IIUSA ASSOCIATION TO INVEST IN USA

REGIONAL CENTER BUSINESS JOURNAL

October 2013

Building International Partnerships to Create American Jobs

In this issue:

2013 FALL IIUSA WEBINAR SERIES

IIUSA is proud to announce its 2013 Fall Webinar Series, a four-part online event schedule designed to give you expert insights and analysis of crucial themes affecting the EB-5 Regional Center industry today. These webinars, stretching from October 29th to mid-December, will include timely discussions on due diligence, bridge financing, Regional Center annual reporting and EB-5 Regional Center industry year in review/forecasting on what comes next.

NEXT EVENT: **OCTOBER 29TH, 3PM EST**

- **Tools for EB-5 Due Diligence**
  The first event in the series is important discussion on how to approach due diligence in the EB-5 context. Our expert panel of speakers will examine industry best practices and present some tools on how to take proper precautions when considering business opportunities in the EB-5 Regional Center industry.

Confirmed Speakers:
John Bintz, Managing Director, Valuation Research Corporation
Frank Franiak, President, Woodfield Fund Administration
David Andersson, President, IIUSA; President, Whatcom Opportunities Regional Center
Peter Joseph, Executive Director, IIUSA (Moderator)

NOVEMBER

- **Bridge Financing: How it Works in the EB-5 Context**
- **Regional Center Annual Reporting on Form I-924a (Year Three)**

DECEMBER

- **EB-5 Regional Center Industry: Year in Review and What's Next in 2014**

MEMBERS: **$50 PER WEBINAR**
NON-MEMBERS: **$100 PER WEBINAR**

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IIUSA ASSOCIATION TO INVEST IN USA

On the cover: **Top:** Ribbon Cutting of the U.S. Pavilion at the 17th Annual China International Fair for Investment and Trade (CIFIT) in Xiamen, China; **Middle:** Exhibition day at the U.S. Pavilion during CIFIT; **Bottom:** Building construction at Jay Peak Resort in Vermont.

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President's Advisory Council

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Welcome

Fellow Regional Center Economic Developers:

As the new Chair of the Editorial Committee for IIUSA's Regional Center Business Journal, I am looking forward to meeting the challenges this post presents. I hope to assist IIUSA in presenting essential materials for members who work at demonstrating EB-5 eligibility and regulatory compliance.

This issue of the Regional Center Business Journal includes further analysis of USCIS work product – here, the USCIS decisions rendered in EB-5 investor cases for removal of conditions -- obtained as a result of IIUSA's persistent and effective FOIA team.

Notably this issue of the Regional Center Business Journal includes two entries covering important developments in the area of securities laws, specifically the new rules implementing portions of the JOBS Act and a recent federal court case decision confirming the SEC's jurisdiction over off-shore offerings of EB-5 investments. The language of securities laws was not part of the vernacular of the nascent EB-5 industry I knew in the 1990s. Nor was it heard of much in the EB-5 program's second decade. But with the attention the EB-5 program is now getting at the SEC, and given the severity of penalties and remedies for the mistakes made on securities issues, members must be very well versed in this language.

In future issues of the Regional Center Business Journal, we intend to continue to feature the important work of IIUSA on the FOIA front and the insights gained as a result of these efforts. Also, among other fast-developing topic areas, I hope to elaborate on recent successes in cases involving job creation methodologies based on tenant occupancy and hotel guest expenditures, notwithstanding the very steep standards imposed by USCIS for use of these methodologies.

Nearly a decade after its founding, IIUSA now is positioned as a leader of the rapidly-growing EB-5 industry not only in the United States but also abroad. IIUSA fittingly chose the theme of this issue of the Regional Center Business Journal, "Building International Partnerships to Create American Jobs", in order to showcase some of IIUSA's recent successes overseas.

Feel free to contact me to share your thoughts about content of future issues of the Regional Center Business Journal.

Lincoln Stone, Esq.
Chairman of the Editorial Committee, IIUSA

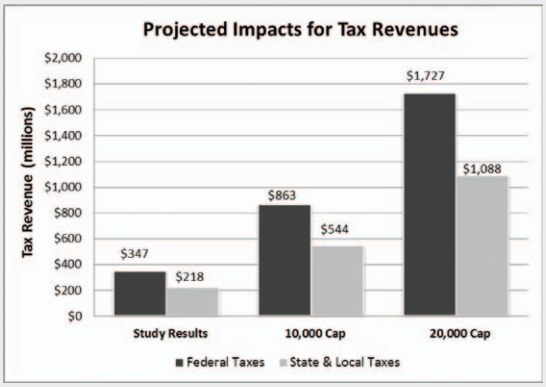
— Executive Summary —

Economic Impacts of EB-5 Spending

According to our estimates, spending associated with EB-5 investors contributed $2.65 billion to U.S. GDP and supported over 33,000 U.S. jobs during 2010-2011. The results can be interpreted as a 2-year national impact for all EB-5 spending, including investments, households, and other immigration expenses. Spending by EB-5 investors also contributed $347 million to federal tax revenues and $218 million to state and local tax revenues. These results are totals that include direct, indirect and induced effects (see Table 11).

Table 11
Economic Impact of All EB-5 Spending, 2010-2011
Summary of National Model (2011 dollars reported)

Impact Type	Jobs Supported	Contribution to GDP	Tax Revenue	
			Federal	State & Local
Direct Effect	14,347.1	$1,005,527,372	$142,727,764	$71,557,335
Indirect Effect	7,277.4	$683,142,214	$86,769,617	$50,797,702
Induced Effect	11,723.0	$962,380,800	$117,292,930	$96,082,826
Total Effect	33,347.5	$2,651,050,387	$346,790,317	$218,437,866



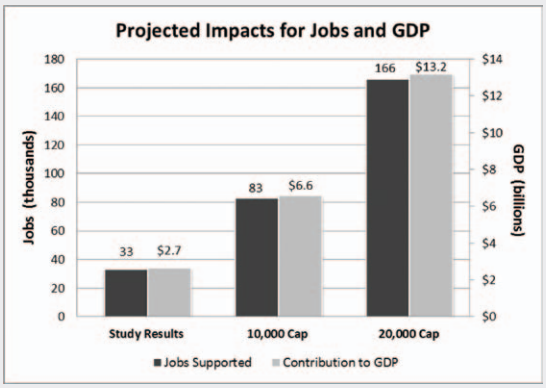


Table 12 shows the top-10 industries impacted by EB-5 spending. Given our estimate of $868 million in construction spending during 2010-2011, it's not surprising that commercial construction tops the list at 8,106 jobs supported.

Table 12
Total Economic Impact of All EB-5 Spending, 2010-2011
Top ten impacted sectors by employment (National Model | 2011 dollars reported)

Sector	Description	Jobs Supported	Contribution to GDP
34	Construction of new nonresidential commercial and health care structures	8,106.3	$476,839,529
413	Food services and drinking places	1,749.1	$54,781,111
319	Wholesale trade businesses	1,134.9	$149,251,826
360	Real estate establishments	905.7	$103,658,075
356	Securities, commodity contracts, investments, and related activities	682.4	$46,194,810
367	Legal services	675.0	$89,334,920
382	Employment services	656.1	$22,141,784
369	Architectural, engineering, and related services	627.0	$45,258,748
394	Offices of physicians, dentists, and other health practitioners	583.7	$47,023,892
397	Private hospitals	572.1	$42,861,889

A simple average of the 2-year impact shows that EB-5 spending supports over 16,000 U.S. jobs each year and contributes $1.3 billion to U.S. GDP. Likewise, investor spending adds $173 million in federal tax revenue annually and $109 million in state and local tax revenue (see Table 22). This is clearly a much larger impact than originally estimated by the 2010 USCIS report, and is primarily due to an increase in the number of investors participating in the program (see Table 23-24).

Economic Impact Projections

In addition to estimating impacts for 2010-2011, we also scaled up our results to show what impacts may look like if the current visa limit is reached (10,000) or increased (20,000). Table 22 and the following two charts show our results.

Table 22
Projected Economic Impact of EB-5 Spending, 2010-2011
Study Results from National Model (2011 dollars reported)

Projection	Jobs Supported	Contribution to GDP	Tax Revenue	
			Federal	State & Local
Study Results	33,347.5	$2,651,050,387	$346,790,317	$218,437,866
Impact/Year	16,673.8	$1,325,525,194	$173,395,159	$109,218,933
Impact/Visa	8.3	$659,958	$86,331	$54,378
10,000 Cap	83,015.9	$6,599,577,762	$863,306,739	$543,783,585
20,000 Cap	166,031.9	$13,199,155,524	$1,726,613,478	$1,087,567,170

If current regulatory and economic environments remain unchanged, economic impact results would increase almost 2.5 times at the 10,000 visa cap. In this scenario, EB-5 spending would support over 83,000 U.S. jobs and contribute $6.6 billion to U.S. GDP. Federal tax revenues would increase to $863 million and state & local tax revenues would increase to $544 million. At the 20,000 visa cap impact results would increase almost 5-fold from current levels. EB-5 spending would then support over 166,000 U.S. jobs and contribute 13.2 billion to GDP. Federal tax revenue would increase to $1.7 billion and state & local tax revenue would increase to $1.1 billion. ■

Government Affairs Review

05/08: Daniel Renaud Accepts Position as Deputy Associate Director of Office of Field Operations

06/21: Conference of Mayors Support EB-5 (Government Affairs)

07/12: New USCIS 2012 Administrative Appeals Office Decisions Related to EB-5 Applications Posted to USCIS.gov

08/06: IIUSA Speaks/ Exhibits at 2013 CDFA National Development Finance Summit in Wash, DC (Government Affairs)

09/13: IIUSA President David Andersson Testifies Before Washington State Legislature

9/20: New USCIS 2012 Administrative Appeals Office Decisions Related to EB-5 Applications Posted to USCIS.gov

09/30: Bureau of Economic Analysis Eliminates Regional Input-Output Modeling System (RIMSII) Due to Sequestration. All RIMS II orders must be submitted before 9/30/2013

2013 MAY JUNE JULY AUGUST SEPTEMBER

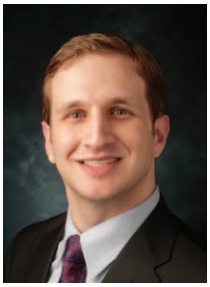
5/30: USCIS Issues its Final Comprehensive EB-5 Adjudications Guidance Policy Memorandum

06/27: White House Nominates USCIS Director Alejandro N. Mayorkas to be Deputy Secretary of Homeland Security

8/27: New USCIS 2012 Administrative Appeals Office Decisions Related to EB-5 Applications Posted to USCIS.gov

09/23: SEC Implements JOBS Act to Allow General Solicitation in Regulation D Offerings. Now Published and Take Effect on 9/23/2013

JOBS Act Rules Published and In Effect



BY PETER D. JOSEPH
IIUSA EXECUTIVE DIRECTOR

The U.S. Securities and Exchange Commission (SEC) has issued regulations implementing a portion of the Jumpstart Our Business Startups Act (JOBS Act) allowing an issuer enjoying exemption from registration under Rule 506 of Regulation D to engage in general solicitation and advertising even in the United States. This rule provides a new opportunity for marketing Reg. D compliant securities, but with it comes new responsibilities.

