

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**American Immigrant Investor Alliance** )  
853 New Jersey Avenue SE )  
Unit 455 )  
Washington, D.C. 20003-5079 )

Plaintiff, )

v. )

**United States Citizenship and Immigration** )  
**Services** )  
5900 Capital Gateway Drive )  
Mailstop 2120 )  
Camp Springs, MD 20588-0009 )

Defendant. )  
\_\_\_\_\_ )

**COMPLAINT**

Case No.: 1:23-cv-820

**COMPLAINT**

For decades, the United States Citizenship and Immigration Services (“USCIS”) and its predecessor Immigration and Naturalization Service (“INS”) have welcomed immigrant investors to our shores based on substantial investments of capital destined to create American jobs. This has especially been the case involving investors hailing from countries which have restrictive currency conversion policies, which are at their very nature against core U.S. foreign monetary policy.

Yet, with no regulatory or policy change, a rogue immigration agency began pushing back and denying EB-5 immigrant investor petitions with materially identical facts to hundreds of those it had approved approximately five years ago. This sharp departure from approximately 30 years of the status quo – again without warning or any kind of announcement – has soured the American Dream for hundreds of families depending upon established agency practice. In

essence, investors from Vietnam – historically the second-largest source of visa demand – have borne the burden of this illegal and unconscionable policy shift. The leading immigrant investor advocacy group has accordingly sought records from USCIS seeking to answer two simple questions: “How was this done?” and “Why was this done?” It is hardly surprising that the same agency which ignored notice and comment rulemaking has also avoided the *Freedom of Information Act* (“FOIA”) statute. But this is a nation of laws and the whims of USCIS adjudicators, policymakers, and FOIA personnel are not above those laws. This Court’s intervention is needed to shine a light upon what is shaping up to be perhaps the most arbitrary and opaque departure from agency practice in the history of the U.S. immigrant investor program.

On September 5, 2022, Plaintiff, the American Immigrant Investor Alliance (“AIIA”), filed a FOIA request with Defendant USCIS seeking documentation and information relating to USCIS’ adjudication of Forms I-526 and Forms I-829 with regard to non-traditional transfers of capital. Plaintiff filed this Request to obtain more information about USCIS’ Immigrant Investor Program Office’s (“IPO”) policies regarding currency swaps, money transfers, and cryptocurrency, specifically with respect to Vietnamese investors.

Pursuant to 5 U.S.C. § 552(a)(6)(B), Defendant had, at most, thirty (30) business days from the day of receiving Plaintiff’s Request to determine whether to comply with the request and the reasons therefor. It has been over 130 business days since Defendant received the Request. As of the time of filing this Complaint, Defendant has not made a determination on the Request nor produced any of the requested records. It is not even clear whether Defendant has attempted to search for these records. Again, while USCIS’ bad behavior is not surprising, it is flagrantly illegal.

Accordingly, Plaintiff respectfully requests that this Court issue an order directing

Defendant to, inter alia, complete a FOIA search, make a determination on Plaintiff's FOIA request, and promptly provide the records that they have unlawfully withheld in violation of 5 U.S.C. § 552(a).

### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because Plaintiff's claims arise under the laws of the United States, specifically the *Freedom of Information Act*.

2. This Court may grant relief pursuant to 5 U.S.C. § 552 (*Freedom of Information Act*).

3. This Court also has authority to grant relief under the *Declaratory Judgment Act* (28 U.S.C. § 2201).

4. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) because the agency records are situated in this District, and the agency may be sued in this District. Venue is also proper under U.S.C. § 1391(e)(1)(A) because Defendant resides in this District and a substantial portion of the events giving rise to this action occurred in this District. Specifically, the IPO is located in Washington, D.C., and upon information and belief, all associated records are located there.

5. Plaintiff is deemed to have exhausted all administrative remedies because the agency "fail[ed] to comply with the applicable time limit provisions of [5 U.S.C. § 552(a)(6)(C)(i)]." 5 U.S.C. § 552(a)(6)(C)(i).

