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ASSOCIATION
TO INVEST IN USA

REGIONAL CENTER BUSINESS JOURNAL

March 2014

Building International
Partnerships to Create
American Jobs

In this issue:

FOLLOW THE DATA >>>>

Charting the success of the EB-5 Regional Center Program

Peer-Reviewed Study Finds Dramatic Increase in Economic Impact of U.S. EB-5 Immigrant Investor Program for 2012

Immigration Service's Investment Program is a Winner

NACo Adopts Resolution in Support of the EB-5 Regional Center Program and IIUSA's Legislative Agenda

2013 EB-5 Media Coverage Review

IIUSA Obtains I-526/829/924 Adjudication Data for FY2013, Releases Comprehensive Dataset (1991-2013)

SelectUSA's Foreign Direct Investment Report for 2012 Reveals Strength of U.S. as Destination for Foreign Investment

New I-526 Data by Country Illuminates EB-5 Investor Demand Trends

Regional Center Investments Account for Growing Percentage of EB-5 Visas

FOIA Efforts Shed Further Light on Review Board Process

Federal Court Litigation of EB-5 Cases

SelectUSA Roadshows this Spring

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We look forward to seeing you in DC! Stay tuned for more details.

www.iiusa2014eb5advocacyconference.org



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2014 IIUSA WEBINAR SERIES

IIUSA is proud to announce its 2014 Webinar Series, featuring a comprehensive array of EB-5 panel topics and an online event schedule designed to give you expert insights and analysis of crucial themes affecting the EB-5 Regional Center industry today. Click on the QR code or visit www.IIUSA.org and click on the IIUSA Event Calendar.



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- 4/24 - Impact of Potential Retrogression of the EB-5 Visa Category this Fiscal Year
- 5/29 - EB-5 Economics: Overview of Available Input/Output Models
- 6/26 - Finance: Combining EB-5 Capital with Other Economic Development Tools
- 7/31 - Securities Laws & EB-5: Enforcement Actions & Registration Guidance
- 8/28 - USCIS EB-5 Adjudication Trends: I-526 & I-829 Petitions
- 9/25 - EB-5 Economics: Targeted Employment Areas
- 10/30 - Form I-924A: Strategies for Fulfilling the Annual EB-5 Regional Center Reporting Requirement
- 11/20 - Finance: EB-5 Escrow, Fund Administration & Bridge Loans
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LETTER FROM THE EDITOR

DEAR READERS:

What is data telling us?

This is the fundamental question that we constantly ask ourselves as we consider which trends are indicative of the growth occurring as a result of the EB-5 Regional Center Program. Thanks to the hard work of IIUSA, the EB-5 industry has never had so much data available to analyze and put into use for our membership and the industry at large.

In Q1 2014, IIUSA released its peer-reviewed economic impact study from 2012, the most comprehensive report on the EB-5 program to date, showing the EB-5 Regional Center Program to have contributed \$3.39 billion to U.S. GDP and supported over 42,000 jobs (pg. 6-7). Moreover, recently obtained data on EB-5 adjudications, from 1991-2013, available exclusively to IIUSA members, brings to light several data points that all EB-5 stakeholders should be aware of (pg. 11).

This edition of the Regional Center Business Journal is a showcase for data; the data reveals the unmistakable pathways characterizing the evolution of the EB-5 industry to date and foretells what is in store for the EB-5 industry for the rest of 2014 and beyond.

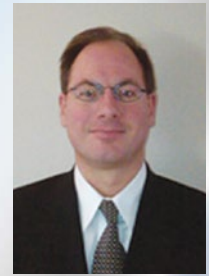
Lincoln Stone

Chair of the Editorial Committee, IIUSA

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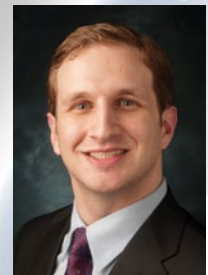
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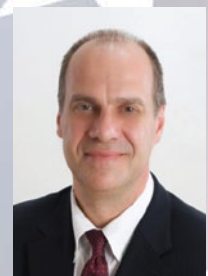
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Government Affairs

2013

12/20/13: Former USCIS Director, Alejandro N. Mayorkas, is confirmed by the Senate for the position of Deputy Secretary at the U.S. Department of Homeland Security – while Leon Rodriguez, currently at U.S. Department of Health & Human Services, is nominated by President Obama to replace Mr. Mayorkas.

2014

- 01/13-15: IIUSA meets with various offices, National Association of Counties (NACo), and other interest groups advocating on EB-5 related issues in Washington, DC. IIUSA is proud to be leading the advocacy charge on behalf of the EB-5 Regional Center industry.
- 01/22-23: IIUSA attends U.S. Conference of Mayors annual Winter meeting in Washington, DC to discuss their continued support of the EB-5 Regional Center Program.
- 01/30: Congressional Republican leaders publish “principles” for immigration reform, signaling potential movement in the immigration reform deliberations currently pending before Congress.
- 02/05: Brookings Institute publishes positive report on the EB-5 Regional Center Program as a tool for regional economic development.
- 02/12: IIUSA receives letter from The Honorable Senator Tom A. Coburn, M.D. inquiring about various Regional Center operational facts.
- 02/14: IIUSA submits questions/suggested agenda items to USCIS for 2/26 EB-5 public engagement via teleconference.
- 02/18: Regional Centers begin receiving letters from The Honorable Senator Tom A. Coburn, M.D. inquiring about various Regional Center operational facts.
- 02/20: IIUSA responds to The Honorable Senator Tom A. Coburn, M.D. with a 360-page response answering the specific inquiries and detailing the growing economic contributions of the EB-5 Regional Center Program to the U.S.
- 02/26: USCIS hosts public engagement on the EB-5 Program via teleconference, introducing the new Program Director, Nicolas Colucci, and updating stakeholders on various administrative/policy issues.
- 03/03: National Association of Counties (NACo) adopts resolution in support of IIUSA’s advocacy platform for a permanent authorization of the EB-5 Regional Center Program, with maximized capacity for economic impact.
- 03/06: U.S. Representatives Polis (D-CO), Garcia (D-FL), Salmon (R-AZ), and Amodei (R-NV) introduce H.R. 4178 to reform and permanently authorize the EB-5 Regional Center Program.
- 03/12: Senate Judiciary Committee recommends the confirmation of Leon Rodriguez as next Director of USCIS.
- 03/12: Congressional Budget Office announces official “score” of H.R. 2131 (the SKILLS Visa Act), stating it would yield \$110 billion in deficit reduction over ten years, if enacted. The SKILLS Act includes provisions that would permanently authorize and reform the EB-5 Regional Center Program.
- 03/18: IIUSA announces several speakers from the federal government and regulatory bodies for its May 7-9 DC Advocacy Conference

Peer-Reviewed Study Finds Dramatic Increase in Economic Impact of U.S. EB-5 Immigrant Investor Program for 2012

PROGRAM CONTRIBUTED \$3.39 BILLION TO U.S. GDP AND SUPPORTED OVER 42,000 U.S. JOBS

A new economic impact study commissioned by the Association to Invest in the USA (IIUSA) finds that the U.S. EB-5 immigrant investor visa program contributed \$3.39 billion to U.S. GDP and supported over 42,000 U.S. jobs during fiscal year 2012. This is more than a 2-fold increase from the average annual impact result reported in 2011.

Congress created the EB-5 program in 1990 to benefit the U.S. economy by attracting investments from qualified foreign investors. Under the program, each investor is required to demonstrate that at least 10 new jobs were created or saved as a result of the EB-5 investment, which must be a minimum of \$1 million, or \$500,000 if the funds are invested in certain high-unemployment or rural areas.

“As the industry trade association for the EB-5 Regional Center Program, IIUSA is committed to accurately measuring the positive impacts of the EB-5 Program in terms of job creation, GDP growth, and tax revenue,” said IIUSA Executive Director Peter Joseph. “The results of the 2012 assessment unequivocally demonstrate that the EB-5 Program is delivering on its promise of regional economic development and U.S. job creation at

no cost to the taxpayer.”

The report uses a comprehensive dataset on EB-5 investor applications and EB-5 Regional Center investments along with well-established economic modeling methods to determine overall positive impacts on GDP and job growth as well as federal, state, and local tax revenue from EB-5 investments in U.S. economic development projects, household spending by immigrant investors and other EB-5 related spending. Economic benefits are measured by state and by impacted industry sector.

Key findings of the report include:

- Total economic impact, combining the benefits of EB-5 investments, household spending of immigrant investors and other EB-5 related spending, was \$3.39 billion to U.S. GDP and supported over 42,000 U.S. jobs.

- Investment represents the largest component of EB-5 spending, with approximately \$1.8 billion invested by EB-5 Regional Center investors. These investments contributed \$2.5 billion to U.S. GDP and supported 33,134 American jobs.
- Over 85 percent of EB-5 investment capital – \$1.55 billion – was invested in the construction sector. Other sectors seeing EB-5 investments include chemical manufacturing, mining, manufacturing and power generation.
- Pennsylvania, New York, California and Illinois top the list of states with the larg-

“As the industry trade association for the EB-5 Regional Center Program, IIUSA is committed to accurately measuring the positive impacts of the EB-5 Program in terms of job creation, GDP growth, and tax revenue.”

est level of investment, and these saw the largest investment impacts. For example, more than 8,000 jobs were supported in California.

- Household spending by immigrant investors and their families contributed approximately \$383 million to US GDP and supported more than 4,700 jobs in 2012. The economic impact of household spending represents a permanent impact on the U.S. economy, as these families maintain spending patterns year after year.
- Spending on EB-5 related immigration services contributed approximately \$477 million to U.S. GDP and supported nearly 5,000 jobs in 2012. These





expenditures include spending on flights, moving services, cars, investment and legal services and government fees.

The study, which was conducted by David Kay of IMPLAN Group, LLC and peer-reviewed by Professors Eric Thompson and Hart Hodges of Association for University Business Economic Research (AUBER), was commissioned by the Association to Invest in

the USA (IIUSA), the national trade association representing EB-5 Regional Centers that account for 95 percent of the capital flowing through the EB-5 program.

This is the second comprehensive economic impact report commissioned by IIUSA based on comprehensive data-sets of I-526 and I-829 approval/denial statistics for each Regional Center in the country for fiscal

years 2010-2012, obtained through a vigorous process of data collection and subsequent analysis of I-924A filings. A breakdown of the “new commercial enterprises” and “job creating enterprises” that Regional Centers fund throughout the year, along with North American Industry Classification System (NAICS) codes to track industry sector impacts adds further context to the data. ■



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Areas include regional center set up, project infrastructure, investor petitions, source of funds.

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Immigration Service's Investment Program is a Winner



BY ROBERT C. DIVINE

BAKER DONELSON BEARMAN,
CALDWELL & BERKOWITZ, PC
IIUSA VICE PRESIDENT

Senate consideration of the nomination of Alejandro Mayorkas to a higher position at the Department of Homeland Security has given rise to increasingly hyperbolic innuendo about the EB-5 immigrant investor visa program. As someone who served in senior positions at U.S. Citizenship and Immigration Service and represents a variety of program stakeholders, I'd like to set the record straight about the EB-5 program — separate and apart from the nomination, which I personally support (IIUSA, as an organization, has no official position on the nomination).

Under EB-5, a program created by Congress with broad bipartisan support, foreign nationals who invest between \$500,000 and \$1,000,000 dollars in approved U.S. businesses are eligible for permanent residency if the U.S. government confirms that their investment created at least 10 American jobs. A comprehensive peer-reviewed economic study found that, from 2010-2011, EB-5 investments contributed \$2.2 billion to U.S. GDP and supported over 28,000 jobs — at no cost to taxpayers. Preliminary 2012 data shows continued growth, with the amount invested topping \$2.5 billion and over 33,000 jobs supported.



Look behind that data and you see that EB-5 capital has been a critical source of funds for name-brand projects like the redevelopment of a closed military base in San Bernardino, California and adjacent business development and the booming Philadelphia Navy Yard. Over the last five years, with commercial lending at a standstill, EB-5 capital filled the gap to fund nearly every major U.S. hotel project, as well as smaller, job-creating projects ranging from senior housing in Washington State and Florida, to a pioneering charter school focused on health care training in upstate New York.

