

October 2015

EB-5 INVESTOR MARKETS:

*A Look at the Trends & Origins of
America's New Job Creators*



IIUSA INVEST IN THE USA

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With Short Term Extension, Congress Recognizes Important Role of EB-5 Regional Centers in Economic Development with Eye Toward Reform

"EB-5 is Working" Letter of Support Sent to Congress with Over 875 Signatories

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Looking Beyond China: EB-5 Emerging Markets

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Eligibility for Federal Trademark Registration

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Visa Bulletin 2.0 and its Implications, Including For EB-5 Investors

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Emerging EB-5 Markets Spotlight on India, Russia and Vietnam

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Letter from the Editor

DEAR READERS:

While the EB-5 Regional Center Program has emerged as a valuable multi-billion dollar economic development tool that appears to be on the brink of permanence, its reach into just about every area of the globe is equally impressive. The origins of the EB-5 investors who fuel the Program are widely varied, and so too are their profiles and motivations.

This edition of the Journal examines both established and emerging EB-5 markets worldwide. Articles featuring emerging markets in Russia, Vietnam, and India, among others, remind industry stakeholders of the fact of EB-5 market diversification, the market possibilities, and the corresponding challenges for stakeholders maintaining vigilance about all matters of compliance.

Thank you for your continued support of IIUSA and its *Journal*. As always, we welcome your comments on how the *Journal* can better serve the needs of IIUSA members.

Lincoln Stone

Chair of the Editorial Committee, IIUSA
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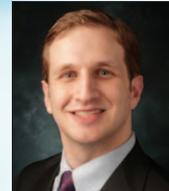
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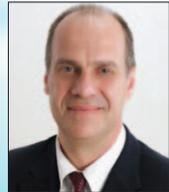
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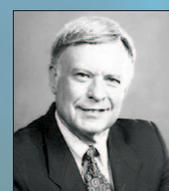
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Government Affairs Timeline

- **6/7** – U.S. Citizenship & Immigration Services (USCIS) issues an update to Form I-829, Petition by Entrepreneur to Remove Conditions. The new edition is dated 05/07/15.
- **6/10** – U.S. Dept. of State announces that the cutoff date for Mainland China-born EB-5 applicants had moved up to September 1, 2013 – meaning that investors who had filed their Form I-526 before that time would be allowed to have interviews scheduled at the US Consulate in Guangzhou and could apply for adjustment of status.
- **6/22** – U.S. Conference of Mayors approves a resolution to urge Congress to add additional visas to the EB-5 Program and ensure that any reform of the Program maintains the ability to deliver job-creating capital to urban areas, streamline approvals for all applications, and urging permanent reauthorization.
- **6/23** – IIUSA releases a statement in response to, and in support of, the first SEC enforcement action in EB-5 against unregistered broker-dealer activity.
- **6/24** – USCIS launches a new customer support webpage to replace the previous “EB-5 Inquiries” webpage.
- **6/29** – CIS Ombudsman’s office publishes their 2015 Annual Report to Congress on recommendations to streamline USCIS programs and services, including improvements to the EB-5 Program such as improving processing times, stakeholder engagements, EB-5 visa queues, and Program integrity.
- **7/1** – IIUSA Executive Director Peter D. Joseph is interviewed by Chinese Central Television (CCTV) on investor protections under U.S. law and the importance of due diligence.
- **7/12** – National Association of Counties passes resolution in support of federal legislation to permanently authorize the EB-5 Regional Center Program and to maximize its capacity for economic impact and job creation.
- **7/16** – White House publishes report titled: *Modernizing and Streamlining Our Legal Immigration System for the 21st Century*. The report not only instructed various federal departments and agencies to update regulations and administrative procedures to modernize the visa system, it also specifically recommended updates to EB-5 standards through the rulemaking process and clarifying eligibility of EB-5 investors to obtain a tourist visa to perform site visits on EB-5 investment opportunities.
- **7/16** – The CIS Ombudsman’s Office hosts a public teleconference to share the findings of their annual report to Congress.
- **7/16** – IIUSA President, K. David Anderson, publishes video of an American living in Washington state telling the story of how he found a job and better life for his family thanks to getting a job financed by the EB-5 Program.
- **7/17** – IIUSA submits comments to the Senate Judiciary Committee on the *American Job Creation and Investment Promotion Reform Act of 2015* (S. 1501).
- **7/21** – IIUSA submits request that the USCIS EB-5 stakeholder engagement held on 8/13 be on guidance for EB-5 visa retrogression and meeting the “sustaining the investment” requirement of the EB-5 Program for investors.
- **7/22-23** – IIUSA holds Congressional Fly-in to educate Congress on how EB-5 is benefitting local communities across the county.
- **7/28** – USCIS publishes record-breaking Q3 adjudication data on Form I-526 and Form I-829 petitions showing that EB-5 contributed over \$1.4 billion in the third quarter in foreign direct investment into the U.S. economy. In FY2015 so far EB-5 has contributed \$3.2 billion to the US economy and is on pace to contribute over \$4.3 billion by the end of the fiscal year.
- **7/30** – Representatives Zoe Lofgren (D-CA), Ranking Member of the House Immigration Subcommittee, and Luis Gutierrez (D-IL) introduce the *EB-JOBS Act of 2015 H.R. 3370* which would permanently authorize, expand, and reform the EB-5 Regional Center Program.
- **7/31** – IIUSA releases statement on H.R. 3370 welcoming the legislation and applauding its provisions for permanent reauthorization and increased number of EB-5 visas available as well as strengthening oversight and accountability.
- **8/10** – USCIS publishes draft policy memo (PM-602-0121) titled: *Guidance on the Job Creation Requirement and Sustainment of the Investment for EB-5 Adjudication of Form I-526 and Form I-829*.
- **8/11** – USCIS alerts EB-5 community that certain terms that may falsely imply a relationship with the federal government cannot be used in the naming of a Regional Center.
- **8/12** – The US Government Accountability Office (GAO) releases a report on the EB-5 Program articulating that in order to continue to bring capital and job creation to American communities, USCIS will need to continue its already impressive work to enhance its oversight, transparency, anti-fraud efforts, and compliance and enforcement of all applicable securities laws within the EB-5 Program.

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GOVERNMENT AFFAIRS TIMELINE

- **8/13** – USCIS hosts regular EB-5 Stakeholder Engagement in Los Angeles with topics of discussion ranging from bridge financing, indebtedness, and visa retrogression.
- **8/14** – IIUSA releases statement regarding the GAO report on the EB-5 Program, welcoming the official review of how USCIS has improved – and must continue to improve – its administration of the EB-5 Program through hiring of a robust interdisciplinary team at the USCIS Immigrant Investor Program Office and inter-agency working relationships with other relevant federal regulators/law enforcement agencies.
- **8/15** – USCIS begins only accepting new version of Form I-829.
- **8/18** – USCIS issues warning on unauthorized use of the Department of Homeland Security and USCIS seal.
- **8/21** – The California Chamber of Commerce released a statement urging the reauthorization of the EB-5 Program to attract foreign investors and to create jobs for Americans country-wide.
- **8/24** – White House sends a continuing resolution (CR) wish list to Congress that includes the extension of the EB-5 Regional Center Program.
- **8/24** – IIUSA releases data report on USCIS processing times for I-526, I-829 petitions and I-924 applications through June 2015 showing an increase of processing times for all three petitions from the previous month.
- **8/25** – IIUSA issues statement in support of legal action by the Securities and Exchange Commission (SEC) to protect investors and integrity of the EB-5 Program after recent enforcement action.
- **8/27** – IIUSA's Executive Director Peter D. Joseph and members of IIUSA's advocacy team present at the American Immigration Lawyers Association (AILA) EB-5 Investors Summit in Las Vegas on a panel titled: "The EB-5 Program: A Time of Change, Reauthorization & the Future"
- **8/27** – IIUSA holds a Leadership Summit and dinner at AILA conference giving an in depth look at the state of Congressional action to reauthorize the EB-5 Regional Center Program.
- **9/2** – IIUSA submits a list of almost 350 EB-5 projects, big and small, located in 36 states and over a hundred industry sectors in both urban and rural areas to Senate Judiciary Committee, demonstrating the diversity of projects that have been or currently are being funded through EB-5.
- **9/8** – IIUSA submits comments to USCIS regarding its draft policy memo PM-602-0121 on visa retrogression and sustaining the investment asking for clarification on redeployment of capital, the definition of "at risk," and job permanency.
- **9/9** – U.S. Dept. of States releases October Visa Bulletin which allows immigrants, otherwise eligible and present in the US, to file for an adjustment of status and get interim work and travel documents significantly earlier than when their place in the queue for limited visa numbers is set for green card approval.
- **9/11** – IIUSA Board Member Angelique Brunner publishes op-ed in *Roll Call* calling for a robust Program with targeted reforms that still allow for EB-5 to stimulate economic growth across the country.
- **9/14** – IIUSA Board Member William Gresser publishes op-ed in Buffalo News urging Congress to not allow a lapse in the EB-5 Program, helping to create jobs and continue Buffalo Niagara's economic resurgence.
- **9/15** – Bipartisan Policy Center releases report on the EB-5 Program titled: *EB-5 Program: Successes, Challenges, and Opportunities for States and Localities*.
- **9/17** – Bipartisan Policy Center holds panel with Governor of Arkansas from 2007-2015 Mike Beebe, Governor of Vermont from 2003-2011 Jim Douglas, and IIUSA member and Co-Founder and Managing Principal of the New York City Regional Center George Olsen (and IIUSA President's Advisory Council member) on the Center's report on EB-5.
- **9/17** – U.S. Chamber of Commerce CEO, Thomas J. Donohue, publishes op-ed in *The Hill* titled *EB-5 program is smart government policy* – urging smart bipartisan policy reforms that will help the US economy.
- **9/17** – USCIS holds "EB-5 Interactive" public engagement on the subject of I-924A annual reporting requirements for Regional Centers.
- **9/21** – IIUSA Public Policy Committee Chair Stephen J. Strnisha submits op-ed to *Cleveland.com* explaining that Congressional delay in the reauthorization of the EB-5 Program would threaten Northeast Ohio job creation.
- **9/22** – Senate releases proposed CR that includes a short term extension of the EB-5 Regional Center Program until December 11, 2015.
- **9/22** – IIUSA submits its Congressional Letter of Support, signed by more than 875 organizations, telling Congress that #EB5isWorking and needs to be reauthorized in order to continue providing local economic development across the country.
- **9/23** – Executive Director Peter D. Joseph publishes op-ed in *The Hill* telling Congress to Keep EB-5 working for America.
- **9/30** – Congress passes CR extending federal funding and the EB-5 Regional Center Program until December 11, 2015.
- **9/30** – IIUSA releases statement supporting Congress passing the CR and allowing time for Congress to consider a long-term reauthorization bill for the EB-5 Regional Center Program.
- **10/1** – Senator Jeff Flake (R-AZ), Member of the Senate Judiciary Committee, introduces the *Targeted Employment Areas Improvement Act S. 2115* with a new proposal on reforms to TEAs.
- **10/1** – Senator Rand Paul (R-KY) introduces the *Invest in Our Communities Act S. 2122* to permanently authorize, expand, and reform the EB-5 Regional Center Program.
- **10/1** – IIUSA issues statement welcoming the introduction of S. 2115 and S. 2122 as further evidence of broad bipartisan, bicameral support for EB-5 reauthorization, expansion, and reform. ■

With Short Term Extension, Congress Recognizes Important Role of EB-5 Regional Centers in Economic Development with Eye Toward Reform



BY PETER D. JOSEPH
EXECUTIVE DIRECTOR, IIUSA

Thanks in large part to the diligent work by II-USA leadership, membership, partners, staff, and advocacy team, Congress temporarily

reauthorized the EB-5 Regional Center Program (the "Program") through December 11, 2015 as part of the last minute "continuing resolution" ("CR") that extended the funding of the federal government through the same date. No lapse of the Program - an important temporary achievement - ensures that billions of dollars in ongoing regional economic development thanks to EB-5 can continue while a longer term reauthorization and reform agreement can be reached that is bipartisan, bicameral, and balances urban and rural interests in attracting EB-5 capital to create American jobs.

EB-5 has proven a potent economic development tool that needs to be expanded and supported through reform efforts while continuing to improve the administrative and regulatory enhancements that continue to bolster Program integrity every day. The industry needs to be ready to come together during this short term extension of the Program to support reasonable reforms and long term reauthorization that reflects the important tool that EB-5 has become in the U.S. economic development toolbox. With 2016 elections rapidly approaching and a fluid political environment in Congress, the time

between now and December 11 represents a window of opportunity that requires all our attention.

LET'S LOOK AT THE NUMBERS: #EB5ISWORKING

First, let's look at the impressive numbers that demonstrate the value of EB-5 to our economy, which has increased exponentially during and after the great recession. When the bottom fell out of the financial markets, commercial lending dried up and economic development ground to a halt. EB-5 helped fill the financing gap, providing much-needed capital to get projects moving and put Americans back to work.

Since 2008, EB-5 has generated \$11.92 billion in foreign direct investment. And, from 2010-2013 alone, the program contributed \$9.62 billion to gross domestic product while supporting an average of 29,300 jobs per year (over 41,000 in 2012 and in 2013 respectively) while generating over \$2.0 billion in federal/state/local tax revenue. Over 95 percent of all EB-5 investments flow through EB-5 Regional Centers. For the first time, last quarter EB-5 accounted for over \$1 billion in FDI (\$1.4 billion to be exact) and is on pace for over \$4.4 billion total FDI in 2015.

While the recession may be technically behind us, access to capital remains a critical need across the country. Traditional lenders require more diversified financing on the front-end to mitigate risk, particularly for infrastructure and large-scale economic development projects. EB-5 is a vital financing tool in this new normal.

In fact, the program is benefiting more communities than ever before. Last year marked the first time that EB-5 operated at full capacity with the maximum allowable number of visas issued under the program. Nearly \$3.25 billion in investment funds have been raised in the first three quarters of FY2015 for projects in communities as diverse as Cleveland, Ohio and Stutman County, North Dakota. There is an additional \$6.5 billion in the pipeline pending government approval.

TAKING THE LOCAL VIEW: REAL RESULTS = REAL SUPPORT

Reauthorization of the EB-5 Regional Center Program reflects the critical flow of investment to American communities. National economic output is built on thousands of local economies - towns, counties and cities with their own needs and plans for economic growth. The impact of EB-5 on local, struggling economies is tremendous.

The program's benefits are evident in communities devastated by the closure of military bases that are now home to thriving business centers. Or in the jobs created - and families supported -- by new senior living facilities. It's new businesses that help make us energy independent while putting people to work. It's new hospitals that bring healthcare jobs and lifesaving care to underserved communities and the renovation of older buildings into hotels that anchor vibrant redevelopment districts.

The list of EB-5 successes is numerous and growing longer every day. Each project represents the creation of real jobs directly on-site

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and all along the supply chain. And, each project represents the opportunity for more people to share in the American dream – workers employed and supported by EB-5-funded businesses and successful immigrants who put their resources at risk to start a new life in our country.

That's why the U.S. Conference of Mayors, the National Association of Counties, the Council of Development Finance Agencies, the International Economic Development Council and over 900 other stakeholders support reauthorization of the EB-5 program, representing a diverse cross-sector coalition that knows: #EB5isWorking (www.iiusa.org/en/letters-of-support). They've seen the benefits first hand.

THE NEXT CHAPTER FOR EB-5: EMBRACING REFORM THAT IMPROVES EFFECTIVENESS & INTEGRITY

The bipartisan and bicameral negotiations between leadership of House and Senate Judiciary Committees have a large body of legislative language to work from, ranging from 113th Congress proposals (S. 744, Manager's Amendment 1455 to S. 744, and H.R. 2131) to legislation from the current 114th Con-

gress (S. 1501, H.R. 616, H.R. 3370, S. 2122, and S. 2115). While there are many ideas to be considered among the substantive reform efforts, there is an important common theme of bipartisanship in support for the EB-5 Regional Center Program - something that has been true since its inception in 1992.

The EB-5 Program has grown over 700% from 2008 to 2014 jumping from \$321 million in FDI to \$2.56 billion in 2014 (and on track for over \$4.4 billion in 2015). It is now a proven and valuable tool for job creation and economic growth. With such exponential growth, it is important that ongoing efforts to improve program integrity by regulators are supported by updated legislation that reflect current market conditions and maximize effectiveness of fraud deterrence through law enforcement and reporting requirements.

In the last few years, the federal government has stepped up oversight and enforcement, adding expertise and enhancing interagency cooperation to evaluate project and investor applications, define consistent adjudication policies, and weed out bad actors. This is a welcome development, and the EB-5 industry supports additional common-sense reforms to strengthen oversight and protect the integrity of the program.

It is imperative that reform is done with care, however. Competition for immigrant investor capital between countries around the world is real. The U.K. immigrant investor program that saw an 82% drop in investor demand after reform efforts shocked the market that has not since recovered. More than twenty other countries offer investor visa programs – all competing in the global capital market. The EB-5 program is by far the most stringent, requiring significant risk of capital, immigration status tied to demonstrated job creation and rigorous law enforcement and national security screenings.

The demanding metrics and popularity of the EB-5 Program is something to be proud of but should not be taken for granted. That is why we, as an industry with challenges that can only be accomplished through common action, must be diligent in communicating the incredible stories of community and economic development that EB-5 is a part of in congressional districts and states across the country. EB-5 is about jobs for the American people and bringing hard earned capital from overseas to the U.S. to further local economic development priorities at a time that we need it most. Together, we can ensure reform efforts reflect that reality. ■

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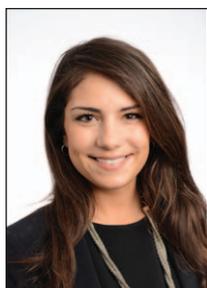
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EB-5 IS WORKING.



“EB-5 IS WORKING”

Letter of Support Sent to Congress with Over 875 Signatories Urging Reauthorization of the Regional Center Program



BY NICOLE MERLENE

IIUSA ADVOCACY ASSISTANT

On September 22 IIUSA delivered its “EB-5 is Working” letter to Congress signed by over 875 organizations in support of the

EB-5 Regional Center Program’s reauthorization. This more than doubles the amount of signatories that signed onto a similar IIUSA just three years ago in 2012. The diverse list of signatories is the result of the hard work of IIUSA’s Association Building Committee, under the leadership of Chairwoman Beth Zafonte of Akerman, LLP, who tirelessly worked as a committee and with IIUSA members to get such broad public support for the EB-5 Regional Center Program. The wide range of supporters highlights the vital role that the EB-5 Regional Center Program plays in economic development across the country today.

When Congress created the EB-5 Regional Center Program in 1992, its goal was to benefit the United States economy by attracting investments from qualified foreign investors in order to create jobs here in America. Today, EB-5 investments has supported job creation in sectors ranging from construction to energy production to education and more. Since 2008, over \$12 billion of foreign direct

investment has been deployed into the United States economy thanks to the Program. From 2010-2013 alone, it has also contributed \$9.62 billion to GDP and \$2 billion to federal, state, and local tax revenues while supporting an average of over 29,300 jobs per year (41,000+ in both 2012 and 2013 respectively) – all at no cost to the tax payer. This year it is expected that the Program will contribute over \$4.3 billion in foreign direct investment, and there is over \$6.5 billion investment waiting in the pipeline pending government approval, ready to be invested into the U.S. economy.

The 875+ signatories to IIUSA’s “EB-5 is Working” letter of support reflect the diverse and cross-sector public benefit that this broad stakeholder community represents. That is why signatories include the: National Association of Counties, U.S. Conference of Mayors, Council of Development Finance Agencies, and National Development Council. Also signing the letter are numerous city mayors, state legislators, economic development agencies, port authorities, chambers of commerce, banking institutions and associations, energy organizations and associations, unions, and more. Long story short, people on the ground know: #EB5isWorking!

With Congress temporarily extending the EB-5 Regional Center Program through December 11, 2015 there is still much to be done to achieve a long term reauthorization and re-

form deal for the Program. In order to achieve that, Congress must understand that the benefits of EB-5 capital investment go much further than just the project that receives the investment. The true story of EB-5 regional economic development and job creation at no cost to the taxpayer is much broader in terms of the shared public benefit. There are many corners of America that EB-5 benefits which is why IIUSA will keep its letter of support active until comprehensive EB-5 reform has been passed by Congress to allow these program beneficiaries to speak up in support of EB-5!

With this short term extension, efforts to reauthorize and reform the Program continues. We urge you and your colleagues to reach out to people and organizations that have benefitted from the important economic development work that you do (project employees, community/business partners, local authorities and other supporters like chambers of commerce, etc.) to take one minute to sign- on in support of a long-term reauthorization of the EB-5 Regional Center Program. I know with your help, we will have well over 1,000 signatories by our new deadline of December 11, 2015.

To read the full text of the letter and a list of signatories go to www.iiusa.org/en/letters-of-support. ■

New USCIS Data Shows Remarkable Growth for EB-5 Program as Source of U.S. Job-Creating Foreign Direct Investment

BY NICOLE MERLENE
 IIUSA ADVOCACY ASSISTANT

This year has proven to be an astounding and record breaking year for the EB-5 industry. According to an IIUSA analysis of data released by the United States Citizenship and Immigration Services (USCIS), foreign direct investment (FDI) through the EB-5 Program totaled over \$1.4 billion in the third quarter of FY2015. This represents a 45% increase over the second quarter of FY2015 and a 153% increase over the third quarter of FY2014 a year ago. Having an industry that pumps well over \$1 billion a quarter directly into the US economy is a statistic that will make investors, governments, and outside industries take note.

Since the beginning of FY2015, EB-5 investments have contributed \$3.2 billion in FDI – a 61.8% increase over the first three quarters of FY2014. Every quarter we continue to see greater investment and local economic im-

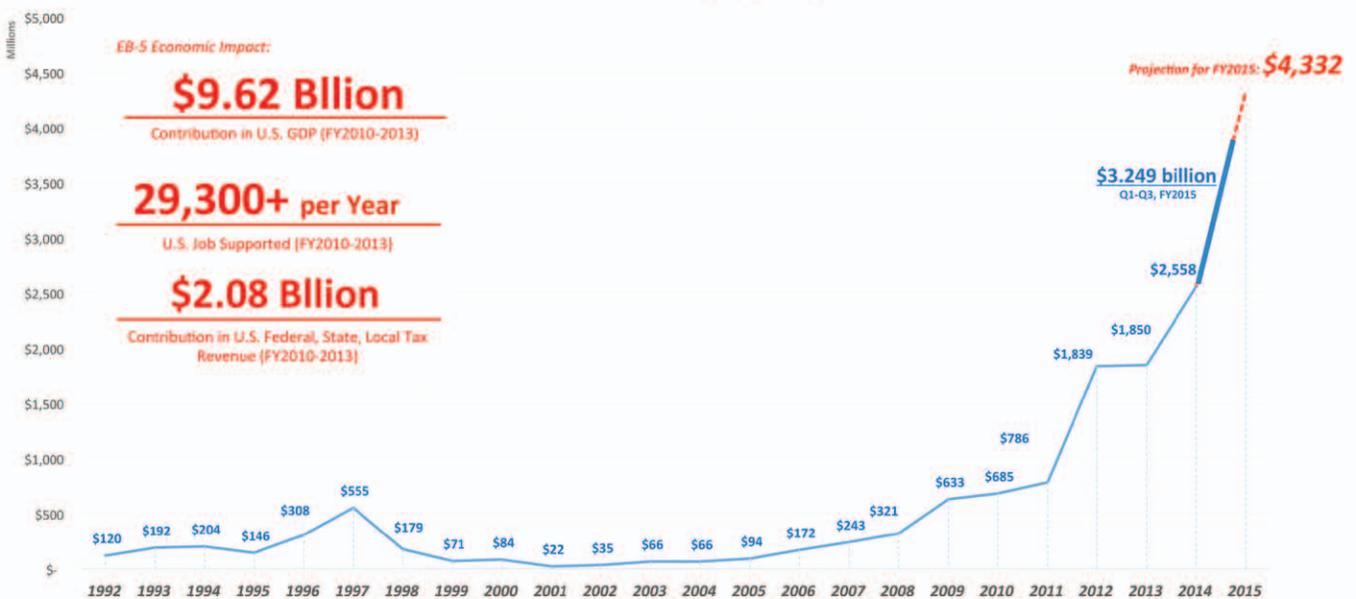
pact from the Program. Since the Great Recession in 2008, EB-5 investments have increased exponentially from \$321 million to what we project to be over \$4.3 billion at the end of FY2015 (an increase of over 1,200%). Although the economy has improved, project financing has changed. Banks remain hesitant to approve the type of large loans that they had pre-recession, and EB-5 has proven to be a great tool in filling that financing gap as developers seek to diversify their capital stacks for job-creating projects across the U.S.

