

# REGIONAL CENTER BUSINESS JOURNAL

October 2014

IIUSA

ASSOCIATION  
TO INVEST IN USA



*Foreign Investment*

## OPENING THE DOOR

*for Economic Development and the American Dream*

### In this issue:

EB-5: The Innovative "All of the Above"  
Approach to Job Creation

NACo Passes Permanent Resolution  
Supporting EB-5 Program

Cultivating New Partners for EB-5  
Investment in Inner Cities

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

It's Never Too Soon to Begin Preparing for  
I-829 Petition Filings

Removal of Conditions for EB-5 Investors:  
Practical Guidance in Preparing I-829  
Petitions

EB-5 Regulation D Offerings and the  
Impact of New SEC Interpretations  
Regarding Accredited Investors

Entrepreneur Cases Signal EB-5 Eligibility  
Challenges for Small Businesses

Modified Regional Input-Output Model  
from BEA to be Released in 2015

EB-5 Visa Usage and Market Diversification  
CIFIT 2014 Recap





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## LETTER FROM THE EDITOR

DEAR READERS:

For EB-5 investors, the final and decisive stage of immigration processing is the I-829 petition to remove conditions. With a growing number of Regional Center projects reaching this phase in the EB-5 lifecycle, this issue of The Regional Center Business Journal offers some practical guidance for preparing I-829 petitions and keeping a wary eye on the issues that surface in RFEs and denials in I-829 petition cases. EB-5 practitioners will savor a mini-section on the I-829 petition filing process.

In the Advocacy/Research section, we explore how EB-5 funding is a vital tool for economic development and job creation. Two articles in particular, EB-5: The Innovative “All of the Above” Approach to Job Creation, and Cultivating New Partners for EB-5 Investment in Inner Cities, provide concrete examples of how states and municipalities have collaborated to utilize EB-5 capital for funding community-benefitting projects.

The International Perspectives section provides a recap of IIUSA’s trade mission to the China International Fair for Investment and Trade (CIFIT), an event that has become a staple in the yearly calendar for all IIUSA members. Also, the analysis of EB-5 visa usage by country reveals where EB-5 investors are emigrating from, and, perhaps, points to investor markets of the future.

As always, thank you for your continued support of IIUSA and The Regional Center Business Journal as EB-5 Regional Centers attract new immigrants and help to fuel a healthy economy.

**Lincoln Stone**

Chair of the Editorial Committee, IIUSA

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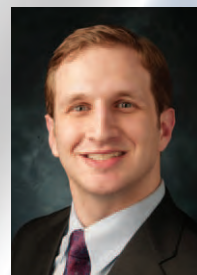
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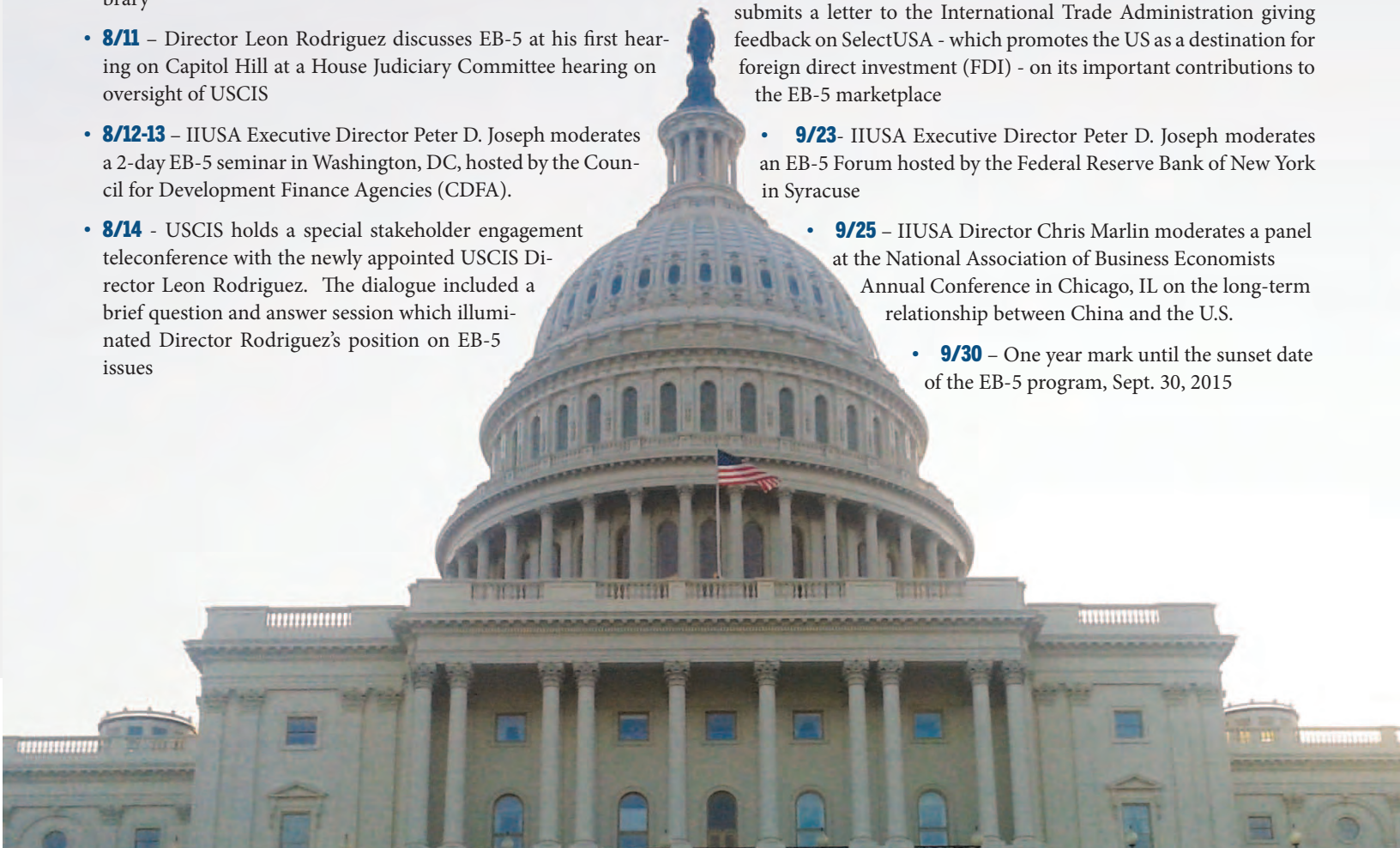
**Bob Honts**, *Texas Lone Star Enterprises*



# Government Affairs Timeline

## 2014

- 6/19** – The first edition of IIUSA's new advocacy e-newsletter, "EB-5 is Working Advocacy Update", is sent to members and Congressional offices
- 6/21** – IIUSA hosts reception atop NYLO Hotel, an EB-5 project, in Dallas for U.S. Conference of Mayors Annual Meeting. Dallas Mayor, Mike Rawlings attends.
- 7/10** – *New York Times* publishes an op-ed by American entrepreneurs and business titans Sheldon Adelson, Warren Buffett and Bill Gates. The piece applauds EB-5 for creating jobs and bringing in foreign investment to the U.S.
- 7/11-12** – NACo passes permanent resolution supporting permanent authorization of EB-5 by Congress
- 7/30** – USCIS holds ELIS system webinar for form I-526
- 8/1** – IIUSA Public Policy Committee establishes a "Regulations Task Force" to develop recommendations to USCIS for its proposed changes to EB-5 regulations
- 8/5** – USCIS holds an ELIS system webinar for their Document Library
- 8/11** – Director Leon Rodriguez discusses EB-5 at his first hearing on Capitol Hill at a House Judiciary Committee hearing on oversight of USCIS
- 8/12-13** – IIUSA Executive Director Peter D. Joseph moderates a 2-day EB-5 seminar in Washington, DC, hosted by the Council for Development Finance Agencies (CDFA).
- 8/14** – USCIS holds a special stakeholder engagement teleconference with the newly appointed USCIS Director Leon Rodriguez. The dialogue included a brief question and answer session which illuminated Director Rodriguez's position on EB-5 issues
- 8/23** – Charles Oppenheim, Chief of the Visas Control Office at the Department of State, announces EB-5 visas for China are unavailable for the remainder of fiscal year 2014
- 8/28** – IIUSA releases a statement on Aug. 27 federal indictment of Mr. Anshoo Sethi. The statement applauds the enforcement of U.S. securities laws, which are a main factor that make the U.S. the number one destination for foreign direct investment
- 9/3** – SEC releases a statement that they, and the Department of Justice, are charging a California Regional Center with defrauding investors through the EB-5 Program. IIUSA immediately announces support of the legal action taken on the non-member regional center to protect investors and the integrity of the EB-5 program from alleged fraud
- 9/6-9/9** – IIUSA leads a 200+ American delegation to the China International Fair for Investment & Trade (CIFIT) in Xiamen, China
- 9/10** – USCIS holds its Quarterly EB-5 Stakeholder Engagement call IIUSA submits several questions regarding statistics, administration, and policy of the Program
- 9/16** – At the request of the US Department of Commerce, IIUSA submits a letter to the International Trade Administration giving feedback on SelectUSA - which promotes the US as a destination for foreign direct investment (FDI) - on its important contributions to the EB-5 marketplace
- 9/23** – IIUSA Executive Director Peter D. Joseph moderates an EB-5 Forum hosted by the Federal Reserve Bank of New York in Syracuse
- 9/25** – IIUSA Director Chris Marlin moderates a panel at the National Association of Business Economists Annual Conference in Chicago, IL on the long-term relationship between China and the U.S.
- 9/30** – One year mark until the sunset date of the EB-5 program, Sept. 30, 2015







# EB-5:

## The Innovative “All of the Above” Approach to Job Creation



**BY PETER D. JOSEPH**

IIUSA EXECUTIVE DIRECTOR

**W**ith second quarter numbers squarely in the books, we’re seeing evidence of the economy’s slow but sure recovery. And

while a healthy 4.6 percent annual rate increase of the GDP means that the U.S. could see the strongest stretch of economic growth

since 2004, job creation remains largely inconsistent.

For six years now, political leaders from both parties have produced a litany of proposals to jump start not only employment in America, but investment in critical industries. Consider the calls for expanding domestic energy production, the federal investments made in research and development and shovel-ready infrastructure projects, and an emphasis on education programs that train workers for jobs of the future. The truth is, in

today’s competitive global economy there is no silver-bullet to create jobs. We need an “all of the above” approach to grow the economy in a lasting and meaningful way.

One of the already existing strategies that merits increased support is the EB-5 foreign investor visa program – a program designed to attract foreign direct investment in job creating businesses and projects while encouraging immigration of entrepreneurs from around the world at no cost to the U.S. taxpayers.





The EB-5 program was authorized by Congress in 1990, with bipartisan support, and has grown exponentially in the last few years. Today, EB-5 investments contribute much-needed capital to many of the industries targeted by policymakers as those primed for growth – healthcare, alternative energy, science and technology fields – as well as those that really needed a post-recession lift, like commercial real estate development.

In upstate New York, EB-5 investments helped get the award-winning Gates Vascular Institute up and running – supporting thousands of jobs in the Buffalo area – while EB-5 funds in Arizona were critical in launching the Green Valley Hospital, set to open early next year. SolarMax, a large solar panel manufacturing and installation facility currently revitalizing the economy in Riverside County, California, used EB-5 capital to get started; as did the first new ethanol facility in North Dakota.

In Philadelphia, \$18.5 million in EB-5 capital supported development at the Philadelphia Naval Shipyard, a site that once housed numerous military facilities. After rehabilitating the site for commercial tenants, the Navy Yard is now an important regional employment center home to 130 companies and 10,000 employees. Similar developments in California funded by EB-5 turned a defunct military base into a thriving regional airport and business distribution center.

Unfortunately, much of the good EB-5 contributes to our economy is overshadowed by persistent misunderstandings about the program, and the bad acts of a few.

In the last year, a handful of high-profile cases of fraudsters manipulating the program for their own gain have come to light. As the Executive Director of the Association to Invest in the USA (IIUSA), the leading trade association of EB-5 regional centers, I have stood shoulder to shoulder with the U.S. Citizenship and Immigration Services (USCIS) and the Securities Exchange Commission (SEC) to take action against such criminals

and strengthen the oversight provisions governing EB-5. As an example of this ongoing effort, IIUSA filed an amicus brief supporting SEC action in one case and is advocating for a number of measures included in congressional immigration reform bills that would protect the integrity of the program.

But the misdeeds of a few shouldn't be used to color an entire industry. The fact is, the positive impact of EB-5 investments is felt in communities across the country that have seen new business and economic development projects get off the ground as a direct result.

Indeed, a comprehensive economic impact study found that investments made in FY2012 through EB-5 contributed \$3.39 billion to U.S. GDP and supported over 42,000 U.S. jobs overall.

Under the program, foreign nationals who invest between \$500,000 and \$1,000,000 dollars in approved U.S. businesses are eligible for permanent residency if their investment creates or saves at least 10 American jobs within two years. By law, there can be no guaranteed return for an EB-5 investment. Investors must accept the same risk that exists with investments in stocks or equity funds. And, the legally required job creation must be demonstrated to receive the immigration benefit. As part of the application and review process, EB-5 investors must show that their investment funds were earned lawfully and they are subject to the same background checks and national security screenings as applicants in any other visa category.

More than 20 countries, including Australia and the United Kingdom, use similar programs to attract foreign investments – but most do not require the level of risk or proof of job creation that the U.S. program requires.

The fact that the EB-5 program has grown exponentially in the last few years – even with more stringent risk requirements than similar programs in other countries – says a lot about the global desire to be part of the American

dream.

It also speaks to global confidence in the American economy and in the American legal and regulatory system. Investors must accept risk and do their own due diligence, but they also need to know that there is a system in place to protect them or seek redress. A silver lining in recent enforcement actions is the strong signal sent to the marketplace that U.S. enforcement agencies will take action if anti-fraud and securities laws are broken.

As the EB-5 program realizes its potential, oversight by enforcement agencies and administration of the program must come of age as well. In the last year, USCIS has added expertise to evaluate proposed EB-5 projects and job creation data and beefed up interagency collaboration, particularly when it comes to background checks and national security screenings. Additional measures aimed at strengthening program oversight were passed as part of the Senate immigration bill, and are included in several House of Representatives proposals.

Congressional Districts across the country are seeing the benefit of EB-5 investments in their communities and should pass these reforms to permanently authorize the EB-5 program. With job growth continuing to fluctuate and the competition for investment dollars increasing, we need EB-5 on the list of strategies to help keep our economy growing. ■

*With only a year between now and the sunset date of the Program, IIUSA will make advocacy a focal point of its upcoming Market Exchange in San Francisco. The conference, being held October 22-24, will serve as a perfect opportunity to engage the wide network of EB-5 supporters, and work together toward permanent authorization. An Advocacy Center will be set up within the conference, allowing attendees to use IIUSA's Legislative Action Center on-site to send letters to their members of Congress. This earns them an "EB-5 is Working" pin, signifying they are an active advocate and encourages their peers to take action too.*



# NACo Passes Permanent Resolution Supporting EB-5 Program with Help from IIUSA Association Building Committee



**BY ASHLEY SANISLO  
CASEY**

IIUSA ADVOCACY & RESEARCH  
COORDINATOR

In early July, IIUSA Advocacy & Research Coordinator, Ashley Sanislo Casey and IIUSA Secretary-Treasurer and chair of IIUSA Association Building Committee (ABC), Bob Honts, traveled to New Orleans, LA for the National Association of Counties' (NACo) 79th Annual Meeting. The purpose of the trip was to lobby for a permanent resolution by NACo in support of the EB-5 Regional Center Program.

IIUSA secured a temporary resolution in February 2014 at NACo's Legislative Conference, but in order to secure a permanent one, the resolution needed to be accepted by the Board of Directors at the Annual Meeting. Casey and Honts made themselves available, armed with advocacy materials and the latest edition of *The Regional Center*



*Business Journal*, to educate and answer questions from county commissioners at the Community, Economic & Workforce Development Steering Committee meeting. The committee unanimously accepted the resolution, passing its recommendation on to the full Board for a vote.

At the end of the conference, the Board of Directors voted in support of the EB-5 resolution, which now stands as a permanent fixture on NACo's Platform and Resolutions. It reads:

**“The National Association of Counties (NACo) supports federal legislation to permanently authorize the EB-5 Regional Center Program and to maximize its capacity for economic impact and job creation.”**

The Association Building Committee was established to form strategic partnerships and gain support from organizations like NACo that see the benefits of EB-5 and the real impacts it has on communities. This permanent resolution is the committee's first big accomplishment, only two months into operating. Other organizations, including the U.S. Conference of Mayors and the Council for Development Finance Agencies, have passed resolutions or formed strategic partnerships with IIUSA, pointing to the broad support of the industry and the far-reaching impacts it has all around the country.

