

**Suggested Agenda Items For: “*Engagement with Director Mayorkas and USCIS Economists*” Scheduled for Friday, June 22, 2012, 3:00 pm – 4:30 pm (EDT). Submitted by Joseph P. Whalen (June 6, 2012)**

The invitation for this engagement indicates that:

“During the session, USCIS economists will address the agency’s review of economic methodologies used in reviewing<sup>1</sup> EB-5 Immigrant Investor cases.”

Obviously, the “Tenant-Occupancy” methodology will be on the agenda as it has been much discussed and, in my opinion, poorly understood by many neophyte Regional Center principals, sponsors, and promoters. I believe that the EB-5 stakeholder community is confused, in part, by similar terminology used in different but closely related contexts while having different meanings and/or manifestations. Once distinctions are understood it then becomes clearer as to how to describe predictions as to job creation and “*other positive economic effects*”.

The following are only some of the areas of confusion that I can see off the top of my head.

TERM/CONCEPT	EB-5 CONTEXT	ECONOMICS CONTEXT
<p><b>DIRECT JOBS</b></p> <p><b>8 CFR § 204.6(g)</b></p>	<p>On the alien’s payroll; <b>or</b></p> <p>On the payroll of a business in which the alien has an ownership interest, <i>such as</i>: in a partnership; or by owning shares of a business; or as a principal in a holding company but only when the <i>business is wholly-owned</i>; or owning stock in the company/corp.</p> <p>May be found in either the “<i>Direct</i>” or “<i>Stand-Alone</i>” Enterprise; or as part of a <b><i>non</i></b>-Regional Center Group/Partnership; or in a Regional Center <b><i>affiliated</i></b> project’s job count [low %]</p>	<p>A category of input/output data in an Econometric Methodology or Economic Model used to produce an Economic Analysis (EA).</p> <p>A base level of jobs created on site in a business or facility.</p> <p>Who it is that signs the paychecks, is irrelevant when the job is merely being used as input data in a complex mathematical or statistical software program.</p> <p><i>Nexus</i> can be <u>stated</u> in the EA &amp; <u>found</u> in an underlying Business Plan (BP).</p>

<sup>1</sup> Perhaps a better word would be “assessing”, “evaluating”, “determining” or “adjudicating”?

<p><b>INDIRECT JOBS</b>  <b>A Ripple Effect will create jobs throughout a wide area. It is the Reasonable Limit or cut-off that is often debated between the RC and USCIS.</b></p>	<p>Jobs that are <b>not</b> on the alien’s payroll.</p> <p>Employee’s of a third-party who were made possible as a result of the efforts of the EB-5 Pooled Investments of Regional Center affiliated projects.</p>	<p>The <i>first line of secondary jobs</i> created and attributable to a project development. [Suppliers of materials and services to the project developer and then the new commercial enterprise(s).]</p>
<p><b>INDUCED JOBS</b></p>	<p>A subset of Indirect Jobs described above.</p>	<p><i>Second line of secondary jobs</i> created by expenditures of the new direct and indirect <b>employees</b> described above.</p>
<p><b>PILOT PROGRAM</b></p>	<p>An undefined nebulous concept in the statute.</p>	<p>Provides <i>contexts</i> for <b>nexus</b> between the efforts of the alien(s) through the Regional Center <b>and</b> the jobs created or preserved; foreign and domestic investments; new expenditures; new revenues; and any of the other resultant economic benefits, <i>in the national or regional economies.</i></p>
<p><b>REGIONAL PRODUCTIVITY</b></p>	<p>An undefined nebulous concept in the statute creating the “Pilot Program”.</p> <p><b>8 CFR § 204.6(m)(3)(iv):</b>  The “positive impact[s] on the regional or national economy in general as reflected by such factors as <i>increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction</i> both within and without the regional center”.....</p>	<p>Predictions and projections as stated in the EA which should include, but need not be limited to the factors described at 8 CFR § 204.6 (m)(3)(iv), and is supported by the “verifiable detail” stated in § 204.6(m)(3)(ii) and supported by the economically or statistically valid forecasting tools asked for in § 204.6(m)(3)(v) as derived from 8 USC § 1153 Note or § 610(c) of Pub. L. 102-395, <i>as amended.</i></p>