Many EB-5 Regional Centers, which account for more than 95 percent of EB-5 capital and are subject to government approval and oversight, work closely with regional economic development agencies to direct funds to high-impact projects. In fact, a number of Regional Centers are partnerships with municipal governments. And, the U.S. Conference of Mayors recently endorsed permanent authorization of the regional center program, noting that EB-5 has become a vital source of urban redevelopment funds.

Contrary to recent criticism, the program requires rigorous vetting to ensure that investors do not pose either a law enforcement or national security threat before they are granted a visa. This starts with USCIS scouring the path of funds flowing into U.S. investments, tracing the money back to the source to ensure that it was earned legally.

This vetting is on top of background screenings required by USCIS and the State Department, which are the same for EB-5 investors as for applicants in any other visa category. Every immigrant in every family and employment based category, including EB-5, completes the same visa or adjustment of status application, providing information that the U.S. government has long determined to be sufficient.

Some applicants will receive greater scrutiny, and individuals deemed to be a danger to the United States can and should be found inadmissible — whatever the visa category.

In fact, in my view having served as Chief

Counsel and Acting Director of USCIS, EB-5 investors and their families, which account for only 7 percent of employment-based visas and 1 percent of permanent visas overall, are more carefully scrutinized than applicants in other visa categories. From a national security standpoint, detailed proof of a legal source and path of funds is more meaningful evidence than the sponsorship of a family member or a prospective employer, educational credentials or work history.

There is no doubt that this is a complex program requiring an equally complex and time-consuming analysis and approval process. Recognizing this, USCIS has made significant operational changes. A new, dedicated program office — now led by a former director of the Treasury department's Financial Crimes Enforcement Network — opened in May, staffed by more than 20 economists along with experts in business, immigration, fraud detection and national security. Interagency cooperation among USCIS, the SEC, FBI, and U.S. intelligence agencies related to reviewing EB-5 applications is the strongest I've seen and critical to addressing national security concerns.

These are the facts. Simply put, the EB-5 Program is complex, and the agency has taken commensurate steps to increase its expertise and enhance its systems. The agencies charged with issuing visas must be vigilant against security threats, and EB-5 is no exception.

Some projects will fail. By law, this program is neither a fast-track nor a guarantee. EB-5 offerings are subject to the same problems that plague other investment vehicles — bad luck, poor planning or execution, and, in some circumstances, misrepresentation. In these cases, investment funds are lost as is immigration status — both risks that the law requires — and all U.S. anti-fraud and securities laws apply.

Concern over investment failure and immigration security, or fundamental misunderstandings about a complicated program, should not throw a cloud over a program that fundamentally is working as intended. ■



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National Association of Counties (NACo) Adopts Resolution in Support of the EB-5 Regional Center Program and IIUSA's Legislative Agenda

In early March, IIUSA earned an important vote of public support as the National Association of Counties (NACo) Community, Economic Development and Work Force Steering Committee unanimously approved a resolution supporting IIUSA, which was subsequently adopted and approved on Monday, March 3, 2014 by the full NACo Board of Directors. These approvals signify NACo's full support of IIUSA's EB-5 legislative initiatives as a formal part of NACo Legislative and Program and Policy agenda and set the stage for IIUSA EB-5 working panel presentations in multiple future NACo meetings. NACo represents over 3,500 counties nationwide and counts nearly 35,000 local elected officials among its membership.

This welcome news is a direct result of the efforts of the newly-formed IIUSA Public Interest Group Committee, led by Chairman Bob Honts (who also serves as IIUSA Secretary Treasurer), which devoted significant behind-the-scene efforts to secure the opportunity to present at the NACo Annual Legislative Conference. Honts, along with IIUSA Executive Director Peter D. Joseph, presented on the EB-5 Regional Center Program to the committee. Also lending their support were IIUSA Government Affairs representative Matt Virkstis, Riverside California County Commissioner Tom Freeman, and SelectUSA Deputy Executive Director Aaron Brickman (who also presenting on EB-5 and the general importance of foreign direct investment to

US economic development today).

This engagement is part of IIUSA's continued coalition building initiative with organizations that have a public mission that overlaps with IIUSA's interests. Following a 2012 resolution in support of permanent authorization of the EB-5 Regional Center Program, in June 2013 the U.S. Conference of Mayors (USCOM) adopted a resolution in favor of the EB-5 Program affirming, "The United States Conference of Mayors urges Congress to include a robust EB5 program in the immigration bill including additional visas, permanent authorization of the regional center program and streamlined approvals for all applications." ■

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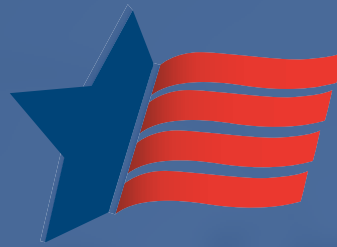
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ANTHONY KORDA
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Immigration
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2013 EB-5 Regional Center Industry Media Report

For most of us, the daily tasks and the urgency of now often take precedence over reflection on past events and experiences. Especially in an industry with so many moving parts, EB-5 practitioners are by necessity very forward-thinking. But as your trade organization, it is our duty to put recent history into context.

2013 was another year of substantial growth and change for the EB-5 Program. This growth has created new public policy challenges and opportunities which gives us great reason to believe the industry's next chapter will allow the Program to achieve new levels of success in both the short and long term. Back in November, IIUSA Executive Director Peter Joseph penned an insightful memo conveying why we should be optimistic about where the Program is headed from a policy and oversight perspective.

Since the end of last year, IIUSA has been diligently organizing a compilation of articles that, while often not as loud as some of the politically charged media coverage of the Program in late 2013, nonetheless conveys the positive impact of EB-5 fulfilling its promise of U.S. job creation at no cost to the taxpayer in diverse geographies and industries. Below are a selection of quotes which we feel embody what the EB-5 Program was all about in 2013.

"Today is not so much about Jay Peak, but it is about taking a program we have proven effective here and expanding its value to our surrounding community."

—**BILL STENGER**, PRESIDENT/CEO, JAY PEAK, INC.; DIRECTOR, IIUSA (NPR)

"Through public-private partnerships, we're able to independently align cities' economic initiatives with the goals of our individual and institutional investors. We pioneered this approach with the City of Dallas and are pleased to implement it in Fort Worth, a city with which we have developed an intimate relationship. In the days ahead, we will work diligently to identify high-quality projects that bring invest-



ment and significant job creation into the area."

—**DANIEL J. HEALY**, CEO, CIVITAS CAPITAL GROUP; DIRECTOR, IIUSA (PR NEWSWIRE)

"Far from it being a 'fast track,' industry data shows that in 2013 it is taking an average of 17 months for the government to review applications from prospective EB-5 Regional Centers, federally approved organizations that pool foreign investments and deploy capital to large-scale projects. For foreign investors, there is currently an 18-month backlog of more than 7,000 investor applications. The anecdotal evidence cited in the article appears to track these timelines, which provide ample opportunity to perform the necessary security checks on investors."

—**PETER D. JOSEPH**, EXECUTIVE DIRECTOR, IIUSA, LETTER TO THE EDITOR OF THE WASHINGTON TIMES

"Look behind that data and you see that EB-5 capital has been a critical source of funds for name-brand projects like California's San Bernardino Airport and adjacent business development and the booming Philadelphia Navy Yard. Over the last five years, with commercial lending at a standstill, EB-5 capital filled the gap to fund nearly every major U.S. hotel project, as well as smaller, job-creating pro-

jects ranging from senior housing in Washington State and Florida, to a pioneering charter school focused on health care training in upstate New York."

—**ROBERT C. DIVINE**, CHAIR OF GLOBAL IMMIGRATION PRACTICE, BAKER DONELSON BEARMAN, CALDWELL & BERKOWITZ, PC; VICE PRESIDENT, IIUSA, IN AN OP-ED PIECE FOR THE HILL

"The EB-5 regional center program and visas are very important funding sources for local businesses in the county."

—**TOM FREEMAN**, FOREIGN TRADE COMMISSIONER RIVERSIDE COUNTY, CA (TEMUCULA PATCH NEWS)

"The EB-5 program is one of the most complex and heavily scrutinized immigration programs. Investors must show every cent was earned legally."

—**STEPHEN YALE-LOEHR**, OF COUNSEL, MILLER MAYER, LLP; PRESIDENT EMERITUS, IIUSA (THE WALL STREET JOURNAL)

"In creating jobs in your neighborhood and in our state, the unemployment rate goes down. We have more taxpayers. Therefore, we can have more services. In other words, we have economic development."

—**K. DAVID ANDERSSON**, PRESIDENT, IIUSA; PRESIDENT, WHATCOM OPPORTUNITIES REGIONAL CENTER (NORTHWEST NEWS)

IIUSA Obtains I-526/829/924 Adjudication Data for FY2013, Releases Comprehensive Dataset

IIUSA recently obtained data on EB-5 adjudications at U.S. Citizenship & Immigration Services (USCIS) for FY2013. In doing so, we have rounded out receipt/approval/denial data for I-526/I-829 petitions and I-924 applications since the start of the EB-5 Program. This comprehensive dataset, which spans from 1991-2013, is available exclusively to IIUSA members and paints a complete picture of adjudication and investor demand trends since the beginning.

The comprehensive dataset brings to light several data points that all EB-5 industry stakeholders should be aware of. Here is a list of our eight favorites (we look forward to hearing what yours are!):

1. The 6,346 I-526 petitions received in FY2013 accounts for \$3.25+ billion in capital formation – a record setting year – while the 3,699 I-526 approvals account for just over \$1.83 billion.
2. FY2008-2013 (the most recent six years) accounts for 68.5% of all I-526 receipts and 62.8% of all I-829 receipts.
3. The I-526 approval rate over the last six years (FY2008-2013) averages out to 83.7%, much higher than the 64.4% over the entire span of the Program's existence. We see this as evidence that EB-5 policy has become more predictable in recent history, improving approval rates along the way.
4. Over the last three years (FY2011-2013), I-526 approval rates have hovered right around 80%; while the I-829 approval rate has eclipsed 90% in each of those years.
5. In FY2013, I-829 filing volume was the second highest it has ever been at 1,217, behind only FY2011 when 2,345 were received by USCIS. Given the higher volume of I-526 filings over time, we expect even higher I-829 volume in FY2014.
6. The I-829 approval rate over the last six years (FY2008-2013) averages out to 87.1%, much higher than the 73.2% over

I-526/829/924 FILING STATISTICS FOR FY2013

FORM	RECEIPTS	APPROVALS	DENIALS	APPROVAL RATE	GROWTH IN RECEIPTS FROM 2012
I-526	6,346	3,699	943	79.6%	+4.8%
I-829	1,217	844	44	95%	+70.9%
I-924	207*	218	32	87.2%	-13.7%

* Through a December 2013 response to IIUSA's Freedom of Information Act (FOIA) request for adjudication data, USCIS indicated I-924 receipts for FY2013 to be 436. We are communicating with USCIS to reconcile the figures.

the entire span of the Program's existence. We see this as evidence that the Program is delivering on its promise to EB-5 investors!

7. I-924 approvals were up 500+% between FY2012 and FY2013, going from 35 to 218 in just one year! This includes applications for initial designation and amendments to existing designations. USCIS made some policy decisions in 2013, while enhancing its administrative capacity, that made this possible.

8. The I-924 approval rate jumped from 35.7% in FY2012 to 87.2% in FY2013.

What do these adjudication trends say about the EB-5 Program's promise to create American jobs, generate federal/state/local tax revenue and contribute to overall U.S. GDP? To answer this vital question, we must take a closer look at the results of the IIUSA-commissioned Economic Impact assessment of the EB-5 Program from 2010-2011 and early initial results from the 2012 report (which has been drafted and is currently under peer-review, before finalizing and publishing in a matter of weeks). According to our initial results, in 2012 the industry supported 42,000+ American jobs, added \$3.39+ billion in GDP and generated \$712+ million in federal/state/local tax revenue (up from 33,000+ jobs, \$2.6 billion in GDP, and \$564+ million over the previous two years combined!).

