REGIONAL CENTER BUSINESS JOURNAL

April 2020

IIUSA
INVEST IN THE USA

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EB-5 Numbers and the COVID-19 Economic Recovery

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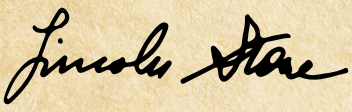
IIUSA
INVEST IN THE USA

Letter from the Editor

Dear Readers:

Like with each publication of the *Regional Center Business Journal*, this edition also touches on many new developments in the EB-5 industry. Emerging investor markets present challenges, some unique and others more familiar. Regulations that became effective in November 2019 increase the minimum costs to investors, alter thinking about the capacity of the EB-5 program, and fuel innovations in design and presentation of investment opportunities. When the EB-5 visa backlog is combined with the USCIS changes in petition adjudication, there is no end to contemplation about the timing implications for the issuers, as well as the investors and their families. And, of course, there is the ubiquitous task of policy making on the question of how to steer the EB-5 program in a direction that addresses the needs of the varied stakeholders. The reader will get tastes of all that in this edition.

While the COVID19 pandemic prevents holding the IIUSA spring advocacy conference in Washington DC, we are grateful for the efforts of the many authors, editors and IIUSA staff who have collaborated to bring this edition of the Journal to you in digital format. As always, we look forward to any suggestions for future editions of the Journal.



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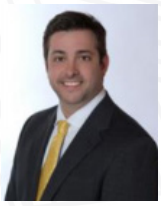

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IIUSA is honored to have welcomed 29 new organizations on board as members over the first few months of the year. Our latest members join a growing and diversifying group of organizations around the world working towards the success of investment immigration and economic development.

Of the new groups, 14 are international service providers and migration consultants demonstrating both the growth of EB-5 in new investor markets and the importance of the education and business development resources provided by IIUSA.

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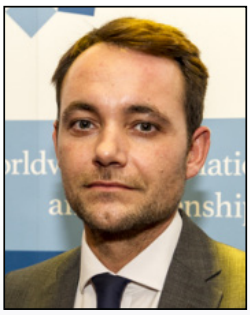
INVESTMENT MIGRATION AND THE STATE OF PLAY IN EUROPE



BRUNO L'ECUYER
CHIEF EXECUTIVE,
INVESTMENT MIGRATION COUNCIL

Introduction: Investment migration refers to the attainment of citizenship or residential rights in return for a financial investment or other contributions to the host country. Today, investment migration is a global industry and is featured in immigration law in most UN recognized countries, albeit in different forms and shapes. Indeed, while there are currently 12 citizenship by investment (CBI) programs *stricto sensu*,[1] many countries offer facilitated naturalization paths that allow for acquisition of citizenship under lessened requirements. Facilitated naturalization is often allowedon grounds of "special achievements" of applicants or "special interest" of states. Residence by investment (RBI) programs have similar paths to residency: while some RBI programs are specifically designed to attract foreign investors in return for residential rights, many countries with no investment programs issue business visas, international talent visas, and/or other economic residence options.

Five of the twelve formal citizenship by investment programs are in Europe, introduced by Cyprus, Malta, Moldova,[2] Montenegro, and Turkey.[3] Furthermore, the Albanian Prime Minister, Mr. Edi Rama, recently announced that Albania may also introduce a citizenship by investment program soon, which would add one more investment migration program in the "old world". Other European states, including EU Member States, allow discretionary naturalization on the grounds of special achievements — including economic achievements — of applicants. Reportedly, 22 EU Member States allow discretionary naturalization.[4]

The number of investment programs in Europe (specifically in EU Member States) has, naturally, triggered the interest of EU policymakers. The freedom of movement enjoyed by EU citizens means that citizens of any EU Member State can settle in any other Member State as well as in Switzerland, Iceland, and Norway.[5] Thus, a Cypriot or Maltese citizen who has obtained his citizenship through an extraordinary investment, can freely relocate to Germany and enjoy most rights domestic citizens do, including the right to stay, establish, or work there. Therefore, the EU has a legitimate

1 These include 12 formal citizenship programs specifically designed to attract foreign investors offered by: Antigua and Barbuda, Cyprus, Dominica, Grenada, Jordan, Malta, Moldova, Montenegro, St Kitts and Nevis, St Lucia, Turkey, and Vanuatu.

2 On 31 July 2019, the Moldovan Parliament passed a four-month moratorium law, which has been recently extended until 20 February in which period relevant authorities will assess possible risks associated to the Program. Once reports are received, decision will be made about the future of the Program.

3 'Europe' is not only about geography but is also a historical, political and a cultural concept. For instance, Cyprus is geographically in Asia, but is rather European and a fully-fledged EU Member State (except for Northern Cyprus, which is not part of the EU); the largest part of Turkey is in Asia, but the country is candidate for EU membership; Greenland is geographically part of North America, but is politically and culturally associated with Europe, to name but a few examples.

4 EUI Globalcit database – information under 'Mode A24, Special Achievements', available at: <http://globalcit.eu/acquisition-citizenship/> last accessed 11 February 2020. As of 1 February 2020, the United Kingdom is not a part of the EU and has been treated as a non-EU Member State for the purposes of this analysis. It is worth mentioning, however, that the UK Tier 1 Investor visa program attracts a large number of candidates from around the world.

5 For detailed information on free movement of all nationalities see Dimitry Kochenov and Justin Lindeboom (eds), 'Kälin and Kochenov's Quality of Nationality Index Nationalities of the World in 2018' (Hart, Oxford 2020).

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interest in following developments related to the acquisition and loss of citizenship in EU member States.

EU institutions have a lot of criticism about these programs and initiate a lot of discussions (and potential legislation) to address them, but this criticism and activity is one sided. The IMC works to balance the discussions and is encouraging other groups to work with them to do the same. In doing so, the integrity of the programs will be strengthened all around.

EU Criticism

Investment migration has attracted strong criticism from EU institutions ever since the launch of the Maltese CBI program, which triggered proactive EU involvement. Since this time, various EU institutions and bodies have initiated discussions and levied numerous critiques of CBI and RBI programs. Criticism was related to the general principle of fairness and discrimination, the EU principle of sincere cooperation, the principle of genuine link, the commodification of citizenship, and specific issues surrounding corruption, money laundering, and other criminal activity.

In 2014, the European Parliament (EP) questioned whether investment programs aligned with EU values, asking the European Commission (EC) to analyze the matter further.[6] The TAX3 Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance, established in March 2018, demanded that all CBI and RBI programs be phased out in EU Member States,[7] stressing that CBI and RBI programs carry significant risks related to devaluation of EU citizenship, corruption, money laundering, tax evasion, lack of proper due diligence checks, and uncertain economic sustainability and viability of the investments provided through the programs.[8] The European Parliamentary Research Service (EPRS) researched investment migration in somewhat greater detail. However, the EPRS study ignored several relevant legal arguments related to the subject of sincere cooperation between EU Member States, the principles of fairness and discrimination in light of citizenship, and the principles of fairness and discrimination.

In January 2019, the EC issued its report on investment programs, relying heavily on previous documents of EU institutions and bodies. While recognizing that applicants may invest in a Member State for legitimate reasons, the EC underscored the risks associated with investment migration programs, including money laundering, corruption and tax evasion, as well as the possibility of criminal infiltration in the EU. Following the report, and through the lobbying efforts of the Investment Migration Council, the EC set up a group of experts from EU Member States to look at the specific risks associated with investment migration, develop a common set of security checks in this respect, and address the aspects of transparency and good governance with regard to the implementation of investment migration programs. It also consulted with civil society and industry representatives (including IMC) who were given the opportunity to provide their feedback on a number of questions raised in the report.

Most recently, the European Economic and Social Committee reaffirmed the stance of the EP's TAX3 Special Committee in its Opinion on investment programs,[9] calling for phasing out all investor programs and urging EU Member States to follow that recommendation "or provide reasonable arguments and evidence for not doing so".[10] It further recommended that "while working towards a phase-out of existing schemes in the EU, accession countries should not be allowed to run CBI or RBI schemes when they join, so that no new schemes are added to the ones currently in place".[11]

With the new MEP's and European Commission in place for the ninth parliamentary term, discussions on investment migration in the EU are expected to continue in the upcoming years. The European Parliament Committee on Economic and Monetary Affairs (ECON) has confirmed the establishment of a permanent subcommittee on tax and financial crime (TAX4) for the 2019 – 2024 parliamentary term, which can be seen as a confirmation that the EP intends to continue to focus strongly on these issues during the mandate. Various intergroups, and especially the recently formed intergroup on anticorruption, are also expected to raise questions related to investment migration in the future.

Involvement of the Investment Migration Council

The Investment Migration Council (IMC) supports discussions by civil society, governments, policymakers, and industry professionals aimed at strengthening the legal and security aspects of citizenship and residency programs. Unfortunately, reports from EU institutions are often unbalanced, focusing too heavily on the critiques of the programs and rarely taking into account the benefits and evident legal arguments in favor of investment migration. Furthermore, these reports are largely shaped by negative stereotypes and bias against the industry, which leads to unbalanced information and wrong conclusions. Investment migration is indeed a sensitive and highly politicized matter. This is primarily because of the money involved in trade with (what seem to be) non-tradable goods.[12] Money makes investment migration different than other forms of facilitated naturalization, such as fast-track naturalization of talented sportsmen or naturalization through marriage or ancestry. Yet, sensitivity and politics are one thing; law is quite another. In the eyes of the law, citizenship and residency through investment are perfectly legal ways of acquiring citizenship or residency in the country providing for such options and not much different from other legal ways of facilitated naturalization or immigration.

The IMC works to paint the whole picture of investment migration and create balance in the discussion, by interacting with other professional associations, governments, and international organizations daily. Furthermore, the IMC continuously assesses various aspects of the investment migration industry through vigorous research, including academic articles, reports, forums, education, and more. The aim is twofold: first, the IMC seeks to improve public understanding of all aspects of the investment migration industry; and second, it aims to promote education and high standards among its members. In

6 European Parliament resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP)).
7 Para. 91, Draft Report of the Special Committee on financial crimes, tax evasion and tax avoidance on financial crimes, tax evasion and tax avoidance (2018/2121(INI)).
8 Para. 87, Draft Report of the Special Committee on financial crimes, tax evasion and tax avoidance on financial crimes, tax evasion and tax avoidance (2018/2121(INI)).
9 EESC Opinion, 'Investor Citizenship and Residence Schemes in the EU' SOC/618-EESC-2019 (EESC Opinion).
10 Para 1.1. EESC Opinion.
11 Para 4.2.2 EESC Opinion.
12 Christian H. Kälin, Ius Doni in International Law and EU Law (Brill Nijhoff, Leiden/Boston 2019) 48.

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pursuing these objectives, the IMC is guided by three important edicts:

1. The IMC is primarily focused on the legal aspects of investment migration. When it comes to the acquisition of citizenship, national laws and EU law are rather clear: citizenship matters, and the criteria for acquiring citizenship remain the sole competence of Sovereign States/ EU Member States.[13]

   Accordingly, the IMC has addressed points made by EU institutions that go against the sovereign rights of states to decide on questions related to acquisition of citizenship. Furthermore, the IMC participated constructively in the investment migration discussion hosted by the European Commission and arranged numerous meetings to make EU and other policymakers aware of their standpoint and work.

2. Various studies and analyses aside, investment migration remains largely an unregulated industry. Establishing minimum standards across the industry would contribute to creating a common regulatory framework that would address the risks associated with investment migration.

   The IMC has started bridging the gap created by the lack of standards. The IMC, in coordination with BDO, Exiger, and Refinitiv, formed a Due Diligence Working Group to examine the state of play of due diligence and explore the potential for minimum standards across the investment migration industry. An independent research think tank, commissioned by the IMC, has drawn on industry-wide insights to conduct independent research on these questions and produce two reports.[14]

3. Any objective assessment of the investment migration programs should include all relevant aspects and players in the industry.

   The IMC repeatedly called EU institutions to involve them in discussions and other activities related to CBI and RBI programs. Challenges and issues can be successfully addressed only if policymakers and stakeholders are willing to hear all arguments and assess objectively all relevant aspects of the industry. The IMC is open to different opinions and arguments that would contribute to a healthy and regulated industry.

Finally, all actors working in the field of investment migration — within or outside of Europe — should join the IMC's efforts and work together to put an end to abuse of investment migration programs, and maintain high standards for the industry.

13 This is notwithstanding the growing importance of EU law with regard to certain aspects of citizenship matters, such as loss of EU citizenship. States' sovereignty and respect for their freedom of deciding on citizenship criteria is of paramount importance and a starting point for every discussion of investment migration.

14 The two reports on 'Due Diligence in Investment Migration Current Applications and Trends' and 'Due Diligence in Investment Migration Best Approach and Minimum Standard Recommendations' are available at <https://investmentmigration.org/industry-reports/> last accessed 11 February 2020.

Winners and Losers Under Recent Regulations, Administrative Tweaks, and Visa Bulletin Advances

CLETUS M. WEBER
FOUNDER & PARTNER, PENG & WEBER, PLLC

ELIZABETH PENG
FOUNDER & PARTNER, PENG & WEBER, PLLC

Recent changes in the EB-5 industry will substantially affect EB-5 regional centers as well as existing and potential investors. This article reviews the most important of these changes, both individually and cumulatively, to determine who is most likely to benefit or be harmed at the end of the day—and by how much.

Recent Changes One by One

Aside from ongoing legislative efforts and the rapid spread of the novel coronavirus, at least four potentially significant recent changes could affect EB-5 regional centers and investors, including:

- USCIS allowing EB-5 investors currently in the United States in nonimmigrant status, such as F-1 students or H-1B specialty workers, to file their green card applications much earlier than otherwise possible
- USCIS's new regulations going live, including the $900,000 minimum investment requirement
- USCIS changing the order it adjudicates I-526 petitions
- March 2020 Visa Bulletin jumping forward about half a year for China-born investors

Each change is discussed individually below.