Also, for the first time the number of pending EB-5 petitions has decreased compared to the previous quarter, although this is still an increase of 26% from the number of pending petitions last fiscal year. There are currently 13,117 petitions pending, representing over \$6.5 billion in FDI that could be injected to the American economy today. It is encouraging to see that processing times of I-526s have improved though, and if this trend continues

to be the norm and USCIS continues to focus on processing applications efficiently, investor confidence in the Program will be greatly benefitted.

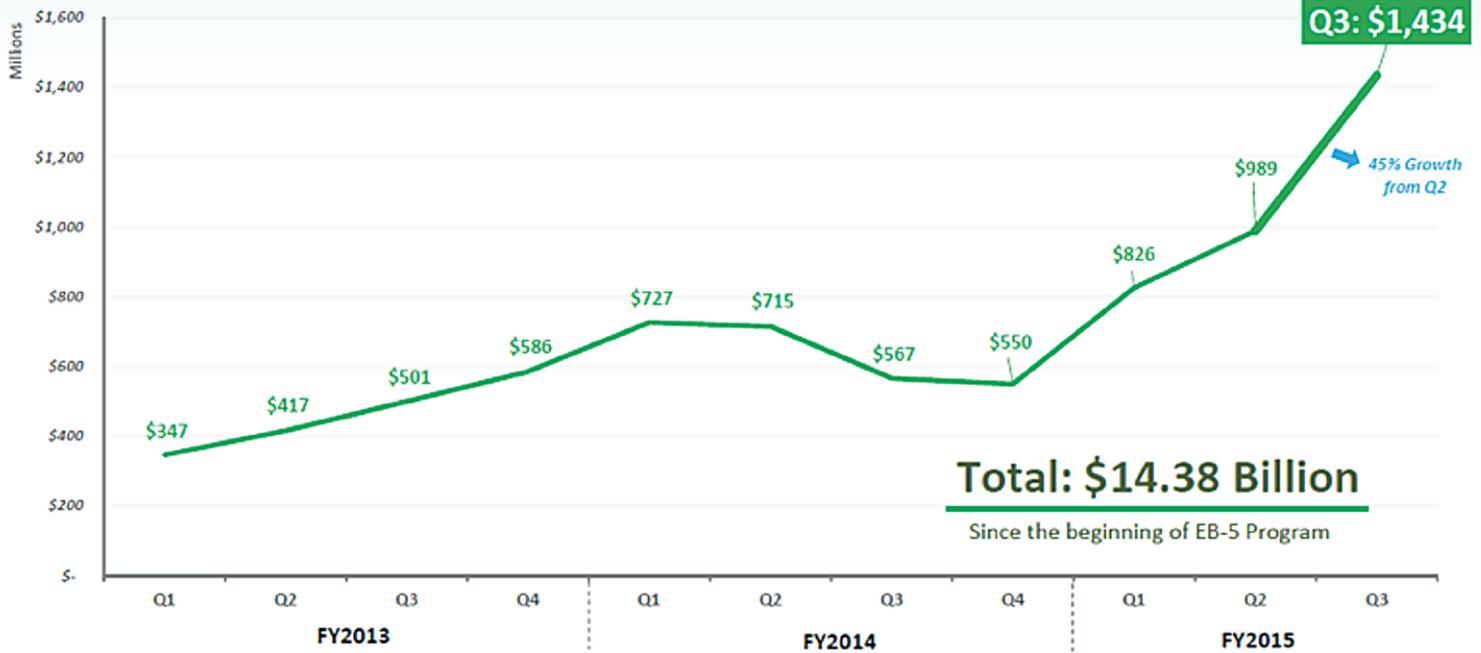
Having over \$1.4 billion in FDI per quarter is a important accomplishment for the EB-5 industry and a big boost to economic development projects across the country. This level of investment demonstrates the integral role EB-5 is playing in development finance capital markets. There is now financing in place for projects in Des Moines, Iowa to the Mariana Islands, to Miami, Florida. With Regional Centers operating in 48 of the 50 states and multiple territories, the benefits of this Program cannot be confined to one place. Being a Program that now contributes over \$1.4 billion a quarter to the U.S. economy, there is no question that **#EB5isWorking**. ■

**EB-5 FOREIGN DIRECT INVESTMENT (FDI) IN \$MILLIONS BY FISCAL YEAR
 FY1992 TO FY2015 (PROJECTION)**



IIUSA Data Report
 Data source: U.S. Citizenship and Immigration Services (USCIS)

EB-5 FOREIGN DIRECT INVESTMENT (FDI) IN \$MILLIONS BY QUARTER (FY2013 TO FY2015)



IIUSA Quarterly Data Report

Data Source: U.S. Citizenship and Immigration Services (USCIS) Data Set

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2015 Q3 Media Review (JULY-SEPTEMBER)



BY MOLLY CONROY
IIUSA POLICY/RESEARCH ASSISTANT

In recent months, media coverage of the EB-5 Program, and its growing role in U.S. economic development around the country, has largely focused on reauthorization of the Program by the September 30, 2015 “sunset” date. Citing job growth and benefits to the community with no cost to taxpayers, media stories continue to hone in on local support of EB-5 thanks to “on the ground” results that speak for themselves.

Projects such as the New York City Green Transportation Group, which provides for-hire ground transportation, and the Buffalo Niagara Medical Campus reflect the diversity in EB-5 investment opportunities, strengthening the Program’s value to America. There remains an emphasis on the pivotal role that EB-5 Regional Centers play in the EB-5 Program as the facilitator of regional economic development and job creation in local economies. There have also been calls by the media, government officials, Regional Centers and EB-5 stakeholders for enhancements to regulatory tools that enhance program integrity.

Here are the highlights from a busy quarter in media coverage on the EB-5 Program, providing further evidence that #EB5isWorking! ■

EB-5 Funding & Transportation Projects - A Perfect Fit for Jobs, Accessibility and the Environment published on *LexisNexis* on 9/21/15 by **Matthew Daus**, President at the International Association of Transportation Regulators and **Mona Shah**, Attorney at Mona Shah & Associates

“Transportation is a natural fit with EB-5 not only due to its viability and simplicity, but also through its high job creation, which is mostly direct and permanent in nature, unlike construction projects, where the construction timeline varies from project to projects. ... The emergence of projects such as the NYCGTG opens doors to infrastructure projects that, while not on the grand scale, will nonetheless have a profound impact on inner urban lifestyles, including the improvement of wheelchair accessible services and the environment. Through foreign investment money, projects of this nature could solve many of New York City’s - and the United States’ - longstanding transportation policy issues and problems.”

Another Voice: Congress needs to reauthorize EB-5 program published in *Buffalo News* on 9/14/15 by **William Gresser**, President of EB-5 New York State Regional Center

“Our projects on the Medical Campus and elsewhere demonstrate exactly what Congress intended the EB-5 program to do - create new U.S. jobs and spur economic development. Immigrants were among the earliest investors in the campus; they financed projects otherwise difficult to fund and their investments were augmented and compounded by other sources of capital. We plan that EB-5 capital will play no less a role in the future.”

New Report Outlines EB-5 Visa Program Successes, Challenges published on 9/17/15 by **Theresa Cardinal Brown**, Bipartisan Policy Center

“The EB-5 program is clearly not going to be the primary solution for the country’s most expensive and critical development needs. However, with the right reforms and safeguards, this program offers significant opportunities for regional economic development, especially in communities hard-hit by the Great Recession.”

Time to ‘Champion’ an investment program that works for all published in *The Hill* on 7/31/15 by **Gregory Wing**, president and CEO of the Education Fund of America, LLC; and co-founder and principal of Green Card Fund

“Two economists from the Harvard Business School-affiliated Institute for a Competitive Inner City found at least 178 EB-5 funded projects nationwide - including our schools - are ‘increasing employment and revitalizing urban areas.’ As our economy continues to recover, projects like ours are living proof of EB-5’s power to help businesses, entrepreneurs and public-private partnerships access the capital they need to invest in their communities and create jobs.”

CONTINUED ON NEXT PAGE >>

2015-Q3 MEDIA REPORT

Keep EB-5 working for America published on *The Hill* on 9/23/15 by **Peter D. Joseph**, Executive Director of IIUSA

"Since 2008, EB-5 has generated \$11.92 billion in foreign direct investment. And, from 2010-2013 alone, the program contributed \$9.62 billion to gross domestic product while supporting an average of 29,300 jobs per year. Over 95 percent of all EB-5 investments flow through EB-5 Regional Centers. ... In the last few years, the federal government has stepped up oversight and enforcement, adding expertise and enhancing interagency cooperation to evaluate project and investor applications, define consistent adjudication policies, and weed out bad actors. This is a welcome development, and the EB-5 industry supports additional common-sense reforms to strengthen oversight and protect the integrity of the program."

Seeing Through the Politics of EB-5 Reform published in *Roll Call* on 9/28/15 by **Jeff Carr**, Senior Economists at Economic and Policy Resources, Inc.

"I've worked with nearly 200 EB-5 projects spanning 48 states and U.S. territories to provide the necessary independent economic analysis - required by the federal government - to ensure each project generates its intended economic impact. In the process, I have seen first-hand the program's capacity to create thousands of good jobs across a broad range of industries."

To Maintain 'Business as Usual' Across the Country, We Need a Robust Investor Visa Program published in *Roll Call* on 9/11/15 by **Angelique Brunner**, founder and president of EB5 Capital

"In today's economy, we cannot afford to lose such a prolific source of economic growth and job creation. ... People around the world continue to invest their hard-earned money in America's investor visa program over those of other nations because they believe our ingenuity, entrepreneurship and integrity will deliver results. And as someone who has overseen a number of EB-5 funded projects in the D.C. area and beyond, I can assure you they do deliver."

EB-5 program is smart government policy published in *The Hill* on 09/17/15 by **Thomas J. Donohue**, President and CEO of U.S. Chamber of Commerce

"These investments drive economic growth and job creation in the U.S. at no cost to taxpayers. This kind of smart government policy should be preserved. ... Smart government policies - backed by facts, data, and statistics - are needed now more than ever to ensure that the United States can compete in the global marketplace to attract foreign capital and help finance projects that put Americans to work."

Restore Integrity of Visas published on 6/29/15 by **Senator Chuck Grassley**

"Maintaining the integrity of our investment and employment-based visa programs would help preserve our heritage of welcoming law-abiding immigrants and roll out the welcome mat to lawful foreign investment in underserved areas. Both bring meaningful contributions to America's banquet of opportunity. Straightening up these table settings would reinforce the rule of law and help boost economic growth and job creation."

Dollars for green cards: EB-5 program grants visas, even citizenship, to foreigners who invest in U.S. published in the *Orange County Register* on 8/29/15 by **Jeff Collins** and **Roxana Kopetman**

"The program is basically to create jobs and stimulate the economy. We're getting many projects and buildings that we would not otherwise have - be they stadiums, be they high-rises. And that stimulates the economy. Not only by the investments, but by (wealthy immigrants) coming to live here. And they continue to invest here." - David Hirson, immigration attorney/partner at David Hirson & Partners, LLP

The EB-5 Regional Center Program is about economic development & American Jobs published in *The Examiner* on 9/28/15 by **Rudy Pamintuan**, chairman for the U.S.-Asia Center and managing director for Sherman Worldwide

"With stricter oversight and management, the EB-5 Regional Center Program is extremely beneficial to America. An extension with strong integrity measures ... will create a favorable environment for the regional centers operating 'above board'. ... We need this program to be extended to give our country the tools necessary to help create jobs and strengthen our nation's economy."

EB-5 Visas Help Many Who Aren't at all Wealthy published in the *Wall Street Journal* on 9/26/15 by **Walter M. "Marty" Cummins Jr.** of Florida EB-5 Investments LLC

"During the Great Recession the EB-5 visa program funded businesses that couldn't get funding from any other source, and it still provides much needed capital. The program provides "patient", low-cost capital that allows businesses the time to develop and flourish. Many of these jobs will simply cease to exist if Congress fails to renew this successful program."



Backup plan for hotel funding? Loan from Polk County published in the *Des Moines Register* on 9/28/15 by **Joel Aschbrenner**

"Des Moines and Polk County officials say EB-5 investors would provide cheap cash for the \$101 million Hilton because visa-seeking foreign investors require a lower rate of return than traditional domestic investors...The program was seldom used until the recession made investment dollars scarce. Following the crash, real estate developers discovered the cheap funding available through EB-5."

CalChamber Urges Reauthorization of Program for Immigrant Investors published by the California Chamber of Commerce on 8/21/15 by **Susanne T. Stirling**, Vice President, International Affairs

"The program is essential to many state and local government economic development entities, as well as numerous industry groups and private sector project and business developers. ... Over the last three years since reauthorization, the program has grown in popularity as a source for funding critical economic development projects, but more importantly has continued to create U.S. jobs, all at no cost to the taxpayer."

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The trucking industry is critical to the health of the U.S. economy, moving roughly **67% of the nation's freight**.

New emissions regulations continue to be implemented, restricting older polluting trucks.

To meet the growing need for environmentally compliant trucks, David Andersson, founder of WORC, established Pacific Northwest EB-5 Regional Center (PNWERC) which, through Green Truck, works to **reduce emissions, create jobs, and stimulate the local economy** while providing opportunities for immigration through investment.

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LOOKING BEYOND CHINA: EB-5 Emerging Markets

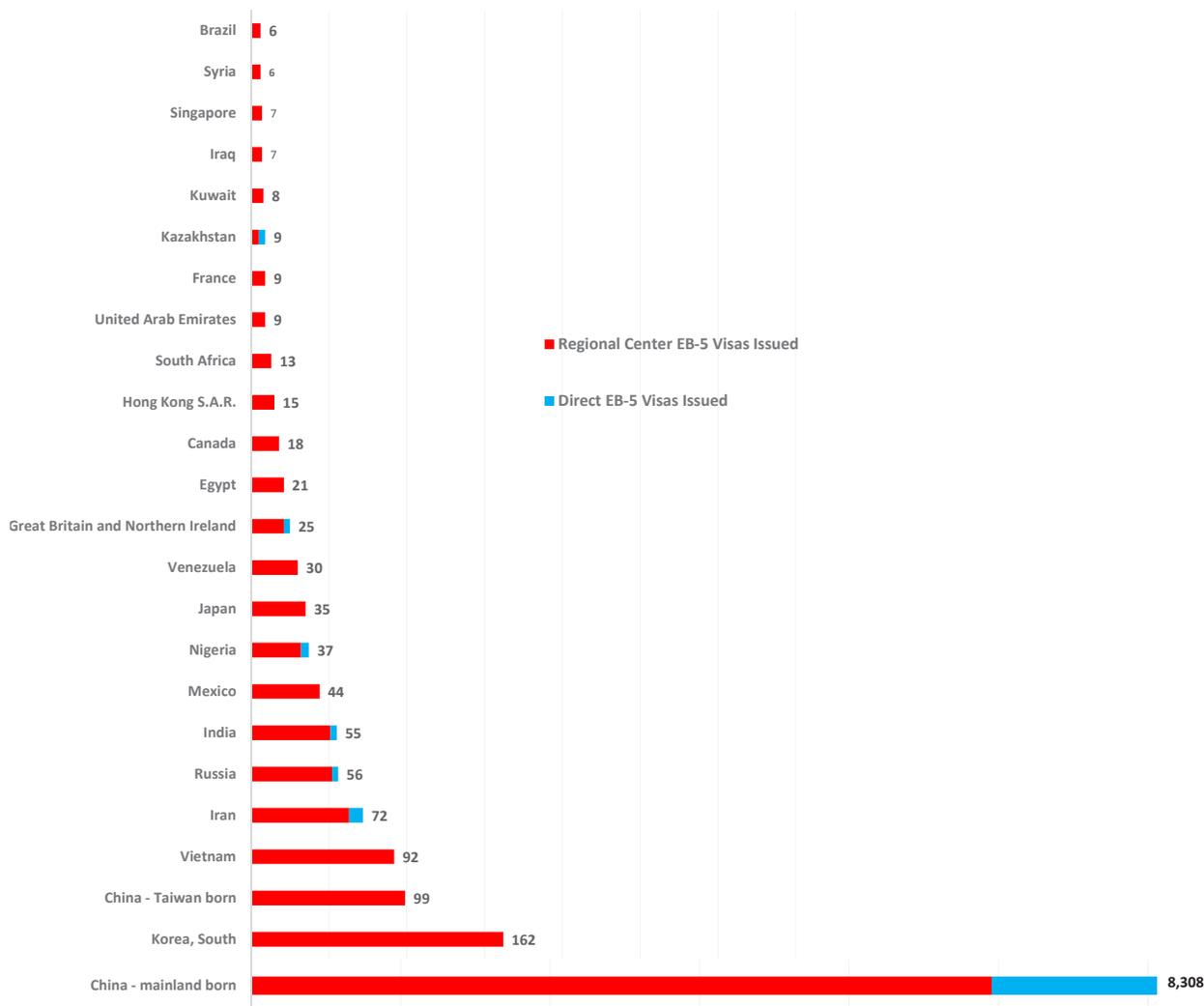


BY PARISA KARAAHMET
FRAGOMEN, DEL RAY,
BERNSEN & LOEWY, LLP

With the arrival of a visa cut off date for EB-5 immigrant visa numbers for China last year, and the more recent woes of the Chinese econ-

omy and stock market crash this past summer, EB-5 actors have started looking outside China to other markets that promise the next generation of EB-5 Investors. While Chinese Investors still dominate the EB-5 world stage, smaller players are poised to consume a larger chunk of the EB-5 investment pool. In light of this, it would be wise to look beyond the current horizon and acclimate to other emerging EB-5 markets that can fill the void, should interest in the EB-5 program level off in China.

In this regard, there are several interesting parts of the world to watch, including Iran, Nigeria and Russia, as well as parts of Asia, such as South Korea, Vietnam and Taiwan. While it is not possible to address all of these jurisdictions in detail, this article will highlight some common source of funds issues, touching on several “hot” or soon-to-be hot markets, including Vietnam, India, Turkey, Brazil and Venezuela.



CONTINUED ON NEXT PAGE >>



As part of the I-526 immigrant visa petition process, investors must provide substantial documentation to demonstrate the lawful source and path of their investment funds. Generally, the U.S. Citizenship and Immigration Services (“USCIS”) requires investors to submit bank statements, tax returns, and documents evidencing ownership of assets that serve as the basis for the investment. In emerging EB-5 markets such as Vietnam, India, Turkey, and countries in Latin America, the political and economic climates often complicate the source of funds documentation process. In some cases, EB-5 investors are unable or unwilling to produce the requisite documentation.

PREPARE THE INVESTOR FOR THE RIGOR OF DOCUMENTING SOURCE OF FUNDS EARLY ON

As a starting point, it is important to identify and explain the source of funds requirement to the investor up front, and provide detailed examples of the documentary evidence required by USCIS to demonstrate the legality of capital used for investment purposes. Many investors from transitional or emerging markets outside of China are simply not sophisticated about the United States Immigrant Investor program and are unaware of the onerous nature of these requirements. In some cases, investors may be knowledgeable about investor programs in other countries but are unprepared for the high standard of review that accompanies the source of funds analysis for a U.S. EB-5 investment. Therefore, from the inception of the case, the burden is on the attorney to ensure that the investor ap-

preciates the level of detail that is necessary in order to assure full client cooperation and a successful source of funds review at the I-526 adjudication phase.

LACK OF TAX RETURNS AND SOURCE OF FUNDS, IS IT GAME OVER?

Initially, it is also worth mentioning that regardless of the jurisdiction, the most common issue that an attorney will encounter is lack of compliance with local tax filing requirements, either because the investor claims an exemption or simply underreports their income. While the lack of income tax returns does not mean per se that the investor will be unable to meet their source of funds burden, it is a heavy factor weighed against them by USCIS in determining the credibility of their case, and must be addressed comprehensively in their petition. In the first instance, an investor who claims an exemption from income tax filing should be asked to obtain a letter from the local tax filing authority that confirms that this is the case. Since this is often difficult to obtain, (even a U.S. domiciled person may have a hard time obtaining this kind of document from the Internal Revenue Service) then it is recommended that the investor submit to an individualized examination of their income and tax filing status by an international auditor or accounting firm, ideally one with a branch office located in that country. In addition to submitting relevant documentation, the attorney should provide a copy of the local tax code that indicates that the exemption exists, along with a certified translation, and prepare additional corroborating documentation

to show that the investor himself or herself fits squarely within the exemption requirements. Finally, it is imperative to review the tax return (or the certified translation) and understand the relationship between the declared income and the investor’s overall statement of wealth. If there is a marked contrast between the two, a RFE seeking clarification may follow. By the same token, if the tax returns are particularly voluminous or difficult to understand, it is likely that a USCIS will have similar challenges and issue a RFE for additional clarification or evidence. The bottom line is if you do not understand what you are reading, neither will the next person reviewing the documentation, so it may be necessary to request a summary of the investors income and tax return history from an accountant or tax professional to include with the filing.

In India, underreporting of income by citizens is common. From a source of funds perspective, this can be particularly problematic for expatriate Indian investors residing in countries with limited tax enforcement mechanisms (e.g., the Persian Gulf Emirates). Notwithstanding the complexity of the Indian tax code, most Indian citizens are obliged to file income tax returns, although the penalties for late filing are minimal and enforcement against the individual tax dodger virtually non-existent. Therefore, lack of income tax filings for Indian citizens may be a red flag for a USCIS adjudicator. Nonetheless, India remains fertile ground for EB-5 investors and currently ranks seventh among investor markets across the world. Moreover, according to a 2012 report released by Credit Suisse Research Institute, India is projected to have nearly 250,000 millionaires by 2017. Given the sheer number of high net worth Indian nationals and the considerable backlogs in priority date availability for other employment based visa categories, the EB-5 visa option will continue to be an attractive alternative for Indian investors seeking residency in the U.S.

