

INFORMAL VALUE TRANSEER (IVT)



In I-829 Adjudications

10/16/2019

Terminal Learning Objectives

- By the end of this training, the learner will be able to identify an informal value transfer (IVT) scenario where the petitioner utilizes a third party Exchanger in facilitating a transfer of funds to the NCE.
- By the end of this training, the learner will understand how to apply deference to IVT scenarios encountered in the course of I-829 adjudications.
- By the end of this training, the learner will understand how to use and reasons to use the IVT Tracker in I-829 adjudications.

Enabling Learning Objectives

- The learner will understand the terms “informal value transfer”, “Exchanger”, and “hawala”.
- The learner will understand what eligibility requirements are impacted by fact patterns where IVT is present.
- Identify a fact pattern where IVT is present in a petition, including:
 - Fact patterns where an official, licensed Exchanger is used.
 - Fact patterns where an informal Exchanger is used.
- Understand when and how to apply the relevant eligibility requirements to the facts.
- The learner will be able to evaluate the evidence for IVT based on each eligibility scenario.

Enabling Learning Objectives

- Identify “hawala”.
- Learn about special considerations for IVT scenarios and how to adjudicate based on them.
- Identify common scenarios in IVT.
- Learn what systems can aid in the adjudication of IVT scenarios and how to use them.
- Check the IVT Tracker in IPO ECN to determine if IVT data was entered for those cases where IVT existed at the I-526 stage.
- Enter data into the IVT Tracker for cases where IVT data was not previously entered into the IVT Tracker.

Overview

1. IVT: Fraud and Program Integrity

2. Definitions of “IVT”, “Exchanger”, and “hawala”

3. Identifying IVT

- How to identify an IVT scenario.
- Common scenarios.

Overview

4. IVT in I-829 adjudications:

- The two eligibility requirements impacted by IVT issues that may need to be examined at the I-829 stage if it is determined that deference should not apply, include:
 - Required amount of capital: Has Petitioner satisfied his burden to establish the capital belongs to Petitioner (Path of Funds)?
 - Lawful source of funds: Has Petitioner satisfied his burden to show that the funds were lawfully derived (Source of Funds)?
- Evaluating the Evidence.
- Other considerations in IVT Adjudications.

