

New leadership gives hope for EB-5 processing time improvements



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One question every EB-5 applicant asks is how long will the processing take. We've done analysis on the delays, inefficiencies at USCIS Investor Program Office (IPO), and even a review of current lawsuits requiring more reasonable processing times.

With a new Biden administration and a newly appointed Secretary of the Department of Homeland Security, we look again at processing times.

How does the future look for EB-5 processing times?

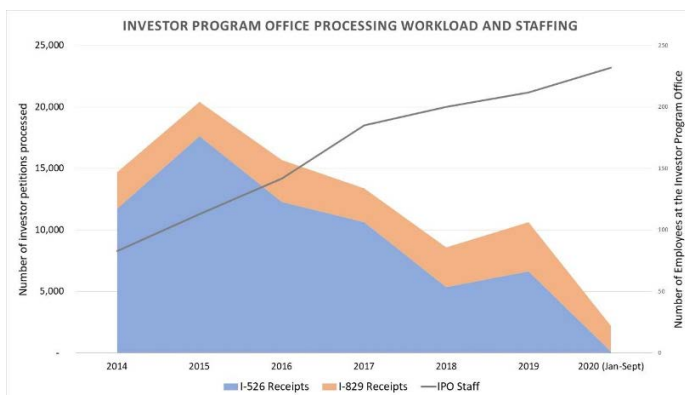
To understand what causes the delays in getting a response from USCIS, we need to look at the factors that create processing times: capacity, workload, and process. We also have to look at the agency's productivity due to management.

“ *Capacity has doubled and workload has dropped significantly in the last 2 years.* ”

Consider how these factors have shifted since 2014 when IPO started processing Form I-526 and I-829.

Processing Capacity has Increased

At the end of 2014, IPO had a staff of only 83 people.¹ IPO more than doubled its staff since then, reaching 200 employees by the end of 2018.² IPO has 232 employees as of last report (November 2020).³



¹ https://www.uscis.gov/sites/default/files/USCIS/Outreach/PED_Executive_Summary_EB-5_Dec_5_2014_Engagement.pdf

² https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Cisna_IIUSA_Meeting_and_Statistical_Analysis_Charts.pdf

³ https://www.uscis.gov/sites/default/files/document/outreach-engagements/IIUSA_2020_Virtual_EB-5_Industry_Forum-IPO_Chief_Sarah_Kendalls_remarks.pdf

⁴ <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data>



THE WORKLOAD HAS DROPPED SINCE ITS PEAK IN 2015

IPO adjudicates investor petitions Form I-526 and I-829, and regional center applications and annual reports. The investor petition workload peaked in 2015, when IPO received over 20,000 I-526 and I-829 filings. IPO's total incoming workload has fallen every year since then, thanks to decreases in I-526 receipt numbers.

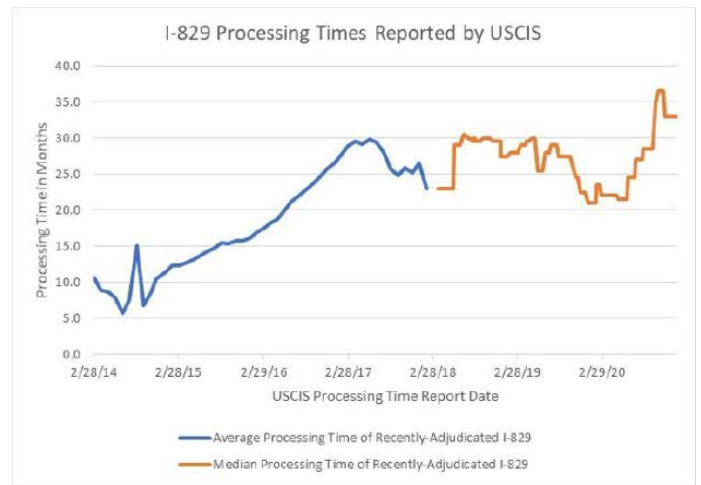
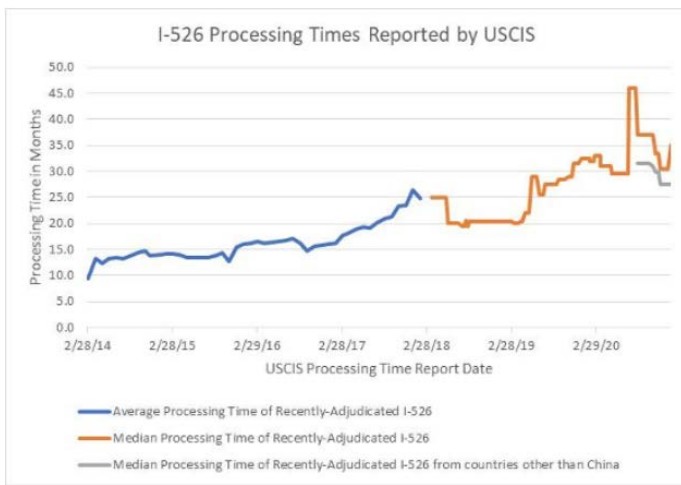
In January to September 2020, IPO received ten times fewer I-526 receipts than in January to September 2015 (114 vs 11,357)⁴. I-829 numbers have increased slightly since 2014. But I-829 is not subject to major filing surges, since the annual visa quota paces demand for conditional permanent residence, and thus for removal of conditions.