6. Declaratory relief is appropriate under 28 U.S.C. § 2201.

7. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

### **PARTIES**

8. Plaintiff AIIA (<http://goaiia.org>) was founded in April 2021 as a Washington D.C.-based 501(c)(4) non-profit to inform, educate, and advocate on behalf of all EB-5 investors from

around the world. As one of the only EB-5 focused organizations whose sole focus is on immigrant investors, AIIA strives to be an authoritative, investor-focused advocacy organization representing interests of all EB-5 investors regardless of their country of birth, adjudication status, or prior residency in the United States. When the EB-5 Regional Center program lapsed in June 2021 impacting the immigration process of over 80,000 individuals for several months, AIIA advocated for the grandfathering of all existing applicants and was successfully able to lobby Congress for the enactment of their grandfathering proposal in the EB-5 Reform and Integrity Act which passed in March 2022. Over 500+ EB-5 investors donated to support AIIA on that effort, and many continue to join the organization every day to advocate for this community and the issues that impact them. AIIA continues to advocate on behalf of investors in the legislative, administrative, and judicial branches, as well as investment spaces.

9. Defendant USCIS is a U.S. government agency within the meaning of 5 U.S.C. § 552(f)(1). USCIS is a component of the Department of Homeland Security, an agency within the Executive Branch. Among other duties and responsibilities, USCIS is responsible for adjudicating EB-5 related benefits, as well as the formation and execution of related EB-5 policies and procedures. USCIS has the possession and control of the public records that Plaintiff has requested under the FOIA statute, and the duty to provide the same.

### **STATUTORY FRAMEWORK**

#### *EB-5 Program, I-526 Petitions, and Permanent Residency*

10. Congress created the EB-5 Program in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Generally, an EB-5 visa is available to a foreign national who invests the requisite amount of capital into a new commercial enterprise that creates 10 jobs for lawful American workers. 8 U.S.C. § 1153(b)(5).

11. To obtain an EB-5 Green Card, a foreign entrepreneur must endure three separate steps. First s/he must submit a Form I-526 Petition and supporting documentation demonstrating that the required capital has been committed and is actually at risk; that the investment is made from the entrepreneur's own lawfully acquired funds; and the existence of a comprehensive business plan demonstrating that ten full-time jobs will be created by the investment. 8 C.F.R. § 204.6(j).

12. Once an investor's Form I-526 Petition is approved, a foreign investor residing within the United States may submit a Form I-485 to adjust status to that of a conditional lawful permanent resident. If the investor is abroad, s/he will process through the local consulate having jurisdiction over the case. *See* 8 U.S.C. § 1186b(a)(1); 8 C.F.R. § 245.1(h).

13. Conditional permanent residency expires two years after its granting. 8 U.S.C. §§ 1186b(a)(1), (d)(2)(A).

14. Near the end of two years of residency, the investor and his/her family must complete a third step to acquire full lawful permanent residency. *Id.* at §1186b(d)(2)(A).

15. The investor must file a Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status within 90 days of the second anniversary of receipt of such status: "a petition [to remove conditions] shall be filed during the 90-day period immediately preceding the second anniversary of the alien's investor's lawful admission for permanent residence." *Id.* at §1186b(d)(2)(A); *See also* <https://www.uscis.gov/i-829> (last visited Mar. 21, 2023).

16. The investor must submit evidence that the investment remained at risk during the entire period of conditional permanent residency and that the investment created at least ten full-time jobs for American workers. 8 C.F.R. § 216.6(c)(1).

#### *Currency Swaps*

17. Many countries in Africa, Asia, and the Middle East set restrictions on the amount of

money that can be transferred to the U.S. and/or the amount of U.S. dollars that may be purchased. *See e.g.*, EB5AN, “Currency Swaps: What Investors Need to Know”, available at <https://eb5visainvestments.com/2020/11/20/currency-swaps-what-eb-5-investors-need-to-know/> (last accessed Mar. 22, 2023); Hermansky, J. “Third Party Currency Swaps: Considerations for RFEs”, available at <https://iiusa.org/wp-content/uploads/2019/01/Third-Party-Currency-Swaps-Considerations-for-RFEs.pdf> (October 2018).