While the new rule provides the Reg. D compliant issuer another pathway for raising capital, if general solicitation and advertising are used, the issuer will have the added obligation of taking reasonable steps to verify accredited investor status. The SEC opted not to provide a listing of safe harbors or to prescribe a uniform verification method for all circumstances, preferring a flexible approach that allows for innovation and adapting to changing market practices. In its commentary, however, the SEC advised that the determination of what constitute reasonable steps would depend on several interconnected factors, including the type of accredited investor, the amount of information about the investor that is available, the nature of the offering, the manner of solicitation, and the terms of the investment. The SEC cautioned that if solicitation is by means of a publicly available and unrestricted website, for example, the issuer must do more than confirm that the investor has checked a box on a questionnaire. Also, the investor must in fact be accredited or the issuer must have a reasonable belief that the investor is accredited. The new rule is welcome. But determining how to verify the accredited status of foreign investors, few of whom would have filed tax forms with the U.S. Internal Revenue Service or would be susceptible to a meaningful credit report from a U.S. credit reporting agency, will be one of the most significant challenges for EB-5 issuers.

> "This exemption provides a new opportunity for marketing Reg. D compliant securities, but with it comes new responsibilities."

In a separate final rule, the SEC now disqualifies from the Reg. D exemption any offering that includes a person who is a "bad actor" due to certain criminal convictions, SEC disciplinary actions or other enumerated regulatory violations. Covered persons include the issuer, affiliates, officers, directors and significant owners of the issuer, as well as persons compensated for soliciting investors.

A reminder: The new rule authorizing general solicitation under Reg. D does not excuse issuers from compliance with the rules concerning registered brokers. Many EB-5 issuers who have become accustomed to using foreign sales agents under the Reg. S exemption for purely foreign offerings may be tempted to use those same or other unregistered agents for general solicitation in offerings that are not Reg. S qualified. But such a practice may be prohibited by rules requiring the use of registered brokers. ■

IIUSA Speaks/Exhibits at 2013 CDFA National Development Finance Summit in Wash, DC

IIUSA Executive Director, Peter Joseph, spoke at the CDFA National Development Finance Summit in Washington, DC this past August, along with IIUSA members Tom Rosenfeld - IIUSA Director, Mariza McKee, Attorney, Kutak Rock, and Steve Strnisha - CEO of Cleveland International Fund (both IIUSA members). The focus of this year's National Summit was to examine the role of the federal government in supporting job creation and business investment and bring together the top federal leaders to address the challenges facing our nation's economy - covering topics from tax-exempt bonds, tax increment financing, new market tax credits, and the EB-5 Program.

Moderated by Peter, the presentation provided an overview of IIUSA and the EB-5 Program with the practicitioners on the panel discussing their experience in marketplace on securities compliance, raising capital overseas, and putting the capital to use for the purposes of regional economic development and job creation in various communities around the country. IIUSA is grateful for our continued partnership with CDFA, as it represents the emergence of EB-5 capital as a reliable tool for economic development in recent years. ■

Conference of Mayors Support EB-5

The EB-5 Immigrant Investor Program was hailed as a success at the 81st U.S. Conference of Mayors Annual Meeting this past June. In the meeting's Adopted Resolutions, the mayors recommend that Congress advance the EB-5 Program within comprehensive immigration reform and that they also allocate more visas towards the Program.

The section on EB-5 details a brief history of the Progam and its impact on the United States economy since it was established by Congress in 1990. The Resolution states that EB-5 has since become a vital source of urban redevelopment funds and that since 2005, over $4.7 billions have been invested through the Program, generating 95,000 American jobs.

The Resolution articulates that 40 additional Regional Centers have been approved in Fiscal Year 2013 alone, and there are currently 7,000 pending applications for EB-5 related visas, representing $3.5 billion in potential direct investment and 70,000 American jobs. It also states that mayors are working with private parties to use EB-5 foreign direct investment to finance job creating projects and downtown revitalization projects.

> "EB-5 has become a vital source of urban redevelopment funds and that since 2005, over $4.7 billions have been invested through the Program, generating 95,000 American jobs."

The EB-5 Immigrant Investor Program section of the Resolution concludes with the following affirmation: "The United States Conference of Mayors urges Congress to include a robust EB5 program in the immigration bill including additional visas, permanent authorization of the regional center program and streamlined approvals for all applications." ■

USCIS Ombudsman Office Releases 2013 Annual Report

The USCIS Ombudsman's Office just released its 2013 Annual Report, which includes some important information on the EB-5 Program. The Report includes the official filing data on form I-924 applications for FY2010-FY2012. Below is a summary of the I-924 filing data:

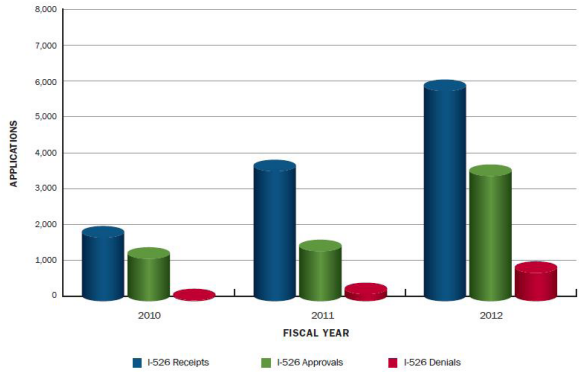
1. **FY2010: 152 filings - 8 approvals - 41 denials - 0% RFE rate**
   (Form I-924 was implemented in November 2010)
2. **FY2011: 278 filings - 123 approvals - 58 denials - 56% RFE rate**
3. **FY2012: 240 filings - 35 approvals - 63 denials - 75% RFE rate**

The Report also includes data for I-526 petitions received between FY2010-FY2012, which states that between FY2010 to FY2012, USCIS received nearly a 300% increase in I-526 filings. Below is a summary of the I-526 filing data:

4. **FY2010: 1,955 filings - 1,369 approvals - 165 denials - 22% RFE rate**
5. **FY2011: 3,805 filings - 1, 571 approvals - 373 denials - 72% RFE rate**
6. **FY2012: 6,041 filings - 3,671 approvals - 957 denials - 44% RFE rate**

The Report also mentions some key events which have taken place this past year, including the move from California Service Center to Washington DC, the release of the proposed EB-5 Policy Memorandum, the March 5th EB-5 Stakeholder meeting, as well as touches upon important information pertaining to tenant occupancy. The Report says that according to USCIS's online "My Case Status" tool, as of February 28, 2013, there were 6,025 Form I-526 petitions pending with an average processing time of 11.7 months. Based on this data and the program requirements, these petitions represent a potential $3 billion and 60,000 new full-time jobs in the United States awaiting USCIS action. The Ombudsman raises this and other ongoing concerns regarding USCIS policy guidelines and states that they will continue to work to resolve individual EB-5 cases, review relevant policies and adjudications, and elevate stakeholder concerns, as appropriate. ■

FIGURE 9: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR RECEIPTS



YEAR	I-526 RECEIPTS	I-526 APPROVALS	I-526 DENIALS	RFE RATE
FY2012:	6,041	3,671	957	44%
FY2011:	3,805	1,571	373	72%
FY2010:	1,955	1,369	165	22%

A Cumulative Analysis

of What USCIS Looks For in EB-5 I-829 RFEs and Denials

2012

EXCLUSIVE Two Part Series Enclosed:
Flip to page 14 for Part 2!

BY SONIA SUJANANI
Student, Cornell Law School

STEPHEN YALE-LOEHR
IIUSA President Emeritus,
Founding President/CEO (2005-2010)
Of Counsel, Miller Mayer, LLP

ROBERT C. DIVINE
IIUSA Vice President, Head of Global Immigration Practice, Baker Donelson Bearman Caldwell & Berkowitz, PC

Introduction

In two previous articles, published in 2012 and 2013, we analyzed and interpreted 2,486 pages of I-829 EB-5 requests for evidence (RFEs) and denial notices released by U.S. Citizenship and Immigration Services (USCIS) in response to two separate Freedom of Information Act (FOIA) requests filed by Invest In the USA (IIUSA), the trade association of EB-5 immigrant investor regional centers. The I-829 responses in these two requests ranged from 2008 to 2011. In 2013 IIUSA received an additional 247 pages of I-829 responses ranging from 2009 to 2013, with the bulk of responses from 2012.

This article expands on our two previous articles by analyzing a number of recent EB-5 I-829 petitions from 2012 and 2013. The current article expands on the previous 469 cases by adding an additional forty petitions and including previously unreported Notices of Intent to Deny (NOIDs). The third of its kind, the article cumulatively analyzes all three FOIA requests, which total 2,733 pages and 509 I-829 petitions.

This series of three articles analyzes real USCIS responses to I-829 petitions. The materials released in response to the three FOIA requests are instrumental in understanding how USCIS applies EB-5 law to specific factual situations in the I-829 context. As such, this series of articles aims to inform practitioners and potential immigrant investors of trends in USCIS adjudications and how those trends have developed.

