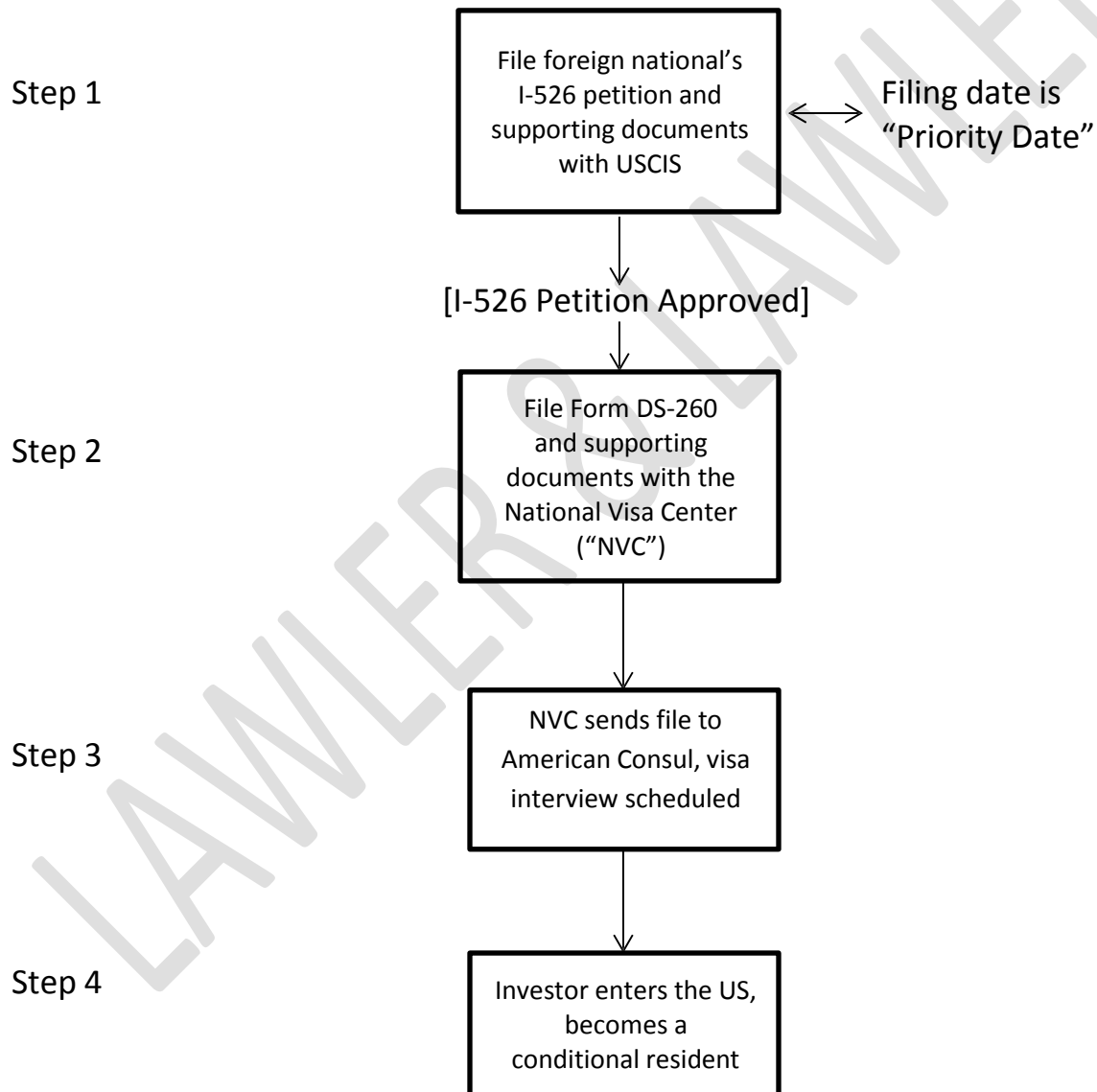


EB-5 QUOTA RETROGRESSION EXPLAINED

(This applies only to EB-5 investors born in the
People's Republic of China)

Becoming an EB-5 conditional resident (green card holder) involves 4 steps:



Filing the EB-5 I-526 petition (Step 1) creates the filing date called the “Priority Date.” Three things must occur to be scheduled for a visa interview at the American Consul (Step 3) for an immigrant visa:

- The I-526 petition must be approved by USCIS;
- The DS-260 visa application must be processed by the NVC; and
- The Priority Date for the petition must be current; a visa number must be available and assigned to the investor, as well as each dependent family member.

The 10,000 EB-5 visas given out each year are controlled by the State Department’s Visa Office. If there are plenty of visas, there is no separate waiting time for the visa number to become available. The foreign national only waits for the necessary time to process the I-526, the DS-260, and scheduling the consular interview.

If there are more applicants than visas in any given year, then the State Department creates a waiting list for a visa number. This will happen in May 2015, but only for EB-5 investors from China. The waiting list is governed by two factors: a) the filing date (“Priority Date”) of the approved I-526; and b) the availability of a visa number. To immigrate, the I-526 filing date (“Priority Date”) must be current on the State Department’s monthly Visa Bulletin. A new Visa Bulletin is issued about the 10th of each month. The Visa Bulletin can be found on the Department of State’s website at:

<http://travel.state.gov/content/visas/english/law-and-policy/bulletin.html>.

What does this mean?