18. The success of the EB-5 Visa was built upon these such swaps. Historically, the largest participants in the EB-5 program have been investors from Mainland China, which restricts conversion of the renminbi to the U.S. dollar. Beginning in 2003, EB-5 stakeholders reached out to Legacy INS and USCIS to ensure that currency restrictions notwithstanding, investors could still have their petitions approved. As described by one of the most seasoned stakeholders in the EB-5 industry:

Because of its troubled history, there was limited investor interest in the EB-5 program[.] We understood the potential of the China market and wanted to introduce the EB-5 program in China. But, obviously, if China’s currency restriction policy was going to be a USCIS source of funds concern, we didn’t want to waste our time or money in that market. We openly vetted the issue with [the former head of USCIS], who understood our concern, but indicated that he needed to raise the issue internally and get a determination from more senior agency officials. It took several months, but eventually [that official] advised that USCIS concluded that it was charged with determining if an applicant earned his or her capital legally and that it was not the agency’s job to enforce China’s restrictive currency policy. That green light is why we pursued the China market.

Eb5Investors.com, “The Man Behind CanAm”, available at <https://www.eb5investors.com/magazine/article/man-behind-canam> (Aug. 20, 2015) (last accessed March 23, 2023).

19. Tens of thousands of investors and their families later, the U.S. has become a major destination for immigrant investment. Again, USCIS continues to, and always has, policed the

lawful sourcing and funding of immigrant capital. However, the agency had never attempted to enforce foreign currency conversion restrictions or the methods used by immigrant investors to transfer capital to the U.S., provided that that capital was lawfully acquired.

20. Indeed, pursuant to 8 CFR 204.6(j)(3), the investor must show that the capital invested was obtained through lawful means.

21. Suddenly, this all changed in the mid to late 2010s. As noted in Plaintiff's FOIA Request, "For years, USCIS accepted 'currency swaps' as an acceptable method for transferring funds to the U.S... Recently however, USCIS has shifted their policy through adjudication of I-526 Petitions and, as part of their examination of the lawful source of funds of the investor, is examining the source of the U.S. dollars used by the other party in the currency swap." See Request (citing Hermansky, J. "Third Party Currency Swaps: Considerations for RFEs", available at <https://iiusa.org/wp-content/uploads/2019/01/Third-Party-Currency-Swaps-Considerations-for-RFEs.pdf> (October 2018)).

22. Recently, USCIS began issuing Requests for Evidence (RFEs) to investors who utilize currency swaps, making it increasingly difficult for investors from certain countries to obtain EB-5 approvals. *Id.*; see also de Kirby, V. "USCIS issues RFEs in EB-5 petitions using 3<sup>rd</sup> Party Money Exchangers", available at <https://www.jatoidekirby.com/library/3rd-party-money-exchangers.cfm> ("In the past, USCIS approved cases where a 3<sup>rd</sup> party money exchanger was used without a Request for Evidence (RFE). However, since March of this year, RFEs are being issued for all such cases, asking for documentation pertaining to the source of funds for the 3<sup>rd</sup> party.").

23. Unfortunately, those RFEs metastasized into denials. Investors, especially those from Vietnam, used the same methods to transfer capital blessed by USCIS for decades that their

friends and family had used to obtain Green Cards. Yet, USCIS executed a rug pull, ending the American Dream for unwitting families who followed the only paths to the U.S. they had known.

24. And so presents this case. A significant number of Plaintiff's members hail from Vietnam, which is a country that has severe restrictions on purchasing U.S. dollars with Vietnamese Dong. Vietnamese investors must accordingly utilize third parties and/or cryptocurrency to make the requisite investment. Many of Plaintiff's members have been receiving RFEs, requiring them to provide voluminous more documents with regard to their source of funds and money transfers. They are fearful of denials. They have no idea what USCIS' current policy is, was, or will be. Neither do any of the private EB-5 stakeholders.

25. The purpose of Plaintiff's FOIA request is to obtain information and records relating to USCIS's practices and policies regarding the adjudication of Forms I-526 and Forms I-829, specifically with regard to Vietnamese investors who must utilize third parties' money exchangers or cryptocurrency to make the requisite U.S. investment.