October 2019: USCIS Starts Allowing Use of Dates for Filing Chart for EB-5

The Visa Bulletin includes two separate charts for EB-5 and other employment-based categories: Final Action Dates (FAD) and Dates for Filing (DFF). One could think of FAD as being the "official" date and DFF as merely a "preliminary" date. FAD determines when a particular EB-5 investor can file a green card application and also when the government can approve it. DFF is a more favorable date for EB-5 investors currently in the United States in lawful nonimmigrant status to at least file their green card applications early—but its usage has an on/off switch. Specifically, although the Department of State publishes the monthly Visa Bulletin listing both FAD and DFF, it is the USCIS that determines whether green card applicants already temporarily in the United States can use DFF to file their "adjustment of status" green card applications in any particular month.

After leaving it off for so long, USCIS

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finally switched DFF back on for EB-5 starting in October 2019. As of the March 2020 Visa Bulletin, DFF showed "current" for both Vietnam and India, while China's DFF at least remained significantly ahead of China's FAD. Nobody knows how long USCIS will allow the use of DFF for EB-5 but doing so would certainly provide great interim benefits to those allowed to file their green card applications while already in the United States.[1]

November 2019: New USCIS Regulations Go into Effect

By far most important of the recent changes is that new USCIS regulations came into effect on November 21, 2019. And most important of the new regulations has been USCIS increasing the minimum investment amount in Targeted Employment Areas (TEAs) from $500,000 to $900,000, as the increase has substantially reduced worldwide investor interest in the EB-5 program—at least temporarily.

Less important for most EB-5 regional centers and investors, the regulations also restrict which locations actually qualify for TEA status and change how TEA determinations are made. Priority date retention and other regulatory or policy changes help certain subsets of stakeholders but are not likely to have much impact on the EB-5 industry as a whole.

January 2020: USCIS Modifies FIFO Processing of I-526 Petitions

On January 29, 2020, USCIS announced that it will give priority to adjudicating I-526 petitions filed by investors not born in a backlogged country—i.e., not born in Mainland China, Vietnam, or India.[2] Although this change theoretically might increase interest in EB-5 among investors from countries without backlogs and in turn make it easier for regional centers to raise job-creating capital in such places, two factors override such theoretical impact, especially in the short term. First, two months before USCIS's announcement, USCIS's new $900,000 minimum investment threshold had already started cutting worldwide demand for EB-5. Second, whether USCIS actually drops the processing times of such petitions enough to influence investor decision making remains to be seen.

On the positive side, slowing down the adjudication of I-526 petitions for investors from backlogged countries could significantly benefit investors whose minor children are at risk of aging out before an EB-5 visa becomes available.

March 2020: Visa Bulletin Jumps Forward for Mainland China

The March 2020 Visa Bulletin substantially advanced both the FAD and DFF for China EB-5. Vietnam's and India's FAD also moved forward somewhat, but Mainland China's FAD and DFF jumped forward 6.5 months and 7 months, respectively. China's FAD and DFF now straddle the EB-5 industry's highest quarterly I-526 filing peak, which followed the introduction of S.1501 by Senators Grassley and Leahy in June 2015. For priority dates within that peak, TChina-born investors already living in the United States might use the more favorable DFF to file I-485 applications to adjust status, but those still living elsewhere must continue to face China's less favorable—but at least much improved—FAD.[3]

Cumulative Impact of Recent Changes

With a handle on each recent change individually, one must consider the cumulative impacts, which vary substantially among regional centers, existing investors, and potential investors, especially in the short term. Impacts also vary by an investor's country of birth.

Regional Centers

Regional centers receive a mixed bag, but the overall impact is significantly negative for most regional centers and incredibly negative for regional centers whose project locations no longer qualify for TEA status under the new regulations. For all regional centers, the regulatory increase of the minimum investment requirement to $900,000 hurts the most; it reduces worldwide interest in EB-5 as a viable migration option.

Putting this regulatory price increase into context, though, one might more appropriately consider the impact of this higher investment threshold as merely another pumping of the brakes following the major overall slowdown caused by the demand-dampening visa backlogs within the three largest EB-5 markets of China, Vietnam, and India. That is, before these regulations even went into effect, EB-5 visa backlogs had already slowed the worldwide number of I-526 filings from more than 15,000 in FY2015 to only about 4,200 in FY2019.[4]

Although data are unavailable for the first half of FY2020, anecdotal evidence indicates that the new $900,000 minimum investment requirement has already substantially decreased worldwide interest. Also, fence sitters worldwide already had plenty of time to make a decision and act on it between the regulatory introduction and implementation dates. The silver lining for regional centers longing for the return of China as a major EB-5 market is that the longer the temporary downturn in the worldwide market continues, the more likely the revival of the China market. Elsewhere-focused regional centers will be looking forward to investors worldwide eventually getting over sticker shock.

Backlogged China-born Investors Should be Thrilled

Backlogged China-born investors stand to benefit the most from these changes. Most important, the $900,000 threshold's suppression of worldwide interest in EB-5 correspondingly increases the number

1 USCIS allowing the favorable DFF to be used is truly a win-win. It provides great interim benefits to many backlogged investors without negatively affecting applications of any other investors, because it is FAD, not DFF, that determines when the government actually approves green card applications. That is, DFF allows certain investors to enjoy the benefits of America's spacious lobby, but only FAD determines when someone is actually allowed to take a seat at the show.

2 https://www.uscis.gov/news/news-releases/uscis-adjusts-process-managing-eb-5-visa-petition-inventory.

3 April 2020 Visa Bulletin and USCIS's decision on ongoing DFF usage were not yet available at time of writing.

4 FY2015-FY2018 data compiled and analyzed by Lee Y. Li of IIUSA based on information IIUSA acquired from USCIS via FOIA request; FY2019 data disclosed publicly by USCIS. India's projected backlog arrived at the tail end of this period, so overall impact on that market is less certain than the impact of earlier backlogs in China and Vietnam.

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of "leftover" EB-5 visas that backlogged China-born investors may use in the future, thereby speeding up their very long line. After years of continually worse predictions of how long such investors must continue to wait, the March 2020 Visa Bulletin finally turns the tide for them in what is likely to be the first of several significant advances of China's FAD or of both China's FAD and its DFF while the EB-5 industry waits for the worldwide market to return.[5]

The size of the incremental movements for China will likely vary significantly as the Visa Bulletin works through progressively smaller peaks in I-526 filings by China-born investors during the fourth quarter of FY2015, the fourth quarter of FY2016, and the third quarter of FY2017, as well as the relative valleys in between. Eventually, as the China-born wait times shrink toward the length of the Vietnam-born and India-born wait times, investors who have been waiting a long time in those countries' lines will begin to share in worldwide leftovers, but that could still be quite a few years away. In fact, that point may be far enough away that some sort of overall visa relief will likely arrive before China's line ever shortens to the length of Vietnam's or India's.

Some backlogged China-born investors might also benefit from priority date retention or other regulatory changes.

Future China-born Investors Might Also Benefit

Future China-born investors will benefit most from anything that shortens their potential visa waiting time, which the new worldwide-impacting $900,000 investment threshold does indirectly. Other regulatory and policy changes will be less relevant in most cases.

India-born Investors Benefit Mostly in the Short Term

India-born investors already in the United States benefit more than India-born investors living elsewhere, at least in months that USCIS allows the use of DFF by EB-5 investors. In fact, if USCIS could be counted on to continually allow India-born investors in the United States to use DFF to file green card applications early, such goodwill could substantially increase demand among such investors, who otherwise must wait nearly forever in the "gold watch" categories of EB-2 and EB-3. Filing green card applications early allows such investors to receive most immigration benefits short of a green card itself. Other USCIS regulatory and policy changes are not overly significant for India-born investors.

Vietnam Faces Impacts Similar to India's

By and large, the cumulative benefits and detriments of these recent changes are similar for Vietnam-born and India-born investors: DFF usage is a boon to those already studying or working temporarily in the United States, but the remaining changes are mostly not helpful. Both Vietnam and India also seem quite far away from eventually benefiting from the $900,000 threshold's likelihood of indirectly freeing up additional "leftover" EB-5 visas. Instead, for the foreseeable future, Vietnam-born and India-born investors will merely share the same $900,000 pain as other investors worldwide.

Rest of the World Impact is Mostly Negative

Those not born in China, India, or Vietnam potentially benefit here or there, but the largest impact is negative. In particular, the detriment of the $900,000 minimum investment requirement far outweighs any potential benefits found elsewhere among the recent changes. One hope for such investors, however, is that USCIS actually does process I-526 petitions from non-backlogged countries much faster than normal, which would allow such investors to obtain their conditional green cards much sooner than they could under current processing times.

Conclusion

The significant changes at the end of 2019 and the beginning of 2020 primarily benefit those who have suffered the most under the EB-5 Program in recent years: backlogged China-born investors. Regional centers and new and existing investors from non-backlogged countries may find a minor, temporary benefit here or there, but mostly the recent changes seem at odds with their interests. Many Vietnam-born investors and India-born investors, as well as some China-born investors, who happen to already be temporarily in the United States will benefit significantly if USCIS continues to allow use of DFF charts for EB-5 investors.

Overall, the absence of positive impact among these recent changes serves as a reminder for the EB-5 industry to continue advocating for more EB-5 visa numbers or similar visa relief. In the interim, regional centers may want to monitor how severely and for how long the new $900,000 minimum investment requirement suppresses worldwide interest and how much the reciprocal benefit to long-backlogged China-born investors might go toward possibly reviving China as a significant source of EB-5 capital.

5 As noted in the March 2020 Visa Bulletin, FAD and DFF for China might also occasionally move backward temporarily in some months to ensure that all available visas are used in each fiscal year without using more than are legally available in the first place.

Regional Center Considerations Under New TEA Regime

WALTER S. GINDIN
DIRECTOR, LEGAL AFFAIRS, CANAM ENTERPRISES

The EB-5 Program changed significantly on November 21, 2019 when the Department of Homeland Security's ("DHS") final EB-5 Modernization Rule (the "Final Rule") took effect. The Final Rule made several major revisions to the EB-5 regulations for the first time since 1993, most notably, increasing minimum investment amounts and tightening the procedures and certain of the criteria for designating targeted employment areas ("TEA"). Barring any superseding legislative reforms, the regulatory changes occasioned by the Final Rule are here to stay. It is therefore incumbent that all EB-5 stakeholders understand and adapt to the new regulatory landscape if the EB-5 Program is to continue its mission of facilitating economic development and job creation throughout the United States. This article examines some of the adjustments that regional centers, in particular, may need to make to their project selection and offering practices in light of the changes applicable to the determination and designation of TEAs.

Changes to TEA Standards

The Final Rule made several prominent changes to the process and certain of the criteria for designating TEAs.

From a process standpoint, the Final Rule indicates that for EB-5 applications and petitions filed on or after November 21, 2019, USCIS will directly review and determine the designation of TEAs and will no longer defer to TEA designations made by state and local governments. USCIS also indicated in its response to comments to the Final Rule that it does not intend to establish a separate application or process for obtaining TEA designations from USCIS prior to filing EB-5 applications or petitions and will not issue separate TEA designation letters for areas of high unemployment. Rather, USCIS has stated that it intends to make TEA determinations as part of the existing adjudication process.

Substantively, the Final Rule did not make changes to the regulatory definition of "rural area" and also maintained the ability to demonstrate that the entire Metropolitan Statistical Area ("MSA") and a specific county within a MSA qualifies as a TEA. The Final Rule did add cities or towns with a population of 20,000 or more which is outside a MSA as a distinct TEA designation criteria.

The Final Rule also made fundamental changes to the scope of high unemployment designations for sub-county regions. Prior to the Final Rule, it was possible to aggregate any number of contiguous census tracts (inclusive of the project census tract) to reach the requisite average unemployment rate threshold of 150% of the national average unemployment rate. The Final Rule limited the geographic scope of a sub-county area to the census tract or contiguous census tract(s) in which the project is located/principally doing business, and any or all census tracts directly adjacent to such census tract(s), provided that the weighted average of the unemployment rate for the subdivision (that is, the area comprised of multiple census tracts), based on the labor force employment measure for each census tract, is at least 150% of the national average unemployment rate.

The foregoing procedural and substantive changes to TEA designations are likely to impact regional centers' operations in a number of ways as discussed below.

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DAVID FINKELSTEIN
CEO & Managing Partner

American Immigration Group

QENDRESE SADRIU-RRUSTEMI
Managing Director

American Immigration Group, LLC.
600 Third Avenue, Suite 259, New York, NY 10016
Phone: (212) 757-2183. Fax: (646) 762-9806.
Email: info@eb5aig.com
www.**eb5aig**.com

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Impacts on Project Selection Process

The substantive changes to the TEA criteria have the potential to limit the number of projects that may be eligible for TEA designation. For example, certain projects that must rely on the more restrictive standards for census tract aggregation to meet the unemployment threshold are particularly susceptible to not being eligible for TEA designation. The immediate impact of such tightening of standards is that regional center operators may have to turn down many more projects that otherwise meet their financial and immigration suitability standards simply because the projects are not located in TEAs (or located in "close call" TEAs) and a $1.8 million-per-investor raise is not feasible.

At the same time, regional center operators should be wary of pursuing projects that may have certain shortcomings from a financial and/or immigration suitability standpoint simply because the projects are "shoe-ins" for TEA designation under the new regulatory criteria. Sound underwriting and due diligence practices on the part of regional centers are more important than ever, and prospective investors too must pay even greater attention to the fundamentals of each project and the underlying rationale for a regional center's sponsorship of that project.

Working Closely with Experienced EB-5 Economists

The regulatory changes to the TEA designation standards have increased the importance of EB-5 economists. Under the old regime, regional centers and/or project sponsors could manage by simply providing a state agency an address or a general location of a project and receive a TEA designation letter in a matter of hours in some cases. That is no longer the case. In fact, this author previously reached out to a state agency to inquire whether it would be willing to merely provide a supplemental opinion to support a third-party TEA analysis (understanding that USCIS will not give deference to any state letter on its own), and received a response akin to "sorry, we're out of it."

Regional centers should therefore work closely with experienced EB-5 economists to assess TEA eligibility for a particular project. This involves all parties understanding and agreeing on the actual regulatory requirements – that is, everyone should be on the same page as to what the rules actually say. At the same time, all parties must be cognizant that the regulatory changes are brand new and there is no history of USCIS adjudications under this new framework that stakeholders can rely on for reference and additional guidance. As such, the parties should explore all avenues of establishing TEA eligibility, for example, by assessing whether the entire MSA, county, city or town independently qualify, and whether and to what extent a grouping of census tracts qualify. Presenting USCIS with multiple TEA designation alternatives could increase the chances that USCIS approves the TEA eligibility of a project based on at least one of those alternatives.