EB-5 Overview

The EB-5 visa program has existed for over two decades. Congress enacted the EB-5 program in 1990. At the time, the program granted lawful permanent resident status to immigrant investors who directly invested in and managed job-creating commercial enterprises. Since 1992, with enactment of the Immigrant Investor Pilot Program, potential immigrant investors could also invest through EB-5 regional centers. Last year, in 2012, Congress reauthorized the regional center program through September 30, 2015. Today, there are nearly 400 approved EB-5 Regional Centers. Comparatively, there were only twenty-five EB-5 regional centers in 2006. The EB-5 program is growing in multiple ways: geographically, investor interest is now coming "from all corners of the globe," EB-5 filings have increased year over year for the past three years, and in FY 2012, the U.S. government issued over 7,400 EB-5 visas.

As background, a potential EB-5 recipient must first file an I-526 petition for classification in the EB-5 category. Upon USCIS's approval, the investor becomes a conditional resident for two years. Potential EB-5 recipients must undergo a procedure to remove conditions at the end of this two-year conditional period. The procedure is analogous to that followed by people who obtain conditional residence through marriage to a U.S. citizen or lawful permanent resident. The petition to remove conditions is filed on form I-829 and submitted to USCIS's California Service Center. This petition must be accompanied by evidence that the applicant has fulfilled all requirements of the EB-5 program, including that the applicant has invested the required capital and that the investment created or will create ten full-time jobs for U.S. workers. The applicant may prove that the jobs were created by including payroll records, relevant tax documentation, and Forms I-9. The I-829 form must also prove that the applicant has "substantially met" the capital investment requirement and has continuously maintained his or her investment during the conditional two-year period.

In May 2013, USCIS issued an EB-5 Adjudications Memorandum clarifying the goals of the EB-5 program. The EB-5 program has three essential elements: "(1) (t)he immigrant's investment of capital, (2) in a new commercial enterprise, (3) that creates jobs." Each of the requirements for removal of conditions is tied to these three elements.

Methodology

We reviewed the I-829 RFEs, denials, and NOIDs released by USCIS to IIUSA in 2013 (the third FOIA response). This FOIA response did not include investors' responses to the RFEs or any motions to reopen following I-829 denials. Therefore we do not know the ultimate outcome of the cases.

If USCIS denies an I-829, there is normally no appeal to the agency's Administrative Appeals Office (AAO) unless USCIS itself certifies the case to the AAO. After an I-829 denial

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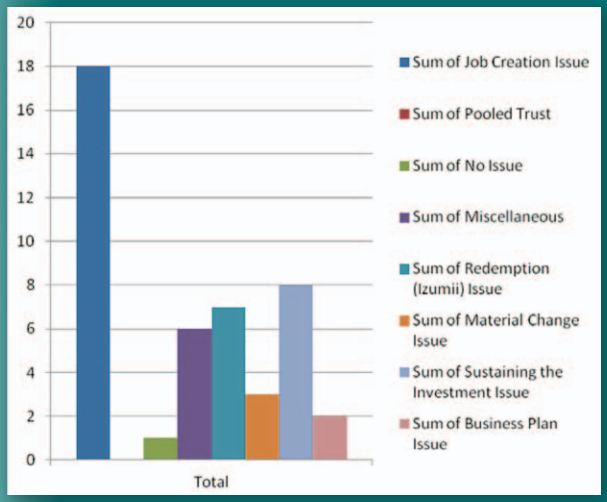
CHART 1



USCIS terminates an EB-5 investor's status and issues a notice to appear before an immigration judge in removal proceedings. If an immigration judge rules against the investor, the investor can appeal to the Board of Immigration Appeals and then to federal court. We are not aware of any BIA decisions concerning EB-5 investors.

We classified the I-829 materials by issue type focusing on the same six issues as our previous two articles: (1) job creation; (2) sustaining the investment, (3) redemption; (4) pooled trust, (5) business plan; and (6) material change. As in previous articles there were also some miscellaneous issues. In addition, some responses were so heavily redacted that it was impossible to identify any issue. These responses were classified as "No Issue."

We aggregated the forty case responses from the third FOIA request responses and coded them into an Excel document called "EB-5 USCIS I-829 Issue Trend.xslx." We preserved the 469 case responses from the first and second FOIA request (167 and 302 responses, respectively) and incorporated them into this Excel document as well. Finally, we aggregated the data from the three requests to show trends over time. We used pivot-tables and pivot-charts to map the trends, some of which are reproduced below.

Results and Analysis

THIRD FOIA RESPONSE

USCIS I-820 RFEs, NOIDs, and denials in the latest FOIA response typically identified one or more of the following issues, in order of prevalence: job creation, sustaining the investment, redemption, miscellaneous, material change, and business plan. There were no pooled trust issues in the latest FOIA response. However, the latest FOIA response totaled 247 pages and contained only forty cases. As the response only contains a small sample of USCIS responses, it is more likely that the lack of pooled trust responses is due to randomness rather than a conscious USCIS trend. On the other hand, given the results of our two previous articles, it is more likely that the high prevalence of job creation mirrors a USCIS trend. This is unsurprising given the goals of the EB-5 program discussed above.

In total, job creation issues comprised 45% of the cases analyzed in the third FOIA response. Sustaining the investment arose in 20% of cases. Redemption issues arose 17.5% of the time. Miscellaneous issues accounted for 15% of cases. All other issues arose less than 10% of the time.

Some cases contained multiple issues. Job creation issues typically arose where there was a problem with the I-9 forms or other employment verification evidence was missing. In particular, I-9 forms came late, were not completed properly, the Alien Registration Numbers did not belong to the relevant employees or did not match USCIS records, or I-551 cards were fraudulent. In all cases, fraud or feared fraud was the issue. This is unsurprising. In the words of USCIS Ombudsman Maria Odom, "[EB-5] (p)rogram integrity is critical, and the agency should use existing USCIS Fraud Detection and National Security resources to identify and take action as warranted."

USCIS requests for evidence in I-829 petitions tend to request the following evidence to support the investor's claim that he or she has maintained his or her investment in an ongoing business creating jobs:

- Federal income taxes, with all schedules and attachments, income statements and balance sheets with any financial statements provided (sometimes USCIS requires copies of returns signed by the company and certified by IRS or originally date stamped computer printouts from IRS), including all partners' K-1 forms;
- Business licenses at city, county or state or federal level;
- Utility bills (usually "most recent" are requested);
- Sales tax returns;
- Seller's permit from the state board of equalization or the like, or evidence that one is not required for the enterprise;
- Major sales invoices that identify the gross sales amount reported on the income and expenses statement or on federal and state corporate income taxes;
- Lease documents, all the way up to the primary lease in the event of a sublease;
- Floor plan of the business premises showing the space occupied and used exclusively by the enterprise;
- Detailed accounts of the enterprise's expenditures reflecting dates, amounts, identity of payee, and reason for payment, such as bank statements, cash disbursement journals, details from relevant general ledger accounts, and other financial records;
- Bank statements, invoices and/or receipts, contracts, and current business license;
- Owned premises: escrow documents used to produce the property and evidence of title, available in the public records of the county recorder's office;
- Assets: some of the major assets that have been purchased for use in the project, including copies of invoices, sales receipts and purchase contracts containing sufficient information to identify such assets, their purchase cost, date of purchase, and purchasing entity;
- Photographs of the inside and outside of the project, showing any company logos, emblems, or signs displayed on or in the building; color photos should show both the inside and outside of all production, warehouse, office and other spaces with equipment, merchandise, products, and employees clearly visible. If space is shared, identify each other organization which is also using the space and identify who uses which space;
- Employment advertisements and documentation of hiring efforts;