All of this data, in tandem with IIUSA's EB-5 Economic Impact reports, goes to show that the EB-5 Regional Center Program is close to maxing out its capacity. Without legislative reforms, such as recapturing unused visas since 1990, eliminating per country caps, and only counting the principal visa applicant toward the annual visa allocation (currently, the entire investor's family counts against the visa cap) the EB-5 Program is set for a collision course with a nightmare retrogression scenario. IIUSA remains hard at work advocating for these changes in Congress and are hopeful 2014 will provide relief we all hope to see. ■

SelectUSA's Foreign Direct Investment Report for 2012 Reveals Strength of U.S. as Destination for Foreign Investment



BY ALLEN WOLFF
IIUSA MARKETING AND
COMMUNICATIONS
COORDINATOR

SelectUSA, the U.S. federal initiative to promote and support business investment in the United

States, released its report *Foreign Direct Investment (FDI) in the United States: Drivers of U.S. Economic Competitiveness* late last month. Housed in the International Trade Administration of the U.S. Department of Commerce, SelectUSA aims to deepen the United States' worldwide economic alliances and promote the stability, potential and promise of the American market to overseas investors.

The report, derived from statistics compiled by the U.S. Bureau of Economic Analysis (BEA), highlights several important investment trends for 2012 including the largest country sources of FDI (top 5: U.K., Japan, Germany, Canada and France), the top FDI growth markets (top 5: China, Hungary, Indonesia, Norway and Malaysia) and a breakdown by industry and geographic location. You can read the full report above or peruse the report's info graphics figures.

What does this all mean in the context of

EB-5 job creation and sustained investment through the Program? Foreign direct investment creates jobs, increases wealth and living standards, and bolsters innovation that drives U.S. economic competitiveness. In many ways, EB-5 is a microcosm of total FDI in the U.S. The EB-5 Program, which totaled over \$2 Billion or 1.2% of total FDI inflow in 2012, is by its very nature a vehicle for job creation and economic development throughout the U.S. What's more, according to the report, FDI into the United States from China grew at an average annual rate of nearly 71 percent between 2008 and 2012, a statistic that is reflected in the large number of EB-5 applicants from Mainland China (estimated at 81% of total EB-5 applicants). As we have recently reported, based off of the adjudication data obtained in the last few months, much of the EB-5 Program's growth has occurred since 2008, with the previous six years (2008-2013) accounting for 68.5% of all I-526 receipts and 62.8% of all I-829 receipts since the start of the EB-5 Program in the early 1990s.

IIUSA'S INTERACTION WITH SELECTUSA

Since the Executive Order in June 2011 by President Barack Obama establishing the SelectUSA Initiative to attract and retain investment in the United States, IIUSA has

developed relationships with key SelectUSA staff members in order to promote the EB-5 Regional Center Program as an important component of foreign investment into the U.S. SelectUSA is a staple speaker at IIUSA conferences, and has an ombudsman function for working with other federal agencies when FDI is being frustrated by bureaucratic hurdles – a portfolio that sometimes includes EB-5 processing issues.

In fact, in October-November, IIUSA attended the first annual SelectUSA Summit in Washington, D.C. where IIUSA Vice President Robert C. Divine spoke on a panel exploring capital availability in the U.S. and the challenges faced by global investors in establishing operations in the United States. IIUSA continues to explore ways in which we can contribute to SelectUSA's overall mission of driving investment into the U.S. Furthermore, IIUSA has participated (and will continue to) in SelectUSA events abroad to promote inbound FDI. Our collaboration with this effort actually predates the creation of SelectUSA in 2011, when the office of "Invest In America" was in charge of promoting FDI into the US (the office was absorbed by the more robust SelectUSA upon its creation). We look forward to continuing this essential partnership. ■



Online at:
www.pnwerc.org
investorrelations@pnwerc.org

Investing in a Greener America

The Trucking Industry is critical to the health of the U.S. economy. New emissions standards come into effective January 1, 2014. Recognizing the urgent need for environmentally compliant trucks, David Andersson, founder of WORC, established Pacific Northwest EB-5 Regional Center (PNWERC).

PNWERC will inject much-needed capital into the American trucking industry throughout its designated geographic region of Washington, Oregon, Idaho, and Montana. Opportunities for immigration through investment are **now available!**

Celebrating Past Success

As we advance into 2014, we look back with pride on WORC's achievements, which include not only a 100% approval rate on I-526 and I-829 petitions, but three vibrant job-creating retirement communities in Whatcom County, Washington. We congratulate our immigrant partners who have each realized their dream of living in America.

Looking Forward to the Future

We are excited about our expansion through PNWERC and to serving new immigrant investors with the same diligence and expertise that is a hallmark of our past projects.

Please contact us for more information



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Regional Center
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Green Truck I GP
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New I-526 Data by Country Illuminates EB-5 Investor Demand Trends



BY SUZANNE LAZICKI

LUCID PROFESSIONAL WRITING

CHARTS BY LEE LI

IUSA DATA MANAGEMENT
INTERM

Where in the world can EB-5 investors be found? We can now answer this question with some precision thanks to a new report from the USCIS, which sorts I-526 petition approvals by the investor's country of birth for each fiscal year from 1992 to 2012. IIUSA obtained the report from the USCIS Office of Performance and Quality via another successful FOIA (Freedom of Information Act) request, adding to the collection of industry intelligence available to members through the IIUSA "All-Access Pass." I-526 petition numbers correspond directly to the number of investors, making the data a more precise measurement of demand than State Department EB-5 visa numbers, which reflect

investors as well as their family members.

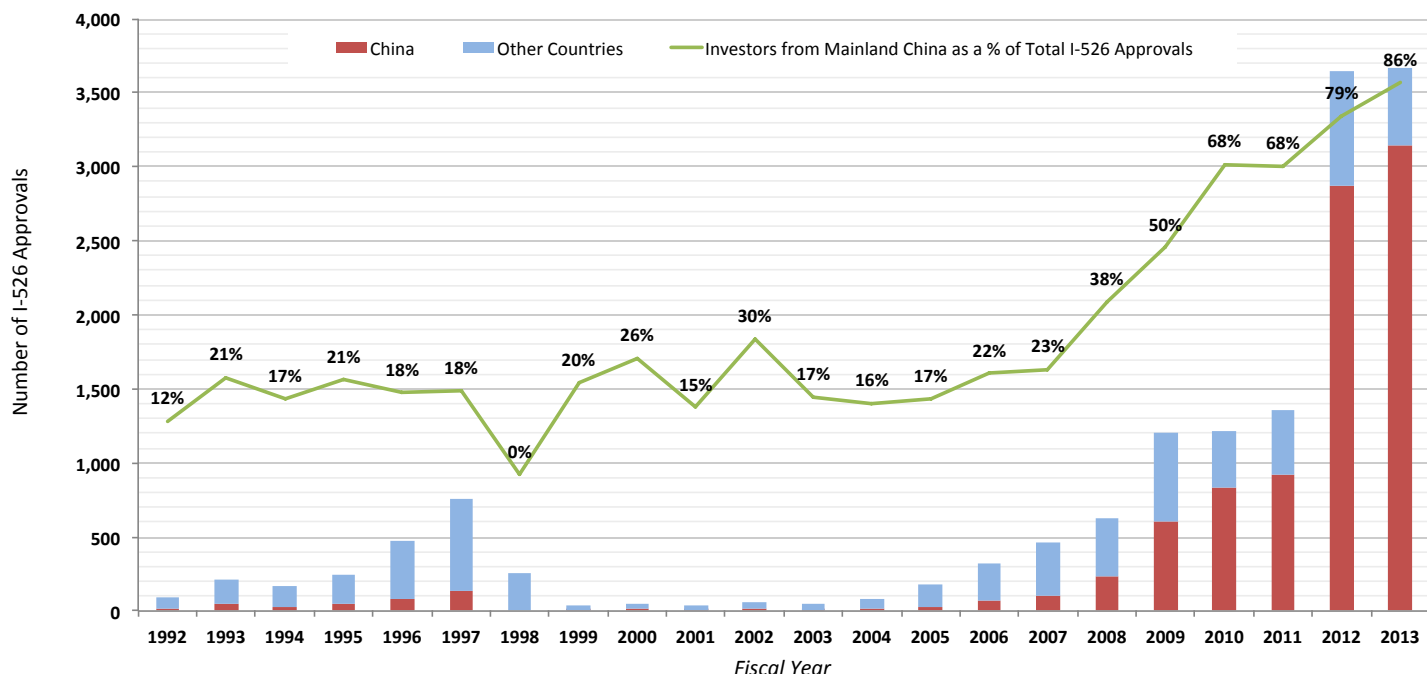
Examining the number of I-526 petition approvals by year and the investor's country of origin reveals consolidation, diversification, and demand shifts in the EB-5 market. The numbers confirm that mainland China has grown dramatically both in terms of number of investors and market share. While China accounted for only a quarter of all EB-5 investors in the pre-Recession period, it has accounted for three quarters of all EB-5 investors since then. South Korea has remained the second largest source of EB-5 investors overall but with a diminishing market share: 22% of EB-5 investors before 2009 and 6% of investors since. Taiwan and the United Kingdom have ranked in third and fourth place overall, but with the UK gaining in relative significance. The roster of countries supplying the balance of EB-5 investors has changed over time. In the pre-Recession period, Hong Kong, India, Japan, Chile, and Germany ranked just below the UK by number of investors. Of these, only India has held

its ranking since 2009. Countries growing in significance in recent years include Iran, Mexico, Venezuela, Russia, Vietnam, Brazil, and South Africa. Meanwhile, India, Canada, Japan, Netherlands, and Germany have continued to supply a moderate number EB-5 investors. While mainland China has been an increasingly dominant source of EB-5 investors, the total number of countries contributing investors has also grown. I-526 approvals since 2009 represent EB-5 investors from a total of 118 countries, while 106 countries were represented prior to 2009. Demand trends for countries other than China become especially significant as EB-5 visa numbers approach the annual quota, raising the possibility of quota backlogs for Chinese investors.

The following charts illustrate some of the demand trends that can be tracked using I-525 petition approval numbers by country and year. The complete report, available from IIUSA through the All Access Pass, includes raw data from fiscal year 1992 through May 14, 2013, the report query date. ■