Additionally, while it is important that EB-5 economists provide a reasonable and credible framework for their TEA analyses, it is also necessary to bear in mind that EB-5 economists, just like every other stakeholder, are also working within a brand new regulatory framework and are providing analyses, though based on their wealth of experience, in an environment where USCIS has yet to meaningfully opine on the reasonableness and/or credibility of a particular approach as applied to the changes introduced by the Final Rule. Regional centers should understand that even though the regulatory text of the new TEA regulations may appear straightforward, there still exist uncertainties surrounding USCIS's interpretation and implementation of any such regulatory criteria, and these uncertainties should be prominently disclosed as described below.

Disclosures

EB-5 offerings are typically accompanied by a memorandum and other supporting materials that contain, among other things, material disclosures about the EB-5 Program and a particular capital investment. EB-5 offerings issued (or amended, as applicable) after November 21, 2019 should contain robust disclosures about the regulatory changes contained in the Final Rule. Because it cannot be assumed that every investor is familiar with such changes, it may be good practice to expressly call out that the offering is being made to prospective investors under the new regulatory regime.

With regard to TEA designations, offering memoranda should disclose the new/changed procedural and substantive criteria, in particular, the fact that USCIS will now have exclusive jurisdiction over TEA determinations. Equally important are disclosures informing investors that none of the regional center, new commercial enterprise, or any affiliated entity can predict how USCIS will interpret and apply the new TEA criteria or provide any assurance that USCIS will approve the underlying TEA designation analysis. It is also important to disclose that a regional center will not know whether USCIS approves the actual TEA designation for a particular project until USCIS adjudicates either the I-924 exemplar or a related I-526 Petition filed by an investor, which adjudications can take several years to complete.

While the foregoing are not meant to be an exclusive list of potential disclosures (TEA-related or otherwise), the overarching goal is to provide prospective investors with sufficient information to make an informed decision (in consultation with experienced counsel and other consultants) about whether a particular investment is likely to meet their financial and immigration needs.

Different Rules, Same Principles

It is important to recognize that while some major the rules of the EB-5 Program have changed, its fundamentals and principles have not. Regional centers must continue to source quality projects with strong underlying fundamentals. Similarly, investors should continue performing thorough screening and due diligence on each regional center-sponsored project to maximize the probability of achieving all financial and immigration benefits under the EB-5 Program. And despite some of the unknowns in how USCIS could interpret and implement the new regulations, for as long as they exist, it is imperative that all EB-5 stakeholders continue to move the EB-5 Program forward.

New TEA Rules:
Frequently Asked Questions

ALEX BROWN
SENIOR ECONOMIST, IMPACT DATASOURCE

EB-5 Immigrant Investor Program Modernization, the final rule published by the Department of Homeland Security (DHS) in the Federal Register on July 24, 2019 ("Final Rule"), went into effect on November 21, 2019.[1] Under the Final Rule, USCIS is no longer accepting Targeted Employment Area ("TEA") certifications from the individual states. Instead, USCIS is requiring that I-526 petitions contain evidence that a Project qualifies as a TEA and will review that evidence as part of I-526 adjudication.[2] Additionally, the Final Rule changed the requirements for qualification as a high-unemployment TEA. MSAs, counties, cities with a population greater than 20,000 and outside of an MSA, and census tracts can all qualify individually if their unemployment rate is at least 150% of the national unemployment rate.[3] A high-unemployment TEA may also consist of a combination of "directly adjacent" tracts, if the weighted average unemployment rate of the combined tracts is at least 150% of the national unemployment rate.

1 https://www.federalregister.gov/d/2019-15000/p-8 codified at 8 CFR 204.6(j)(6)(ii)(A).
2 https://www.federalregister.gov/documents/2019/07/24/2019-15000/eb-5-immigrant-investor-program-modernization
3 https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2

Q: Since USCIS is no longer recognizing TEA letters provided by the states, how do I obtain a TEA certification?

A: Under the Final Rule, evidence that a Project site qualifies as a TEA must be submitted with each investor's I-526 petition and will be reviewed by USCIS as part of I-526 adjudication. USCIS will not be providing a separate process for reviewing TEA certifications. Under the Final Rule, TEA status will not be confirmed until the I-526 petition has been processed, and as of March 18, 2020, I-526 processing time is currently estimated to be between 33 and 50 months.[4]

Q: What evidence needs to be presented to USCIS to show that a Project site qualifies as a TEA?

A: The evidence submitted to USCIS as part of the I-526 petition must show that at the time of investment or I-526 filing, whichever came first, the Project site met the requirements for TEA qualification. The evidence should include the source of the data used to determine the labor statistics of the MSA, county, city, or census tract(s), the TEA unemployment threshold, a map showing the project site and the county, city, or census tract(s) included in the TEA, the labor statistics (civilian labor force, employment, and unemployment, plus the unemployment rate) of the county, city, or census tract(s), and the weighted average unemployment rate of the combined census tracts if the TEA relies on census tract combination.

4 https://egov.uscis.gov/processing-times/

Q: How many tracts can I combine to create a TEA?

A: USCIS does not have a specific limit on the number of tracts that can be combined, but combination is limited to the project tract(s) and any or all "directly adjacent" tracts.[5]

Q: Are tracts that border each other only at the corner or cross bodies of water "directly adjacent"?

A: When USCIS published the Notice of Proposed Rulemaking (NPRM) on January 13, 2017,[6] they included a map (shown below) that demonstrated the meaning of "directly adjacent."[7] According to USCIS, all of the tracts within the dashed border are considered directly adjacent to the Project

5 https://www.federalregister.gov/d/2019-15000/p-115
6 https://www.federalregister.gov/d/2017-00447/p-1
7 https://www.federalregister.gov/d/2017-00447/p-195

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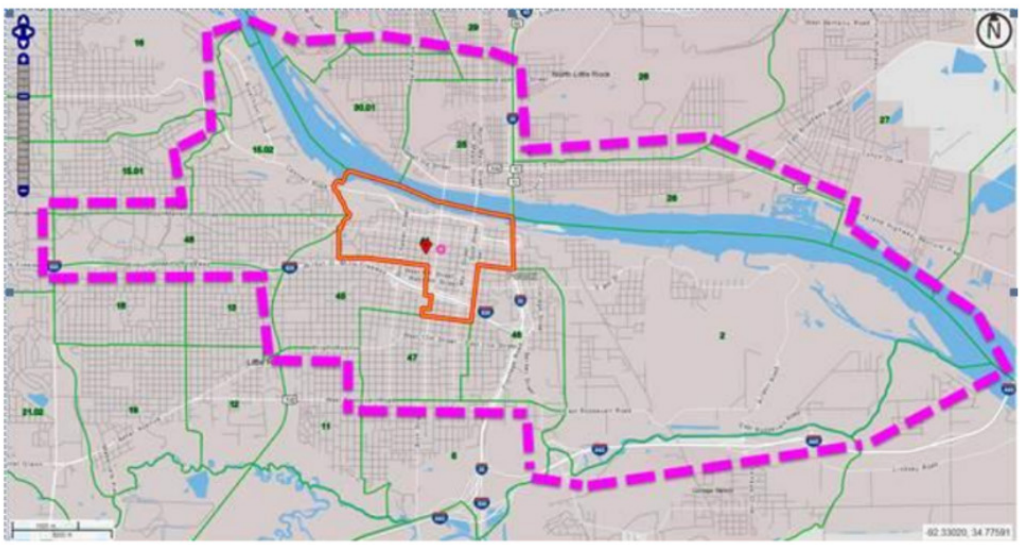

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tract (the tract with the thick orange border), including the tract to the northeast of the Project tract, which borders the Project tract only at the corner and all three tracts to the north of the Project tract, which border each by crossing a body of water.

The Final Rule[8] does not include a similar map, but since the "directly adjacent" language did not change significantly between the proposed rule and the Final Rule, it appears that USCIS will view tracts that touch only at the corner and tracts that border each other at bodies of water as "directly adjacent."

Q: What data can be used to determine the unemployment rate for census tracts?

A: The Final Rule did not specify what data sources must be used. Instead, it only requires that the data be "reliable and verifiable." The Final Rule also stated that unemployment data published by ACS and BLS qualify as reliable and verifiable data sources, so these two datasets can be used to provide evidence that a site qualifies as a TEA. Using data from ACS and BLS, there are two methods to determine the unemployment statistics of a census tract: the ACS-only method and the census-share method.[9] The ACS-only method relies only on the most recent data from the ACS 5-year estimates of labor statistics at the census tract level.[10] The census-share method combines labor force data from the ACS 5-year estimates of labor statistics at the census tract level with BLS's annual averages at the county level.[11] There is no BLS-only method for census tracts, because BLS does not publish labor force data at the census tract level. Most tracts that qualify as a TEA qualify under either the ACS-only method or the census-share method, but, under certain circumstances (for example the county unemployment rate improved at a faster rate than the national unemployment rate), tract(s) may only qualify under one of the methods.

8 https://www.federalregister.gov/documents/2019/07/24/2019-15000/eb-5-immigrant-investor-program-modernization
9 The census share method was the generally accepted method for determining TEA qualification by states prior to the implementation of Final Rule.
10 U.S. Census Bureau, Employment Status for the Population 16 Years and Over ACS 5-year estimates. Data set available at https://data.census.gov/cedsci/.
11 Labor Force Data by County, 2018 Annual Averages. https://www.bls.gov/lau/laucnty18.txt

Q: Are there any datasets besides the ACS 5-year estimates and BLS annual averages that can be used as evidence that a Project site qualifies as a TEA?

A: Since USCIS only limited the datasets to those that are "reliable and verifiable," presumably they would accept datasets other than the ACS 5-year estimates and BLS annual averages as evidence that a Project site qualifies as a TEA. However, in order to protect investors, until we get feedback from USCIS in the form of I-526 adjudications or further public communications, the only safe datasets to use to determine TEA qualification are the ACS 5-year estimates and the BLS annual averages.

Q: When do the datasets get updated?

A: ACS data is updated in late December and BLS LAUS annual averages at the county-level are finalized in late April.

Q: When does TEA evidence need to be updated?

A: The timing of TEA letter data is a gray area. Under the old TEA rules, the census-share method was utilized by the majority of states, and states updated their data once a year, when the new BLS annual average data was finalized in April. Some states claimed that their certification letters were valid for a year (or sometimes longer), but in practice USCIS required TEA letters to be based on the most recent available data available as of the time of the investment or I-526 filing, whichever came first. So, TEA letters were generally considered to be valid from around April to April each year under the old rules. Under the new rules, it's unclear whether USCIS will continue to accept evidence based on the census-share method that is updated only in April when the new BLS data is released, or will require census-share data to be updated twice a year; once when the BLS data is released in April and again when ACS data is released in December. TEA qualification evidence needs to be based on the most recent available data for each investor at the time of investment or I-526 filing, whichever comes first. As long as new investors are being added to a Project, TEA evidence based on the census-share method should be updated in April and again in December and TEA evidence based on the ACS-only method should be updated once a year, in December.

Q: How do I know if my site will continue to qualify as a TEA?

A: While some TEAs are so significantly above the threshold that they are almost certain to stay a TEA from year to year, for many locations it is difficult to predict whether or not they will qualify as TEAs in the future. We can analyze the margin between the unemployment rate of the tract(s) and the TEA threshold, the number of bordering tracts with an unemployment rate greater than the TEA threshold, and the historic year-over-year unemployment rate changes of the Project tract(s) and adjacent tracts to estimate the likelihood that a tract will continue to qualify as a TEA when the data updates. However, given the relatively small population size of most tracts and the difficulty in estimating how a single tract's unemployment rate is likely to change compared to the national unemployment rate, it is very difficult to say with any certainty that a tract(s) that qualifies as a TEA at any single point in time will continue to qualify as a TEA in the future.

Q: What is the unemployment threshold for TEA qualification?

A: The qualification threshold for TEAs depends on which dataset is used to calculate the labor statistics of the census tract(s). According to USCIS, regardless of which data is presented, the data should be *internally consistent.*[12] So, if ACS data is used to calculate the unemployment rate for the tract(s), then ACS data must be used to determine the national unemployment rate, and if the census-share method is used to calculate the unemployment rate for the tract(s), then BLS data must be used to determine the national unemployment rate.[13] Under the ACS-only method, using ACS 14-18, the qualifying high unemployment rate for TEAs is 8.9% (150% of the 2018 BLS national annual average civilian unemployment rate of 5.9%). Under the census-share method, using ACS 14-18 and BLS CY18, the qualifying high unemployment rate for TEAs is 5.9% (150% of the 2018 BLS national annual average civilian unemployment rate of 3.9%).

12 https://www.federalregister.gov/d/2019-15000/p-375
13 https://www.federalregister.gov/d/2019- 15000/p-375

USCIS "Pivots" Which Investors Get Adjudicated First

ROBERT C. DIVINE
SHAREHOLDER, BAKER DONELSON

On January 31, 2020, USCIS suddenly announced that, starting on March 31, 2020, for any case not already assigned to an adjudicator, it will "prioritize" in assignment for adjudication I-526 petitions made by investors who are not subject to visa availability backlog, rather than in the haphazardly first-in-first-out policy applicable up to now.[1] USCIS has been falling farther and farther behind in those adjudications, so it reasoned that it should focus its limited resources on deciding cases for the investors who can actually make use of the approval.

Which cases really will get prioritized, at least for now?

For now, the only cases that will get thrown into a pile of delay will be those filed by investors born in mainland China and who cannot be "chargeable" to another country.[2] This is because USCIS is treating as "backlogged" only those countries that have a cut-off date in the "Dates for Filing" chart in the Visa Bulletin. China is the country whose nationals have filed the overwhelming percentage of I-526 petitions over the last decade, and for mainland China the April 2020 Visa Bulletin sets a cutoff date of May 15, 2015 in the Dates for Final Action chart and December 15, 2015 in the Dates for Filing chart. All of the other countries are "current" under both charts in the April 2020 Visa Bulletin.