Additionally, NACo's news publication *County News* published an article in its August 25 issue about the success of counties utilizing EB-5 for local economic development. Riverside County in California was highlighted for its use of EB-5 to spur innovation in expanding its green energy, medical and recreational-tourism sectors. Pima County, AZ also has benefited from EB-5 funding which allowed for the construction of a 50 bed full-service general and acute care hospital. Ray Carroll, Pima County Supervisor, said, “On top of this critical community development, Pima County will see employment and quality of life rise significantly. Projects like the Green Valley Hospital simply would not exist today without EB-5 investment funds.”

IIUSA is proud to have NACo's official support to ensure the EB-5 Regional Center Program may continue to stimulate local economies and create jobs for American citizens. It is important that local elected officials see the value in the Program as a regional economic development tool and IIUSA is grateful to move forward in this year to reauthorization with such a respected and influential partner like NACo. **Thank you for your support. ■**

## Alice H. Sun

ATTORNEY AT LAW, AILA MEMBER, IIUSA MEMBER

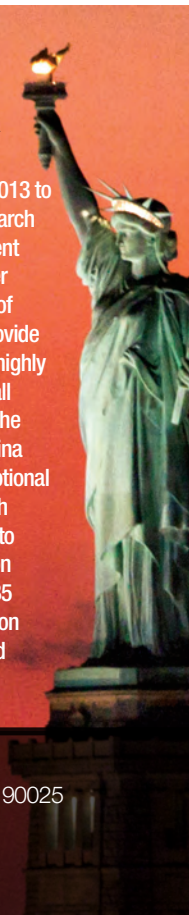


Alice H. Sun, member of AILA (1996 to present) and IIUSA (2013 to present), has been doing research and practice of EB-5 Investment Visa laws since 1994. Together with highly experienced staff of the law firm, she strives to provide outstanding legal advice and highly successful representation to all

EB5 clients. Having a Master's Degree of Law from the Chinese Academy of Social Sciences in Mainland China and a J.D. degree in the United States, she has exceptional ability to communicate sophisticated legal terms with EB5 investors in both Chinese and English language to enhance effective and successful legal representation of EB-5 Investors. Alice H. Sun also hosts periodic EB5 seminars for potential investors and foreign emigration agencies to promote understanding of EB-5 laws and EB-5 regional center projects.

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## EB-5 OFFERING - CHECKLIST

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- ☒ Securities Attorney
- ☒ Corporate Attorney
- ☒ Economist (Job Study)
- ☒ Bus Plan Writer ("Matter of Ho")
- ☒ Feasibility Study
- ☒ Regional Center
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# 2014 MEDIA REPORT: EB-5 IN THE NEWS

**W**ith three quarters of the year in the books, now is the perfect time to review media coverage of the EB-5 Program thus far in 2014. The growth of the EB-5 Regional Center Program continues to underscore a narrative that the infusion of capital to development projects in communities around the country is good for America.

As EB-5 stakeholder continue to push for a permanent and successful immigrant investor program in the United States, a unifying theme has emerged. And that theme is EB-5 is Working. The selected quotes below represent a growing consensus that EB-5 stands for long-term job creation and diversified economic development while maintaining high ethical standards.

*"We believe that America's self-interest should be reflected in our immigration policy. For Example, the EB-5 "immigrant investor program," created by Congress in 1990, was intended to allow a limited number of foreigners with financial resources or unique abilities to move to our country, bring with them substantial and enduring purchasing power...People willing to invest in America and create jobs deserve the opportunity to do so."*

—**SHELDON G. ADELSON, WARREN E. BUFFET AND BILL GATES** (*New York Times*)

*"Finding the EB-5 program was a god-send for Pima County (AZ). Access to a state-of-the-art medical facility like the Green Valley Hospital is long overdue for our constituents. On top of this critical community development, Pima County will see employment and quality of life rise significantly. Projects like the Green Valley Hospital simply would not exist today without EB-5 investment funds."*

—**RAY CARROLL**, PIMA COUNTY, ARIZONA SUPERVISOR (*NACo County News*)

*"EB-5 is a program that's a four-way win. It's a win for US tax payers because it brings in foreign money to help develop projects at no expense to the taxpayer. It's a win for U.S. workers because it creates jobs. It's a win for U.S. project developers because it allows them to get money for projects that might not be able to get otherwise. It's also a win for the foreign investors because they get a green card from their investment in United States."*

—**STEPHEN YALE-LOEHR**, OF COUNSEL, MILLER MAYER LLP; PRESIDENT EMERITUS, IIUSA (*The Wall Street Journal*)

*"The EB-5 Regional Program is a great example of creating partnerships that build innovative economic development tools that can strengthen our economy and enhance our competitiveness. It is among the most successful economic initiatives passed by Congress in the past quarter century and should be permanently authorized."*

—**U.S. REPRESENTATIVE HENRY CUELLAR** (TX-28) (*mysanantonio.com*)

*"We're very grateful for the monetary support that EB-5 investors have lent to the city and county of San Francisco. EB-5 is a model program for the community, city and really the nation."*

—**DR. VERONICA HUNNICUTT**, CHAIRWOMAN OF THE SAN FRANCISCO CITIZENS ADVISORY COMMITTEE (*Huffington Post*)

*"Just last year, the EB-5 Jobs for Massachusetts regional center completed the renovation of Studio 52 in Boston's Allston neighborhood. The site had been a defunct clothing factory and a blight to historic Everett Street. By partnering with local developers, EB5MA helped raise almost half of*

*the \$2.5 million needed to convert the space into a contemporary music recording and community artist space. The studio is now a needed resource for students and the local music industry, and has added nearly 80 jobs to the Allston workforce."*

—**JILLIAN FORTUNA**, COO, EB-5 JOBS FOR MASSACHUSETTS, INC. (*Boston Business Journal*)

*"New York, San Francisco and other traditional immigrant destination cities have long understood that while immigrants seek out American cities as proverbial lands of opportunity, these newcomers also drive economic growth. A recent influx of immigrants is also helping to stabilize declining older industrial cities such as Detroit, Cleveland, Syracuse and Toledo that have been losing residents for decades. As smaller cities across the U.S. are realizing this potential economic impact, many are enacting local initiatives to help draw more immigrants to their communities."*

—**KIM ZEULI**, SENIOR VICE PRESIDENT, INITIATIVE FOR A COMPETITIVE INNER CITY (*Governing Magazine*)

*Regarding scrutiny of the EB-5 Program by federal regulators: "We applaud it. We want there to be more of it. It has to be made clear what the standards are."*

—**GINNY FANG**, CEO, GOLDEN GATE GLOBAL (*San Francisco Chronicle*)

*"The EB-5 program has now become a tangible capital market, so there is a diversification in industries that are now benefiting from it."*

—**PETER D. JOSEPH**, EXECUTIVE DIRECTOR, IIUSA (*Urbanland Magazine*) ■



- + Experience from the very beginning of EB-5 law
- + Provides a full scope of legal services for investors, projects and regional centers
- + Renowned attorney, lecturer and author
- + Specialist in Immigration and Nationality Law\*

**I-526 | CP/I-485 | I-829 | I-924**

David Hirson is a premier immigration attorney and among the best of the best of the EB-5 industry. With a full scope of investment immigration services, attorney Hirson has guided countless clients to EB-5 success in his more than 30 years of practice. Present in the U.S. Senate when the original EB-5 legislation was being debated, attorney Hirson went on to file hundreds of EB-5 cases of all types. He continues to do so under his new practice, David Hirson and Partners, LLP. Now Hirson leads a dedicated team of EB-5 legal professionals and is a recognized, trusted expert in the field.



**David Hirson, Managing Partner | David Hirson & Partners LLP**

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\*Certified by the State Board of California, Board of Legal Specialization  
as a Specialist in Immigration and Nationality Law

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# Cultivating New Partners for EB-5 Investment in Inner Cities



**BY KIMBERLY ZEULI**

SENIOR VICE PRESIDENT AND  
DIRECTOR OF RESEARCH, ICIC

**T**he Initiative for a Competitive Inner City (ICIC) was founded in 1994 by Harvard Business School Professor

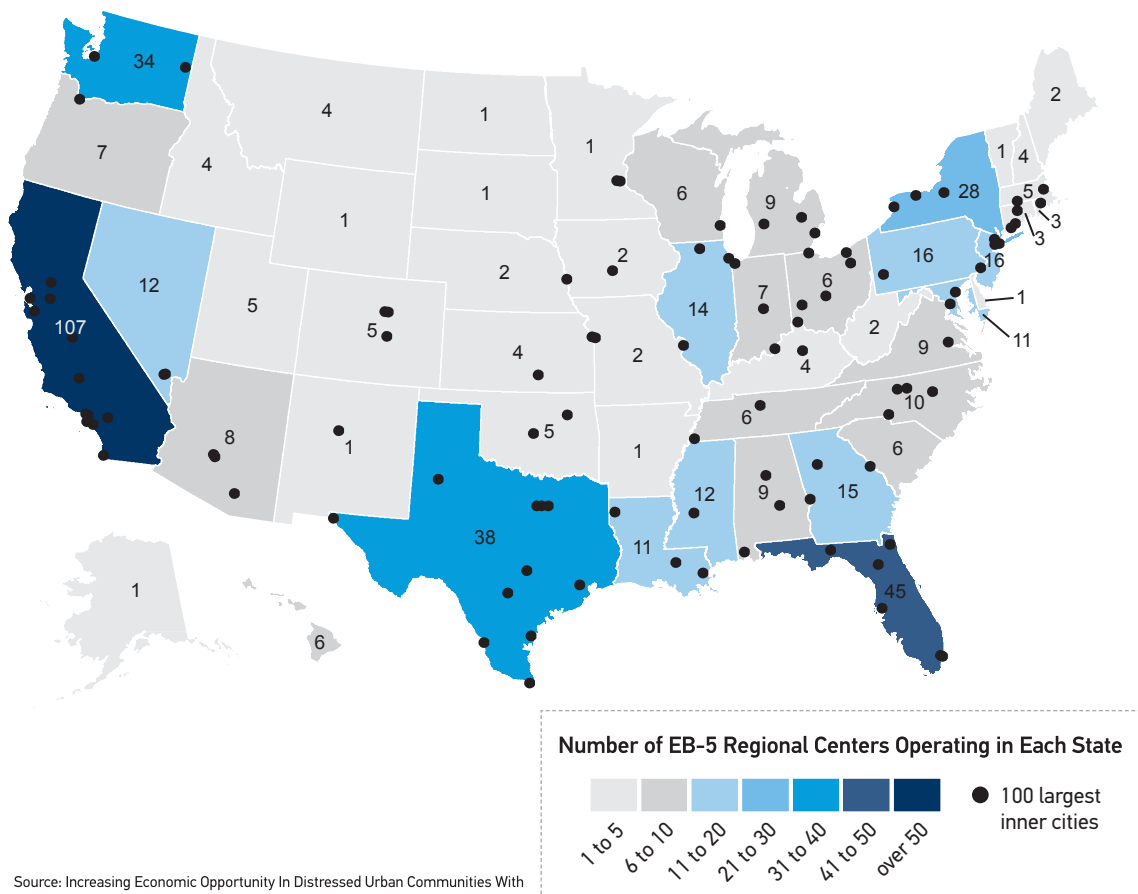
Michael Porter with the mission to promote economic prosperity in America's distressed urban economies through market-based solutions. As he argued in his seminal *Harvard Business Review* article, the strategic location, local demand, regional industry connections and underutilized workforce within these "inner cities" offer unique competitive advantages for businesses. Since its inception, ICIC has worked with leaders in over 50 cities to analyze their inner city assets, develop robust

economic development strategies and support inner city entrepreneurs.

A common challenge across cities is insufficient capital, especially to support inner city economic development. The EB-5 program has the potential to channel more capital, up to \$5 billion - \$10 billion annually, to community and economic development projects in underserved neighborhoods. ICIC spent the past year analyzing the potential of the program, which included interviewing over 50 EB-5 experts and economic development professionals. We also contacted all of the regional centers and identified over 175 EB-5 projects in large and small cities across the U.S. The complete list of projects, and more insights from our research, can be found in the recently published report: *Increasing Economic Opportunity in Distressed Urban Communities with EB-5* (<http://www.icic.org>).

One issue we were interested in was the scope of coverage of EB-5 regional centers. Or more specifically, were they serving inner cities? At the time of our analysis (February 2014), there were 432 EB-5 regional centers operating across the country (see map). The lack of publicly available data on actual EB-5 investment projects makes it challenging to analyze the real scope of the program. However, some conjectures can be made by mapping the location of regional center operations. We found that 60 of the regional centers are approved for operations in more than one state and the states with the most regional centers operating within their boundaries are California, Florida, Texas, Washington, and New York. The more populous states have more EB-5 regional centers authorized to operate within their boundaries, but every state has at least one regional center with the authority to operate there.

**Geographic Scope of Operations by EB-5 regional centers by State, 2013**



Source: Increasing Economic Opportunity In Distressed Urban Communities With EB-5, ICIC (2014); USCIS (Feb. 2, 2014) N = 432 unique regional centers

One should not conclude from this analysis that EB-5 investment is occurring in all of these areas. Many regional centers are still new and not actively investing. Also, the regional centers may not be serving entire states, but only certain counties or regions. Some cities, and some inner cities, may not be adequately served by a regional center. However, our analysis also suggests that there is a significant opportunity to leverage regional centers for inner city investment. A large number of regional center headquarters are located near inner cities and 92 percent of regional centers are approved to operate in states with at least one of the largest inner cities in the country. Fifty-eight percent of inner cities have unemployment rates of

CONTINUED ON NEXT PAGE >>

at least 150 percent of the national average, which qualifies them as targeted employment areas (TEAs) and makes them competitive locations for EB-5 investment.

The proliferation of new regional centers (579 as of June) is most likely expanding the geographic coverage of regional centers but also creating a more competitive market. Partnering with economic development professionals, foundations and other organizations actively promoting inner city investment can help surface a robust pipeline of suitable investment opportunities. Aligning EB-5 regional center priorities with economic and community development priorities will help ensure that EB-5 capital is being used as originally intended, which is to support projects that would not have been funded otherwise. It will also help channel resources to transformative projects that create high-quality jobs in the areas that need it most. In turn, the impact of EB-5 projects will be maximized if they are part of a larger economic development plan since they can catalyze additional development, leverage resources of multiple public and private partners and benefit from a growing local economy.

Community and economic development organizations could be helpful leveraging public financing resources. The Brooklyn Navy Yard Redevelopment Project, for example, leveraged \$60 million from EB-5 investments with \$81 million in equity from federal, state and local government. The EB-5 projects we studied in Miami and Dallas utilized New Market Tax Credits, Enterprise Zone tax credits, tax increment financing and Recovery Zone Facility Bonds. Foundation may also be interested in investing in, or providing grants to, EB-5 projects or regional centers. The Surdna and Garfield foundations, for example, provided grants to Asian Americans for Equality (AAFE), a community development organization, to support the creation of a new regional center in New York's Chinatown. Foundations could directly invest in EB-5 projects by structuring below-market loans or subordinated equity investment to fill gaps in capital stacks. Foundations that make program-related investments (PRIs), which are investments in charitable organizations or in commercial ventures for charitable purposes that involve a potential return of capital, could also potentially invest in EB-5 projects. Structuring a deal with foundation investments may have the same appeal to foreign investors as projects with strong local or state government support.

A strong partnership between EB-5 regional centers and community and economic development organizations could also help support smaller EB-5 projects. When the EB-5 program was first started the capital was often used for smaller projects such as restaurants and retail businesses. However, smaller projects, especially when they are in smaller cities, are finding it difficult to attract EB-5 investors. And yet, this type of project may be what is needed most in some inner cities. The over 175 EB-5 projects we identified included many large real estate development deals. But we also found smaller, innovative EB-5 deals, such as a charter school operation and a trucking company, which focused on social and economic returns. Keith Burwell, President of the Toledo Community Foundation, has tried to cultivate EB-5 investors for viable, but smaller, community development projects and has had limited success. The challenge, he said, is that "Toledo is a very different market. We do not have the economy or demand for large real estate projects. We're trying to figure out how to position smaller projects at the neighborhood and community level in a market bombarded with large real estate deals."

Smaller cities, especially in the rust belt, could provide significant opportunities for EB-5 investment. There is a new awareness in some of these cities that immigrants can drive economic growth, especially in distressed urban areas. A recent influx of immigrants is helping to stabilize declining older industrial cities such as Cleveland, Toledo, Detroit and Syracuse that have been losing residents for decades. New York, San Francisco and other traditional immigrant destination cities have long understood that while immigrants seek out American cities as proverbial lands of opportunity they can also play a significant role in urban economies by creating new jobs and investing in development. As smaller cities across the U.S. are realizing this potential economic impact, many are enacting local initiatives to help draw more immigrants and investment to their communities.