Overview

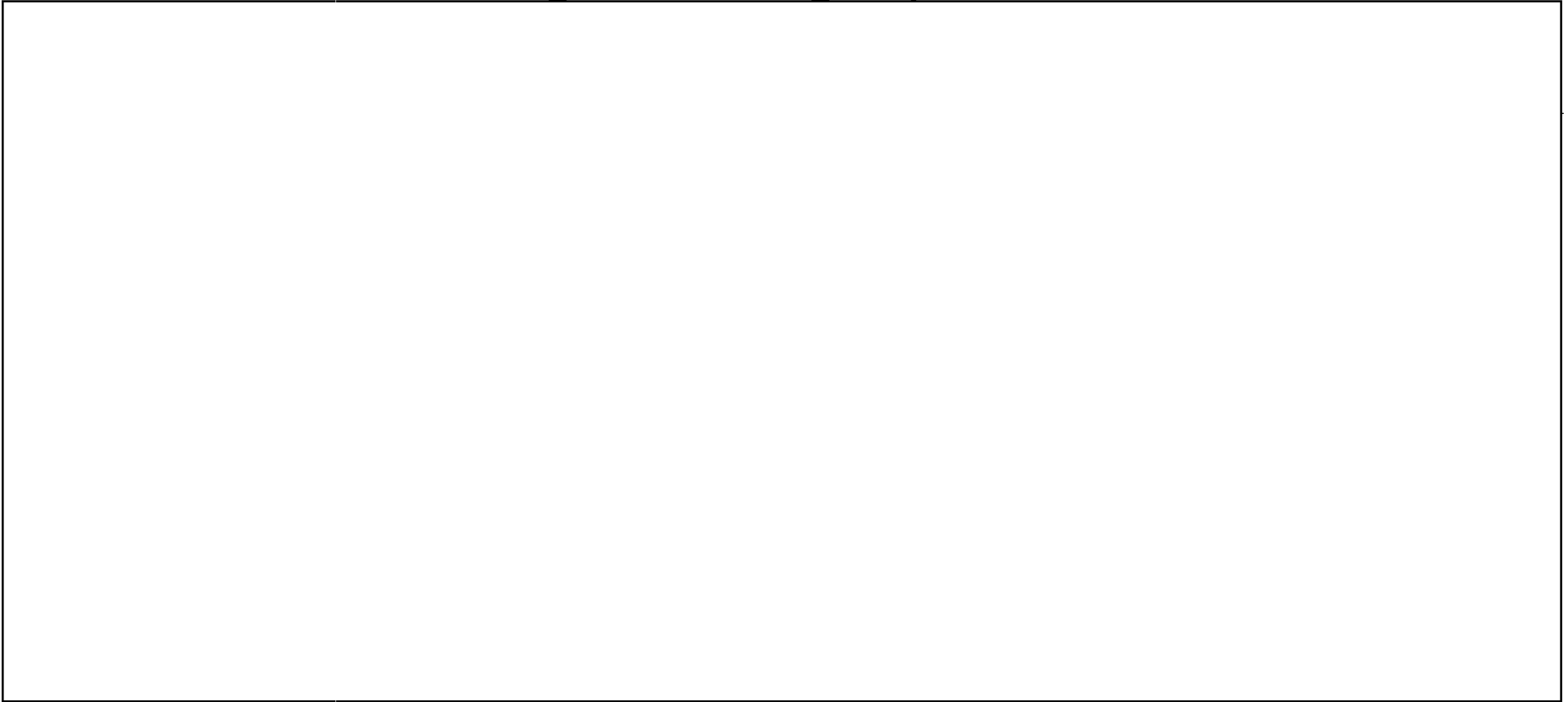
5. IVT Tracker

- Relevance to I-829 adjudications
- When to use the IVT tracker
- What data to identify for the IVT tracker
- How to navigate the IVT tracker

6. Systems Checks to Perform IVT Analysis

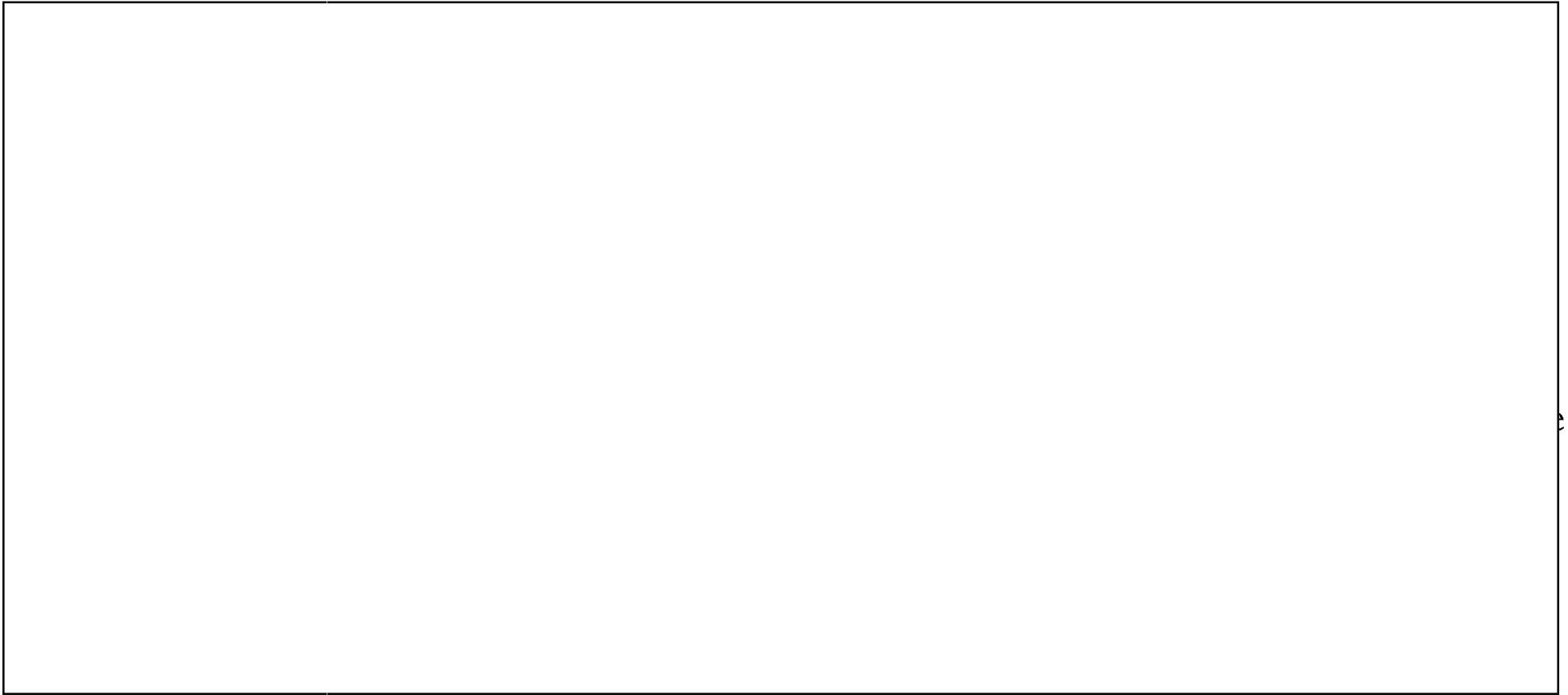
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IVT: Fraud and Program Integrity



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IVT: Fraud and Program Integrity



