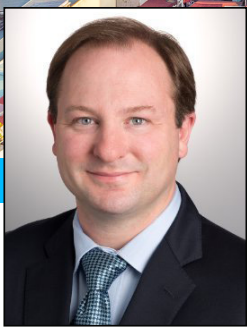


# UPDATE ON VIETNAM: A Surging EB-5 Market



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In less than five years, the EB-5 market in Vietnam has grown from single-digits a year volume to become the world's second largest source of EB-5 investors. Some industry observers believe that Vietnam has overtaken China as the largest source country for EB-5 investors, given that China market volume may have declined anywhere between 70-90% by some estimates.<sup>1</sup> While USCIS has yet to publish statistics on the number of new I-526 petitions filed by Vietnamese investors during Fiscal Year 2017, there is no doubt that the 2017 calendar year was the best ever for sourcing EB-5 investors from Vietnam. Credible estimates for the number of new I-526's filed during the calendar year 2017 vary between 275-400, with my personal assessment putting the number at approximately 300.

Yet, even with the rapid five-year growth of the 1 Statistical analysis of EB-5 trends is always fraught with risk for two reasons: 1) the concept of "EB-5 math," which requires one to deflate or inflate statistics depending on the need ("come do a seminar in Mauritania with us. We have 500 interested investors lined up!"); and, 2) the time lag between what disparate members of the EB-5 community are seeing in their practice and when actual filing trends show up in published reports.

Vietnam market, simple mathematics dictate that Vietnam (90 million people) can never hope to replace the volume that China (1.3 billion people) used to generate. Furthermore, despite that explosive growth, the EB-5 market in Vietnam faces many challenges, leaving the overall market at a crossroads.

While Vietnam has rapidly shifted from an EB-5 non-entity to the second-largest market behind the People's Republic of China, the market is still relatively immature. EB-5 issuers and practitioners should not make the assumption that doing EB-5 business in Vietnam is the same as China based on the superficialities that the two countries are neighbors and have similar "migration brokerage" agency models. Issuers and practitioners will quickly find out that many of the migration brokers are new to the industry (and also run their agency "on the side") and lack efficiency, if not professionalism in their EB-5 approach.

Many migration brokers are simply chasing a "quick buck" and will offer many projects concurrently and/or quickly add or drop projects based on ancillary concerns, which leads to confusion within the Vietnam market and frustration among issuers. With the twin issues of brokers being new to the industry

and operating their EB-5 business as a sideline activity, issuers and practitioners are learning that without their systematic and perpetual involvement in the agency's sales process many agencies are unable to "close" clients. Put another way, many agencies simply cannot close clients once the issuer and/or attorney leaves Vietnam. Additionally, prospective clients will often need several meetings with the issuer and/or attorney before making the decision to go forward.

This means that the only way to succeed in Vietnam is by spending significant amounts of time on the ground. However, issuers and practitioners accustomed to the comparatively efficient way EB-5 business is done in China (do four seminars in four different cities over two weekends, return to the US and wait for investors to flood in) are beginning to openly question whether the Vietnam market is really worth the relative time, expense, and effort. Following a similar itinerary in Vietnam will likely yield no positive results. Quality issuers and practitioners exiting or scaling back their footprint in Vietnam because of frustration with the comparative inefficiencies of the country's EB-5 business environment would be tragic.