Yet, in most cities there is typically a weak, if any, relationship between community and economic development organizations and EB-5 regional centers. A combination of factors seems to have created this issue. The largest barrier is the relatively obscurity of the program. Since the federal government does not actively promote it as an economic development tool, it does not get the same attention in the economic development field

as New Market Tax Credits and other federal incentive-based financing programs focused on stimulating private sector investment in distressed communities. Unfortunately, this vacuum of information has been partially filled by media stories on high-profile cases of EB-5 fraud that have tarnished the program's reputation. The government's lack of transparency about EB-5 projects helps to fuel further skepticism about the program.

EB-5 regional centers, and professional associations such as IIUSA, can help fill this information void by supporting stronger educational and outreach campaigns. Additional research is also needed to provide a comprehensive picture of the wide variety of projects being funded with EB-5 capital, especially in inner cities. The job-creation requirement of the EB-5 program means that it has the potential to generate 100,000 jobs annually in areas of high-unemployment. Our limited research found that most of the jobs initially created by EB-5 capital were linked to construction for real estate projects. More research is also needed to fully analyze the number and quality of jobs created by EB-5 capital.

Regional centers that have strong partnerships with local government officials, economic development organizations and community organizations should provide the best opportunities for investing in projects that create the greatest impact on the local economy. Investment opportunities that are integrated into municipal economic development plans will have a stronger connection to the city's competitive advantages. Organizations that focus on the inner city like ICIC hope to see that the limited resources target transformative projects that support urban entrepreneurs and create high-quality jobs. Aligning EB-5 center priorities with economic and community development priorities will help move the program in the right direction. ■

*Founded in 1994 by Harvard Business School Professor Michael Porter, the Initiative for a Competitive Inner City (ICIC) is the leading authority on U.S. inner-city economic development with a reputation for effectively helping cities to develop strategies that capitalize on a community's unique competitive advantages. ICIC's mission is to promote economic prosperity in America's inner cities through private sector engagement that leads to jobs, income and wealth creation for local residents.*





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# THE LATEST ANALYSIS OF WHAT USCIS LOOKS FOR IN EB-5 I-829 RFEs and Denials



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## INTRODUCTION

In three previous articles, published in 2012, 2013, and early 2014, we analyzed and interpreted over 2,700 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 three 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 the previous requests ranged from 2008 to early 2013. In mid-2014 IIUSA received an additional 1,068 pages of I-829 responses.

This article expands on our three previous articles by analyzing a number of recent EB-5 I-829 petitions from 2013 and one from 2014. The current article expands on the previous 509 cases by adding an additional 245 petitions. The fourth of its kind, this article cumulatively analyzes all four FOIA requests, which total 3,801 pages and 754 I-829 petitions.

This series of articles analyzes real USCIS responses to I-829 petitions. The materials released in response to the four 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. In 2012, Congress reauthorized the regional center program through September 30, 2015. Today, there are nearly 600 approved EB-5 Regional Centers. By comparison, 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,” and EB-5 filings have increased year over year for the past several years. In fiscal year 2013, the U.S. government issued 8,564 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 and denials released by USCIS to IIUSA in July, 2014 (the fourth 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 Ap-



peals Office (AAO) unless USCIS itself certifies the case to the AAO. After an I-829 denial 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 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 245 case responses from the latest FOIA request responses and coded them into an Excel document called "I-829 cumulative Excel 8.28.14.xlsx." We preserved the 509 case responses from the earlier FOIA requests (167, 302, and 40 responses, respectively) and incorporated them into this Excel document as well. Finally, we aggregated the data from the four requests to show trends over time. We used pivot-tables and pivot-charts to map the trends, one of which is reproduced below.

## RESULTS AND ANALYSIS

### FOURTH FOIA RESPONSE

USCIS I-829 RFEs and denials in the latest FOIA response typically identified one or more of the following issues: job creation, sustaining the investment, redemption, miscellaneous, material change, and business plan. There were no pooled trust issues in the latest FOIA response. 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 34% of the cases analyzed in the latest FOIA response. Sustaining the investment arose in 61% of cases. Redemption issues arose 6% of the time. Miscellaneous issues accounted for 29% of cases. All other issues arose less than 5% 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 several 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;
- 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 individu-

CONTINUED ON NEXT PAGE >>

al 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 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

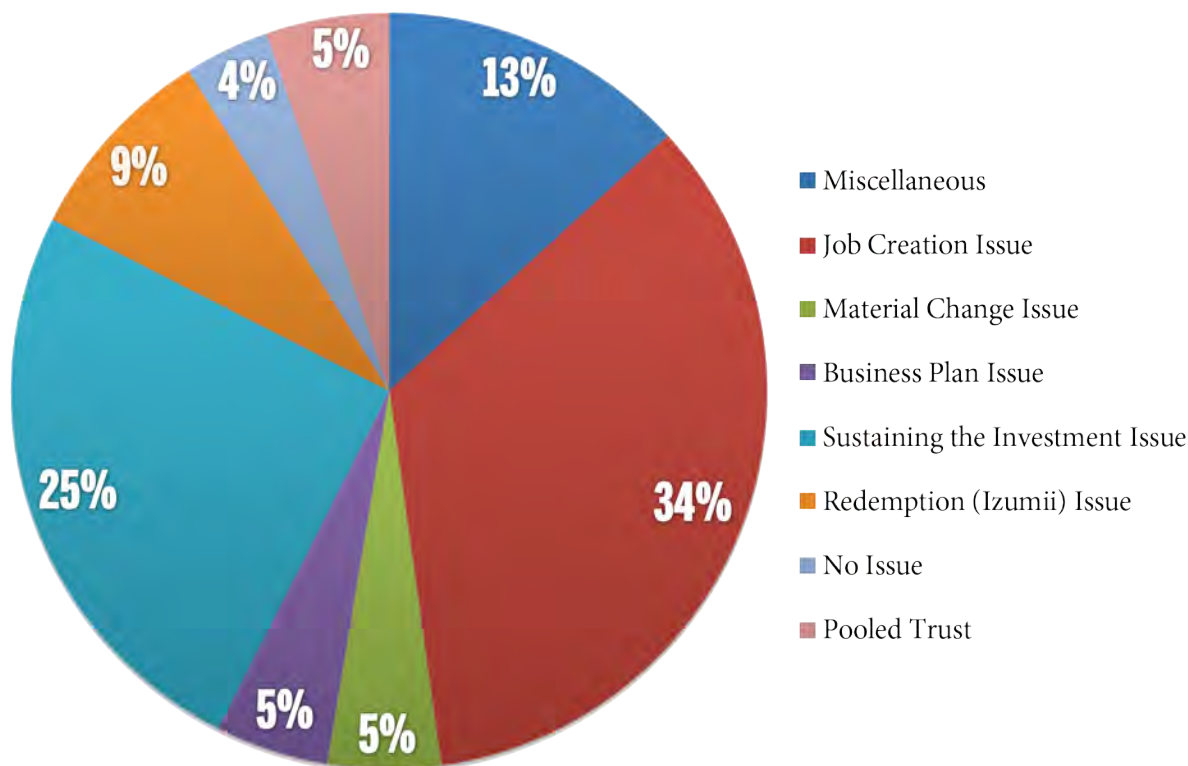
guidelines in determining whether or not the evidence submitted for benefits meets the regulatory guidelines needed to be granted the benefit. In this instance, as noted above, the information provided with the filing of the instant petition does not meet EB-5 guidelines.

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.

## CATEGORIES OF I-829 RFEs AND DENIALS BY PERCENTAGE







## BIOMETRICS REQUESTS AND OTHER ISSUES IN THE FOURTH FOIA RESPONSE

Numerous I-829 RFEs and denials issued in 2013 concerned the failure to supply updated biometric information. These RFEs and denials concerned investors in the Chang class action litigation. That case, filed in 1998, challenged the retroactive application of new rules applied by the legacy Immigration and Naturalization Service to EB-5 investors. The Ninth Circuit ruled in 2003 that the agency could not apply its new EB-5 interpretations retroactively to investors who had already obtained conditional resident status. The case was eventually settled fifteen years later, in March 2013. The settlement agreement provided for the approval of I-829s for class members, contingent upon the completion of certain conditions, including the submission of updated biometric information for criminal and national security background checks. If Chang class members failed to supply their biometric information, RFEs, and then denials, followed. In our view, the RFEs and denials relating to the Chang case were a one-time event and are not relevant in analyzing general I-829 trends.

Somewhat more surprising in the latest batch of I-829 RFEs and denials was an increase in RFEs on sustaining the investment. However, often there was not much information as to why that issue arose in a particular case. Many RFEs simply consisted of the same boilerplate language asking for additional information, such as updated K-1 annual statements.

A few miscellaneous issues arose because the applicant was already an unconditional permanent resident by the time their I-829 petition was reviewed. In several of those

cases, the EB-5 investor had invested in one EB-5 project that ran into difficulties, withdrew their money, and invested in a second EB-5 project. They then obtained an I-829 approval in the second project. They apparently failed, however, to withdraw their first I-829 petition.

## CUMULATIVE ANALYSIS

Cumulatively, this series of articles analyzed 754 USCIS responses from a six-year period ranging from 2008 to early 2014. The most prevalent issue, as in our previous articles, overall was job creation. Overall, job creation issues arose in 34% of the I-829 RFEs and denials that we reviewed. Although the percentage of job creation issues fluctuates from year to year, job creation has always been the most prevalent issue, except in 2013. 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, USCIS 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 similar rates. Given the small differences between the rate of occurrence of these issues in the six-year period and 754 cases, it is statistically impossible to differentiate the relative importance of each of these issues.

## CONCLUSION

In total, IIUSA's four FOIA requests resulted in the cataloguing of 754 USCIS I-829 RFEs and denials. Although some years had smaller samples than others, certain trends have remained constant in the six-year cross-section these FOIA requests encompass. It is clear, for example, that job creation is the most prevalent issue in USCIS RFEs and denials.

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. This latest FOIA contained cases adjudicated as recently as January, 2014. However, since then USCIS has approved over 800 and denied nearly 100 I-829 petitions. Moreover, as of June 30, 2014, USCIS had a backlog of nearly 1,800 I-829 petitions. Thus, our sample of 754 cases 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 reveal a glimpse at USCIS' EB-5 priorities in I-829 adjudications. ■

# IT'S NEVER TOO SOON TO BEGIN PREPARING FOR I-829 PETITION FILINGS



## BY REID THOMAS

EXECUTIVE VICE PRESIDENT,  
NES FINANCIAL

**W**hile EB-5 can be an attractive source of capital for

U.S. based developers and entrepreneurs, it is first and foremost an immigration program. The primary motive for foreign investors looking to invest in the program is to receive U.S. permanent residency. A Green Card without conditions is the ultimate goal. This milestone is achieved upon approval of the Investors' I-829 petition (Petition by Entrepreneur to Remove Conditions).

The requirements for a successful I-829 petition include:

- The timely filing of the I-829 petition. USCIS requires filing of an I-829 petition within the 90-day window immediately prior to expiration of the two-year con-

ditional residence period. Note that the conditional residence period begins on the date of entry, not on the date of the I-526 approval.

- Evidence that the new commercial enterprise, as described in the I-526 petition, has been created.
- Evidence that the full amount of the requisite capital was invested (i.e. \$500,000 for an investment into a project in a Targeted Employment Area).
- Evidence that the investment has been sustained at risk throughout the two-year conditional residence period and utilized for job creation purposes.
- Evidence that the investment resulted in the creation of 10 full-time jobs (or will create jobs within a reasonable period of time).

For EB-5 Issuers, getting this right is critical. Ultimately the Issuer, and the whole EB-5 program will only succeed if investors are

successful in achieving their primary objective, an I-829 petition approval. From the investors' perspective the stakes are enormous. At the point of I-829 submission the investor and family are typically well established in the U.S. and if something goes wrong, investors do not have the option to appeal, – instead, the process moves straight to a deportation hearing. A successful I-829 petition approval is the key success objective for all EB-5 stakeholders.

To quote Benjamin Franklin, "By failing to prepare, you are preparing to fail". Preparation for the I-829 petition should begin at the outset of launching the EB-5 project to achieve the highest I-829 success rates.

The EB-5 Issuer should start by consulting their immigration counsel and identifying the key pieces of evidence and data that they plan to include in the I-829 petition. The following table provides some examples of the types of evidence that could be used.

I-829 REQUIREMENT	EVIDENCE
The NCE was established	<ul style="list-style-type: none"> <li>• Corporate Documents supporting formation or certificates of good standing</li> <li>• Federal income tax returns</li> <li>• Progress updates provided to investors</li> <li>• Bank Statements for the NCE</li> <li>• Monthly, quarterly &amp; annual statements summarizing complete list of investors, and investor funds flow</li> </ul>
Full Capital Amount invested	<ul style="list-style-type: none"> <li>• Investor Contact Information and Identification</li> <li>• Up-to-date OFAC status</li> <li>• Bank account numbers</li> <li>• Account balance statement, including available funds</li> <li>• Log of all account activity showing inflows and outflows into escrow and NCE</li> <li>• Wire receipts (in &amp; out)</li> <li>• Executed subscription agreement</li> <li>• Quarterly &amp; annual statements</li> </ul>
Full Capital Investment was sustained at risk	<ul style="list-style-type: none"> <li>• Log of all account activity showing investor funds into and out of the NCE, into the job creating entity</li> <li>• Regular statements showing status of individual investors account</li> <li>• Settlement account progress reports</li> <li>• Audit trail for each investor summarizing funds movement through all phases</li> </ul>
Creation of 10 full time jobs	<ul style="list-style-type: none"> <li>• Invoices and receipts showing funds were applied to the project</li> <li>• Monthly bank statements of NCE showing payments made</li> <li>• Tax records</li> <li>• Form I-9 documents (Employment Eligibility Verification)</li> <li>• Payroll documents</li> </ul>



Unfortunately when considering all of the above information, the sources, formats, timing, and complexity vary, making this a significant challenge. Implementing a technology driven solution from the outset is an excellent approach to this problem.

There are several important considerations when deciding on a technology based approach. These considerations include:

1. Scalability: The solution should be cost effective from the project outset. Ideally the costs of the solution are not all front-end loaded but instead scale as the volume of investors grows.
2. Ease of Implementation, Setup and Maintenance: EB-5 adjudication standards and policies are continuing to evolve and the journey of an individual investor lasts multiple years. Any solution chosen at the outset needs to be adaptable in order to maintain the required level of compliance.
3. Ability to pull and store information from disparate sources: Not all the information required to be tracked and stored comes from the same place. Financial information usually comes from the bank, or in most cases multiple banks. While on the other hand, documents of formation, accounting records etc. are generated by completely different sources. They all need to be assembled for a comprehensive and compliant I-829 petition.
4. Ability to store and retrieve information in multiple formats: The complete set of information required will include data, text documents, images.
5. EB-5 specific tracking & reporting: Evidence to support that each individual investor has met the job creation requirement is a unique EB-5 requirement and not something that is found in traditional fund tracking solutions. A solution that recognizes the unique EB-5 requirements from the outset will be more cost effective and efficient in the long run than trying to customize a non EB-5 tool.
6. Security & Transparency: The data being tracked and maintained is highly confidential and any solution must be executed in a way that provides the necessary levels of transparency without sacrificing security.

Issuers who have neglected to implement a formal process and solution for tracking and maintaining the required I-829 evidence at the beginning of the project are finding themselves scrambling at the last minute. While in the past this may have worked, it was certainly an expensive and risky approach. With the dramatic increase of I-526 filings in recent years we expect to see a corresponding bubble in the number of I-829 petitions being filed in the next few years. A casual approach to preparing for this I-829 bubble will result in bad headlines for our industry and disastrous results for investors. Preparing now is key. Going forward, preparing from the outset of the project is the way to go. ■

*"Practical Guidance in Preparing I-829 Petitions"*  
by Susan L. Pilcher and Elsie Hui Arias  
referenced in the writing of this article.