<p><b>REVENUES GENERATED</b></p>	<p>An undefined nebulous concept in the statute creating the “Pilot Program”. Originally it was confined to “exports”.</p>	<p>Figures predicted by or inspired by the Business Plan.</p>
<p><b>FULL-TIME EQUIVALENT (FTEs)</b></p>	<p>A concept USCIS has fought as insufficient for job creation purposes.</p> <p>A concept USCIS should re-examine for the sake of fulfilling Congressional Intent in creating the “Pilot Program” in the first place.</p>	<p>A common statistical device used in Econometric Models and is an industry standard that USCIS has had difficulty accepting.</p>
<p><b>ECONOMIC ANALYSIS</b></p> <p><b>8 CFR § 204.6 (m)(3)(i)-(v)</b></p> <p><b>And</b></p> <p><b>Pub.L. 102-395 § 610(c)</b></p>	<p><b><u>Evidence</u></b> that supports a Regional Center Application [I-924] or an alien’s RC affiliated I-526.</p> <p>Contains predictions on job creation.</p> <p>Contains much more valuable supporting information than USCIS adjudicators have recognized so far.</p>	<p>The Economist’s <b><u>work product</u></b>.</p> <p>The written report containing predictions and projections of what the planned activity will accomplish.</p> <p>Utilizes input data either directly from, or inspired by the BP provided to the Economist.</p>
<p><b>BUSINESS PLAN</b></p> <p><b>8 CFR § 204.6 (j)(4) (i)(B), (ii), &amp; (iii)</b></p>	<p>A detailed, comprehensive, and credible plan that contains, <i>at a minimum</i>, a description of the business, its products, services, and/or its objectives. .... Most importantly, the business plan must be <u>credible</u>.</p> <p>“Certainly no astute investor would place half a million or a million dollars into a business that he had</p>	<p>A source of data for input in a model or that leads the economist in the right direct to find such data.</p> <p>The BP should establish reliable categories as to:</p> <p>(1) <u>location</u> of activities, and</p> <p>(2) <u>type(s)</u> of new business or commercial enterprises, as well as the:</p> <p>(3) anticipated <u>scope and size</u> of the project(s),</p> <p>(4) their <u>timelines</u> for</p>

<p><b>BUSINESS PLAN (cont'd)</b></p>	<p>not thoroughly researched. Creating a comprehensive business plan as described above is normal practice for any business[person] seeking to operate a viable business.”</p> <p><i>Matter of Ho</i>, 22 I&amp;N Dec. 206 (AAO 1998) at 213.</p>	<p>construction, remodeling, refurbishing, retooling, staffing,  (5) anticipated budget and expenditures; and it should  (6) explain the connections between the various players and associated business (such as project partners and suppliers among others) which is the NEXUS.</p>
<p><b>EB-5 NEXUS</b></p> <p><b>AELP was the Regional Center in which the Aliens Invested.</b></p> <p><b>AELP made loans to businesses outside of its approved area, which were also outside of TEAs but did it at the TEA rate.</b></p>	<p>“Especially where indirect employment creation is being claimed, and the <u>nexus</u> between the money and the jobs is already tenuous, [USCIS] has an interest in <u>examining</u>, to a degree, <u>the manner in which funds are being applied</u>. <u>The full amount of money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.</u>”<sup>7</sup>” at p. 179</p> <p>FN7 “Whether or not \$500,000 must be made available for the loans to export companies or whether \$500,000 must merely be made available to the credit corporation extending the loans, it is clear that making \$500,000 available to AELP is not sufficient. AELP’s primary</p>	<p>The explanation found in the Business Plan that demonstrates how the various participants in the overall project rely upon each other to do their part in order to make the whole thing work out in the end.</p> <p>“A connection or series of connections linking two or more things; or A connected group or series; or A causal link” among others. I have found it useful to explain it in terms of a “cause and effect relationship” that clearly shows a palpable connectivity. In this instance “<u>palpable</u>” is defined as: “<i>Able to be touched or felt: Tangible; esp. of a feeling or atmosphere; So intense as to be almost touched or felt; [and my particular favorite]: easily perceptible by the mind: Noticeable and/or Manifest.</i>”</p>

<p><b>EB-5 NEXUS (cont'd)</b></p>	<p>purpose is apparently to locate potential alien investors. AELP does not extend the loans to the export companies and is not the entity most closely engaged in employment creation, indirect or otherwise.”</p> <p><i>Matter of Izummi</i>, 22 I&amp;N Dec. <a href="#">169</a> (AAO 1998)</p>	<p><i>Nexus</i> needs to be described, <i>explained</i>, and demonstrated sufficiently <i>to satisfy USCIS</i> that those particular <i>jobs being claimed should be counted</i> for the purpose of lifting conditions from the aliens’ status.</p>
<p><b>REGIONAL CENTER</b></p> <p><b>8 CFR § 204.6 (m)(7)(ii)</b></p> <p><b>8 CFR § 216.6 (a)(4)(i)-(iv) And INA § 216A(d)(1) Modified by §610(c)</b></p>	<p><b>8 CFR § 204.6(e) -</b> <i>Regional center</i> means any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.</p> <p><b>This entity has a responsibility to its EB-5 investors to track data and collect evidence for compliance purposes and to be submitted in support of the investors’ I-829s.</b></p>	<p>Provides the parameters of the Economic Analysis as to location and industry used to select data for input in a model. Commercially available data sets will be selected based on the approved operational parameters and scope of the Regional Center and the specific project.</p> <p><b>The assumptions as to job creation and expenditures etc, stated in the EA, based on the BP, will influence if not dictate, the evidence to be collected for compliance reporting and to support the investors’ I-829s.</b></p>

These few items are by no means the end, they are but a beginning to this dialogue.

Sincerely,

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