

ISSUE #2
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IIUSA

ASSOCIATION
TO INVEST IN USA

REGIONAL CENTER BUSINESS JOURNAL



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加快构建促进中部地区

ATTENTION IIUSA MEMBERS!

Join us in China this September at the
China International Fair for Investment and Trade (CIFIT)!

IIUSA partners with the American Chamber of Commerce in South China to co-host the U.S. Exhibit Pavilion, collaborate on media events, and bring together international partners across sectors to strengthen the bonds of economic friendship between China and the U.S. at the 17th Annual China International Fair for Investment & Trade (CIFIT) - September 6-10, 2013.

According to AmCham South China's statistics from last year's Fair, CIFIT is where US\$298 million in investment is forged every minute, 24 hours a day for 3 consecutive days. Last year, some 17,000 businesses from China and around the world attended and over 2,000 private business executives from China, all seeking overseas investment opportunities, will be in attendance, in addition to the 17,000+ regular attendees.

In addition to several media events, international cross-sector meetings/networking, and the U.S. Pavilion, IIUSA will be hosting an EB-5 seminar on 9/9 for all interested in the Program. A detailed schedule and all other information you need to sign up today is on the event registration page.

“CIFIT is the culmination of what has already been a productive year of collaboration in 2013 between the organizations - providing the ideal platform for our respective members to pursue opportunity.”

— K. David Andersson, IIUSA President

IIUSA is able to offer exhibition booths exclusively to our members for the following special low prices:

Early Bird Member Rate (thru 6/20)
Exhibitor - \$3,850

Regular Member Rate (starts 6/21)
Exhibitor - \$4,500

Sponsor/Exhibitor - \$8,500

Included in price: Attendance to CIFIT for 4 people
- Exhibit booth (3 x 3 meters) pre-decorated w/ logo -
Student Translator

Not included in price: Flights & other lodging/travel plans & cost.

Available for additional cost: Larger exhibit space
- Unique Booth Decoration - Pro Translator

Sponsors
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EB-5 U.S. Immigration Investment



Exhibitors (6 spots remaining): Civitas Capital Group, Jay Peak Vermont, Green Card Fund, EB-5 Global, NES Financial, U.S. Immigration Investment Center.



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On the cover of previous issue, omitted on error: Clockwise from upper-left: American Life, Inc. Regional Center - 255 Hotel with Downtown View; CIVITAS - Building construction project; Cleveland International Fund; Seidman Cancer Research Center; CanAm PIDC Regional Center in Philadelphia - Shipyard.

IIUSA

ASSOCIATION TO INVEST IN USA

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On the cover, clockwise from upper-left: American Life Regional Center, Construction of the Home Plate Center in Seattle, WA.; PIDC Regional Center in Philadelphia; North Country EB5 Regional Center (CanAm) - Construction on Rail Cars.

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Welcome

FELLOW REGIONAL CENTER ECONOMIC DEVELOPERS:

This second edition of the Regional Center Business Journal reflects IIUSA's vigorous promotion of regional economic development through the EB-5 Regional Center Program (the "Program"). Like the first edition, the front page pictures show but a few examples of the numerous economic development projects accomplished by IIUSA Regional Center members in diverse communities throughout the country - creating American jobs at no cost to the U.S. taxpayer.

With the Program set to "sunset" in 2015, and record breaking data coming in for fiscal year 2013, the Program continues to both flourish and struggle with growth. Information enclosed herein confirms that fact, covering everything from advocacy updates, visa and case processing statistics, and federal inter-agency collaboration, to details on the always expanding set of membership benefits.

This edition of the Regional Center Business Journal features a comprehensive look at our collective efforts in the last month or so. As you can see, we are busy representing this U.S. job creating industry with tireless work in the advocacy, industry development, and member deliverables - all conveniently available to you on the communications platform of your choice.

None of this would be possible without the continued support and leadership of IIUSA members. Thank you for all that you do.

Sincerely,

K. David Andersson

President, IIUSA



LEAHY AMENDMENT TO S. 744 PASSED IN SENATE JUDICIARY COMMITTEE

By: Peter D. Joseph

IIUSA Executive Director

IIIUSA is glad to announce that the amendment to S. 744 proposed by Chairman Patrick Leahy (D-VT) which moves to permanently authorize and improve the EB-5 Program, passed in the Senate Judiciary Committee last month. The amendment is a positive step forward for the Program, now officially included in the comprehensive immigration reform deliberations, but we still have a long way to go in both the Senate and House. In addition to permanency, Leahy's amendment pushes for maximizing the Program's visa capacity while protecting Program integrity and potentially putting processes in place that would address USCIS processing issues. In response to the introduction of his amendment, IIUSA sent a letter to Chairman Leahy expressing gratitude and support for his leadership in this issue, as well as his colleagues Judiciary Committee Ranking Member Grassley (R-IA), Immigration Subcommittee Chairman Schumer (D-NY), and Ranking Member Cornyn (R-TX).

In the letter, IIUSA communicated to Chairman Leahy that permanent authorization for the Program is the single most important step for effectuating its full potential of creating jobs for U.S. workers and progressive regional development. Short-term authorizations of three years is not sufficient for the Program because a lingering threat of expiring authorization creates an air of uncertainty surrounding the Program - thereby hindering its ability to induce capital formation and create jobs. IIUSA also stated that the backlog of more than 7,000 un-adjudicated I-526 petitions at USCIS represents no less than 70,000 American jobs not created and \$3.5 billion in foreign investor capital not invested in communities across the U.S. - even though \$11 million in filing fees has been collected by USCIS on these backlogged investor applications.

IIUSA also applauded Chairman Leahy for including in his legislation provisions to enhance Program integrity. Lastly, IIUSA stated its intention of providing substantive comments on the amendment based on member and stakeholder review of the legislation for operational

and policy implications. Permanent authorization of the Program, maximizing visa capacity, and addressing USCIS processing issues are the three priorities in IIUSA's currently approved advocacy platform. The Leahy amendment addresses these issues, and gives the Program the certainty it needs to maximize its economic contribution to the U.S. IIUSA is looking forward to building an active partnership with our cross-sector, bipartisan supporters in Washington (and around the country) and continuing our concerted effort towards supporting the continued success of the Program.

THANK YOU MEMBERS FOR YOUR SUPPORT AND EFFORTS DURING THE FIRST PART OF THE LEGISLATIVE PROCESS! WE HAVE A LONG WAY TO GO...

Feedback from membership regarding the Leahy amendment is most welcome!

