EB-5 Leaders Talk Sunset Deadlines, Green Card Turmoil

By **Nathan Hale** · June 1, 2026, 9:11 PM EDT · Listen to article

Organizers of an annual conference focused on the EB-5 investment visa program stressed a theme of optimism at the event last week in Miami, but even as the program appears to have overcome many of its own past issues, it was impossible to ignore the uncertainty and volatility that hangs over the program and U.S. immigration more broadly.

Steven Reingold (from left), a partner at Saul Ewing; Andrew Diroll-Black, of American Lending Center; and Ronald Klasko, of Klasko Immigration Law Partners, participate in a panel on litigation at the JTC and Saul Ewing Advanced EB-5 Conference in Miami. (Nathan Hale | Law360)

Co-hosts Saul Ewing LLP and EB-5 service provider JTC Group moved up the 2026 edition of their Advanced EB-5 Conference in light of a key deadline this September and an overall program sunset date next year. But conference participants confronted even more timely concerns after the Trump administration **announced** a shift in the green card application process just days before the May 28 gathering in Miami.

Attorneys and other EB-5 experts said they do not think EB-5 applicants will ultimately be affected by the new policy, which says noncitizens in the U.S. on nonimmigrant visas must exit and apply for green cards from abroad, and they also questioned the policy's legality. But they offered their conclusions after describing how they had scrambled resources and staff to analyze the government's pronouncement and quickly reach out to hundreds of clients.

Nevertheless, Saul Ewing partner Rohit Kapuria said during the opening remarks: "The note that we're going to be discussing today and the information that we're going to be providing is one that is backed up by optimism. … EB-5 works. EB-5 is an amazing program. EB-5 is important for everybody in this room."

Kapuria and Jill Jones, head of specialty administration/general counsel – USA at JTC, noted how the program — which reserves green cards for foreigners who make investments in U.S. projects or companies that create at least 10 jobs — has strengthened and grown since Congress passed the 2022 EB-5 Reform and Integrity Act, a time that corresponds with the conference's five-year history.

"I've come before you five times in a row and told you we're in a period of uncertainty. Can't change it today, either," Jones said. "But as Rohit was saying, change is good. Change helps us evolve. The growth that EB-5 has had over the past five years under RIA and even before that, becoming a more sophisticated, well-rounded program is to do with [meeting in] groups like this."

Data Dive

The number of EB-5 applications has increased steadily since 2022, when Congress reinstated the program through the RIA after a nearly nine-month lapse. They climbed from 378 cases in 2022 to 2,617 in 2023, 4,902 in 2024 and 6,658 last year, according to U.S. Citizenship and Immigration Services data presented by Lee Li, director of policy research and data analytics for the EB-5 industry trade group Invest in the USA.

China and India remain the leading sources of applicants, combining to account for 75% of all cases last year, with India showing particularly rapid growth. They were followed most closely by Taiwan, South Korea and Vietnam. Chinese and Indian applicants have also most heavily targeted priority processing available to cases supporting projects in rural areas. That incentive has led to rural projects accounting for 80% of approved cases since 2022.

Chinese and Indian applicants also are increasingly filing from within the U.S., IIUSA's Li pointed out, making the administration's new adjustment of status policy potentially more noteworthy.

Several speakers also noted increased diversity of project types, with broadband internet, energy and infrastructure projects starting to gain traction.

Sunsets on the Horizon

Those positive trends will be meaningless if Congress allows the EB-5 program to expire. The RIA set a program sunset date of Sept. 30, 2027, but before that a "grandfather clause" intended to provide investors assurances on deal terms and their immigration applications being processed runs out at the end of September this year.

There was widespread confidence at the conference about obtaining program reauthorization by 2027, but much less certainty about convincing Congress to provide early reauthorization this year or to extend the grandfather clause.

"You can bet your bottom dollar on it. There's a chance that it's reauthorized in 2026, and we fix the grandfathering clause. We're obviously leaning in quite heavily to make sure that that's not just a possibility but a probability, and you just never know. It's a very tough to make that kind of promise, but I can promise that in '27 this program will be reauthorized," IIUSA Executive Director Aaron Grau told the audience.