CHART 2

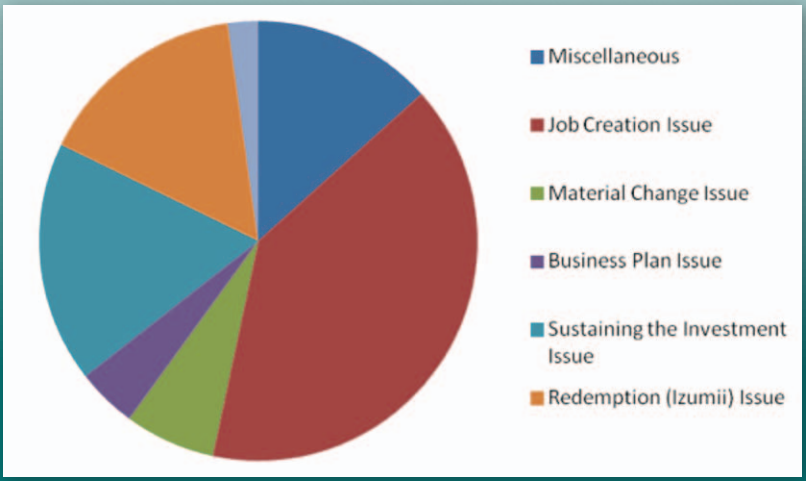


CHART 3

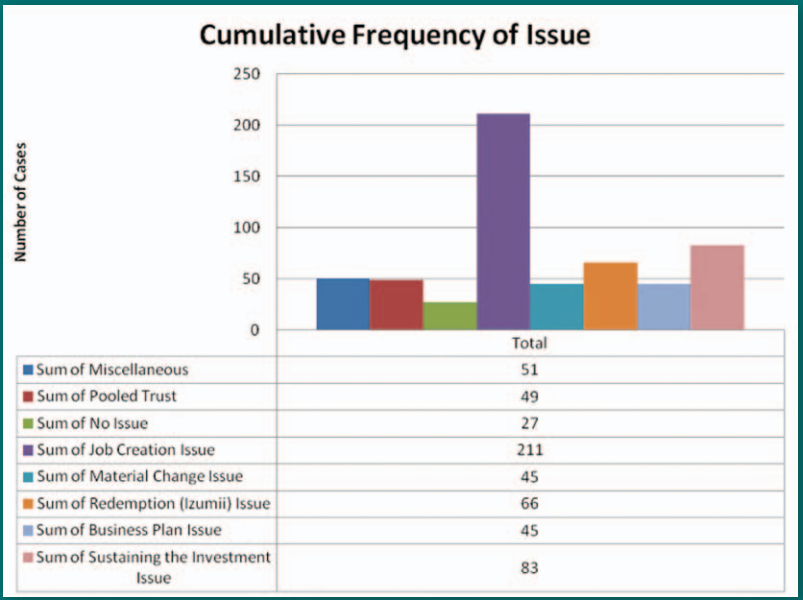
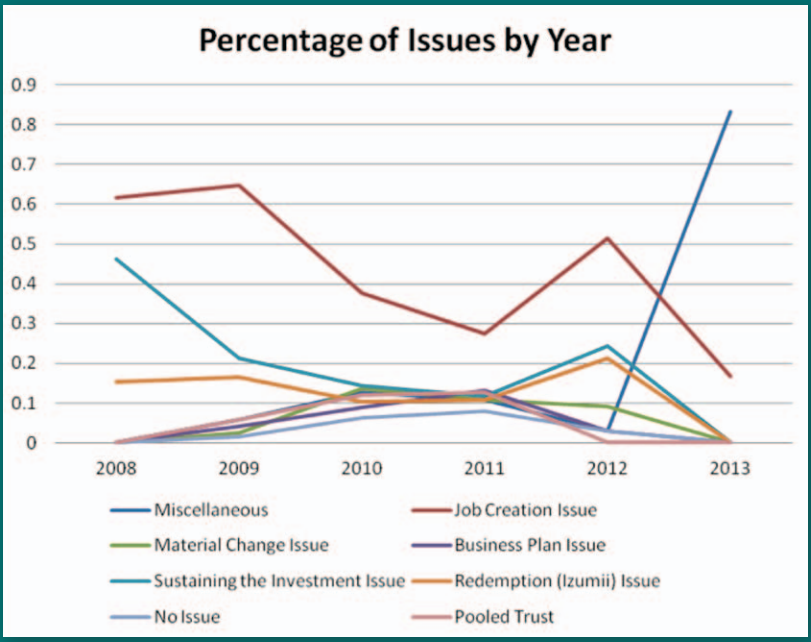


CHART 4



- Bank statements showing amounts deposited in the enterprise's U.S. business accounts;
- Evidence of all property transferred from abroad for use in the enterprise, including U.S. Customs Service commercial entry documents, bills of lading, and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market valuation of such property;
- Evidence of monies transferred or committed to be transferred to the enterprise in exchange for shares of stock; and
- Evidence of borrowing secured by assets of the petitioner for which petitioner is personally and primarily liable.

To show direct job creation, USCIS typically requires the following:

- For U.S. citizens: birth certificates with photo identification, certificates of naturalization, or the biographical page of U.S. passports;
- For permanent residents, copy of valid permanent resident card, reentry permit, recent I-485 approval notice, valid audit (I-551) stamp on or opposite immigrant visit in passport along with passport bio/photo page;
- For asylees or refugees: biographical page and photo page of I-571 Refugee Travel Document. If not received yet, refugee or asylee cachet stamp placed in the individual passport at the time of entry into the U.S. along with passport bio/photo page;
- For a foreign national granted suspension of deportation: copy of immigration judge's decision to grant suspension of deportation (or, ostensibly, cancellation of removal);
- State quarterly wage reports;
- I-9 forms for each employee hired by the enterprise. Note that I-9s should be properly completed, signed and dated by the worker and the employer representative;
- IRS Forms 941;
- Federal tax returns;
- Federal forms W-2 or W-3 for each employee; and
- If available, E-Verify confirmation reports.

USCIS frequently states the following in I-829 RFEs about job creation:

USCIS understands that an employer is not expected

CONTINUED ON NEXT PAGE >>

to know without absolute certainty whether a document is genuine or not. However, with the filing of a petition before USCIS seeking benefits for aliens, the employer should follow appropriate guidelines in determining whether or not the evidence submitted for benefits meets the regulatory guidelines needed to be granted the benefit. In this instance, as noted above, the information provided with the filing of the instant petition does not meet EB-5 guidelines.

The creation of 10 full-time jobs for qualified employees is one of the criteria that need to be met. Employing individuals who are not qualifying employees and/or may have obtained their evidence through fraudulent means does not meet the criteria established for the creation of 10 full-time jobs or qualified employees through investment. Thus, although it is not a requirement for an employer to verify the status of an employee it seeks to hire through E-Verify, if the employer wishes to seek an immigration benefit for an individual by filing a petition before USCIS, it is recommended that the employer determine that the evidence presented for employment and later with the filing of a petition before USCIS meets EB-5 guidelines.

USCIS appears routinely to check various databases in I-829 adjudications, including the following:

- State Secretary of State databases reflecting the status of registration of the enterprise. Sometimes parties fail to maintain these registrations, and USCIS has claimed that such failure results in failure of the petitioner to demonstrate that he has in good faith substantially met the capital investment requirement and maintained his capital investment when the new commercial enterprise is no longer authorized to conduct business in the state. Thus, investors should check state registration status before filing I-289.
- Google search for the enterprise's business. While such a website is not required, USCIS has mentioned the lack of credibility of the absence of an enterprise website when substantial marketing of the business's products or services is part of the plan.
- USCIS records concerning any permanent residence or other immigration status claimed concerning workers to be counted toward the ten full-time employee requirement.

OVERCAPITALIZATION CASES

In one I-829 petition involving an enterprise established to perform freight management, transportation brokerage, and warehouse management, the investor produced various corporate formation documents and evidence of $1,000,000 being placed into a corporate bank account, plus a lease agreement for a warehouse and office space and an industrial building shared by three parties jointly along with bank statements, financial statements, and business invoices. The adjudicator noticed that the "petitioner's business plan does not include a projection of the amount of capital required to get the proposed investment up and running." The evidence showed that the $1,000,000 investment had never been spent at all, sitting in a bank account. The adjudicator concluded that the investment capital had never been at risk and the enterprise was unnecessarily capitalized. The intriguing aspect of this case that the business plan approved in the I-526 petition had not stated clearly the uses for the $1,000,000. USCIS issued an RFE, and the outcome of the response is not known.

USCIS took a similar approach in an I-829 petition by an investor in a transportation company that claimed to have purchased six heavy-duty trucks costing $560,000 with down payments of $122,000. The staffing plan for the business did not include any freight delivery truck drivers. The officer concluded that the enterprise involved only the requisition of transportation from freight carriers to ship plant products for its clients. The officer found no evidence of actual expenditures, even on the down payment for the trucks. Finding that the investor never had infused the $1,000,000 into the operation of the enterprise, USCIS denied the petition.

TENANT OCCUPANCY CASES

Two RFEs issued in 2012 provide insight into USCIS adjudicators' approach to job creation in petitions involving the construction of commercial buildings and the resulting employees of tenants in the building. Starting in 2012, USCIS has started to challenge in I-526 petitions the practice of counting the jobs of tenants in commercial buildings in the absence of compelling evidence that the tenants would not be operating and employing those workers in the absence of that particular space. Nevertheless, many such I-526 petitions were approved before USCIS began raising this issue, and such investors will be filing I-829 petitions for some time. In adjudicating I-829 petitions, USCIS does not seem to be reneging on its past recognition of the tenant occupancy concept under which it approved the I-526, but it does require proof of the tenant occupancy and job levels.

In one case, the officer noted that the construction had been delayed by a few years and that only 3.7% of the space was leased, as opposed to the 85% projected in the I-526 business plan. The officer gave credit only for the indirect and induced jobs from the construction and for the direct jobs of the sole commercial tenant times the multiplier from the economic model. Apparently the investors had not made use of the regulation honoring any reasonable formula for allocation of job creation among pooled investors in an enterprise. In the absence of an agreed formula, the officer noted the number of investors whose I-829 petitions already had been approved and found that this number already accounted for more than the job creation with which the officer was crediting the enterprise to date. Thus, it appears that USCIS by default applies a "first to I-829 approval" formula for the allocation of jobs in an enterprise in the absence of an investor-agreed formula. Requesting more information, the officer required the investor to submit the most up-to-date list of all the building tenants' signed lease agreements for each tenant, and either an affidavit or "employer information form" from each tenant indicating the date they moved into the property, square footage occupied, type of business operated, number of current full time employees occupying the space, and business sectors of the tenant's operation employing the workers. The officer also required a detailed explanation and evidence regarding how the enterprise will create the number of jobs for all immigrant investors in the enterprise if the property is not 85% occupied by tenants as projected at the I-526 stage.

Cumulative Analysis

Cumulatively, this series of article analyzed 509 USCIS responses from a five-year period ranging from 2008 to 2013. The bulk of responses were from 2009-2011, with thirteen responses from 2008, 122 from 2009, 125 from 2010, 204 from 2011, thirty-three from 2012, and six from 2013. Six responses were so heavily redacted that no date was available. The trends, overall, in each year, and the dis-

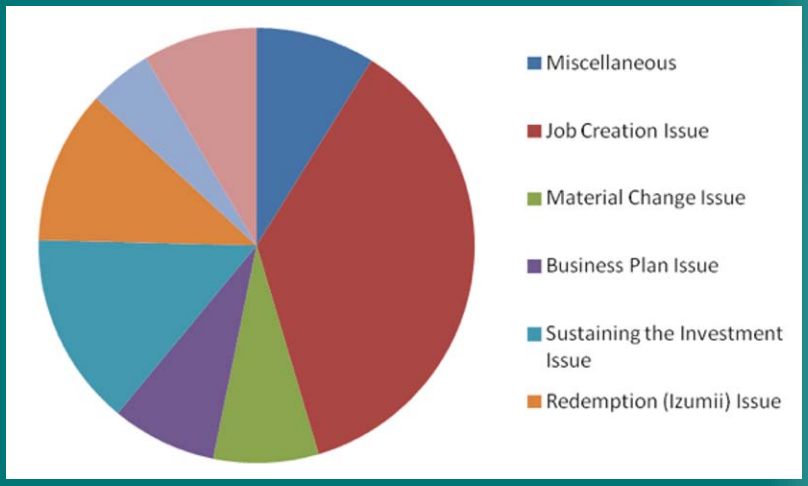
tribution of issues remained similar to our previous two articles.