Both Brazil and Turkey have enjoyed impressive economic growth in the last 15 years, with Turkey’s economy quadrupling in size since 2002, and Brazil becoming a regional powerhouse in banking and finance. The net result is more wealth and opportunities for those investors interested in utilizing the EB-5 program. From a source of funds perspective, Brazilian investors are more likely to be able

to provide detailed tax returns as they are required to list all their assets and corresponding value annually, in addition to income. Tax compliance in Brazil is generally more common than India, Vietnam and other emerging markets. An interesting footnote here is that dividend payments are generally considered nontaxable in Brazil, creating a situation where tax returns may reflect relatively low salaries but high dividend payments. In Venezuela, individuals must pay taxes on all earned income. However, certain sources of income such as savings plans, retirement plans, and interest from loans may be exempt from taxation depending on the nature of the loan. In addition, a distrust of the Chavez government's socialist policies prompted many wealthy Venezuelan families to move money off shore during the last two decades for safe-keeping, often to accounts in Caribbean Island nations or to the U.S., sometimes making both tracing the path of funds as well as sourcing them, a difficult task. High net worth investors from Turkey may cite to complex Turkish tax rules as a rationale for not having to file income tax returns, for example, income earned and paid in a foreign currency (eg, Euro or Dollars) to an employee of a foreign owned representative office in Turkey is generally not taxable.

CURRENCY RESTRICTIONS AND SOURCE OF FUNDS

Vietnam has emerged as one of the fastest growing EB-5 markets over the past seven years. Notably, Vietnam was among the four largest investor markets utilizing the EB-5 program in FY2014, not including Mainland China. Typically, Vietnamese investors frequently use earned income or the sale of an asset as the basis for their EB-5 investment. The sale of long held family assets, such as real estate, may require the investor to document the atmospheric rise in real estate prices in the places like Ho Chi Minh city since the 1960s, accounting for huge profits in the sale of certain properties. In documenting the lawful source of these funds as well as the path these funds take in reaching the U.S., attorneys frequently encounter issues relating to Vietnam's restrictions on transferring currency abroad, and the lack of or incomplete tax filings and bank records. Vietnamese law regulates the export of currency abroad, and while the amount has fluctuated over the years, these restrictions can make it difficult for inves-



tors residing in Vietnam to transfer funds to the United States for a qualifying investment. Similar to EB-5 investors from China, EB-5 investors from Vietnam frequently use a 3rd party, such as a credit institution, to transfer money to the United States, or may rely on family and friends to transfer money out of the country. As such, Vietnamese investors will often need to take an extra step in documenting their source of funds by including not only evidence of the transfer to the credit institution, but also include a letter from the credit institution or bank verifying the deposits or transfers from the investor in Vietnam. Vietnam's modern private banking industry has only been around since the 1990s, and today State owned banks still dominate the market. Many wealthy Vietnamese individuals also maintain accounts in Singapore and other neighboring countries, which generally make it easier for the investor to trace the path of funds for these monies, although documenting the lawful source of funds is still a necessity.

Investors from other emerging markets face similar challenges with currency restrictions. India, for example, continues to regulate their outflow of the Rupee in an attempt to bolster the strength of the national currency. While the restrictions are not as stringent as they once were, this remains an issue for Indian EB-5 investments, as some investors are forced to provide documentation for various transfers, to different accounts and through different intermediaries, to compile a complete picture of their investment. Similarly, EB-5 investors from certain Latin American countries can face restrictions in transferring

funds to the United States. For example, in order to stabilize its faltering economy, the Venezuelan government imposed strict restrictions on the amount that an investor can transfer outside of the country, leaving citizens with few options outside of the Black Market, to convert the local currency (bolivares) into U.S. dollars. Recently, in February 2015, in an attempt to counter the black market currency exchange, Venezuela opened a government sanctioned currency market, known as the Marginal Currency System (commonly referred to as Simadi, in Spanish), allowing individuals to buy and sell U.S. dollars privately for the first time in over a decade. It should be noted that that notwithstanding this positive development in loosening its foreign currency controls, most Venezuelan investors ultimately utilize long established foreign dollar bank accounts as the source of their EB-5 investment. By contrast, Brazil has a relatively open banking and financial system, and moving money out of Brazil is easier than other Latin American countries. Likewise, Turkey has a relatively open economy and sophisticated international banking system with few limitations on monetary transfers abroad.

In sum, developing and transitional economies offer abundant opportunities to hedge bets against the potential for waning interest in the EB-5 program in China, and should be explored further. In doing so, understand that these newer EB-5 markets often present unique issues with regard to documenting source of funds and tracing the path of investment monies into the U.S. ■

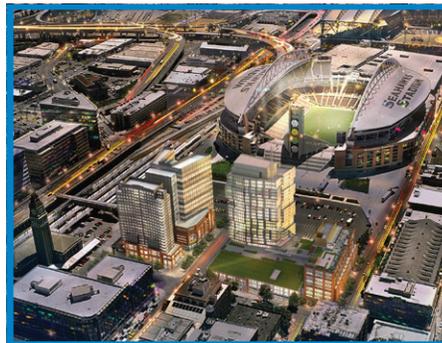
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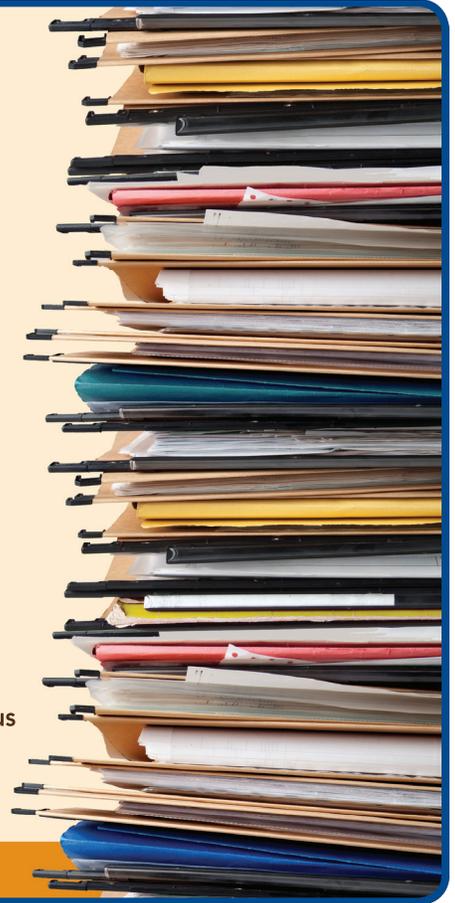


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EB-5 PROJECT TRENDS: *What Is Hot and What Is Not?*



REID THOMAS
EXECUTIVE VICE PRESIDENT, NES FINANCIAL



KAITLIN HALLORAN
MARKETING COORDINATOR, NES FINANCIAL

For almost 20 years, the EB-5 Immigrant Investor Program sat quietly on the sideline. Few had heard of it, and most of the available visas went unused — certainly not what we are seeing from the program today.

The 2008 financial crisis reduced access to capital, and jobs were in short supply. The EB-5 program gained popularity not only as a relatively low-cost source of capital but also as the only job creation program not financed by

U.S. taxpayers. By comparison, jobs created under the American Recovery and Reinvestment Act were estimated to cost \$100,000 – \$400,000 of public money for every one job created. The majority of EB-5 investments are estimated to create at least twice as many jobs with the same amount of private funding.

Since 2008, the use of EB-5 financing has continued to grow. From the Regional Center program's inception in 1993 up until 2007,

only 13 Regional Centers had been created. Today, there are over 700. Annual job creation has soared from an estimated 2,000 jobs created per year to more than 30,000, and for the last two years the program has met its cap of 10,000 visas.

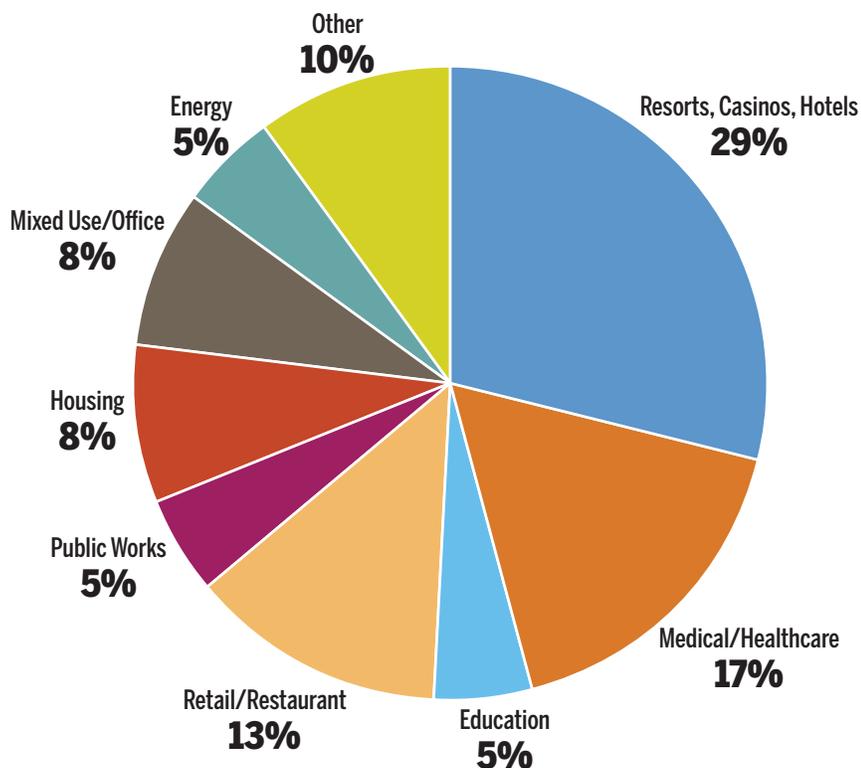
As the EB-5 program has grown, China has established itself as the primary source of EB-5 investors. Increased creation of individual wealth coupled with unfavorable economic policies and the desire for their children to receive top notch education have made the EB-5 program very attractive to many Chinese potential investors. This consistent demand created the infrastructure to make China an appealing market for issuers as well.

Historically, because of the size of their market segment, the preferences of Chinese investors dictated the viability of EB-5 project types. Construction-based real estate projects located in certain major metropolitan areas tended to inspire investor confidence and flourished. Projects associated with internationally recognizable brands, often resorts, casinos, or hotels, gained significant traction with investors.

FY 2014 marked the first year that the visa cap for China was hit. Now with a visa cutoff date for mainland China-born investors being a reality and the resulting diversification in investor markets, the balance of projects is beginning to shift.

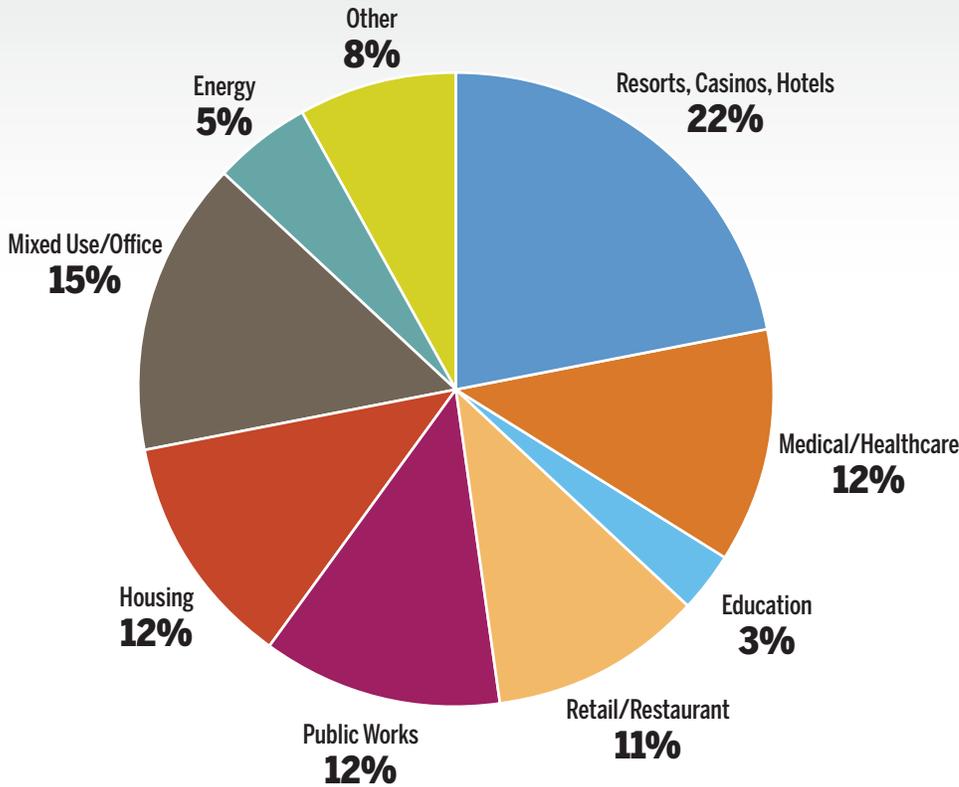
China may have the most advanced infra-

TYPE OF PROJECTS (FY 2010-2013)

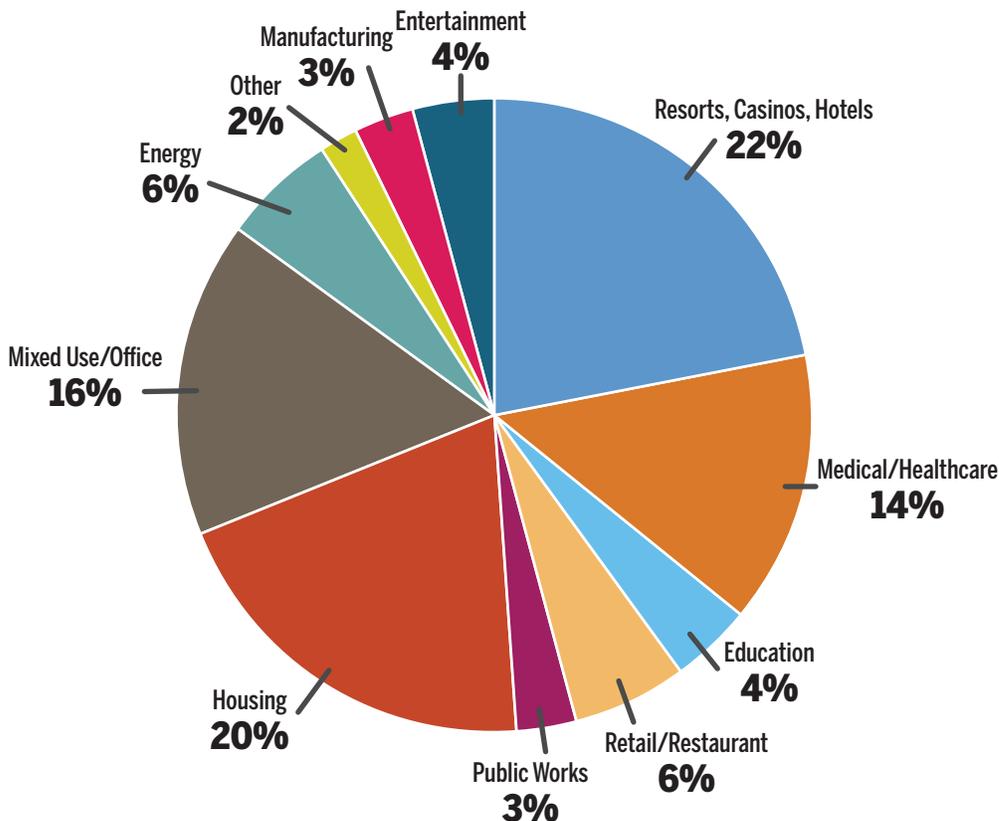


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TYPE OF PROJECTS (FY 2014)



TYPE OF PROJECTS (FY 2015 YTD)



structure for sourcing investors, but it is also the market where competition for them is the fiercest. And as cost and competition for investors in China rise, the importance of developing networks in other countries becomes paramount.

According to data pulled from NES Financial's experience working with over 350 EB-5 projects, between 2010 and 2013, nearly a third of all EB-5 projects seeking funds were hotels, resorts, or casinos. Popular belief suggested that the reasoning behind this was that the ongoing direct employment needs, large construction efforts, and ongoing supply chain requirements provided these projects with high levels of direct, indirect, and induced job creation. As a result, this provides investors with confidence that the project will meet EB-5 requirements.

However, since FY 2014 when the visa cap was first reached, demand for other types of real estate projects has increased.

While hotels are still the largest segment, mixed use and housing (specifically multifamily) projects have grown increasingly popular.

While the ongoing direct job creation effects of these projects may be less than others, the construction-related job creation (direct, indirect, and induced) associated with most of these large-scale development projects is often sufficient to meet the job creation minimums.

So why the shift? There are several possible explanations.

The first is that the popular investment type has less to do with investor preference and correlates closer to demand in the U.S. real estate market. According to many reports, the "millennial" generation is driving demand for urban apartment and condominium housing (i.e. multifamily) which allows them to be close to work and take advantage of all that a big city has to offer.

Second is that investor diversification is driving different investment preferences. There is clearly a trend towards investor diversification. While the absolute numbers continue to pale in comparison to China, the growth rate from countries like Brazil, Mex-

ico, and several Middle Eastern countries is worth taking note of. Could it be that this is driving the market towards certain types of projects as investment opportunities?

It is likely that differences in investor motivation from one region to another will impact the types of offerings that can be marketed successfully.

The data presented so far is analyzing the market based on the number of projects. However, another interesting metric is to analyze the flow of capital. While total number of housing projects is now roughly equivalent to the number of hotel projects, the shift in the total amount of money invested in each sector is more dramatic.

While the hot trend in EB-5 development projects in 2013 was hotels, resorts, and casinos, the increase in non-hospitality developments last year shot up substantially. Data gathered from NES Financial showed that from 2013 to 2014, the number of mixed use developments increased more than 300%, as more and more cities in the U.S. saw a growing demand for them. With vacancies falling

and rents rising in a large number of submarkets, demand for these types of buildings is expected to remain at post-recession highs for at least the next two years. According to CoStar’s “State of the U.S. Office Market 2014 Review and Forecast”, net absorption increased 42% from the previous year.

The increase in multifamily projects may have more to do with markets here in the U.S. than the wants from investors overseas involved with EB-5. CBRE’s “Q2 2015 U.S. Multifamily MarketView” reports that the vacancy rates for these types of apartments dropped significantly from the year before, and deliveries are forecast to reach nearly 173,000, the second highest forecast since 2000.

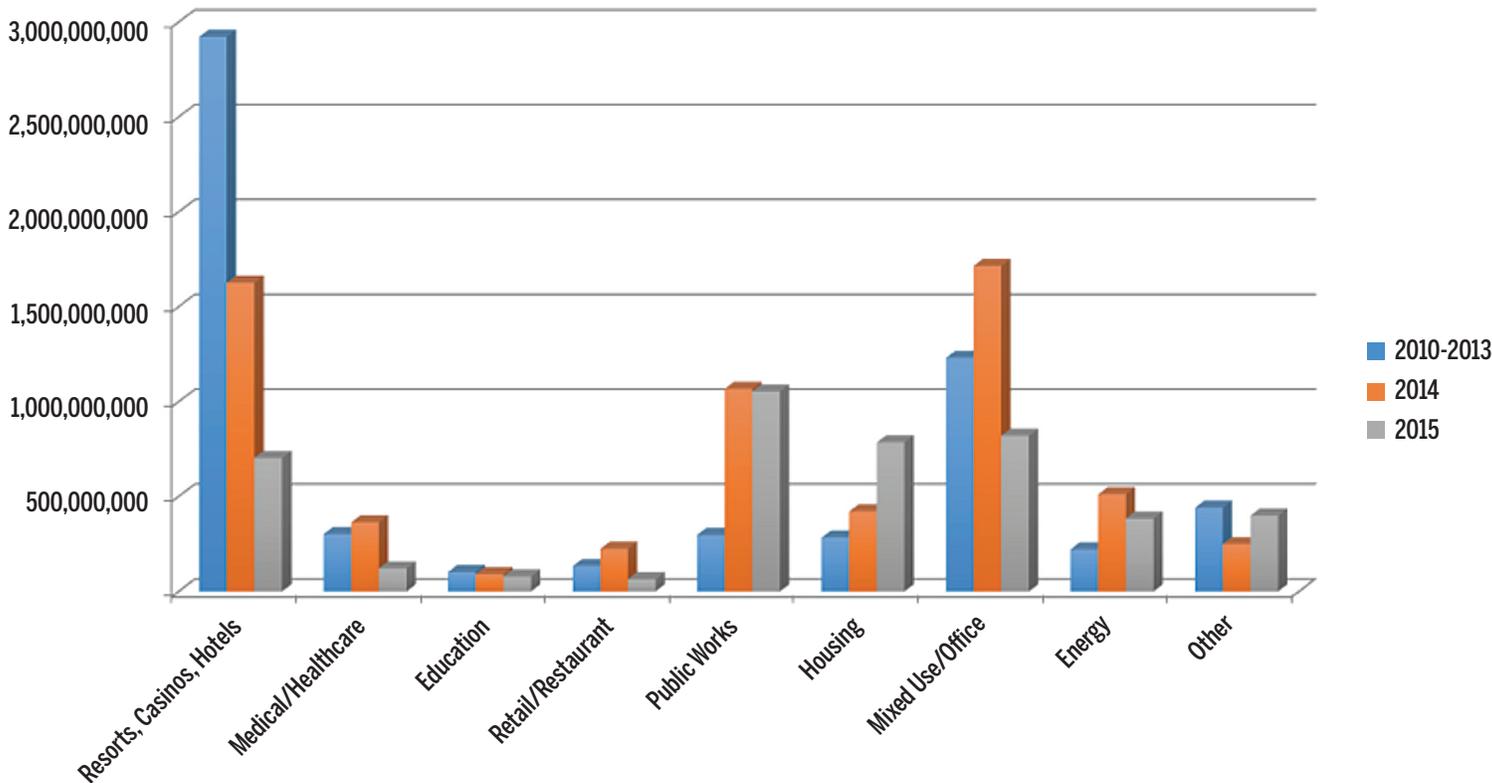
Real estate remains the dominant sector for EB-5 investments. But in the last 18 months, public works/infrastructure and energy projects have grown more popular. The size and scope of these projects create even more dramatic shifts in the use of EB-5 investment funds. As the program evolves, these sectors have the potential to grow more prominent, dramatically changing the EB-5 industry.

When it comes to target raise amounts, projects associated with the energy sector increased the use of EB-5 funding in their capital stack 440% from one year to the next, demonstrating the need for those projects in the U.S. and the interest from overseas investors to be involved in these types of projects.

The EB-5 industry is still quite young. For most of the last 20 years, the program saw little use, but as EB-5 funding has become mainstream, the EB-5 project marketplace has grown more and more dynamic. For those not watching closely, emerging trends can be easy to miss.

Recent legislation has driven projects to lean towards being more rural. With this type of push, the industry can only wonder what kind of impact this will have on the types of projects that are brought to the market from now on. ■

TARGET RAISE BY PROJECT TYPES (FY 2010-2015)



CMB REGIONAL CENTERS

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SUCCESS DEFINED

The true measurement of success is clearly defined in the mind of nearly every prospective EB-5 investor and their family. Achieving permanent residency and a return of their investment is the benchmark by which an EB-5 investor judges a regional center and its EB-5 investment opportunities. CMB is among a very select group of regional centers that have achieved I-829 approvals and return of capital to investors in multiple partnerships.

