

EMPLOYMENT LAW



Immigration Work Permit Delays

During a period of sweeping worker shortages in the United States, U.S. Citizenship & Immigration Services ("USCIS") has experienced drastic delays in the adjudication of the Employment Authorization applications (Form I-765). Upon approval, USCIS provides the applicant with an Employment Authorization Document (EAD card). These delays adversely impact US employers at a time when sourcing critical talent is most acute.

In a class action complaint filed against the U.S. Citizenship & Immigration Services: Department of Homeland Security, five named plaintiffs claimed extreme delays related to the adjudication of the plaintiffs' Employment Authorization applications to be unlawful. *Tony N v. USCIS*, Case No. 3:21-cv-08742 (N.D.Cal.). Historically, this application had a processing period of approximately three months – which slipped to four, five, six, and up to twelve months. Without valid employment authorization, these individuals are unable to lawfully contribute to their employer's business.

The crux of the complaint centers around the plaintiffs applying to renew their employment authorization to continue working for their employers. A loss of employment authorization would mean a loss of health insurance, certain professional licensure, a method to obtain a driver's license, and in some cases, a means to financially provide for the applicant's family. For employers, this means extended periods left without skilled workers, managers, and executive-level employees who provide crucial contributions not easily replaced.

As of late, it seems the Plaintiffs' efforts have had some positive effects – USCIS has been trending towards the normal three-month processing period for the Employment Authorization application for beneficiaries of certain case types.

On March 29, the Department of Homeland Security announced the upcoming publication of an expanded premium processing program for various case types to take effect 60 days from the date of publication. One such case type includes "Premium Processing" for Form I-765 Application for Employment Authorization for specified groups of EAD applicants in FY 2025. The expanded premium processing program will guarantee adjudication of the application within 30 calendar days for an additional fee.

Mitch Wexler is the Managing Partner of Fragomen's Irvine, Los Angeles, and San Diego offices. Fragomen, with 57 offices and 5,000 employees worldwide, is the leading business immigration law firm in the world. Mitch can be contacted at mwexler@fragomen.com

Nicholas Massari is an Associate at Fragomen's Irvine office, where he focuses on assisting clients with immigrant visa petitions and permanent residency applications. Nick can be contacted at nicholas.massari@fragomen.com.

EB-5 Revived: Reauthorization of the Popular Immigrant Investor Green Card Program

On March 15, 2022, the EB-5 Reform and Integrity Act was signed into law, reauthorizing the popular EB-5 regional center program that lapsed nine months ago. The new law makes several significant changes aimed at modernizing the EB-5 program, improving integrity measures, and protecting investors against future lapses in reauthorization.

In 1990, Congress enacted the EB-5 Immigrant Investor Program, which provides a green card for foreign nationals who invest in a U.S. business and directly create 10 full-time jobs for American workers. Two years later, Congress created the "regional center" (RC) program, allowing designated regional centers to sponsor pooled investments by multiple investors and the use of indirect employment calculation for job creation. The RC program was never made permanent and needs "reauthorization" from time to time.

Since 2008, the RC program has raised over \$37 billion for U.S. businesses and created over 820,000 jobs for American workers. It accounts for over 90 percent of all EB-5 visas. Businesses are also attracted to EB-5 capital as a source of funding at below-market rates. This makes reauthorization to September 30, 2027 welcome news to EB-5 stakeholders. The new law includes the following changes:

- Higher investment amounts. Future investors must make a minimum equity investment of \$800,000 in a rural area, high unemployment area, or infrastructure project, or \$1,050,000 for all other projects.
- Concurrent filing. Certain investors no longer need to wait for petition approval before filing their green card and ancillary work authorization and travel applications.
- Grandfathering provisions. EB-5 petitions are to be adjudicated based on rules at the time of filing and will continue to be processed if the program lapses in the future.
- Visa set-asides. A portion of EB-5 green cards are now reserved for rural area, high unemployment area, and infrastructure projects, making these projects more desirable.

The government has yet to issue guidance on how these changes will be implemented. We encourage current and potential investors to seek experienced immigration counsel to assess your case.

Mitch Wexler is the Managing Partner of Fragomen's Irvine office. Fragomen, with 57 offices and 5,000 employees worldwide, is the leading business immigration law firm in the world. Mitch can be contacted at mwexler@fragomen.com

Nam-Giao Do is an Associate of Fragomen's Irvine office. Nam-Giao can be contacted at ndo@fragomen.com

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Fragomen, Del Rey, Bernsen & Loewy, LLP
18401 Von Karman Avenue, Suite 255
Irvine, CA 92612

Mitch Wexler, Partner
mwexler@fragomen.com
T +1 949 660 3531

James Pack, Partner
jpack@fragomen.com
T +1 949 862 9443

Blake Miller, Partner
bmiller@fragomen.com
T +1 949 862 9492