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# REMOVAL OF CONDITIONS FOR EB-5 INVESTORS: PRACTICAL GUIDANCE IN PREPARING I-829 PETITIONS

BY ELSIE HUIARIAS

PARTNER, STONE GRZEGOREK & GONZALEZ LLP

**S**ecuring the initial I-526 petition approvals for a particular new commercial enterprise (“NCE”) represents a significant milestone for a regional center. For the individual EB-5 investor, though, obtaining approval of the I-829 petition for removal of conditions is far more critical as the ultimate immigration goal -- it allows the investor’s family to remain in the United States indefinitely. On the other hand, denial of the I-829 petition leads to termination of resident status and initiation of removal (deportation) proceedings. The stakes are high, and significant risk attaches to the removal of conditions process. Drawing from our law firm’s experience in successfully representing more than 1,000 individual investors across dozens of NCEs in removal of conditions cases, it is imperative that regional centers engage in careful planning about removal of conditions at the outset of raising EB-5 capital. Due consideration must be given to understanding the requirements for USCIS adjudication of I-829 petitions, monitoring significant events in the business of the job creating entity, tracking job creation progress, organizing supporting documentation, and engaging expert immigration counsel for guidance on how to craft successful I-829 petitions in an environment of constant business change. This article provides to regional centers an overview of the legal and regulatory requirements for I-829 petitions, as well as practical guidance in tackling challenging issues that may arise during the removal of conditions process.

## GENERAL PROCEDURES

To remove the conditions from permanent resident status, the EB-5 investor must file Form I-829 with USCIS within the 90-day window immediately preceding the expiration of the two-year conditional period. A failure to file timely may be excused only “for good cause and extenuating circumstances.” The divorced spouse of the petitioner and a child who has married since obtaining resi-

dent status may be included in, or may file separately, the I-829 petition to remove conditions. Also, the surviving spouse and children of an investor who has died may file an I-829 petition.

Upon the filing of the I-829 petition, USCIS will issue a receipt notice to the principal and verification notices to the dependents, reflecting that conditional resident status is automatically extended for one year (or until the I-829 petition is adjudicated). The notices also serve as a travel document, enabling the investor and family members to travel and return to the United States as conditional residents. Should the I-829 petition remain pending for more than a year, the petitioner and family members can obtain I-551 stamps from a local USCIS district office through an InfoPass appointment.

The investor and dependents need not be in the United States at the time the I-829 petition is filed, but they will be required to attend a biometrics appointment at a USCIS application support center approximately 30 to 60 days after the I-829 petition is filed so travel will need to be coordinated accordingly. Biometrics processing reveals any arrests or convictions. The ramifications of any arrests or convictions should be closely analyzed by the investor’s immigration counsel to determine whether an incident could trigger removal (deportation) proceedings. If there are pending charges, USCIS will likely withhold approval of the I-829 petition until a final adjudication has been made in the criminal proceedings.

USCIS, also, in some cases has reviewed the travel records of an investor as part of the I-829 petition review, and probed the extensive absences outside of the United States to determine whether the investor has abandoned resident status.

There are essentially three requirements for adjudication of the I-829 petition for removal of conditions -- investment of capital, sustained investment, and job creation. These requirements will be addressed in turn.

## INVESTMENT OF CAPITAL

Both the statute and regulations governing I-829 petitions require evidence that the EB-5 investor has “invested or was actively in the process of investing the requisite capital” in the NCE. However, practically speaking, USCIS expects that all of the requisite capital has been invested in the NCE. Documentation reflecting that the EB-5 investor has completed the investment typically includes similar evidence that was submitted in the underlying I-526 petition, i.e., the investor’s personal bank statement reflecting a withdrawal of funds directed to the NCE, and the NCE’s bank statement reflecting a corresponding deposit from the investor. If an escrow was used to initially hold the investor’s EB-5 capital pending the fulfillment of certain conditions prior to release of funds to the NCE (e.g., approval of the I-526 petition), bank documentation should also be presented to reflect that each investor’s EB-5 capital was in fact released from the escrow account to the NCE’s account.

Given the need for biometrics in all cases, attention must be given to the possibility that USCIS could probe whether arrests or convictions relate to the investor’s source of funds. USCIS may revisit an investor’s source of funds if the agency receives “derogatory information” following the approval of the I-526 petition. A request for evidence (“RFE”) would question whether the investment capital was actually derived from unlawful sources.

## SUSTAINED INVESTMENT

The statute and regulations also require evidence that the investor has sustained the investment in the NCE. This requirement focuses on the investor sustaining the investment as well as the sustaining of the business of the NCE.

The investor cannot withdraw any part of the minimum threshold EB-5 capital contribution from the NCE during the conditional resident period. This prohibition does not disallow distributions representing profits. With partnership accounting, the Form K-1 proves



useful to indicate the EB-5 investor's capital account has been sustained at the minimum level. If the capital account has dropped below the required level due to non-cash expenses such as depreciation, an accountant's letter helps to explain that the EB-5 investor has not withdrawn any part of the required capital.

The I-829 also should demonstrate that the NCE is an ongoing enterprise. As a start, the I-829 should include documents verifying that the NCE continues to operate, e.g., income tax returns, financial statements, and/or recent bank statements. Additional evidence would depend on the particular facts of the NCE. As an example, if the NCE was formed for the purpose of developing and operating a hotel, the I-829 petition should include documents evidencing the expenditure of EB-5 capital towards the development of the hotel, and the status of the hotel's construction and operations. In another common example, if the purpose of the NCE was to raise EB-5 capital that in turn was loaned to a third party ("Borrower"), the I-829 petition should include documentation of the release of loan proceeds and of the Borrower's expenditures. Notably, USCIS has not provided guidance on how it views the Borrower's prepayment of a loan to the NCE, or on whether in the circumstances the NCE should re-deploy the repaid proceeds during the EB-5 investor's conditional residence. This lack of guidance is especially troubling in view of the U.S. State Department's dire predictions of visa retrogression for Chinese nationals, which among other consequences will stretch the overall timeframe for the NCE to manage the EB-5 process.

From approximately December 2009 to May 2013 (the dates of EB-5 adjudication guidance memos issued by USCIS), any "material change" from the initial Comprehensive Business Plan of the NCE would result in the denial of the I-829 petition and would require the EB-5 investor to start the process anew with the filing of a new I-526 petition. Fortunately, USCIS adopted a more flexible view on business changes in its Policy Memorandum of May 30, 2013. As for now, USCIS authorizes approval of an I-829 petition irrespective of a change from the initial Comprehensive Business Plan, so long as the material change occurs after the EB-5 investor has obtained conditional permanent residences, and the

I-829 petition meets all other adjudication requirements including sufficient job creation.

## JOB CREATION

USCIS interprets the EB-5 law to require proof in all I-829 adjudications that jobs have been created or will be created within a reasonable period of time. This task of documentation may be complicated for NCEs with multiple EB-5 investors who "consume" ten EB-5 created jobs every time USCIS approves an I-829 petition. Consequently, it is of paramount first importance that the regional center carefully track the conditional residence period and I-829 petition filing windows for all of its EB-5 investors.

Second, as part of its review and preparation for the I-829 petition, the regional center should review the job credit allocation agreement among the EB-5 investors in the NCE, set a timeline to monitor the number of jobs that must be created for each investor by a particular date, and develop a strategy that will support specific investors depending on where they are in line to receive job creation credit.

Third, in documenting job creation, the regional center will need to revisit the job impacts analysis that supported the I-526 petition approval, and prepare the evidence that shows the assumptions underlying the job impacts analysis have been realized.

It is imperative that the regional center obtain and organize these documents well in advance of the first I-829 filing deadline in order to avoid any delays for its EB-5 investors who require a prompt filing in order to obtain the notices that extend status and approve travel. Also, advance planning is required to develop strategies for addressing any problem areas.

Examples of specific items of proof depend on the type of job creation. Construction phase jobs are created as construction funding is expended, so the I-829 petition should include evidence of these capital expenditures. Evidence can include a current construction budget detailing line item expenditures, sample invoices, construction draws, certification from the developer confirming capital expen-

ditures, and documents showing the project has been completed or is near completion.

Proof of operations phase jobs will depend upon the inputs that were used in the economist's analysis to estimate job creation. For example, where revenues were relied upon, verification should include the job creating entity ("JCE") income tax returns if possible and financial statements. For tenant occupancy, evidence could include executed lease agreements, tenant affidavits regarding the type of business and number of employees at the leased space, and ongoing marketing efforts to attract tenants. Where the number of on-site workers is the input to the economist's analysis, payroll records and I-9 forms can verify the presence of on-site workers.

Following business realities, it is not uncommon that the assumptions underlying the job impacts analysis fail to transpire in accordance with the original timeline due to construction delays or lower leasing levels. USCIS tracks the number of jobs it deems to have been created by a particular NCE and the number of I-829 petitions that have been approved for investors in that NCE. It will issue RFEs to the EB-5 investors who are up for adjudication after the job creation capacity of the NCE has been filled. Success in those I-829 cases will depend on documenting the amount of jobs already created and the addi-

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tional jobs that will be created within reasonably identifiable timeframes, such as within a particular quarter. Where, for example, the NCE funded the development of a hotel it is possible to qualify most of the EB-5 investors for removal of conditions based on the construction expenditures alone, without having to document the operations phase jobs. On the other hand, EB-5 investors who are at the end of the line for job creation credit purposes may be entirely dependent on documentation of the performance of the hotel in terms of operating revenues.

Where jobs have not yet been created as of the date of the I-829 adjudication, the petitioner must argue that the jobs will occur by a certain date which amounts to "within a reasonable period of time." The Policy Memo sets the outer limit of this timeframe as three years following the initial conditional permanent residence date. Because EB-5 investors in a particular NCE generally immigrate over a protracted period of at least 1 to 2 years, which could be further distended due visa retrogression, the three year deadline will differ from one investor to the next. The strategy

and supporting evidence, consequently, needs to be adjusted for different groups of investors depending upon the window for I-829 petition filing and the evidence of job creation that then is available.

## OPTIONS IF I-829 PETITION IS DENIED

Unfortunately, there is no extreme hardship or good faith waiver for EB-5 investors who fail to meet the requirements for removal of conditions. Also there is no administrative appeal available for a denied I-829 petition. Routinely, USCIS now encloses with the I-829 denial a "Notice to Appear" thereby vesting jurisdiction with the immigration court. The government bears the burden by a preponderance of the evidence to prove to the immigration judge that the I-829 petition should be denied. The mere submission by the government of the USCIS denial of the I-829 petition is not sufficient in immigration court; the USCIS denial signals only that the petitioner did not meet the burden of proof before USCIS. Although the law in this area is less than clear, the EB-5 investor should be

able to present in immigration court evidence of subsequent events, such as additional job creation. The immigration judge has the authority to remove the conditions on the investor's residence, or alternatively to deny the I-829 petition again and order the deportation of the investor and family.

## CONCLUSION

When a regional center assists the immigrant investor to reach the end zone with an approval of the I-829 petition, a family's immigration dream of unconditional permanent residence is realized. It shows that the regional center serves the primary motivation of its EB-5 investors. The regional center notches another victory for its own organization, a feat that strikes a harmonious chord when promoting to prospective EB-5 investors. ■

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# EB-5 REGULATION D OFFERINGS AND THE IMPACT OF NEW SEC INTERPRETATIONS REGARDING ACCREDITED INVESTORS



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**O**n July 3, 2014, the Division of Corporation Finance (Division) of the Securities and Exchange Commission (SEC) released Compliance and Disclosure Interpretations relating to accredited investors (AI Interpretations). The AI Interpretations are of particular importance to the EB-5 community because they clarify verification matters that often apply to non-U.S. persons.

The Jumpstart Our Business Startups Act, enacted in 2012, required the SEC to adopt rules and measures that amended existing exemptions from registration under the Securities Act of 1933 and that created new exemptions that allow issuers to raise capital without registration. As a result, Rule 506(c) of Regulation D was adopted, which eliminates the SEC's prohibition against using general solicitation and advertising in private offerings of securities under Rule 506 if all investors are accredited investors, the issuer takes reasonable steps to verify their accredited investor status, and certain other conditions of Regulation D are satisfied. Under Rule 501 of Regulation D, an "accredited investor" includes a natural person who: (1) has earned income that exceeded \$200,000 (or \$300,000 together with a spouse) in each of the two previous years, and reasonably expects to earn a comparable amount for the current year (income verification); or (2) has a net worth that exceeds \$1 million (as interpreted by the SEC), either alone or together with a spouse (net worth verification). In order to verify the accreditation of its investors, the issuer may employ one of four non-exclusive safe harbor verification methods or use the principles-based verification method.

The four non-exclusive and non-mandatory methods of verifying that a natural person is an accredited investor are as follows:

- (i) with respect to income verification,

reviewing Internal Revenue Service forms that report the investor's income for the two most recent years, and obtaining a written representation from the investor that the investor reasonably expects reaching the income level necessary to qualify as an accredited investor during the current year;

- (ii) with respect to net worth verification, reviewing certain types of documentation enumerated in Rule 506(c), dated within the prior three months, and obtaining a written representation from the investor, that all liabilities have been disclosed;

- (iii) with respect to income and net worth verification, obtaining a written confirmation from a person enumerated in Rule 506(c), on behalf of the investor that such person has determined within the prior three months that the investor is an accredited investor; and

- (iv) with respect to income and net worth verification for an existing investor of the same issuer who purchased securities prior to the adoption of Rule 506(c), obtaining a certification from such investor at the time of sale that such investor qualifies as an accredited investor.

The principles-based verification method requires an objective determination by the issuer as to whether the steps taken were "reasonable" in the context of the given facts and circumstances of each investor and transaction. In evaluating accreditation under the principles-based method, Rule 506(c) indicates that an issuer should consider: (1) the nature of the investor and the type of accredited investor that the investor claims to be; (2) the amount and type of information the issuer has regarding the investor; and (3) the nature of the offering, including such information as the manner in which the investor was solicited

to participate in the offering and the terms of the offering (e.g., the minimum investment amount).

Pursuant to the Division's recent AI Interpretations and of importance to EB-5 practitioners, if a potential investor's income is not reported in U.S. dollars, it can be converted to U.S. currency to determine whether the investor meets the income-based requirement by using either the exchange rate in effect on the last day of the year for which income is being determined, or by using the average exchange rate for that year. By analogy, if a potential investor's net worth is not represented in U.S. currency, it too can be similarly converted to determine net worth accreditation.

The Division provided the following recommendations, in an effort to facilitate an issuer's determination under the principles-based method of income verification: (1) that the issuer review the potential investor's Internal Revenue Service (IRS) forms reporting income for the previous two years; and (2) that the issuer obtain written representations from the potential investor stating: (i) that the IRS forms for the recently completed year are not yet available; (ii) the amount of income received for the most recently completed year; (iii) that such income was sufficient to qualify as an accredited investor under the income test; and (iv) that the investor reasonably expects to reach the requisite level of income in the current year.

The Division further clarified that if the investor is not a U.S. taxpayer and thus is unable to provide an IRS tax form that reports his or her income, the issuer may be unable to rely upon comparable tax forms from a foreign jurisdiction in order to rely on the safe harbor income verification method provided in Rule

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506(c)(2)(ii)(A). In making this clarification, the SEC reasoned that this safe harbor was provided in light of the “numerous penalties for falsely reporting information” to the IRS – a comfort that is not altogether guaranteed by similar forms in foreign jurisdictions. The Division indicated, however, that an issuer could reasonably satisfy the principles-based income verification requirements by reviewing foreign-filed tax forms that report income where the foreign jurisdiction imposes comparable penalties for falsely reported information.

For the purposes of the net worth verification safe harbor, the Division provided guidance that an issuer may not use a consumer report prepared by a non-U.S. consumer reporting agency that performs similar functions, but could employ the principles-based method with respect to such report to verify investor net worth accreditation. Such method may include reviewing the report and taking other steps necessary to determine the investor’s liabilities to determine requisite net worth. Additionally, the Division stated that an issuer may not use a potential investor’s tax assessment to verify accreditation if the document is more than three months old. However, the issuer may be able to verify investor net worth accreditation under the principles-

based method when the potential investor’s most recent tax assessment shows a value that (after deducting liabilities) demonstrates a net worth that substantially exceeds the \$1 million threshold amount. For the purposes of this provision, under 26 U.S.C. § 6203, “[a tax] assessment is a bookkeeping entry ‘recording the liability of the taxpayer’... made when a taxpayer ‘[s]elf-assesses,’ i.e., files a personal income tax return, or, when the IRS prepares a substitute for return.” In addition, a tax assessment can also include an assessment made by a taxing authority on the value of an asset, such as real estate.

In addition to the AI Interpretations discussed above, the Division also provided more general guidance applicable to all determinations of net worth. Thus, where property or an account is held jointly with another person other than the investor’s spouse, the assets in the property or account may be included in the calculation of net worth to the extent of such investor’s percentage ownership of the property or account.

The AI Interpretations reinforce the importance of reviewing reliable documents, and provide some flexibility in determining which methods are available to satisfy verification requirements. As the burden remains on the

issuer to demonstrate compliance with these provisions, the Division warned that where there is reason to question a potential investor’s accredited status, the issuer must take additional steps to verify the investor’s status in order to establish that the issuer has fulfilled all of its reasonable verification obligations.