*FOIA*

26. Pursuant to 5 U.S.C. § 552(a)(3)(A), an agency is required to promptly make disclosable records available upon request.

27. An agency has twenty (20) business days from the day of receiving a request to determine whether to comply with the request and provide the reasons therefor. 5 U.S.C. § 552(a)(6)(A).

28. Under "unusual circumstances," an agency may request an extension of not more than ten business days to respond to the request. 5 U.S.C. § 552(a)(6)(B).

29. Thereafter, the agency is only permitted to withhold responsive records if the records fall under one of the nine enumerated exceptions in 5 U.S.C. § 552(b)(1)-(9).

30. If the agency makes a request to the requester for information or clarification, the twenty-



day period may be tolled while it is awaiting such information. 5 U.S.C. § 552(a)(6)(A)(ii). The tolling period ends upon the agency's receipt of the requester's response to the agency's request for information or clarification. *Id.*

31. A FOIA requestor may request the district court "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

### **FACTUAL ALLEGATIONS**

32. On September 5, 2022, Plaintiff submitted a FOIA request ("Request") to Defendant. In brief, Plaintiff requested that Defendant produce (1) records relating to USCIS' process of adjudicating Forms I-526 and Forms I-829 with regard to the use of currency swaps or informal value transfer systems, (2) records relating to the conversion of the Vietnamese Dong to the U.S. Dollar, (3) records relating to the process of adjudicating Forms I-526 and Forms I-829 where an EB-5 investor utilizes one of the following companies or natural persons for a currency swap: Eastern & Allied Pty. Ltd., Dong Tai Trading Service Company Limited, Compass Global Holdings Pty. Ltd, CamLy Duong, or VNT Trading and Investment Pty. Ltd., and (4) records relating to the process of adjudicating Forms I-526 and Forms I-829 where an EB-5 investor utilizes cryptocurrency.

33. Plaintiff received correspondence dated September 6, 2022 ("the Letter") from Defendant confirming receipt of the Request on September 5, 2022. Defendant assigned the Request the control number COW2022004384.

34. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant had twenty business days from the day of receiving Plaintiff's request to determine whether to comply with the request and provide the reasons therefor. However, Defendant invoked a 10-day extension to respond under 5 U.S.C. §

552(a)(6)(B).

35. Therefore, Defendant's determination was due, at the latest, on October 18, 2022.

36. It has been over 130 business days since Defendant received the Request and over 155 days since Defendant's determination was due. Defendant has not made a determination on Plaintiff's FOIA request or produced the requested documents.

**CAUSE OF ACTION**

**COUNT I**

**Violation of the Freedom of Information Act  
under 5 U.S.C. § 552(a)**

37. Plaintiff re-alleges all allegations contained herein.

38. Defendant failed to make a determination, and provide the reasons therefor, on the Request in violation of 5 U.S.C. § 552(a)(6)(A).

39. Defendant failed to produce any of the requested records in violation of 5 U.S.C. § 552(a).

40. Defendant failed to provide any legal justification for its failure to comply with 5 U.S.C. § 552(a).

41. Because Defendant has failed to meet the statutory deadlines, Plaintiff is deemed to have exhausted all administrative remedies under 5 U.S.C. § 552(a)(6)(C).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that this Court:

A. Declare that Defendant's failure to make determinations on Plaintiff's request and the subsequent withholding of the records requested is unlawful under the FOIA;

B. Order Defendant to immediately produce and release the requested documents to Plaintiff by a date certain;

C. Retain jurisdiction to ensure that Defendant provides Plaintiff all responsive

records and that it lawfully and reasonably segregates portions of any exempt records sought in this action;

D. Order USCIS to pay reasonable attorneys' fees pursuant to FOIA, the *Equal Access to Justice Act*, and/or any other provisions of law; and

E. Enter and issue other relief that this Court deems just and proper.

Dated: March 27, 2023

Respectfully submitted,

/s/ Matthew Tony Galati  
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