Email info@iiousa.org with any comments on the proposed amendment. ■

IIUSA WRITES LETTER TO THE WHITE HOUSE REGARDING USCIS PROCESSING BACKLOG

By: Peter D. Joseph

IIUSA Executive Director

On May 9th, IIUSA sent a letter to the White House regarding the EB-5 processing backlog and its stifling effect on EB-5 capital formation and job creation to draw attention from the Executive Branch on the severity of this issue. IIUSA shared its experiences attempting numerous communications with USCIS to determine the cause of these adjudication delays and have not received any indication for the delays or if there is any affirmative action taking place to address this situation. "Members of Congress, states, cities and local communities have been meeting with USCIS and requesting information on

the delays from USCIS with no substantive answers and are very worried about the projects and jobs in their communities not coming to fruition."

IIUSA provided the White House with a copy of the letter to USCIS Alejandro Mayorkas concerning the processing backlog and its detrimental impact on the success of the EB-5 Program as well as notified them of the staggering 7,000 pending I-526 petitions which are backlogged at USCIS, awaiting adjudication. This kind of inefficiency and unpredictability in processing times is leading to negative consequences for the Program and causing foreign investors and job-creating businesses in the U.S. to lose confidence in the Program. At the current processing rate, it may take years to

process this backlog of petitions, which would be extremely detrimental to the success of the Program at a time when it is peaking in economic growth and regional development nationwide.

Lastly, IIUSA emphasized that our members are committed to working with USCIS to address this delay and offer any support and resources necessary to assist in the adjudications process. We encouraged the White House to work with USCIS to put measures in place to advance a swift solution to the backlog so that capital formation can continue at a steady progressive rate and job creation can flourish. The letter was also sent to Judiciary Committee leadership in both chambers of Congress and USCIS Director Mayorkas. ■

GOVERNMENT AFFAIRS REVIEW

“Your tireless efforts have officially included permanent authorization of the Program in S. 744, the comprehensive immigration reform legislation currently pending in the Senate. Our 89 EB-5 Regional Center members, operating in 35 states, make up approximately 95 percent of all capital raised through the Program. While we are encouraged and appreciative of the current iteration of the legislation, IIUSA has several substantive comments... We believe our suggested changes will improve the Program’s ability to achieve its intended economic impact of creating jobs for Americans without any cost to U.S. taxpayers.”

“On behalf of the Association to Invest In the USA (IIUSA) and the EB-5 Regional Center Program (the “Program”) industry that we represent, thank you for your thoughtful and continued leadership on EB-5 issues... This has been a complex process involving many stakeholders from all around the country and across sectors. We are aware that you have listened to important concerns raised by your colleagues... We also thank them for their support in keeping this important program going and contributing ideas to this legislation and toward the betterment of this job-creating program overall.”

“This kind of inefficiency and unpredictability in processing times is leading to seriously negative consequences in the EB-5 Program at a time when it is peaking in economic growth and regional development nationwide. Both foreign investors and job-creating businesses in the U.S. are losing confidence in the EB-5 Program because USCIS has offered no explanation for these significant delays... Each immigrant investor petitions requires a \$1,500 filing fee, meaning USCIS has collected almost \$11 million from investor applicants, without delivering decisions. IIUSA members are committed to working with USCIS to address this delay and offer any support and resources that may be necessary to assist with processing the pending jobs and U.S. investment.”

2013

05/29

IIUSA sends 2nd letter with substantive comments to Chairman of the Senate Judiciary Committee, Patrick Leahy (D-VT) about his amendment to S.744.

05/23

House Judiciary Committee Chairman Bob Goodlatte (R-VA) and Government Reform Chairman Darrell Issa introduce the Supplying Knowledge Based Immigrants and Lifting Levels of STEM Visas (H.R. 2131), also known as the SKILLS Act. 05/13: IIUSA sends letter of appreciation to Chairman of the Senate Judiciary Committee, Patrick Leahy (D-VT) regarding his amendment to S. 744

05/13-22

IIUSA travels to China and Japan on a Trade Mission; Meets with Exit/Entry Associations in Beijing and Guangzhou; Tours Japan with the U.S. Commercial Service promoting the EB-5 Program to Japanese businesspeople

05/16

Chairman Patrick Leahy’s Amendment to S. 744 passed in Senate Judiciary Committee

05/09

IIUSA sends letter to the White House regarding USCIS processing backlog

05/06

The new EB-5 Program Office in Washington, DC officially opens its doors in the USCIS DC headquarters

05/02

IIUSA attends the AILA, Mexico City Chapter “Show Me the Jobs” Conference in Miami, FL where USCIS Special Counsel to the Director, Robert Silvers, was the keynote speaker

05/01

IIUSA Leadership Dinner in Miami, FL, attended by Representative Joseph Garcia (D-FL) to discuss how the industry can break the processing backlog and update leadership on the status of comprehensive immigration reform

04/03

USCIS/SEC EB-5 Stakeholder Teleconference Engagement to discuss securities laws compliance in the context of EB-5 Regional Centers and investments

IIUSA SUPPORTS COURT ORDER TO BEGIN RETURNING FUNDS TO INVESTORS IN SEC ENFORCEMENT ACTION AGAINST NON-MEMBER REGIONAL CENTER

By: Peter D. Joseph

IIUSA Executive Director

On Friday April 19, in the U.S. Securities and Exchange Commission's (SEC) enforcement action against the Intercontinental Regional Center Trust of Chicago (a non-IIUSA member Regional Center), et. al., the

Honorable Judge Amy St. Eve issued an order modifying the court's asset freeze order and directing the escrow agent to return escrowed funds directly to investors. This order follows a motion by the SEC to modify the asset freeze, which was supported by an IIUSA amicus brief and agreed to by the defense. IIUSA fully supports the court's action. It

demonstrates that U.S. securities laws protect investors from fraud and breach of contract – efficiently making investors as financially whole as possible, while respecting individual choice, by returning the frozen funds directly to investors. The escrow agent will begin working on returning the funds directly to each investor. ■

SUMMARY OF SEC/USCIS INTER-AGENCY ENGAGEMENT ON THE EB-5 PROGRAM

Also on Wednesday (4/3), the SEC and U.S. Citizenship and Immigration Services (USCIS) hosted an inter-agency engagement on the EB-5 Program. IIUSA welcomed this joint engagement and has been encouraging this for a number of years now. Before getting into a detailed summary, the overarching theme was clear: there are a myriad of securities laws that apply to EB-5 related investments and associated activities - some of which have exemptions and exclusions depending on the structures of the investment and management - but there is no exemption to the anti-fraud rules that are fundamental to U.S. securities laws.