- Borrowers have Repaid Over \$118 Million in CMB EB-5 Investment Capital
- Repayment has Occurred within Multiple CMB EB-5 Partnerships
- CMB EB-5 Investors have Received Over 400 I-829 Approvals Spanning 10 Partnerships
- Over 1,800 CMB EB-5 Investors have Received I-526 Approvals
- CMB has Received I-526 and/or I-924 Approvals in all 33 of its Partnerships that have been Adjudicated (100% Success)
- CMB has Raised over \$1.7 Billion in EB-5 Investor Capital to Date
- CMB Investor Capital has been Matched with over \$7.5 Billion in Public/Private Funds
- CMB EB-5 Projects have Involved a Total Capital Investment of over \$9.2 Billion
- CMB EB-5 Investor Capital has assisted in the Creation of over 140,000 (Direct, Indirect, Induced) New American Jobs
- CMB Regional Centers is Comprised of 8 Separate Federally Designated Regional Centers
- CMB EB-5 Partnerships Represent over 3,500 Investors To Date

CMB Infrastructure Investment
Group 48 Project Rendering
Century Plaza Hotel,
Condominiums and Retail



Lessons Learned From Securities Litigation in EB-5



MICHAEL G. HOMEIER
FOUNDING SHAREHOLDER AT HOMEIER & LAW, P.C.



OSVALDO F. TORRES
MANAGING PARTNER, TORRES LAW, PA

Litigation in the securities law arena is rapidly accelerating in the EB-5 industry. As of the date of this article, shortly before the reauthorization deadline of September 30, 2015, the SEC has filed eight SEC

actions impacting the EB-5 industry.

The Chicago Convention Center case, filed in February 2013, was the first civil enforcement action brought by the SEC involving actual EB-5 investors. Since then, the SEC filed

two actions in 2013, another two in 2014, and four more actions thus far in 2015.

The following table lists the SEC cases to date:

DATE	CASE	TYPE OF ACTION
2/16/13	SEC v A Chicago Convention Center, et al	Civil enforcement case
9/30/13	SEC v Ramirez et al (USA Now)	Civil enforcement case
8/27/14	United States v Sethi	Criminal case (felony) (derived from Chicago)
9/3/14	SEC v Justin Lee, et al	Civil enforcement case
6/23/15	Matter of Ireeco, &c	SEC administrative proceeding
7/6/15	SEC v Luca, &c	Civil enforcement case
7/6/15	Matter of Wisteria Global	SEC administrative proceeding (related to Luca)
8/24/15	SEC v. Path America	Civil enforcement case

LESSONS FROM THE SEC CASES: AVOIDING MISTAKES

It is vital that EB-5 principals and their professional teams be aware of these SEC cases. Understanding what the SEC, the Department of Justice, and private litigators base their litigation causes of action on will help regional centers and project principals avoid the same mistakes. In acting to protect them-

selves, usually involving closer understanding of and compliance with the securities law requirements, RC and project principals will end up better protecting investors, helping minimize their injury and lessening the government's need to intervene to safeguard investors and stop and prevent future harm.

The fundamental securities law imperative is that prospective investors have disclosed to them all material facts prior to their making

an investment decision. Such access to material information will assist the investor in making the most informed decision possible. Issuers have a duty to inform investors (before they actually make an "investment decision") of the risks as well as hoped-for benefits of each investment opportunity, without omitting any material information. Importantly, once investors subscribe and the project is

CONTINUED ON NEXT PAGE >>

funded, the issuer must do what it disclosed it would do with the investment dollars.

Given this imperative, it is completely unsurprising that without exception, all of the SEC litigation (other than the administrative

proceedings), as well as private litigation by investors, involves claims of fraud. Invariably, either the issuer did not fully or accurately disclose all material information, and/or the issuer did not do (or did something different than) what it promised to do in its

disclosures. In some cases, better structuring of the EB-5 offering, for instance to reduce the possibility that conflicts of interest would materialize into wrong-doing, could have been implemented that may have avoided SEC action or investor harm.

SUMMARY OF SEC CASES

A summary follows of the details, factual allegations, and important notes from the authors concerning each of the SEC cases:

SEC v. A Chicago Convention Center, Case No. 1:13-cv-00982, US District Court, N.D. IL.

Claims:	26-page complaint, three fraud causes of action (upon investors and upon USCIS, also alter ego) citing Securities Act 17(a)(1), 17(a)(2), and 17(a)(3), Exchange Act 10(b) & Rule 10b-5.
Investment:	Aggregate \$145M capital + \$11M of Admin Fees = \$156M total EB-5 funds.
Allegations:	Fraud, falsifying documents, false statements (regarding committed hotel brands, contributed land value, involvement of government financing, and status of progress), misappropriation of funds (spent on luxury goods, settling unrelated lawsuit, investment in cosmetic surgery business, paying personal expenses), wire fraud, creation of false documents.
Important facts:	Defendants' only motion was to attack SEC jurisdiction, motion denied then case ended.
Result:	Consent judgment vs Defendants entered on 3/17/14.
Sanctions/Penalties Imposed:	Disgorgement (repayment) of \$11.5M + pre-judgment interest, permanent injunctions against further securities violations, injunction from offering/selling securities, and civil penalties (\$1M civil penalty against Sethi and \$1.45M each against entity defendants ACCC & IRCTC).

United States v. Sethi, Case No. 1:14-cr-00485, US District Court N.D. IL.

Claims:	Grand jury 10-count indictment 8/27/14 brought by U.S. Attorney's Office-Chicago, Dept. of Justice.
Allegations:	Generally as per prior civil enforcement action, above.
Important facts:	Jury trial date set for 1/11/16, anticipated trial time 2-3 weeks.
Important notes:	Same facts grounding civil causes of action also suffice to ground criminal counts.
Status:	Defendant released on \$100,000 recognizance bond, granted right to subpoena USCIS and 9 foreign brokers.
Sanctions/Penalties Requested:	20 years' imprisonment and \$250K fine on each of 8 wire fraud counts, and 5 years' imprisonment and \$250K on each of other 2 counts.

SEC v. Ramirez (AKA "USA Now case"), Case No. 7:13-cv-00531, US District Court, S.D. TX.

Claims:	21-page complaint, three fraud causes of action (SA 17(a), SEA 10(b) & Rules 10b-5(a), (b), (c)) brought against husband & wife and 5 companies
Investment:	\$5M from 10 EB-5 investors.
Allegations:	Without disclosure defendants withdrew funds from escrow (before any I-526s filed), diverted funds to restaurant and other personal businesses, used funds to settle unrelated lawsuit, spent for personal use (buying Mercedes Benz automobiles), making Ponzi payments (using funds to pay off other investors).
Important facts:	USCIS issued 526 denials based on unauthorized industries; FBI executed search warrant on 7/18/13.
Sanctions/Penalties Requested:	Injunctions, asset freeze, accounting, preserve books, bank safeguard, passports, disgorgement, and penalties in an amount to be determined.

SEC v. Justin Lee, et al. (AKA “Kansas Biofuels case”), Case No. 2:14-cv-06865, US D.C., C.D. CA.

Claims:	23-page complaint, three securities fraud causes of action brought against 2 immigration lawyers & wife. California State Bar disciplinary proceedings have been launched against Defendant attorney Lee, and Defendant attorney Kent has been disbarred.
Investment:	\$12M from 24 EB-5 investors.
Allegations:	Diverted \$3.9M to other businesses (incl. a Philippines project intended to produce iron ore from sand), \$2.4M Ponzi payments, the promised Kansas ethanol plant never built, false docs provided to USCIS, misappropriated funds.
Sanctions/Penalties Requested:	Injunctions, disgorgement, penalties in amount TBD. Court entered default as to Defendant Justin Moongyu Lee on 8/7/15

Ireeco SEC Administrative Proceeding, File No. 3-16647 (SEC cease-and-desist proceeding)

Charge:	Ireeco, LLC and Ireeco Limited willfully acted as unregistered brokers of EB-5 securities.
Investment:	Sourced \$79M from est. 158 EB-5 investors.
Findings accepted by Respondents:	Solicited foreign investors to choose right EB-5, claimed only providing education/information and 100% success rate on 526s and 829s, gave project choices, performed “due diligence”, registered investors with only select RCs, received compensation from RCs of average \$35K per investor. Respondents neither admitted nor denied charges, but consented to below sanctions
Sanctions/Penalties Imposed:	Cease and desist (injunctions), censure, additional proceedings to follow to determine whether disgorgement and interest and/or civil penalties appropriate, and if so in what amounts.
Important notes:	First EB-5 unregistered broker case “won” by SEC (the case against immigration lawyers remains impending), and Respondents are private businesses not attorneys; case only brought against entities, not owning individuals.

SEC v Luca, et al., Case No. 3:15-cv-03101, US District Court, N.D. CA.

Claims:	26-page complaint, 9 causes of action including 3 securities fraud, 2 unregistered offering (Reg D), 2 Investment Adviser fraud, + 1 unregistered broker causes brought against Bingqing Yang + 4 other individuals, + 12 companies
Investment:	A total of \$68M of which \$8M was EB-5 (as such, not primarily an EB-5 case).
Allegations:	Without disclosure defendants commingled funds, made Ponzi payments, diverted to other business and personal use (bought \$2.5M home, paid pool & garden expenses, personal vacations, and golf junket), made material misstatements (as to returns) and omissions (as to business’ health), breached fiduciary duties owed to investors, unregistered persons received broker commissions, general solicitation in violation of Reg D and including non-accredited investors, and fraud; defendants asserted Fifth Amendment privilege against self-incrimination.
Important notes:	First case charging unexempted offering due to loss of Reg D exemption and first case of SEC asserting position that EB-5 principals are investment advisers under 1940 Investment Advisers Act.
Sanctions/Penalties Requested:	Injunctions, receiver, asset freeze, accounting, preserve books, disgorgement, penalties TBD.

Wisteria/Fujigami SEC Admin. Proceeding, File No. 3-16675 (SEC cease-and-desist proceeding)

Charge:	Wisteria Global, Inc. and Hiroshi Fujigami willfully acted as unregistered broker of EB-5 securities.
Investment:	Sourced \$31M from 400 non-EB-5 investors for Luca projects.
Findings accepted by Respondents:	Solicited Japanese investors for Luca, arranged seminars and meetings, provided translation services, received comp from Luca of net \$1.8M. Respondents neither admitted nor denied charges, but consented to sanctions.
	Respondents neither admitted nor denied charges, but consented to sanctions.
Sanctions/Penalties Imposed:	Cease and desist (injunctions), censure, limited disgorgement and interest but no penalties.
Important notes:	No penalties “based on Statements of Financial Information and other documents submitted to the SEC” (could mean Respondents cooperated).

SEC v Path America, et al., Case No. 2:15-cv-01350, US District Court, W.D. WA.

Claims:	17-page complaint: 4 causes of action for securities fraud brought against Lobsang Dargey and 9 companies
Investment:	\$136M EB-5 including \$125M capital and \$11M Admin Fee (\$45K each).
Allegations:	80/20 early release structure; material misstatements and omissions, misappropriation, diverted to other business and personal use (bought \$2.5M home, withdrew \$350K cash from 14 casinos, and spent \$7.3 M + \$4.25 M to purchase other land).
Sanctions/Penalties Requested:	Injunctions, asset freeze, accounting, preserve books, return funds to USA, disgorgement, penalties to be determined.
Important notes:	A related party and conflicts of interest case. Trouble could have been avoided if proper structure had been in place to prevent same ultimate control person from having unfettered access to funds, but this would require the wrongdoer to have honored any such structure he imposed on himself at inception.

Regarding the Path America case, the individual Defendant appears to have been solely responsible for structuring the transaction, and did so explicitly reserving complete control over the funds. Despite the disclosure of this dangerous degree of control, apparently investors did not balk or question this as the project was successfully subscribed. The marketplace understands, and accepts, that EB-5 regional centers and project principals may lawfully perform multiple roles, but simple disclosure cannot be accepted as involving no risk; instead, your authors believe reasonable protective mechanisms should fairly be required by the marketplace to provide some checks on principals' total freedom of action, in case a principal should be swayed to the

Dark Side of the EB-5 Force. Corporate securities counsel should be consulted to generate reasonable structures and protections in anticipation that the marketplace will soon require them.

IMPENDING SEC ENFORCEMENT AGAINST IMMIGRATION LAWYERS FOR BROKERING

The SEC's enforcement action against EB-5 immigration lawyers for accepting unlawful broker fees for referring investors to regional center projects back in 2010 appears to be slowly continuing to move forward. The agency has not formally announced the action, but continues to reach settlement agree-

ments with attorneys involving disgorgement of fees, plus interest, and apparently in particularly egregious cases penalties also. This has been ongoing for quite some time, and the reasons behind the delay in a formal announcement and imposition of actual settlement agreements remain uncertain, although the SEC is known to be pursuing investigations of the regional centers involved in making the unlawful payments to the lawyers. Meanwhile, the SEC's Ireeco proceeding and Luca litigation demonstrates the agency's aggressive position taking action against issuer principals as well as non-attorneys who source investors without registration and accept transaction-based compensation. ■

NEW MEMBER FEEDBACK SECTION!

Would you like to provide commentary on any of the articles in this edition of the Regional Center Business Journal? If so, send us your comments, maximum 150 words, to editorial@iiusa.org.



The most thought-provoking responses will be featured in the next issue and also on the IIUSA Blog.

What are you waiting for? Publish your comments today!

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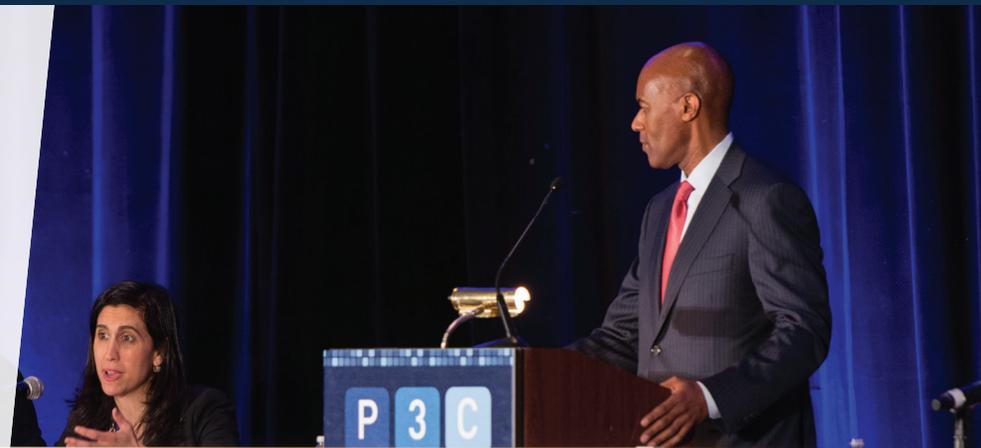
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Anti-Money Laundering Rules and IIUSA Members



BY KEN WRIGHT
PARTNER AT BAKER &
HOSTETLER LLP

BACKGROUND

Regional Centers, affiliated issuers, and other IIUSA Members (**Members**) may act in capacities that fit within federal rules for “financial institutions” and thereby may be required to implement certain policies, procedures and controls intended to prevent financial crimes. Stiff penalties may be levied for non-compliance. Even where coverage under the rules is unclear, Members are encouraged to consider implementing policies, procedures and controls that are designed to protect business from the ill effects of financial crime. This article introduces requirements of the Bank Secrecy Act (BSA), first enacted in 1970, and the USA Patriot Act (Patriot Act), initially enacted in October 2001 in the aftermath of the 9/11 terrorist attacks.

The BSA is our nation's first and most comprehensive anti-money laundering (AML) statute and requires US financial institutions and other industries vulnerable to money laundering to assist US government agencies to detect and prevent money laundering and take a number of precautions against financial crime. This includes filing and reporting certain data about financial transactions possibly indicative of money laundering, including cash transactions over \$10,000 and suspicious activity that might signify money laundering, tax evasion, or other criminal activities. According to the Financial Crimes Enforcement Network (FinCEN), a bureau of the Treasury that administers the BSA, over 15 million BSA reports are filed each year by more than 25,000 US financial institutions, providing a wealth of potentially useful information to agencies whose mission is to detect and

prevent money laundering, other financial crimes and terrorism.

The Patriot Act made a significant number of changes to the BSA to enable the tracking of financial assets in the economy to combat terrorism, including the following:

A. Expanded Definition of Financial Institutions. The definition of financial institution was greatly expanded to 27 categories that include not only traditional finance industry entities, but also other persons or entities that could include Members, such as:

- Loan or finance companies;
- Persons involved in real estate closings and settlements;
- Private bankers;
- Investment companies (whether or not registered);
- Securities brokers (whether or not registered); and
- Investment bankers.
- Any other category the Secretary of Treasury determines (by regulation) or designates (regulation not required) for specified reasons.

B. Anti-Money Laundering Programs (AML Program). To require “financial institutions” to establish anti-money laundering programs that include, at a minimum, the following “four pillars”:

- Development of internal policies, procedures, and controls;
- Designation of an anti-money laundering compliance officer;
- An ongoing employee training program; and
- Independent audit function to test the AML Program.

Consideration of the size, location, and ac-

tivities of the financial institutions must be taken into account.

C. Customer Identification Programs (CI Program). To prescribe regulations establishing minimum standards for “financial institutions” and their customers regarding the identity of a customer at the time of opening of an account. At a minimum, CI Programs must implement reasonable procedures for:

- Verifying the identity of any person seeking to open an account;
- Maintaining records of the information used to verify identity, including name, address, and other identifying information; and
- Determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The various types of accounts maintained by various types of financial institutions, the methods of opening accounts, and the types of identifying information available, all must be taken into account.

THE PROGRAM RULES

REGULATIONS. The Patriot Act allows the Secretary of the Treasury to adopt regulations providing minimum compliance standards. To date, FinCEN has adopted a General Rule applicable to all “financial institutions” (and temporarily exempting 13 categories from the AML Program requirements described above) and adopted or proposed specific Rules (each different for the reasons stated above) for 12 categories of “financial institutions” (Category Rules) described in the Table below (together, the Program Rules or the Rules). Each “financial institution” looks to the General Rule and then to its Category Rule, if applicable, to determine any ad-

ANTI-MONEY LAUNDERING RULES AND IIUSA MEMBERS

ditional requirements.

The Program Rules generally cover the following areas:

AML Programs and CI Programs. See Table below for current program requirements.

Reports Required to Be Made. These vary by category, but include:

- Form 112 - Currency Transaction Report (CTR). To be filed by certain financial institutions indicated in the Table, involving cash currency transactions in excess of \$10,000 in one business day, including aggregated transactions if the institution has knowledge they are by or on behalf of the same person, including the identity of the depositor or recipient and the real party in interest, if different. These relate to transactions in which the institution pays out or receives cash currency.
- Form 8300 -- Generally requires each person engaged in a trade or business to report the receipt of "cash," i.e., currency and cash equivalents (bank drafts, money orders, traveler's checks and cashier's checks) to the Internal Revenue Service (IRS) on IRS Form 8300. Generally, any person who, in the course of a trade or business, receives cash in excess of \$10,000 in one transaction, or in two or more related transactions, must report such transaction on Form 8300, including the amount, the identity of the payer and certain other information, and notify the person named of such filing by January 31 of the following year.
- Form 111 – Suspicious Activity Report (SAR). This is a report regarding suspicious activities that are conducted or attempted by, at, or through an institution and that involve in aggregate at least \$5,000 in funds or other assets, including currency and all other forms of payment. In addition, the Rules that impose SAR obligations encourage the institutions to file SARs on a voluntary basis regarding transactions that appear relevant to violations of law or regulation, even in cases where the \$5,000 threshold is not met. According to FinCEN, "suspicious activity" is any conducted or attempted transaction or pattern of transactions that one knows, suspects or has reason to suspect meets any of the following conditions:

- Involves money from criminal activity.
- Is designed to evade BSA requirements, whether through structuring or other means.
- Appears to serve no business or other legal purpose and for which available facts provide no reasonable explanation.
- Involves use of the money services business to facilitate criminal activity.

Examples of activities that could be considered suspicious and red flags include:

- Use of a false ID, or multiple IDs on different occasions.
- Two or more customers use the same or similar IDs (photo or name may be different).
- A customer breaks a large transaction into two or more smaller transactions.
- Customer changes a transaction after learning that he or she must show ID.
- Customer conducts transactions so that they fall just below amounts that require reporting or recordkeeping.
- Two or more customers seem to be working together to break one transaction into two or more transactions.
- Customer uses two or more locations or cashiers on the same day to break one transaction into smaller transactions.

If customer does something obviously criminal – such as offering a bribe or even admitting to a crime – the law requires an SAR if it involves or aggregates funds or other assets of \$2,000 or more. If required, a SAR must be file within 30 calendar days after obligated person becomes aware of any suspicious transaction or pattern of suspicious transactions or activities that are required to be reported.

As summarized by FinCEN, the law protects you from SAR report civil liability; you are not being asked to accuse customers of criminal activity – you are only required to file a SAR if you believe the activity is suspicious and involves \$2,000 or more; and it is illegal to tell any person involved in the transaction that a SAR has been filed.

- Form 114 – Report of Foreign Bank and Financial Account (FBAR). This report

must be filed by a US Person who has a financial interest, signature power or other authority over a financial account in a foreign country and having a value exceeding \$10,000 (alone or aggregated with others) at any time during a calendar year. It must be filed by June 30 of the following year. "US Person" includes a US person, a resident alien and generally any entity formed in the US, its states, territories, possessions, enclaves or Indian Tribe territories. "Financial interest" generally includes acting as an agent and having direct or indirect control of 50% or more value or voting interest. Physical location of the account outside geographic boundaries described above is a key concept, so even an interest by a US Person in an account of a US Bank maintained in a foreign country would be reportable. Note: The filing of this report does not address the requirements of the Foreign Account Tax Compliance Act, enacted in 2010 to combat tax evasion by US taxpayers by requiring them to report certain foreign financial accounts and offshore assets to the IRS and by requiring foreign financial institutions (FFIs) to identify accounts owned by US persons to the IRS.

- Form 105 – International Transportation of Currency or Monetary Instruments (CMIR). This report must be filed by each person who physically transports, mails, or ships, or causes to the same to occur, or attempts to do so with respect to currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the US to any place outside the US, or into the US from any place outside the US. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person. Additionally, each person who receives the US currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time which have been so transported, mailed, or shipped to such person from any place outside the US with respect to which a report has not been filed as provided above, whether or not required to be filed thereunder, shall make a report thereof. Exemptions from this filing requirement include (i) a person who is not

CONTINUED ON NEXT PAGE >>

ANTI-MONEY LAUNDERING RULES AND IUSA MEMBERS

a citizen or resident of the US in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or securities broker or dealer through the postal service or by common carrier; (ii) currency or other monetary instruments mailed or shipped through the postal service or by common carrier by a bank, a foreign bank, or a securities broker or dealer; (iii) a commercial US bank with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned; and (iv) the common carriers and the postal service in the above described exceptions.