The most prevalent issue, as in our previous two articles, overall and in each year with the exception of 2013 was job creation. Overall, job creation issues arose in 211 out of 509 cases at a rate of 41.45%. In 2008, job creation accounted for 61.54% of responses, in 2009, 64.75%, in 2010, 37.6%, in 2011, 27.45%, and in 2012, 51.52%. As seen in Chart 4 below, although the percentage of job creation issues fluctuates from year to year, job creation has always been the most prevalent issue. Most job creation issues arose due to verification of employment eligibility and full-time/part-time job status. In particular, USCIS seriously reviews the forms I-9, Alien Registration Numbers, Birth Certificates, Passports, I-551 cards, and other documentation provided to support employment eligibility. It is in the best interests of practitioners and potential investors alike to keep accurate records and submit as much supportive evidence as possible to avoid an RFE. Similarly, UCSCIS routinely does a spot check of full-time/part-time status by calculating full-time wages (using the State minimum wage times the minimum number of hours a week to be full-time) and comparing these wages to the evidence.

The second most prevalent issue was sustaining the investment. Sustaining the investment issues often arose where the investment did not last the entire two-year conditional period, or insufficient evidence of investment was presented.

All other issues (miscellaneous, material change, business plan, redemption, pooled trust, and no issue) occurred at relatively

CHART 1: **CHART 5**



similar rates. Given the very small differences between the rate of occurrence of these issues in the five-year period and 509 cases, it is statistically impossible to differentiate the relative importance of each of these issues.

Conclusion

In total, IIUSA's three FOIA requests resulted in the cataloguing of 509 USCIS I-829 RFEs, NOIDs, and denials. Although some years had smaller samples than others, certain trends have remained constant in the five-year cross-section these FOIA requests encompass. It is clear, for example, that job creation is the most prevalent issue in USCIS RFEs, denials, and NOIDs.

Given the goals of the EB-5 program, it is no surprise that USCIS views the job creation requirement seriously. Practitioners and potential investors alike should bear in mind USCIS's commitment to integrity and its searching review for fraud, particularly when verifying employment eligibility. Similarly, sustaining the investment has consistently appeared as the second most prevalent issue.

Nevertheless, current trends may differ from what we found in the data. Although this third FOIA contained cases adjudicated as recently as March, 2013, we have analyzed only six cases from 2013 and thirty-three from 2012. Given that over 7,400 EB-5 visas were issued in 2012 alone, our sample of 509 cases from five years continues to graze the surface of USCIS EB-5 I-829 adjudications, especially given the lack of follow-up responses to RFEs. However, the responses and this series of articles offer a glimpse at USCIS' EB-5 priorities in I-829 adjudications. ■

EB-5 I-829 RFEs and Denials: New Analysis of What USCIS Looks for 2010-2011

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Introduction

In a previous article published in 2012, we analyzed 895 pages of I-829 EB-5 requests for evidence (RFEs) and denial notices released by U.S. Citizenship and Immigration Services (USCIS) in response to a 2010 Freedom of Information Act (FOIA) request filed by Invest In the USA (IIUSA), the trade association of EB-5 immigrant investor regional centers. The original information released constituted parts of 167 EB-5 I-829 petitions.

In 2011 IIUSA filed a second FOIA request. In response, in March 2013 USCIS provided 1,591 pages of heavily redacted I-829 RFEs and denial notices. In total, these latest 1,591 pages constituted parts of 302 cases. The 302 cases ranged in time from 2009 to 2011. The majority of cases were from 2011.

This article expands on our previous article by analyzing a larger number of more recent cases. As we noted in our last article, "[d]espite cataloguing 167 USCIS responses, our findings [were] simply the tip of the iceberg." This article reports our findings from the 302 cases released in response to IIUSA's most recent FOIA request. It also compares the results to those summarized in the previous article.

EB-5 Overview

As background, the EB-5 immigrant investor program has developed over time. Congress created the program in 1990. At that time the program granted lawful permanent resident status for immigrant investors who directly invested in and managed job-creating commercial enterprises. In late 1992 Congress added the Immigrant Investor Pilot Program, which Congress designed to encourage immigrant investment through so-called regional centers. In 2012, Congress removed the word "pilot" from the regional center program and reauthorized the regional center model through September 30, 2015.

As USCIS explains, there are three main elements of the EB-5 program: "(1) The immigrant's investment of capital, (2) in a new commercial enterprise, (3) that creates jobs." An immigrant investor first files an I-526 petition for classification in the EB-5 category. Upon USCIS's approval, the investor then goes through adjustment of status if he or she is already in the United States in lawful nonimmigrant status, or consular processing in his or her home country. Once the investor adjusts status or is issued an immigrant visa, he or she is granted conditional permanent residency for two years.

An immigrant investor's petition to remove his or her conditions is filed at the end of that two-year period on Form I-829 with the California Service Center. It must be accompanied by evidence that the individual invested the required capital and that the investment created or will create at least ten full-time jobs within a reasonable period of time. Proof that the jobs were created may include payroll records, relevant tax documentation, and Forms I-9.

The I-829 petition also must show that the investor "sustained the actions" required for removal of conditions during the person's residence in the United States. An entrepreneur will have met this requirement if he or she has "substantially met" the capital investment requirement and has continuously maintained this investment during the conditional period.

The petitioner must establish each of the requirements by a preponderance of the evidence; it must be "more likely than not" or "probably" true that each of the conditions is met. After reviewing a filing, a USCIS adjudicator who does not find the filing approvable when filed may send the petitioner a request for evidence (RFE). The RFE typically notifies the petitioner of one or more perceived deficiencies that might be explained or overcome.

Methodology

We reviewed all the I-829 RFEs and denials released by USCIS to IIUSA in 2013. The FOIA response did not include investors' responses to the RFEs or any motions to reopen following I-829 denials. For that reason we do not know the ultimate outcome of cases. We know that USCIS positions on some issues have changed since these RFEs were issued.14 Some of the volume of RFEs on particular issues results from USCIS' identical language to extremely similar filings of multiple investors in the same projects.

We classified the I-829 RFEs and denials by issue type. We focused on the same six issues as in our 2012 article: (1) job creation; (2) sustaining the investment; (3) redemption; (4) pooled trust; (5) business plan; and (6) material change.

The USCIS response to IIUSA's first FOIA request was quite redacted. The response to the second request was even more redacted. USCIS headings again helped to identify issues, even though much of the actual text was redacted. A few responses were so redacted that it was impossible to discern any issue from the remaining text, which was all boilerplate. Some responses contained issues that did not fall under any of the aforementioned categories. We classified these responses as miscellaneous.

We aggregated the 302 case responses from the second FOIA request response and coded them into an Excel document called "EB-5 USCIS I-829 Issue Trend.xlsx." We preserved the 167 case responses from our first article in this Excel document as well. We aggregated the data from both requests to show changes over time. We used pivot-tables and pivot-charts to map the trends.

Results and Analysis

SECOND FOIA RESPONSE: USCIS I-829 RFES AND DENIALS FROM 2009-2011

USCIS I-829 RFEs and denials in the latest FOIA response typically identified one or more of the following issues: job creation, business plan, material change, redemption, pooled trust, sustaining the investment, miscellaneous, or no issue. See Table 1 and Chart 1.

The most prevalent issue was job creation, occurring in forty-two percent of all cases. This is unsurprising. Our previous FOIA request similarly displayed job creation as the most prevalent issue.

15 Indeed, as USCIS puts it, "[t]he creation of jobs for U.S. workers is a critical element of the EB-5 program."16 Emphasized in another way, "the centerpiece of the EB-5 program is the creation of jobs."17 Generally, to satisfy the job creation requirement, the immigrant investor's investment in a new commercial enterprise must "create full-time positions for not fewer than 10 qualifying employees."18 Qualifying employees must be persons lawfully able to work in the United States.19 They must work full-time.

Job creation issues arose in four circumstances. First, the petitioner simply did not create the required number of jobs.21 Second, USCIS was unable to determine whether an employee was a "qualifying employee" because of a lack of evidence as to whether employees were legally authorized to work in the United States.22 Third, USCIS was unable to determine if a worker was full-time because Form W-2s were missing from the application.23 Fourth, the wages showed that indicated workers were not full-time employees.

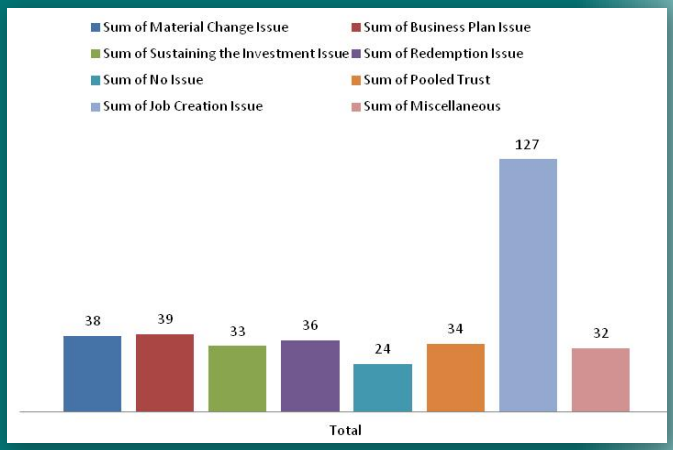
USCIS approached job creation issues in the latest batch of I-829 RFEs in a similar fashion to the previous FOIA response. Using the correct documentation to prove job creation is essential to an approved application. Generally, in the RFEs USCIS suggested that investors submit I-9s and additional proof of each worker's legal authorization to work in the United States, such as payroll records and annual IRS Forms W-2. For U.S. citizens, "such evidence should include copies of birth certificates with photo ID, Certificates of Naturalization, or the biographical page of U.S. passports." Such extensive documentation is usually unnecessary for U.S. citizens when completing the I-9. However, USCIS notes that "proof of the immigration qualifications of the workers hired to fill the employment creation requirements of the regulations is a separate issue from the work eligibility requirements of the Form I-9, Employment Eligibility Verification."