Although the AI Interpretations relate more to Regulation D offerings than to the Regulation S offerings that are most often used in EB-5 financings, these clarifications are relevant in the context of concurrent domestic and foreign offerings and, in the case of large Regulation S offerings, may become relevant for purposes of determining whether an issuer is required to register under Section 12(g) of the Securities Exchange Act of 1934 if the issuer has 500 or more non-accredited investors. EB-5 practitioners should also be aware that the SEC has proposed other rules, not yet effective, that will further impact all Regulation D offerings, including the information required by Form D, the timing of the filing of Form D and the requirement to file a Form D. These proposals, while being roundly criticized by commentators, are expected to be tweaked and adopted, thus making all future Regulation D offerings even more complex and regulated. ■



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# Entrepreneur Cases Signal EB-5 Eligibility Challenges for Small Businesses



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Experience teaches that entrepreneurs and sole proprietors in small business have unique challenges in qualifying for the EB-5 category. Many of these applicants are seeking permanent residence in the EB-5 category after having operated a small business while in the United States in E-2 treaty investor status. A fair share of the problems encountered by entrepreneurs in seeking EB-5 based residence stems from incorrect assumptions about what constitutes investment in the eyes of the USCIS examiner. These problems exist for entrepreneurs whether the case involves a lone EB-5 investor or multiple investors claiming the new commercial enterprise (“NCE”) will employ all the required personnel as employees of the NCE, or on the other hand the NCE is affiliated with a regional center thus also enabling the credit of indirect jobs. Entrepreneurs may find that a successful EB-5 case requires reevaluating the company’s capital structure, taking a much harder look at how it employs personnel, and overhauling its bookkeeping and recordkeeping. Some articulation of the problems entrepreneurs routinely encounter in connecting “incremental investments” with incremental job creation is found in S. Pilcher, “Preserving the EB-5 Option for the Entrepreneur: Strategic Considerations for Startup Counsel,” *Immigration Options for Investors & Entrepreneurs* (AILA 2014).

Small businesses also seem to attract much higher scrutiny from USCIS examiners. Most denials of EB-5 petitions filed by investors in small business involve an examiner finding inconsistencies in documentation. Essentially the examiner locks in on a discrepancy, or several of them, and then uses the discrepancy to discredit the core factual claims advanced by

the petitioner. Often, it seems, the discrepancy results from the incorrect assumptions made by the investor and from sloppy record-keeping. Considering that well more than 90% of all EB-5 petitions are filed by investors in regional center-affiliated NCEs, more frequently involving institutional parties, high-quality documentation, and well-structured capital investments, the entrepreneur’s EB-5 petition based on a small business investment needs to be exhaustively vetted prior to filing with USCIS.

Recent non-precedent decisions of the Administrative Appeals Office (“AAO”) illustrate the difficulties facing entrepreneurs in preparing EB-5 cases. We reviewed dozens of AAO decisions posted to the USCIS website. Here we summarize key aspects of these cases.

## PROOF OF INVESTMENT

In one case the petitioner had invested in the NCE for purposes of developing housewares for the wholesale market. The main problem in the case centered on the fact there was a shareholder loan of \$30,250 and the entrepreneur claimed he had repaid that loan as part of a later \$100,000 deposit to the NCE. The petitioner expected USCIS to figure out that the deposit constituted part repayment of the loan and part equity investment, notwithstanding the confusion of various documents including corporate minutes of meetings, three sets of stock ledgers, and the lack of corroboration in the corporate income tax return. USCIS homed in on the “inconsistencies” that were not resolved. The AAO also found that the petitioner failed to meet his burden where there were two separate deposits of \$520,000 each, one by an unrelated entity and one by the petitioner, followed by a

withdrawal of \$520,000, without clarification of whether it was the petitioner or the entity that was repaid.

In another case, the NCE was a seller of popular brands of used cars and a provider of long-term financing to its customers. The entrepreneur claimed to invest more than \$2.1 million in the NCE. The AAO rejected the contention that \$489,000 of “purchased assets” should be counted as the investment, finding the evidence unconvincing on whether it was the petitioner rather than the NCE that bought the assets. The AAO also declared that shareholder loans of \$580,000 appearing on one NCE income tax return could not be merely swept aside by a later NCE income tax return, without proof that the later return had been filed with IRS and the earlier “erroneous” returns had been amended and corrected. The AAO also found that “income receivables” of \$1.2 million could not be credited as investment because they are a form of “retained earnings” that cannot be considered qualifying investment. Finally, the AAO noted that photocopied deposit slips accounting for more than \$1.4 million could not be credited as petitioner’s investment because the handwritten notations were self-serving and not reliable.

Several AAO decisions illustrate that entrepreneurs need to be alert to what appears to be the “fraud antenna” in USCIS review of small business cases. In a case where a sublease was submitted as proof of investment and the site of business operations, USCIS seized on the indicated total rentable area (11,044 square feet) instead of the actual leased area (375 square feet), and also noted that there was conflicting documentation as to the exact location of the business (on the 3rd floor or the



4th floor). The sizable discrepancy and open questions led to a site visit by USCIS. The AAO agreed with the Director's finding that submission of the false sublease constituted material misrepresentation.

Entrepreneurs need to be especially careful about submitting multiple petitions in an effort to correct past mistakes. These corrective filings might accomplish nothing more than provide damning evidence of inconsistent statements. One entrepreneur who established a Chinese restaurant filed two I-526 petitions a year-and-a-half apart with inconsistent statements as to the timing and amount of initial investment and the total investment. His employment and residential history also conflicted with information in other filings made with USCIS, calling into question his claims of managing and operating the NCE. The AAO concluded these unresolved inconsistencies rose to the level of willful and material misrepresentation, and warned: "This finding of misrepresentation shall be considered in any future proceeding where admissibility is an issue." As a consequence, the entrepreneur is permanently barred from entering the United States, unless there is a citizen or legally resident family member to support a waiver grounded in abundant evidence of extreme hardship to the relative.

Note that many of the cases that have problems with proof of investment also suffer from insufficient evidence of lawful source of funds. However, we recognize the source of funds topic is best addressed separately. One resource on the topic is: E. Arias, "Documenting an EB-5 Investor's Source of Funds – Including Practical Tips and Review of Recent RFE Trends," *Immigration Options for Investors & Entrepreneurs* (AILA 2014).

## CAPITAL AT RISK

Even if USCIS does not challenge that the entrepreneur invested capital, there are other hurdles. In one case involving one of three EB-5 investors who joint ventured to fund the development, ground-up construction, and management of an assisted living facility, USCIS denied the petition for the lack of evidence of the \$2 million funding the NCE required from a lender. The AAO affirmed, noting the belated evidence of such funding did not cure the fact that the funding source was not available at the time of I-526 petition filing. The AAO also declared that the mere assignment of a contract to purchase land and nominal expenditures for a market study were

insufficient business activity to place the EB-5 capital at risk of loss. Finally, the commitment by the limited partnership to pay the limited partners five years after making their capital contributions was an impermissible redemption under *Matter of Izummi*, which could not be rectified by a later post-filing agreement to amend the partnership agreement.

In yet another case, where the NCE imported and distributed Filipino products throughout the United States, and had been conducting US business for nine years and was slightly profitable, the AAO held that the petitioner's capital investment was not at risk. The AAO reasoned that the entrepreneur should explain why an already-profitable business would need an infusion of capital. This rationale was elaborated on in a similar case involving a NCE that exported sea cucumbers to Asia. The AAO stated that where there already existed a slightly profitable business and there is no expansion plan and no indication of what the EB-5 capital investment would be used for, there is no at risk investment. The AAO dismissed the business plan that provided for future job creation because the business plan lacked any justification for hiring. The AAO also ridiculed the confused organization charts, job titles, job descriptions, and timeline for hiring.

## JOB CREATION

The AAO reminds us that the touchstone of a reliable comprehensive business plan that satisfies *Matter of Ho* is one that is reasonable and credible. The plan for job creation should not be merely conclusory and wishful. In the housewares case reviewed above the AAO concluded that the plan for hiring 17 workers was not credible without addressing the relevant competitive market and demand for products.

In a case involving a manufacturer of automotive parts for enhancing automotive performance, the AAO observed a common problem in EB-5 cases involving a pre-existing business, namely, overstating the number of qualifying positions that have been created. The entrepreneur needs to be absolutely clear about how many employees exist prior to investment, and how many have been created thereafter, and then the business plan must document well how many more full-time positions will be created within 2.5 years of USCIS adjudication of the I-526 petition. Meaning, if the business plan projects a total of 18 full-time positions, and the entrepreneur is

thinking that is ten more than the eight employees he had prior to investment, this could be faulty reasoning. USCIS may downsize the number of positions already created (and thus the total created) by identifying them as part-time or filled by nonimmigrants and consequently not to be credited for EB-5 purposes.

Indeed, in the used cars case referenced above, as if the investor were unaware of the existence of EB-5 regulations, the AAO remarked that the petitioner and immediate family do not count, nonimmigrant visa holders do not get credited, independent contractors are not relevant, nor are part-timers. And, above all else, employees should be documented with reliable I-9s and paystubs showing the number of hours worked.

## ENTREPRENEURS AND REGIONAL CENTERS

Not all regional center-related EB-5 cases involve massive amounts of capital invested by dozens of investors who have relatively minimal participation in the NCE. Occasionally, entrepreneurs do associate with regional centers. The posted AAO cases include several regional center-based EB-5 petitions involving relatively small businesses. In one case where the NCE would fund the development, production, manufacture and sale of alcoholic gelatin shots, the AAO declared that job creation estimates must be based on market estimates and market data indicating that the assumptions of the job creation methodology are reasonable. Both the business plan and economic impact analysis relied upon in the I-526 petition were dated in 2012, more than two years after USCIS had approved the regional center. In view of the fact the petitioner did not argue to the AAO that either document had been reviewed by USCIS as part of the regional center proposal, the AAO cited to the May 2013 EB-5 Policy Memo and concluded "USCIS need not afford either document deference."

Exactly what USCIS approves or does not approve in its regional center approval letters is a subject touched upon in two other AAO cases. In one regional center case involving EB-5 capital to fund a manufacturing facility in Florida, the AAO noted that a regional center amendment indicated an investment focus on manufacturing of steel frame buildings. The petitioner contended that the I-526 petition and regional center amendment proposal were based on the same business plan and eco-

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conomic analysis. The Director had stated that the business plan had been materially changed, but without explanation. The AAO remanded the case so that the Investor Program Office could make an "initial assessment as to whether the business plan, the business plan addendum, and the economic impact analysis in the record should be afforded deference." Evaluation of material change is ripe, it declared, only after a determination on deference is made.

In a case with a similar outcome, involving EB-5 investment in a marina in Florida, the AAO framed the issue on appeal as follows: If the regional center proposal approved by USCIS in October 2010 included a comprehensive business plan compliant with *Matter of Ho*, "then that business plan and the accompanying economic impact analysis should be afforded deference." The petitioner contended the I-526 petition used the same methodology and multipliers as presented in the regional center proposal. Because the Director had denied the I-526 petition without analyzing the question of deference, the AAO remanded the case to determine whether any of the economic impact analyses in the record should be afforded deference.

These deference decisions bring to mind still another regional center-linked case where prior USCIS "mistake" in approving a regional center amendment and in approving related I-526 petitions (i.e., multiple mistakes) was used as the rationale to kill the project. It signals the next chapter in the 20 year-evolution of the regional center approval letters. (For background see L. Stone, Trends in Approvals of Regional Centers (RCBJ, May 2013); S. Lazicki, 2013 Regional Center Approval Letters (RCBJ, June 2014). To say that a regional center approval letter is binding in some sense on USCIS examiners in related adjudications of I-526 petitions, and to frame that in the language of the USCIS deference policy, is to ignore the near-limitless bounds of the exceptions for mistake and material change. USCIS is making long strides in formalizing its regional center approval letters. But to make two categories of regional center approval letters, one for hypothetical projects and another for actual projects, is not to answer all the lingering questions these letters have created. Until there is a lot more clarity, lone entrepreneurs and pooled investors in major EB-5 projects are likely to be wrestling with USCIS for the foreseeable future over what a regional center approval letter actually means in terms of predictability. ■

*Lincoln Stone and Taiyyeba Safri Skomra are colleagues at the immigration law firm of Stone Grzegorek & Gonzalez LLP, [www.sggimmigration.com](http://www.sggimmigration.com), based in Los Angeles.*

## Modified Regional Input-Output Model from BEA to be Released in 2015



**BY PAUL SCHEUREN**  
PRINCIPAL ECONOMIST,  
IMPACT DATASOURCE,  
LLC.

**O**n July 3, 2014, the Bureau of Economic Analysis (BEA) announced its plans to release

a modified economic model in 2015 that will replace its Regional Input-Output Modeling System (RIMS II). This news comes after nearly one year of speculation on the fate of the RIMS II program and how its discontinuation may affect the EB-5 industry.

Last year, the BEA announced it would discontinue updates to RIMS II as the result of sequestration-related budget cuts. The BEA's modified model will be updated less frequently resulting in a cost savings



for the Bureau which will allow it to continue providing regional economic impact multipliers.

The RIMS II model is a popular input-output model used by many EB-5 economists and has been long accepted by the USCIS to demonstrate the indirect job creation associated with regional center investment projects. With the news that the BEA will produce a modified impact model beginning next year, EB-5 economists will retain a BEA-sourced economic model as an option alongside privately produced models such as IMPLAN, Redyn, and REMI. ■

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# Industry Event Schedule

LEARN ABOUT ALL THESE EVENTS AND MORE ON THE IIUSA EVENT CALENDAR AT [WWW.IIUSA.ORG](http://WWW.IIUSA.ORG)!

- **10/11-10/14**, Association for University Business Economic Research (AUBER) Annual Conference (Portland, OR)
- **10/22-24**: 4th Annual EB-5 Market Exchange (San Francisco, CA)
- **10/29-10/30**: Henley & Partners' 8th Annual Global Residence & Citizenship Conference (Singapore)
- **10/30**: Form I-924A: Strategies for Fulfilling the Annual EB-5 Regional Center Reporting Requirement (IIUSA Webinar)
- **11/13**: ABA Section of International Law: 15th Annual Live from the SEC (Live in Washington, D.C. or Webinar Online)
- **11/18-11/21**: CDFA National Development Finance Summit (Scottsdale, AZ)
- **11/20**: Finance: EB-5 Escrow, Fund Administration & Bridge Loans (IIUSA Webinar)
- **12/18**: 2014 EB-5 Industry Year-In-Review & Look Ahead at 2015 (IIUSA Webinar)
- **2/23-2/25, 2015**: The P3 Conference (Dallas, TX)
- **3/23-3/24, 2015**: SelectUSA 2015 Investment Summit (National Harbor, MD)
- **4/12, 2015**: 10th Annual IIUSA Membership Meeting (Washington, DC)
- **4/12-4/14, 2015**: 8th Annual IIUSA EB-5 Regional Economic Development Advocacy Conference (Washington, DC)
- **6/17-6/20, 2015**: AILA National Conference (National Harbor, MD)

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Our **EB-5 Team** below, all based in the United States, remains up-to-date with new EB-5 rules and policies, and are recognized members of AILA, **Invest in USA**, International Organizations, EB5Info.com, and EB5Investors.com.



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# EB-5 Visa Usage and Market Diversification



**BY LEE LI**

IIUSA POLICY ANALYST

The EB-5 visa usage data illustrates that EB-5 Investor Program (the Program) has generated substantial foreign direct investments that open the door to economic development in U.S. communities at no cost to taxpayers. Additionally, the Program provides an opportunity to foreign entrepreneurs who share the same dream of moving their loved ones to America and being a proud contributor to the U.S. economy.