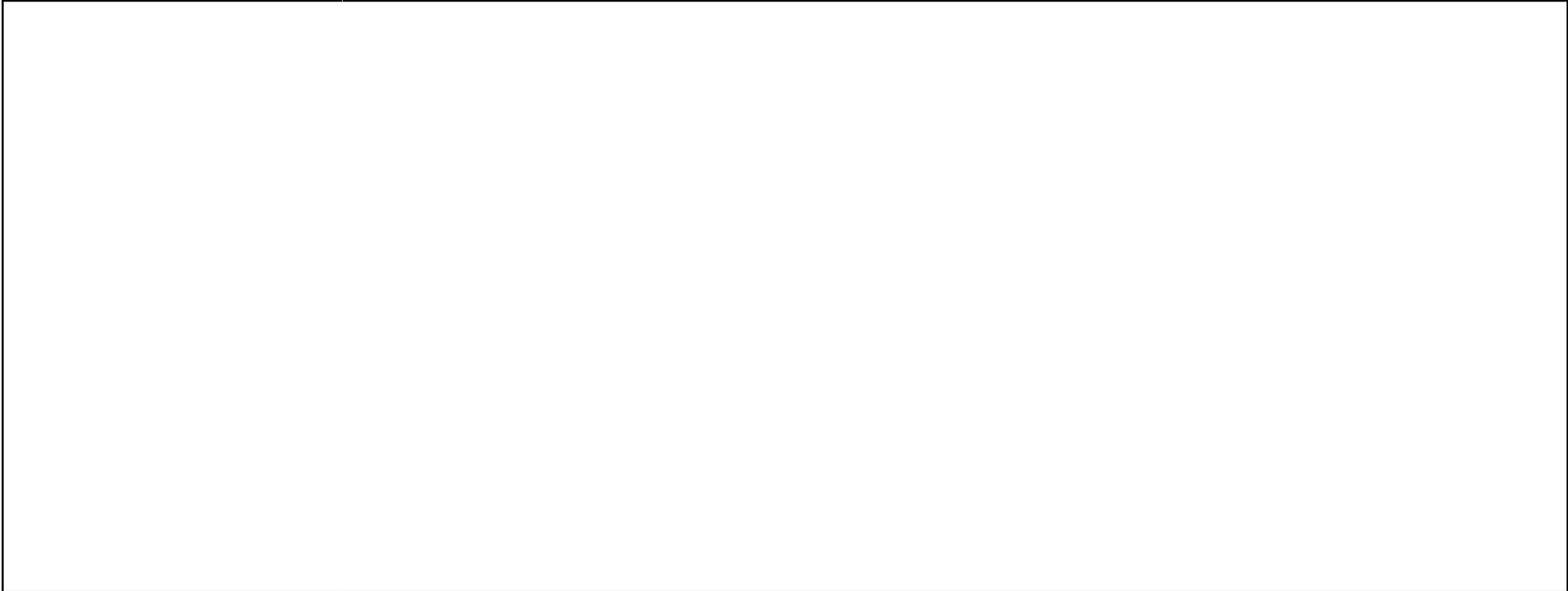
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IVT: Fraud and Program Integrity



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IVT: Fraud and Program Integrity



Definitions

- **IVT:** FinCen defines IVT systems as “any system, mechanism, or network of people that receives money for the purpose of making the funds, or an equivalent value, payable to a third party in another geographic location, whether or not in the same form.”

(b)(7)(E) *See:* (last visited on August 29, 2019)

- **Exchanger:** The individual or entity (formal or informal) who exchanges (or “swaps”) Petitioner’s currency for foreign currency of the same value (e.g. RMB to USD, or VND to USD).
- **“Hawala”:** is an alternative remittance channel that exists outside of traditional banking systems. Hawala is a method of transferring money without any money actually moving.

See: <https://www.investopedia.com/terms/h/hawala.asp> (last visited on September 3, 2019)

Identifying IVT: How to Identify an IVT Scenario

1. Is there a break (or breaks) in the path of funds from Petitioner to NCE?

EXAMPLE:

- Petitioner claims he derived EB-5 funds through a mortgage loan. Petitioner received the loan proceeds in his bank account in Pakistan.
- Petitioner then transferred the funds from his account in Pakistan to another individual in order to convert the funds from local currency into U.S. dollars.
- The third party, in exchange, transfers his own U.S. dollars to the NCE.

Identifying IVT: How to Identify an IVT Scenario

Path of Funds: This includes not only how the funds were accumulated or obtained but also how the funds traveled from the original source all the way to NCE (or to NCE's escrow account).

- Each step of the path must be sufficiently documented.
- If a step is not documented, an RFE/NOID may be necessary.

Identifying IVT: How to Identify an IVT Scenario

2. If there was a break in the path of funds, did Petitioner use a third-party exchanger to facilitate transfer of funds to NCE and was there a currency swap involved?

3. Is the exchanger a licensed third-party money exchanger (e.g. a licensed and registered money services business (MSB))?

EXAMPLE: Petitioner A transfers funds from his/her bank account in Vietnam to the bank account in Vietnam of a currency-exchange broker. Petitioner A and currency-exchange broker agree that the latter will “swap” the value of the transfer by crediting Petitioner A with equivalent funds in the currency-exchange broker’s bank account in Hong Kong. The currency-exchange broker transfers the funds to Petitioner A’s account in Hong Kong. Petitioner A, then transfers the funds to NCE’s bank account in the U.S. Petitioner submits evidence to establish that the currency-exchange broker is licensed and registered as a money service business.