As the new prioritization policy takes hold and USCIS actually starts adjudicating petitions newer than those filed by Chinese investors, it will approve enough to trigger immigrant visa or adjustment of status applications of investors born in Vietnam and India in enough numbers to trigger the law's 7% per-country limit. Under that law, no more than 7% of the available 10,000 or so visas in the EB-5 preference category can be used up by the investors and their immigrating family members from any one country except to the extent that the rest of the world does not use up those numbers.[3] On average, it only takes about 300 investors, when combined with their family members, to use up those 700 numbers causing a cutoff date in the Dates for Final Action chart. But the cut-off dates in the Dates for Filing chart are set with a design to trigger cases to begin being worked by the National Visa Center about a year before their visa numbers will become available in the Dates for Final Action chart. Thus, there may be a lag of a year or two before the I-526 petitions already in the USCIS adjudication queue will result in USCIS "prioritizing" other countries' I-526 petitions away from those filed by Vietnam and India. It is conceivable that almost all of the Vietnam and India petitions in the USCIS adjudication queue could be adjudicated before the Visa Bulletin catches up to the bulge of those cases so that they never really suffer the delayed adjudication that China-born investors will experience.

How long will non-China petitions take to get adjudicated?

Meanwhile, during the last year or so USCIS has slowed its overall I-526 processing to a near stand-still, which it attributes to new time-consuming measures to enhance fraud detection and adjudication. If USCIS annual adjudication numbers remain small, then India and Vietnam will stay under 700 visa numbers usage per year without need for any Visa Bulletin cut-offs. If USCIS speeds up overall adjudications even to half of its rate in FY2019, it would get through in a year or two all of the 7,000+ I-526 petitions from countries other than China[4] that USCIS has reported were pending as of October 1, 2019.[5] It is conceivable (but unlikely) that USCIS could adjudicate quickly so many of those that a worldwide cut-off date could develop in Dates for Final Action, at least. Even if that phenomenon occurred, it would be short-lived, because those visa applicants from other than India and Vietnam would be satisfied by one or two years of visa allocations after 700 per country from China, Vietnam, and India.

But USCIS already will have assigned gobs of China cases to adjudicators before the prioritization policy takes effect, and it will take time for those cases to work through the adjudication system to make room for new cases more exclusively from elsewhere. Thus, one can guess that it will take at least two years to adjudicate the "other than China" petitions already filed. The impacts on officer productivity from COVID-19 protection measures may further slow the wheels.

1 USCIS stated that petitions already assigned to an adjudicator before that date will proceed with adjudication under prior policy.

2 An investor can be chargeable to another country, and thereby escape the waiting list of his or her birth country, if either (1) he or she is married to a person born in another country, in which case they both can be treated as having been born in the spouse's country, also called "cross-chargeability"; or (2) his or her parents were only temporarily present in the country of birth and permanently resided elsewhere, in which case the applicant is charged to the parents' country of permanent residence at the time of birth. USCIS has instructed that an investor who will benefit from "alternate chargeability" should use the USCIS receipt notice for the I-526 filing and send an email to the IPO pointing out such chargeability and asking for prioritization.

3 Once a country hits the 7% limit and the rest of the world within their respective 7% limits do not use up the rest of the worldwide allocation for the year, the remaining available numbers are allocated on a worldwide first-in-first-out basis, which means that the China-born investors who have been waiting the longest will use up those remaining numbers for the next many years.

4 USCIS has not reported on individual country numbers, even for India and Vietnam.

5 We can guess confidently that many petitions must have been filed between October 1, 2019 and November 21, 2019, when the new regulations nearly doubling the minimum investment took effect. Not surprisingly, it appears from industry information-sharing that very few petitions have been filed since November 21, 2019.

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USCIS "Pivots" Which Investors Get Adjudicated First

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What exceptions will be made?

USCIS has announced that if it approves expedite requests for any petitions (or for groups of petitions for an expedited project), the expediting will supersede any visa number-based prioritization. Petitioners who would receive swift adjudication under the prioritization cannot "opt out" of prioritization. It is not clear why anyone would want to do so, because a person with an approved I-526 can "slow walk" the visa process without having "termination of registration" as long as desired by sending the National Visa Center an annual notification that he or she does not wish to proceed yet.

Who wins and loses and how?

Obviously, investors who get "prioritized" and can immigrate more quickly will be delighted. Even for some visa-backlogged investors, this will have the happy effect of reducing the chances of a child's "aging out" of eligibility while awaiting visa numbers and thus will be welcome.[6]

For other visa backlogged investors, however, it will be a very unwelcome and irritating increased wait to be told that they qualify based on their project plans and their source of funds.

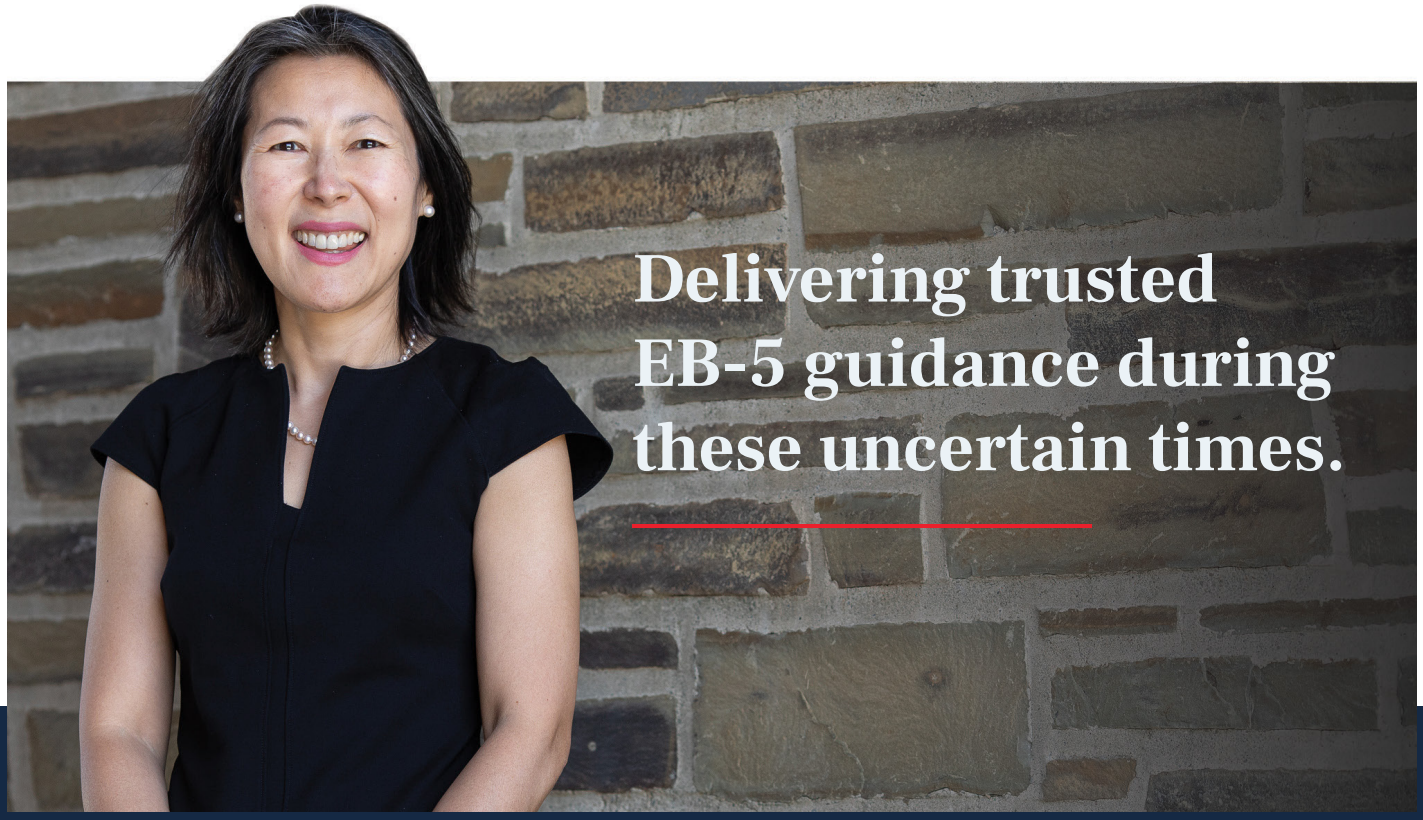
In addition, the more non-Chinese petitioners who get through the adjudication pipeline and on to non-backlogged visa issuance, the slower China-born investors and their family have visa numbers available to them. Under the current environment under the new regulations, however, it does not appear that non-Chinese investors are flooding the system with new $900,000 investments.

Moreover, this delayed adjudication for investors born in visa-backlogged countries has the surely unintended effect of eliminating the "priority date retention" protection that 2019 USCIS regulations had provided for investors who obtained I-526 approval. Before some investors could get a visa number and immigrate their project fizzled, failed, was fraught with fraud, or suffered termination of the sponsoring regional center, so that the investor lost the will or ability to proceed due to hopelessness of I-829 approval down the road or even due to immediate I-526 revocation by USCIS. Under the new regulations, such investors could make a new investment and I-526 filing and retain their place in the visa number queue based on the earlier approved I-526 filing date. If USCIS delays the I-526 adjudication and meanwhile the project's infeasibility is exposed, USCIS will deny the I-526 petition and "priority date retention" will be unavailable, so that the investor would need to start over at the back of the visa queue in a new investment and filing. USCIS has acknowledged this effect and refuses so far to make accommodation, such as by adjudicating I-526 petitions' eligibility as of the time of investment rather than as of the time of decision.

What if legislation creates new numbers?

Congress is continually lobbied to increase visa numbers and reduce minimum investment levels. If those efforts become surprisingly successful, it would be critically important whether new numbers would be allocated using the same allotment category and per country limit. If so, China-born investors would continue to face longer waits for visa numbers (and through the USCIS policy, for I-526 adjudication), and their interest in the program might be less than if changes to allotment were included.

6 Generally, a child can qualify to immigrate with an EB-5 investor only if the child is under 21. Under the Child Status Protection Act (CSPA), however, the child's age is locked in as of the date when the later of two events occurs: I-526 approval and availability of a visa number in the queue based on date of I-526 filing. Also under the CSPA, the child's "adjusted age" for this purpose is reduced by the time it takes for USCIS to adjudicate the I-526 petition. In effect, a child's adjusted age happily is frozen during the nail-biting time an I-526 petition awaits adjudication and then resumes advancing until a visa number becomes available. If the adjusted age exceeds 21 before that date, the child becomes ineligible to derive permanent residence with the parent investor (the dreaded "age out").



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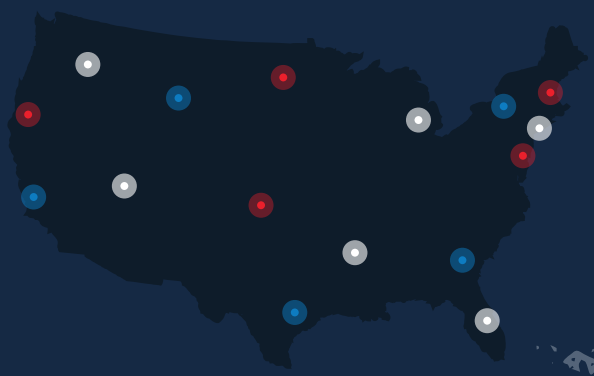

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How the Nigerian Travel Ban Affects EB-5 Investors

ACHO AZUIKE
MANAGING DIRECTOR,
HOUSTON EB-5 REGIONAL CENTER

In February 2020, the Trump administration set into effect a travel ban for immigrant visa applications by Nigerian nationals, along with nationals of five other countries. Although nonimmigrant visas such as visitor visas, student visas, and other work permit visas are still permissible, the EB-5 immigrant investor visa is not to be issued at a U.S. Consulate to a Nigerian national until the policy is reconsidered by October 1st later this year.

Approximately 30% of Houston EB5's investor database consists of Nigerian nationals. Most Nigerians were blindsided by the recent travel ban since Nigeria is Africa's largest economy and the second largest trading partner to the U.S. in all of Africa. Although each case is different and Regional Centers and their investors should always consult with their legal counsel first, Regional Centers should communicate the details and realities of this ban with current and prospective EB-5 investors.

If an investor chooses to continue course with his/her investment with the optimism that the ban will not remain in place by the time an immigrant visa interview is scheduled at a U.S Consulate, then filing his/her I-526 petition with USCIS will preserve his/her place in line for adjudication. In select cases involving an

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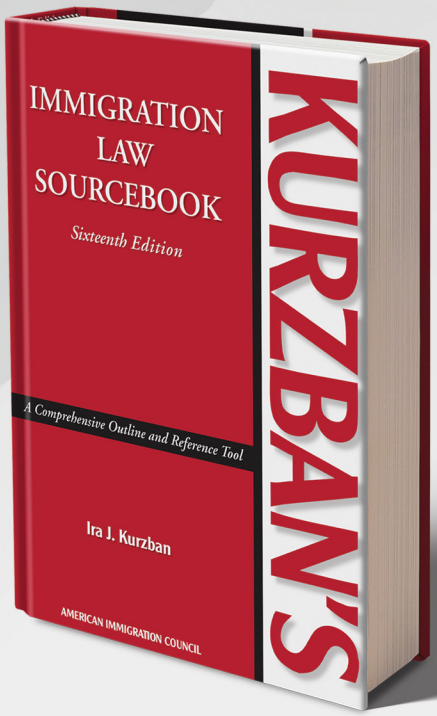

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For more info
ira@kktplaw.com
jpratt@kktplaw.com

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investor whose I-526 petition approval comes when the investor is already physically present in the U.S. lawfully, there may be the option of adjusting status without returning to the U.S. Consulate for an immigrant visa, thereby avoiding the travel ban entirely. If adjustment of status is not an option, and if the travel ban still exists, then a waiver is likely to be necessary for the Nigerian EB-5 investor.

Below is a list of exemptions and waivers to the travel ban that could be applicable to some investors. The ones in **bold** are most likely to be helpful to Nigerian investors.

Exemptions: The travel restrictions in the proclamation do not apply to:

- Lawful permanent residents (LPRs);
- **Dual nationals of a designated country who are traveling on a passport issued by a non-designated country;**

Waivers: A waiver may be granted if a foreign national demonstrates to the consular officer's or CBP official's satisfaction that:

a) Denying entry would cause the foreign national undue hardship;

b) Entry would not pose a threat to the national security or public safety of the U.S.; and

c) Entry would be in the national interest.

A waiver issued by a consular officer shall be valid for both the issuance of the visa and for any subsequent entry on that visa.