- Form 107 – Registration of Money Center Business (RMSB). Each money services business (MSB), whether or not licensed as a money services business by any State, must register on this form on or before the end of the 180-day period following the date the business is established, and registration must be renewed every 2 years. Each provider of prepaid access must identify each prepaid program for which it is the provider of prepaid access. Each MSB must, as part of its registration, maintain a list of its agents. Each foreign-located person doing business, whether or not on a regular basis or as an organized or licensed business concern, in the US as an MSB must identify a person who resides in the US who is authorized, and has agreed, to be an agent to accept service of legal process, and identify the address in the US where records pertaining to registration and maintenance information are kept. A list of the approximately 36,000 registered MSB's may be viewed at: http://www.fincen.gov/financial_institutions/msb/msbstatelocator.html
- Form 110 – Designation of Exempt Person (DOEP). This is a voluntary filing available only to Depository Institutions (e.g., banks, thrifts, credit unions, etc.) allowing them to exempt from the CTR filing requirements regarding currency transactions exceeding \$10,000 in one business day entities that include: (i) other banks, to the extent their domestic operations; (ii) most 51%

or greater controlled US subsidiaries of the institution; (iii) entities to the extent of US operations with shares listed on the NYSE, AMEX or designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market (except stock or interests listed under the separate “NASDAQ Capital Markets Companies” heading); (iv) certain governmental entities; and (v) certain domestic “payroll customers” and “non-listed” businesses with whom they have a pre-existing relationship, frequent withdrawals or currency or other transactions in excess of \$10,000 through certain “eligible accounts” and not involving any “non-eligible businesses”. This form may be filed within 30 days following a reportable transaction with the person sought to be exempted and must be monitored and reviewed annually for compliance.

Records Required to be Maintained (RR).

The records retention requirements include any of the reports described above and additional extensive requirements. The general requirements are located at 31 CFR 1010.400. The Table below indicates whether each Category has requirements in addition to the general ones. The retention period is generally 5 years.

Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity (SIS). The Information Sharing Procedures requirements include any of the reports described above and additional extensive requirements. The general requirements are located at 31 CFR 1010.520 and apply to all categories of financial Institution. The Table below indicates whether each listed Category has requirements in addition to the general ones.

Special Standards of Diligence; Prohibitions; and Special Measures (SSDS). Generally, these Rules provide that a “covered financial institution” (generally, a Depository Institution, a Securities Broker or Dealer, a Futures Commission Merchant or Introducing Broker in Commodities or a Mutual Fund) shall establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the covered financial institution to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving any

account of such covered financial institution in the US for a new foreign customer or counterparty, and are required as part of the AML Program. Such policies, procedures, and controls include:

- (1) Assessing the money laundering risk, based on a consideration of all relevant factors, which shall include, as appropriate:
 - (i) the nature of the party's business and the markets it serves; (ii) the type, purpose, and anticipated activity of such account; (iii) the nature and duration of the covered financial institution's relationship with the party (and any of its affiliates); (iv) the AML and supervisory regime of the jurisdiction that issued the charter or license to the party, to the extent that information regarding such jurisdiction is reasonably available; and (v) information known or reasonably available to the covered financial institution about the party's AML record.
- (2) Applying risk-based procedures and controls to each such account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.
- (3) In the case of a “private banking account” (or combination of accounts) maintained at a covered financial institution that: requires a minimum deposit of \$1,000,000; is established by one or more non-US persons as direct or beneficial owners; and is assigned to, or is administered or managed by, an officer, employee, or agent of the covered financial institution acting as a liaison between it and the direct or beneficial owner of the account), that the financial institution takes reasonable steps to:
 - (i) Ascertain the identity of all nominal and beneficial owners of a private banking account;
 - (ii) Ascertain whether any beneficial owner a senior foreign political figure;
 - (iii) Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and
 - (iv) Review the activity of the account to

ANTI-MONEY LAUNDERING RULES AND IUSA MEMBERS

ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report, in accordance with applicable law and regulation, any known or suspected money laundering or suspicious activity conducted to, from, or through a private banking account;

(v) In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program must include enhanced scrutiny of such account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption; and

(vi) The procedures must address circumstances in which a covered financial institution cannot perform appropriate due diligence with respect to such a private banking account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report or close the account.

Prohibitions generally require a covered financial institution to take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank.

Special Measures generally require each

covered financial institution to: (1) terminate all correspondent accounts with any Burmese banking institution, Commercial Bank of Syria, Banco Delta Asia, and FBME Bank, Ltd.; (2) adopt special procedures designed to ensure the covered financial institution will have no involvement with new correspondent accounts of such institutions; and (3) provide certain ownership and registered agent information on accounts maintained by it, if properly requested by federal law enforcement officers; (4) terminate its correspondent relations with any foreign bank the fails to respond to or contest any summons issued by the Secretary of Treasury or the Attorney General regarding records of such foreign bank, wherever located.

PROGRAM RULES	GENERALLY INCLUDE: (General Rules begin at 31 CFR §1010) G = Follows General Rule, C = Follows Category Rule	AML Program	CI Program	CTRs	SARs	RMSB	RR	SIS	SSPS	Begins at 31 CFR §:
Depository Institutions	Banks, savings associations and credit unions and certain non-Federally regulated banks.	C	C	C	C		C	C	C	1020
Casinos and Card Clubs	Most gaming facilities with gross annual gaming revenue exceeding \$1,000,000, including those on Tribal Lands.	C		C	C		C	C		1021
Money Services Businesses (MSBs)	Dealers in foreign exchange, check cashers, Issuers or sellers of traveler's checks or money orders, Providers of prepaid access, Money transmitters, The US Postal Service and Sellers of prepaid access.	C		C	C	C	C	G		2022
Brokers or Dealers In Securities	A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (Exchange Act)	C	C	C	C		C	C	G	1023
Mutual Funds	Any "investment company" (as the term is defined in section 3 of the Investment Company Act of 1940 (ICA)) that is an "open-end company" (as that term is defined in section 5 of the ICA) that is registered or is required to register with the SEC under section 8 of the ICA.	C	C	C	C		G	C	G	1024
Insurance Companies	Any person engaged within the United States as a business in the issuing or underwriting of any covered product: (1) A permanent life insurance policy, other than a group life insurance policy; (2) An annuity contract, other than a group annuity contract; or (3) Any other insurance product with features of cash value or investment.	C		G	C		G	C		1025
Futures Commission Merchants And Introducing Brokers In Commodities	Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission ("CFTC") under the Commodities Exchange Act of 1936 (CEA).	C	C	G	C		G	C	G	1026

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ANTI-MONEY LAUNDERING RULES AND IIUSA MEMBERS

PROGRAM RULES	GENERALLY INCLUDE: (General Rules begin at 31 CFR §1010) G = Follows General Rule, C = Follows Category Rule	AML	CI	CTRs	SARs	RMSB	RR	SIS	SSPS	Begins at
		Program	Program							31 CFR §:
Dealers in Precious Metals, Precious Stones, or Jewels	Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission (“CFTC”) under the Commodity Exchange Act of 1936 (CEA). Any person engaged within the US as a business in the purchase and sale of covered goods and who, during the prior calendar or tax year: Purchased more than \$50,000 in, and Received more than \$50,000 in gross proceeds from the sale of, in each case, covered goods: (1) Jewels; (2) Precious metals; (3) Precious stones; and (4) Finished goods (including numismatic items, and antiques), that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods.	C					G	C		1027
Operators Of Credit Card Systems	Any person doing business in the United States that operates a system for clearing and settling transactions in which the operator’s credit card, whether acting as a credit or debit card, is used to purchase goods or services or to obtain a cash advance.	C					G	C		1028
Loan or Finance Companies	A loan or finance company: (i) including a residential mortgage lender or originator; but excluding: (1) A bank (except bank credit card systems); (2) A securities broker or dealer; (3) An MSB; and (4) A telegraph company	C		G	G		G	C		1029
Housing Government Sponsored Enterprises	(i) The Federal National Mortgage Association; (ii) The Federal Home Loan Mortgage Corporation; and (iii) Each Federal Home Loan Bank.	C	C		C		G	C		1030
Investment Advisors (Rule Proposed 8/25/15)	Investment advisors and managers that are registered or required to register with the US Securities and Exchange Commission (SEC), generally those advisers with over \$100 million in regulatory assets under management. The comment period ends 60 days after 9/1/15.	C		C	C		G	G		1031

MEMBER CONSIDERATIONS

ARE YOU A FINANCIAL INSTITUTION FOR THESE PURPOSES? Members may act in capacities that fit within the BSA and Program Rule descriptors of financial institutions, such as those above. For example, Regional Centers and affiliated issuers investing in or lending to project entities, and certain intermediaries may be covered by BSA and/or FinCEN definitions and categories of “financial institution” and therefore may be subject to requirements applicable to “financial institutions” thereunder.

IF SO, WHICH OF THE PROGRAMS AND OTHER RULES APPLY? If a Member is such a “financial institution,” the Rules that apply will depend on which of the Rules categories cover the Member. For example, all categories require an AML Program (and its four pillar requirements), but some do not require a CI Program. All must file CTRs. Most must file SARs. Only MSBs must register and retain MSB specific records. All have other detailed record keeping requirements.

WHAT’S THE DOWNSIDE OF NOT COMPLYING? Civil and criminal fines, penalties and other consequences of non-compliance can be significant. A recent FinCEN settlement with Caesars Palace, including an \$8 million fine for lax AML controls, is just one example. www.fincen.gov/news_room/nr/html/20150908.html

WHAT IF MY COMPANY HAS LIMITED STAFF? There are provisions that allow certain functions be addressed by another financial institution, third party providers and/or trusted channel intermediaries, depending on your circumstances.

WHAT IF I’M NOT SURE? Check with a professional experienced in this area and who is knowledgeable about the facts and circumstances of your business. While most members probably don’t deal with very much cash and instruments deemed to be cash-like under the Program Rules, most categories of financial institutions (other than Depository Institutions, MSBs and Casinos and Card Clubs) probably don’t either, but are deemed under the Program Rules to war-

rant coverage. Also, our growing EB-5 Industry by definition involves new financial relationships with non-US persons that could benefit from CI Programs. If the conclusion is unclear, consider a conservative approach. While the requirements of AML Programs and CI Programs were designed to assist our government in preventing the effects of financial crimes and funding of terrorism on the economy, they can have the added benefit of preventing those effects on your business and our Industry.

The IIUSA Best Practices Committee from time to time publishes non-binding “best practices” for Member consideration in various areas deemed relevant. Its work includes Recommended Best Practice for IIUSA members regarding “Know Your Customers (KYC)” and it is currently working on an AML best practices piece. ■

Note: This article is intended to inform Members about current legal developments of general interest. It should not be construed as legal advice, and readers should not act upon the information contained herein without professional counsel. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, you should request written information about qualifications and experience.



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ELIGIBILITY FOR FEDERAL TRADEMARK REGISTRATION:

An Additional Reason to Heed USCIS's Warnings When Naming a Regional Center



BY SPENCER MCGRATH
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USCIS recently published a memo to EB-5 stakeholders reminding them that the terms “United States,”

“U.S.,” “US,” and “Federal” must not be used as part of a regional center’s name because such use may constitute false advertising by falsely implying a relationship with federal agencies. As the market for immigrant investor capital becomes more crowded, there may be an additional reason not to use these words: they impair a regional center’s eligibility to register its name as a trademark with the US Patent and Trademark Office (“USPTO”).

BENEFITS OF FEDERAL TRADEMARK REGISTRATION

Only 10,000 immigrant investor (and dependant) visas can be issued in a fiscal year. The theoretical maximum amount of capital that can be raised under this cap is surely much less than the total amount needed by the over 700 approved regional centers. Thus, regional centers will need to distinguish themselves from competitors to effectively compete for investor capital. A robust and

well-protected trademark may provide one such distinguishing feature.

A trademark is any “word, name, symbol, or device, or combination thereof” that indicates the source of goods or services and distinguishes the goods or services from those provided by another. In the marketplace, trademarks protect a business’s goodwill and reputation by preventing others from using similar words, slogans, symbols, or designs that are likely to confuse consumers, or that weaken or tarnish the trademark. Registration with the USPTO, while not required for trademark ownership, provides the registrant with several key benefits.

First, common law trademark protection is limited in geographic scope to the places where the trademark is actually used. Federal registration, however, provides nationwide protection.

Second, federal trademark registration in the United States gives the registrant priority when filing for trademark protection in many foreign countries where investors may reside. US registration may also give rise to presumptions as to rights abroad. Common law rights and state level registrations do not typically allow a registrant to claim priority dating back to US use when filing later in a foreign country.

Third, federal trademark registration gives the registrant the right to enforce its trademark in federal court, along with several useful presumptions including valid ownership and a right to exclusive use.

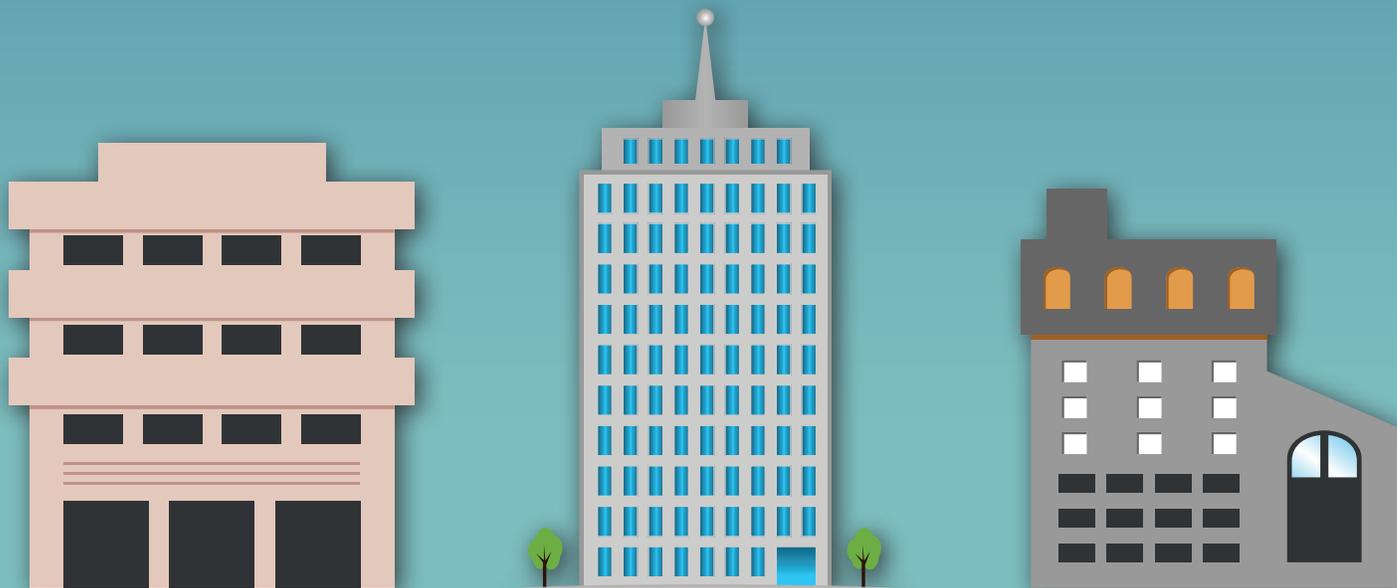
Finally, registration with the USPTO gives the trademark owner public notice of ownership, assurance that conflicting marks will not be registered, the right to use the “®” symbol with the mark, and seizure of infringing goods by Customs and Border Protection.

ROADBLOCKS TO REGISTRATION WHEN “US,” “UNITED STATES,” OR “FEDERAL” IS PART OF THE NAME

DECEPTIVENESS

“Deceptive” trademarks are ineligible for registration. This category includes any trademark that falsely suggests a connection with a US government agency. A trademark falsely suggests such a connection if:

- It is the same as, or close approximation of the name used by a government agency,
- Points uniquely and unmistakably to a government agency,
- It is owned by a party not connected to the agency, and



d) Would cause a connection to the agency to be presumed.

Use of “federal” increases the likelihood of a finding of deceptiveness. For example, a Google search for “Federal Regional Center” yielded a link to fema.gov as the first two hits. As USCIS has already admonished the use of “Federal,” including this term as part of a regional center’s name is likely to satisfy the factors above, thus impairing, if not disqualifying, the trademark from registration.

DESCRIPTIVENESS

“Descriptiveness” restricts a trademark’s eligibility for registration as well. Trademarks that merely describe the goods and services offered cannot be registered. Similarly, geographically descriptive trademarks cannot be registered either. “America” and “American” may be geographically descriptive depending on:

- 1) The type of goods or services offered in connection with the trademark,
- 2) The actual geographic origin of the goods or services, and
- 3) The overall commercial impression engendered by the mark at issue.

dered by the mark at issue.

If these terms are used in a way that primarily denotes the United States origin of the goods or services, then the term is primarily geographically descriptive. Given the nature of the regional center industry, the terms “US” and “United States” would likely be considered geographically descriptive for the same reasons as “America” or “American.”

ON A RELATED NOTE: THE US FLAG

Stylized US flag designs are a popular choice for regional center trademarks. While such designs may be registered, any trademark that consists of or comprises the flag or coat of arms or other insignia of the United States is ineligible for registration. Even stylized flag designs must meet at least one of the following criteria to be eligible for registration:

- The flag design is used to form a letter, number, or design,
- The flag is substantially obscured by words or designs,
- The design is in a shape not normally seen in flags

- The flag design appears in a different color from that normally used in the national flag, or
- A significant feature of the flag is missing or changed.

Since these factors are subjective, regional centers should exercise caution when deciding to use a stylized flag as part of their trademark.

CONCLUSION

By heeding USCIS’s warnings, regional centers can increase the likelihood that their names can be registered as trademarks with the USPTO. Since registration provides several features that allow regional centers to protect their image and reputation in the investor marketplace, federal trademark registration may be a valuable asset, especially when competing for a finite amount of investor capital. By choosing names that avoid geographic descriptiveness or falsely suggesting a connection with a federal agency, regional centers have a better chance of maintaining their competitive edge. ■

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Please contact any of our EB-5 immigration thought leaders for the immigration advice that can help you:



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VISA BULLETIN 2.0

AND ITS IMPLICATIONS, INCLUDING FOR EB-5 INVESTORS



BY ROBERT C. DIVINE

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On September 9, 2015, the U.S. Government pleasantly surprised the immigration world by publishing a new type of monthly Visa Bulletin for October 2015 with USCIS announcement about a new approach to the timing of the ability to take the last steps toward permanent residence. Bottom line: People otherwise eligible and present in the U.S. can file for "adjustment of status" and get interim work and travel documents significantly earlier than when their place in the queue for limited visa numbers is set for green card approval. I offer some musings, including some unique to EB-5. USCIS canceled without explanation a September 16, 2015 stakeholder meeting about the new Bulletin, and then on September 25, 2015 the State Department published an embarrassing revision to the October Bulletin narrowing the beneficiaries of the new practices. A lawsuit has ensued, Congress has extended the regional center legislation, and the saga is in flux, but here is where we are as of this writing on October 5, 2015.

Two Step Process. With apology, it takes a little background to understand what's happening and what else it might mean. The path to U.S. permanent residence normally involves two essential steps: first, establish to U.S. Citizenship & Immigration Services (USCIS) your substantive eligibility for a particular category (and yes, in certain employment based categories that in itself starts with a preliminary process of "labor certification" with the Department of Labor); and second, once you are at the front of any waiting list

for limited "visa numbers" allocated annually by statute, show that you are at the front of the queue and are not "inadmissible" (that is, without certain criminal convictions, contagious diseases, or other attributes Congress has listed). That second step involves either: (1) for people who are in the U.S. and otherwise eligible, filing for "adjustment of status" on Form I-485 with USCIS; or (2) for people processing outside the U.S., applying for an immigrant visa at U.S. consulate abroad.

Visa Number Allocation Rules. The law makes visa numbers available in each category on a worldwide "first come, first served" based on when the first filing for eligibility was made for the applicant (I-130, labor certification, I-140, I-360, or I-526), and that filing date marking the place in the queue is the person's "priority date." But no country's natives are entitled to more than 7% of the world allocation in a category unless the rest of the world does not use up the rest of the annual allocation, so people born in countries using lots of visas will need to wait longer. There

are some complicated rules about annually "unused" numbers "spilling down" or "spilling up" between categories. Some general government goals are to use up all the numbers in a given year (if demand is there), but not to go over the limit, and to try to spread the final interviews at consulates throughout the year to allow relatively level staffing and smooth processing. Not easy.

Visa Number Management Challenges. The Department of State (DOS) is technically in charge of managing the allocation of "visa numbers," and the way it has done so was conceived before adjustment of status within the U.S. became an option in 1950. It has published a Visa Bulletin each month with charts for the family and employment categories as the horizontal rows and the countries as the vertical columns. In the grid's cells are published the "cut-off date" for the category and country (or group of countries), and any otherwise qualified applicant with a "priority date" that is earlier than the cut-off date is eli-

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gible to receive an actual visa number and be granted permanent resident. But unless people step up to apply, DOS can't really see how many people are eligible and where to draw the cut-off lines. It has approved petitions from USCIS for people who had told USCIS they intended to process for visas abroad, but some people won't pursue their cases, and it is hard for DOS to assess the real demand. So DOS has quietly and opaquely defined a separate set of "qualifying dates," which are later than the cut-off dates, and has invited applicants with priority dates earlier than the qualifying dates to start paying the visa application fees and submit data forms and documents to establish that they are "documentarily qualified." DOS would then use the picture from the resulting data to draw the cut-off dates and set interviews for applicants with priority dates before the cut-off dates. It works pretty well for the visa process.

Special Challenges with Adjustment. But adjustment of status applications are made to USCIS, an agency in a different Government department. In the past, the rules have al-

VISA BULLETIN 2.0 AND ITS IMPLICATIONS

lowed applicants to file for adjustment only after their priority date was before the cut-off date. Because DOS could not see into a pipeline of filings that had not yet been filed, it had inadequate data on which to set the cut-off dates. Because over 80% of applicants in the main employment categories tend to be already in the U.S. and thus use adjustment instead of visa processing, DOS was really just guessing about how many people would suddenly be eligible to receive permanent residence if it set a certain cut-off date.

So what happened and why? So on September 9, 2015, as part of the "Executive Actions on Immigration" that President Obama had initiated in late 2014, USCIS and DOS announced that it was changing two things: (1) openly publishing in each monthly Visa Bulletin the separate set of "qualifying dates" previously used in the background by DOS to get visa applicants to queue up early, now re-naming them as "Dates for Filing Applications"; and (2) opening the use of those "filing dates" to applicants for adjustment of status within the U.S. Therefore, someone who is

the "principal beneficiary" (main sponsoree) of an approved or even pending petition and whose priority date is now earlier than the "filing date" published in that month's Visa Bulletin can go ahead and file for adjustment of status, if otherwise eligible under some tricky rules, even though the priority date is still later than the published cut-off date, now called the "final action date." The idea is to allow DOS to be able to see actual, queued up and vetted final applications in both the USCIS and DOS systems to see how many people would qualify for actual approval based on a certain "final action" cut-off date. That way DOS should be able to manage the flow of actual visa allocations to give away the full allocated number in an orderly way over the course of each year and not go over the limit.

The implications are interesting and important.

Earlier Filings and Freedom. First, this means that a lot of people in the process for green cards who would have had to maintain temporary status in the U.S. and later file

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for adjustment can go ahead and file the last step earlier than under prior practice. By doing so, they will become eligible for interim cards allowing unrestricted work and international travel almost as if they already were permanent residents. Those whose eligibility is based on certain work sponsorship would need to maintain the plan to maintain or undertake that work once the green card is approved, but a special law allows people whose adjustment applications have been pending for 180 days to become free of that restriction and finish the green card process based on any employer's offer of work in the "same or similar occupation." So sponsored workers will become "free agents" sooner, and a new dynamic about employment sponsorship is introduced.