On the call from USCIS was Mary Hermann from the Customer Service and Public Engagement Directorate and Robert Silvers, Special Counsel to Director Alejandro Mayorkas. From the SEC, there were representatives from the following divisions:

- **Division of Corporation Finance**
- **Division of Trading & Markets**
- **Division of Investment Management**
- **Division of Enforcement**

After a brief introduction by USCIS, a

SEC representative from the Division of Corporation Finance discussed the common exemptions to registering EB-5 securities offerings with the SEC, namely: Regulation D and Regulation S. Regulation D prohibits general solicitation of securities to those that the offeror does not have a pre-existing relationship with and requires solicitation occur only to accredited investors. The SEC has proposed new rules that will relax these standards, based on the JOBS Act passed last year, but the new regulation have not yet been finalized and implemented. Regulation S applies to when all sales activities for the offering occur offshore and the buy order by the investor is placed offshore.

The next presentation was by the Division of Trading & Markets which is primarily responsible for administering the Securities Exchange Act of 1934. Within the context of EB-5 investments, this Division of the SEC is focused on individuals involved in the sale and offering of investments, or Broker-Dealers. Certain activities were identified as triggering the need to register as a Broker-Dealer: (1) if the person is directly soliciting an investment offering to investors; or, (2) if the person is indirectly advertising the

investment with compensation of the individual based on the number of investors they subscribe to the offering. The only exception to registration discussed was for people associated directly with the issuer.

The third presentation was by the Division of Investment Management, which administers the Investment Advisers Act and Investment Company Act. Depending on how EB-5 investments are structured, it was made clear that a trigger to register under one of those acts was possible. Investment companies tend to apply to mutual funds that pool investor capital into a diversified securities portfolio. Investment advisers are those that provide investment advice to investors for compensation (which unlike broker-dealers do not get compensated by the securities offeror).

Each of the Divisions detailed above cover different areas of regulation that encompass most investment structures and related activities in one way or another. A couple of exclusions for registration were discussed, including the Professional Exclusion - which includes

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attorneys, accountants, and teachers - so long as any advice they provide is "incidental" to the professional services they regularly perform. Public sector entities/instruments also have an exclusion from registration.

Lastly, the Division of Enforcement spoke about the need to pay close attention, and hire competent legal counsel, to all of the statutes and regulations that had been brought up during the engagement. Furthermore, the Division representative spoke about the SEC enforcement action against A Chicago Convention Center ("ACCC"), et. al. as an example of alleged fraud perpetrated by a Regional Center on foreign investors, specifically citing the representations made by ACCC about job creation projections, the likelihood of investors obtaining U.S. citizenship, partnerships with name-brand hotels, and more.

There were not any bright lines offered by the SEC in the engagement, including during Q & A about what is and is not permitted under securities laws because the Commission bases its actions on an analysis of the totality of the circumstances. One thing is clear, the EB-5 Regional Center industry has grown to a point where it is considered a tangible part of the U.S. capital market. Hence the willingness of the SEC to utilize resources to protect the integrity of the Program. IIUSA welcomes this development and will work hard to educate the Commission about the industry and the marketplace to advocate proper compliance. Stay tuned for more educational resources and events on these issues! ■



PURCHASE A
RECORDING
OF IIUSA'S
WEBINAR
ON THE
LESSONS OF

SEC VS. INTERCONTINENTAL
REGIONAL CENTER TRUST
OF CHICAGO!

THE IMPACT OF CHINESE QUOTA RETROGRESSION ON EB-5 INVESTORS AND EB-5 INVESTORS



by
Tammy Fox-Isicoff
*Partner, Rifkin &
Fox-Isicoff, P.A.*



and
H. Ronald Klasko
*Partner, Klasko, Rulon,
Stock & Seltzer, PC*

The EB-5 quota for China is expected to retrogress in 2013. This quota retrogression will impact not only EB-5 filings for Chinese nationals, but also EB-5 investments for applicants from other countries. This article will explore the ramifications of Chinese EB-5 quota retrogression for Chinese nationals and for the EB-5 program.

BACKGROUND

Although the EB-5 program's quota has remained unchanged since EB-5 became law in 1990, the approximate 10,000 quota for investors and derivative family members has been more than enough to satisfy demand. In fact, in no previous fiscal year has demand exceeded 50% of the allocated quota.

However, with the increasing popularity of regional center investments, EB-5 visa usage reached its highest level in the fiscal year ending September 30, 2012. The December 2012 Department of State Visa Bulletin predicted that the quota usage could be so high in the fiscal year ending September 30, 2013, that the per country limit may have to be imposed in the second half of the fiscal year. Once that happens, the only country that would be affected is China since approximately 80% of the world's EB-5 investors are from China.

At this time, the U.S. Department of State has no idea how long of a "back-

log" there may be should there be a need to impose a China cut-off date. That could only be determined if a cut-off is established, and would be dependent on several variables. Even though a cut-off date is not certain for FY2013, the increased demand makes the establishment of a cut-off date in the coming years almost inevitable.

DIRECT EB-5 FILINGS

Though most Chinese nationals choose to invest in a regional center, EB-5 visa quota retrogression for Chinese natives will all but eliminate the possibility of direct EB-5 filings. In order to obtain approval of an EB-5 petition, the investor must demonstrate that he or she has invested or is actively in the process of investing the required amount of capital.

The petitioner must demonstrate that the required amount of capital is at risk. Evidence of mere intent to invest will not suffice. As a practical matter, USCIS has required the petitioner to demonstrate that the entire investment of \$1,000,000 or \$500,000 (if in a targeted employment area) has been made at the time of filing the form I-526, Immigrant Petition by Alien Entrepreneur.

With quota retrogression, it may be several years between the filing of the form I-526 and the time the investor can lawfully immigrate to the United States and manage his investment. For nationals of countries with investment treaties with the U.S., this problem is solved by the availability of the E-2 visa, which allows the investor to come to the U.S. to oversee the investment. However, no such treaty exists for Chinese nationals.

An investor who will have no way to directly manage his investment for many years due to quota retrogression will be unlikely to invest. Even if he did, an EB-5 petitioner must demonstrate that he will be engaged in the management of the

new commercial enterprise. A petitioner who cannot immigrate to the United States for many years because of quota retrogression may not be able to demonstrate that he will be able to manage a direct EB-5 investment.

In addition, for direct EB-5 investments, the I-526 petition must be accompanied by evidence that the new commercial enterprise will employ not fewer than ten qualifying employees within the next two years. A comprehensive business plan must be submitted showing the jobs that will be created and the approximate dates of hire. The plan must demonstrate that the ten qualifying employees will be employed within the next two years. The business plan should contain a detailed market analysis, including competing businesses, their strengths and weaknesses.¹¹ It defies logic that a petitioner could submit a credible business plan when he or she has no idea of the prospective timeline for immigrating to the United States. A petitioner who will have no ability to manage his investment will have no ability to employ and oversee the requisite employees.

