFM was formed on December 10, 2007.
3. Hybrid Kinetic was formed on October 21, 2008.
4. GreenTech was formed on August 14, 2009.
5. WMGTA was formed on October 9, 2009.

Hybrid Kinetic/GreenTech Reorganization and Ownership Change

On August 14, 2009, Hybrid Kinetic and GreenTech entered into a Plan and Agreement of Merger whereby Hybrid Kinetic and GreenTech merged with GreenTech continuing as the surviving company (the "Merger"). A copy of the Plan and Agreement of Merger is attached hereto as Appendix A. Following the Merger, Hybrid Kinetic no longer existed.

Pursuant to further restructuring, on February 16, 2010, CWH acquired 100% of the shares of stock of GreenTech from its existing shareholders. CWH acquired the GreenTech shares from these shareholders by issuing them preferred stock of CWH in exchange for such shares. A copy of the Plan of Share Exchanges is attached hereto as Appendix B.

Thereafter, on March 18, 2010, CWH entered into a share exchange that resulted in WMGTA owning 100% of the common stock of GreenTech and CWH owning 75% of the common stock of WMGTA. A copy of the Plan of Share Exchange is attached hereto as Appendix C.

GCFM Purchase by CWH

Prior to November 2, 2009, GCFM was owned by Frantzen/Voelker Investments, L.L.C., Tax Credit Capital, LLC, [redacted] and [redacted] (collectively, the "Prior GCFM Owners") and managed by [redacted]. See the Articles of Organization of GCFM attached

hereto as Appendix D. On November 2, 2009, CWH created a wholly owned subsidiary (American Immigration Center, LLC) which purchased 100% of the membership interests of GCFM (the "GCFM Purchase") pursuant to the Assignment of Membership Interests attached hereto as Appendix E. Accordingly, following such purchase, CWH became and continues to be the sole member of GCFM.

Formal Responses to Request for Evidence

RFE #1. *An explanation of how the common and preferred stock will be distributed at the end of the investment period and which agreements address each stock transfer stage (from either GreenTech Automotive, Inc. or WM GreenTech Automotive Corp. to GCFM and subsequently from GCGM to the individual investors). Please reference GreenTech Automotive, Inc. and WM GreenTech Automotive Corp. separately and individually rather than interchangeably as "GTA".*

For the record, a conversion is not a redemption and at all times both before and after the conversion, the EB-5 investors remain at risk for the success of the GreenTech project.

The dispositive factor in distinguishing a "redemption" from a "conversion" is the type of asset received in exchange for the security being surrendered. In a redemption, an investor receives the return of his or her investment capital in cash or a fixed income security such as a promissory note or bond. On the other hand, in a conversion, the investor exchanges his or her convertible security, such as preferred stock, into another type of security, such as common stock, typically at a predetermined price, on or before a predetermined date.

In the present situation, the Series A Preferred Stock of GreenTech held by the A-1 Fund and A-2 Fund will be exchanged for GreenTech Common Stock five years after the issuance of the Preferred Stock. Following such exchange, the Funds will own common stock and continue their at risk investment in GreenTech. Accordingly, such exchange is not a redemption but rather a conversion. If such transaction were a redemption, rather than receiving GreenTech Common Stock, the Funds would receive cash, a promissory note or a bond as payment in full for the Funds' relinquishment of their Series A Preferred Stock ownership.

Based on the foregoing, the terms of the Series A Preferred Stock are in compliance with USCIS "no redemption" policy.

Below is a summary of the original issuances of the Series A Preferred Stock (the "Preferred Stock") of GreenTech and how it will be converted into the common stock of GreenTech (the "Common Stock"). We also note that our previous descriptions of some of the entities involved may have caused some confusion with the AAO and want to make clear that GreenTech and

WMGTA are separate entities. Therefore, we have provided the "Historical Corporate Structure" above and the chart attached hereto as Exhibit 3 to assist your understanding of the various entities.