Fraudulent documentation, even without an EB-5 investor's knowledge, will not fulfill the job creation requirement. The employer must establish that qualifying employees were hired. Therefore, "although it is not a requirement for an employer to verify the status of an employee it seeks to hire . . . it is recommended that the employer determine that the evidence presented with the filing of the petition is valid."29 USCIS runs database checks behind I-9s and other documents to determine if the workers are legally authorized to work in the United States. Although it recommends determining whether the evidence is valid, it mentions no specific course of action for investors to take to determine whether workers are providing fraudulent documents. In a series of footnotes, USCIS mentioned that employers could use USCIS' E-Verify system to confirm their employees' work eligibility.

TABLE 1: **2012 FOIA ISSUE PERCENTAGES**

Issue	Percentage
Job Creation	42.05%
Business Plan	12.91%
Material Change	12.58%
Redemption	11.92%
Pooled Trust	11.26%
Sustaining the Investment	10.93%
Miscellaneous	10.60%
No Issue Identified	7.95%

CHART 1: **2012 FOIA RESPONSE: NUMBER OF CASES BY ISSUE**



The second issue, occurring approximately thirteen percent of the time, was business plan issues. To show that a new commercial enterprise will create jobs the immigrant investor must submit a comprehensive business plan. The business plan must show that "due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result; including approximate dates, within the next two years, and when such employees will be hired."31 A case called Matter of Ho sets forth the requirements for a satisfactory EB-5 business plan.32 To comply with Matter of Ho, the business plan must contain market analysis, including an analysis of the relative strength of the business vs. competition, descriptions of any manufacturing or production processes, marketing strategy, organizational structure, and income projections.The business plan must also be credible.

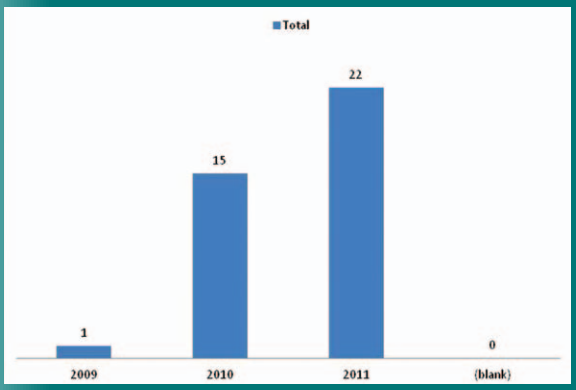
Most business plan RFE issues occurred when USCIS asserted that the business plan was not credible or did not exist,35 or the information on the I-829 petition did not match public records. For example, in one RFE, the petitioner answered "no" to the

Continued on Next Page >>

TABLE 2: **AGGREGATED FOIA ISSUE PERCENTAGES**

Issue	Percentage
Job Creation	41.33%
Sustaining the Investment	16.06%
Redemption	12.63%
Pooled Trust	10.49%
Miscellaneous	9.64%
Business Plan	9.21%
Material Change	8.94%
No Issue Identified	5.57%

CHART 2: **2012 FOIA RESPONSE: MATERIAL CHANGE ISSUES BY YEAR**



following question on the I-829 form: "Has your commercial enterprise filed for bankruptcy, ceased business operations, or have any changes in its business organization or ownership occurred since the date of you initial investment?" However, USCIS independently reviewed public records and found an article stating that "[a]fter being closed for a year. . .the restaurant plans on resuming operation on March 16th." Applicants should ensure their answers to the I-829 petition are not only consistent with the Form I-526, but continue to be credible at the time of USCIS adjudication.

The third most frequently occurring issue was material change. As suspected in our previous article, material change issues occurred more frequently in 2010 and 2011. See Chart 2. A petitioner must determine eligibility at the time of filing; the petitioner cannot demonstrate eligibility at a later date under a new set of facts.

Material change issues often arose because applicants did not follow the exact provisions of the business plan submitted as part of the I-526 petition. For example, in one RFE, the original commercial enterprise mentioned in the I-526 petition (a home improvement business) did not materialize, so the limited partnership invested in a restaurant instead to complete the job creation requirements of the program. USCIS denied the I-829 petition, holding that this constituted a material change.40 We know that all of the petitions in this project were denied after certification to the Administrative Appeals Office, and the investors' federal court challenge to this denial is pending. Meanwhile, the May 30, 2013 USCIS EB-5 adjudications policy memorandum takes a more lenient position on the material change issue, and we can expect that USCIS might reopen and approve these petitions.

The fourth most frequently occurring issue was redemption. This issue arose when a redemption clause existed in the investment agreement that guaranteed the return of funds if the I-829 were to be denied. Certain redemption clauses violate Matter of Izummi.43 Although the law does not specify what the exact degree of risk must be, "[i]f the immigrant investor is guaranteed the return of a portion of his or her investment, or is guaranteed a rate of return on a portion of his or her investment, then that portion of the capital is not at risk."

The fifth issue concerned pooled trusts. This issue generally arose when multiple investors made their investments through a mutual fund, a pooled trust fund, or some other security device. For the petitioner to make a qualifying investment, the evidence at the I-829 stage must make clear that the funds have been made available to the commercial enterprise for the business plan activities.

The sixth issue concerned sustaining the investment. Unlike our previous article, most of the issues regarding sustaining the investment arose not from part of an investor's funds being removed during the conditional period, but because of a lack of the proper paperwork. According to USCIS, partnership tax returns and Form 1065, Schedule K-1 must both be submitted with an I-829 petition.

A small percentage of issues concerned miscellaneous issues, for example, evidence to demonstrate the petitioner and family reside permanently in the United States.47 A few decisions were so heavily redacted that no issue was discernible.

AGGREGATED FOIA RESPONSES: USCIS I-829 RFES AND DENIALS FROM 2008-2011

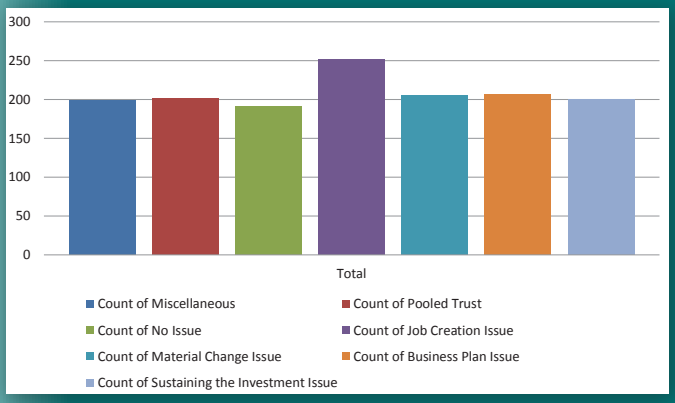
Aggregating the two FOIA responses, we analyzed a total of 469 cases. See Table 2 and Chart 3 at the end of this article. The most prevalent issues, in order of frequency, were job creation, sustaining the investment, redemption, pooled trust, miscellaneous, business plan, material change, and no issue. Although some issues, such as business plan and material change, increased in frequency since our previous article, overall the trend remains similar to our first article. Overall, most issues other than job creation occur at relatively similar rates. Job creation continues to be the number one issue overall.

Conclusion

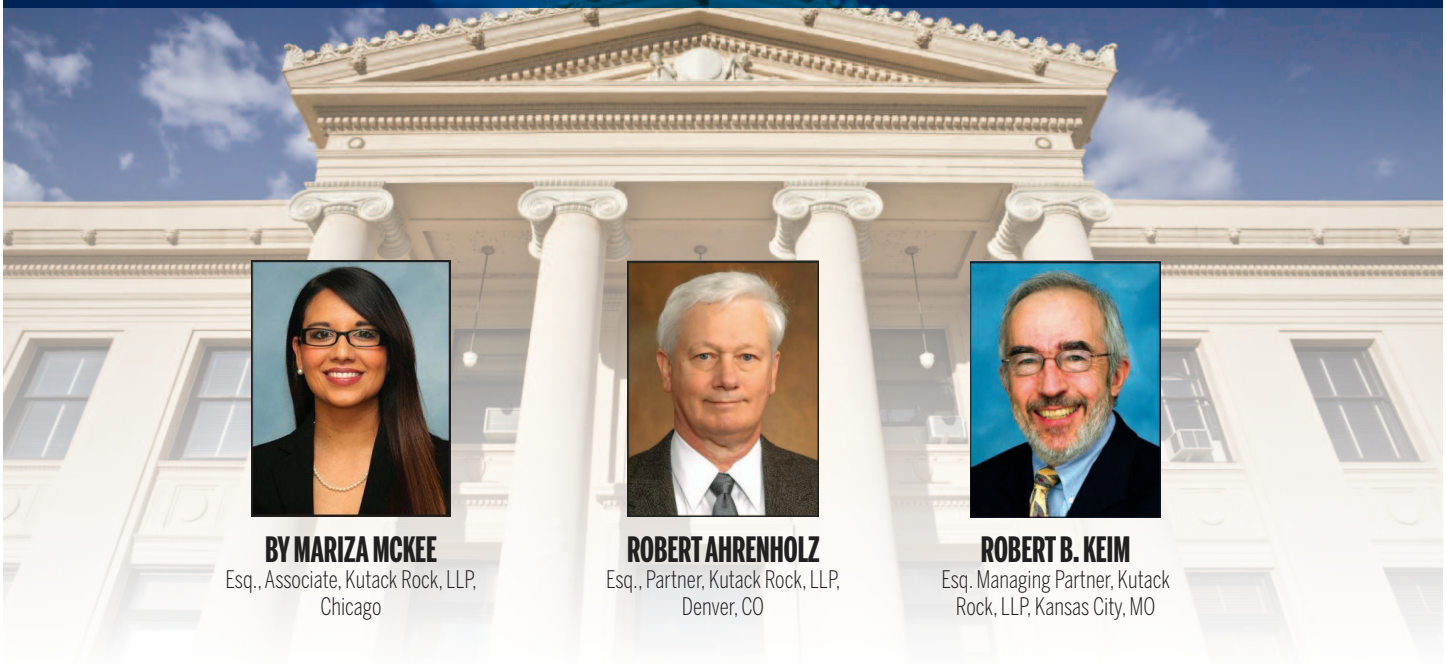
In total, we have catalogued 469 USCIS I-829 RFEs and denials. Our findings continue to graze the surface of USCIS EB-5 I-829 adjudications and its priorities therein. Given the strong presence of job creation issues in USCIS adjudications, the goals of the EB-5 program, and USCIS's own policy statements, it is highly likely that job creation will remain the most important issue at the I-829 stage.