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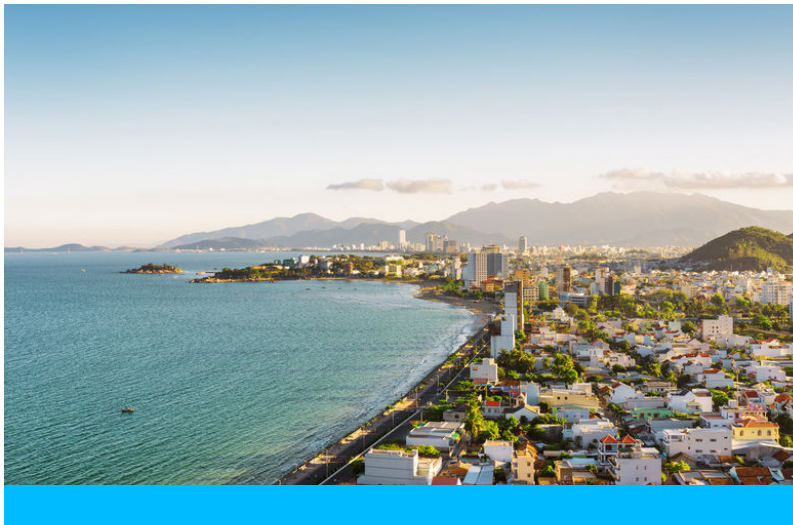
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Conversely, given the perfect storm of the overall organic growth of the Vietnam market, the proliferation of EB-5 projects, and the collapse of the China market, agents have been absolutely overwhelmed by the number of projects and service providers seeking to enter the Vietnam market. Most agencies lack the bandwidth to perform adequate project due diligence, let alone deal with the volume of EB-5 related e-mails from the United States. This makes it very difficult for agents to select projects that they feel fully comfortable in supporting.

Potential investors also find themselves overwhelmed by the volume of EB-5 projects and general program information. This state of information overload often leads to confusion, with the end result being that many potential investors do not move forward with EB-5. Thus, the Vietnam EB-5 market is at a crossroads: it could mature and strengthen, or it could die a victim of its own success.

In addition, four market conditions are fueling the headwinds plaguing the Vietnam market and preventing it from reaching its potential:

- 1) Uncertainty over the future of the Regional Center program. Few people in Vietnam take the looming expiration of the existing Regional Center program and possible regulatory changes seriously, and after 10 temporary program extensions since September 30, 2015, this is a logical and defensible viewpoint. However, the phenomenon of political paralysis in the United States that leads to the Regional Center program surviving on this never-ending series of temporary extensions, gives potential investors in Vietnam an even greater excuse to procrastinate in moving forward. Again, this is a logical and defensible viewpoint. The thought process is: if the deadline keeps getting extended, obviously the deadline means



nothing, there is no deadline, so what's the rush?

- 2) The inevitable increase in the minimum investment amount may depress overall investor interest, although I am optimistic that an increase will not deeply depress volume.
- 3) The Department of State has issued informal guidance to expect the imposition of cut-off dates for Vietnamese nationals. Thus, the dreaded retrogression issue that has effectively killed the China EB-5 market is expected to rear its ugly head imminently in an upcoming publication of the Visa Bulletin. Vietnam may be hit with a "Final Action Date" somewhere in the July 2014 range, exactly the same as China. Once the latest allotment of 10,000 visas for FY19 becomes available October 1, 2018, it is anticipated that the Final Action Date will be set

somewhere in the late 2015 or early 2016 range. I believe that retrogression will have a significant negative impact on the market, as it gives potential investors another excuse for inaction. Others who are active in Vietnam disagree, and believe that the introduction of cutoff dates will actually spur the growing army of EB-5 fence sitters in Vietnam to finally move forward.

4) The alphabet soup of E-2's, EB-3's and L-1's is causing greater indigestion within the Vietnam market. A growing number of agencies and part-timers in Vietnam are chasing the easy money at the end of a rainbow – with no real understanding of how the process works – have begun marketing E-2's, EB-3's, and L-1's as quicker, cheaper and easier paths to the United States in comparison to EB-5. I fear the intensity of these marketing efforts will increase once retrogression and an increased minimum investment amount both become unshakeable realities. And once the mirage of E-2's, EB-3's and L-1's

being "easier" than EB-5 is exposed, the credibility of Vietnamese agencies, and by extension all United States project developers and service providers, will take a serious hit.

## CONCLUSION

Vietnam can exist as a nice, supplemental niche EB-5 market, but only as long as people are willing to spend a disproportionate amount of time cultivating this market relative to other markets. The numerous challenges to the industry highlighted above, however – if not properly addressed – threaten to forestall the overall maturation of the market. Vietnam risks returning to being an EB-5 also-ran once the China market recovers (it will eventually, simple math and the internal political and economic risk factors within China are not improving) and the India market continues its rapid growth. The party may end just as it was really getting started. ▶