Future I-526 filing surges are unlikely, absent changes to the expense and time factors that depressed demand since November 2019, when new regulations took effect. In theory, falling workload combined with increased capacity should lead to falling processing times.

As a general rule, USCIS processes petitions in first-come-first-served order. Starting in April 2020, IPO implemented an exception to this rule for I-526 processing.⁵ Under the new “visa availability approach,” IPO prioritizes adjudications for I-526 with visas available. In theory, this priority should result in reduced I-526 processing times for countries that are current in the Visa Bulletin.

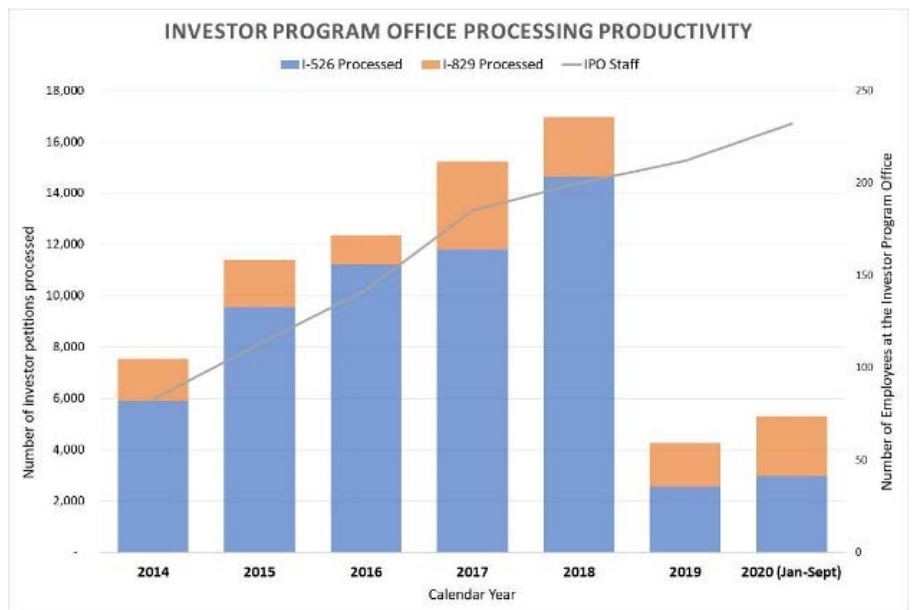
Implications of Management on Productivity

In practice, EB-5 processing times did not improve between 2014 and 2020, despite increased capacity, reduced workload, and the visa availability approach.⁶



The reason: productivity loss coincident with management change.

The Investor Program Office transitioned in 2018/2019 between Nicholas Colucci (IPO Chief from 2014 to 2018⁷) to Sarah Kendall (IPO Chief from late 2018 until November 2020⁸), and productivity plummeted.