Waivers may not be granted categorically but may be appropriate in the following situations:

- **The foreign national has previously been admitted to the U.S. for a continuous period of work, study, or other long-term activity, is outside the U.S. on the applicable effective date, seeks to reenter the U.S. to resume that activity, and the denial of reentry would impair that activity;**
- **The foreign national has previously established significant contacts with the U.S. but is outside the U.S. on the applicable effective date for work, study, or other lawful activity;**
- **The foreign national seeks to enter the U.S. for significant business or professional obligations and the denial of entry would impair those obligations;**
- **The foreign national seeks to enter the U.S. to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a USC, LPR or lawful nonimmigrant, and the denial of entry would cause undue hardship;**
- The foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by special circumstances;
- The foreign national can document that he or she has provided faithful and valuable service to the U.S. Government;
- The foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), traveling for purposes of conducting meetings or business with the U.S. Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;
- The foreign national is a Canadian permanent resident who applies for a visa at a location within Canada;
- The foreign national is traveling as a U.S. Government-sponsored exchange visitor; or
- The foreign national is traveling to the U.S. at the request of a U.S. Government department or agency, for legitimate law enforcement, foreign policy, or national security purposes.

We at Houston EB5 are optimistic that Nigeria will take the steps needed to remove itself from U.S. visa restrictions that were imposed in February. In a meeting in February between Secretary of State Mike Pompeo and Nigerian Foreign Minister Geoffrey Onyeama, Onyeama said, "We have identified all those requirements, we had actually started working on all of them." He said Nigeria was close to creating an information sharing mechanism that would meet the criteria for passport security and sharing of criminal and terrorism information.

"We hope to have that up and running very soon and no longer running through third parties," he said. "Hopefully once that has been achieved, we look forward to being taken off this visa restriction list." At this same meeting Secretary of State Mike Pompeo said he's optimistic that Nigeria will take the steps needed to remove itself from U.S. visa restrictions that were imposed. Based on that optimistic assessment, we believe investors with recently-filed or soon-to-be-filed petitions will not be severely impacted by the Travel Ban.

The Country of Brazil, On the Spotlight with EB-5 Immigrant Investors

KARLA BLEDSOE
DIRECTOR OF INTERNATIONAL RELATIONS,
MORENO & VILLARRUBIA, LLP

Permanent residence in the United States (U.S.) has become increasingly attractive high-net worth Brazilian individuals. I am a native of Brazil, and in the latter part of 2019, I and my business colleague, Marco A. Moreno (Mr. Moreno)[1], flew to Brazil to meet with prospective investors as well as law firms and venture capitalists. On this trip to Sao-Paolo, Brazil, I observed and interacted with wealthy Brazilians, mostly entrepreneurs, who have taken an interest in learning more about investing their money in the United States in order to relocate here permanently. While these potential investors cited a number of reasons for their desire to move to the United States, some of the key reasons cited included the following: (a) highly regarded public-school systems; (b) safe neighborhoods and environments; (b) the high level participation in sports offered to children in grammar school; (c) and lucrative business development opportunities. A potential investor's personal motivations should be used to determine whether Regional Center EB5 investment, or Direct EB5 investment is the right path.

For investors primarily looking to provide opportunities to their children or loved ones, Regional Center investment is a highly beneficial choice. It allows investors to seek out permanent residence without being required to manage or operate a business in the United States. To give this some context, Mr. Abrao, a self-employed investor, stated that he applied for the EB-5 to become a Permanent Resident in order to pass the benefits along to his children. He indicated that he wants his children to avail themselves of the opportunities in the U.S. to grow. "I know it's a big investment," Mr. Abroa explained, "but I want a better quality of life, and want to give my children the opportunity to explore better options in the U.S. They may want to come back to Brazil one day and apply what they learned in the US a choice that they would make independently as grown adults."

For investors who seek economic opportunity in addition to a green card, Direct EB5 investment provides such opportunity. The business market in the US is very attractive for Brazilians who wish to start up their own enterprises. For example, Mr. Darthanhan de Oliveira (43), an engineer and owner of DH Ambiental in Sao Paulo, made his initial EB-5 investment and began his green card application by focusing on his business. Mr. Oliveira creates vertical landscaping for hospitals, commercial building and houses in Brazil, and he found that the United States has a need for more green projects. He is excited to explore this opportunity, stating: "Couple years ago, I was invited to go to Portland, OR to show our projects. We worked with the city and universities to create local projects. Brasil is way ahead of US in Environmental technology and researches, and I want to share our knowledge and expertise with the US market." Darthanhan and Jamil are among several Brazilian investors that are investing $900,000 and they both agreed that the value of their investment is "priceless" because they are investing in a better quality of life, education and safe environments for their families. The high exchange rate between the U.S. dollar and reais (Brazilian currency) did give these investors pause before investing, but ultimately it did not stop them. According to them, the amount that they will save by not having to pay for private schools, drivers and nannies to help with their kids in Brazil, will pay off in a long run. Mr. Abrao states:

> There is no doubt that we spend way more here in Brasil with schools for the kids. We don't have a good public-school system, so we are forced to pay for private schools since they start kindergarten. Our schools only offer half day schedule, that means, we have to have a nanny to stay with the kids the other half of the day, and it's very expensive.

Mr. Moreno, the attorney helping investors such as Darthanhan and Jamil make their dream a reality maintains that the increased amount from $500,000 to $900,000 will not stop wealthy Brazilians pursuing their dreams to move to the United States. When they weigh the cost of college tuition against the benefits of the EB-5 program, particularly for their children, the increased

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1 Marco A. Moreno is General Counsel and President to the Indiana Regional Center and, after spending years working at internationally based firms in their Global Mobility departments and handling EB5 cases, he now operates his own immigration law firm. I am the Director of International Relations & Vice President to the Regional Center, and I am a shareholder of the company.

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price is insignificant in the grand scheme of things.

Mr. Moreno agrees that, in spite of the increase in the minimum investment option from $500,000 to $900,000, a small percentage of Brazilians continue to be able to afford to invest their capital through the EB-5 program. Studies from the Global Wealth Report[2], the Credit Suisse Research Institute's annual publication on wealth around the world, which ranks nations based on the number of individuals with over one $1 million USD in assets, indicates in its 2019 Rise of the Millionaires that Brazil was the sixth largest country in the world, slightly behind the Netherlands, Germany, China, Japan and the United States. Specifically, in 2019, the number of millionaires in Brazil reached 259,000, an increase of 19.35% compared to the previous year, when there were 217,000 millionaires. By 2024, fiscal forecasts suggest that the number of Brazilian millionaires will grow by 23% to 319,000. The survey estimates that the richest 1% of the Brazilian population owns 49% of all family wealth in the country, which reaches $3.5 trillion. The result is even more impressive in the case of the so-called ultra-rich, who have assets above $ 50 million: Brazil had the second highest global rise, only behind the United States. While the USA gained 4,200 ultra-rich, Brazil saw the number rise by 860 people between 2017 and 2018.

Other key attributes of Brazilian investors, according to Mr. Moreno, is that they are very "hands on" investors. Mr. Moreno stated:

Although many prospective investors with whom we interacted would invest their capital in just about any viable project recommended by their representatives, most prospective investors asked a myriad of questions on how their funds would help the communities in which they would invest. Specifically, ***they wanted to know whether their investment create other business opportunities for U.S. citizens who developed a smaller business "across the street", such as a coffee shop, from the newly created EB-5 project.*** Some wanted to invest through a regional center but also potentially invest in their own business.

Others had interest in starting as soon as possible, so we discussed an E-2 but is it, an E-2 visa, is not available to Brazilians. Therefore, our discussion concentrated on getting a B-1 visa to participate in meetings of the EB-5 project while USCIS processed the EB-5 petition submitted through a regional center. What was also important was any potential return on their investment. The currency exchange between the U.S. and Brazil has a remarkable difference. Essentially, they are investing double based on the currency differentials, so projects with high potential returns were considerably attractive to them. In any event, what I learned even more, is that Brazilians are comical, have a great sense of humor, and love their race cars, which the Indy500 was very popular with them and of course Helio Castroneves being on Dancing with the Stars.

My overall impression is that they love spending money and having a great time on the condition that communities are being developed to create better job opportunities for the youth.

The turmoil of political scandals, public financing shortfalls, a massive economic decline, and a rising crime wave is leading high net worth individuals to look for safer havens even if they have to leave home to find them. Some 2,000 Brazilian millionaires left the country in 2017, according to The Global Wealth Migration Review, a joint report from Johannesburg-based market researcher New World Wealth and AfrAsia Bank.

According to the investment brokers that I interviewed, the number of Brazilians applying for EB-5 visas will continue to increase in significant numbers over the next decade. Brazilians are now just becoming familiar with the EB5 program and its benefits, and this market has attracted a lot of attention. We have been at the forefront in educating potential investors, as well as aligning with a myriad of legal professionals in Brazil who represent high net worth individuals. We are excited that IIUSA will host the first EB-5 Conference in Sao Paulo, this year, and will help Brazilians learn more about the program. I believe the number of EB5 filings will increase significantly in the next several years, *so the time to focus on Brazil is now.*

2 https://www.credit-suisse.com/about-us/en/reports-research/global-wealth-report.html

EB-5 Numbers and the COVID-19 Economic Recovery

CAROLYN LEE
FOUNDER, CAROLYN LEE, PLLC

Introduction: This article has two main parts and goals. The first part is an overview of the U.S. visa allocation system aimed to improve understanding of the EB-5 visa backlog problem. The second part catalogues possible solutions for increasing EB-5 visa supply. The U.S. economy will need to fire all engines to recover from COVID-19. EB-5 capital and job creation served the U.S. economy in the Great Recession, and it can be used for good effect now.

Overview of U.S. Visa Allocation

The Immigration and Nationality Act (the "INA") sets overall worldwide limits on immigration.[1] The INA also sets per-country limit for preference immigrants at 7% of the combined preference limits – i.e. 25,620.[2]

The worldwide family-sponsored immigrant annual limit is 480,000 and the worldwide employment-based immigrant annual limit is 140,000.[3] However, according to the 2018 Yearbook of Immigration Statistics, there were just over 1 million persons obtaining lawful permanent resident status.[4] This is because "immediate relatives" of U.S. citizens, including spouses, children and parents, are not subject to specific numerical limitations, resulting in the family-sponsored cap of 480,000 being pierced whenever immediate relative numbers exceed a certain threshold.[5]

The EB-5 visa category is allocated 7.1% of the employment-based annual limit of 140,000, or a minimum of 9,940 visas annually. As such, EB-5 immigrants comprise less than 1% of the overall annual immigration levels.

Operationally, the U.S. Department of State ("DOS") is responsible for administering the numerical limitations on immigrant visa issuances. The DOS publishes its monthly progress in the Visa Bulletin, available online and by e-mail subscription.[6]

The DOS Visa Office ("VO") subdivides the annual preference and per-country limits into monthly allotments. I think of this process as monthly "budgeting" of annual allocations. At the start of each month, consular posts report the list of qualified immigrant visa applicants in categories subject to numerical limits. This list is compared with the monthly visa availability for the next month. The visa availability reflects the monthly allotment and adjustments made based on several variables including return rates and USCIS's reported demand. Once visa availability is determined, numbers are allocated to the reported qualified immigrant visa applicants.

If the demand is within the monthly allotment, the visa category is considered "current," and marked "C" on the Visa Bulletin. But when the visa applicants total exceeds the monthly allotment, the category is considered "oversubscribed," and a visa availability "final action date" is established.[7]

The final action date under the Visa Bulletin's Chart A is the priority date[8] of the first qualified applicant who could not be allocated a visa number. For example, if there were 700 allocated for the month, the priority date of the 701st visa applicant establishes the final action date. Only visa applicants with a priority date earlier than the final action date may be issued a visa.

The Visa Bulletin also establishes "dates for filing" under a separate Chart B. This set of dates allows applicants who are not yet current under final action dates to assemble and submit required visa application documents to DOS's National Visa Center ("NVC"). Applicants with priority dates earlier than the dates for filing may so submit.

Note that USCIS has a more ad hoc process from the public's point of view for receiving adjustment of status applications (Form I-485) based on dates of filing. Adjustment of status applications are available to qualified applicants already in the U.S. and are analogous to NVC-processed visa applications. For example, in March 2020, USCIS allowed adjustment applications for EB-5 visa applicants based on dates for filing, but in April 2020, USCIS discontinued the allowance.[9]

Visa Bulletins establishing final action dates and dates for filing are published around the 8th of each month.

Quick Historical Perspective

Until May 2015, the EB-5 category did not

1 See Immigration and Nationality Act ("INA") Section 201 setting the worldwide preference limits at least 226,000 for family-sponsored immigrants and at least 140,000 for employment-based immigrants. The EB-5 visa category is the fifth preference category within employment-based preference categories.
2 See INA section 202.
3 See INA section 201.
4 See https://www.dhs.gov/immigration-statistics/yearbook/2018/table1.
5 The threshold number is approximately 254,000 because there is a statutory "floor" for the other family-sponsored categories of 226,000. Whenever the number of immediate relatives exceeds 254,000 and the other family-sponsored categories reach the 226,000 floor, the worldwide cap of 480,000 is pierced. For an explanation of this calculation, see https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works
6 See https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html.
7 Note: before 2015, the "final action date" was called "cut-off date."
8 A "priority date" is the petition filing date reflected on the petition receipt. See redacted example below:

NOTICE TYPE	
Receipt	
CASE TYPE	
I-526, Immigrant Petition by Alien Entrepreneur	
RECEIPT NUMBER	RECEIVED DATE
WAC[redacted]	November 19, 2019
PRIORITY DATE	PREFERENCE CLASSIFICATION
November 19, 2019	203 B5 I-526

9 USCIS process for following dates of filing is published on https://www.uscis.gov/visabulletininfo.

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have a final action date (or cut-off date) on the Visa Bulletin. However, 10,692 EB-5 visas were issued in Fiscal Year (FY) 2014,[10] up from 8,564 in FY 2013. That combined with the 12,453 cases pending at USCIS at the end of FY 2014[11] meant that EB-5 visa backlogs were inevitable though not appreciated at the time.

