



The Real Estate Roundtable



U.S. Chamber of Commerce



Chief Alissa Emmel
Immigrant Investor Program Office
U.S. Citizenship and Immigration Services
Department of Homeland Security
131 M Street NE, 3rd Floor,
Washington, DC 20529

February 9, 2023

Dear Chief Emmel:

In a recent USCIS Stakeholder Engagement notice, the agency informed the public that "sustainment" of EB-5 capital would be a topic addressed on the agency's forthcoming call scheduled for March 20, 2023. The issue of sustainment has been codified in the EB-5 Regional Center Program's regulations at [8 C.F.R. § 216.6\(c\)\(1\)\(iii\)](#). This regulation squarely addresses the time period required for an individual investor to sustain their investment and maintain their eligibility for an immigrant visa under the program. Specifically, the regulation states that an EB-5 visa applicant is:

"[C]onsidered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and *continuously maintained his or her capital investment over the two years of conditional residence.*" [Emphasis added].

This regulation has been in place for almost 30 years, since USCIS's predecessor agency promulgated it in 1994. See [59 Fed. Reg. at 26,592, col. 2 \(May 23, 1994\)](#). USCIS's *Policy Manual* has long reinforced this rule, stating that the "immigrant investor must provide evidence that he or she *sustained the investment throughout the period of his or her status as a conditional permanent resident* of the United States." [USCIS Policy Manual, Vol. 6, Pt. G- Investors, Ch. 5, "Removal of Conditions," § A.2](#) (Emphasis added).

Over the last decade, 95% of the capital raised from EB-5 investors has come into the U.S. economy through the EB-5 Regional Center Program. This data represents billions of dollars invested in economic development projects across the U.S. and helped create hundreds of thousands of U.S. jobs. The undersigned stakeholders believe that a *minimum* two-year period of capital sustainment, throughout an EB-5 investor's conditional residence period, is critical to the program's continued success. Furthermore, it is consistent with the text and intent of the *EB-5 Reform and Integrity Act (RIA) of 2022*.

We see nothing in the 2022 law evidencing Congress' intent to modify its longstanding regulatory policy that might somehow de-couple the capital sustainment period from the

conditional residency period. Neither the text of the *RIA*, its legislative history – nor practices in the EB-5 marketplace – would countenance such a contrary result. In fact, it risks creating further uncertainty for the businesses and investors that utilize the EB-5 Program.

As USCIS noticed the issue of "sustainment" for discussion on the upcoming March 20 call, the undersigned stakeholders request the agency's confirmation that [8 C.F.R § 216.6\(c\)\(1\)\(iii\)](#) and supporting interpretations in the *Policy Manual* remain in full force and effect.

Sincerely,

Invest in the USA

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EB-5 Investment Coalition

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