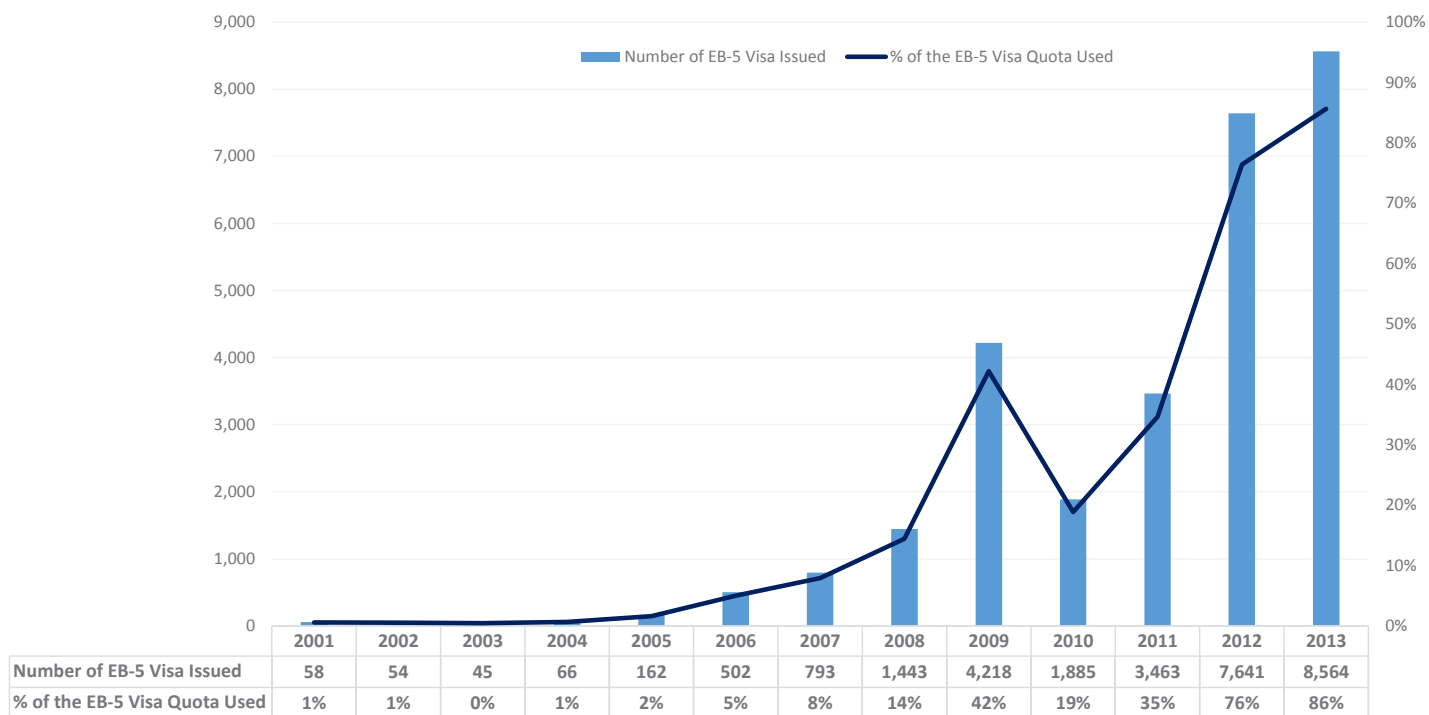
Based on the annual reports composed by

the Visa Control Office at U.S. Department of State, there were only 45 EB-5 visas issued in fiscal year 2003. However, after one decade, this number has increased significantly to 8,564 with an outstanding growth rate of 18,931%. In addition, from FY2010 to FY2013, the annual growth rate of EB-5 visa usage was 72%, which demonstrates the vibrant growth of the economic development and job creation generated by the Program. According to the 2012 peer-review economic impacts report commissioned by IIUSA, the Program has contributed \$3.39 billion to U.S. GDP and supported over 42,000 jobs in U.S. communities during FY2012, which was more than a 2-fold increase from the annual impact result reported in FY2011.

While we are enjoying the great success of the Program and the significant economic development it has brought to U.S., the Program is reaching its 10,000 annual visa quota. As Figure 1 indicates, 86% of the total visa allotted to the Program were used in FY 2013. However, with the continued growth on the I-526 approvals, the 10,000 EB-5 visa annual allocation can no longer meet the drastic increase of the investor's demands for the Program. It calls for a new visa allocation policy as well as the permanent authorization for the Program so that it can continue delivering its promises on enhancing the economy and creating jobs for America. As Bill Gates, Warren Buffett, and Sheldon Adelson put in their New York Times op-ed, "People willing

## EB-5 VISA USAGE OVERVIEW

**FIGURE 1: NUMBER OF EB-5 VISA ISSUED BY U.S. DEPARTMENT OF STATE (FY2006 TO FY2013)**





to invest in America and create jobs deserve the opportunity to do so.”

Moreover, on August 23, 2014, the U.S. Department of State announced that EB-5 visas would no longer be available for Chinese investors for the remainder of FY2014. As Figure 2 shows, the EB-5 investment market in Mainland China has grown significantly since FY2006. It exceeded South Korea to become the country that produces the largest amount of EB-5 visa holders in FY2008. In addition, since FY2011, the investors from Mainland China have become the majority (accounts more than 50%) of the total EB-5 visa usage. In FY2013, there were around 6,900 visas issued to Chinese EB-5 investors, which took up 80% of total EB-5 visas used in that fiscal year.

Although EB-5 visas became available again to Chinese investors on October 1, 2014 as FY2015 started, the potential for visa ret-

gression for Chinese investors still indicates the need for market diversification for sources of EB-5 investments. Figure 3 presents the share of top ten countries other than Mainland China that have the highest number of EB-5 visa holders from FY2006 to FY2013. During that period, there were 3,660 EB-5 visas issued to investors from South Korea, the second largest country providing EB-5 investments, which accounts for 37% of the total EB-5 visa issued to the countries other than Mainland China. While United Kingdom and Taiwan are two other markets that have over 800 EB-5 visa holders during the past seven fiscal years.

Aside from these big markets that provide substantial amount of EB-5 funding, there are some other emerging markets that EB-5 industry stakeholders should be aware of. As Figure 5B indicates, Mexico has a consecutive growth on the number of EB-5 visas used in the last six years with an average annual

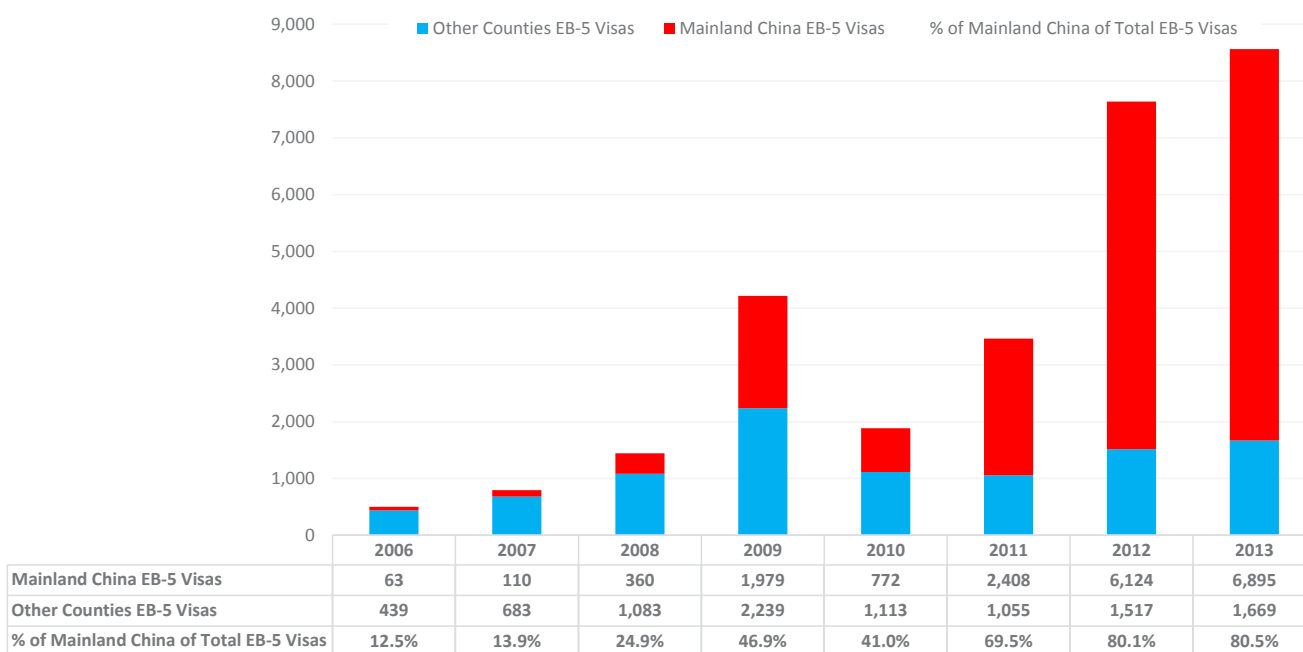
growth rate of 77%. From FY2006 to FY2013, India, Japan, and Russia all produced over 250 EB-5 investor visas with a momentum of growth. Additionally, India has around 200 I-526 approvals from FY2006 to FY2013, which ranks fourth among all EB-5 investor markets across the world.

The continued increase of the EB-5 visa usage provides substantial evidence on the undeniable fact that the Program is opening the door for economic development in U.S. communities as well as realizing the American dreams for the foreign investors who are dedicated to providing better lives for their families and to be contributing members of the U.S. economy.

The following charts present the EB-5 visa usage from fiscal year 2006 to 2013, as well as shed lights on the top and growing countries that have the significant EB-5 investors around the world. ■

## CHINESE INVESTORS ON EB-5 VISA USAGE

**FIGURE 2: NUMBER OF EB-5 VISAS ISSUED TO CHINESE INVESTORS COMPARED TO INVESTORS FROM OTHER COUNTRIES (FY2006 TO FY2013)**



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# TOP COUNTRIES OF EB-5 VISA USAGE OTHER THAN MAINLAND CHINA – MARKET DIVERSIFICATION

FIGURE 3: PERCENTAGES OF EB-5 VISA ISSUED BY INVESTOR'S COUNTRY OF BIRTH FROM FY2006 TO FY2013 (OTHER THAN MAINLAND CHINA)

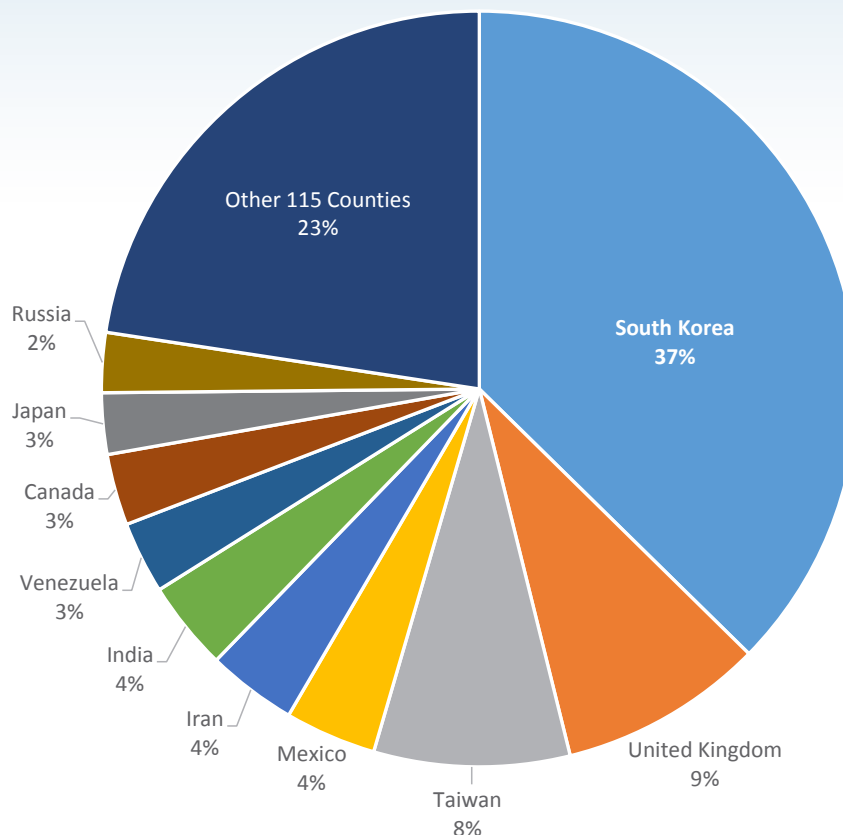
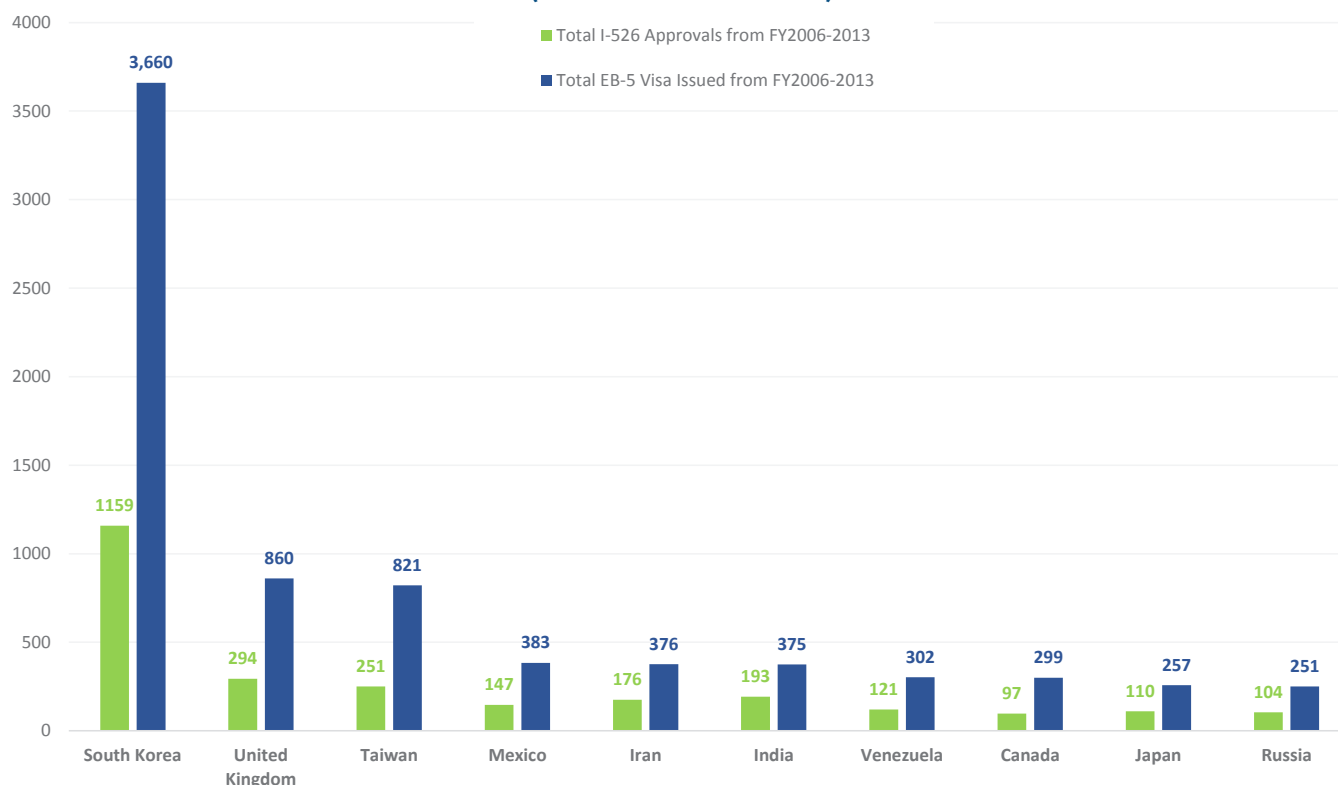


FIGURE 4: TOTAL NUMBER OF I-526 APPROVALS AND EB-5 VISA ISSUED BY INVESTOR'S COUNTRY OF BIRTH FROM FY2006 TO FY2013 (OTHER THAN MAINLAND CHINA)





# TOP COUNTRIES OF EB-5 VISA USAGE OTHER THAN MAINLAND CHINA – MARKET DIVERSIFICATION (CONT.)

FIGURE 5A: TRENDS OF EB-5 VISA USAGES BY INVESTOR'S COUNTRY OF BIRTH (FY2006 TO FY2013)