I-526 PETITION APPROVAL TRENDS BY COUNTRY OF INVESTOR ORIGIN

FIGURE 1. GROWING SIGNIFICANCE OF MAINLAND CHINA AS A SOURCE OF EB-5 INVESTORS



TOP COUNTRIES OF ORIGIN FOR EB-5 INVESTORS, PRE- AND POST-RECESSION

FIGURE 2A. I-526 APPROVALS BY INVESTOR'S COUNTRY ORIGIN OF BIRTH, FY1992-2008

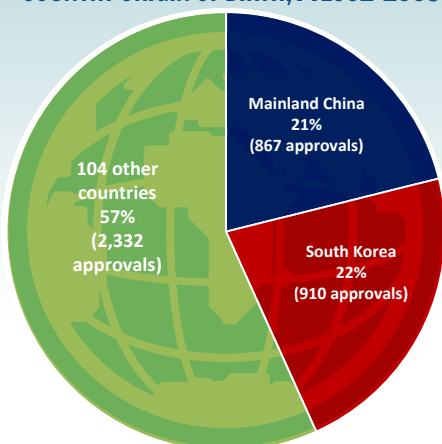


FIGURE 2B. I-526 APPROVALS BY INVESTOR'S COUNTRY ORIGIN OF BIRTH, FY2009-2013

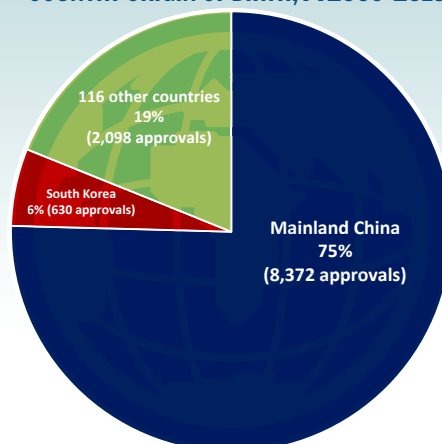


FIGURE 3A. I-526 APPROVALS FOR INVESTORS FROM COUNTRIES OTHER THAN CHINA AND SOUTH KOREA, FY1992-2008

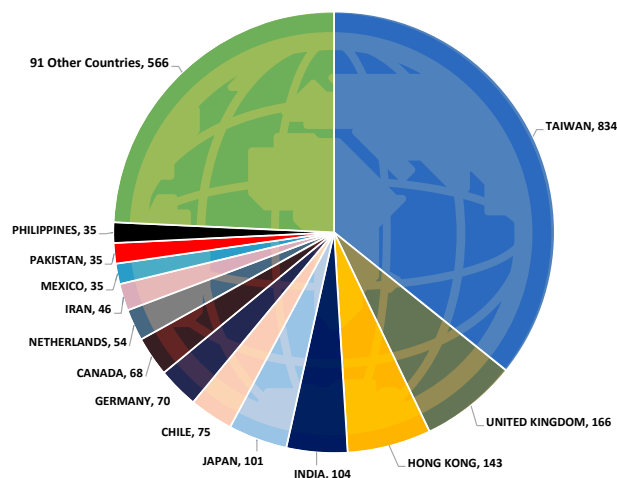
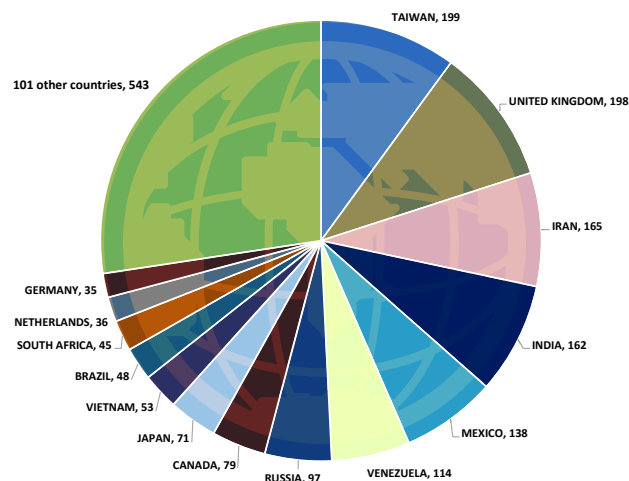
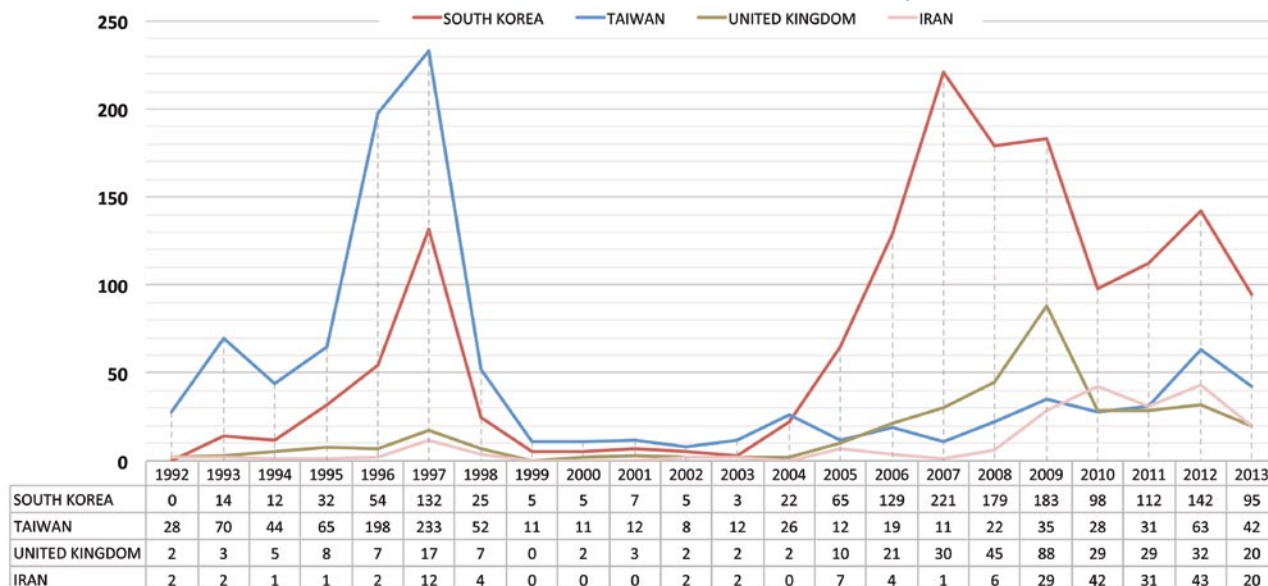


FIGURE 3B. I-526 APPROVALS FOR INVESTORS FROM COUNTRIES OTHER THAN CHINA AND SOUTH KOREA, FY2009-2013



SPOTLIGHT ON POST-RECESSION GROWTH MARKETS

FIGURE 4A. I-526 APPROVALS BY INVESTOR'S COUNTRY OF BIRTH, FY1992-2013



SPOTLIGHT ON POST-RECESSION GROWTH MARKETS, CONT.

FIGURE 4B. I-526 APPROVALS BY INVESTOR'S COUNTRY OF BIRTH, FY1992-2013

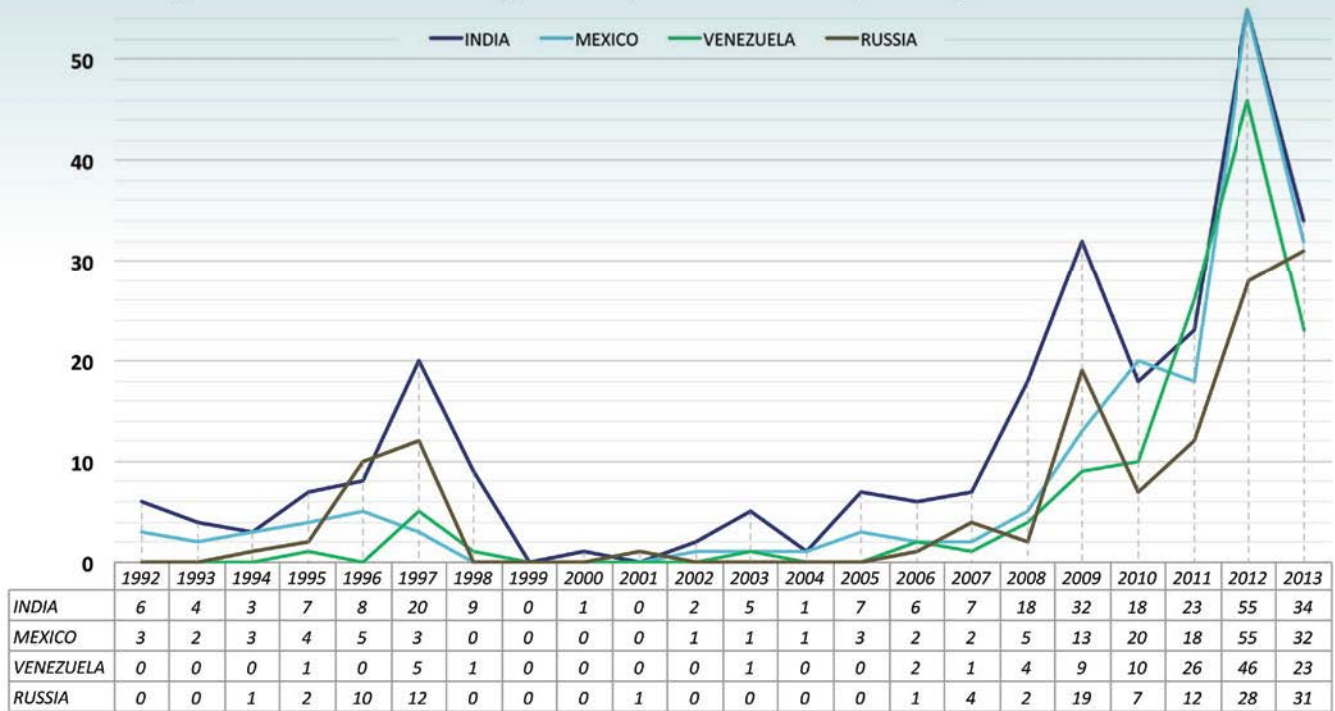
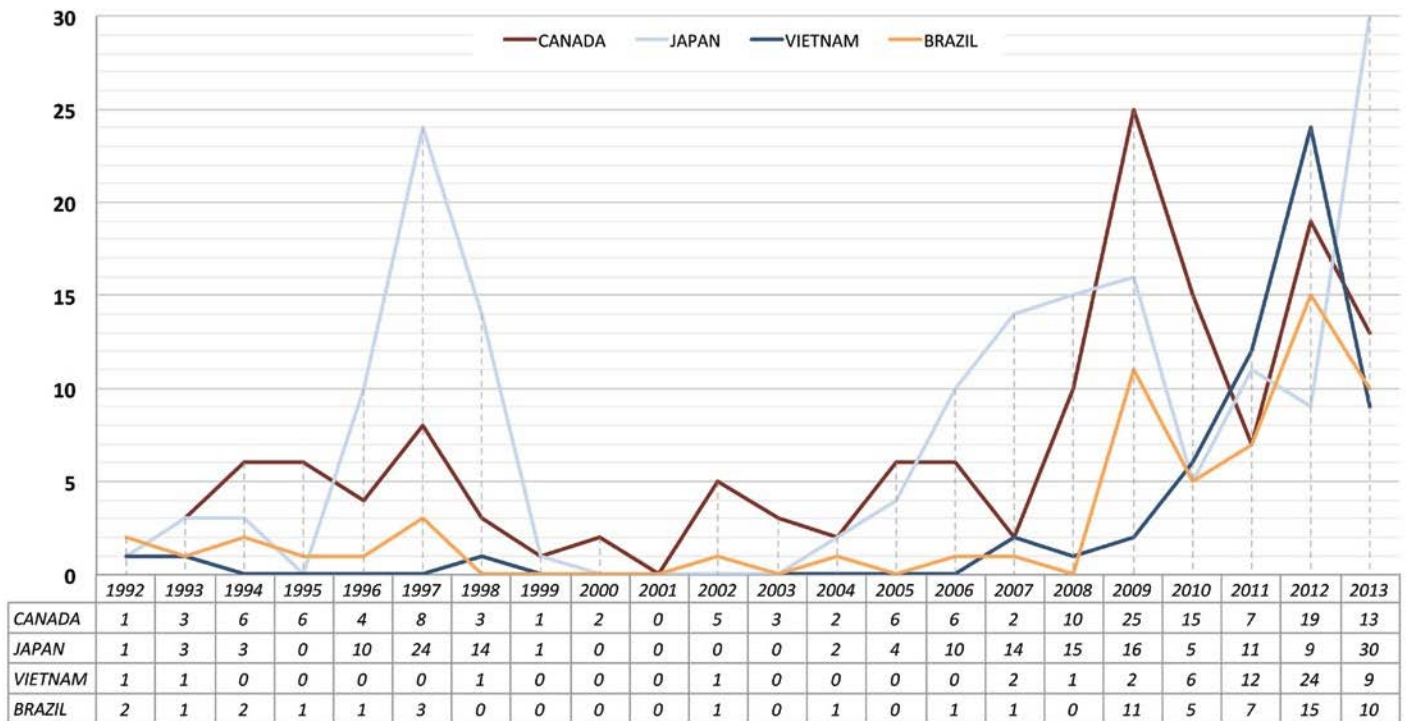


FIGURE 4C. I-526 APPROVALS BY INVESTOR'S COUNTRY OF BIRTH, FY1992-2013



Regional Center Investments Account for Growing Percentage of EB-5 Visas

EB-5 visa usage statistics from the US Department of State's annual Report of the Visa Office show that the vast majority of EB-5 investments since 2006 have been associated with Regional Center projects in Targeted Employment Areas. The number of visas associated with direct investments declined overall from 2006 to 2013, though with an uptick between 2012 and 2013. The number of Regional Center investments at the \$1 million level has remained very low. ■