In May 2015, the final action date was May 1, 2013, understood as representing an approximate two-year backlog, three years if being conservative for age-out estimation purposes. With the regional center program scheduled to "sunset" on September 30, 2015 and requiring legislative reauthorization, there was hope, perhaps wishful thinking

in retrospect, for a legislative fix. Moreover, the new EB-5 backlog felt manageable particularly by comparison with the longer backlogs for Chinese applicants in other employment-based categories.

Any hope of a legislative fix was quashed the following month in June 2015 when Senators Chuck Grassley (R-IA) and Patrick Leahy (D-VT) dropped S. 1501, "American Job Creation and Investment Promotion Reform Act of 2015."[12] Restricting targeted employment area ("TEA") designations and increasing the EB-5 investment thresholds to $1.2 million for non-TEAs and $800,000 for TEAs, the bill created a massive investor rush to file under the then-current $500,000 TEA investment level.

FY 2015 ending September 30, 2015 saw a 30% increase in I-526 petition filings from FY 2014, hitting a historical high of 14,373.[13] This rate continued into FY 2016. For comparison, in FY 2013, there were 6,346 I-526 petition filings; in FY 2011, there were 3,805.

By the end of 2015, the EB-5 visa backlog was on the way spiraling upward, fed by filing surges throughout calendar year 2016 and into early 2017.

Visa Backlog Estimates and Provisos

The industry's best source for visa backlog projections, meaning when an investor filing today may obtain an EB-5 visa, is the Visa Office. However, as has been often stated publicly by the Chief, Immigrant Visa Control and Reporting Division, Charlie Oppenheim, these projections are subject to numerous moving variables.

The most recent data were presented at the IIUSA EB-5 Industry Forum in October 2019 featuring Mr. Oppenheim.[14] The estimates showed China mainland-born wait times of over 16 years, India at 6.7 years, and Vietnam at 7.1 years.

However, these projections' main qualification is that they reflect only estimates, not actual accurate counts, of USCIS inventory and limited visibility into USCIS operations.[15] For example, the August 2019 Visa Bulletin showed an Indian final action date of October 15, 2014, the same as China. But in the next month, the Indian final action date leapt 3 years to September 1, 2017. The VO's explanation was that there was a "dramatic change in the USCIS demand pattern" during July as well as an unexpected large number of returned July numbers. Similarly, while India was not expected to return to "current" status as of September 2019, it now appears India may become current in later 2020.[16]

USCIS's recently announced processing changes prioritizing cases by visa availability rather than "first-in-first out" will also change demand patterns, ultimately resulting in more visas being available for worldwide investors and fewer for countries already at the per-country limit.[17] When USCIS processing changes are added to the mix it would appear the business of projecting visa wait times will be extremely qualified if ventured at all.

Expanding EB-5 Visa Supply and COVID-19 Recovery

FY 2019 data show that I-526 petition filing numbers are down to 2011 levels.[18] With the United States on the verge of economic depression caused by COVID-19, now seems the opportune moment to improve EB-5 program oversight and bring this investment and job creating engine back to life.

Over the years, numerous credible solutions have been discussed within the immigration bar and EB-5 industry to increase EB-5 visa supply. Any or a combination may be considered by one or more Government branches. I focus here on legislative solutions because Congress has an opportunity now to seize EB-5 as a tool in post-COVID-19 economic recovery. I have seen and guided distressed projects at standstill during the Great Recession move forward with EB-5 capital.[19] EB-5 can do the same now for the post-COVID-19 U.S. economy.

Prior proposals for expanding EB-5 supply have roots in both precedent and legislative history. Notably in 2017, Senator John Cornyn (R-Tx) drafted a comprehensive EB-5 reform proposal that would omit derivatives from EB-5 visa limits.[20] There is good foundation for this approach under current immigration laws along with other legislative approaches discussed below.

1. **Exempting certain investment visas from annual visa limitations altogether for "compelling U.S. government interest."**

   Precedents exist for Congress exempting certain permanent resident applicants from annual limits. For example, in 1981

10 https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2014AnnualReport/FY14AnnualReport-TableV-PartIII.pdf.
11 See https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526_performancedata_fy2014_qtr4.pdf.
12 See https://www.congress.gov/114/bills/s1501/BILLS-114s1501is.pdf. See also https://www.leahy.senate.gov/press/leahy-and-grassley-introduce-legislation-to-improve_extend-job-creating-foreign-investment-program and https://www.grassley.senate.gov/news/news-releases/grassley-and-leahy-introduce-eb-5-reform-bill.
13 See https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526_performancedata_fy2018_qtr1.pdf.
14 See https://iiusa.org/wp-content/uploads/2019/10/IIUSA_Visa-Update-w-Charlie-Oppenheim-and-Roundtable-Discussion.pdf.
15 Of the grand total of 70,198 estimated visa demand as of October 1, 2019, 31,011 are Department of State estimates of applicants represented by petitions on file with USCIS. See also Zixiang Li v. Kerry (710 F.3d 995 (9th Cir. 2013) (Circuit Judge Reinhardt concurs with the affirmance of the lower court's ruling dismissing the complaint, but is critical of the USCIS "system that produced this error" where "the government erroneously gave these visas to individuals from other countries, many of whom had been waiting far less time for the same type of visa than their Chinese counterparts.").
16 Based on comments of Mr. Oppenheim during the Eb-5 Investor Program Public Engagement (March 13, 2020).
17 See Carolyn Lee's summary of the USCIS EB-5 Engagement at https://iiusa.org/blog/member-analysis-ipo-engagement-regarding-i-526-inventory-processing-change/.
18 See supra note 13.
19 See reference to EB-5 investment's role in the Great Recession's economic recovery at https://www.aila.org/advo-media/aila-correspondence/2017/aila-statement-house-judiciary-committee-hearing.
20 Senator Cornyn's 2017 EB-5 legislative draft is on file with author.

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amendments to the INA, Congress exempted investors applying for adjustment of status before June 1, 1978 from both the annual worldwide limit and the per-country limit.[21] Similarly, 75% of the family-sponsored "2-A" category for spouses and children of lawful permanent residents, is exempt from the per-country limitation by statute.[22]

Although not exactly on point with exemption from numerical limits, the INA exempts certain workers whose work is deemed in the U.S. "national interest" from otherwise applicable requirements for labor certifications ensuring no U.S. worker displacement.[23]

Finally, USCIS policy also allows expediting adjudication of an immigration benefit for, among other listed reasons, "compelling U.S. government interests (such as urgent cases for the Department of Defense or DHS, or other public safety or national security interests)".[24]

Infrastructure, healthcare, urban revitalization initiatives, STEM-research, public-private-partnerships, and distressed businesses would be ideal use cases for EB-5 visa exemption in the compelling U.S. economic interest post-COVID-19.

2. Omitting derivatives from EB-5 visa limits.

As mentioned, the concept of omitting derivatives from EB-5 numbers was written into the 2017 Cornyn legislative draft. This is significant because it shows a senior Republican senator on the Judiciary committee presenting the idea as a credible solution.

Moreover, exempting dependents from EB-5 limits is supported by solid legislative history underlying the current law. This argument was one of the bases for recent litigation challenging the DOS counting policy, *Wang v. Pompeo*.[25] Clear Congressional record shows that legislators creating the EB-5 program intended 10,000 investors to immigrate creating 100,000 jobs, not some-3,000 investors and their dependents. Also as argued by David Bier of the Cato Institute, the INA also requires dependents to be accorded the "same status and the same order" as the principal, which is transgressed when dependents are separated due to visa retrogression as can occur when they are counted separately.

These are compelling arguments to support a legislative fix. The same arguments support an executive fix as well. The President could direct DOS to revise its counting policy to omit derivatives as an alternative to Congressional action.

3. Borrowing or redistributing Diversity Visa allocation.

Providing EB-5 with a proportional 1/5th of the 55,000 allocated to Diversity Visas divided evenly among the five employment-based preference categories would provide 11,000 more EB-5 visas. Even merely adding the current statutory proportion of 7.1% of the employment-based worldwide limit would add 3,905 to the current EB-5 allocation. Reallocating the bulk or all of Diversity Visas to EB-5 would align with the economic needs of the day, particularly if earmarked for economic recovery needs involving infrastructure, distressed projects, rural and urban revitalization, and P3 partnerships.

4. Requiring unused EB-4 numbers to "fall down" to EB-5 rather than "falling up" to EB-1.

Since FY 2015, numerical limits for EB-4 have been reached. This means that there have not been excess numbers for allotment to other preference categories. However, if future EB-4 demand is less than supply, a provision requiring unused EB-4 numbers to fall down to EB-5 would ameliorate EB-5 visa shortage.

5. Recapturing unused EB-5 visas from prior years.

By some estimates, there are about 180,000 employment-based visas that have never been used. These visas may be "recaptured" for EB-5 use.

There are two notable Congressional precedents for recapture. The American Competitiveness in the Twenty-First Century Act ("AC21") recaptured 130,107 employment-based numbers that were available but not used in Fiscal Years 1999 and 2000.[26] Similarly, the REAL ID Act of 2005 recaptured 50,000 employment-based visas for Schedule A (healthcare) workers.[27] These laws recaptured unused employment-based visas after year 2000.

However, unused employment visas from before year 2000 that "fell across" to family-sponsored limits but were never used remain un-recaptured. The mechanics are complex. But the fact that there is a significant number of unused visas before year 2000 is uncontested.[28] The issue is more one of political palatability.[29]

6. Maintaining low supply but softening

21 See Pub. L. No. 97-116, 95 Stat. 1611, 1621.
22 See INA section 202(a)(4)(A).
23 See INA section 203(b)(2)(B) and 8 C.F.R. section 204.5(k)(4)(ii).
24 See USCIS Policy Manual, 1 USCIS-PM A.5; see also https://www.uscis.gov/forms/forms-information/how-make-expedite-request.
25 Wang v. Pompeo, No. 1:18-cv-01732-TSC (D.D.C. filed July 25, 2018). See also Carolyn Lee, Summary and Analysis of Litigation to Expand EB-5 Visa Capacity, Regional Center Business Journal, Vol. 6, Issue 2 (IIUSA, October 2018), appearing at https://issuu.com/iiusa/docs/iiusa-rcbj_oct2018-digital.
26 See Pub. L. 106–313 (enacted October 17, 2000) at https://www.govinfo.gov/content/pkg/PLAW-106publ313/pdf/PLAW-106publ313.pdf; see also https://travel.state.gov/content/dam/visas/Statistics/FY2001%20app%20D.pdf.
27 See Pub. L. 109-13 (enacted May 11, 2005) at https://www.dhs.gov/xlibrary/assets/real-id-act-text.pdf.
28 In short, the INA imposes a minimum or "floor" of 226,000 family-sponsored numbers. If this is not reached, for example, when there are fewer than 254,000 immediate relative visas used (to reach the family-sponsored limit of 480,000), then any employment-based numbers "falling across" are unused.
29 For example, when I raised the possibility of recapturing unused visas during a meeting hosted by Congressional staff in 2016, I was advised by the then-majority Republican counsel for the House Judiciary Committee that recapture was a political non-starter. However, Judiciary leadership and economic circumstances have changed since.

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the visa wait.

There are legislative fixes, short of expanding visa supply, that would reopen investor demand. EB-5 investors and family members awaiting visas could be afforded travel permits and employment authorization. These benefits are provided in the most recent EB-5 bill, S. 2778, sponsored by Senators Mike Rounds (R-SD), Lindsey Graham (R-SC), Cornyn and Chuck Schumer (D-NY)[30] representing bipartisan support for the concept.

S. 2778 also contains age-out protection for dependent children, critical for keeping families together and preserving immigration benefits for the children for whom the EB-5 investments are typically made.

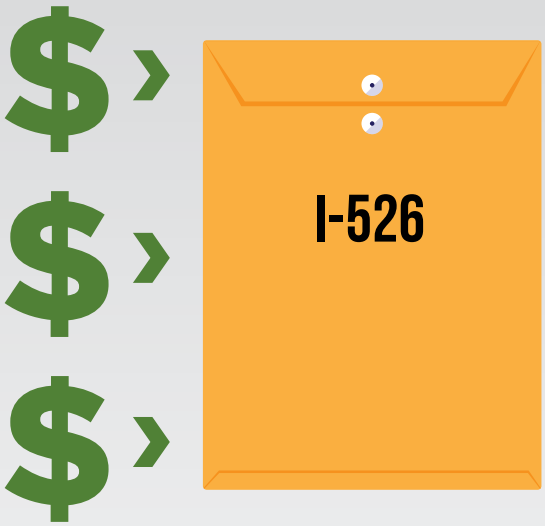
A similar fix is creating a nonimmigrant visa category for EB-5 immigrants to allow work and travel, or amending USCIS and DOS policy to readily permit B visitor visa extensions exempt from public benefits condition.[31]

Conclusion

There are many options Congress can consider increasing EB-5 supply for post-COVID-19 economic recovery. The above is not an exhaustive list. No doubt integrity reform must be a part of any expansion of EB-5 visa limits. Both are timely and needed.

30 See https://www.congress.gov/116/bills/s2778/BILLS-116s2778is.pdf.

31 See USCIS Policy Manual, 2 USCIS-PM 4.B.



IRREVOCABLE COMMITMENT OF INVESTMENT FUNDS:

Filing an approvable I-526 petition with installments of the investment requirement.

EDWARD BESHARA
MANAGING PARTNER, BESHARA PA

The new EB-5 Regulations imposed by USCIS on November 21, 2019 currently require a substantial increase for minimum investments in both TEA and non-TEA areas. The minimum investment for TEA or rural projects is now $900,000 US and for non-TEA or non-rural areas is $1.8 million US.

The Immigrant Investor Program, also known as "EB-5", was created by Congress in 1990 to stimulate the U.S. economy. Since the EB-5 program began, EB-5 investors grew accustomed to and were comfortable financially with the minimum investment of $500,000 US. But as stated, the minimum has now nearly doubled or quadrupled.

Consequently, the number of EB-5 investors filing EB-5 petitions with USCIS has dramatically decreased. The common complaint of EB-5 investors is the need for more time to lawfully source the additional increase of either $400,000 US or $1.3 million US.

In addition, many investors still prefer to invest in sought after urban locations rather than rural areas. Based upon current EB-5 Regulations defining TEA's, most EB-5 projects in urban areas will not qualify for a TEA designation.