Similarly, the ability of a Chinese investor to invest in a “troubled business” to obtain residence under the EB-5 program will be all but eliminated because of Chinese quota retrogression as the petitioner must demonstrate maintenance of the number of existing employees at no less than the pre-investment level for a period of two years. When the petitioner may not immigrate for two (2) years, this may be impossible.

CHINESE QUOTA RETROGRESSION AND THE CHILD STATUS PROTECTION ACT

Chinese EB-5 quota retrogression will create a conflict between project developers, the agents and the Chinese investors. The project developers and the agents are anxious to obtain approval of form I-526. Many projects hold a petitioner's funds in escrow until the form I-526 is approved. Thus, approval of the form I-526 is often crucial to freeing up the investor's capital for use in the investment.

So how is this prompt-as-possible approval of the I-526 petition inconsistent

with the investor's interest? It may be if the investor has a child reaching age 21. Here's why.

The Child Status Protection Act (“CSPA”) freezes the age of children who are derivative beneficiaries of an I-526 petition while the petition is pending, but not once the petition is approved and awaiting the quota to become available.¹³ A Chinese petitioner with children age eighteen or older will want to freeze a child's age for as long as possible if Chinese EB-5 priority dates retrogress. The longer the time the I-526 is pending, the longer the time the child's age is frozen. Thus, it will be beneficial for certain Chinese nationals who have children close to “aging out” to draw out the I-526 petition process. It might be advantageous for a Chinese national to receive a Request for Evidence as such a request makes the petitioning process longer. It might also be advantageous for the Chinese national to delay responding to the Request for Evidence until the latest possible date, again drawing out the petitioning process. For example, form I-526 was filed for Mr. Wang on October 1, 2012. At the time the I-526 was filed, Mr. Wang's son's age was 20 and the priority date was current. While the I-526 was pending, Chinese EB-5 priority dates retrogressed to October 1, 2011. If Mr. Wang's 526 is approved on October 1, 2013, Mr. Wang can deduct the entire period of time the I-526 was pending (twelve months) from his son's actual age, likely saving him from “aging out.”

Chinese EB-5 priority date retrogression will make it imperative for counsel to carefully track the ages of a petitioner's children and to strategize how to prolong the I-526 petitioning process, if a child is close to “aging out.” It will also be imperative for counsel to make certain that the immigrant visa is applied for within one (1) year of the priority date becoming current, in order to be able to take advantage of the period of time the child's age is frozen during the petitioning process.

Counsel representing the project and the investor may have to resolve ethical issues with the developers of the project and the investor pertaining to protracting the I-526 processing time.

IMPACT ON LENGTH OF INVESTMENT AND INVESTOR EXIT STRATEGY

Pursuant to 8 CFR§216.6(c)(1)(iii), the investor's investment in the new commercial enterprise must be “sustained” during the two years of conditional residence. Although the regulation is unclear as to whether the investment must be sustained until the filing of the condition removal petition or until the approval of the condition removal petition, USCIS appears to have required the sustaining of the investment through the approval of the I-829 petition. So how long is this period in which the investment must be sustained? If the average processing time of an I-526 petition is 8 months, and if it takes approximately one year to complete the adjustment of status process, or the conditional immigrant visa and U.S. entry process, and another two years is added for the filing of the I-829 petition and another approximately 4 to 8 months is added for the approval of the petition to remove conditions on residence, one sees that, from the time of the investment and filing of the I-526 petition until the time conditions are removed and the investment no longer must be sustained, in most cases, between 4 and 5 years have elapsed.

So what happens in the event of quota retrogression? The time period before which the investor cannot have his investment capital returned is extended by the length of the quota retrogression. From the investor's point of view, this means that the investment money will be tied up for a longer period of time and any “exit strategy” will become more protracted.

There are particular issues for regional center investors. A significant majority of regional centers utilize the so-called “loan model”. Under this model, the investor is an equity investor in the new commercial enterprise. The new commercial enterprise is, in turn, a lending company that lends the EB-5 investors' investment money to the project developer (the so-called “job creating enterprise”). Traditionally, the loan from the new commercial enterprise to a job-creating enterprise is five years (for the

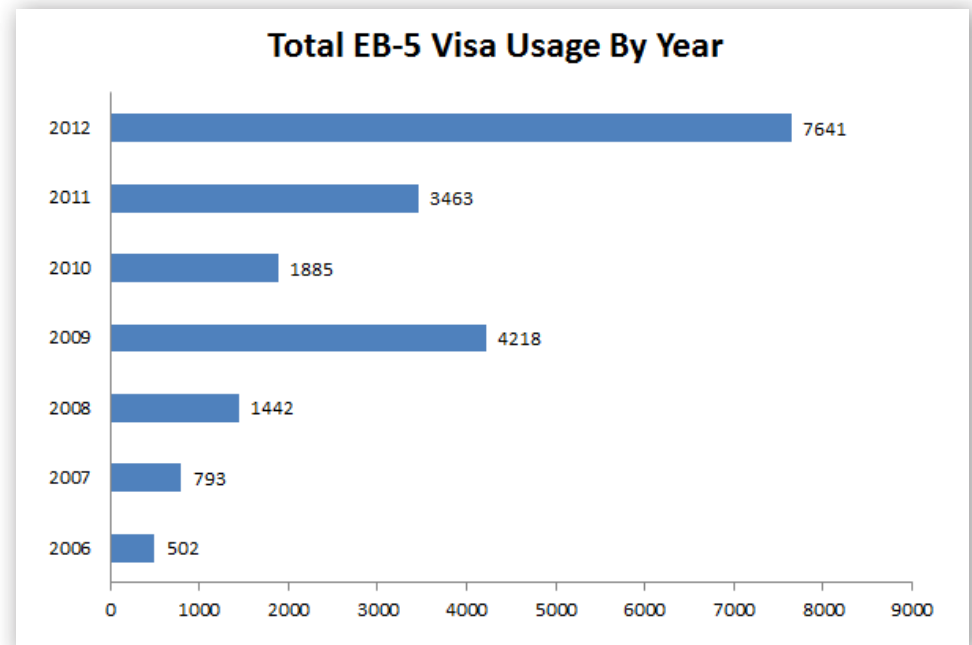
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reasons indicated above), sometimes with provision for one or two year extensions (to cover any outliers), creating a five year exit strategy for investors.

Quota retrogression will require lengthening of the loan time period, which will delay the investor's return of investment proceeds. From the point of view of the job-creating enterprise, this could be good news or bad news. It means that the generally low interest EB-5 money will be available for a longer period of time. However, many project developers seek to refinance or sell the business, which could have significant negative consequences for the condition removal process for the investors if it occurs before the approval of the I-829.

