



Statement

by

Deputy Secretary Alejandro Mayorkas
U.S. Department of Homeland Security

before the

House Committee on Homeland Security

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Chairman McCaul, Ranking Member Thompson, Distinguished Members of the Homeland Security Committee,

I look forward to the opportunity to address you and to answer questions you might have.

The work of U.S. Citizenship and Immigration Services, or USCIS, is casework. The agency's primary responsibility is to decide immigration cases according to the law, in a way that safeguards our Nation's security and the integrity of our immigration system. The agency decides millions of cases each year.

We are fortunate to have a great work force at USCIS, dedicated and hard-working public servants. After I became the Director and led a top-to-bottom review of the agency, I learned that the agency did not always provide its work force with the support and resources it needed to meet its obligations to the American public. Among the most significant challenges were gaps and inconsistencies in the critical legal and policy guidance that governed adjudicators in their review of cases.

The consequences were serious; the agency was too often misapplying the law and issuing unsound policies. USCIS is an adjudicative body and I learned of these legal and policy challenges when individual cases were brought to my attention. The cases – cases involving the rich and the poor alike, business and cultural interests as well as profound humanitarian concerns – came to me from a variety of sources, including agency employees who brought cases to me for resolution, media reports, Members of Congress, other government officials, and members of the public. The extent of my involvement depended on the nature and complexity of the issues presented and what was necessary to resolve them. I became involved in many cases, of all types, throughout my tenure because it was ultimately my responsibility as the Director to ensure cases were decided correctly under the law. Congress is only too familiar with the severe consequences to an applicant when a case is wrongly decided.

The legal and policy challenges we faced were greatest in the EB-5 program, the most complex program USCIS administers. EB-5 cases require complicated business and economic analysis, such as whether the required amount of investment capital is at risk and whether the econometric models used to predict future job creation are reasonable. Unlike traditional immigration adjudications that involve an application that is several pages in length, EB-5 cases require different stages of agency review and often involve thousands of pages of legal and business documents.

The EB-5 program was under-developed when I arrived at USCIS in August 2009. At that time, the program only had approximately nine adjudicators. The agency did not provide them with the needed economic, business, or corporate law expertise to support them. Applicants did not have to file a form as required in other visa categories but instead would submit an informal letter. The agency's national security and anti-fraud screening needed to be strengthened. There was no comprehensive EB-5 policy document, but rather a series of memos issued over the years that I learned, through my review of EB-5 cases, had failed to address many critical issues that applied to our everyday work. As a result, we were administering the EB-5 program poorly and that was the view from every quarter.

At the very same time, the public's interest in and use of the program was growing dramatically. In the challenging economy at that time, when it was difficult to obtain commercial loans domestically, more business developers were turning to the EB-5 program for foreign financing. Because EB-5 developments can lead to the significant infusion of money and new jobs into a community, the public was interested in the outcome of these cases. The growing importance of the program in communities suffering high unemployment, combined with USCIS's poor administration of the program, led to rising complaints, which I took seriously. Congress appealed to me repeatedly to fix our administration of the program and to fix errors in specific cases. Members of Congress from both parties directed to USCIS more than 1,500 EB-5 case inquiries per year, dwarfing the number of communications about any other program USCIS administered.

As the individual ultimately responsible for USCIS's administration of the program, I became increasingly involved in resolving the EB-5 legal and policy issues that we as an agency confronted. The issues often came to me through cases, the very work for which the agency is responsible. I became involved in many EB-5 cases – three of which became the focus of the Office of Inspector General – and I became involved in the very same way that I became involved in other cases; at the behest of my own employees, Members of Congress, government officials, and other stakeholders.

As to the three cases, the Office of Inspector General found that through my involvement I allowed some agency colleagues to develop the perception that I was favoring individuals with an interest in the cases. I thought I had taken steps to guard against this very possibility; even an appearance of impropriety is not acceptable to me. Yet, as I have reflected on this important matter, I understand that these colleagues would not necessarily have known what I did do to adhere to applicable guidelines in these three cases, nor would they necessarily have been aware of my involvement in many other cases, many which were responsive to concerns and inquiries of Members of Congress from both parties. This context would better have guarded against the possibility of such perception. I support and embrace Secretary Johnson's protocols developed to more ably ensure that employees understand the involvement of their supervisors in specific cases. The protocols will benefit future agency directors who become involved and provide guidance in certain cases. I regret the perception my own involvement created.

In the three cases at issue – cases that were the subject of bipartisan support – I did what I did in the many other cases that were brought to my attention; I did my job and fulfilled my responsibility. I did not let errors go unchecked, but instead helped ensure that those cases were decided correctly, nothing more and nothing less. I sought the advice of colleagues, including agency counsel, took steps I thought would guard against the chance of misperception, raised concerns of fraud or national security, and followed the facts and applied the law.

I became involved in more cases – EB-5 and other types – than I can count. All applicants are entitled to and deserve the fair and correct application of the law. In the cases in which I became involved – whether it was the case of the Guatemalan orphan seeking to be united with her adoptive American family, the pregnant mother seeking urgent humanitarian parole to escape a forced abortion in China, the performing arts group blending cultural influences and seeking a

performing arts visa, or the EB-5 petitioner forming a business enterprise – this basic principle was my guide and my responsibility to fulfill.

Thank you for the opportunity to appear before you.