





**EB-5 Regional Center  
Project Issues**

*H. Ronald Klasko • Daniel Lundy • Alison Li*

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## 2023 Webinar Series

- **H-1B Lottery Alternatives**
  - Recording on KlaskoLaw.com
- **EB-5 Regional Centers**
  - Recording on KlaskoLaw.com
- **EB-1 Updates**
  - Recording on KlaskoLaw.com
- **EB-5 Investors Basics**
  - Thursday, June 15 at 2:00pm
- **PERM Hot Topics**
  - Recording on KlaskoLaw.com
- **EB-5 Direct Investors**
  - TBD

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## Pre-Existing Regional Centers (designated prior to RIA)

- Continue as designated regional centers
- Must file I-956 (deadline date unknown)
- Retain designation while I-956 pending
- Can continue to file project approval applications (I-956F)
- Must file annual statements (I-956G)
- Can file for expansion of geography
  - Cannot sponsor project in expanded geographical area until approved

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## New Regional Centers

- Choose 1 of 3 options
  1. File I-956
    - Lengthy processing time
    - Cannot sponsor project until approved
  2. Buy existing regional center
    - File amendment
    - Can sponsor projects immediately
  3. Obtain sponsorship of existing regional center
    - Need regional center sponsorship agreement
    - Can sponsor projects immediately
- Possibly combine (1) for long term and (2) or (3) for short term

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## “Winding down” regional centers

- Will not sponsor any new project under RIA
- Will continue to serve as regional center for pre-existing investors
- Need to file I-956 and I-956G unclear
- Failure to file may result in termination

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## New Projects

- Must file I-956F
- Investors can invest and file I-525E once filed
  - Do not have to await approval
- TEA determined at time of filing I-956F
  - Valid 2 years
  - No state involvement

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## I-956H - - “Persons Involved”

- “directly or indirectly in a position of substantive authority to make operational or managerial decisions over pooling, securitization, investment, release, acceptance or control or use of any funding”
  - USCIS policy/RFEs
  - Regional center policy decisions re: who should file
  - Regional center “person involved” must be US citizen or permanent resident

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## I-956K - - Direct or 3rd Party Promoters

- Definition unclear - - includes at least agents, finders and broker dealers
- Must file I-956K
- Must have written agreement
- Applies to subagents, employees
- Regional center issues
  - Policy re: oversight of promoters
- Policy re: who should file, including securities law implications
  - Policy re: I-956K vs I-956H

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## New Benefits of the Law

- Rural, High unemployment and Infrastructure set-asides
  - 20%, 10%, 2%, roll over into same category in the first year, general category in the second year
  - There will be backlogs, but when?

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## New Benefits of the Law

(Continued)

- Concurrent filing of I-526/526E and I-485

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## New Benefits of the Law

(Continued)

- Good faith investor provisions:
- **(M) Treatment of good faith investors following program noncompliance**
- **(i) Termination or debarment of EB-5 entity**
- Except as provided in clause (vi), upon the termination or debarment, as applicable, from the program under this paragraph of a regional center, a new commercial enterprise, or a job-creating entity-
- (I) an otherwise qualified petition under section 1154(a)(1)(H) of this title or the conditional permanent residence of an alien who has been admitted to the United States pursuant to section 1186b(a)(1) of this title based on an investment in a terminated regional center, new commercial enterprise, or job-creating entity shall remain valid or continue to be authorized, as applicable, consistent with this subparagraph; and
- (II) the Secretary of Homeland Security shall notify the alien beneficiaries of such petitions of such termination or debarment.
- **(ii) New regional center or investment**
- The petition under section 1154(a)(1)(H) of this title of an alien described in clause (i) and the conditional permanent resident status of an alien described in clause (i) shall be terminated 180 days after notification of the termination from the program under this paragraph of a regional center, a new commercial enterprise, or a job-creating entity (but not sooner than 180 days after March 15, 2022) unless-
- (I) in the case of the termination of a regional center-
- (aa) the new commercial enterprise associates with an approved regional center, regardless of the approved geographical boundaries of such regional center's designation; or
- (bb) such alien makes a qualifying investment in another new commercial enterprise; or
- (II) in the case of the debarment of a new commercial enterprise or job-creating entity, such alien-
- (aa) associates with a new commercial enterprise in good standing; and
- (bb) invests additional investment capital solely to the extent necessary to satisfy remaining job creation requirements under subparagraph (A)(ii).