Quota retrogression highlights the importance of USCIS addressing an unanswered question. What if a five year loan is, in fact, paid back to the new commercial enterprise at the end of the five years? However, with quota retrogression, the new commercial enterprise cannot pay the loan proceeds with interest back to the investors until the conditions are removed, which perhaps may be multiple years later. Is the investment in that event "sustained"? The authors believe that the answer is in the affirmative, but USCIS has yet to opine. The reason that the authors believe that the investment has been sustained is because the regulatory requirement is that the investment be sustained in the new commercial enterprise and not in the job-creating enterprise. If the investor's money has been used to create the jobs in the jobcreating enterprise, and if the loan proceeds have been returned to the new commercial enterprise, and if the new commercial enterprise has not redeemed the investors' investment, the investment has clearly been "sustained" in the new commercial enterprise. Since the new commercial enterprise is "formed for the ongoing conduct of lawful business"¹⁶ presumably the new commercial enterprise could lend the money elsewhere once the job creation requirement is met, although there is no specific requirement that it do so.

One issue that could be raised is that an investment that sits in a company bank account may not be considered to be "at risk" or being used for job crea-



tion. However, in the example cited, the necessary job creation has already occurred and the investment money was placed at risk in creating the jobs. Furthermore, the "capital at risk" requirement is a requirement of the I-52617 and not a requirement of the I-829. The only requirements of the I-829 are that the investment in the new commercial enterprise has been sustained and the jobs created (or will be created within a reasonable time).¹⁸ These requirements are satisfied in the case of a five year term loan even if quota retrogression results in a delay in the return of the investment money from the new commercial enterprise to the investor.

TWO AND ONE HALF YEAR RULE

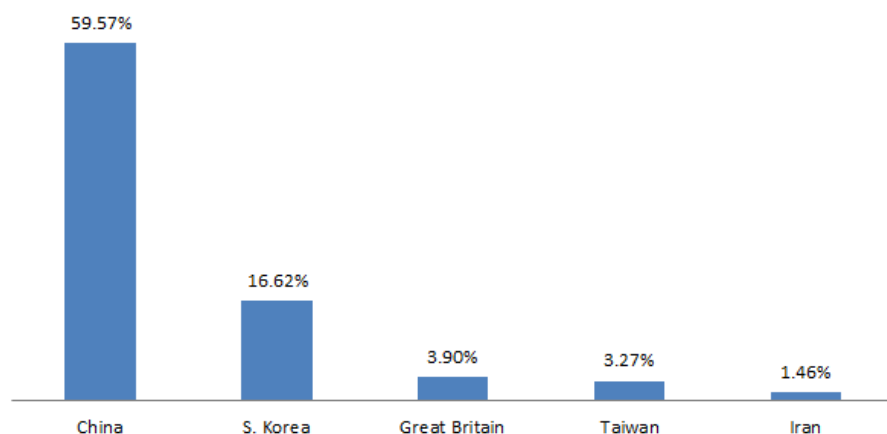
USCIS presently applies an adjudicative standard, articulated in the controversial Neufeld Memorandum of December of 2009, requiring proof that the requisite ten jobs will be created within 2½ years of the approval of the investor's I-526 petition. This does not appear in the statute, regulation or any precedent decision. Rather, it is a creature of a non-binding memorandum. The premise of the rule is faulty to begin with but loses any foundational justification once there is quota retrogression. The rule is premised on a six month period to complete adjustment of status or consular conditional immigrant visa processing. The two year conditional residence is then added to arrive at the 2½ year requirement.

The "rule" is faulty for at least four reasons even without quota retrogression:

- Neither the adjustment of status process nor the consular conditional immigrant visa process is usually completed within six months;
- With the conditional immigrant visa process, the investor and his family have an additional six months after issuance of the conditional immigrant visa to actually immigrate to the U.S. and commence the two year period of conditional residence;
- The regulations clearly state that the jobs do not all have to be created by the time of filing of the condition removal petition. The jobs do not even have to be created by the time of the adjudication of the condition removal petition, which is traditionally many months after the two years. Rather, the regulatory requirement is that the jobs must be created within a "reasonable time" after the adjudication of the I-829 condition removal petition; and
- The two year job creation rule is arguably inapplicable to regional center investments.

With quota retrogression, the foundation of the rule is not only faulty but completely destroyed. As a practical matter, when the quota retrogresses, there will be no reliable indicator of when any particular investor's priority date will be reached. Until the priority date is reached, no ad-

Top 5 Countries (2006-2012)



justment of status application can be filed and no conditional immigrant visa interview can be scheduled. As arbitrary as the 2½ year rule is presently, it would be completely unjustifiable with quota retrogression which could result in the investor having to prove the requisite job creation before he ever even becomes a conditional permanent resident.

An examination of the regulations reveals that quota retrogression, while creating a major stumbling block for direct EB-5 investors, is actually helpful to investors in a regional center. The job creation regulation, 8CFR§204.6(j)(4), is divided into three parts – “general”, which applies to direct EB-5; “troubled business”; and “immigrant investor pilot program”. The “general” requirement (arguably not applicable to troubled businesses and regional center pilot program investors)²¹ is that the comprehensive business plan shows the need for at least ten qualifying employees within the next two years. The troubled business regulation requires that the I-526 petition include evidence that the number of existing employees will be maintained at no less than the pre-investment level for at least two years. The qualification of a business as a troubled business is premised on the business’ net loss during the 12 or 24 month period prior to the I-526 priority date.

However, for the large majority of investors who invest in regional centers, there is no two year job creation rule to be found anywhere in the regulations. Rather, 8CFR§204.6(j)(4)(ii) only requires evidence that the direct or indirect em-

ployment will be created from the investment but with no time period specified whatsoever. 8CFR§204.6(m), which is the added regulatory section relating to regional centers, lists the requirement that the regional center describe how it will promote economic growth through job creation and how jobs will be created; but there is likewise no mention whatsoever of a time period. In the absence of such a two year time period for regional center investors, the only time period that exists is the requirement in 8CFR§216.6(c)(1)(iv)23 that the jobs be created “within a reasonable time” following the approval of the condition removal.

Therefore, it would be a reasonable expectation that USCIS will withdraw its arbitrary 2½ year rule once quota retrogression is a reality. Presumably, unless some completely arbitrary standard is applied, the requirement would revert to the regulatory requirement that the regional center investor must prove that the indirect and induced employment will occur within a reasonable time after the conditions on residence are removed, which could be 4, 5, 6 or even more years from the time of filing the I-526 petition, depending on how backlogged the Chinese quota becomes.