Initial Issuance of the Preferred Stock. Attached as Exhibit 1 is a chart showing the steps involved in the initial issuance of each unit (each a "Unit") of the Gulf Coast Automotive Investment Fund A-1, LLC (the "A-1 Fund") or GTA Fund A-2, LLC (the "A-2 Fund"). Each EB-5 Investor purchased one (1) Unit pursuant to a Subscription Agreement. Pursuant to the Operating Agreement of the A-1 Fund and A-2 Fund which are attached hereto as Appendices F and G, such fund then purchased one (1) share of Preferred Stock from GreenTech. All the shares of Preferred Stock are owned by the A-1 Fund and A-2 Fund, not the EB-5 Investors. GCFM is a separate entity from both the A-1 Fund and A-2 Fund with completely separate owners. GCFM is owned by CWH (as described in the "Historical Corporate Structure" section) and all of the Units of the A-1 Fund and A-2 Fund are owned by the EB-5 Investors. GCFM, as the management entity, has no ownership interest in either the A-1 Fund or A-2 Fund.

Conversion/Distribution of Common Stock at End of Investment Period. Attached as Exhibit 2 is a chart showing the steps involved in the conversion of the Preferred Stock into Common Stock and the ultimate distribution of the Common Stock to the EB-5 Investors. Below is a summary of the various steps:

STEP 1: *Automatic Conversion after Five (5) Years.* As stated in the Articles of Incorporation of GreenTech (a copy of which is attached hereto as Appendix H), "each Preferred Share shall be converted automatically, without any action required on the part of the holder [A-1 Fund and A-2 Fund] five years from the date of issue, into that number of shares of Common Stock having a 'fair market value' of $555,000."

STEP 2: *Manner of Conversion.* As stated in the Articles of Incorporation of GreenTech, upon the delivery of a share of Preferred Stock to GreenTech, "the Secretary of GreenTech [GreenTech] shall deliver to the holder of a Preferred Share [A-1 Fund and A-2 Fund] a certificate representing the shares of Common Stock into which the Preferred Share was converted."

STEP 3: *Distribution to EB-5 Investor.* Each EB-5 Investor shall surrender his/her Unit to the A-1 Fund or A-2 Fund for cancellation and receive the number of shares of the Common Stock set forth above. *See* Section 2.3 of the Operating Agreement attached hereto as Appendices F and G.

STEP 4: *Liquidation*. Each Unit shall be cancelled and the A-1 Fund and A-2 Fund shall be liquidated. *See* Section 2.3 of the Operating Agreement attached hereto as Appendices F and G.

As described above, in a conversion each investor continues his or her investment in the company by exchanging his or her at risk preferred stock for at risk common stock. The $550,000 conversion rate was selected to maintain an equivalent at risk exposure for each investor. Accordingly, at all times before and after the conversion, each investor's total at risk exposure for participating in such investment is $550,000.

RFE #2. *The articles of organization and operating agreement for Gulf Coast Automotive Investment Fund, LLC referenced in the October 28, 2008 Business Cooperation Agreement between GCFM and Hybrid Kinetic Automotive Corp. (now GreenTech Automotive, Inc.).*

It should first be noted that the only two pooled investment vehicles (collectively, "funds") that have been marketed to EB-5 investors are Gulf Coast Automotive Investment Fund A-1, LLC and GTA Fund A-2, LLC. While initially contemplated, no other funds have been marketed to investors, including and without limitation, GTA Automotive Investment Fund, LLC and GTA Automotive Investment Fund 1, LLC.

The Cooperation Agreement (defined in item 5 below and attached hereto as Appendix I) references an entity that has not been used for any EB-5 purposes. Specifically, Section 1 states that, "GCFM has established Gulf Coast Automotive Investment Fund, LLC." The reference to such entity was intended to reference any future Gulf Coast Automotive Investment fund formed by GCFM. However, Gulf Coast Automotive Investment Fund, LLC was never formed and, therefore, no Articles of Organization exist. More importantly, however, following the reorganization the companies discussed above, many of the provisions of the Cooperation Agreement were no longer applicable and did not make sense to the new owners. Accordingly, on February 2, 2010, the parties executed an Addendum to the Cooperation Agreement deleting or otherwise amending these provisions. The Addendum was entered into after CWH's purchase of GCFM from the prior GCFM Owners. The specific purpose of the Addendum was to delete certain provisions of the Cooperation Agreement that (1) would have adverse tax consequences for CWH due to its direct ownership of WMGTA (the parent of GreenTech) and indirect ownership of GCFM, and (2) did not make sense given CWH's direct ownership of WMGTA (the parent of GreenTech) and indirect ownership of GCFM. The Addendum modified the Cooperation Agreement to delete the Option. Accordingly, pursuant to the Cooperation