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## New Benefits of the Law

(Continued)

- Amended petitions
  - Must file an amended petition within 180 days of notice of termination or debarment
  - For RC termination Must affiliate with new RC or make new \$800k investment in new NCE
  - For NCE or JCE debarment- investor must affiliate with a new NCE
  - Investor does not have to invest full \$800k- just enough to create the jobs

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## New Benefits of the Law

(Continued)

- Can treat recovered funds as the investor's funds for the purposes of a new investment
- Can file an I-829 two years later
- Will retain original priority date
- Does not apply if the investor was involved in the bad conduct

### **Problems:**

- No procedure to seek termination or debarment
- Not clear if USCIS will apply to pre-RIA Investors
- Need regional centers and projects to take these investors

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## Compliance Checklist

- Working with Investors, Migration Brokers, and Immigration Attorneys
  - Lawful Source of Funds
  - I-956K Filings
  - Periodic Investor Updates
- Investor Petitions Filing and Recordkeeping
  - I-526E, I-829, Recordkeeping
- Regional Center Compliance, Recordkeeping and Filing
  - I-956, I-956H, I-956G, I-956F, I-956K
  - Site Visits, Regional Center Audits, Fund Administration
  - Redeployment Parameters Under the RIA
  - Regional Center Amendments

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## Working with Investors, Migration Brokers, and Immigration Attorneys

- Working with Immigration Attorneys:
  - Lawful Source and Path of Funds Documentation
  - Tax Returns
  - Employment History
  - Military Service or Government Position Disclosure
  - I-956F Receipt Notice
  - Fee Disclosure
- Working with Foreign Migration Brokers:
  - Did the migration brokers duly file Form I-956K? (new under the RIA)
  - Written agreement with each direct or third-party promoter

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## Sales/Marketing Team Promotional Activities and Investor Updates

- Periodic Investor Updates
- No material misrepresentation or omission of facts
  - Consult with securities attorneys
  - Follow regional center compliance manuals

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## Recordkeeping: I-526E

### Recordkeeping:

- Maintain executed versions of all documents signed by each investor.
- I-526E receipt notice of each investor
- A spreadsheet of all the investors' information

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## Investor Petitions Filing and Recordkeeping I-829

- Immigration Filing Recordkeeping
- Flow of Funds
- Job Creation Documentation
- NCE Tax Returns and Investor K-1s
- Redeployment Documentation (if applicable)
- USCIS Site Visit

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## Fund Administration

- Comply with INA § 203(b)(5)(Q)
- Capital investment of each alien investor in a separate account.
- Use of Funds
- Additional Requirements for Deployment of Funds into an Affiliated Job-Creating Entity
- Fund Administrator
  - Exemptions to the Fund Administrator Requirements:
    - Broker Dealer Affiliation
    - Annual Independent Financial Audit

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## Regional Center Audits

- Recordkeeping: 5-Year
- Prepare for USCIS Audits

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## I-956G - Regional Center Annual Statement

1. Due on or before December 29 of the Calendar Year for the Prior Fiscal Year
2. Provide total amount of all individual alien investor capital invested since the inception of the Regional Center
3. Disclose any pending or resolved material litigation or bankruptcy proceedings.
4. I-956G addendum for each NCE to disclose information including but not limited to:
  - a) How the investors' investment capital has been used?
  - b) How many jobs have been created?
  - c) Material change since I-956F filing?

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## Regional Center Leasing (if applicable)

1. If you are the lessor regional center:
  - a. Conduct periodic site visits to projects.
  - b. Collect paperwork necessary for filing Form I-956G
2. If you are the lessee NCE/JCE:
  - a. Request copy of all regional center filings
  - b. Request regional center disclosure of:
    - i. Pending or resolved material litigation or bankruptcy proceedings that involve the regional center
    - ii. Outstanding Request for Evidence (RFE), Notice of Intent to Deny (NOID), Notice of Intent to Terminate (NOIT), etc.

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## Questions?