EB-5 investors who are still interested in the EB-5 Residency program, are inquiring whether they can file their EB-5 petitions today with the $500,000 US old minimum or less than $500,000 US as a down payment in order to secure the filing date, but simultaneously acquire more time to pay the balance required by the new EB-5 Regulations.

The EB-5 Laws, Regulations and Policy Manual authorize an investment structure that includes a "process of investing." Reliance on this concept was verbally supported by Ms. Sarah M. Kendall, Chief of the Immigrant Investor Program Office (IPO), who addressed the IIUSA attendees at the 9th Annual EB-5 Industry Forum in Seattle, WA, in 2019.

The EB-5 Laws, Regulations, and Policy define "Capital" as including cash, cash equivalents, and secured indebtedness of the investor, such as promissory notes.

As of March 2020, the USCIS Policy Manual's discussion of "Investment of Capital" acknowledges there are many different ways in which a person can make a capital contribution of financial value to a business. The Policy Manual[1] describes the regulatory definition of capital as including cash, indebtedness secured by assets owned by the immigrant investor provided the immigrant investor is personally and primarily liable. The immigrant investor must establish that he or she is the legal owner of the capital invested. Matter of Ho, 22 I&N Dec. 206 (Assoc. Comm'r 1998).

1 USCIS Policy Manual, Volume 6, Part G, Chapter 2, Section A, available at https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2 (last visited at March 5, 2020).

The Policy Manual further confirms that qualifying capital can include a promissory note, provided the note satisfies certain criteria prescribed by the AAO's precedent decision Matter of Hsiung, 22 I&N Dec. 201, 204 (Assoc. Comm'r 1998). Under Hsiung, the immigrant investor's promissory note can constitute "capital" under the regulations if the note is secured by assets the petitioner owns. In addition, all of the capital must be valued at fair market value and the present value in United States dollars.[2]

Please note at the I-526 Petition filing stage, to be "invested or actively in the process of investing," the immigrant investor must demonstrate his or her irrevocable commitment of the required capital to the New Commercial Enterprise but need not establish that the full amount already has been transferred to the Escrow Account or New Commercial Enterprise. It is sufficient if the immigrant investor demonstrates that he or she is actively in the process of investing the required capital, with proof of the irrevocable commitment at the time of filing the I-526.

Based upon the foregoing definitions as explained in the Policy Manuals, Laws and Precedent Decisions, an EB-5 investor may commit EB-5 investment funds through a combination of cash and a Promissory Note. For example, the EB-5 investor may deposit and therefore irrevocably commit $500,000 US cash into the Escrow Account which, upon the Escrow Agent's receipt of the I-526 filing notice

2 Matter of Hsiung, 22 I&N Dec. 201, 203-04 (Assoc. Comm'r 1998), held security interests must be perfected to the extent provided for by the relevant jurisdiction, the assets must be fully amenable to seizure by a U.S. note holder, they must have an adequate fair market value.

Continued On Page 32

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from USCIS, can be transferred to the NCE and thereafter made available to the Job Creating Entity ("JCE"). If the investment requirement is $900,000 US, then the balance of $400,000 US can subsequently be transferred to the Escrow/ NCE account on the basis of a Promissory Note.

The implementing regulations at 8 CFR 204.6(j)(2) state that evidence of present and actual commitment of capital will show that the investor is actively in the process of investing.

Hence, capital can include the immigrant investor's promise to pay, as long as the immigrant investor is personally and primarily liable for the promissory note debt and his or her assets adequately secure the note. Any security interest must be perfected to the extent provided for by the jurisdiction in which the asset is located. The secured assets must be fully amenable to seizure by a US noteholder.[3]

In addition, under Matter of Izummi, to qualify as capital, nearly all of the money due under a promissory note must be payable within 2 years, without provisions for extensions.[4]

In summary, the EB-5 investor must first prepare and execute a promissory note in favor of the NCE pursuant to which the investor is irrevocably committed to pay the balance remaining on either $900,000 US or $1.8 million US, as the case may be, during the following period of two years.

In order to collateralize the EB-5 investors' irrevocable commitment for the full amount owed, the promissory note shall be secured by liquid assets and/or by a first priority security interest encumbering liquid securities accounts and/or deposit accounts owned by the investor that are maintained at a reputable and insured financial institution.[5]

The security interest in liquid assets and/or pledged securities and/or deposit accounts will be held by the NCE regardless of whether the secured liquid assets and/or securities and deposit accounts are domestic or foreign. The investor must tender to the NCE a properly perfected, first priority lien encumbering such assets and/or accounts under all applicable state, federal and local laws in force at the time in the domestic or foreign jurisdictions where such assets and/or accounts are physically and geographically located.

This process will ensure USCIS that the EB-5 investor has irrevocably committed the required capital for the total required minimum EB-5 investment amount. The cash deposit, coupled with the investor's promissory note fully secured by a properly perfected pledge of assets and/or securities and/or deposit accounts, satisfies the "process of investing" concept authorized by applicable EB-5 laws, regulations and policies.

This financing strategy will be new to the EB-5 industry and may in fact save the entire EB-5 investment market for developers and investors alike.

3 Matter of Hsiung, 22 I&N Dec. 201,203-04 (Assoc. Comm'r 1998), held security interests must be perfected to the extent provided for by the relevant jurisdiction, the assets must be fully amenable to seizure by a U.S. note holder, they must have an adequate fair market value.

4 Matter of Izummi, 22 I&N Dec. 169, 193-94 (Assoc. Comm. 1998). n 6e

5 Attorney Craig V. Rasile, area of practice Financing and Asset Securitization, and Partner with the law firm of McDermott Will and Emery LLC. Special appreciation for the contribution.

New IIUSA Introductory Membership Program Drives Substantial Membership Growth in Q1

LAURA KELLY
IIUSA MEMBERSHIP & INVESTOR MARKET DEVELOPMENT COMMITTEE
VICE PRESIDENT OF MARKETING, NES FINANCIAL

As the Chair of the IIUSA Membership & Investor Market Development Committee I am tasked with working with our committee members to grow the IIUSA membership base, expand upon member benefits and work with the association to grow its international presence.

All members of the committee have worked diligently over the years on various initiatives including the IIUSA Awards for Economic Advancement, Mentorship Programs, Industry Surveys and more. We do this because we are committed to the EB-5 industry and more importantly we understand the importance of having a strong and unified advocate in IIUSA.

With that being said, we identified cost as a main barrier to entry for many organizations contemplating joining. While the value of IIUSA is easy to see from the inside we realized that membership costs could be a large upfront expense before organizations have had an opportunity to appreciate the value IIUSA brings to the table.

Thus was born the Introductory Membership Rate which will allow new member organizations to join at a one-time 50% discount which applies to both regional centers and service providers. The goal of the program is to increase IIUSA membership which will broaden the demographics of the members, improve the association's ability to act as a representative of the industry and introduce new entrants into the market to the value of IIUSA.

The new rate was presented to the IIUSA Board of Directors during an in-person meeting in Seattle, WA and was met with support and approval. The members of the Committee are pleased to already see the positive results from this new introductory rate begin to materialize. Since late last year IIUSA staff has been given the green light to begin marketing the new Introductory Rate to perspective members. So far we have seen great success in the new program with 18 member organizations having joined in just the past few months. The Introductory Rate has been particularly effective in overseas investor markets with the association seeing recent growth in Vietnam, South Korea, India and Taiwan.

2020 is a critical year for the EB-5 industry, one likely to provide both challenges and opportunities. IIUSA is uniquely positioned provide the industry with leading education, advocacy and research and we encourage all industry stakeholders to support the association in this important year ahead. We look forward to welcoming many more new organizations on board in the year ahead and we will diligently continue our work to ensure that members receive the utmost value from their participation.

To discuss membership, the association or anything EB-5 related you are encouraged to email IIUSA at info@iiusa.org or give them a call at (202) 795-9667.

Thank You to Our Committee Members

Laura Kelly, NES Financial *(Chair)*
Edward Beshara, Beshara Global Migration Law Firm
Karla Bledsoe, Moreno & Villarrubia LLP
Eren Cicekdagi, Golden Gate Global
Matthew Galati, Green & Speigel LLC
Marko Issever, America EB5 Visa LLC
Eugene Lee, Texas Regional Center, LLC
Brandon Meyer, Meyer Law Group
Irina Rostova, Rostova Westerman Law Group PA
Rebecca Singh, Mona Shah Global
Mona Shah, Mona Shah Global
Darrell Sanders, American Life, Inc.
Kripa Upadhyay, Orbit Law
Abteen Vaziri, Brevet Capital

IMC EDUCATION &TRAINING

Certification in Investment Migration - Cert (IM)

Overview and Objectives

The Certification in Investment Migration is an intermediate level course designed to be studied over about 6 months. This practical introduction leads to a professional status with the IMC and is benchmarked at Associate level for those working in the IM industry. This is the first global Investment Migration course of its type - specially designed for those working in the industry. The course is taught online through our custom Learning Management System and includes 5 compulsory modules.

Target Audience

- All staff working in, allied to, or intending to work in the industry
- Advisors
- Agents
- Lawyers/paralegals
- CIP programme staff
- Regulators and government staff
- Compliance professionals
- Financial services practitioners
- Investment advisors

Course Format

- Delivered online via an easy to use, comprehensive Learning Management System (LMS)
- Accessible by a range of mobile and laptop technologies
- Around 6 months to complete the programme
- Comprehensive support materials including:
  - comprehensive module manuals
  - interactive e-learning modules
  - case studies and examples
  - specimen test questions

Entrance Requirements

Applicants should possess:

- Good educational background
- Ability to complete the readings and comprehend core principles in the English language

Assessment

The programme is assessed via:

- Two hour, online, multiple choice test
- 100 multiple choice questions to be answered

Certification and Designation

Individuals who successfully complete the programme will be awarded the 'IMC Certification in Investment Migration'. The certificate carries with it the designation Cert (IM) and leads to membership of the IMC.

Example designation - Carmen Swift Cert (IM); IMCM (Associate)

Professional Status

On successful completion of the Certification, Non IMC Members will become eligible for membership of the IMC at Associate level.

How to Apply

To apply for the Certification in Investment Migration course please go to investmentmigration.org/education to enrol online.

Rationale for Taking the Certification

The IMC Certification is a groundbreaking initiative designed to prepare participants for work in a new and vibrant industry where high professional standards, values and enhanced competencies are required. This certification will:

- ✓ Provide verifiable evidence of competency (knowledge, skills and behaviours)
- ✓ Provide a practical focus and benchmarking of your work in the industry
- ✓ Help you to reduce risk in your firm and enhance the firm's reputation
- ✓ Enhance your career prospects
- ✓ Keep you abreast of developments in the industry

Programme Structure / Course Format

Module 1

Citizenship and Residence by Investment

- ✓ Industry Overview
- ✓ Understanding Citizenship and Residence
- ✓ Ways of Acquiring the Status of Citizenship
- ✓ The Concept of Residence
- ✓ Development and Characteristics of Investment Migration
- ✓ Citizenship and Residence by Investment: Assessing the Arguments

Module 2

Ethics, Conduct and Professional Standards in Investment Migration

- ✓ Ethics
- ✓ Codes of Conduct
- ✓ Corporate Culture and Values
- ✓ Integrity
- ✓ Competence
- ✓ Transparency
- ✓ Marketing of Citizenship & Residence by Investment Programmes
- ✓ Practical Application of the IMC Code
- ✓ Whistleblowing

Module 3

Anti-Money Laundering (AML) and Financial Crime Prevention (FCP)

- ✓ Nature of AML, Terrorist Financing (TF) and Sanctions
- ✓ Terrorist Financing
- ✓ Sanctions
- ✓ Key International AML and Sanctions Bodies
- ✓ Suspicious Activity Reporting
- ✓ Concept of Risk Management
- ✓ Bribery and Corruption
- ✓ Cybercrime

Module 4

Investor Migration — Know Your Customer (KYC) and Customer Due Diligence (CDD)

- ✓ Generic KYC and CDD
- ✓ Customer Due Diligence
- ✓ Types of Due Diligence
- ✓ Politically Exposed Persons
- ✓ Customer Risk Rating
- ✓ CDD Gone Wrong – Regulatory Action
- ✓ Citizenship by Investment and Residence by Investment – the need for CDD
- ✓ Minimum Standards for Agents

Module 5

Personal Data: Management and Protection

- ✓ What is Personal Data?
- ✓ Principles of Data Protection
- ✓ Risks Associated with Inappropriate Management of Personal Data

WHAT HAVE YOU DONE FOR ME LATELY?

AARON GRAU
EXECUTIVE DIRECTOR, IIUSA

Trade associations are platforms for debate, resolution, and progress toward a common goal. We should assume, even hope, that not all association members have the exact same point of view. Their diversity, even within the same membership categories, is what creates the most pragmatic solution for everyone involved.

However, the platform must be accessible and once that is established, it creates a strong association that provides members with a qualified support staff and tools to reach understandings and consensus through discussion and cooperation.

Over the last twelve months, IIUSA made great strides asserting itself in critical legislative negotiations; representing the members' interests in the ongoing Regional Center statute reauthorization process.

The association reduced costs and redirected savings to develop a stronger platform. In particular, IIUSA will unveil a completely revised, more accessible, and user-friendly website in 2020. The new website will, among other things, streamline the association's communications with members and non-members, strengthen IIUSA's ability to leverage its grassroots advocacy, and improve members' overall experience within the association's "member portal."

This progress does and will speak for itself, but associations' platforms need more than just great staff and a few tools. So, just as Janet Jackson asked in the 1980s, all association members should always be asking, "What have you done for me lately?"

We have two answers (and counting…): a.) affinity agreements and b.) grassroots guidance.

Affinity agreements are not new to associations, but they are new to IIUSA. The premise is simple: In exchange for the opportunity to market goods or services to IIUSA members by licensing IIUSA's logo and leveraging its membership list, a vendor agrees to become a member of IIUSA and pay IIUSA a royalty fee. Goods and services are provided at a membership rate (a discount) and fees can be paid on a monthly or quarterly basis. Their amount can either be a flat figure or a percentage of the vendors' sales to IIUSA members.

The arrangement can become a significant source of non-dues revenue to IIUSA and a reliable marketing channel for participating vendors. Importantly, the goods and services are limited to those most important or desired by IIUSA members. So, in addition to being a benefit to the vendor and the association, affinity agreements become one more tool members can use on their association's platform.