FIGURE 5. PERCENTAGES OF EB-5 VISAS BY INVESTMENT TYPE, FY2006-2013

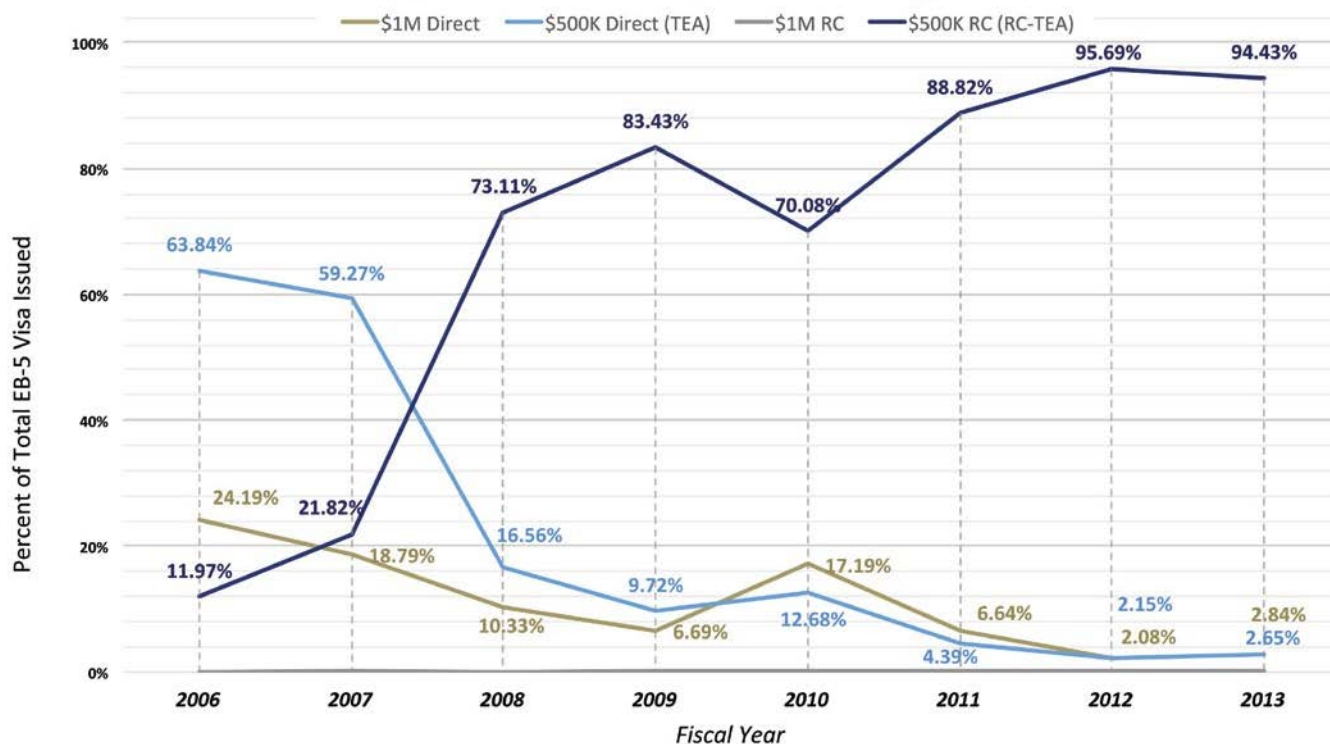


FIGURE 6. TOTAL NUMBER OF EB-5 VISAS ISSUED BY INVESTMENT TYPE, FY2006-2013

	2006	2007	2008	2009	2010	2011	2012	2013
\$500K Regional Center (TEA)	96	173	1,055	3,519	1,321	3,076	7,312	8,087
\$500K Direct (TEA)	512	470	239	410	239	152	164	227
\$1M Regional Center	0	1	0	7	1	5	6	7
\$1M Direct	194	149	149	282	324	230	159	243

Source: US Department of State Annual Report of the Visa Office

FOIA EFFORTS SHED FURTHER LIGHT ON REVIEW BOARD PROCESS



BY LINCOLN STONE

IJUSA EDITORIAL COMMITTEE
CHAIR, STONE GREZGOREK &
GONZALES, LLP

I USA persistence in seeking information by way of FOIA requests continues to pay dividends. The

latest haul includes a few important pages concerning the Review Board installed by USCIS to hear in-person presentations by applicants who are facing denial of an I-924 application for regional center authority.

Former USCIS Director Alejandro Mayorkas had announced the Review Board would be inaugurated by the end of July 2012. See <http://www.aila.org/content/default.aspx?docid=40574>. The Review Board now is in full swing. The standard Notice of Intent to Deny ("NOID") the I-924 application issued by USCIS includes a section entitled "Review Board Option" that advises the applicant of the option to request an in-person or telephonic hearing before a final decision is made by USCIS. The NOID advises further that the applicant will be required to submit arguments and supporting documents in advance of the Review Board hearing; however, it does not indicate much more about the process. Very few stakeholders have appeared before the Review Board, so scant information about it is publicly available.

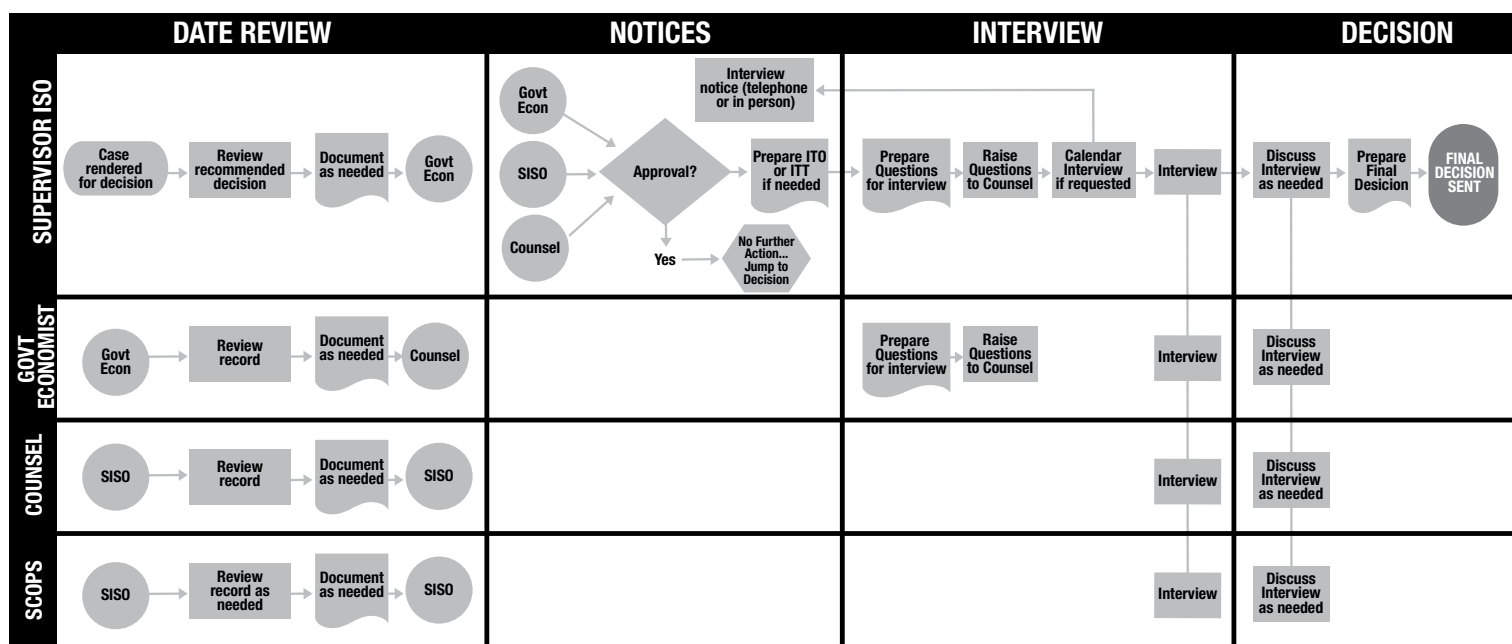
The materials obtained via FOIA include instructions on how USCIS is to conduct the

"I-924 Interview", which is to be directed by a USCIS panel consisting of the supervising adjudications officer ("SISO"), an economist, and a lawyer from the Office of Chief Counsel. An accompanying diagram of the decision-making process highlights the integral roles that the government economist and counsel have in reviewing the record, formulating questions, and helping USCIS get to final decisions. According to the instructions, the SISO opens the interview with welcoming remarks and administers an oath to the principal representative of the applicant ("excluding the attorneys"), and then explains that the interview will not be recorded by either party but it will be a flexible format consisting of questions from the SISO and/or the economist to the principal and his accompanying team. The instructions allow for alternative formats, such as a presentation by the applicant ("interviewee"). The SISO is expected to provide closing remarks at the conclusion of the interview which is not to exceed 60 minutes. USCIS commits to supplementing the record of the proceedings with the additional information provided at the interview, and also allows for further supplementing of the record with any additional information that is provided within 7 days after the interview is concluded. USCIS commits to issuing a written decision within 30 days.

As testament to how the Review Board process can dramatically enhance an applicant's fortunes, one successful regional center applicant shared copious notes of its experience before the Review Board. And why not – after having fought through three separate Requests

for Evidence ("RFE") and a NOID, the presentation before the Review Board garnered a USCIS-issued approval notice dated 27 days after the hearing. Prior to the Review Board interview, and following the submission of a response to the NOID, the applicant received from USCIS certain informal "Requests for Clarification" that, ultimately, served to narrow the remaining open issues. Apparently, though, the I-924 application still could not be approved based on the then-existing record and USCIS therefore issued a "Notice of Interview" that includes interview instructions as well as a list of discussion items. At the interview, the applicant was represented by a team of five, including an economist, an industry expert, a regional economic development official, and an immigration lawyer. The government economists, in particular, demonstrated deep familiarity with the issues in the case and peppered the applicant with questions about NAICS industry codes, IMPLAN sector codes, the foundations for the estimated revenues of the business, whether the estimated job creation represents "new jobs", and the rationale for the expansive geographic scope of the proposed regional center.

Certainly, the opportunity to have in-person dialog with USCIS about an important (usually long-pending) application ranks far superior to the time-consuming and expensive adjudication routine of RFE#1-RFE#1 response-RFE#2-RFE#2 response-NOID-NOID response. It remains to be seen whether this critical adjudications tool will be a mainstay of the investor program in Washington DC. ■



State Designations of EB-5 Targeted Employment Areas



BY CAROLYN S. LEE
PARTNER, MILLER MAYER, LLP

Misconceptions about targeted employment area (TEA) designations continue to cloud the views about certain EB-5 immigrant investor projects. These misconceptions appear to be grounded in fundamental misunderstandings of the rules governing TEAs.

The TEAs discussed here are high unemployment TEAs as certified by authorized state agencies, qualifying investments in these areas for EB-5 investment at the \$500,000 level, due to “high unemployment” of at least 150% of the national average unemployment rate. Other types of TEAs are not controversial. Rural TEAs published by the Office of Management and Budget, are static and politically uncontroversial. Similarly, high unemployment in an area already measured by the U.S. Bureau of Labor Statics (BLS), Local Area Unemployment Statistics (LAUS) program, such as Metropolitan Statistical Areas (MSAs), counties and certain large cities, requires no state certification because LAUS publishes unemployment data for these areas. If an EB-5 project is in an MSA, or a county is a TEA, no state designation is required because LAUS publishes high unemployment data for these areas. Many non-rural projects are within MSAs and counties that as a whole do not meet the high unemployment threshold, so the project sponsors use the second form of evidence – state TEA designation letters for smaller geographic areas.

The state government of any state of the United States may designate “a particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more” as a high unemployment TEA. Before a state makes any TEA designation, it

must notify USCIS which state agency will be delegated the authority to certify TEAs. Typically, a state’s labor department is the designated state agency. USCIS regulations delegate to states the task of designating high unemployment TEAs for smaller areas within MSAs and counties for which no federal data are publicly available. Current USCIS policy, consistent with USCIS regulations, affords state designations robust deference. USCIS, however, does not abdicate all review. It reviews a state’s determination for compliance with the EB-5 program definition of high unemployment and ensures the use of the most recent federal statistics.

While USCIS has oversight authority over TEA designations, the U.S. Department of Labor (DOL) provides substantive guidance and standards for state TEA designations. The DOL has issued at least four technical memoranda instructing state departments of labor on the proper methodology for determining EB-5 TEAs, most recently in July 21, 2010 (“DOL Technical Memorandum”). These technical memoranda make clear that in designating areas for which BLS does not produce employment estimates, states must use “the standard LAUS estimating methodology” including specified disaggregation methods. Therefore, as long as states follow these DOL guidelines, USCIS defers to state TEA determinations.

IS GERRYMANDERING “RULES STRETCHING”?

Some have suggested that rules have been “stretched” to qualify certain sites as within TEAs. These sources point to selective uses of census tracts resulting in irregular shaped maps evocative of gerrymandered districts. Others contend that census data are “manipulated” in violation of the EB-5 program rules. It may be true that state designated TEA maps are rarely geometric and some are odd shapes. But this is not necessarily a sign of rule stretching.