IMPACT ON JOB CREATION

The 2½ year rule has significantly restricted indirect and induced job creation projections, and therefore the number of investors who can provide EB-5 capital to a given project. The reason is that in many projects, such as hotels,

office buildings and shopping centers, stabilized occupancy may not occur for two or more years after construction is completed. If the construction period is, say, 18 months, and stabilized occupancy (and the job creation that goes with it) does not occur for another 24 months, the job creation resulting from stabilized occupancy may occur after the 30 month period. The result has been that in many projects indirect and induced jobs from construction are the only jobs that can be counted. With the expected elimination of the 2½ year rule, the often significant operations jobs numbers can be added to the mix, increasing the number of jobs and therefore the number of investors per project.

Also, if the 2½ year rule is eliminated, a project including a mix of Chinese and non-Chinese EB-5 investors could have the benefit of allocating job creation over an extended period of time. For example, the non-Chinese EB-5 investors, who will be able to file their I-829 petitions much sooner, could be allocated the construction jobs whereas the Chinese investors could be allocated the operations jobs. Furthermore, with the protracted filing date of I-829 petitions for Chinese investors, developers will have longer periods of time to meet the required inputs in the economist’s job projection report, such as longer periods of time to expend the money, produce the necessary revenues, employ the necessary direct employees, achieve the necessary occupancy rate, complete construction, etc. Meeting these projected inputs is critical for the investors to meet the job creation requirement to be able to remove conditions on their residence.

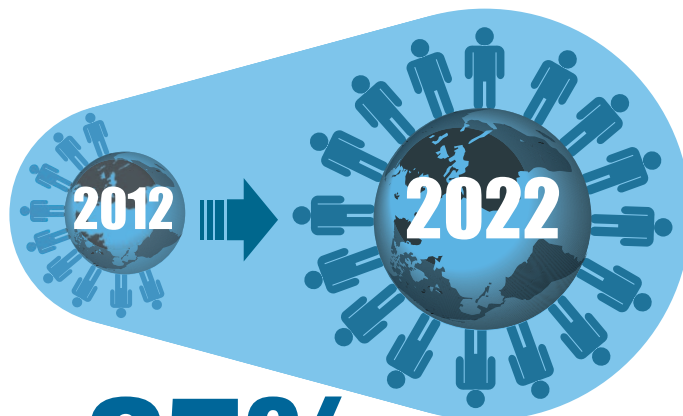
CONCLUSION

We can speculate on whether EB-5 quota retrogression for Chinese nationals will have an impact on the number of Chinese investors who choose to invest under the EB-5 program. However, no speculation is necessary regarding the impacts of quota retrogression on investors who have already invested or will invest in the future. The impacts, as this article has revealed, will be profound – for the investors, for the investment entities and for the policies of the government agency that regulates the program. ■

WEALTH REPORT 2013: GLOBAL PERSPECTIVE ON PRIME PROPERTY AND WEALTH

KNIGHT FRANK LLP, a global residential and commercial property consulting agency founded in London in 1896, released its latest edition of *The Wealth Report 2013: Global Perspective on Prime Property and Wealth*. The Wealth Report is globally recognized as the leading annual commentary on prime international property markets and high net worth individuals, and as such is an important resource for IIUSA members. The report assesses the attitudes of the wealthy concerning property and investments and provides an analysis of the distribution of wealth across the globe.

The Report predicts how the international distribution of High Net Worth Individuals (HNWIs) is expected to change over the next 10 years. It states that wealth continues to be created around the globe and that there is a “growing interest in commercial property among private investors (p36), while the results of [the] Attitudes Survey suggests that HNWIs are slowly but surely regaining their taste for risk (p54).” According to statistical analysis, New York and London continue to be the most influential cities for HNWI's, but Asia is catching up quickly. ■



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globally between
years **2012-2022**
by *Knight Frank*
Wealth Report.



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—K. David Andersson, *IIUSA President*

EXHIBITORS (ONLY 6 SPOTS REMAINING!) Civitas Capital Group, Jay Peak Vermont, Green Card Fund, EB-5 Global, NES Financial, U.S. Immigration Investment Center.

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FY2013 EB-5 VISA USAGE AND DEMAND TRENDS

By: Peter D. Joseph

IIUSA Executive Director

The U.S. Department of State released statistics on employment-based visa demand trends thus far in FY2013 this week. IIUSA consulted with Charles Oppenheim, Chief of the Visa Controls Office, to make sense of the statistics and found out the following:

- There are approximately 6,000 EB-5 visas left in the annual allocation of about 10,000;
- The annual allocation of EB-5 visas for FY2013 slight higher than usual

this year thanks to spillover from “family-based” visas categories; and,

- If demand patterns are identical to FY2012, about 750 EB-5 visas per month, 4,500 additional visas would be issued over the remainder of FY2013 - leaving approximately 1,500 unused at year's end.

So, as of right now it still appears that a backlog of available EB-5 visas is unlikely (but not impossible) for this FY. If demand patterns over the next several months increasing unexpectedly, we could very well get into a backlog situation. ■

As of March 2013...

10,000	FY2013 EB-5 Allocation
6,000	Remaining EB-5 visas for FY2013
4,500	Estimated additional visas issued over remainder of FY2013
1,500	Unused visas at end of FY2013

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CDFA and IIUSA jointly provide specialized programming that supports the rapidly growing EB-5 Immigrant Investor Program. Together, we offer professional development, legislative advocacy, and organizational expertise to the development finance and economic development industries.

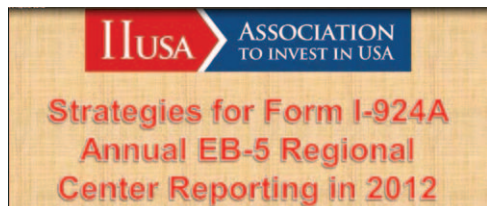
Hundreds of EB-5 specific headlines and resources available online:

www.cdfa.net

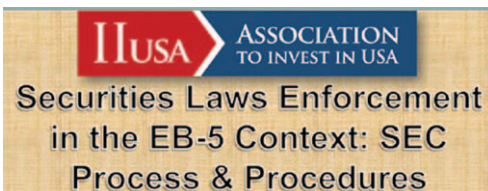
www.iiusa.org

INDUSTRY EVENT SCHEDULE

- **11/02/2012** Webinar on Office of Foreign Asset Control (OFAC), US Department of Treasury, Revises Regulations Related to EB-5 Transactions



- **11/09/2012** Webinar on Strategies for Form I-924A Annual EB-5 Regional Center Reporting in 2012: Information on how to file your I-924 petition.