[redacted]

From: [redacted]
Sent: Thursday, September 01, 2011 10:25 AM
To: [redacted]

[redacted]–
FYI, here is my synopsis of yesterday's 4:30 pm teleconference on GCFM. [redacted]– please feel free to correct me on any of this.

The director asked whether we believe the investment is at risk. I started to talk about the different kinds of risk described in the regs (loss and gain) but he immediately cut me off and said that he is not really interested at that level (i.e., how the investment is at risk), just whether the AAO has determined that it is at risk. The Director advised us that he would be "hunkering down" with USCIS staff in the future on two specific issues: EB5 and Kazarian.

The Director then asked whether the investment is at risk, "yes or no". I answered "yes." Then he asked whether we have come to this determination on our own or whether we have come to this determination because we feel pressured. I didn't answer. [redacted] started to respond that this has been an unusual case and then started to discuss some of our concerns about the legitimacy of the entire enterprise. While valid, the director does not want to hear about our suspicions without documentation to confirm there is something shady, so I am afraid I jumped in and admitted that we don't have derogatory evidence that would preclude approval.

Then the director again asked something very close to this, (I can't remember the exact phrase): "did you come to the determination that there is risk of your own free will? Yes or no?" I said "yes."

[redacted] told the director that he wanted to provide him with a copy of our decision before we mail it and the Director said "that's up to you." I added that we would provide copies to OCC and SCOPs as well since they were at the original meeting. The director expressed that he does not want review of any other office to delay release of the decision. We agreed to do this by noon today. Then the director then asked whether we would later discuss an EB1-B case with him. [redacted] said "of course." I have no idea what the case is, whether it is pending adjudication, and whether it is on appeal or certification at the AAO.

[redacted]

[redacted]

From: [redacted]
Sent: Tuesday, October 04, 2011 9:33 AM
To: [redacted]
Subject: RE: Go figure.

I agree with you on this one particular case, given the goofy progression so far; but the meeting tomorrow afternoon is going to get really interesting. He can't have it both ways, and I intend to let him know that. I have written dozens of decisions over the years that clearly indicated that the plaintiff had, in my opinion as a jurist, proven their case 51%. They won, but I wanted them to understand why I disagreed with them when I did. In this instance we clearly are being told, as we have been in many, many other areas, if the answer can legally be yes or legally be no, why aren't we saying yes? We decided to err on the side of the appellant in this case, and I believe it is supportable legally; but we could just as easily have said no, and without the intense scrutiny who knows what our answer would have been?

If he tells me tomorrow, and he won't, that in those instances he's comfortable with us saying no, then we will take the strongest legal approach we believe we have going forward.

I am off today on leave that I scheduled long ago, but am doing mental gymnastics getting ready for that meeting tomorrow afternoon. I feel like I'm going in the lion's den to justify our existence as a Christian. That scenario always comes to a predictable end.

From: [redacted]
Sent: Tuesday, October 04, 2011 9:21 AM
To: [redacted]
Subject: RE: Go figure.

At this rate, there is no way to win on our own. It sounds like we need OCC review just for coverage within our own agency.

From: [redacted] J
Sent: Monday, October 03, 2011 4:01 PM
To: [redacted]
Subject: Go figure.

I'm starting to think that Ali's problem with the CanAm case is that we should have said no if we thought it was a no, and not taken the letter as gospel. [redacted]read the decision and said, and I agree, that it read like "no, no, no . . . oh, wait, there's a letter . . . yes." It did, but in the end only because I felt like that was the way we saw it.

I'll know more on Wednesday.