U.S. DEPARTMENT OF LABOR STANDARDS

Department of Labor guidance on state TEAs permit states to draw their own boundaries: “States may create geographic boundaries of any size and/or limit the size of these areas.” States’ discretion to draw similar boundaries is not limited to the EB-5 program. The DOL TEA guidance allows states to find high unemployment for other federal programs: “a State may choose to apply an ASU-type approach and identify very small areas that meet the unemployment rate minimum, but, if they find this process too time-consuming, they may decide to limit labor force estimates to areas with some minimum population size.” Areas of Substantial Unemployment (“ASUs”) are areas having among other factors an unemployment rate of at least 6.5% and are used to determine areas qualifying for federal funding programs targeting unemployment and worker displacement. This process is very similar to the process states use to designate EB-5 TEAs, as it also prescribes using LAUS methodology for calculating unemployment in sub-LAUS areas. Under DOL guidance, ASUs may be comprised of “any combination of LAUS areas and/or census-shared areas (for example, census tracts within counties, functional minor civil division (MCD) parts of census tracts, place parts of census tracts, and place parts of functional MCDs)” or “a portion of a LAUS area that is census-shared from a whole LAUS area.” States’ findings of high unemployment areas using even parts of a census tract are therefore valid, as long as states use standard DOL methodology specified in the Manual for Developing Local Area Unemployment Statistics and follow all other procedures and statistical policy directives the memoranda require.

No rule limits how states draw their boundaries for measuring high unemployment areas: “States may create geographic boundaries

CONTINUED ON NEXT PAGE >>



of any size and/or limit the size of these areas.” The DOL ASU guidance states that an area “must be a contiguous geographic area composed of any combination of counties, balance of counties, cities, census tracts, or other areas within a State. Contiguity may be accomplished if two areas are separated by a body of water (for example, river, lake, ocean) if the two areas are directly across the body of water from one another.” Accordingly, DOL guidance gives states discretion to configure the area as long they follow a BLS-approved methodology to find the local unemployment rate.

USCIS STANDARDS

USCIS regulations expressly permit irregular areas to be recognized as a high unemployment TEA if based on a state government letter meeting the requirements of 8 CFR 204.6(i). That regulation, in turn, states in part:

“The state government of any state of the United States may designate a particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate). Evidence of such designation, including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained, may be provided to a prospective alien entrepreneur for submission with Form I-526.”

These regulations make clear that states have the discretion to draw the geographic bounds of a TEA. First, while “political subdivision” has a general defined meaning (such as a state, county, city), there is no general definition of “geographic subdivision.” Also,

because the definitions set apart the areas in the alternative as “geographic or political subdivision,” a geographic subdivision must have a meaning apart from political subdivision. It follows then, that “a” geographic subdivision may encompass any single area the delegated state authority designates. This single area may encompass multiple political subdivisions, parts of political or statistical subdivisions, a single census tract, or an aggregation of different types of areas and/or parts of them, consistent with DOL guidance. The open character of “geographic subdivisions” under USCIS regulations is therefore consistent with DOL guidance discussed above.

Second, recall that the regulations provide the state designation letter as an alternate form of high unemployment evidence distinct from evidence readily and publicly available to establish a single political subdivision as having high unemployment. If an MSA, county, or large city qualifies as a TEA, EB-5 petitioners may simply collect public LAUS data and include that data with the petition. 8 C.F.R. 204.6(j)(6)(ii)(A) permits:

“Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate.”

The USCIS’s Adjudicator’s Field Manual (AFM) is consistent with the regulations as set forth above. Chapter 22.4(c)(4)(F) of the AFM states:

In some instances I-526 petitioners may claim high unemployment in only a portion or portions of a geographic area or political subdivision for which distinct unemployment data

is not readily available to the general public from federal or state governmental sources. This may be indicative of an attempt by the petitioner to “gerrymander” a finding of high unemployment when in fact the area does not qualify as being a high unemployment area. Such a claim is not sufficient to establish that the area is a high unemployment area unless it is accompanied by a designation from an authorized authority of the state government.

The purpose of the state designation letter is precisely to permit a state to designate irregular areas not readily encompassed by a political subdivision or subdivisions as high unemployment TEAs. An oddly-shaped TEA is no indication of rules stretching. Both USCIS and DOL rules applicable to state EB-5 TEA designations contemplate and permit states to draw boundaries consistent with DOL methodology such as census-share and population-claims methods. DOL memoranda make clear that for “components of non-rural areas” for which BLS does not publish data, LAUS methodology must be used. As long as states follow this guidance and prescribed methods, 8 C.F.R. § 204.6(i) is satisfied, regardless of the area’s shape.

STATES AS TEA DESIGNATORS

There is no better authority arguably than a state department of labor or workforce agency to designate TEAs. First, as the ASU example shows, states have followed similar DOL guidelines for other federal programs requiring BLS methodology to disaggregate BLS data for smaller geographic areas. Second, it is in every state’s interest to ameliorate unemployment within their state. In particular, no governmental agency, has a greater interest in lowering unemployment and enhancing the workforce than a state labor agency, as their



mission statements show.

Notwithstanding states' regulation by the DOL, USCIS reserves for itself oversight of states' designations. USCIS's policy is to "ensure compliance with the statutory requirement that the proposed area designated by the state in fact has an unemployment rate of at least 150 percent of the national unemployment rate." Consistent with its regulations, USCIS generally defers to states' TEA designations. However, USCIS "will review state determinations of the unemployment rate and, in doing so, USCIS can assess the method or methods by which the state authority obtained the unemployment statistics."

USCIS's deference policy does not mean that it simply gives state TEA letters a pass. USCIS regularly issues requests for evidence for updated state designation letters. This is consistent with DOL guidance for states to use "the latest 12-month average or latest annual average of data." If EB-5 investor petitions for a large project are filed over a long period of time, often the next year's BLS unemployment data will be available by the time the last ones are filed. In these instances, USCIS requests a new TEA letter to ensure that the project remains within a TEA for the latter filings.

USCIS has thus struck a considered policy balance between deferring to state agencies for the map and calculations, while reserving and reasonably exercising its authority to further review for compliance with EB-5 program rules.

THE PROJECT SITE AND A NON-HIGH UNEMPLOYMENT CENSUS TRACT

Where the project site itself is not a high-unemployment census tract, adjoining census tracts with high unemployment are brought within a contiguous geographic area to designate a TEA. This approach is consistent with how (1) the BLS measures unemployment

and (2) economists measure job creation impacts of stimulation.

The BLS does not use place of employment (i.e. where the business is located, operating, or principally doing business) when producing unemployment rates. Rather, it uses workers' place of residence using the Current Population Survey (CPS). For states and local areas, the LAUS program uses a combination of CPS, Current Employment Statistics, State Unemployment Insurance programs, and BLS building-block and disaggregation techniques. Households, not employers, are surveyed to determine unemployment. Accordingly, a project site unemployment rate does not determine whether unemployment will be reduced at that site, whether that single census tract on which the project sits itself has high unemployment or not. This is because labor at a place of construction or operation comes from a much larger commuter area surrounding the construction site or place of business. Indeed, the project site census tract may have no residents (and hence zero unemployment, necessitating inclusion of other areas to reach the 150% threshold).

The fallacy of focusing narrowly on project site unemployment rates is further illuminated by economists' method of calculating project employment impacts. Economists choose a study area surrounding a project site of usually at least the county and more often several surrounding counties constituting the commuting area. This is because in choosing the study area, economists look to location of inputs of production – labor, capital (including supplies), and land. As labor is a significant input, economists find commuter patterns to the project area totaling a significant percentage of the total labor force for that area – in the 80-90 percentile range. Economists typically use that labor force area for job creation impacts modeling.

This labor force area is not limited to the single census tract on which the project sits.

The RIMS II Handbook, published by the U.S. Department of Commerce's Bureau of Economic Analysis (BEA), confirms that even one-county study areas, an area far wider than a single census tract, sometimes underestimate impacts. RIMS II is an economic impact modeling system created by the BEA. Many current EB-5 projects use RIMS II multipliers to estimate a project's job creation impacts. In its discussion of the user's choice of study area, the RIMS II Handbook states: "if the study seeks a comprehensive estimate of the factory's impact, then the region of choice is the economic area." The BEA's "economic area" is an area typically comprised of regional markets surrounding metropolitan or micropolitan statistical areas, which can include several counties. There are about 179 economic areas. There are about 3,000 counties in the United States, so economic areas are multi-county areas. Clearly, in examining employment impacts of a project – EB-5 or other – looking at just the census tract project location yields no significant information.

CONCLUSION

The very purpose of state designations is to find unemployment in irregular sub-county areas, as the BLS does not generate unemployment statistics for these areas. In doing so, states must follow BLS methodology and use the most recent available federal employment data. It is not difficult for states to find high unemployment TEAs if areas surrounding the project site have pockets of high unemployment. On the other hand, if there is no high unemployment in a project's commuting area, it is highly unlikely that a state will find a TEA. USCIS's policy of deference strikes a measured balance between deferring to states' use of BLS methodology, while reserving authority to review state designations to ensure proper use of federal data. ■

Federal Court Litigation of EB-5 Cases



BY IRA J. KURZBAN

Why litigate an EB-5 case in federal court?

There are clearly other administrative options. A client confronted with a denial of an I-526

petition can file a motion to reopen. Alternatively, she can file an appeal of the denial to the Administrative Appeals Office (“AAO”) within USCIS. A client denied an I-829 petition might have time to ask for reconsideration, or could battle the case out with district counsel in a removal hearing before the immigration judge.

The best course of action among these options is never obvious. Filing a motion to reopen delays resolution of the case. It gives the government an opportunity to explain its decision further, at times providing an avenue for USCIS to offer new, different, and more reasonable grounds for their denial. Appealing cases to the AAO is fraught with the same dangers and the time delay may be far greater than litigation. On the other hand, litigation is time consuming, expensive, and offers no guarantees of success.

So how to decide whether to litigate in federal court? To answer the question, we must first know what we are litigating, what issues can be resolved through litigation, what does the litigant hope to accomplish strategically at the end of the process, and whether the fight will be worth it.

LITIGATING DELAY

One of the major problems facing regional centers and their investor clients is simply the waiting time the USCIS takes to adjudicate their cases. Delays in adjudications cause hardship to regional centers, project enterprises, and investors. Projects cannot be funded if the EB-5 capital is sitting in escrow. The clients are understandably unhappy with the waiting time. Even cases where the funds have already been invested to the commercial enterprise pose problems; the lack of certainty about adjudication leaves open the possibility that investors may elect to withdraw at a time when funds are not easily accessible. Similarly, a person who has received his conditional

residency and is waiting over a year to have the condition removed finds herself uncertain as to when or if the condition will be removed or whether she will be placed in a removal proceeding.

In these circumstances, a federal court petition for mandamus to compel the government to take action makes good sense. A mandamus action seeks to compel the government to render a decision. A litigant may also seek the same result through the Administrative Procedure Act which requires that the government not “unreasonably delay” a decision on the merits of an application. When either or both mechanisms are invoked, the government is put to the test of explaining why a case has been pending for a substantial period of time. Generally, the courts are reluctant to intervene when the time period is less than a year but each case turns on its own merits and the government’s own “processing times” may be used against them when those times have already run.

The greatest advantage of the mandamus remedy is that the government often will make a decision regarding the investor’s case within the 60-day period it was otherwise required to answer the mandamus complaint under the Federal Rules of Civil Procedure. Thus, rather than give excuses or defenses for their failure to adjudicate the I-526 or I-829 petition, USCIS will simply go ahead and address the merits of the case—the exact remedy the regional center or investor seeks in bringing the action.

Clients are often fearful that bringing a mandamus action will result in the government denying the case out of sheer exasperation in being pressured to make a decision, or out of anger at having to answer the suit. My experience suggests otherwise. The government may deny cases that they were inclined to deny anyway. More often than not, the cases get approved in quick succession.

REVIEW OF A MERITS DENIAL

Federal court review of a denial on the merits is a far more complex problem. Whether a client should file suit will turn on the nature of the denial, the likelihood of success in litigation, and the client’s willingness to endure what may be a long battle.

The details of the denial will often be a good indicator of whether the government may be willing to resolve the case quickly in the litigant’s favor, reopen the case and take a second look, or fight the case on the merits. One of the most important indicators is the number of reasons USCIS offers in its denial. If the case involves one issue, such as whether the funds are “at risk” or the arrangement constitutes a “redemption agreement,” the government may be more willing to settle the case if the issue can be resolved by refile or simply making changes that do not constitute “material changes” in the documentation. In other cases, USCIS engages in the strategy of “death by a thousand cuts.” They offer so many reasons for the denial, many petty, erroneous, or legally insufficient, that the lawyer is faced with the difficult task of unthreading the mosaic USCIS has created. In these cases, it may be more likely that the government will fight the case with its seemingly unlimited resources. However, our experience is that in many circumstances these cases can be pared down, simplified, and either fought on limited grounds or settled with USCIS.