Identifying IVT: How to Identify an IVT Scenario

4. Is the Exchanger an unlicensed third party money Exchanger (e.g., Petitioner's friend)?

EXAMPLE:

- Petitioner A in China transfers funds from his/her bank account in China to Individual B's bank account in China.
- Petitioner A and Individual B agree that the latter will “swap” the value of the transfer by crediting Petitioner A with equivalent funds in Individual B's bank account in Hong Kong.
- Individual B then transfers funds from Individual B's Hong Kong account to NCE's bank account in the U.S.

Identifying IVT: Common IVT Scenarios

Scenario 1

- Petitioner transfers funds from his/her bank account in Country A to Exchanger's bank account in Country A.
- In exchange, the Exchanger transfers U.S. dollars from his bank account in Country B into the NCE's U.S. bank account.

Identifying IVT: Common IVT Scenarios

Scenario 2

- Petitioner transfers funds from his bank account in Country A into Exchanger's bank account in Country A.
- In exchange, the Exchanger transfers U.S. dollars from his bank account in Country B into Petitioner's bank account in Country B.
- Petitioner then transfers U.S. dollars from bank account in Country B to the NCE's U.S. bank account.

Common IVT Scenarios

Scenario 3

- Petitioner transfers funds from his or her bank account in Country A to third party's bank account in Country A.
- Exchanger transfers U.S. dollars from bank account in Country B to a third party individual's bank account in Country B, who then transfers the funds into the NCE's U.S. bank account.

Common IVT Scenarios

Scenario 4

- Petitioner transfers funds from his bank account in Country A to a third party individual's bank account in Country A.
- In exchange, a company owned by third party individual transfers equivalent U.S. dollars from its bank account in Country B into Petitioner's bank account in Country B.
- Petitioner then transfers U.S. dollars to NCE's U.S. bank account.

IVT Scenarios in the Form I-829 Adjudication: Deference

Deference

- Where USCIS has previously evaluated and approved certain aspects of an investment, USCIS generally defers to that favorable determination at a later stage in the process. Thus, USCIS generally defers to favorable determinations made at the I-526 stage.
- USCIS does not defer to a previously favorable decision in later proceedings when the underlying facts, upon which a favorable decision was made, have materially changed, there is evidence of fraud or misrepresentation, or the previously favorable decision is determined to be legally deficient (i.e. an *objective* mistake of law or fact).

IVT Scenarios in the Form I-829 Adjudication: Deference

The officer adjudicating an I-829 should only re-adjudicate issues relating to the path and source of funds if one of the exceptions to deference applies.

- The mere fact that the petitioner utilized a third-party exchanger is insufficient.
- However, if the prior determination involved an *objective* mistake of law or fact (e.g. the previous adjudication was based on the wrong legal standard or it applied different facts than are contained in the record), then deference would not apply and an analysis of lawful source of funds involving the IVT scenario should be done on a Form I-829.

IVT Scenarios in the Form I-829 Adjudication: Deference

Officers assigned a Form I-829 should:

1. Review the petitioner's underlying Form I-526 cover letter (if any) and evidence to determine if it presents a possible IVT scenario (e.g. indicators of exchangers, breaks in path of funds, etc.).
2. Identify any *objective* mistake of fact or law that would constitute an exception to deference.

IVT Scenarios in the Form I-829 Adjudication: Deference

Objective Mistake of Law

EXAMPLE:

- You are adjudicating an I-829 petition and review the I-526 cover letter and determine that the I-526 contained an IVT scenario. You check the IVT tracker and find that it was not updated with the Exchanger information.
- During the course of inputting the data into the IVT tracker, you read through the evidence and don't agree with the I-526 officer's weighing of the evidence and decision to approve, even though the I-526 officer sufficiently articulated why he found the evidence in the record meets the correct legal eligibility requirement by a preponderance of the evidence in his analysis worksheet.

IVT Scenarios in the Form I-829 Adjudication: Deference

Objective Mistake of Fact

EXAMPLE:

- You are adjudicating an I-829 petition and review the I-526 cover letter and determine that the I-526 contained an IVT scenario. You check the IVT tracker and find that it was not updated with the Exchanger information.
- While inputting the data into the IVT tracker, you read through the evidence and realize that the evidence in the file does not match the facts and evidence as described by the officer in her analysis worksheet. You believe that she has applied the facts of another case to this one.

IVT Scenarios in the Form I-829 Adjudication: Deference

Officers assigned a Form I-829 should (cont.):

3. Review the petitioner's Form I-829 submission to determine if there are material changes that would constitute an exception to deference.
4. Determine if there is evidence of fraud and misrepresentation that would constitute an exception to deference.
5. If you believe that deference does not apply for one of the above reasons, then please see your branch chief to determine if an analysis of the lawful source of funds and/or required amount of capital should be done on the Form I-829.
6. If deference to the prior I-526 approval is not warranted due to one of the exceptions, the officer must determine whether the petitioner has demonstrated eligibility for removal of conditions based on being in compliance with INA 203(b)(5). See INA 216A (d)(1)(B).

IVT Scenarios in the Form I-829 Adjudication: IVT Tracker

Officers assigned a Form I-829 should:

If the officer determines that a petitioner used IVT for his or her source and path of funds:

- Check the IVT tracker to determine if the IVT data has already been recorded.
- If not, record this information in the IVT Tracker.