Derivatives, Too. Second, the spouse and unmarried children under age 21 who normally can derive green card eligibility from the "principal applicant" also can apply for adjustment or immigrant visa as early as the principal applicant, but only if they are applying in the same way. If the principal applicant is processing for a visa then the derivative can only go ahead with a visa process, and if the principal applicant is applying for adjustment then the derivative can only go ahead with adjustment. The derivative can only choose to use the other process by waiting for the principal to complete his or her process to actual green card and then the derivative can pro-

ceed. For example, a child who is in the U.S. and finishing up F-1 student status cannot take advantage of the parent's self-sponsorship as an EB-5 investor with a priority date earlier than the published "filing date" and file for adjustment within the U.S. if the parent is not also in the U.S., qualified, and filing for adjustment. It might be smarter for a family mainly outside the U.S. but some people within the U.S. to join in the visa process to "get on record" as early as possible, especially for the child (see below for why). Note that it appears that these days USCIS never sends to the NVC any information about family members of an EB-5 investor, even if listed clearly in an addendum to the I-526 form itself, so the fee bill is issued only for the investor, who must notify NVC of the rest of the family and request a revised set of fee bills for everyone.

Aging Out Protection Questions. There is a really tricky issue to be resolved about whether the filing of an adjustment application in the U.S. or the payment of an NVC fee bill as the first step in visa processing will "lock in" the "adjusted age" of a child under the Child Status Protection Act (CSPA) to avoid any chance of "aging out." The CSPA says that a child's "adjusted age" is deemed frozen while an immigrant petition is pending but that once the petition is approved the child's adjusted age resumes advancement until a visa number is available. The child can "lock in" the adjusted age and avoid "aging

out" to 21 by filing for adjustment or paying the NVC fee bill within one year after the visa number becomes available. The question is whether a visa number is now deemed "available" for this CSPA purpose when the "filing date" has been reached but the "final action date" has not been reached. On one hand, allowing people to file early is just a mechanism for DOS to decide when to make visa numbers "available" by the setting of final action dates. Under that view, the early filing by a child would not lock in an adjusted age until the final action date was reached. On the other hand, DOS and USCIS arguably have redefined "visa availability" to be the point that the "filing date" is reached. After all, INA section 245(a)(3) and 8 CFR section 245.1(a) say that a person can only file an application for adjustment if "an immigrant visa is immediately available at the time of filing the application." So if USCIS is allowing adjustment filing based on "filing date" without changing the law or regulation, then USCIS and DOS must have decided that a visa number is "immediately available" at that point for CSPA purposes as well. Time will tell, and maybe even as soon as September 16. It seems worth the risk of a filing fee for a potentially aging out child to join an early filing (either in filing for adjustment or paying a visa fee bill) in the hope of protecting eligibility, but it might not work. And some people who previously were deemed aged out but had paid an NVC fee bill

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might have the chance to revive a CSPA claim.

What's the Difference? Just how much earlier can people now apply than before? Stated like a lawyer: it depends. It seems like the new "filing dates" are relatively earlier than what we could only observe haphazardly in practice from the old "qualifying dates." The September 25, 2015 revision to the October Bulletin ratcheted back the dates for five employment-based categories, ostensibly because the Government had found the originally published dates indefensibly recent and subject to better litigation challenge (by American workers) to the opening of floodgates for filings by professionals from India and China. In fact, in the first round of filings in litigation brought instead by foreign workers challenging the Government's renegeing on their opportunity to file for adjustment, the Government finally explained that DHS had instructed DOS to revise the "filing dates" to allow adjustment filings by applicants who were expected to reach "final action dates"

VISA BULLETIN 2.0 AND ITS IMPLICATIONS

within a year after filing. Anyway, the variations in some categories are significant. For instance, unmarried adult children born in the Philippines sponsored by U.S. citizens (F1) can file over 4 years earlier than under prior policy. Same for EB-5 professionals from India. Wow! But for EB-3 workers from most countries the spread is only two weeks. The average spread seems to be about a year.

EB-5 Dates for October—What Ho? The October 2015 Visa Bulletin, particularly as initially published, has some curious indications for EB-5 that are worth unpacking. First, as first published it broke out EB-5 into two sets: one for "Targeted Employment Areas/Regional Centers" and the other for "Pilot Programs." That breakdown did not really make sense, and DOS later revised the online version to change the two categories to "Non-Regional Center (C5 and T5)" and "Regional Center (I5 and R5)." While TEAs and RCs in practice often align in projects, there is no inherent connection. Yes, INA section 203(b)

(5)(B) does set aside 3,000 visas per year for TEA investors, and the repeatedly extended appropriations bill that created RCs sets aside 3,000 visas per year for RC-sponsored visas, but that RC bill is set to expire on September 30, 2015, as we are all painfully aware. That's why the row for "Regional Center" showed "U" for "Unavailable" for Final Action Dates: because there was no law on the books on September 25 (when the bulletin was published) that provided for any visas for RC-sponsored investors claiming indirect jobs in October or beyond. The category initially labeled for TEAs/RCs seemed to be referring essentially to the "direct" EB-5 program that will remain in the statute in the event of RC law expiration, and it showed the category as "C" for "current," meaning no waiting list at all, except for mainland China-born applicants, for which the Final Action date is October 8, 2013, which is an advancement of almost a month from the September Bulletin's date of September 22, 2013. The chart for Filing Dates had only one unified row for EB-5

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VISA BULLETIN 2.0 AND ITS IMPLICATIONS

showing "current" for all but mainland China natives with a date of May 1, 2015, which is about 17 months earlier than the Final Action Date. But if the RC law is not renewed, it is not clear that USCIS or even DOS will continue processing RC-sponsored investors even with approved petitions, and what would be the point if the Final Action Date chart shows the RC category unavailable for actual approval of a green card, ostensibly indefinitely in the absence of much needed legislation. If anyone needed something in black and white as a wake-up call to what will result if the RC legislation is not renewed, the October Visa Bulletin is it. Now that Congress on September 30 extended the RC legislation's expiration to December 11, it would seem that the State Department should yet again revise the October Visa Bulletin to reflect that "Regional Center" investors have the same "current" or October 8, 2013 date as "Non-Regional Center" investors.

Will This Continue? The October 2015

Bulletin and some USCIS announcements seem to suggest that, even though the State Department will be publishing the "Dates for Filing Application" in all bulletins going forward, USCIS might not always let people use them to apply for adjustment of status. Apparently each bulletin will say whether its "Dates for Filing" can be used that month for adjustment filings. Therefore, prospective applicants should approach the opportunity for early adjustment filings with a sense of urgency and seek to accomplish a filing during the first month during which an actionable Visa Bulletin is applicable. USCIS has provided no information on how and on what rational basis it will exercise the discretion it apparently has reserved.

Wiggling to U.S. Early? In most cases, people who have filed for the green card process want to live here sooner rather than later. Let's face it: early filings toward the immigrant visa process might help save your child's eligibility, and it queues you up for final ac-

tion once the numbers really are available, but it does not get you here and doing what you want. But filing for adjustment does all that and affords unlimited work and travel authorization almost as good as a green card. So we can expect that EB-5 investors and their family (so they can file together) will be scheming to get to the U.S. and be here at the time or after their Filing Date is reached so they can file for those interim benefits. Those who don't already have a valid visa and need one must answer the DS-160 application question, "Has an immigrant petition been filed for you?" That's a red flag of "immigrant intent," though not necessarily fatal to an application, especially in categories that allow dual intent (tricky stuff). The one dumbest thing is to lie in answering that question, because there is a clear record, USCIS increasingly looks back at those applications in deciding adjustment applications, and having made an intentional and material representation in a visa application results in permanent inadmissibility for which a waiver for most EB-5 applicants

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will be unavailable. It is not clear whether a derivative beneficiary of a pending or approved I-526 petition must answer yes to that same DS-160 question. Port of entry interactions could become problematic for people seeking to jump the gun into the U.S. to take advantage of this program. Legal counsel may be important.

Medical Exam Timing. One other mechanical implication relates to medical examinations. Immigrant visa applicants obtain their medical exam shortly before visa interview, after Final Action Date is reached, so that won't be affected. But it has been the practice in the past to include a medical exam report in an initially filed adjustment application, because a visa number was already by requirement immediately available, so there would be no time for the exam to get stale unless the category "regressed" due to sudden demand or USCIS delayed in processing. Now it may be years before USCIS can approve an adjustment application after filing, and USCIS requires the exam to be no more than one year old when submitted and to be used for adjudication within one year from submission. So more applicants will choose not to include a medical exam report in their adjustment application. USCIS will need to develop a good system to request updated medicals shortly before priority dates are reached, or applicants will need to figure out how to make predictions and interfile the (new) medical exams and pester USCIS to acknowledge receipt for adjudication promptly once Final Action Date is reached. ■

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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IIUSA's 2015 EB-5 Investor Markets Report: A Quantitative Analysis of EB-5 Foreign Direct Investment (FDI) by Country & Region



LEE LI
IIUSA POLICY ANALYST



BY ALLEN WOLFF
IIUSA ASSOCIATE DIRECTOR OF
MARKETING & COMMUNICATIONS

The influx of EB-5 capital into the U.S. economy is growing at a record pace. According to data released by the United States Citizenship and Immigration Services (USCIS), foreign direct investment (FDI) through the EB-5 Program totaled over \$1.4 billion dollars in the third quarter of FY2015. Or, in other words, USCIS approved 2,868 I-526 Immigrant Petition by Alien Entrepreneur in Q3, shattering the Program record.

As the EB-5 industry trade association, IIUSA is well-positioned to help its members make sense of this macro-level data so that it can inform their decisions in the marketplace. With this in mind, IIUSA recently published its first ever EB-5 Investor Markets Report (The "Report"), bringing into focus the countries and regions poised for growth in the

years ahead.

The 2015 EB-5 Investor Markets Report is a comprehensive quantitative analysis of EB-5 investor trends whereby every country in the world with market data is assigned a "growth score", allowing us to compare trends of various countries and regions against the average growth of the industry over various timespans.

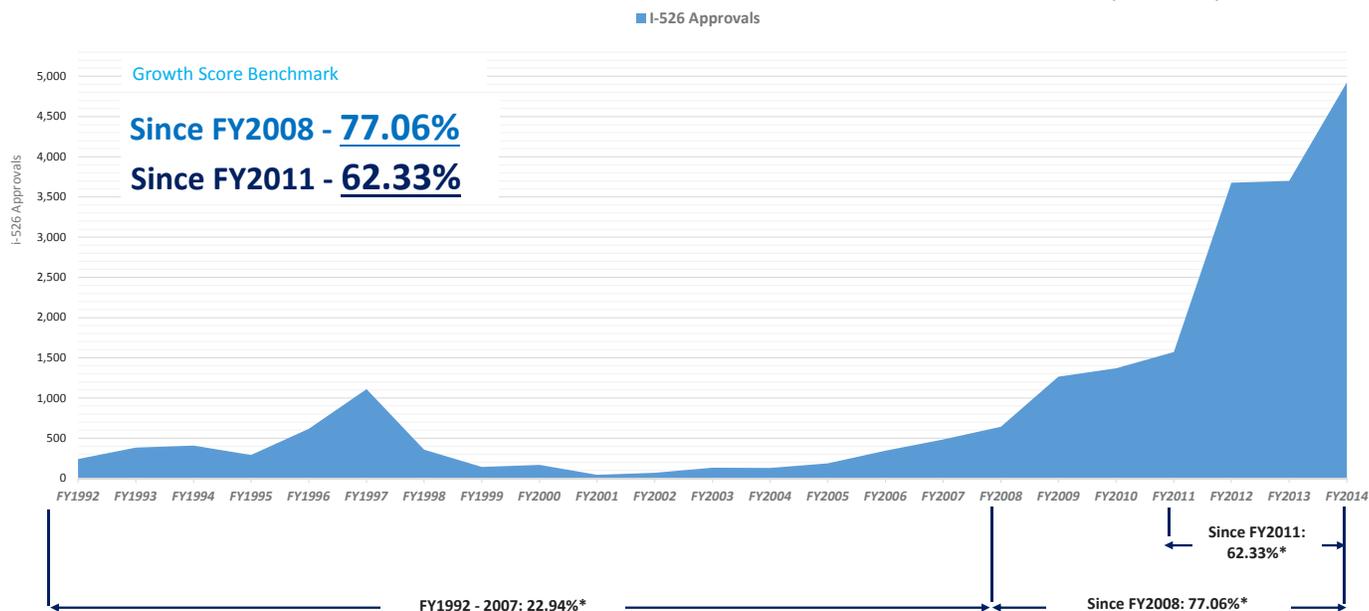
THE METHODOLOGY

Through Freedom of Information Act (FOIA) disclosures of I-526 approval data by investor origin, IIUSA has accumulated a complete historical dataset for the years FY1992 through FY2014 (and will obtain FY2015 data when it becomes available). This treasure-trove of data allows us to ana-

lyze I-526 approvals in aggregate and helps us trace the remarkable growth of the EB-5 Program since its creation over two decades ago.

As **FIGURE 1** illustrates, the EB-5 Program experienced its most significant growth year-over-year since FY2008 (i.e., post great recession). From the data, we can ascertain that 77.06% of all I-526 approvals occurred within the past seven year. This 77.06% is our first benchmark by which we compare country and regional growth since FY2008. A second significant increase can be observed between FY2011 and FY2014 where 62.33% of all I-526 approvals took place. With these benchmark growth scores in toe (77% since 2008 and 62% since 2011) there is now a barometer by which one can determine whether a country or region is truly on the rise.

FIGURE 1: A HISTORICAL LOOK AT EB-5 PROGRAM DEMAND NUMBER I-526 APPROVALS BY FISCAL YEAR (1992-2014)



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HOW TO CALCULATE THE “GROWTH SCORES”

	EQUATION	EXAMPLE
SINCE 2008	$\text{Growth Score since FY2008} = \frac{\text{Total Number of I-526 Approvals (FY2008-FY2014)}}{\text{Total Number of I-526 Approvals (FY1992-FY2014)}}$	$\begin{aligned} \text{Growth Score of the EB-5 Industry Since FY2008} &= \frac{\text{Total Number of I-526 Approvals of the EB-5 Program (FY2008-FY2014)}}{\text{Total Number of I-526 Approvals of the EB-5 Program (FY1992-FY2014)}} \\ &= \frac{17,148}{22,254} = \mathbf{77.06\%} \end{aligned}$
SINCE 2011	$\text{Growth Score since FY2011} = \frac{\text{Total Number of I-526 Approvals (FY2011-FY2014)}}{\text{Total Number of I-526 Approvals (FY1992-FY2014)}}$	$\begin{aligned} \text{Growth Score of Mainland China Since FY2011} &= \frac{\text{Total Number of I-526 Approvals of Mainland China EB-5 Investors (FY2011-FY2014)}}{\text{Total Number of I-526 Approvals of Mainland China EB-5 Investors (FY1992-FY2014)}} \\ &= \frac{11,094}{13,392} = \mathbf{82.84\%} \end{aligned}$

THE PROS AND CONS OF THE “GROWTH SCORE” CALCULATION

PROS:

- **Multi-year & Repeatable** – This methodology can be easily duplicated year-over-year and produce consistent results. The benchmark growth score will reflect the overall trends of the Program and emphasizes the most recent fiscal year data.
- **Regional & Country-specific analysis** – Using the growth score model, we can now compare demand trends for individual countries across the world. By analyzing these growth scores in segments (i.e. since FY2008 or FY2011), we can also pinpoint exactly when in time certain countries or regions have seen a change in overall demand. For instance, since 2008, Latin America has a growth score of just over 68% which is less than the 77% overall Program benchmark average. However, a more granular focus on the region reveals

that individual countries such as Venezuela (93%) Columbia (71%) or Brazil (82%) have exceed both the regional and global benchmark averages and thus are countries that should be paid extra attention by those seeking EB-5 capital.

CONS:

- **Petition Volume:** When “scoring” countries and regions based on their growth, we have no control for volume, which is also a critical determinant for whether a market has a healthy share of potential investors. For example, Taiwan ranks third among all countries globally in FY2014 in terms of overall market share, yet its growth score lags significantly behind the rest of the top 10 markets at just over 25%. This is because the number of I-526 approvals from Taiwan pre-FY2008 was so high (reaching a high-water mark of 233 investors in FY1997)

that Taiwan’s growth score over the past seven years does not compare favorably with its popularity in the early years of the EB-5 Program.

- **Benchmark Averages Includes Mainland China** – We know that EB-5 demand over the past seven years has been driven largely by Mainland Chinese investors. In fact, the EB-5 investor market in Mainland China made up 86.34% of the total market share in FY2014 with the next nine highest volume markets combined sharing only 8.75% (as Table 1 indicates). Removing Mainland China from the equation, the overall growth score benchmark average since FY2008 for the rest of the world is actually just over 56%. This is a far more conservative figure when compared to the 77% growth score benchmark average that includes all EB-5 investor markets.

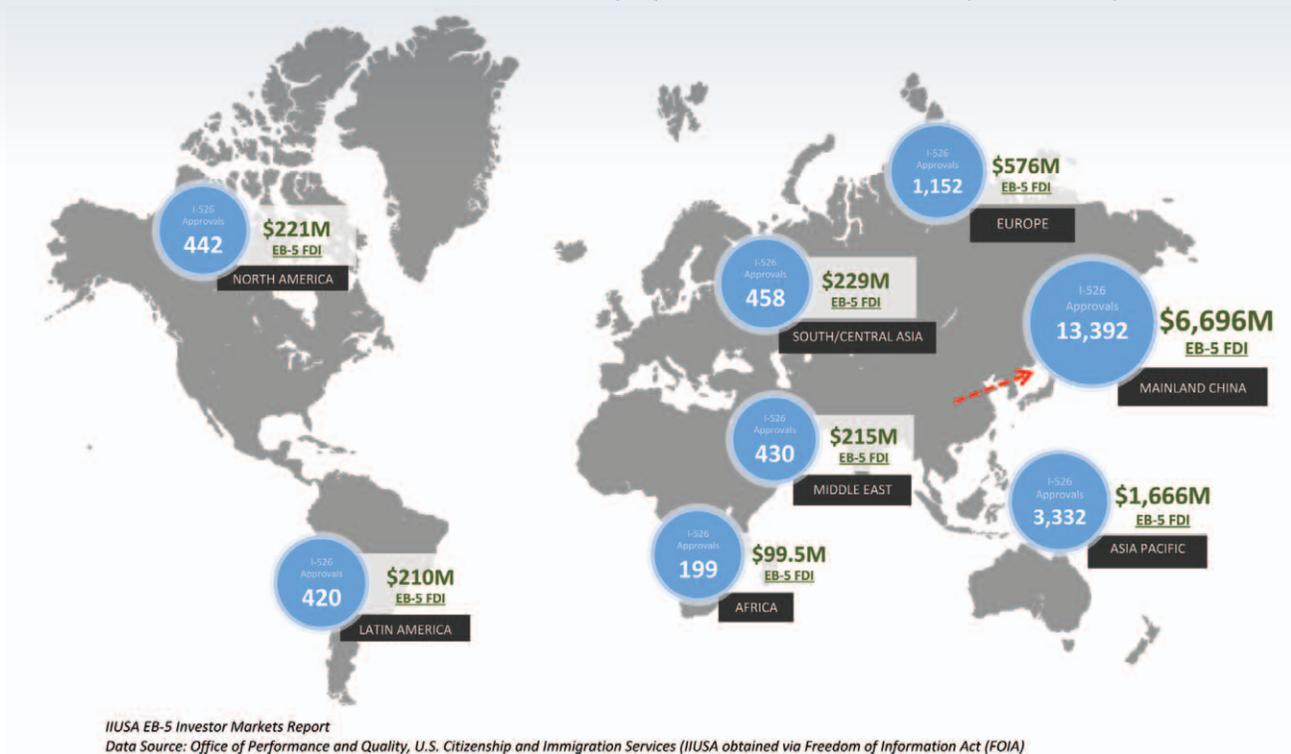
TABLE 1: TOP 10 EB-5 INVESTOR MARKETS BY MARKET SHARE (FY2014)

Ranking	EB-5 Investor Market	Number of I-526 Approvals	Market Share	Growth Score Since FY2008
1	Mainland China	4,153	86.34%	95.30%
2	United Kingdom	67	1.39%	72.02%
3	Taiwan	59	1.23%	25.64%
4	India	57	1.19%	73.37%
5	South Korea	56	1.16%	54.23%
6	Canada	49	1.02%	71.43%
7	Russia	44	0.91%	81.33%
8	Mexico	35	0.73%	85.58%
9	Venezuela	29	0.60%	93.37%
10	Vietnam	25	0.52%	93.81%
Top 10 Total		4,574	95.09%	77.06%

IIUSA EB-5 Investor Markets Report

Data Source: Office of Performance and Quality, U.S. Citizenship and Immigration Services

FIGURE 2: EB-5 FOREIGN DIRECT INVESTMENT (FDI) & I-526 APPROVAL BY REGION (FY1992-FY2014)

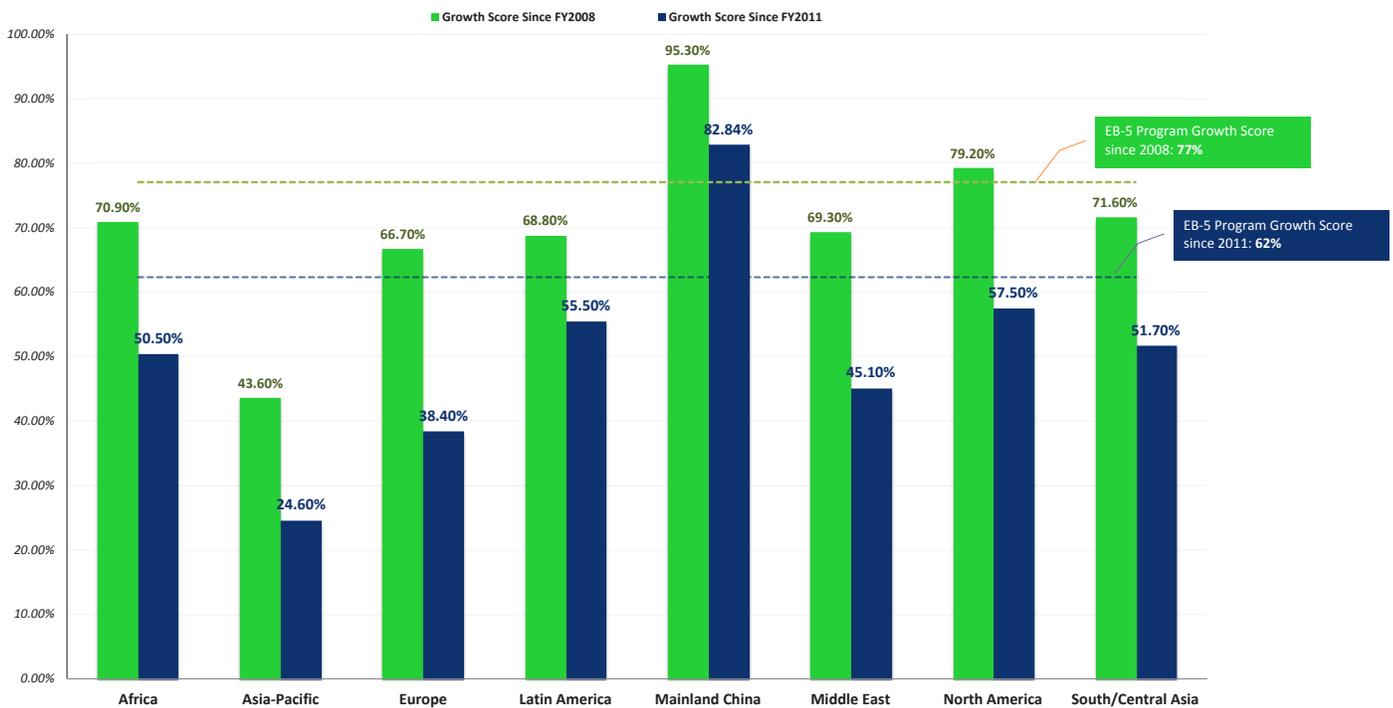


THE EB-5 DEMAND

This infographic above illustrates global EB-5 market demand for each region since FY1992. **TABLE 1** highlights the top 10 EB-5 investor markets by I-526 approvals market share in FY2014. The complete 50-

page EB-5 Investor Markets Report, replete with comprehensive analyses for individual countries, is available exclusively to IIUSA Members at <http://member.iiusa.org>.