Faced with the denial, the investor must realistically ask what are the alternatives? She can withdraw and invest the money with another EB-5 project. But then she may be waiting an additional 16 to 18 months to have the new case adjudicated. The second adjudication is no more secure than the first and the idea that simply hopping from one regional center project to another will give you a better result is misleading. Children may have “aged-out” and there may be no method to include the child in their new petition, absent winning the lawsuit based on the initial I-526 petition. In contrast to these untenable outcomes, federal court litigation might be completed in a relatively short period of time if the government is willing to reopen and approve the case or at least take a serious second look at the denial.

LIKELIHOOD OF SUCCESS VERSUS COST

The regional center and the investor also must weigh the likelihood of success versus the cost of litigation. These EB-5 cases are complex and commercial, economic, securities, corporate and immigration issues are

woven into the disputes in each and every case. Consequently it is impossible to reduce the likelihood of success to some formula. But there may be a better chance of success than the regional center or investor perceives. The other side of the complexity is that the USCIS decision may be indefensible in ways that the government would least expect. Often the cases involve retroactive application of principles that USCIS announces spontaneously. Often cases turn on a misperception of a relatively simple issue such as the nature of the inputs into IMPLAN or the miscalculation of the source of employment. At times, the cases will turn on a legal interpretation of one or two issues. Litigation works best in the EB-5 context when we can narrow the issues and present clear, coherent arguments to a federal judge on limited issues. You cannot successfully challenge a USCIS decision on every incorrect factual or legal ground. The likelihood of success rises as the number of issues you must address is narrowed to clear statements of fact or law.

Cost is always an issue in litigation, and it is difficult to predict ahead of time the likely



total cost of litigating a case in federal court. An experienced litigator should be able to provide ranges of cost for particular phases of litigation. But inaction, or simply filing endless motions to reopen or appeal, is also a costly exercise. Consider, too, that the federal court litigant might recover attorneys' fees in certain limited circumstances. The Equal Access to Justice Act provides that litigants whose incomes are below a certain level may

recover their attorneys' fees from the government in federal litigation if the government fails to demonstrate that its position in the litigation, and its underlying actions, were not substantially justified.

At the present time there is on-going litigation in many areas of the EB-5 program. Litigation has arisen in the form of mandamus, review of I-526 and I-829 petition denials, review of regional center denials, and defense of securities law violations. In a highly regulated field such as EB-5, and as the federal government looks more closely at the details of each regional center and investment program, it is likely that such litigation will continue. ■

Mr. Kurzban is a partner in the law firm of Kurzban, Kurzban, Weinger, Tetzeli and Pratt, P.A. of Miami, Florida and is the author of Kurzban's Immigration Law Sourcebook, the most widely used single volume work on immigration law. He has litigated over 50 federal cases involving immigration matters, has argued cases in the United States Supreme Court, and is currently litigating a substantial number of EB-5 cases.

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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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Industry Event Schedule

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

- **4/03:** Tools for EB-5 Due Diligence (IIUSA Webinar)
- **4/24:** Impact of Potential Retrogression of the EB-5 Visa Category this Fiscal Year (IIUSA Webinar)
- **4/14-18:** SelectUSA Roadshow – China
- **5/7:** 2014 IIUSA Membership Meeting at the Hyatt Regency Hotel on Capitol Hill in Washington, D.C.
- **5/7-5/9:** 7th Annual IIUSA EB-5 Regional Center Advocacy Conference at the Hyatt Regency Hotel on Capitol Hill in Washington, D.C.
- **5/19:** SelectUSA Roadshow – Mexico
- **5/19-23:** SelectUSA Roadshow – Japan/South Korea
- **5/29:** EB-5 Economics: Overview of Available Input/Output Models (IIUSA Webinar)
- **6/18-6/21:** AILA Annual Conference on Immigration Law - Boston, MA
- **6/26:** Finance: Combining EB-5 Capital with Other Economic Development Tools (IIUSA Webinar)
- **7/31:** Securities Laws & EB-5: Enforcement Actions & Registration Guidance (IIUSA Webinar)
- **8/28:** USCIS EB-5 Adjudication Trends: I-829 Petitions (IIUSA Webinar)
- **09/6-9/10:** IIUSA Trade Mission to the 18th Annual China International Fair for Investment & Trade (CIFIT)
- **9/25:** EB-5 Economics: Targeted Employment Areas (IIUSA Webinar)
- **10/22-24:** 4th Annual IIUSA EB-5 International Investment & Economic Development Forum in San Francisco, CA
- **10/30:** Form I-924A: Strategies for Fulfilling the Annual EB-5 Regional Center Reporting Requirement (IIUSA Webinar)
- **11/18-21:** CDFA National Development Finance Summit (Scottsdale, AZ)
- **11/20:** Finance: EB-5 Escrow, Fund Administration & Bridge Loans (IIUSA Webinar)
- **11/21-22:** Henley & Partners' 8th Annual Global Residence & Citizenship Conference (Singapore)
- **12/18:** 2014 EB-5 Industry Year-In-Review & Look Ahead at 2015 (IIUSA Webinar)

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IIUSA Members: Take Part in SelectUSA Roadshows this April & May!

WHAT IS SELECTUSA?

The SelectUSA Initiative was established through an Executive Order in June 2011 by President Barack Obama to support private sector job creation and enhance economic growth by encouraging and supporting business investment in the United States. Housed in the U.S. Department of Commerce, SelectUSA's mission is to coordinate outreach and engagement by the Federal Government to promote the United States as the premier location to operate a business.

WHAT ARE SELECTUSA ROADSHOWS?

SelectUSA Roadshows are designed to bring state Economic Development Organizations (EDOs), regional EDOs and their partners to meet with potential investors and companies. Through these roadshows, participating organizations will gain market insights, learn of existing investment opportunities, make industry and state government contacts, and advance specific projects, with the goal of increasing inbound investment into the U.S.

CRITERIA FOR IIUSA MEMBER PARTICIPATION

Roadshow participants are restricted from promoting EB-5 projects unless they are implemented by state, regional or city/county Economic Development Offices. In order to participate in these roadshows, IIUSA Members must be linked with a respective local EDO that is also planning on attending the events. If you need any assistance in connecting with Economic Development Organizations in your region, IIUSA might be able to help so please contact us at info@iiusa.org.

ROADSHOW SCHEDULE & PRICING

SelectUSA Roadshows are designed to bring state Economic Development Organizations (EDOs), regional EDOs and their partners to meet with potential investors and companies. Through these roadshows, participating organizations will gain market insights, learn of existing investment opportunities, make industry and state government contacts, and advance specific projects, with the goal of increasing inbound investment into the U.S.

CHINA

DATE: April 14-18

LOCATION: Hong Kong, Shenzhen, Guangzhou

PRICE: \$2,500 per first signed EDO, then additional \$500 per attendee

DID YOU KNOW? From 2009-2013, China has accounted for 75% of approved investor petitions and is largest EB-5 investor market.



JAPAN/SOUTH KOREA

DATE/LOCATION: May 19-23, 26: Seoul, South Korea | May 19-23: Tokyo, Nagoya and Osaka

PRICE: \$1,000 silver sponsor (two people) - other sponsorship slots available

DID YOU KNOW? Japan accounted for \$15 million in EB-5 investments in FY2013, the seventh most of any country in the world. S. Korea has been the second largest EB-5 investor market, behind China, since FY2009 (prior to that it enjoyed multiple years as the largest EB-5 investor market).



MEXICO

DATE: May 21-23

LOCATION: Guadalajara and Monterrey

PRICE: \$400 per attendee

DID YOU KNOW? FY2013 was first time Mexico was in top five for number of EB-5 visas issued.



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BESHARA PROFESSIONAL ASSOCIATION also has **strong and strategic alliances** with Groups that provide investors for EB-5 project funding and professional firms with offices in more than 50 countries, including in Asia, the Middle East, Europe, and South America, providing both EB-5 and non-EB-5 legal services.

The team at **BESHARA PROFESSIONAL ASSOCIATION** remains up-to-date with new EB-5 rules and policies, and are recognized members of **Invest in USA**, the American Immigration Lawyers Association, International Organizations, EB5 Info, and are verified by EB5 Investors.



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*Top 25 EB-5 Attorney
EB-5 Investors Magazine*



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Canadian Immigrant Investor Shutdown Holds Lessons for EB-5 Applicants



BY PETER D. JOSEPH
IIUSA EXECUTIVE DIRECTOR

Last month, Canada terminated its Immigrant Investor Program, sweeping out the pending applications of nearly 75,000 applicants. The

program had been frozen since 2012 due to the enormous influx of applications, which essentially paralyzed immigration staff with a backlog in the tens of thousands. The elimination, according to a statement from Citizenship and Immigration Canada, will “pave the way for new pilot programs that will actually meet Canada’s labor market and economic needs.” Applicants who had been waiting in queue, among them approximately 45,000 Chinese, will be returned their fees.

The loss of political support for the Canadian IIP can be traced to its design, which granted residency in exchange for a five-year, interest-free loan of C\$800,000 (\$730,000

USD). While relieving the immigrant investor of financial or immigration risk, the Canadian IIP also lacked economic impact metrics to evaluate whether the program benefited the broader Canadian public.

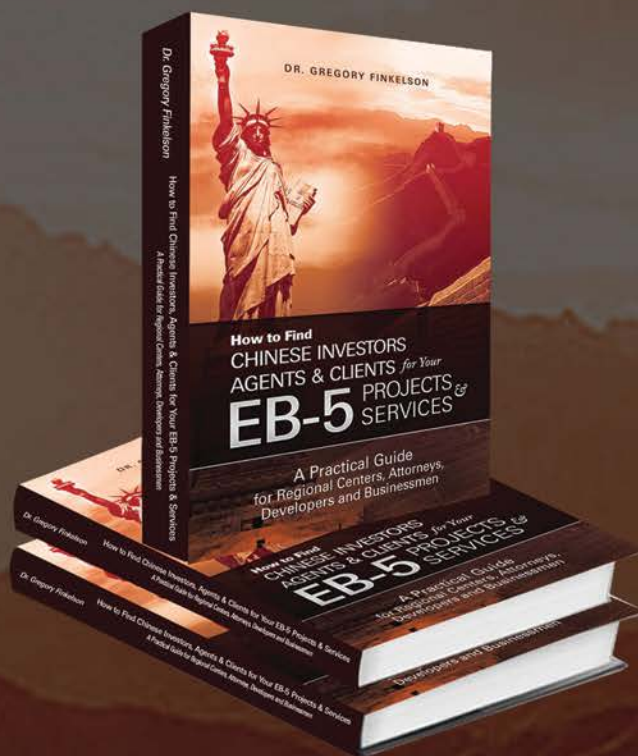
According to Citizen and Immigration Canada, “Research shows that immigrant investors pay less in taxes than other economic immigrants, are less likely to stay in Canada over the medium- to long-term and often lack the skills, including official language proficiency, to integrate as well as other immigrants from the same countries.”

As would-be Canadian investors look to emigrate by investment elsewhere, the U.S. EB-5 program appears likely to continue growing from its all-time high of over 6,500 investor applicants in fiscal year 2013.

In contrast to the Canadian Immigrant Investor Program, the U.S. EB-5 Program requires capital—at least \$500,000—to be “at risk” throughout the term of the investment. Two years after the initial investment, EB-5 investors must prove their investment

created at least ten American jobs. And once immigrant investors become EB-5 visa holders, they must pay U.S. taxes based on their worldwide income. Thanks to these requirements, the EB-5 Program has demonstrable economic benefits—and broad bipartisan political support. In fiscal year 2012 alone, the Program contributed \$3.4 billion to U.S. gross domestic product, supported over 42,000 American jobs and generated over \$712 million in federal, state and local taxes.