IVT Scenarios in the Form I-829 Adjudication: Impacted Eligibility Requirements

If the officer is reviewing the IVT scenario de novo because deference does not apply, the officer must evaluate the evidence to determine if the petitioner has met his or her burden to satisfy these eligibility requirements:

- **Required Amount of Capital**
- **Law Source of Funds**

IVT Scenarios in the Form I-829 Adjudication: Impacted Eligibility Requirements

[Petitioner Invested] Required Amount of Capital:

- When the petitioner has not demonstrated that the capital belongs to Petitioner based on the path of funds through the Exchanger.
- INA §§ 203(b)(5)(A)(i), (C)(i); 8 C.F.R. §§ 204.6(f)(1-2), (j)(2): ***Petitioner*** must generally invest or be actively in the process of investing at least \$1,000,000 of capital in a new commercial enterprise or \$500,000 in a targeted employment area. See also *Matter of Ho*, *Matter of Izummi*, *Matter of Soffici*.

IVT Scenarios in the Form I-829 Adjudication: Impacted Eligibility Requirements

Lawful Source of Funds:

- When the petitioner has not demonstrated that the funds were lawfully derived due to involvement of a third-party exchanger/broker. 8 CFR 204.6(e) (definition of capital); 204.6(j)(3); *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm. 1998) , *Matter of Izummi*, 22 I&N Dec. 195 (Assoc. Comm'r 1998).

IVT Scenarios in the Form I-829 Adjudication: Impacted Eligibility Requirements

Lawful Source of Funds:

- Specifically for I-829 adjudications, “[If] ... it becomes known to the government that the entrepreneur obtained his or her investment funds through other than legal means (such as through the sale of illegal drugs), the director shall offer the alien entrepreneur the opportunity to rebut such information. If the alien entrepreneur fails to overcome such derogatory information or evidence the investment funds were obtained through other than legal means, the director may deny the petition, terminate alien’s permanent resident status, and issue an order to show cause.” 8 C.F.R. § 216.6(c)(2).

IVT Scenarios in the Form I-829 Adjudication: Impacted Eligibility Requirements

EXAMPLE #1 (required amount of capital issue):

- Petitioner A and Individual B agree to engage in a currency swap.
- The record contains evidence that Individual B sent USD \$500,000 to the NCE on Petitioner's behalf.
- The record does not contain evidence that Petitioner A sent the equivalent amount in RMB from his bank account in China to Individual B's bank account in China.
- As a result, Petitioner A has not established the path of funds such that he can demonstrate the capital invested in the NCE belongs to him.

IVT Scenarios in the Form I-829 Adjudication: Impacted Eligibility Requirements

EXAMPLE #2 (lawful source of funds issue):

- Same scenario as the previous one.
- Petitioner A and Individual B agree to engage in a currency swap.
- The record contains evidence that Individual B sent USD \$500,000 to NCE on Petitioner's behalf.
- The record does not contain any evidence of the source of Individual B's funds.
- Petitioner A has not established that the funds invested in the NCE derived (directly or indirectly) from lawful sources because the record did not contain evidence of the lawful source of Individual B's funds.

IVT Scenarios in the Form I-829 Adjudication: Impacted Eligibility Requirements

EXAMPLE #3:

- Petitioner A sends Individual B RMB 3.5 million (approximately USD \$500,000) to Individual B's bank account in China.
- Individual B sends USD \$500,000 from his Hong Kong bank account to Petitioner A's Hong Kong bank account.
- Petitioner A sends USD \$500,000 to the NCE from his Hong Kong account.
- The record does not contain evidence of an agreement between Petitioner A and Individual B regarding the funds that were deposited in Petitioner A's Hong Kong bank account by Individual B.

IVT Scenarios in the Form I-829 Adjudication:

Impacted Eligibility Requirements

EXAMPLE #3 (cont.):

- Without an explanation for the transaction between Petitioner A and Individual B to confirm that the exchange was of the same funds that Petitioner A lawfully derived in China (e.g., from salary, etc.), Petitioner A has not established that the funds invested in the NCE were lawfully derived, and the unexplained break in path of funds could implicate that requirement as well.

IVT Scenarios in the Form I-829 Adjudication: Evaluating the Evidence

[*Petitioner* invested] Required Amount of Capital (when deference does not apply)

- If the petitioner has not demonstrated that he/she transferred the funds from her account to the exchanger's account to begin with, then the officer could request:
 - Bank statements establishing the transfer of funds from the petitioner to the exchanger.
 - Any other evidence deemed sufficient to establish that the petitioner is the legal owner of the funds.

IVT Scenarios in the Form I-829 Adjudication: Evaluating the Evidence

[*Petitioner* invested] Required Amount of Capital (when deference does not apply)

- If the petitioner submitted evidence that he/she transferred the funds from her account to the exchanger's account, and then the exchanger invested the funds in the NCE, but there is no evidence that the exchanger did so on behalf of the petitioner, then the officer could request evidence that the petitioner (and not the third party) invested the funds.
- Common types of evidence could include a currency swap agreement.