FIGURE 3: A NEW PARADIGM: EB-5 INVESTOR MARKET GROWTH SCORES BY REGION



*IIUSA EB-5 Investor Markets Report
Data Source: Office of Performance and Quality, U.S. Citizenship and Immigration Services (IIUSA obtained via Freedom of Information Act (FOIA))*

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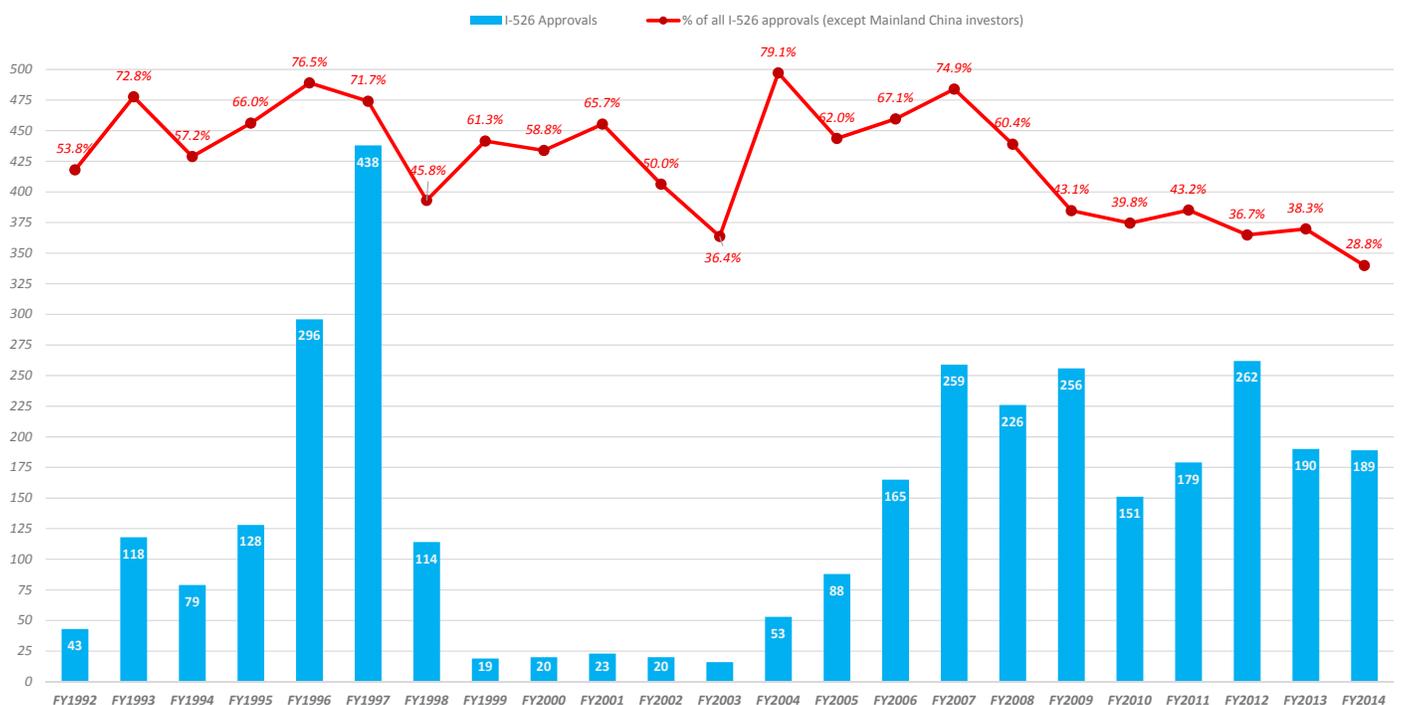
Mainland China is the largest EB-5 investor market by a significant margin, generating a total of 13,390 I-526 approvals since the start of the Program. Since FY1992, Mainland China has accounted for over \$6.7 billion in EB-5 foreign direct investment (FDI). In addition, 95% of all I-526 approvals for EB-5 investors from Mainland China took place after FY2008, while 82% of all I-526 approvals occurred within the last four fiscal years. **FIGURE 5** shows Mainland China's EB-5 market share increasing from 38% in FY2008 to over 86% in FY2014.

Asia Pacific (excluding Mainland China) is the second largest EB-5 investors. A total of 3,300 I-526 approvals were issued to EB-5 investors from Asia Pacific between FY1992 and FY2014, which accounts for over 1.6 billion in EB-5 FDI. Yet, the Asia Pacific regional EB-5 growth score since 2008 is only 43.5%, among the lowest level among all regions. In addition, its EB-5 market share has been in constant decline, from over 70% in FY2009 to only 28% in FY2014.

**FIGURE 5: MAINLAND CHINA – THE MARKET LEADER FOR THE FORESEEABLE FUTURE
NUMBER I-526 APPROVALS BY FISCAL YEAR (1992-2014)**



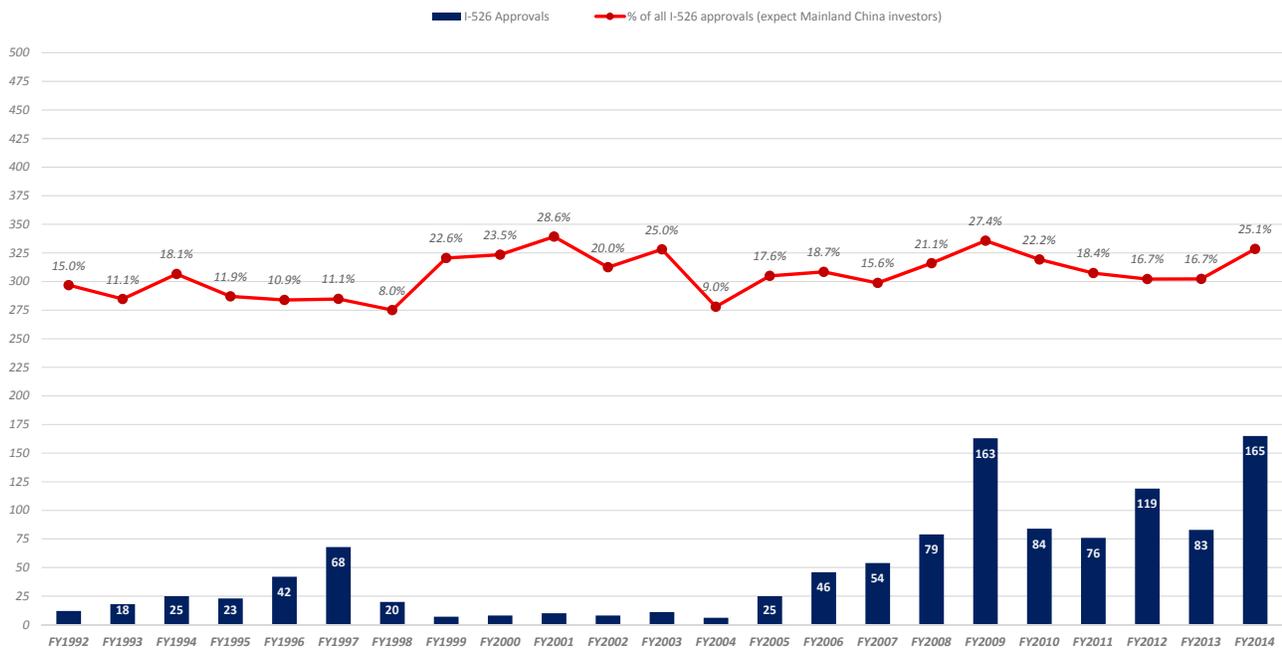
**FIGURE 6: INVESTOR MARKET TRENDS - ASIA PACIFIC REGION, NOT INCLUDING CHINA
NUMBER I-526 APPROVALS BY FISCAL YEAR (1992-2014)**



Europe ranks as the third largest EB-5 investor region in terms of total number of I-526 approvals since FY1992. EB-5 demand in Europe is extremely diversified – a total of 39 European countries have generated over 1,150 EB-5 investors accounting for over \$576 million

in EB-5 FDI. Although Europe’s growth scores are relatively low compared to regions such as Latin America and South/Central Asia, it still generated over 110 EB-5 investors in every year since FY2011.

**FIGURE 7: INVESTOR MARKET TRENDS - EUROPE
NUMBER I-526 APPROVALS BY FISCAL YEAR (1992-2014)**



**FIGURE 8: INVESTOR MARKET TRENDS - LATIN AMERICA
NUMBER I-526 APPROVALS BY FISCAL YEAR (1992-2014)**



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Rest of the World: The EB-5 investor markets of South/Central Asia, North America, Middle East are relatively similar in terms of the number of I-526 approvals since FY1992 – a total of 458, 442, 430 I-526 approvals have been issued to these three regions, respectively.

(aside Mainland China) that has a growth score higher than the EB-5 program’s average level since FY2008. Countries such as Mexico and Canada have grown significantly in the past four years.

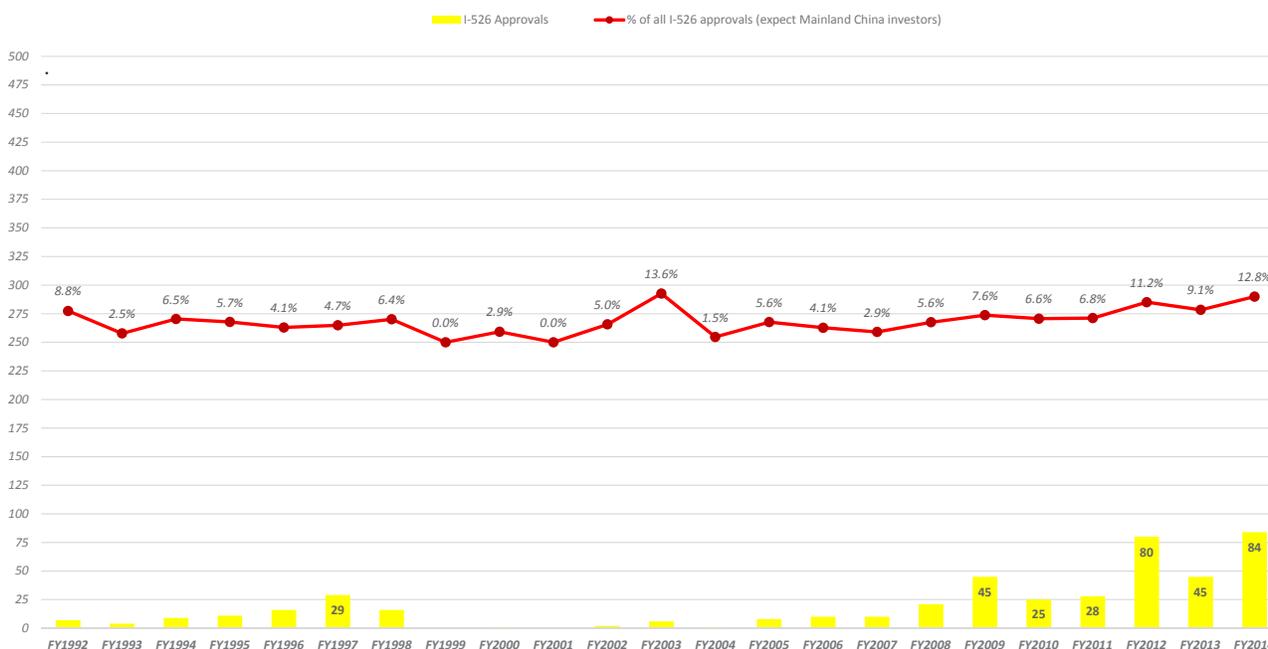
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However, as **FIGURE 3** illustrates, North America is the only region

**FIGURE 9: INVESTOR MARKET TRENDS - NORTH AMERICA
NUMBER I-526 APPROVALS BY FISCAL YEAR (1992-2014)**



**FIGURE 10: INVESTOR MARKET TRENDS - SOUTH/CENTRAL AMERICA
NUMBER I-526 APPROVALS BY FISCAL YEAR (1992-2014)**



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Oswaldo F. Torres, the firm's Managing Partner, has over 25 years of sophisticated corporate and securities law experience. "Ozzie" has been immersed in the EB-5 space for numerous years assisting regional centers and projects with all of their offering, structuring and SEC compliance needs. His project experience includes hotel development, multifamily residential, assisted living, franchises and alternative energy.

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**BY ROHIT KAPURIA**

KLASKO, RULON, STOCK & SELTZER, LLP

As the EB-5 program continues to generate investor interest around the world, Indian nationals are considered a relatively untapped market of potential subscribers. Interest in the EB-5 program is fueled by the growing number of High Net Worth Individuals (“HNWI”) globally, with a focus on the anticipated growth of millionaires in India, projected to double over the next 10 years. Among these wealthy and eligible individuals, the EB-5 program is an attractive and relatively affordable opportunity for those seeking to relocate to the United States. The EB-5 program is particularly popular among Indian nationals residing in other countries, such as Qatar or UAE, who are seeking permanent residence for their children to study and work within the U.S. without continually facing non-immigrant visa renewal concerns. Undoubtedly, the Indian market of investors has its own obstacles, including government regulation of outgoing capital (which though complicated, is still relatively less cumbersome than say China or Vietnam), potential source of funds issues in tracing and documenting the source of EB-5 capital. That being said, this market remains attractive and one that issuers of EB-5 shares should consider closely examining.

EB-5 MARKET OBSTACLES***Better quality of life within the investor's home market***

– In some ways, economic strides within India have dulled interest in the EB-5 program. For wealthier investors, as quality of life improves within the country, their incentive to invest capital in order to relocate overseas may become less appealing. It is clear that for some wealthy individuals, the quality of life at home, (separate from daily bureaucratic hurdles and/or corruption), is still superior to the standard of living they may have to embrace in the US. While the HNWI are used to having cooks, chauffeurs and butlers, such standards of luxury are not as economically viable here in the US.

Accurate knowledge on the EB-5 Program, if any at all, is lacking

– Compared to China, Korea and other countries that have a multi-year history of double digit I-526 approvals, India is a relative newcomer and as such, a very small proportion of potential EB-5 candidates have ever heard of the EB-5 program. Furthermore, when introduced to the EB-5 Program, some Indian investors view the program with suspicion, and usually have limited access to reliable and accurate information on the program and its potential benefits. As such, information on the program and the necessary investment structure may be heavily tainted with incorrect information. In the short term, proper education about the EB-5 Program is a real hurdle that must be addressed in order to continue EB-5 investor interest in the market.

The largest complaint voiced by newly educated EB-5 candidates in India relates to the return on investment and the fact that the program does not guarantee the return of capital contributions following I-829 adjudication. While Indian investors normally tend to be risk takers, the EB-5 program is foreign and there is a general distrust that outsiders may end up making away with their money. Indian investors have also seen a tremendous rise in the local real estate market and as such, a large proportion of wealthy EB-5 candidates have capital tied up in land, (which have turned many, like in China, into newly minted millionaires), bank certificates of deposits, (which generate 8-11% annually on rupee denominated accounts), and stocks. Real estate investments, however, remain the most attractive to Indian investors, and many seek real estate-based EB-5 investments as a result. That being said, Indian investors are savvy enough to understand that even if there is real estate collateral, the senior lender is typically in the first position for repayment, and the EB-5 investor may never rely on this collateral as true security for their invested capital.

Remittance Restrictions –The most encouraging sign for Indian economic potential perhaps lies with Prime Minister Narendra Modi and his Bharatiya Janata Party, whose election victory in May 2014 was predicated on promises of a more efficient, better-run and business friendly economy. Mr. Modi's government has already begun work on substantial reforms that, if successfully implemented, could provide the Indian economy with much needed stability. Prime Minister

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Modi has already significantly, indirectly, loosened capital controls in India. In fact, the Reserve Bank of India recently increased the annual fiscal limit on outgoing capital to \$250,000 per person. This liberalization of capital controls will hopefully encourage more resident Indians to invest in the U.S.

Source and Path of Funds Concerns

Looking to the case of EB-5 investors residing within the UAE, the principal EB-5 candidates are typically Indians, Pakistani, Iranian, and Egyptian. Separate from possible concerns they may have with proving the source of funds stemming from property sales and/or businesses in their respective home countries, an additional burden pertains to the businesses that they may be currently running within the UAE. Given that these investors are likely not citizens of the UAE, (since the UAE runs on the principle of nationality by blood or *Jus sanguinis*), but are instead temporary visa holders, their respective UAE businesses typically require an Emirati sponsor that would hold a certain percentage of equity ownership in the business. As a result, many migrants may keep two books of business. One which displays tapered profits that are presented to the equity sponsor and a “true book” that clearly conflicts with the other book of business. In presenting a comprehensive and accurate source of funds report to the USCIS, the true book has to be shared. Of course, this is not the issue with salaried employees. Indian investors residing and operating businesses within the UAE will need to ensure that they lawfully present complete reports of business income, along with comprehensive evidence of taxation on this business income, in order to properly comply with USCIS source of funds reporting.

Tax Concerns – Another concern relates to the U.S.’s long jurisdictional arm on tax collections. Many Indian investors currently favor tax havens such as Mauritius, the UAE, the Netherlands, and the Cayman Islands. The savvy EB-5 candidate must consider the prospect of having to pay taxes on global income, which can be a major consideration in deciding whether to move forward with an EB-5 investment. While there exists a tax treaty between India and the U.S. that, among other provisions, precludes double taxation of earned income, the contained exemptions are complex and do not negate the hard truth that

TOP 25 PLACES OF ORIGIN OF INTERNATIONAL STUDENTS (2012/13 – 2013/14)

Rank	Place of Origin	2012/13	2013/14	2013/14 % of Total	Change
WORLD TOTAL		819,644	886,052	100%	8.1
1	China	235,597	274,439	31.0%	16.5
2	India	96,754	102,673	11.6%	6.1
3	South Korea	70,627	68,047	7.7%	-3.7
4	Saudi Arabia	44,566	53,919	6.1%	21.0
5	Canada	27,357	28,304	3.2%	3.5
6	Taiwan	21,867	21,266	2.4%	-2.7
7	Japan	19,568	19,334	2.2%	-1.2
8	Vietnam	16,098	16,579	1.9%	3.0
9	Mexico	14,199	14,779	1.7%	4.1
10	Brazil	10,868	13,286	1.5%	22.2

Courtesy of the Institute of International Education. (2014). “Top 25 Places of Origin of International Students, 2012/13-2013/14.” Retrieved from <http://www.iie.org/opendoors>

Indians who have grown accustomed to tax free havens would now be held accountable by the Internal Revenue Service (IRS). Savvy Indian investors typically begin legal consultations asking about the consequences of having to claim on their tax returns, as U.S. lawful permanent residents, income that is earned in locales outside the shores of the U.S. As such, taxation on global income remains a large deterrent for Indian investors considering the EB-5 program.

STRATEGIES TO OVERCOME SOME OF THE OBSTACLES

Flip the China Compensation Model to appeal to the Emerging Markets – Given the increasing demand for investors in the Chinese market, migration brokers are increasingly able to command very high broker rates. While investors in China are routinely comfortable with having a 0.25-0.5% annual Return on Investment (“ROI”), it is difficult to necessarily apply the same model to Indian investors. This is not to say that there is not a market in India for this type of ROI model; it would simply make things considerably easier if the investors could see an additional financial upside on the ROI. This can be done at the expense of the Indian agents who are not in the current position to demand high compensatory terms. Therefore, if deals can be structured appropriately whereby the issuer can market EB-5 opportunities in both China and India, then there may be a way to bridge some of the interest shortfall with Indian

investors. (Note that in this scenario, there would likely be securities disclosure considerations. If only one New Commercial Enterprise is utilized, Indian investors would have different treatment as compared with Chinese investors).

Focus on the Children – The overarching theme among EB-5 investors coming from Asian countries is security for their children. In India, for example, while the parents may not be enthusiastic about moving to the U.S., they are likely interested in sending their children to the United States for an American education. India currently accounts for the second largest group of F-1 students within the U.S. (see table above). A key strategy for an issuer is to explain the benefits that permanent residency will afford these children. For example, discussing topics such as in-state tuition at public universities, scholarship or financial aid opportunities, higher chances at matriculating to a U.S. medical school as a permanent resident, and most importantly, the absence of the H-1B dilemma post-graduation. Given how difficult and competitive the educational climate is currently in India, (a student that scores in the 95th percentile has almost no chance at matriculating to one of the finer Indian institutions), the U.S. educational system is a no brainer.

Target certain metropolitan cities – In seeking EB-5 investors within the Indian market, a focus on Mumbai, Delhi, Chandigarh, Bangalore, Ahmedabad, and Chennai would provide the most advantage. The result

is that an agent or broker will be dealing with EB-5 candidates that are actually interested in migration and have a far more sophisticated understanding of, along with the potential capital means, EB-5 investment opportunities.

Target a certain class of brokers – The overarching groups with access to EB-5 candidates are wealth managers, CPAs, private equity companies, real estate developers, attorneys, and even certain educational institutes that specialize in SAT and TOEFL prep classes.

Adjust the size of seminars by market and consider local support – 100+ seminar attendees in the Indian market is counterproductive, as is a 4-day project tour with no local support on the ground to both vet the attendees, prior to their respective attendance to the seminar, and to follow-up with them after the seminar. Indian investors are traditionally much slower to "convert" given that EB-5 is largely an alien concept. If a regional center/developer thinks it will spend \$40,000 on a whirlwind project tour in any of the above mentioned cities and in return sign up investors, the EB-5 issuer will likely end up being disappointed. Cultivate on the ground support and narrow seminar sizes to smaller group participation based on special invitations.

Registration requirements for Migration Agents – Based on conversations with local counsel, it appears that India does not require migration brokers to register with any sort of governmental body. As such, the bureaucratic red tape does not preclude industrious entrepreneurs from venturing into the market and promoting the EB-5 program. Of course, this does not absolve the EB-5 issuer from any appropriate oversight of its migration broker with respect to the issuer's offerings. It is very easy to turn an exciting project into a tainted deal if one affiliates with the

wrong migration broker. Due diligence is key.