Current trends may differ from what we found in the data. The latest cases we received are from 2011, two years ago. Nevertheless, the recent May 30, 2013 USCIS EB-5 policy memorandum makes clear that some issues identified in our research continue to be important for USCIS. ■

CHART 3: **AGGREGATED FOIA RESPONSE: NUMBER OF CASES BY ISSUE**



SEC'S JURISDICTION OVER OFF-SHORE EB-5 OFFERINGS AFFIRMED



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In an action brought by the Securities and Exchange Commission ("SEC") involving allegations of fraudulent representations and omissions in offering materials under the federal securities laws against participants in an EB-5 offering, the United States District Court for the Northern District of Illinois, United States Securities and Exchange Commission v. Chicago Convention Center, et al. (Aug. 6, 2013) ruled that the SEC had jurisdiction to bring such action without otherwise deciding the merits of the case or whether the offering complied with Regulation S. The case has brought national attention to the EB-5 industry and involves allegations of a large scale fraudulent investment scheme perpetrated through material misstatements about the investment and use of proceeds in the offering documents and USCIS filings.

The Court determined that the SEC had jurisdiction even though the securities were only offered and sold off-shore to non-U.S. persons pursuant to Regulation S and were sold through foreign placement consultants who were not registered U.S. broker-dealers. The question presented was whether the SEC failed to meet, for jurisdictional purposes, the "transactional" test for jurisdiction set forth by the U.S. Supreme Court in Morrison v. National Australia Bank Ltd., 130 S. Ct. 2869, 177 L. Ed. 2d 535 (2010) ("Morrison"), as argued by the defendants or whether, as argued by the SEC, Section 929P(b) of Dodd-Frank controlled, which uses a "conduct" test and an "effects" test. This jurisdictional issue was important because, if the SEC's complaint failed to properly allege violations under the federal securities acts, the defendants' motion to dismiss the SEC action would be granted resulting in a potentially negative precedent for the SEC in future enforcement actions involving off-shore EB-5 offerings.

The Court found that under either theory of jurisdiction, viewing the facts of the allegation most favorable to the SEC, the SEC sufficiently alleged both a "domestic transaction" under Morrison and also the conduct and effects required by Section 929P(b), and allowed the case to proceed. The Court determined that a domestic transaction was properly alleged because: (i) subscription agreements were to be sent to defendants in the U.S., (ii) funds were wired to a U.S. based escrow agent, (iii) funds were released by the escrow agent only after approval of the investors' U.S. visa applications, and (iv) the subscription agreements were accepted by the issuer in the U.S. Likewise, the Court determined that the conduct and effects tests were met because the conduct took place in the U.S. and the effect on the conduct was to assist investors in gaining U.S. residency and the creation of U.S. jobs. These are activities that are usually present in all properly structured EB-5 offerings and the Court gave no indication whether any one factor was more important than the others. In the future, it may be expected that any SEC enforcement action would allege additional factors to ensure jurisdiction, such as the fact that the project being financed was in the U.S., that the borrower was a U.S. entity, and the existence of any affiliation between the issuer and the borrower that may dictate the existence of the U.S. borrower as a co-issuer.

Is it possible to structure an EB-5 offering that would not give jurisdiction to the SEC? Given the myriad of facts existing in EB-5 offerings that exhibit a domestic transaction, that result appears extremely unlikely. As a result, the take-away from this case for regional centers, issuers and other EB-5 transaction participants is that the SEC and foreign plaintiffs have jurisdiction in U.S. courts over EB-5 offerings being offered off-shore to bring enforcement actions, if warranted, under the Securities Act of 1933 and the Securities Exchange Act of 1934. In light of the SEC's public statements regarding its concern that EB-5 offerings comply with relevant U.S. securities laws, EB 5 participants should continue to carefully consider their due diligence and disclosure obligations and focus on regulatory compliance issues in future offerings. Going forward, it may not be surprising to see the SEC also target so-called "gatekeepers" (e.g. attorneys and other professionals) in EB-5 offerings for not fulfilling their due diligence and disclosure obligations. ■

Industry Event Schedule

LEARN ABOUT ALL THESE EVENTS AND MORE ON THE IIUSA EVENT CALENDAR AT WWW.IIUSA.ORG!

- **10/29/2013:** IIUSA Webinar Series - "Tools for EB-5 Due Diligence"
- **NOVEMBER:** IIUSA Webinar Series (Dates TBD) We will produce two separate webinars during November - (1) "Bridge Financing: How it Works in the EB-5 Context" & (2) "Regional Center Annual Reporting in Form I-924a (Year Three)"
- **10/13/2012 to 10/15/2013:** Association for University Business Economic Research (AUBER), Richmond VA. - Fiscal Challenges Facing Our Cities and States
- **10/31/2013 to 11/01/2013:** U.S. Department of Commerce International Trade Administration SelectUSA Investment Summit, Washington, DC
- **11/20/2013 to 11/22/2013:** 7th Global Residence & Citizenship Conference 2013, Mandarin Oriental Hotel, Miami
- **DECEMBER:** IIUSA Webinar Series (Date TBD)- "EB-5 Regional Center Industry: Year in Review and What's Next in 2014"

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

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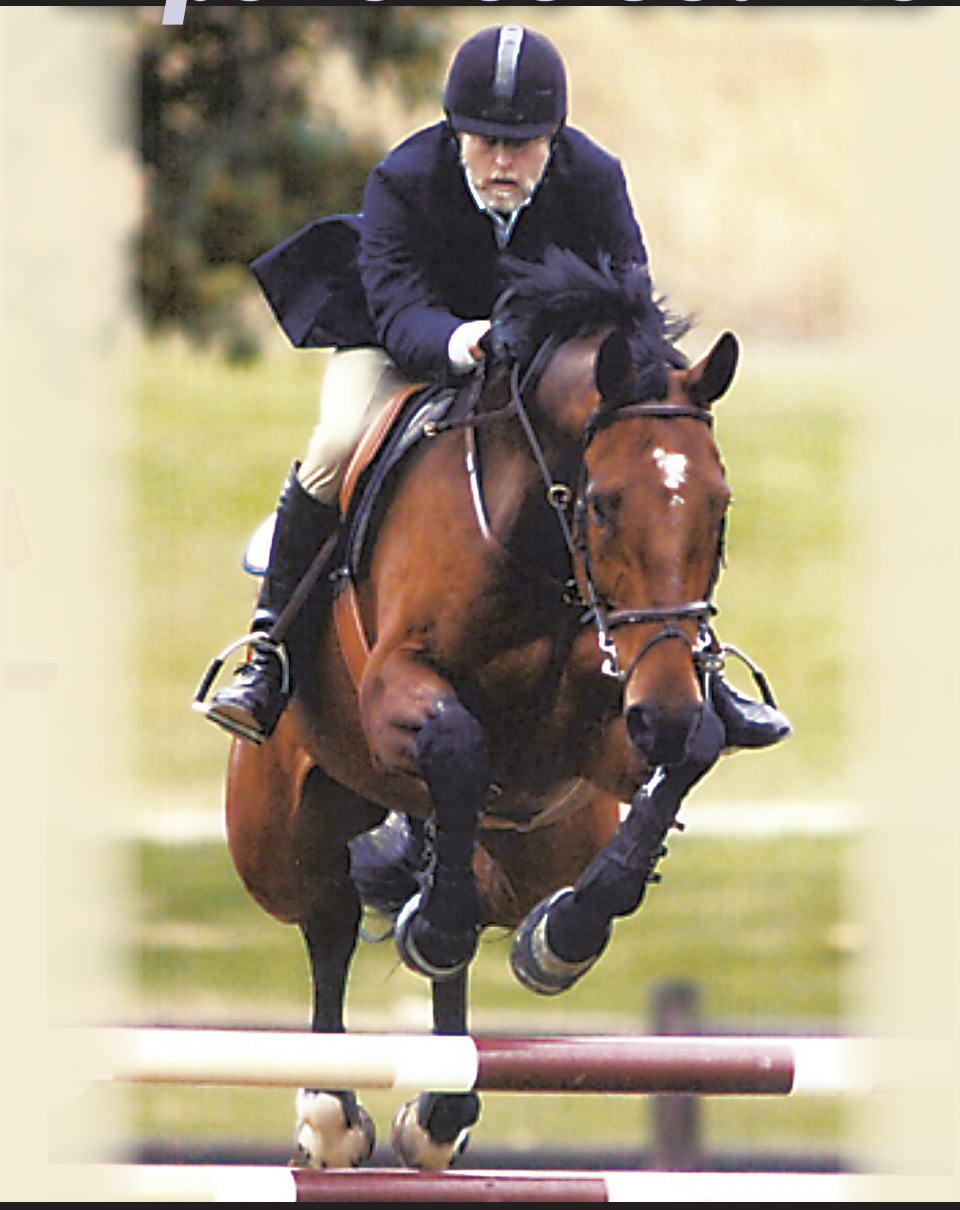

Martin Lawler and Big Sur, Pebble Beach, CA

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Staff fluent in Mandarin, Cantonese, Spanish & French

LEFT: A busy day on the exhibition floor at the U.S. Pavilion at the 17th Annual China International Fair for Investment and Trade. **TOP RIGHT:** Leaders of AmCham South China and IIUSA, along with government officials from both the U.S. and China, lead a toast to attendees at the at the CIFIT Annual Reception. **BOTTOM RIGHT:** Harley Seyedin, President of American Chamber of Commerce in South China, waves to the crowd.

Largest-Ever USA Pavilion Sets Records at CIFIT

XIAMEN, China, Sept. 8, 2013 /PRNewswire via COMTEX/ -- Mr. Harley Seyedin, president of The American Chamber of Commerce in South China (AmCham South China), this morning joined Mr. Yuan Rongxiang, Director of Propaganda Department of Fujian Province, Mr. Zhong Xingguo, Deputy Party Secretary of Xiamen, Mr. Wang Qiongwen, Director of Conference and Exhibition Bureau of Xiamen; Peter Dewitt Joseph, the Executive Director of the Association to Invest in the U.S.A. (IIUSA) and senior representatives of the U.S. Consulate General in Guangzhou for the ribbon-cutting ceremony of the "AmCham South China USA Pavilion" at the China International Fair for Investment and Trade (CIFIT).