IVT Scenarios in the Form I-829 Adjudication:

Evaluating the Evidence

Lawful Source of Funds (when deference does not apply)

- When Petitioner uses third party to exchange funds, Petitioner must still establish by a preponderance of evidence that the source of the funds invested was derived, directly or indirectly, through lawful means. 8 CFR 204.6(e) (definition of capital).
- If the third-party exchanger is a licensed money exchanger/money services business (MSB)/money service operator (MSO)/etc., the officer may wish to request documentation, as appropriate, to show that it is legitimate and/or licensed and registered money service business, or was at the time of transaction with Petitioner.
 - E.g., In Hong Kong, the license to conduct foreign currency exchanges is issued to an MSO by the Commissioner of Customs & Excise, Money Service Supervision Bureau, Kowloon, HK https://www.customs.gov.hk/en/whats_new/licensing/index.html (last visited September 3, 2019).

IVT Scenarios in the Form I-829 Adjudication: Evaluating the Evidence

Lawful Source of Funds (when deference does not apply)

- If the third-party exchanger is not a licensed money exchanger and is a casual acquaintance or a friend, the officer may wish to request evidence regarding the source of the funds in the third party's account that was transferred to the NCE to ensure that the funds invested in the NCE derived from lawful means.

IVT Scenarios in the Form I-829 Adjudication: Evaluating the Evidence

Lawful Source of Funds (when deference does not apply)

- If the third-party exchange is through the *hawala* system, the officer may wish to request evidence that the *hawala* broker:
 - Is registered as a money service business with the financial regulatory agency of the country/countries at the time of the transactions where they conducted business involving the petitioner's funds;
 - Was a lawful business entity at the time of the transaction where they conducted business involving the petitioner's funds.

NOTE: The use of *hawala* systems might require Office of Foreign Assets Control (OFAC) research.

IVT Scenarios in the Form I-829 Adjudication: Evaluating the Evidence

Other considerations in IVT Adjudications:

- Affidavits alone (submitted in the initial filing or an RFE response) are generally insufficient to establish the source of funds in third party Exchanger's account after the break in the path.

- Sufficient evidence to corroborate the source, maintenance, and transfer of funds in the third party Exchanger's account, could include:
 - bank statements
 - transfer slips
 - currency swap agreement
 - etc.

IVT Scenarios in the Form I-829 Adjudication:

Evaluating the Evidence

Other considerations in IVT Adjudications (cont.):

- If the petitioner appears to claim (in the initial filing RFE or NOID response) that the exchanger does not or is not willing to provide Petitioner the requested documents, this could lead to a denial. Simply going on record without supporting documentary evidence does not satisfy the burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm. 1998).
- If any third-party exchanger funds, after the break in the path of funds, are in the United States, the AO needs to contact the IVT working group before proceeding because some issues involving U.S. law may be involved.

IVT Scenarios in the Form I-829 Adjudication:

Other considerations in IVT Adjudications (cont.):

- For adjudications of Form I-829 petitions, review the Form I-526 cover letter (if available) and related evidence to determine if there was an IVT scenario.
- If the submission indicates a break in the path of funds or the use of an Exchanger, review the Form I-526 evidence further to determine if there was an IVT scenario.
 - If the I-526 filing is not available, than notate on the adjudication worksheet that the I-526 file was not available.
- In some instances, it may be evident from the I-829 filing that IVT was used. In such instances, check the IVT tracker to determine if the data was captured and update the IVT tracker as necessary.

IVT Tracker

If during Form I-829 adjudication, it is found that an IVT scenario was used in connection with the petitioner's investment, then check the IVT tracker to make sure that the required IVT information was entered.

IVT Tracker

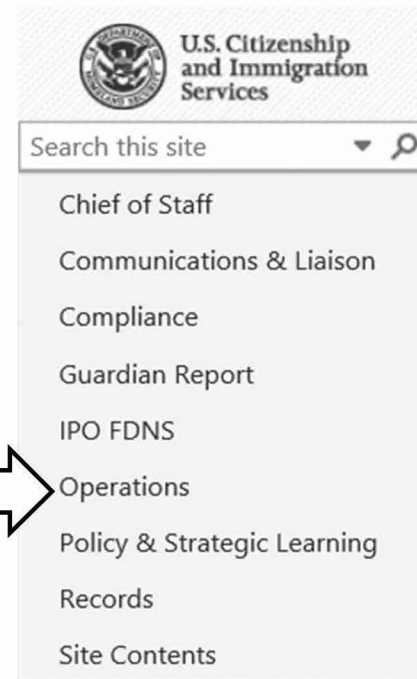
To check the IVT tracker, the officer must log on to IPO ECN.