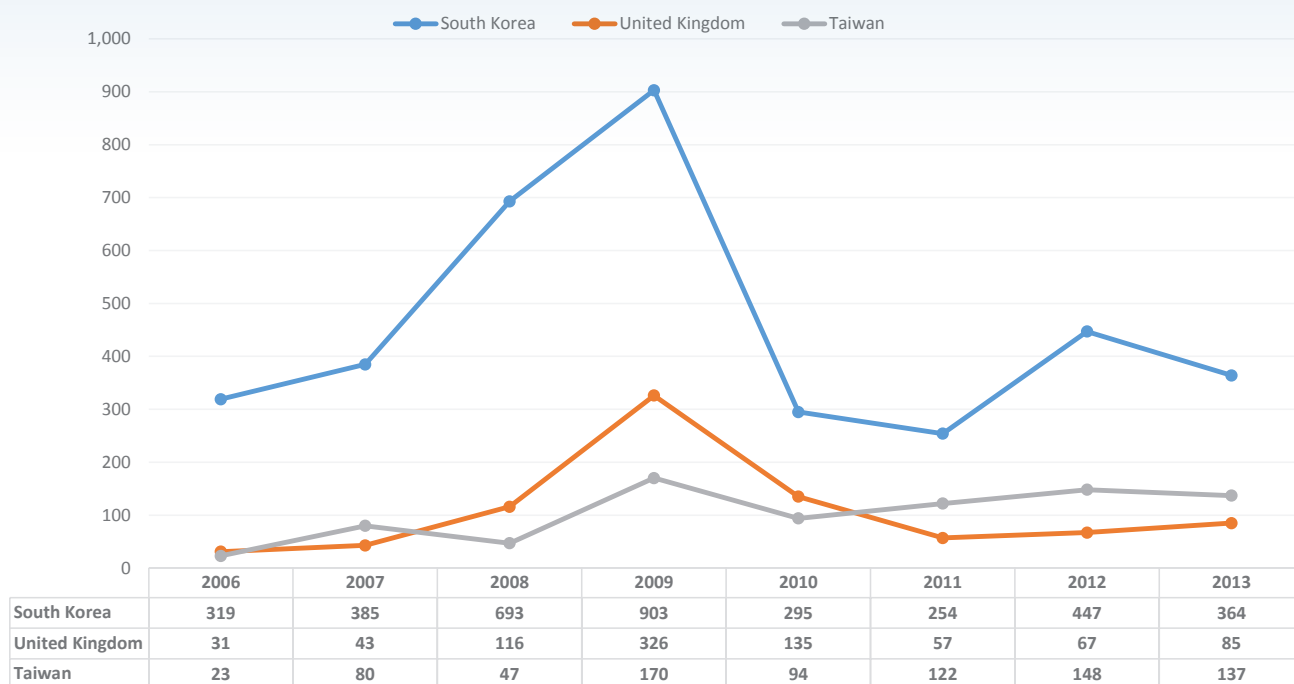
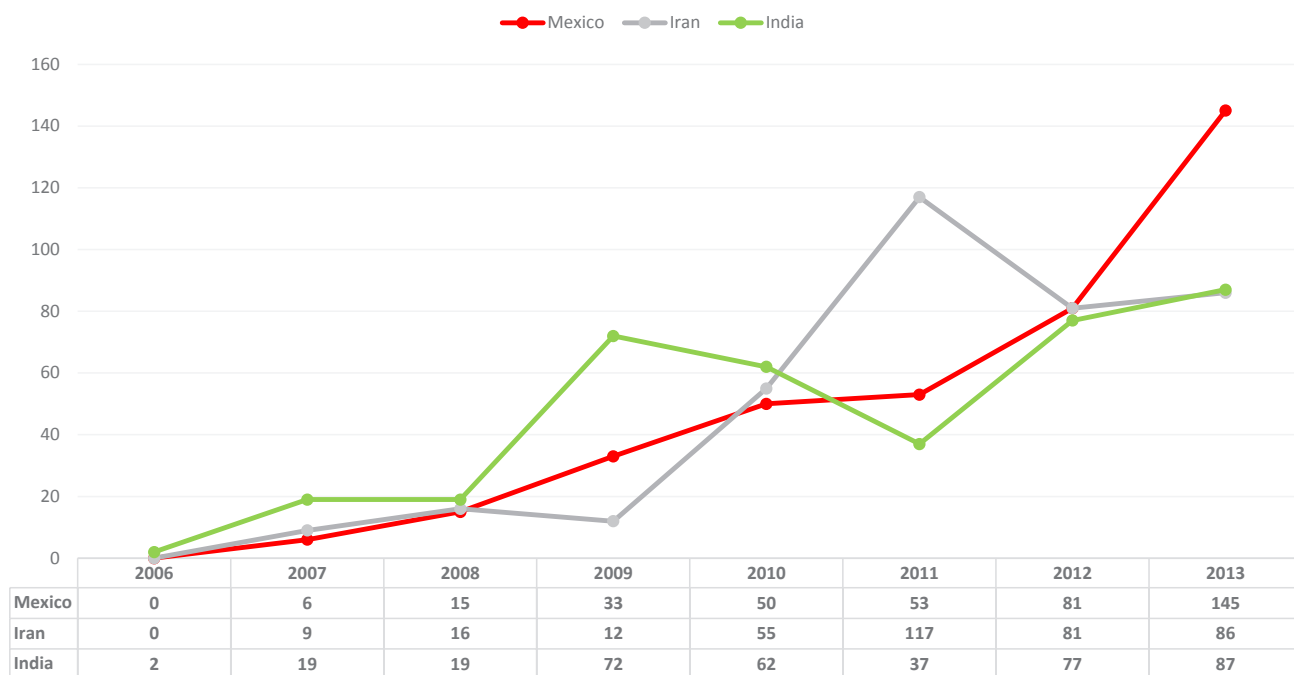


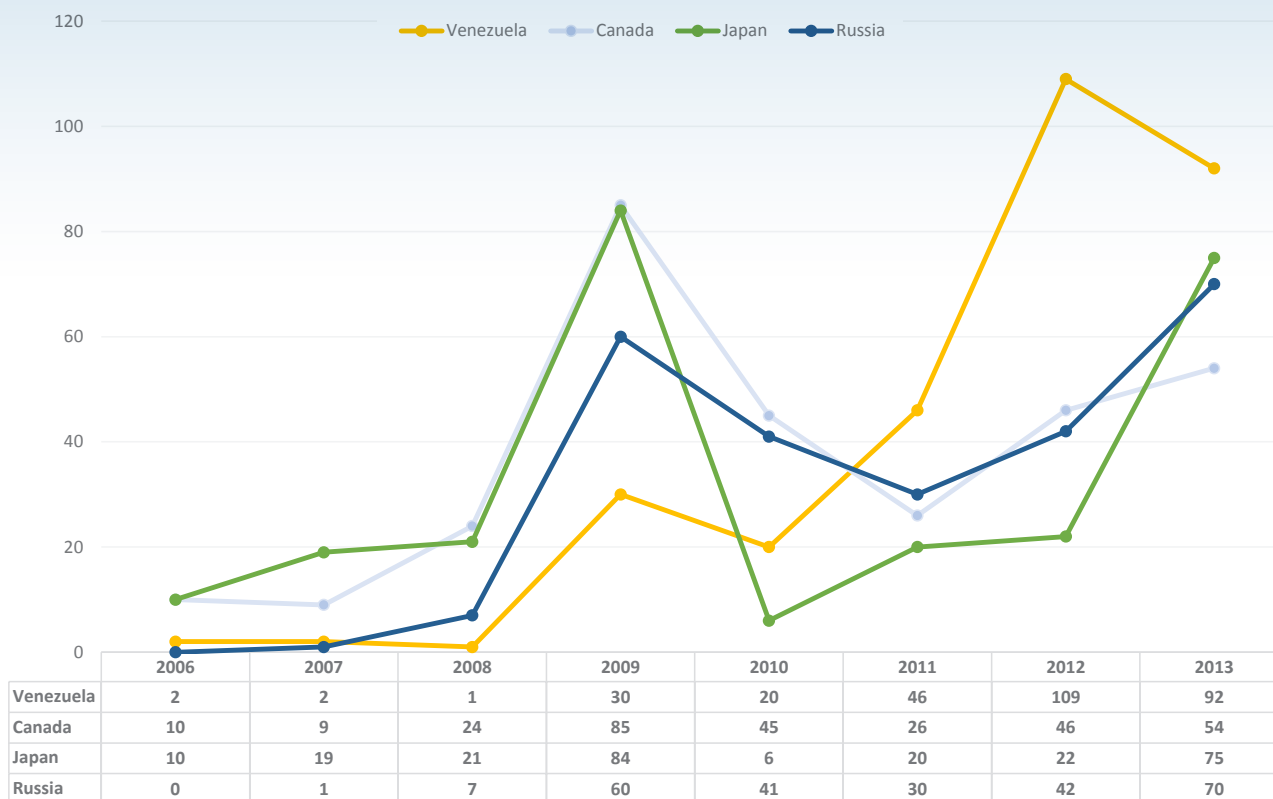
FIGURE 5B: TRENDS OF EB-5 VISA USAGES BY INVESTOR'S COUNTRY OF BIRTH (FY2006 TO FY2013)



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## TOP COUNTRIES OF EB-5 VISA USAGE OTHER THAN MAINLAND CHINA – MARKET DIVERSIFICATION (CONT.)

FIGURE 5B: TRENDS OF EB-5 VISA USAGES BY INVESTOR'S COUNTRY OF BIRTH (FY2006 TO FY2013)



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# CIFIT 2014:

## Building a Cross-Pacific Bridge for Regional Economic Development



**BY KELVIN MA**

PARTNER, SHANGHAI  
DEMEI LAW FIRM;  
CHAIR, INTERNATIONAL  
SUBCOMMITTEE OF IIUSA  
MEMBERSHIP COMMITTEE

The 18th annual China International Fair for Investment & Trade in Xiamen ended with complete success this year. IIUSA appreciated the cooperation of our partners, the Fujian Exit-Entry Association and the American Chamber of Commerce of South China, to make this trade mission a substantial success.

### WHAT IS CIFIT?

The China International Fair for Investment and Trade (CIFIT) is the largest official investment-based trade show in China, the predominant EB-5 market contributing more than 80% of all EB-5 investments. CIFIT takes place every September in Xiamen, China, and is set up like a mini-world expo, with pavilions from more than 40 countries and regions each seeking to attract investment while showcasing their respective investment environments, policies and projects to the world. In 2013, CIFIT had more than 16,000 attendees from 120 countries and regions, as well as over 600 governmental institutions, chambers of commerce and intermediary agencies. CIFIT was even more successful this year than last, with over 40 exhibitors and attendees from 80 organizations and far more EB-5 specific programming. The enthusiasm from the attendees seemed to set a fire in hot and humid Xiamen.

**Multilateral Partnerships:** Cooperation among IIUSA, the American Chamber of Commerce South China, and the Fujian Entry-Exit Association

Since early 2013, IIUSA has worked closely with AmCham South China and the Fujian Entry-Exit Association to establish and enhance vital relationships with strategic partners (including Chinese exit/entry associa-



The official ribbon cutting ceremony for the USA pavilion at the 18th Annual China International Fair for Investment and Trade (CIFIT) on September 8, 2014 in Xiamen, China.

tions and the U.S. Department of Commerce), recruit new migration agency members, and educate the Chinese market on the EB-5 Program. In addition to co-hosting the USA pavilion at CIFIT, IIUSA and its partners in China have collaborated on media events and brought together international partners from across sectors to strengthen the economic bonds of friendship between China and the U.S. through the EB-5 Regional Center Program. The American delegation to CIFIT had over 230 members, including regional centers and projects, attorneys, economists, media, and more. The USA pavilion co-hosted by IIUSA and AmCham South China had over 42 booths from 32 IIUSA member organizations. IIUSA joined with AmCham South China and the Fujian Entry-Exit Association to hold events including the Sino-US Immigration Investment Summit & Welcome Banquet of Mid-Autumn Festival, an EB-5 Roundtable Discussion, a seminar on EB-5 hot topics and trends, and a lunch meeting joined by IIUSA directors and heads from China's Exit-Entry Associations.

These events for investors and migration agencies demonstrated a commitment to industry development and an establishment of common understanding.

### CONFERENCE REPORT

Built on the sea and with the sea in the city, Xiamen is also known as Sea Garden. Islands, reefs, crags, temples, flowers and trees all serve as a foil to each other. The weather is like spring all the year round, adding brilliance to the charm of the sea. IIUSA, with its large delegation, visited this charming Garden on the Sea during the occasion of the Mid-Autumn Festival, making the days colorful and memorable.

#### SEPTEMBER 6, 2014

At the Xiamen Westin Hotel, IIUSA delegate members registered, picked up badges, and arranged exhibitions. Everyone was ready to start the exciting CIFIT trip.

#### SEPTEMBER 7, 2014

IIUSA delegates were invited to attend the CIFIT press conference of AmCham South China. Both wished CIFIT a great success.

Because the second day would be Mid-Autumn Festival, IIUSA and the Fujian Entry-Exit Association together held a welcome banquet for Sino-USA CIFIT delegates to show their gratitude. The banquet was

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## CIFIT 2014 RECAP

hosted by IIUSA Executive Director, Peter D. Joseph, and the IIUSA International Committee Chairman's Assistant, Iris Wu. All the delegate members had a joyous gathering and moon festival celebration. IIUSA was glad to invite the leaders from ten provincial-level exit-entry associations to be present. During the banquet, K. David Andersson representing IIUSA with Qingbo Lu representing Fujian Association issued plaques to exit-entry heads and thanked them for coming. IIUSA has been working closely with each association since the Washington DC conference to ensure the healthy development of the EB-5 industry. IIUSA also thanked Kelvin ("Ning") Ma, Chairman of the IIUSA International Committee, and Shanghai Demei Law Firm for their contributions. IIUSA issued an invitation to participate in its annual Market Exchange to be held in San Francisco this October. Under the bright moonlight, the banquet ended in cheers and laughter.

## SEPTEMBER 8, 2014

IIUSA delegates arrived at the Xiamen International Exhibition Center in the early morning to participate in the opening ceremony of the 18th CIFIT. After that, over 500 attendees and 30 regional centers gathered at the crowded USA pavilion, watching and ribbon-cutting ceremony, signaling its official opening.

In the afternoon, IUSA held an EB-5 roundtable discussion hosted by Kelvin ("Ning Ma"), Chairman of the IIUSA International Committee and Natalia Martinez,

an IIUSA member from Brooks City Base Regional Center in San Antonio, Texas. Ning Shao, president of the Council of American States in China (CASIC), and his governmental delegates from Prince George's County, Maryland and Washington, DC, opened the seminar with a brief speech, followed by short statements from IIUSA President K. David Andersson, IIUSA Executive Director Peter D. Joseph, Chairman of International Committee Kelvin ("Ning") Ma and President of Fujian Association Qingbo Lu.

Representatives from exit-entry associations introduced China's exit-entry policy and regulations related to marketing in China. Tina Hou of Civitas Capital Group, representing IIUSA's Best Practices Committee (BPC) which is Chaired by Civitas CEO and IIUSA Director Daniel J. Healy, introduced best practices work past, present, and future. The duty of BPC is to educate the marketplace and maintain high standards for quality, ethics and integrity in the EB-5 industry. The recommendations issued by the BPC set high standards for IIUSA's members to promote responsible, professional and ethical behavior and reinforce confidence in the EB-5 industry. The number of approved Regional Centers has risen rapidly over the past few years. The emergence of high profile fraud highlights the importance of best practices. The SEC and FINRA are also accelerating scrutiny of the EB-5 industry.

In 2014, BPC recommended updates to IIUSA's Code of Ethics and Standards of Professional Conduct as well as enforcement proce-

dures, which was adopted by the membership at the 2014 annual membership meeting. The BPC plans to further promote transparency in the market and foster clear communication among project sponsors, investment managers, foreign agents and foreign investors. The BPC will work on the following four major initiatives: (1) Best Practices for Foreign Agents (2) Best Practices for Broker-Dealers (3) Regulation D/S 101 White Paper to educate the membership, and (4) Coordination of BPC with other IIUSA Committees. In addition, BPC hopes to choose certain qualified migration agents to participate in finalizing their current work on marketing issues..

Ron Klasko, former chairman of BPC, explained the most popular issue in Mainland China these days: visa availability and retrogression. He addressed questions including: What is EB-5 visa availability? How many investors could get conditional green cards once retrogression happens? At which stage are those visa quotas allocated? How will the EB-5 visa availability affect investors from Mainland China? Why were EB-5 visas not used up last year, as predicted? How long will investors from Mainland China wait once retrogression happens? What should those children facing the age-out problem do?

The around 10,000 annual EB-5 visas available each year are allocated to petitioners by his priority date. It does not affect USCIS processing of I-526 and I-829 petitions. Everything resets on October 1, when visas may be issued again freely. So visa unavailability in September 2014 had a low impact. Mr. Klasko speculated that in May to July next year, we can expect the State Department in its monthly "Visa Bulletin" to post a "cut-off date" for mainland China that essentially says only those applicants whose approved I-526 was filed before that date may be approved by USCIS for adjustment of status or scheduled by a U.S. consulate for immigrant visa interview. We can expect the cut-off date to be sometime in 2015. For those families with children close to 21 years old, they should carefully consider the effect of age-out, which would cause the children to lose the benefits of getting a visa as dependents. For the EB-5 Program, a cut-off date may extend the time frame for investment and job creation. Thus, everyone should be fully prepared for the upcoming visa retrogression.



IIUSA President David Andersson (right) and Prince George County (MD) Executive Rushern Baker III share a laugh at the EB-5 Roundtable Discussion on September 8, 2014 in Xiamen, China.