Taking place at 9:40 in the morning in Hall D of the Xiamen International Conference and Exhibition Center, the event kicked off what is expected to be the busiest year yet for the Pavilion's exhibitors. This is the fifth consecutive year that CIFIT has included a U.S. Pavilion since Mr. Seyedin and former Consul General Robert Goldberg of the U.S. Consulate General in Guangzhou conceived and led the Pavilion's inaugural effort in 2008.

Expected to be the largest of any at the 17th CIFIT, the 700-square-meter USA Pavilion is this year guiding individuals to investment opportunities in addition to its historical focus on larger commercial and industrial partnerships.

In addition to establishing dialogue with potential investors for projects in the United States at the USA Pavilion, the 300 American companies of AmCham South China's delegation will be participating in a variety of other activities at the fair. These include the "U.S.-China Enterprises Investment Cooperation Forum on Energy and Green Innovation", meetings with senior officials from Fujian, Sichuan, Hebei and Chongqing and the chamber's highly-regarded CIFIT Cocktail, this year scheduled for the evening of September 8 at the Westin Xiamen. This year marks the 11th consecutive delegation to CIFIT led by the chamber of commerce.

> "The largest of any at the 17th CIFIT, the USA Pavilion is guiding individuals to investment opportunities in addition to its historical focus on larger commercial and industrial partnerships."

ABOUT THE AMERICAN CHAMBER OF COMMERCE IN SOUTH CHINA

The American Chamber of Commerce in South China (AmCham South China) is a non-partisan, non-profit organization dedicated to facilitating bilateral trade vbetween the United States and the People's Republic of China. Certified in 1995 by its parent organization, the U.S. Chamber of Commerce in Washington, D.C., AmCham South China represents more than 2,000 corporate and individual members, is governed by a fully-independent Board of Governors elected from its membership, and provides dynamic, on-the-ground support for American and International companies doing business in South China. In 2012, AmCham South China hosted nearly 10,000 business executives, government leaders and journalists from around the world at its briefings, seminars, committee meetings and social gatherings. ■

SOURCE AmCham South China

EB-5 IN OUR COMMUNITIES: LET YOUR STORIES BE HEARD!

As part of a sustained effort to drive more support and understanding of the EB-5 industry, IIUSA will be reaching out to our members to chronicle human-interest narratives and success stories which move beyond statistics. In particular, we hope to collect details of Americans working on site, the economic ripple effect felt within the community, and immigrant investor stories of triumph and perseverance. These stories—Your stories— will be profiled on the IIUSA blog and utilized as material evidence to record the benefits of EB-5 capital projects on the U.S. economy.

Send your stories and/or ideas to IIUSA's newest team member, Marketing/Communications Assistant Allen J. Wolff, at allen.wolff@iiusa.org. We hope to hear from you soon! ■

BY THE NUMBERS

753 Days Remaining on the Current Authorization of the EB-5 Regional Center Program

120 Regional Center Members in IIUSA (as of 10/01/13)

$1.4 Billion Federal/state/local taxes generated by the EB-5 Program annually if all 10,000 visas were used and 526 demand stayed at 2010/2011 levels (it has more than doubled since then)*
*(*according to peer-reviewed, IIUSA-commission economic impact report by Minnesota IMPLAN Group (MiG), Inc.)*

166,000+ American Jobs Supported by the EB-5 Program annually if all 20,000 visas are used and 526 demand stayed at 2010/2011 levels (it has more than doubled since thn) at no cost to the U.S. taxpayer.*
*(*according to peer-reviewed, IIUSA-commission economic impact report by Minnesota IMPLAN Group (MiG), Inc.)*

83,000 American Jobs Created by the EB-5 Program annually when all 10,000 visas are used - at no cost to the U.S. taxpayer (according to peer-reviewed, IIUSA-commission economic impact report by Minnesota IMPLAN Group (MiG), Inc.)

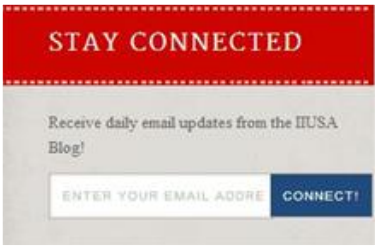
IIUSA MARKETPLACE

IIUSA is pleased to announce the opening of our new online store, IIUSA Marketplace! With this online Marketplace located at **iiusa-marketplace.myshopify.com**, our valuable webinars and products are readily available to our constituents. New products will be added regularly, so check back often! If you have any questions regarding our products, please contact Mirinda James, IIUSA Research / Administrative Assistant, at mirinda.james@iiusa.org.

iiusa-marketplace.myshopify.com

SIGN UP FOR A DAILY EMAIL UPDATE ON THE IIUSA BLOG

Signing up for daily blog post updates via email is easy! Just visit the IIUSA blog website, enter your email where it says "STAY CONNECTED" (on the right side of your screen) and click "CONNECT!" Then follow the instructions to confirm your account.



Doing this will send blog updates directly to your email inbox once per day, keeping you informed of current events, legislation & advocacy updates, new resources and networking tools, and more!

COMMITTEE WORK ABOUT TO BEGIN: STAY TUNED!

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

IIUSA SURPASSES 100 REGIONAL CENTER MEMBERS!

IIUSA is proud to announce that we recently surpassed the 100 mark for Regional Center members! Thank you to everyone for your dedicated support during this time of unprecedented opportunity and challenges for our industry. Our organization, and the industry as a whole, is stronger thanks to your hard work and commitment.

Stay tuned for some new advocacy tools on best practices and economic impact that will equip our industry with the necessary information to engage the public with data-driven industry analysis and powerful anecdotes that drive the real narrative of the 21st century economic development through the Program. ■

A BIG THANKS TO OUR MEMBERS FOR YOUR SUPPORT, AND TO THOSE WHO HELPED MAKE THIS EXCITING MILESTONE POSSIBLE!

Regional Center Member Map

Our Interactive Regional Center Members Map on www.iiusa.org has recently been updated to include each Regional Center's approved industry, geography, and economic model in the display list. If you are a Regional Center member, please visit the site and make certain that all the data associated with your Regional Center is correct. Should there be a need for any edits to your information on the interactive map, please email Mirinda James at mirinda.james@iiusa.org, and she can update IIUSA records.

New administrative appeals reviews are now available for members to view.

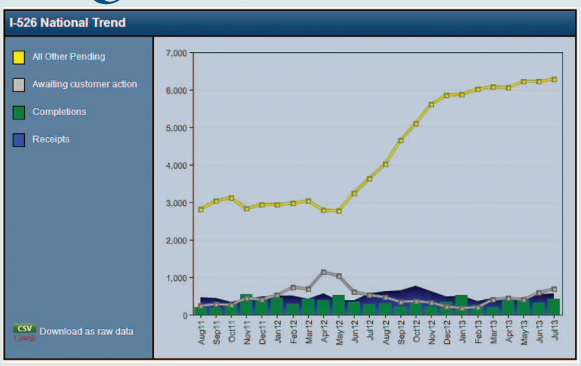
"I3" Online Member Database Update

Presentation materials and content from IIUSA's 3rd Annual International Investment and Economic Development Forum in Las Vegas this past June and are now available exclusively for member viewing on IIUSA's Basecamp Industry Intelligence Online ("I3 Online")! The following materials, and more, are available for full viewing:

IIUSA I-829 Trend Analysis (2010-2011), EB-5 Regional Center Terminations to Date: An Analysis and Look Ahead, Global Competition for Immigrant Investors, EB-5 as Part of the Capital Stack, Tenant Occupancy Economic Impacts, Visitors Spending Economic Impacts, IIUSA-IMPLAN-AUBER Economic Impact Report, USCIS Training Review.

Also, the USICS Administrative Appeals Office recently released new decisions on I-526/I-829 and Regional Center Denials, which we have posted on our Basecamp I3 Online resource archive for members to access on demand.

I-526 Trends



上海德美律师事务所

Shanghai De Mei Law Firm

关于德美

德美律师事务所立足于上海，是一家为广大客户提供全面周到的国内外个人及商业的法律咨询及服务的专业律师事务所。我们的律师执有美国和中国律师执照。我们有专注于从事美国移民法律相关业务的律师，并且擅长于EB-5相关法律事务及很多其他移民法律领域的业务。我们律所已受理了数百位移民家庭申请，为进行他们EB-5移民法律申请程序。

About Demei Law

Demei Law Firm is a Shanghai-based full-service law firm that provides legal consultation and service to both foreign and domestic individuals and businesses. Our attorneys are licensed in the United States and China. Our attorneys are experts on the business of U.S immigration laws with an emphasis on EB-5 related practices. Shanghai Demei Law Firm has filed several hundreds immigrant petitions for EB-5 investors.

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美国联邦、纽约州、威斯康星州执业律师
中国注册律师
美国EB5投资移民行业协会(IIUSA) 国际会员部主任
上海德美律师事务所 合伙人

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9 PROJECTS

2.2 BILLION DOLLARS OF DEVELOPMENT

8,000 JOBS CREATED

639 MILLION DOLLARS OF EB-5

3,500 LIVES CHANGED

U.S. IMMIGRATION FUND

With Regional Centers located in the world's most thriving markets, the U.S. Immigration Fund provides worthwhile opportunities for foreign investors and their families to obtain permanent U.S. residency through the EB-5 Visa Program. With projects ranging from oceanfront resorts to mixed-use developments and government funded incubators in South Florida to ultra-high-end condominiums in the heart of New York, the U.S. Immigration Fund has an investment opportunity to fit the needs of every international investor.

All amounts are estimates based on current and anticipated 2013 EB-5 Projects sponsored by U.S. Immigration Fund.

USI FUND | 1295 US Highway One | North Palm Beach, FL 33408 | 1.855.EB5.USIF | unitedstateseb5.com