To begin your search click on the IPO ECN link:

<https://ecn.uscis.dhs.gov/team/FOD-IPO/default.aspx> (last

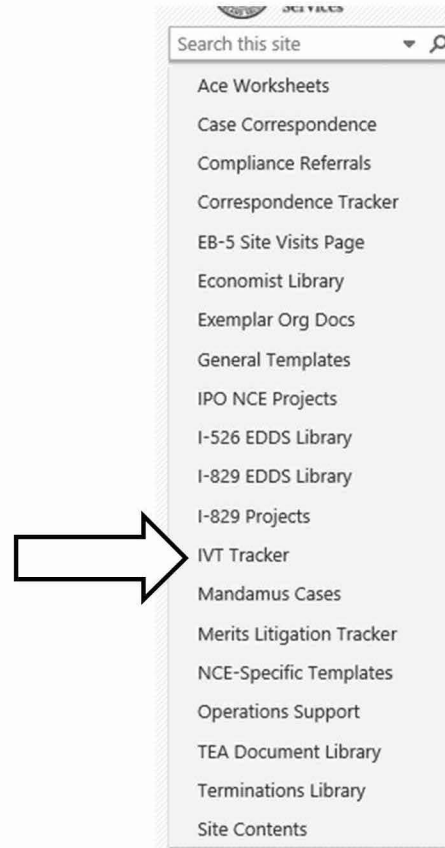
Accessed on September 30, 2019).

Then, on the left hand side of the page, click on 'Operations'



IVT Tracker

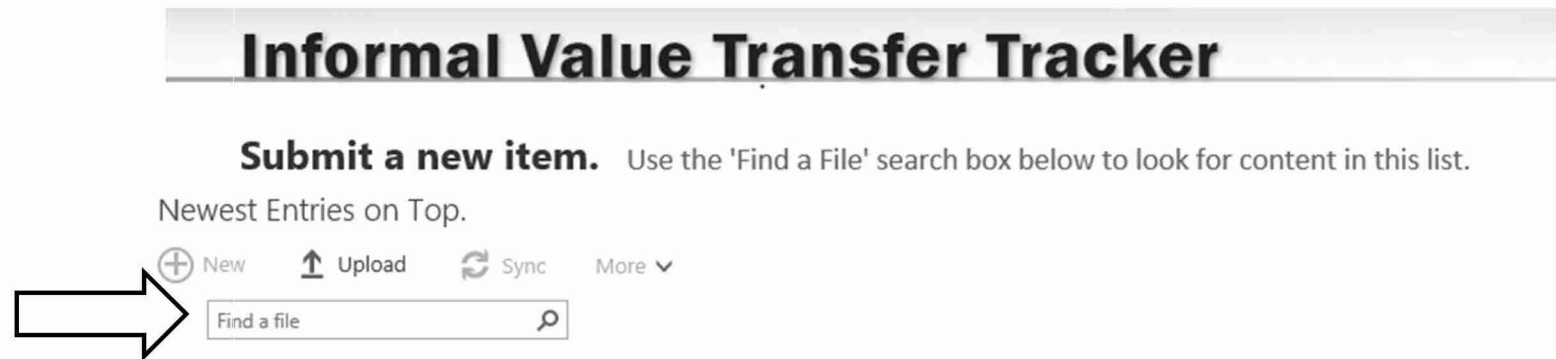
Next, click on IVT tracker:



IVT Tracker

Then, to check if the IVT information has or has not been entered in the IVT tracker, enter the WAC number of the I-526 in the 'Find a File' search box as shown below.

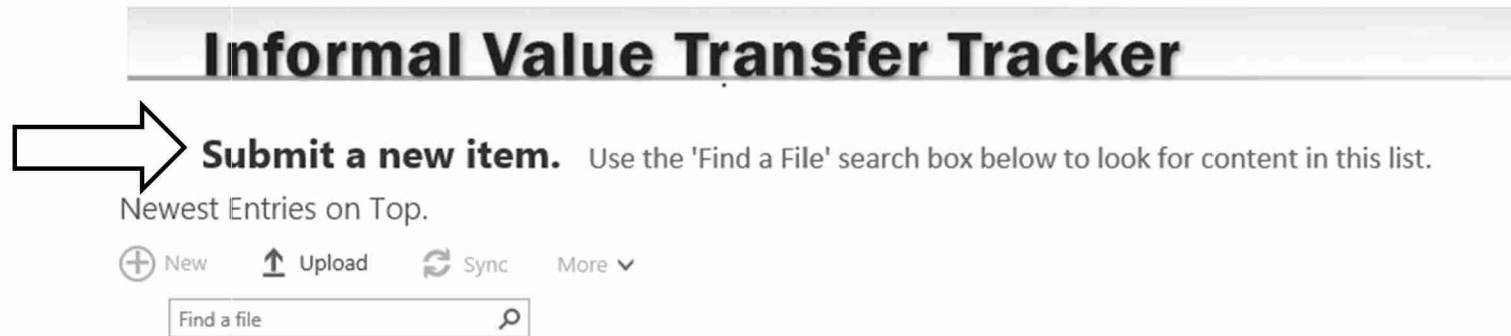
If the IVT scenario has already been entered, the IVT information will appear.



IVT Tracker

If an officer recognizes an IVT scenario was used in connection with the petitioner's investment and IVT information was not entered in the IVT tracker previously (at the Form I-526 stage or otherwise), then the Form I-829 adjudicator must enter the IVT information in the IVT tracker.

To enter the IVT information, click on 'Submit a new item':



IVT Tracker

When you click on 'Submit a new item', this list will appear. Populate all of the required information.