CAUTIONARY POINTERS

Taper Expectations – China is and will, for the foreseeable future, remain the dominant market force not only for the EB-5 program but for almost all the other migration programs offered by countries like Australia, Austria, Portugal, etc. The appetite for investment migration in China is second to none. While India, for example, has a very large skilled worker network of migrants, the wealthy are not typically eager to exit the country. That being said, the prospect for EB-5 growth outside of China in emerging markets like India (or countries with large Indian nationals) should see a respectable percentage jump of at least 5-10% within the next few years.

Prepare to Haggle– Indians love to bargain. Separate from the capital contribution which must remain firm, the regional center/developer/immigration attorney should be prepared to discuss terms related to the administrative fees and/or the professional fees. Very rarely will an Indian investor, whether currently residing in India or the UAE, immediately agree to terms without attempting to haggle. The Indian investor will likely shop around for regional centers and immigration counsel (at times speaking to upwards of 10-20 groups) prior to settling on a decision.

Comfort with professionals of the same nationality –While the language barrier is not a real issue in India, there is a certain amount of comfort that these investors have with professionals who understand the culture. Regional Centers or Developers familiar with China are unlikely to be surprised by this concept.

Prepare to deal with questions surrounding "Black Money" – As discussed in the market obstacles section above, "black money" can often present a significant im-

pediment to EB-5 opportunities for Indian investors. Black money, which are assets that the holder has not appropriately disclosed to the public authorities for tax purposes, is a prevalent national issue in emerging markets such as India and Vietnam. Similarly, it is an issue that is quite common in the other popular EB-5 markets such as China. The issue of black money can pose extensive and burdensome obstacles to EB-5 investments based on the rigorous standards imposed on source of funds requirements by the USCIS. It is not, however, a complete deal breaker for hopeful EB-5 investors who are eager to properly remedy or address this issue. One key issue to quickly address is the concept of converting black money into "white money". Such conversions (which could sometimes involve the investor essentially paying a third party large amounts of money, in cash, in exchange for tax declared white funds) do not cure the USCIS hurdles of demonstrating legally earned income. As such, it is imperative for the EB-5 professional or issuer to understand that this problem exists and to be prepared to thoroughly investigate and decipher the potential EB-5 investor's package and tracing of documents in connection with their EB-5 capital before allowing the investor to file the I-526 petition.

CONCLUSION

It is evident that the market of potential Indian investors within the EB-5 program offers both significant opportunity and potential impediments to success. In understanding both the background and culture of the investor along with current market conditions, it will become easier to further develop this potentially lucrative emerging market. ■

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EMERGING EB-5 MARKETS SPOTLIGHT:



RUSSIA



BY CHARLES RAETHER,
MANAGING PARTNER,
AMLAW GROUP PLLC

The increasing cost of investor recruitment in China, the challenges with retrogression for Chinese-born investors, and the need for diversification of the investor marketplace is forcing regional centers and developers to seek out markets beyond China to secure reliable sources of investors. Russia and the surrounding Russian-speaking countries offer promising solutions to these problems. At the same time, the worsening internal economic and political conditions in Russia are creating conditions that are motivating more individuals to consider emigration. Myths and misperceptions concerning the EB-5 program continue to pervade investor perceptions. However, they are gradually falling by the wayside as the EB-5 program becomes more familiar.

RIPENING CONDITIONS FOR EMIGRATION

In late 2014, the Russian Federal State Statistics Service (Rosstat) published Russian population migration data covering the period from January to August 2014. The report revealed that in the first eight months of 2014, 203,600 people emigrated from Russia compared to the 186,400 who emigrated in all of 2013. What is important to note is that the 2014 figure does not reflect the latter part of 2014, when economic conditions in Russia even further deteriorated. The number of Rus-

sians who emigrated in 2014 will be the largest since Putin's ascension to the presidency and will likely surpass the record high of 1999, when the country officially "lost" around 215,000 people. Although those leaving the country account for less than 1 percent of the population, fully half of the Russian middle class in Moscow and St Petersburg polled in a survey conducted last year knew someone who had opted to move abroad.

MISPERCEPTIONS ABOUT EB-5 IN RUSSIA

Despite the large presence of high net-worth individuals in Russia and surrounding markets, the number of EB-5 visas issued to Russians in FY2014 was less than 1% of total EB-5 visas. The reasons behind this small presence are founded in part by misconceptions and myths not only in the eyes of potential investors, but also that of EB-5 developers and project promoters. Unlike a typical Chinese investor who is quite knowledgeable about the EB-5 program and many of its intricacies, a typical Russian investor has very limited, if any, knowledge about the program. His or her knowledge is almost certainly limited to whatever information they find on Russian-language forums or websites, which tend to be over-simplified or outright inaccurate. Even worse, many potential investors develop perceptions of the program through their personal networks with anecdotal stories of investors who were defrauded by unscrupulous project sponsors. Most of these projects are generally small, "fly-by-night" projects, often organized by other Russian-speaking emigres. Although there may be truth to some of these unfortunate episodes, these stories led

to distorted perceptions of the risks and benefits of participation in the EB-5 program. As a result, the typical perception of EB-5 among Russian investors is overshadowed with skepticism and suspicion.

The most common misperceptions about the EB-5 program among Russians include:

- EB-5 is just a legal means to "purchase" a green card without any real opportunity to receive the invested principal back;
- There's nothing obligating developers to finish the construction project after raising all the funds;
- The investor has no protection or recourse in the event of a default;
- The investor has no control over the project and therefore his funds are at heightened risk.

Although an EB-5 visa may not be ideal for all investors, the program certainly offers advantages to certain individuals. These advantages should be emphasized during discussions with potential investors. Even more helpful is a very frank and transparent discussion about the successes of previous investors in a regional center's projects. Providing potential investors the opportunity to speak with earlier investors (either in-person or via Skype) is an ideal means of helping investors to gain a higher level of trust towards a project and the EB-5 concept in general. As few Russian-speaking investors have completed the full cycle of approval of their I-829 and return of invested funds, potential investors are overly reliant on inaccurate anecdotal stories for their understanding of the program.

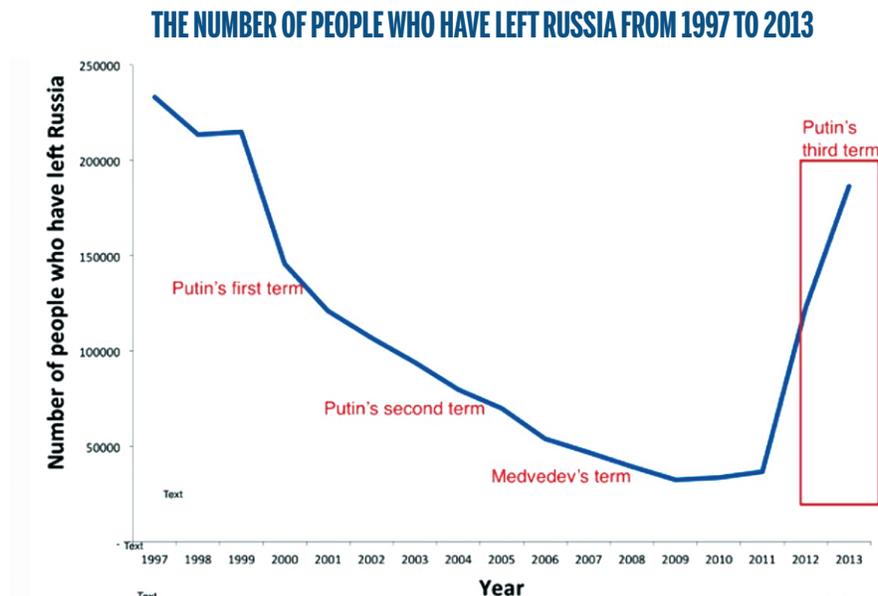
This issue of control over funds has long been a perceived deficiency of EB-5 as compared to other visa categories. As a result, many investors with the financial means prefer to invest in their own business over which they have full control. As compelling a position this might be in the short-term, many investors are unaware of the realities of operating a business in the United States where the market is very competitive, and for most EB-5 investors, completely unfamiliar. From the author's professional experience, we have seen many more L-1's and EB-1's fail than EB-5's. Therefore, if the definition of "success" is attainment of permanent residency and recovery of one's principal (without necessarily earning a return), an EB-5 investment might better serve their needs.

MARKETING EB-5 IN RUSSIA

As is true of most markets outside of China, there is no developed network of migration agents with whom regional centers and investors can work. In Moscow, and to a lesser extent St. Petersburg, there are some agencies that specialize in securing residency for clients overseas; however, these companies are not focused on EB-5 or even the United States, focusing more generally on Europe or offshore island jurisdictions. Although this necessitates more hands-on work in developing partnership relationships, the upside is that the cost of investment recruitment is significantly less than in China. Agents never expect a percentage return earned from the loan, and they are generally happy with receiving only a portion of the administration fee as their commission. Given the relative novelty of EB-5 in these markets, there is no average market rate, and players can generally try to negotiate the best terms possible with various parties. It's also safe to say that partners in Moscow will expect more than anywhere else, and the smaller the city, the lower their expectations for remuneration.

Given the absence of EB-5 focused agencies, recruiting efforts must be targeted at companies which generally interact with individuals who follow the same general EB-5 demographic profile. This would include high-end real estate agencies, brokers dealing with overseas residency, private bankers, financial advisors, and law firms.

From our experience, property trade shows and other mass events are generally an effective way of meeting potential partners and agencies, but not investors. Smaller seminars of 5 to 15 participants in a private setting seem to be a more effective means of reaching serious investors. However, investors are concerned about revealing their desire to im-



migrate and may consequently shy away from even small group meetings. Showing a desire to establish residency in the U.S. is perceived as being possibly detrimental personally and professionally given the recent political tensions between the United States and Russia. Personal consultations and one-on-one meetings have proven to be the preferred forum for clients to learn about EB-5 and particular projects. As labor-intensive as this may be, it has proven to be the most effective.

COMMON MISPERCEPTIONS IN THE U.S. CONCERNING RUSSIAN INVESTORS

1. Russians generally do not have enough money to invest to EB-5.

In 2014, there were 213,000 U.S. dollar millionaires in Russia. With the recent ruble devaluation, this figure has obviously declined. Nonetheless, given the approximately 100 EB-5 visas issued in 2014 to Russians, there is clearly room for future expansion of EB-5.

2. Russia is dangerous.

In terms of personal security, Russia has probably never been safer since the fall of the Soviet Union. That is assuming, of course, that the purpose of your visit does not veer into the realm of anything remotely related to political opposition. The anti-American rhetoric in the media has reached a level not seen since the last years of the Soviet Union, and unfortunately, this image of America as the enemy has influenced the views of large segments of the population. However, that is not the case with the target demographic for EB-5 and thus is largely irrelevant.

3. It is exceedingly difficult to prove source of funds from this part of the world.

The vast majority of our EB-5 clients from this region of the world are entrepreneurs who

earned their wealth from their own personal companies. Clients from these markets tend to be "working class wealthy." It has been our experience that Russia really has no additional complications with proving the source of funds than any other emerging market. However, it should be noted that proving source of funds is relatively more challenging for Ukrainian clients to the extent that tax avoidance and non-compliance there are even more widespread than Russia.

In addition, as of the time of the preparation of this article in September 2015, there are generally few, if any, capital restrictions in Russia that hamper clients in wiring hard currency overseas. That could change if the economic situation in Russia worsens. A relatively liberal system exists in neighboring Kazakhstan. However, Belarus and Ukraine have strict restrictions on currency outflows which can pose serious problems for clients to get money out of their home country. This often requires more creative structures that complicate the process of documenting the path of funds for clients from these countries.

In conclusion, Russia and the surrounding markets offer an appealing source of EB-5 investors. Realizing the full potential of this market will require groundwork to develop a network of partners and referral sources as well as educating both investors and intermediaries as to the realities of EB-5. However, given the smaller financial expectations of agents, favorable socio-economic circumstances for emigration, and absence of retrogression for these investors, the prospects of this market are compelling. ■

Charles Raether is the Managing Partner of AmLaw Group PLLC, a business immigration boutique law firm with a Russian-centric practice with offices in the Miami and Washington, D.C. metro areas.

EMERGING EB-5 MARKETS SPOTLIGHT:

VIETNAM**BY MCKENZIE PENTON**

IIUSA MARKETING DEVELOPMENT ASSISTANT

Vietnam's participation in the EB-5 Program has been relatively low when compared to its Asian counterparts. However, there is reason for optimism. Although Vietnam has only had a total of 97 investors since the Program's inception in 1992, that statistic is deceiving as 93% of those I-526 approvals have taken place since 2008 with an astounding 84.5% of all I-526 approvals taking place in the last four years. And we do not have data for fiscal year 2015 yet!

Over the past two decades an influx of foreign investment has fueled improving living standards and produced a rapidly emerging Vietnamese wealthy class benefiting from the country's economic growth. According to the 2014 Knight Frank Wealth Report, Vietnam is projected to see a 166% growth of Ultra High Net Worth Individuals (UHNWI) over the next ten years while its largest urban center, Ho Chi Minh City, is expected to see a 173% increase in UHNWI's over the same time frame.

However, Vietnam's economic prospects continue to be hindered by financial instability, political corruption and weak

legal systems, according to the 2015 U.S. Department of State's Bureau of Economic and Business Affairs Investment Climate Statement. While these woes have not necessarily impacted the inbound foreign investment market, they have driven the emergent class of wealthy Vietnamese to seek residence in other countries. With approximately 2 million Vietnamese expatriates living in the United States and with Vietnamese students forming the eight largest group of international students studying at American colleges and universities, the U.S. is an attractive destination for these individuals.

Participation in the EB-5 Program has been complicated by decades old government restrictions on money transfers, specifically remittances restrictions on both inbound and outbound funds, dependent on volatile domestic laws. However, more options for transferring funds out of the country have begun to emerge which will increase the EB-5 Program's accessibility to Vietnamese investors.

From FY2013 to FY2014 over 10% of the EB-5 Investors from the Asia-Pacific region, excluding China, were from Vietnam with a total market share of 13.2% last year. With a growing economy, an upwardly-mobile wealthy class, an established Vietnamese expatriate community and a large number of Vietnamese students studying at U.S. intuitions it is highly likely that Vietnam continues its emergence in the EB-5 investor marketplace for years to come. ■

GROWTH PATTERN OF THE DEMANDS FOR EB-5 PROGRAM BY NUMBER I-526 APPROVALS - VIETNAM



VIETNAM'S FIVE MOST POPULOUS CITIES



Ho Chi Minh City (7.298 million), **Hanoi** (3.629 million), **Can Tho** (1.175 million), **Haiphong** (1.075 million), **Da Nang** (952,000 thousand)

EB-5 FDI US \$41 MILLION (SINCE 2011)

+52% I-526 APPROVALS (SINCE 2011)

166% PROJECTED GROWTH in UHNWI over the next ten years

MEMBER PERSPECTIVES ON THE VIETNAM EB-5 MARKET

“Verifying lawful source of funds for EB-5 investors from Vietnam can be challenging. Banks are not trusted and people often convert cash to gold for which there may be no paper trail. Some will loan funds to relatives who invest in real estate and then return the funds to the EB-5 applicant. With real estate there is of course a property deed. But in Vietnam the agreement between relatives, even involving real estate, may be verbal and not recorded with a promissory note. Vietnam like many other developing countries is not a society run on paper, as is the US. But providing the paperwork to verify lawful transactions for EB-5 capital is what USCIS expects. Bringing together these cultural and economic differences can be arduous, but is not insurmountable in most cases.”

- Martin Lawler, Lawler & Lawler

“We have seen significant growth in the Vietnamese market as more options for transferring funds have emerged in recent times and with continued growth in this segment we fully expect this trend to continue in the next several years.”

- Kevin Wright, Wright Johnson, LLC

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Industry Event Schedule

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2015 EVENTS

- **11/2-11/3** - Henley & Partners - 9th Global Residence and Citizenship Conference (United Arab Emirates)
- **11/3-11/6** - Council off Development Finance Agencies (CDFA) - National Development Finance Summit (Charleston, SC)
- **11/5** - CIS Ombudsman's Fifth Annual Conference
- **11/19** - EB-5 Regional Center Project Case Studies - The Good & Bad (IUSA Webinar)
- **12/1-12/4** - SelectUSA Road Show – Brazil (Rio de Janeiro, São Paulo, Belo Horizonte)
- **12/17** - EB-5 Industry Year in Review & Look ahead to 2016 (IUSA Webinar)

2016 EVENTS

- **03/07-09** – Public-Private Partnership (P3) Conference (Dallas, TX)
- **03/15-18** – MIPIM Property Market Fair (Cannes, France)
- **04/20-22** – 9th Annual IIUSA EB-5 Regional Economic Development Advocacy Conference (Washington, D.C.)



IIUSA MEMBER PORTAL DATABASE UPDATE

Members should take note of the recent additions to the IIUSA's New Member Portal (NMP) database located at member.iiusa.org. The following materials, and more, are available for full viewing:

- **Webinar Presentation Documents:** Revisions to the Visa Bulletin for Adjustment of Status (09/22/15), EB-5 Litigation: Strategies & Trends (09/03/15), Banking and EB-5 (7/30/15), Going Global: Importance of Diversifying the EB-5 Investor Marketplace (07/16/15)
- USCIS EB-5 Interactive Teleconference:

Annual Reporting Requirements for Continued Eligibility within the Regional Center Program (09/17/15)

- **Advocacy Toolkit: Bipartisan Policy Center Report Program (09/17/15), Regional Center Media Toolkit (08/18/2015), Government Accountability Office (GAO) Report on EB-5 Program (08/12/15)**
- **Industry Data Library: DOS October Visa Bulletin (09/09/15), Q3 Adjudication Statistics (08/28/15), EB-5 Petition Processing times through June 2015 (08/15/15)**

- **Federal Stakeholders: CIS Ombudsman Office 2015 Annual Report (07/16/15), White House Report: "Modernizing and Streamlining our Legal Immigration System for the 21st Century" (07/7/15)**

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



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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 advo-

cacy 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 JUNE 2015



Source: www.USCIS.gov



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- Registration for the 9th Annual EB-5 Regional Economic Development Advocacy Conference, April 20-22, 2016 in Washington, D.C.
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- Regional Center “data tracker” reports featuring aggregated reporting on all Regional Centers’ annual I-924A filings and designations/amendments
- I-829 request for evidence (RFE)/denial raw data and report (2011-2013)
- Notice of Intent to Terminate (NOITs) and final termination notices for terminated Regional Centers
- Notices/reports of Securities & Exchange Commission (SEC) enforcement actions on against Regional Centers

iiusa.org/marketplace

By the Numbers

10/8/13 – The U.S. Department of State-Bureau of Consular Affairs released its revised visa bulletin for the month of October, revealing that for Mainland-China born EB-5 visa applications, the cutoff date is now October 8, 2013, moving up from September 22, 2013 in the previous monthly bulletin.

\$1.424 billion – The EB-5 Program Contributed \$1.424 billion to U.S. Foreign Direct Investment (FDI) from April through June. The highest quarterly total in Program History up 45% from Q2 of this year the previous Program high.

80+ – Attendance at this year’s Dallas EB-5 Market Exchange is expected to surpass last year’s high water mark in attendance. With 80+ speakers including Guest of Honor Speakers; The Honorable John Huntsman Jr; Citizenship and Immigration Services (CIS) Ombudsman Maria M. Odom; Chief, Visa Controls Office, U.S. Department of State, Charles Oppenheim; Dawn D. Calonge, Surveillance Director, Member Regulation, Financial Industry Regulatory Authority; Mayor of Fort Worth the Honorable Betsy Price; and Dallas County Judge the Honorable Clay L. Jenkins.

12/11/15 On September 30, 2015 Congress passed a Continuing Resolution which included the temporary extension of the EB-5 Regional Center Program (the “Program”) until December 11, 2015. The extension provides additional time for Congress to consider a long-term reauthorization bill that would include reform measures to strengthen federal oversight and the integrity of the program.

890+ On September 22nd, 2015 IIUSA submitted its “EB-5 is Working” public letter of support to Congress. The letter currently has over 890+ signatories which include: National Association of Counties, U.S. Conference of Mayors, Council of Development Finance Agencies, and National Development Council. Also signing the letter are numerous city mayors, economic development agencies, port authorities, chambers of commerce, banking institutions and associations, energy organizations and associations, and more.

163 United States Citizenship and Immigration Services (USCIS) has approved 163 Regional Centers in Fiscal Year 2015 as of October 1, 2015. Bringing the total number of approved regional center to 743!

2,700+ The Regional Center Business Journal (RCBJ) has an international distribution list with over 2,700 participants across the EB-5 Regional Center Industry. The RCBJ is distributed to all our 570+ Regional Center Members nationally as well as our 250+ Associate Members worldwide in addition to being featured on our website which receives thousands of unique page views per month. Purchase an ad to be displayed in the next issue.

IIUSA SURPASSES 290 REGIONAL CENTER MEMBERS!



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EXCITING MILESTONE
POSSIBLE!

Regional Center Member Map

Our Interactive Regional Center Members Map on 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.

IIIUSA is proud to announce that we recently surpassed **290 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) 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. ■

EB-5 HISTORY JULY-SEPTEMBER

IIUSA's This Date in EB-5 History will serve as a new feature to highlight the EB-5 programs milestones and changes, key pieces of legislation, publishing dates of USCIS memos, IIUSA achievements and important events over the past two decades of EB-5 history. To access the memos please be sure to visit the IIUSA Member Portal.

member.iiusa.org

JULY

- July 2, 2013- USCIS Policy Memo on Precedent and Non-Precedent Decisions of the Administrative Appeals Office
- July 2, 2013- NACo Publishes Permanent resolution in Support of EB-5
- July 22, 2009- Congress Holds Hearing on Promoting Job Creation and Foreign Investment in the United States: An Assessment of the EB-5 Regional Center Program

AUGUST

- August 8, 1998- Bach Memo on Invested Fund in Escrow
- August 8, 2004- Neufeld Memo on CPR in removal Proceeding Naturalizing

- August 4, 2013- Conditional Permanent Residents and Naturalization: Revisions to the Adjudicators Field Manual
- August 10, 2010- IIUSA Membership Committee Created
- August 11-12, 2011- First Annual IIUSA EB-5 International Investment & Economic Development Forum Held in Seattle, WA
- August 20, 2009- IIUA Public Policy Committee (Previously Legislative Committee) holds first meeting

SEPTEMBER

- September 1, 2014- American Immigration Council (AIC) Publishes- The US Immigration Program: New American Investors Making a Difference in the Economy

- September 12, 2006- Adjudicators Field Manual Update on Employment Based Petitions
- September 17, 2004- Yates Memo Mandating Parole and CPR Extension for Pending I-829s
- September 23, 2013- Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings
- September 28, 2012- Amended the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 1993 to Extend the EB-5 Regional Center Program Through September 30, 2015.

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Since inception, U.S. Immigration Fund has successfully raised over \$1.5 billion in EB-5 capital for real estate development nationwide. This success is based on our strong partnerships with international immigration agents, attorneys and the developers we work with. With USCIS-approved Regional Centers in New York, New Jersey and Florida, our company and network continue to grow.

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To encourage immigration through the EB-5 category, Congress created the EB-5 Regional center (Pilot) Program in 1990. Regional Centers are considered to be any government approved entity, organization or agency which focuses on a specific geographical area of the United States and that seeks to promote economic growth, increased regional productivity, job creation and domestic capital investment. This advertisement is intended for general information purposes only. This does not represent an offer or solicitation to buy or sell any security. Investments are available only to qualified investors via a confidential offering memorandum.