**Top:** Over 200 conference delegates attended the IIUSA Mid-Autumn Festival Banquet on Sept. 7, 2014.  
**Bottom:** IIUSA and Fujian Entry-Exit Service Association partnered to host the EB-5 Roundtable discussion, a private seminar for foreign intermediaries and IIUSA members focused on dialogue on industry best practices, visa availability, USCIS policy updates, EB-5 advocacy and legislative affairs updates.

IIUSA Executive Director Peter D. Joseph greets American Chamber of Commerce Shanghai President Kenneth Jarrett at the USA pavilion on September 8, 2014. IIUSA's trade missions provide the opportunity to strengthen EB-5 partnerships around the globe.

IIUSA Director Tom Rosenfeld and IIUSA Executive Director Peter D. Joseph gave a speech on EB-5 legislative and other government/public affairs updates. The permanent authorization of the EB-5 Regional Center program has both Democratic and Republican support. We hope the Congress can permanently authorize the Regional Center Program and solve the upcoming visa retrogression issue through increasing quotas or removing the per-country caps on visas among other fixes.

Negative reports about EB-5 can affect Congressional attitudes toward the Regional Center Program, which is disadvantageous to permanent authorization. We need to prevent fraud, respond to negative reports on regional centers and projects, and provide material for positive media coverage. Topics like how to evaluate the percentage of EB-5 funds in a project, conflicts of interest among immigration attorneys, finder's fees, and project's risk alert to investors also attract audience interest.

The afternoon seminar on EB-5 hot topics, which was open to the public, was a highlight of CIFIT. IIUSA President David Andersson and Executive Director Peter D. Joseph led the seminar, which included speeches from the chairman of the IIUSA Membership Committee Kyle Walker (Green Card Fund), Chairman of the Guangdong Association Boyi He, Chairman of Beijing Association Yuzhang Chen, Chairman of the Shanghai Association Yao Yao and Chairman of the Fujian Association Qingbo Lu. IIUSA International Committee Chairman Kelvin ("Ning") Ma and IIUSA member Dandan Zou (Mainstay Global) acted as host and field interpreter.

IIUSA member and Vice Chairman of Guangdong Association Rachel Zou and IIUSA Director Tom Rosenfeld jointly discussed EB-5 project due diligence and the China market for EB-5. IIUSA has repeatedly stressed the importance of due diligence and commits their strong support to China EB-5 market.

At the end of the conference, IIUSA and the Fujian Association gifted a deed of gratitude to the American Chamber of Commerce South China in recognition of its cooperation. IIUSA and its partners also thank participating members of China's provincial Exit-Entry Associations:

1. Mr. Qingbo Lu, Chairman, Fujian Exit-Entry
2. Mr. Yuzhang Chen, Chairman, Beijing Exit-Entry
3. Mr. Lixin Qi, Chairman, Beijing Exit-Entry
4. Ms. Yao Yao, Chairman, Shanghai Exit-Entry
5. Mr. Peter Zeng, Chairman, Wuhan Exit-Entry
6. Ms. Rachel Wang, Chairwoman, Chongqing Exit-Entry
7. Ms. Danhua Zhang, Chairwoman, Liaoning Exit-Entry
8. Ms. Dan Zhu, Chairwoman, Sichuan Exit-Entry
9. Ms. Wenwen Chen, Vice-chairwoman, Zhejiang Exit-Entry
10. Mr. Yanwu Xie, Vice-chairman, Guangdong Exit-Entry
11. Mr. Zhongyi Pei, Vice-chairman, Shandong Exit-Entry
12. Mr. Xin Chang, Secretary General, Beijing Exit-Entry
13. Mr. Zhangwei Liu, Secretary General, Sichuan Exit-Entry

Autumn is the season of achievements. The IIUSA delegation returned from Xiamen with rewarding results. The next gathering will be IIUSA's 4th Annual EB-5 Market Exchange to be held in San Francisco October 22-24. IIUSA sincerely invites all of you to come to San Francisco to join this meeting. Next April, IIUSA will celebrate its 10th anniversary at the Annual Meeting and 8th Annual EB-5 Advocacy Conference in Washington, DC. ■

# COMMITTEE CORNER

## ASSOCIATION BUILDING (ABC)

Lead IIUSA's outreach to interest groups whose members are benefiting from the EB-5 Regional Center Program and are natural strategic partners in advocacy, education, and/or otherwise.

## BANKING

Develop educational materials for banks on the EB-5 Regional Center Program and best practices in popular financial services (escrow, bridge or other) loans, fund administration, etc.) that provides leadership in the ongoing institutionalization of the Program.

## BEST PRACTICES

Develop recommended industry best practices that contribute to a transparent and informed marketplace with the highest degree of professional behavior that aligns the interests between investor, project, and Regional Center to the greatest extent possible.

## BUDGET AND FINANCE

Recommends IIUSA annual budget to membership, oversee budget reporting, and ensure compliance with all applicable laws and regulations.

## BYLAWS

Ad hoc committee that recommends amendments to IIUSA's corporate bylaws on an as needed basis.

## COMPLIANCE

Proactively seek out market intelligence to inform IIUSA of current trend drivers, while contributing to market transparency by making potentially aggrieved parties aware of IIUSA's industry code of ethics policies and enforcement processes to address unethical behavior in the marketplace.

## EDITORIAL

Curate IIUSA's industry-leading quarterly magazine, the *Regional Center Business Journal* (and other select publications) by providing essential input into IIUSA industry data collection/analysis process and carefully considering submissions for publication on various IIUSA communication platforms.

## INVESTOR MARKETS

Track how world events are driving EB-5 investor market demand around the world and report through IIUSA's various communication platforms, while also providing essential input into IIUSA's market research efforts that empower member marketing decisions.

## MEMBERSHIP

Improve IIUSA's value proposition to members through consistent benefits analysis, recommending new programming, and leading outreach efforts to desirable new members.

**INTERNATIONAL SUBCOMMITTEE:** Recruit desirable new members based outside of the United States, while leading efforts to develop partnerships with international governmental entities and interest groups.

## PUBLIC POLICY

Consider public policy issues, both proactively and reactively, while developing and recommending industry positions for all elements of IIUSA's advocacy and government affairs activities.

## PUBLIC RELATIONS

Provide ongoing input to IIUSA public affairs strategy and its implementation, and assisting with outreach efforts to members and media alike.

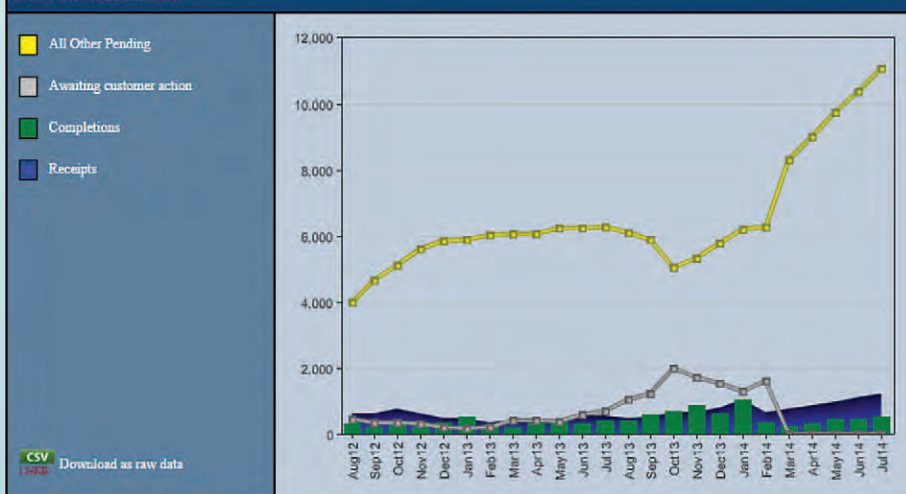
## TECHNOLOGY

Lead IIUSA efforts in understanding members technology needs, delivering empowering, cutting-edge industry technology tools to members, and optimizing all facets of IIUSA's existing web presence

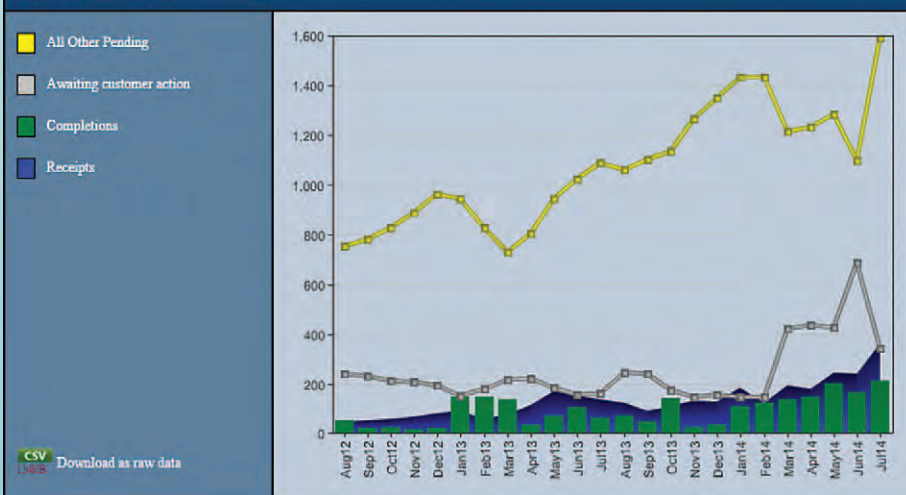
## I-526 & I-829 Trends

AS OF JULY 2014

### I-526 National Trend



### I-829 National Trend



Source: www.USCIS.gov





Visit the updated IIUSA Marketplace by going to [iiusa.org](http://iiusa.org), select Visit Our Shop, and chat with an IIUSA representative if you have any questions.

- Register for the 8th Annual IIUSA EB-5 Regional Economic Development Advocacy Conference in Washington D.C., April 12-14, 2015
- Sign Up for upcoming EB-5 webinars
- Purchase the All Access Pass
- Advertise in the *Regional Center Business Journal*
- Advocacy Brochures, Conference Handbooks and industry reports
- Exclusive Video Content, including webinars and conference presentations, available for OnDemand Purchase.
- Leadership Fund Contributions



IIUSA members can purchase an **All Access Pass** for the rest of 2014 which will grant you attendance to all 3 remaining webinars, unlimited access of past webinar recordings on demand and other digital content including conference presentations. Additionally, All Access Pass holders get exclusive IIUSA EB-5 reports and raw data on EB-5 statistics and trends.

***Purchase from the IIUSA Marketplace today!***

**[iiusa.org/marketplace](http://iiusa.org/marketplace)**

## By the Numbers

**I-829** - IIUSA is asking that all Regional Centers who have achieved I-829 approvals and/or return of investor capital, within the last year to e-mail [info@iiusa.org](mailto:info@iiusa.org). IIUSA will hold a special award ceremony on October 23rd at the EB-5 Market Exchange to honor RC operators with I-829 approvals.

**340** - 340 of the 369 Regional Centers approved as of September 30, 2013 submitted timely I-924As for that fiscal year; of the remaining 29, some filed late and some were issued a Notice of Intent to Terminate (NOIT) and some ultimately were terminated for failing to file.

**230** - The number of IIUSA delegates who attended the 18th Annual China International Fair for Investment & Trade (CIFIT), September 6-10 in Xiamen, China. The U.S. pavilion consisted of 42 booths from 32 IIUSA member organizations making this the largest U.S. delegation to CIFIT ever!

**4,000** - The August 2014 USCIS "performance data" on I-526 petitions reflects that in the first three quarters of this fiscal year USCIS approved about 4,000 petitions.

**100,000,000** - Department of State's (DOS) global database holds more than 100 million records of visa cases and 75 million photographs, with links to other federal agency security databases, including the FBI's Integrated Automated Fingerprint Identification System (IAFIS) and the Department of Homeland Security's Automated Biometric Identification System (IDENT). It unexpectedly crashed on July 20th after maintenance and has led to visa processing delays in consular offices worldwide.

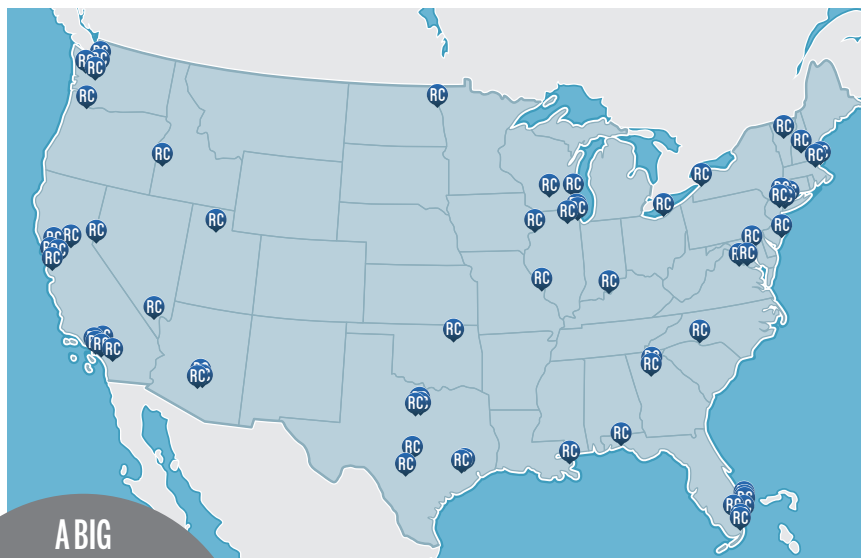
**538** - On June 5th, 2014, IIUSA President Advisory Council member CanAm Enterprises' 22nd EB-5 project repaid its loan in full and on time, bringing the total number of investors that have received principal repayment in full to 538.

# IIUSA SURPASSES 220 REGIONAL CENTER MEMBERS!

**I**IUSA is proud to announce that we recently surpassed **220 Regional Center members!** Thank you to everyone for your continued and dedicated support as we enter the one year mark until the Program needs reauthorization. Our organization, and the industry as a whole, is stronger thanks to your hard work and commitment.

Visit IIUSA's Legislative Action Center ([advocacy.iiusa.org](http://advocacy.iiusa.org)) to share your story with your members of Congress to ensure the Program's future. Additionally, stay tuned for IIUSA's new online member portal, a powerful tool that will equip our industry with the necessary information to engage the public with data-driven industry analysis and powerful anecdotes that drive the 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](http://www.iiusa.org) includes each Regional Center's date of approval, states they serve, and I-526 or I-829 approvals. These updates to the map and accompanying information will promote even greater visibility for your Regional Center to EB-5 stakeholders. 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 e-mail Allen Wolff at [allen.wolff@iiusa.org](mailto:allen.wolff@iiusa.org).



## "I3" Online Member Database Update

**I**IUSA Members should take note of the recent additions to the Basecamp Industry Intelligence Online ("I3 Online") database. The following materials, and more, are available for full viewing:

- "Selling Visas and Citizenship: Policy Questions from the Global Boom in Investor Immigration," Migration Policy Institute (10/14)
- "New American Investors Making a Difference in the Economy," American Immigration Council's (AIC) Immigration Policy Center Report On the EB-5 Immigrant Investor Program (09/14)
- USCIS EB-5 Stakeholders Engagement Teleconference Recording (09/10/14)
- USCIS ELIS Webinar Recording (08/05/14)
- IIUSA Webinar Presentation Documents: Targeted Employment Areas (09/05/14), USCIS EB-5 Adjudication Trends: I-526/I-829 Petitions & I-924 Applications (08/08/14), Securities Laws & EB-5: Enforcement Actions & Registration Guidance (07/31/14) "Selling Visas and Citizenship: Policy Questions from the Global Boom in Investor Immigration," Migration Policy Institute (10/14)



IIUSA has over 1,000 documents (totaling tens of thousands of pages) easily accessible from I3 Online including resources, presentations and files relating to advocacy, economic methodology, litigation, securities laws, USCIS adjudication and SEC Enforcement Actions. ■





# EB-5 [ MATCH ]



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from setting up regional centers and  
projects to filing EB-5 petitions.



**Elizabeth Peng, Esq.**

- Editor-in-Chief, Chinese edition of The EB-5 Handbook (EB5investors.com, 2014 forthcoming).
- Author of “How to Represent Chinese Investors in EB-5 cases.”
- Frequent speaker on EB-5 law and practice, especially related to investors from China.
- Earned law degrees in both China and USA.



**Cletus M. Weber, Esq.**

- Member of national EB-5 Committee of American Immigration Lawyers Association (AILA).
- Editor of several major books on EB-5, published by AILA and EB5investors.com.
- Frequent author and speaker on EB-5 law and practice.
- Invited reviewer of EB-5 section of Kurzban's Immigration Sourcebook, America's “bible” on immigration law.

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