⁵ <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/questions-and-answers-eb-5-immigrant-investor-program-visa-availability-approach>

⁶ <https://www.dropbox.com/s/dfa4ifgop1vhm63/IPO%20Times%20Dates.xlsx?dl=0>

In 2018, IPO processed nearly 17,000 investor petitions. In 2019, with the same staff but different leadership, IPO processed fewer than 5,000 investor petitions.

This change reflected a shift notable throughout USCIS in recent years, according to testimony at a July 2020 House Judiciary Committee hearing on USCIS Oversight⁹. Witnesses at the Hearing, including a former USCIS employee, described “deliberate processes put into place designed to slow down the immigration process” and a shift from immigration service to immigration enforcement¹⁰. The strategy was set by top leadership. Ken Cuccinelli, the senior official performing duties of DHS Secretary and USCIS Director in 2019 and 2020 stated that “we are not a benefit agency, we are a vetting agency.”¹¹ This management approach naturally did not prioritize or promote efficient service to immigrants.

New Leadership Brings New Hope

Leadership is now in transition. Ken Cuccinelli is no longer leading DHS or USCIS since January 20, 2021. Sarah Kendall left IPO in November 2020.

On February 2, Congress confirmed a new DHS Secretary, Alejandro Mayorkas. The philosophy and management approach of Mr. Mayorkas is well-known from his time as USCIS Director and deputy DHS secretary under Obama. He was responsible for establishing and getting funding for the Investor Program Office back in 2013, and prioritized professionalism in EB-5 adjudications. As he explained in his [nomination hearing](#) on January 19: “It is my job to become involved, to learn the problems that an agency confronts, to become involved in those problems, and to fix them.” Mr. Mayorkas will be responsible to deliver on President Biden’s immigration priority of a “fair and orderly immigration system that welcomes immigrants.”¹²

Potential Impact on Processing Times

How will processing times change if new leadership can reverse the productivity losses that occurred under Ken Cuccinelli and Sarah Kendall? As of last report (September 30, 2020), IPO had an inventory of 25,367 pending investor petitions (15,063 pending Form I-526 and 10,304 pending Form I-829). If IPO only manages to complete around 600 forms per month (the 2020 average productivity), then we’re looking at $25,000/600=42$ months just to clear the current inventory. However, if IPO returns at least to its 2018 average productivity, and processes over 1,400 forms per month, then the entire inventory could be cleared in $25,000/1,400=18$ months.

If IPO returns to its 2018 average productivity, the entire backlog could be cleared in 18 months

IPO has even more employees today than it had at peak productivity in 2018. Future 18-month processing times are achievable even with no additional resources – depending on how new management chooses to deploy capacity.

⁷ <https://www.linkedin.com/in/nicholas-colucci-711b2b44/>

⁸ <https://www.linkedin.com/in/sarah-kendall-44b679162/>

⁹ <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=3145>

¹⁰ <https://www.congress.gov/116/meeting/house/110946/witnesses/HHRG-116-JU01-Wstate-Dalal-DheiniS-20200729.pdf>

¹¹ <https://www.wsj.com/articles/ken-cuccinelli-takes-reins-of-immigration-agency-with-focus-on-migrant-vetting-11562410802>

¹² <https://www.whitehouse.gov/priorities/>

Overview of EB-5 Investor Petition Processing History

Calendar Year	I-526 Processed	I-829 Processed	Total Completions	Monthly Average Total Completions	IPO Staff	Average Monthly Completions per Staff	IPO Chief	I-526 Receipts	I-829 Receipts
	A	B	C=A+B	D-C/12 or 9	E	F-D/E			
2014	5,902	1,648	7,550	629	83	8	Nicholas Colucci	11,726	2,956
2015	9,567	1,831	11,398	950	113	8		17,634	2,778
2016	11,209	1,144	12,353	1,029	142	7		12,265	3,405
2017	11,816	3,435	15,251	1,271	185	7		10,632	2,735
2018	14,651	2,312	16,963	1,414	200	7		5,370	3,218
2019	2,555	1,701	4,256	355	212	2		6,650	3,972
2020 (Jan-Sept)	2,966	2,329	5,295	588	232	3	Sarah Kendall	114	2,083

Sources: Form I-526 and I-829 receipt and processing data from <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data>; IPO staffing detail from stakeholder meeting notes and Congressional testimony