Informal Value Transfer Tracker

Information

Receipt Number
Required for all electronic money transfer (EMT) receipts (number form)

Exchange Information

Exchange First Name
From Service of Exchange, Circular letter No. 24, 2014/15

Exchange LAST Name
From 2015 letter of Exchange

Exchange Company Name
If Exchange is a company, enter the full name of the company or full business registration number

Exchange Date of Birth
Exchange Date of Birth

Exchange Country of Birth
Exchange Country of Birth

Exchange's Government ID Issued
Exchange's Government ID Issued

ACA Last Name of Exchange
Please enter any other names, names variations, former names, and last name aliases of Exchange please include all used

ACA First Name of Exchange
Please enter any other names, names variations, former names, and first name aliases of Exchange if Exchange is also or verify these place made a case of multiple first name

Multiple Exchanges?
Input selection of "Yes", input fields for multiple exchanges will appear on the bottom of the form

Exchange Financial Accounts in the US?
Check for YES (use financial account opening in Exchange is listed in the last column)

US Bank
Enter the primary of record for Item's US Bank

Migration Agent
If you have immigration agency agent used by Exchanger for Item's US Bank, please enter their name

NIC

IC

Exchange Profound?
Under YES if you (the user) determine that Exchanger(s) provided all the through document information through country cooperation using the data source of similar information that is provided from

Exchange is Licensed MSB?
Under YES if you have established by a professional standard that you Exchanger is licensed under financial regulatory authority in the country/locations in regulated where Exchanger claims to operate

Relationship - Exchanger and Exchanger
Please enter the detailed relationship between Exchanger and Exchanger

Exchanger Bank Name
Enter the exchange bank name

Exchanger Bank Accounts Number(s)
Enter complete bank account numbers, for all accounts used by Exchanger(s)

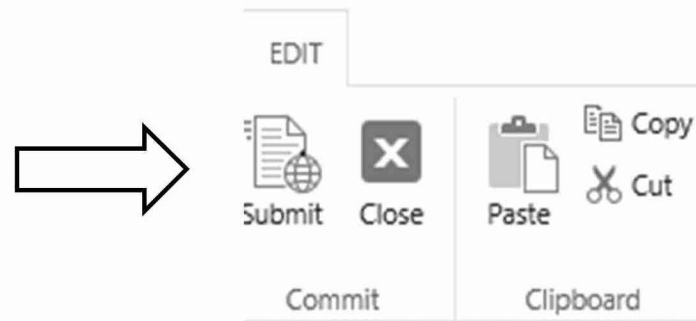
Name
Please include address of Exchanger, such as, that will be used for Exchanger's business address, phone number, website, Exchanger claimed of being used information, etc.

Enter more exchangers below

Exchange First Name	Exchange Last Name	Exchange Company Name	Exchange Date of Birth	Exchange Country of Birth	Exchange's Government ID Issued?	ACA Last Name of Exchange	ACA First Name of Exchange	Exchange Financial Accounts in the US?	US Bank	Migration Agent	NIC	IC	Exchange Profound?	Exchange is Licensed MSB?	Relationship - Exchanger and Exchanger	Exchanger Bank Name	Exchanger Bank Accounts Number(s)	Name

IVT Tracker

When you have finished populating all of the required IVT information, click on 'Submit':



Systems Checks for IVT

The Consular Consolidated Database (CCD) can be useful in adjudicating IVT.

- Officers can check third party Exchanger in CCD.
- Information obtained in CCD can be used internally to form the basis for a fraud or compliance referral.

Some Key Authorities

- INA §§ 203(b)(5)(A)(i), (C)(i); 8 C.F.R. §§ 204.6(f)(1), (j)(2): Petitioner must generally invest or be actively in the process of investing at least \$1,000,000 of capital in a new commercial enterprise.
- 8 CFR § 204.6 (e). Definition of Capital.
 - i. “Capital” means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the immigrant investor, provided that the immigrant investor is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.
 - ii. All capital invested by an immigrant investor shall be valued at present fair market value in United States dollars.
 - iii. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital.

Some Key Authorities

- 8 CFR § 204.6(j)(3): Evidentiary requirements for demonstrating that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means.
- 8 CFR § 216.6(c)(2): If derogatory information is determined regarding any of these issues or it becomes known to the government that the entrepreneur obtained his or her investment funds through other than legal means (such as through the sale of illegal drugs), the director shall offer the alien entrepreneur the opportunity to rebut such information.

Some Key Authorities

- *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm. 1998): A petitioner must show that he or she has placed his or her own capital at risk, i.e., that he or she was the legal owner of the invested capital, and that he or she acquired the legal ownership of the invested capital through lawful means.
- *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm. 1998): Interpreting 8 C.F.R. § 204.6(e) as requiring that a petitioner establish the funds invested are his or her own.

Some Key Authorities

- *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm. 1998):
 - To show that the capital was his or her own, Petitioner must document the path of the funds.
 - A petitioner cannot establish the path of the funds merely by submitting bank letters or statements documenting the deposit of funds in the NCE and without showing if the money came from the petitioner's overseas accounts, from his U.S. accounts or from some other source.

Questions?

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Author: Immigrant Investor Program Office

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