Potential immigrant investors to the U.S. need to understand that successful utilization of the EB-5 requires substantial due diligence from an immigration, economic and financial perspective. These risks can be minimized and managed, but not eliminated, by EB-5 investors who take the time to perform thorough due diligence with the help of properly licensed and credentialed professionals. It is far more important that investors take their time and pick an EB-5 project that gives them an opportunity to succeed, rather than rush to apply for an EB-5 visa. ■



ORDER NEW BOOK NOW:

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In his new book - "How to Find Chinese Investors, Agents & Clients for Your EB-5 Projects & Services. A Practical Guide for Regional Centers, Attorneys, Developers and Businessmen" - Dr. Gregory Finkelson unveils practical and insightful information to help business people understand the opportunities and benefits of the EB-5 program with Chinese investors. He provides additional tips and suggestions about how to navigate the sometimes "shark-infested" waters of the EB-5 visa program.

"This innovative guide provides an invaluable resource to anyone seeking to do business with China and its labyrinth of agents throughout this primary EB-5 investor market."

Larry Behar, Immigration Attorney, Fort Lauderdale, Florida

"This book serves as a beneficial primer for professionals interested in the fundamentals of EB-5 law, practice and industry."

L. Kate Kalmykov, Immigration Attorney, Florham Park, New Jersey

"How to Find Chinese Investors, Agents & Clients for Your EB-5 Projects & Services" is a must for entrepreneurs considering forming Regional Centers as well as new Regional Centers that need to be in China to connect with agents in order to be successful reaching potential investors. It is also a very valuable source for immigration attorneys and EB-5 investors to understand the Chinese agency and investor market. Most important, it is an easy and interesting read, even for someone who has been in the EB-5 business for many years. I wholeheartedly recommend this book."

Mark A. Ivener, Attorney at Law, Los Angeles, California

COMMITTEECORNER

2014 ADVOCACY CONFERENCE

Planning the 7th Annual IIUSA EB-5 Regional Center Advocacy Conference in Washington DC (May 2014)

BEST PRACTICES

Advance/maintain recommended industry best practices on an ongoing basis to promote an ethical business climate in the industry marketplace.

BUDGET AND FINANCE

Report IIUSA finances to Leadership and Membership on a regular basis; recommend annual budgets to Leadership and Membership.

BYLAWS

Consider and recommend amendments to IIUSA bylaws, as needed.

EDITORIAL

Curate and edit select IIUSA publications, including the quarterly industry magazine, Regional Center Business Journal. Facilitate data analysis on FOIA results.

MEMBERSHIP

Enhance current member benefits; improve outreach strategy to attract new members; serve as a resource to potential and new members; facilitate feedback loop between IIUSA members/committees/ leadership.

PUBLIC INTEREST GROUPS

Build coalitions with strategic partner organizations with a publicly oriented mission that overlaps with IIUSA.

PUBLIC RELATIONS

Participate in developing and implementing public relations activities, such as message development and media/public outreach and education.

PUBLIC POLICY

Recommend communications between the government and IIUSA, particularly with federal government agencies. Facilitate feedback loop between membership/leadership/ government stakeholders.

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

SIGN UP FOR A DAILY EMAIL UPDATE ON THE IIUSA BLOG

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

account. By signing up, IUSA will send blog updates directly to your email inbox once per day, keeping you informed of current events, legislation and advocacy updates, new resources, networking tools, and more! ■

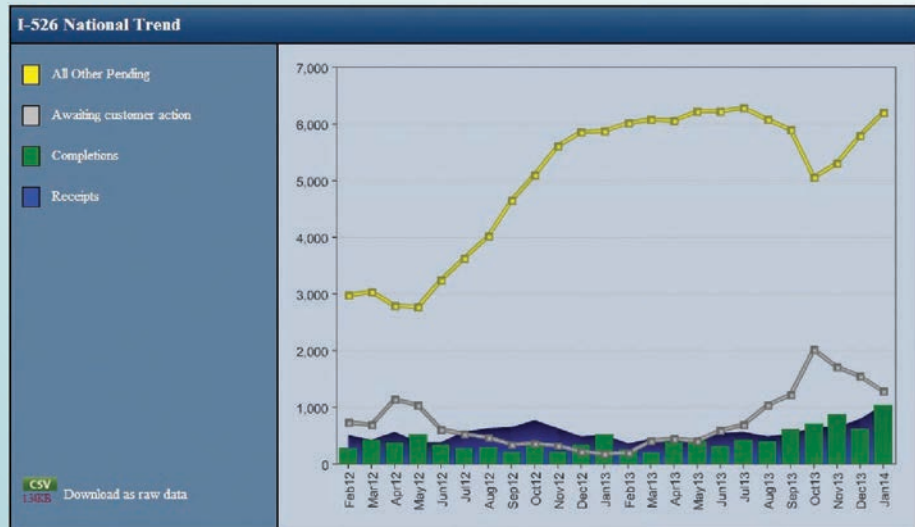
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I-526 & I-829 Trends

AS OF JANUARY 2014



Source: www.USCIS.gov.

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

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

Send your stories and ideas to IIUSA's Marketing/Communications Coordinator Allen Wolff at allen.wolff@iiosa.org. ■



MARKETPLACE



IIUSA's Online Marketplace has been updated and is more accessible and comprehensive than ever! To access the marketplace, simply visit iiusa.org, select IIUSA Online Store, and follow the instructions.

Impressed with the webinars and want to get in on the action? Become a sponsor of the 2014 IIUSA Webinar Series and have your company logo branded on IIUSA marketing materials and webinar registration pages as well receive the chance to address webinar attendees at the beginning of the webinars. Within the online Marketplace, you can also purchase a copy of the Economic Impact Report of the EB-5 Program from 2012, conference materials from the 2013 IIUSA EB-5 International Investment & Economic Development Forum, IIUSA branded merchandise, and magazine advertisement space in our quarterly publication, Regional Center Business Journal. Scan the QR code above to visit IIUSA Marketplace today!



We are currently featuring On-Demand recordings on IIUSA Marketplace (discounted for IIUSA Members). Topics include EB-5 Due Diligence, Bridge Financing & Escrow, Regional Center Annual Reporting, 2013 Year in Review, EB-5 Government Affairs and the Broker/Dealer Business Model. Scan the QR code below to enjoy IIUSA OnDemand today!



iiusa-marketplace.myshopify.com

By the Numbers

\$3.39 billion Amount added to U.S. GDP, according to the 2012 Report on the Economic Impact of EB-5 Immigration Program. The Program also supported 42,000 jobs and generated \$712+ million in federal/state/local tax revenue, up from \$2.6 billion in GDP, 33,000+ jobs and \$564+ million over the previous two years combined.

54-41 The Senate confirmed former US Citizen and Immigration Services (USCIS) Director Alejandro Mayorkas to Deputy Director, the second highest post within the Department of Homeland Security (DHS) with a 54-41 roll call vote.

1.2% The percentage of total Foreign Direct Investment (FDI) in 2012 that EB-5 Program is responsible for. EB-5 Program contributed \$2 Billion in 2012 compared to \$166 Billion of total investments.

3,677 - 844 - 220 The total number of I-526, I-829 and I-924 approvals, respectively in Fiscal Year 2013. Last year saw the most number of I-526 and I-924 petitions approved in EB-5 Regional Center Program history!

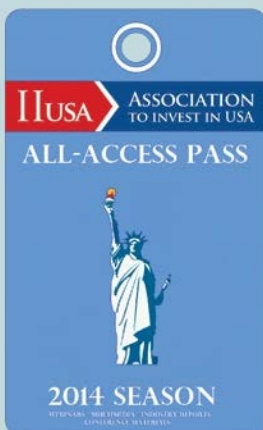
9-0 The Senate Committee on Homeland Security & Government Affairs approve President Barack Obama's nomination of USCIS Director Alejandro Mayorkas for Deputy Secretary of the Homeland Security Department with a vote of 9 to 0. All nine votes in favor belonged to Democratic Senators while all Republican Senators voted "present", ostensibly ensuring that a full Senate debate on the nomination will ensue within several the next several weeks.

25+ The number of countries with immigrant investor programs around the world, a number that continues to rise

45,500 Of the estimated 75,000 applicants who were shut out of the Canadian Immigrant Investor Program, 45,500 were filed at the Canada's Hong Kong Visa Office.

\$1.8+ billion Approximate amount invested by immigrant investors into EB-5 Regional Centers in FY2012, supporting over 33,000 of the 42,000 American jobs supported that year by all EB-5 related activities.

+37% The projected increase of centa-millionaires, individuals with over 100 million in disposable assets, worldwide over the next ten years, doubling in China and India, according to Brookings Institute's report "Improving the EB-5 Program: International Financing for U.S. Regional Economic Development"



ARE YOU AN ALL-ACCESS PASS HOLDER?

New in 2014, IIUSA members can purchase a twelve-month "All-Access Pass" and ensure access to another layer of EB-5 Regional Center industry intelligence. Pass holders will automatically be registered for all 10 remaining IIUSA webinars (hosted monthly), have access to previous webinars, presentation and recording OnDemand and receive industry reports for one flat fee!



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IIUSA SURPASSES 155 REGIONAL CENTER MEMBERS!

IIUSA is proud to announce that we recently surpassed 155 Regional Center members! Thank you to everyone for your dedicated support during this time of unprecedented opportunity and challenges for our industry. Our organization, and the industry as a whole, is stronger thanks to your hard work and commitment.

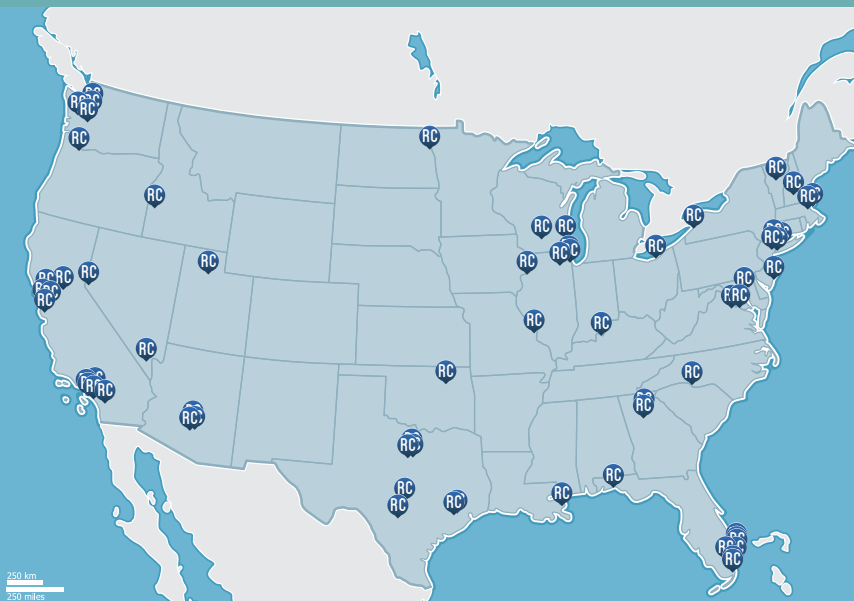
Stay tuned for some new advocacy tools on best practices and

economic impact that will equip our industry with the necessary information to engage the public with data-driven industry analysis and powerful anecdotes that drive the real narrative of the 21st century economic development through the Program. ■

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

Regional Center Member Map

Our Interactive Regional Center Members Map on www.iiusa.org has recently been updated to include each Regional Center's 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 email Allen Wolff at allen.wolff@iiusa.org. ■



"I3" Online Member Database Update

IIUSA 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:

- "A View of EB-5 Program Issues from a Top SEC Enforcement Official" by Daniel Nathan & Lawrence Bard, Morrison & Foerster: (12/03/2013)
- Final AIS v. USCIS Settlement Agreement (10/05/2012)
- EB-5 Program from the Beginning - 526-829-924 stats (02/26/2014)
- IIUSA Letter to The Honorable Senator Tom A. Coburn, M.D. (02/20/2014)
- "Minority Rules: Why Companies Should Take Seriously the Increasing Trend of Minority Party-Led Congressional Investigations" by Akin Gump Strauss Hauer & Feld, LLP (02/2014)
- "A Client's Guide to Congressional Investigations" by Akin Gump Strauss Hauer & Feld, LLP (02/2014)
- Advocacy Fact Sheets (About EB-5, About IIUSA, EB-5 FAQ, Potential Backlog of EB-5 Visa Availability) (01/2014)
- IIUSA & EB-5 Messaging for Member Media Prep (01/2014)



- 2013 Financial Statement (01/03/2014)
- 2010-2011 IIUSA Peer-Reviewed EB-5 Economic Impact Study by IMPLAN (06/2013)

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. ■

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