- **02/22/2013** Webinar – Chicago Convention Center Study - Securities Laws Enforcement in the EB-5 Context: SEC Process and Procedures
- 3rd Annual IIUSA EB-5 International Investment & Economic Development Forum in Las Vegas, NV! **06/19/2013 to 06/21/2013**

- **08/06/2013 – 08/09/2013:** Council of Development Finance Agencies (CDFA) National Development Finance Summit
- Register for the China International Fair for Investment and Trade (CIFIT) this **September 6-10, 2013**. The theme of this year's fair is Chinese investment overseas. IIUSA is in proud partnership with American Chamber of South China to present this exciting opportunity to our members.
- **09/18/2013 – 09/19/2013:** CDFA/IIUSA EB-5 Financing 101 Webcourse

The above webinars and more are available for purchase on our Online Marketplace at <http://iiusa-marketplace.myshopify.com>.

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REPORT ON IIUSA'S MAY TRADE MISSION TO ASIA

By: Peter D. Joseph
IIUSA Executive Director

IIUSA recently returned from a successful trade mission to Asia with a mission to educate the investor markets in both China and Japan. The goal of the trip was two-fold: (1) maintain the health and vitality of the EB-5 Regional Center Program's (the "Program") largest investor marketplace (i.e., China) through education and advocacy; and, (2) promote the Program - in partnership with the U.S. Commercial Service (Dept of Commerce) - to a marketplace (Japan) that should be stronger in its EB-5 visa demand in order to diversify the investor marketplace.

In China, IIUSA visited with exit/entry associations in both Beijing and Guangzhou to discuss the latest EB-5 issues (including: due diligence, update on potential for Chinese EB-5 visa backlog, and legislative/policy changes under consideration) and to personally deliver the message that investors in the Chicago Convention Center whose funds had been frozen had already, or were in the process of, receiving their funds back. This news was welcomed by IIUSA's industry counterparts, who we also visited in February of this year to discuss the litigation process that follows a Securities & Exchange Commission (SEC) civil enforcement action.

In addition to meeting directly with exit/entry association officials, IIUSA hosted a seminar in each city (Beijing and Guangzhou) for migration agencies and any others interested in the EB-5 Program. The Beijing seminar was hosted with assistance of the provincial exit/entry association at the International Club. Speakers at the Beijing seminar included Peter D. Joseph, IIUSA Executive Direc-



IIUSA Executive Director Peter D. Joseph speaks at the American Chamber of Commerce in South China, 5/17/13

tor; Kelvin Ma, Chair, IIUSA International Committee; and, Lin Kang, Chairman, Beijing Exit/Entry Service Association. IIUSA is deeply appreciative of the collaboration with the Beijing association to ensure the China EB-5 investor marketplace is as educated as possible to minimize the risk of subsequent market shocks like that caused by the SEC enforcement action against the Intercontinental Regional Center Trust of Chicago (NOT an IIUSA-member Regional Center).

The Guangzhou seminar was also hosted with assistance from the local provincial (Guangdong) Exit/Entry Service Association - and in partnership with the American Chamber of Commerce in South China (AmCham South

China) at the AmCham South China event facility. Mr. Joseph and Mr. Ma were joined as speakers at this event by Harley Seyedin, President, AmCham South China, and Terry Tyminski, U.S. Commercial Service, U.S. Department of Commerce (from the U.S. Consulate in Guangzhou). It was a true honor to be joined by the both of them to promote investment in the United States through the EB-5 Regional Center Program.



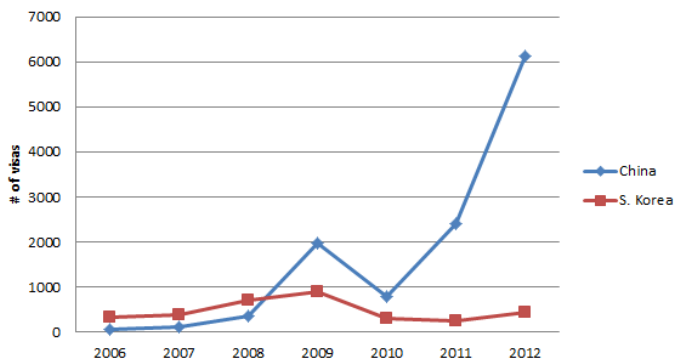
Peter D. Joseph, IIUSA Executive Director, and Harley Seyedin, AmCham South China President, shake hands in front of a packed room of EB-5 industry stakeholders at an IIUSA/AmCham seminar in Guangzhou, China.

In Japan, IIUSA took part in a three-day, three-city (Tokyo, Nagoya, Osaka) road show - hosted by the U.S. Commercial Service - to promote investment in the U.S. by Japanese companies and individuals. With Japan currently engaged in aggressive currency devaluation, the U.S. Commercial Service saw it as a

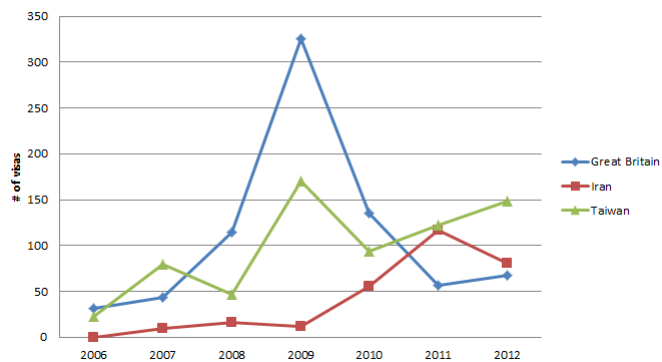
good time to promote U.S. investment by those with healthy balance-sheets that will be becoming less valuable by the day due to the additional Japanese yen being released into circulation. While EB-5 demand in Japan has limits, it should be producing more than 15-20 I-526 petitions than it has averaged annually the past several years. IIUSA hopes to help diversify the EB-5 investor marketplace away from over-reliance on a couple of dominant markets so the industry is as insulated as possible from potential market shocks.