Grau said that unlike when Congress let the program lapse in 2021, there is no discussion of wholesale changes to the program right now and the debate "is much cleaner and much simpler."

However, getting Congress to act early on any deadline is a tall order, Grau added. And despite its success, EB-5 has to contend with the administration's overall negative stance toward immigration.

"Unfortunately … this is an economic development program painted with an immigration brush," Grau said, "and it's very difficult for us to separate ourselves from the other immigration policy issues that are out there."

Fellow panelist Kevin Gluba, a partner with Intersection Government Relations, urged EB-5 stakeholders to continue pushing, saying the program is "one of the strongest and sharpest economic development tools the federal government has, and I just think we don't want to be in a situation where there's even a doubt that this is going to get reauthorized in a year in some change."

Brennan Sim, who handles global sales with regional center EB5 United, said the window to fundraise for projects ahead of the Sept. 30, 2026, grandfather clause deadline is going to close soon, and there are questions about how steep of a drop-off might occur without those assurances continuing.

There is also a third notable deadline coming at the end of 2026, when the EB-5 application cost is due to rise as a result of inflationary adjustments stipulated in the law. Kapuria said the current $800,000 minimum investment for projects located in designated targeted employment areas or qualifying infrastructure projects is expected to climb to more than $930,000, with the $1,050,000 minimum for other projects increasing accordingly.

"I think on Oct. 1, there won't be a lot of new cases. But I think then there will be another population as you get closer to January," Ronald Klasko, chairman of Klasko Immigration Law Partners LLP, told Law360 Real Estate Authority at the conference. "There's going to be a big rush to file before the investment goes up, and then there may be another fall off again until it's clear what's going to happen" to the program.

Status Stress

While the EB-5 program's sunset dates were expected to dominate the conversation, the Trump administration's sudden policy announcement on adjustment of status thrust another source of uncertainty into the room.

A consensus emerged that EB-5 was not the intended target of the new policy, as it accounts for only about 3% of adjustment of status cases, and Klasko said the governing law makes clear that concurrent filing is permitted, allowing applicants to submit their EB-5 petition and adjustment of status application at the same time while in the country. But the policy shift has still raised concerns.

"There is a lot of investor panic. There's a lot of individual panic," Kapuria told Law360, noting that IIUSA quickly called meetings when the announcement was made on May 22, and he and other lawyers reached out to hundreds of individual clients.

Klasko said the shift raises questions about possibly needing to do "a whole different level of filing" for upcoming cases to better document good moral character and show financial equities.

During a panel on litigation, Klasko outlined several reasons why he thinks the new policy will not stand up to a legal challenge. Adjustment of status is discretionary, he said, but USCIS "can't use an improper basis to deny through discretion." He also argued that the memo's assertion that "the mere fact of applying for adjustment of status is … a negative discretionary factor" is legally unsound, noting that the USCIS policy manual states that in the absence of any negative factors, discretion should be favorably exercised.

Fellow panelist Andrew Diroll-Black, who is chief compliance officer at American Lending Center and served for a decade at USCIS, agreed, saying that there have been 50 years of regular adjustment practice.

"This is a normal thing. … While there's a lot of discretion applied to it, I can tell you that it is, in fact, extraordinary in a field office to do a discretionary denial," he said.

"I don't think that there's anybody trying to specifically target EB-5," Diroll-Black added. "I think that this is just the administration trying to reduce immigration overall and indiscriminately affecting those categories of which even people on the [political] right would say are the best kind of immigrants — people who are having skills, who are affluent — and so this is just collateral damage to the overall administration goals."

Klasko noted that for many green card applicants, a denial based on discretion is a hardship, but they can still process overseas at a consulate; however, there are some people for whom a denial is "the end of the game." This includes citizens of the 70-plus countries that by presidential proclamation are unable to process immigrant visas in U.S. consulates but are eligible for adjustment of status. He suggested someone facing that scenario might make a suitable plaintiff if the policy is challenged.

--Editing by Linda Voorhis.