- When there are more visa numbers than applicants, the Visa Bulletin shows EB-5 visas are current (“C”) and there is no extra time to wait for one’s I-526 Priority Date to show up on the Visa Bulletin to proceed to the Consul (Step 3) for visa issuance.

This is the case today (April 2015), and this is what the Visa Bulletin for the EB-5 category looks like for April 2015:

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
[other categories omitted]					
5 th	C	C	C	C	C

- If there are more applicants than visas available, there will be a cutoff date. If the Visa Bulletin has a cutoff date, it will look like this:

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
[other categories omitted]					
5 th	C	01MAY13	C	C	C

- If the investor's Priority Date is on or before the cutoff date listed on the Visa Bulletin, the investor can proceed as described above as though there is no cutoff date at all.
- If the investor's Priority Date is more recent than the Visa Bulletin's listed cutoff date, the investor must wait for the date to be at or before the cutoff date to get one of the 10,000 EB-5 visa numbers given out each year. In this case, Lawler & Lawler checks the Visa Bulletin about the 10th of each month until the investor's priority date becomes current. Lawler & Lawler then reminds the NVC to

allow the investor to proceed with Step 2 and then schedule the interview (Step 3).

When the State Department creates a cutoff date, this is called “retrogression” of the visa list. The State Department will advance the cutoff date each month, but if demand is greater than the number of visas, it may again move the cutoff date backwards to regulate the flow of visas throughout the year.

People often ask how much delay visa retrogression will cause. This depends on how far the quota retrogresses and the investor’s Priority Date, as well as when the I-526 is approved. The State Department has announced that in May of 2015, the EB-5 visa quota will retrogress to May of 2013. Here are a few examples of the delays this will cause:

- If an investor filed an I-526 in September 2013, and it was approved in December 2014, it is expected to take a few months before the visa list progresses past the Priority Date (September 2013) and a visa number becomes available. It will then take a few months for the NVC to process the DS-260 (Step 2) for the case to be scheduled for interview at the Consul (Step 3). The delay due to retrogression in this case will be a few months.
- If an investor filed an I-526 in August 2014, and it was approved in December 2014, as occurred with a few of our cases, it looks like it will be more than a year before the Priority Date will come up on the visa list and the investor’s DS-260 is processed by the NVC (Step 2) for the case to be scheduled for interview at the Consul (Step 3).
- If an investor filed an I-526 in June 2014, and it is approved in August 2015 (after 14 months - the USCIS current posted average processing time), there will be a delay before the Consul interview (Step 3). How much delay is hard to estimate because no one knows how

many I-526s will be approved with a priority date earlier than June 1, 2014. It could be over a year.

The EB-5 China quota retrogression:

- Does not mean the EB-5 green card/visa is closing.
- Does not mean America does not want Chinese investors.
- Does not mean one must file an EB-5 petition before June or September or any other date. I-526 petitions can be filed with USCIS even when the quota retrogresses.

I predict there will be many alarmist and inaccurate media stories, especially in the Asian press and EB-5 blogs. EB-5 cases will continue as before, a bit slower in the next year. After that, the cases may continue considerably slower.

I am often asked how investors can speed up their EB-5 immigration. It sounds trite, but filing the I-526 petition and establishing a Priority Date is critical. The longer an investor puts off filing the I-526, the more visa petitions are filed by others who may be allocated visa numbers first.

Are there any expected changes in the rules? Possibly. There is a bill in Congress that would permit EB-5 immigration with only one visa number of the 10,000 per family instead of the current law requiring one visa number per each family member. This would eliminate retrogression for the foreseeable future.

While delay caused by retrogression is frustrating, its greatest impact is on children who may turn age 21 before they can immigrate with their parents. Some are protected by the Child Status Protection Act ("CSPA"), which freezes their age as a child until immigration. Others are not helped by this law. Please contact me for more on the CSPA.

Retrogression's Impact on I-829

I have been asked whether retrogression will impact EB-5 investments and I-829 applications for removal of conditional resident status.

For example, often EB-5 involves an investment in a new commercial enterprise ("NCE") that loans the funds for 5 years to build a project such as a hotel. Suppose, due to retrogression, immigration is delayed and this stretches out the time frame before conditional residents can file the I-829 (21 to 24 months after admission). The I-829s may not be decided before the loan is due to be repaid. The EB-5 rules require the investment to be maintained until the I-829 is decided. In this scenario, will the investors' I-829s be impacted by retrogression?

First, most EB-5 offerings provide that the loans cannot be repaid until the I-829s are decided. If the loan is for 5 years, the terms provide for extension of the repayment time to protect the investors' EB-5 status and for I-829 approval.

Second, many EB-5 experts believe USCIS will soon be forced to modify its policies to take into account the possible impact of retrogression and permit the repayment of the loan by the project to the NCE, but not to the investor. The NCE may then bank the funds, provided the needed jobs were created, until the I-829s are granted and then return the investors' capital. In light of retrogression, I have posed this scenario to USCIS, but they have not yet stated their policy. I believe the government's policies will have to be modified given the new reality brought on by retrogression.

Martin Lawler

Martin is a leading attorney on EB-5 visas. He has filed about 400 I-526 petitions. He has set up many Regional Centers. Martin appeared on CNBC News about EB-5 visas, see <http://classic.cnbc.com/id/37357190>. Contact Martin for a consultation. His staff is fluent in Mandarin, Cantonese, Spanish, and Arabic. Also, see Martin's informative website at www.aboutvisas.com.

All services are provided under the direction of a California licensed attorney.

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