Joining IIUSA for portions of the trade mission were representatives of IIUSA's leadership, including: K. David Andersson, IIUSA President; George W. Ekins, IIUSA Director; Daniel J. Healy, IIUSA Director; and, Bobby Schilling, IIUSA President's Advisory Council. IIUSA has been thoroughly engaged with overseas markets since Program re-authorization last September to do all we can to maintain the health of current EB-5 investor markets, while opening opportunity for members in underserved markets. ■

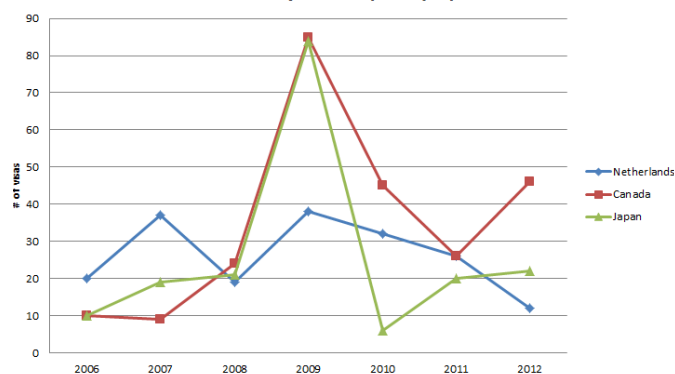
Country Trends (Group 1)



Country Trends (Group 2)

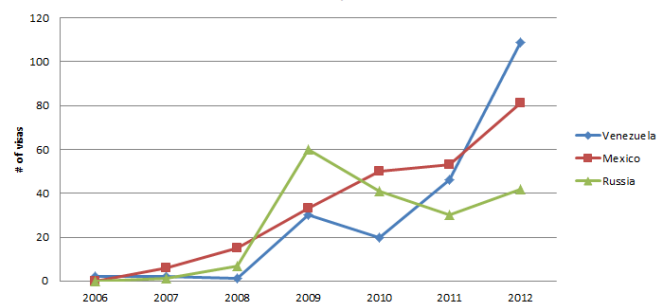


Country Trends (Group 3)

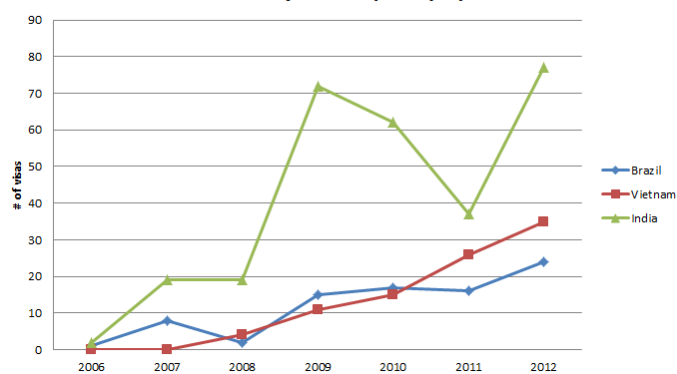


Country Trends (Group 4)

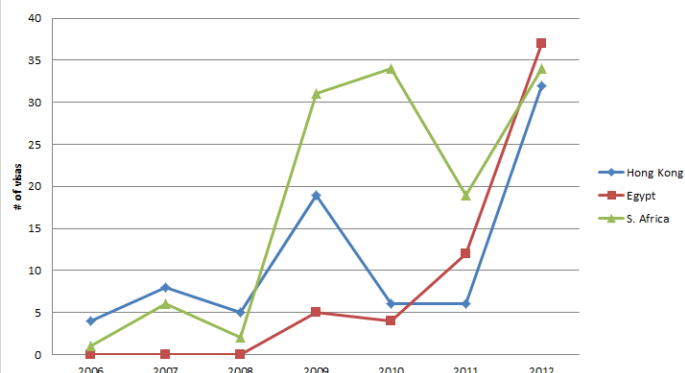
*as of 03/2012



Country Trends (Group 5)



Country Trends (Group 6)



BY THE NUMBERS

70,000+ American Jobs – Estimated economic impact of I-526 petitions awaiting processing today.

\$3.5+ Billion Amount of EB-5 capital currently waiting on USCIS adjudications

7,000+ I-526 petitions currently waiting USCIS adjudication (estimated, as of 4/1/13)

\$2.0+ Billion projected EB-5 capital formation during FY2013

95,000+ Total number of U.S. jobs created since FY2005

\$4.7 Billion dollars in EB-5 capital formation since FY2005

3,285 Number of I-526 petitions received by USCIS in FY2013 through March 2013 (on track for a record-breaking year)

REGIONAL CENTER MEMBER MAP & WHAT'S NEW IN THE MEMBER DATABASE



REGIONAL CENTER MEMBER MAP

Users can now search Regional Centers by states served, year of approval, and by specific Regional Center name. More information, including approved industries, geographies, economic methodologies, and approval notices will be added to the map soon. Visit www.IIUSA.org and click on the 'Regional Center Members Interactive Map' tab.

MEMBER DATABASE UPDATE

IIUSA has updated the members-only section of its website to proudly launch "IIUSA Industry Intelligence (I3) Online!" This newer, faster, and centralized system replaces the old system effective immediately. Communications, digital archives, shared calendars and more are now all in one place - making it easier and more efficient for you to utilize I3 Online for success in the marketplace.

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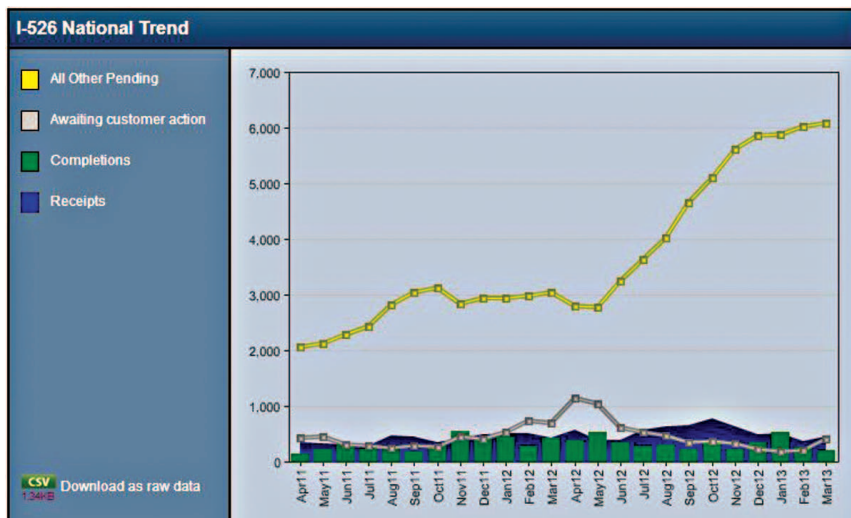
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I-526 PETITIONS PROCESSING TRENDS AS OF MARCH 2013



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COMMITTEE CORNER

PRESENTATIONS FOR THE IIUSA 2013 ANNUAL MEETING IN LAS VEGAS THIS MONTH...

- **Best Practices** – Recommendation for updating industry best practices
- **Budget & Finance** – 2013 budget reporting & 2013/2014 budget recommendations
- **Legislative** – Reporting on advocacy/policy work over the last year
- **Membership** – Reporting on membership growth over the last year

Members email info@iiusa.org with questions about serving on a Committee.

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