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# For Further Information



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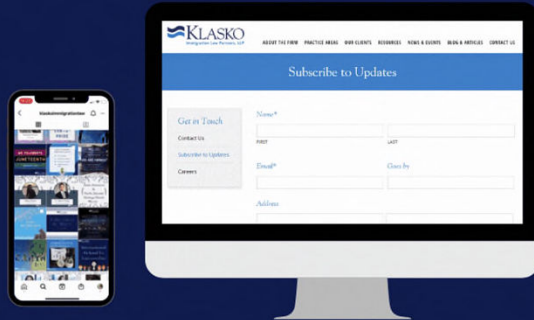
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**H. Ronald Klasko**  
Managing Partner

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Immigration Law Partners, LLP

**Ron Klasko** is one of the country's leading lawyers representing EB-5 clients. Ron is the chair of the firm's EB-5 practice area. Ron represents thousands of foreign investors worldwide, over 50 approved regional centers and numerous U.S. developers and business owners who have sought his counsel in connection with using the EB-5 program to raise capital for investment projects.

Ron's counsel has included applications to designate new regional centers; applications for approval of projects within regional centers; having projects adopted by existing regional centers; structuring projects to be EB-5 compliant; preparing template I-526 petitions; and advice on successfully marketing EB-5 projects. Ron has successfully represented many direct individual EB-5 investors, direct pooled EB-5 investors, and regional center investors.

During his five years as Chair of the EB-5 Committee of AILA, he led advocacy efforts with USCIS to improve the EB-5 program. As Chair of the Best Practices Committee of IIUSA, the association of EB-5 regional centers, Ron worked with regional centers, developers and EB-5 professionals to develop the first comprehensive list of best practices in the EB-5 industry.

One of the most prolific EB-5 bloggers, Ron is a sought-after speaker and regularly speaks on EB-5 topics around the country and around the world. Ron has been interviewed by U.S. Chinese media on numerous occasions and has been quoted in Forbes Magazine and other media on his views on EB-5 matters.

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**Daniel B. Lundy**  
Partner


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**Daniel B. Lundy** leads the firm's EB-5 Developer & Regional Center, and Compliance practices. Mr. Lundy has successfully represented numerous immigrant investors in their EB-5 petitions and applications, including investors seeking permanent residence through their own businesses or into a USCIS-approved Regional Center.

Mr. Lundy represents numerous developers and regional centers who seek to use foreign investment under the EB-5 program to fund their projects by joining or forming an EB-5 Regional Center. He works with an accomplished network of securities lawyers, economists, business plan writers, and other professionals to structure development deals that are EB-5 compliant. Mr. Lundy has the knowledge needed to assess business plans, economic reports, securities offerings, and corporate documents for EB-5 compliance. His knowledge and experience extends to the similarly nuanced immigration components of the EB-5 program, and under his representation, hundreds of individuals seeking to obtain investment-based permanent resident status have filed successful EB-5 immigrant petitions and applications.

Outside his day-to-day practice, Mr. Lundy is an active member of the American Immigration Lawyers Association and served as Co-Chair of the Banking Committee for two years at Invest in the USA—America's premier not-for-profit EB-5 trade association. He has been named one of the top 25 immigration lawyers in the country by EB5 Investors Magazine since 2015, and frequently speaks on the latest EB-5 trends at seminars around the world. He is a published author and frequent blogger on EB-5 topics. He is a graduate of Hunter College (B.A., 2000) and Fordham University School of Law (J.D. 2006).

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**Alison Li**  
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**Alison Li** is an associate attorney at the firm with nearly a decade of business and employment-based immigration experience. She works with regional centers, developers, and investors who seek to use foreign investment capital under the EB-5 program to fund job-creating projects. In preparing the required petitions, Alison coordinates with a complex network of professionals including economists, business plan writers, corporate attorneys, and market analysts. Her extensive experience in the EB-5 industry enables her to provide exceptional client service. She is accomplished in advising regional centers and developers on EB-5 filing requirements and best practices in compliance.

In addition to her work in EB-5, Alison is a seasoned business immigration attorney, having assisted numerous clients in obtaining E, H, and L visas, as well as family-based cases. She has successful experience in consular processing through both US embassies and consulates across the globe. The complex nature of her casework is successfully managed through her skilled client communication and precision with details.

Alison completed her undergraduate degree at Emporia State University, received her master's degree at New York University, and earned her Juris Doctor degree from the University of Maryland, Francis King Carey School of Law. She is a conservatory-trained classical pianist with a concentration on 18th – 20th century European art music and still performs occasionally in venues throughout New York City. She is bilingual in Cantonese and Mandarin Chinese.