IIUSA staff invested meaningful time exploring appropriate protocols and legalities of establishing and managing an "affinity program." Specifically, in an effort to maintain the association's tax-exempt status, IIUSA will only seek affinity relationships in which we license our

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intellectual property, i.e. our logo and brand. The association will not actively market an affinity partner's goods or services beyond efforts like facilitating their participation in IIUSA events or listing them as an IIUSA affinity partner. Marketing, tracking sales, and obviously service delivery is strictly the affinity partners' responsibilities.

Before exploring any affinity agreements, IIUSA staff also undertook a membership survey to better understand members' business interests and needs. For what goods and services would association members appreciate a discount? With what types of vendors will IIUSA seek an affinity agreement? Suggestions include: translation services, shipping, and travel-related services. If you have any ideas for an IIUSA affinity agreement, please let us know!

What else?

IIUSA is strengthening its advocacy capacity by educating and including its entire membership in direct advocacy work. In February 2020, to bring data, guidance, and lobbying communication strategies to all of IIUSA, the association partnered with the Congressional Management Fund (CMF.) According to its website, CMF "works directly with citizen groups to educate them on how Congress works, giving constituents a stronger voice in policy outcomes. The results are: a Congress more accountable, transparent, and effective; and an informed citizenry with greater trust in their democratic institutions."

CMF started as a not-for-profit dedicated to helping Congressional offices understand how to operate like the small businesses they are. Most new Members of Congress hire their closest campaign aides to lead their Washington, DC and District offices and many of those hires are experts in politics, but unaware of how to manage office budgets, human resources, lease agreements, or the myriad of types of communications incumbent on running a Congressional office.

As CMF engaged Congressional offices more and more and at particularly granular levels of management and communication, it found itself in the unique position of truly understanding Congressional office operations. Soon, other organizations and non-profits began asking CMF, "knowing what you know – what is the best way to communicate with Congressional offices and their staff?"

Since then, CMF began coordinating its information and understanding of Congressional office operations and collecting additional data to help non-profits effectively engage Capitol Hill. IIUSA's new partnership with CMF opens this information to our membership, allowing our professional lobbyists in turn to partner with a much broader swath of IIUSA members to impact our most pressing federal issues.

For example, based on surveys of Congressional staff, CMF articulates the most effective ways for non-profits to engage on their key issues. The chart below is just a small part of the type of data CMF develops. This information, in conjunction with their custom training and support, empowers our members and strengthens our lobbyists' hand.

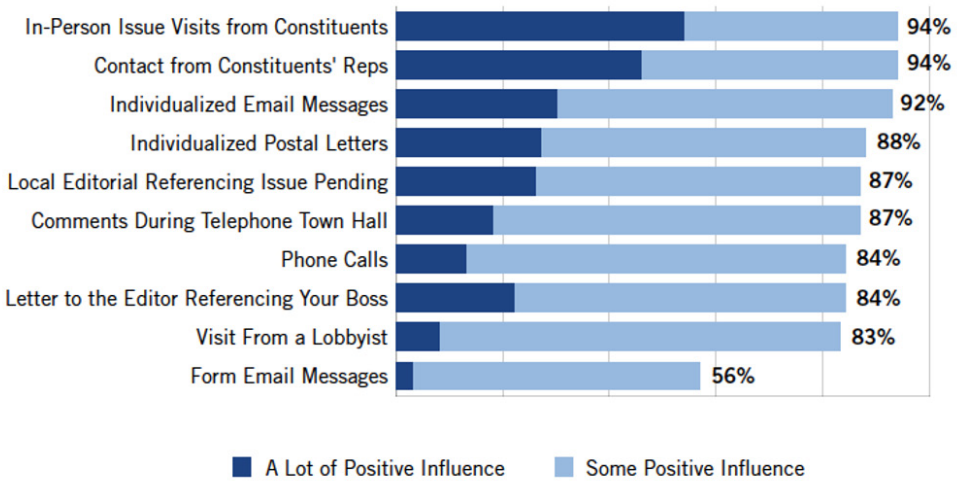
IIUSA can use this type of data to begin tailoring its advocacy work in ways it has not before. For example, as our lobbyists tackle specific negotiations and necessary in-person meetings on Capitol Hill, the association can train and support its members to deliver strategic messages through specific mediums to support our "boots on the ground;" persuade Congressional staff with information and in ways that matter most to them and their bosses.

IIUSA's partnership with CMF also includes opportunities for specific training. In particular, we encourage members to participate in periodic webinars discussing topics like: Advocacy Strategies and Relationship Building with Congress, Perceptions and Use of Social Media on Capitol Hill, and How to Create a Local Event That Will Attract a Member of Congress.

IIUSA, as a platform for debate, resolution, and progress toward the EB-5 industry's common goals is broad, well supported, accessible, and stable. During the last year, the association made inroads to new policy opportunities and fortified the systems we knew were working well. However, progress and success stalls without new tools, new ideas, and innovation. So, when members justifiably ask, "what have you done for me lately?" there are clear answers and useful tools.

As the association supports its members and their platform during 2020, I hope you'll leverage these news tools. Let us know what affinity agreements will be most beneficial. When its live, log on and use the association's new website and actively engage IIUSA and its partnership with CMF to strengthen your advocacy strategies and the association's ultimate effectiveness.

If your Member/Senator has not already arrived at a firm decision on an issue, how much influence might the following advocacy strategies directed to the Washington office have on his/her decision?



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EB-5 Investor Market Trends in 2018:

The Largest Markets and the Rising Stars for Raising EB-5 Capital

LEE LI
DIRECTOR OF POLICY RESEARCH & DATA ANALYTICS, IIUSA

Using the statistics that IIUSA obtained via Freedom of Information Act (FOIA) for I-526 filings by investor's country of, this data analysis explores seven trends in the EB-5 investor markets across the globe. Additionally, by comparing the year-over-year changes of I-526 filings between fiscal year (FY) 2017 and FY2018, this report also identifies the rising stars of the EB-5 investor markets where we saw the fastest growth of the demand for EB-5 visas during that time.

1. A Shifting Landscape of Market Shares Among Top Investor Markets

The most significant changes of the I-526 filings trends in FY2018 could be the fact that Chinese investors no longer accounted for the majority of the I-526 filings. The market share of the EB-5 investors from China was down by almost 50% year-over-year, from 77% in FY2017 to 39% in FY2018.[1]

In contrast, the market shares of I-526 filings from India and Vietnam jumped significantly, from 5% in FY2017 to 18% and 12% respectively in FY2018. Additionally, South Korea, Taiwan, and Brazil also doubled their market shares in I-526 filings between FY2017 and FY2018.

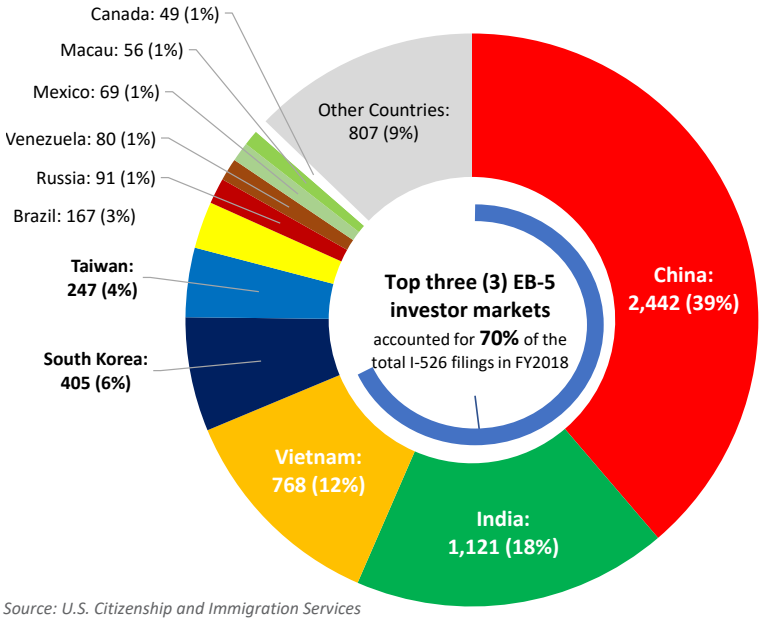
Overall, the three largest EB-5 investor markets (China, India, and Vietnam) accounted for about 70% of all I-526 filings in FY2018, while the six biggest markets (the top three countries plus South Korea, Taiwan, and Brazil) produced more than 83% of all EB-5 investors who filed their petitions between October 2017 and September 2018.

2. 72% Decline of China Market and 91% Growth of the Demand from Indian Investors

In FY2018, 2,442 I-526 petitions were submitted by Chinese investors, down by 72% from FY2017 when the number was more than 8,700. I-526 filings from China in FY2018 had the most significant year-over-year decline since FY2015 when the visa backlog issue began.

However, as Table 1 summarizes, the demand for EB-5 visas in India, Vietnam, South Korea, Taiwan, and Brazil all demonstrated a double-digit growth in FY2018. In particular, more than 1,100 India investors filed their I-526 petitions in FY2018, a year-over-year increase of 91%. Although investors from Vietnam started facing the visa backlog problem in May 2018, the market continued to grow by 47% in FY2018.

FIGURE 1: Number & Percentage of I-526 Filings by EB-5 Investor Market (FY2018)



Source: U.S. Citizenship and Immigration Services
Prepared by: IIUSA

TABLE 1: Number of I-526 Filings & Year-Over-Year Change by Investor's Country of Orgin (FY2018 & FY2017)

FY2018 Ranking	Country of Visa Chargeability (COC)	FY2018 I-526 Filing Count	FY2018 YoY Change	FY2017 I-526 Filing Count	FY2017 YoY Change
1	China	2,442	-72.2%	8,771	-19.9%
2	India	1,121	91.0%	587	65.8%
3	Vietnam	768	46.8%	523	29.5%
4	South Korea	405	88.4%	215	37.8%
5	Taiwan	247	35.7%	182	27.3%
6	Brazil	167	22.8%	136	-9.9%
7	Russia	91	160.0%	35	-44.4%
8	Venezuela	80	-13.0%	92	-3.2%
9	Mexico	69	7.8%	64	-17.9%
10	Macau	56	330.8%	13	550.0%
11	Canada	49	19.5%	41	7.9%
	Other Countries	837	3.2%	811	-4.6%
	Worldwide Total	**6,332**	**-45.0%**	**11,464**	**-13.6%**

Data Note: Margin of error: +/- 1.9%.
Source: U.S. Citizenship and Immigration Services
Prepared by: IIUSA

1 See Lee Li. IIUSA. "Analyzing Form I-526 Statistics by Investor's Country of Chargeability for Fiscal Year 2017: What is New and What it Tells Us?" https://iiusa.org/blog/wp-content/uploads/2018/11/Analyzing-I-526-Data-for-FY2017-Lee-Li-IIUSA-FINAL.pdf

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Furthermore, the EB-5 market in Russia bounced back from the decline in FY2017, with 91 new investors filing their I-526 petitions in FY2018, a 160% growth year-over-year. Additionally, for the first time in its history, Macau made it to the list of the top-ten EB-5 investor markets, producing 56 new EB-5 investors in FY2018 with an increase of 331% from FY2017.

3. $2.3 billion+ EB-5 Capital was Raised from 11 Largest Investor Markets

Based on the I-526 filing statistics, we estimate that more than $476 million EB-5 capital was invested by Indian EB-5 investors in FY2018, while at least $326 million was generated by qualified EB-5 investors from Vietnam.[2] Despite the annual decline in I-526 filings, investors from China still accounted for over $1 billion EB-5 investment in FY2018.

The 11 largest EB-5 investor markets (China, India, Vietnam, South Korea, Taiwan, Brazil, Venezuela, Mexico, Russia, Macau, and Canada) contributed at least $2.3 billion of new capital in FY2018 that has been invested in a variety of American businesses.

4. The Majority of EB-5 Investors were from OTC Countries.

As the visa backlog issue becomes increasingly severe, the demand for EB-5 in the China market tanked in FY2018. As Figure 2 illustrates, the number of I-526 filings by Chinese investors started to decrease in FY2015 when the EB-5 visa backlog started and reached its 8-year low in FY2018 with a stunning year-over-year decline of 72%.

On the contrary, the rest of the world (other than China, or "OTC" countries) experienced a growth of 43% during the same time period. With 3,860 I-526 filings from OTC countries in FY2018, non-Chinese investors represented the majority of the new investors participating in the EB-5 Program for the first time in the last 10 years.

5. EB-5 Markets in India and Vietnam Continued Their Exponential Growth.

Among all OTC countries, India and Vietnam show an exponential growth since FY2009. In FY2018, as Figure 3 illuminates, these two EB-5 investor markets together accounted for nearly 1,900 I-526 filings, which represents at least $800 million in new EB-5 investment. Furthermore, the growth of the EB-5 markets in India and Vietnam have been even more robust in recent years. In fact, the annual increase of the number of I-526 filings by Indian investors was merely 25% between FY2009 and FY2014, but its annual growth was 87% between FY2015 and FY2018.

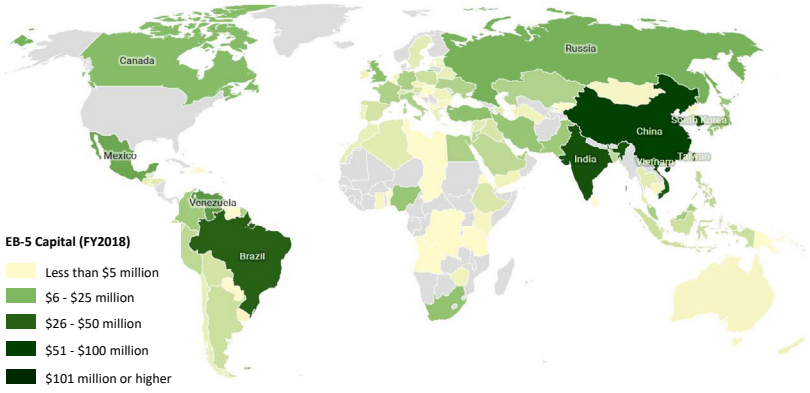
6. 73% of the I-526 filings in FY2018 Came from Asian Countries

2 The estimates of EB-5 investment at this section are based on $500,000 investor per I-526 filings with an approval rate of 85% for I-526 petitions.

Continued On Page 41

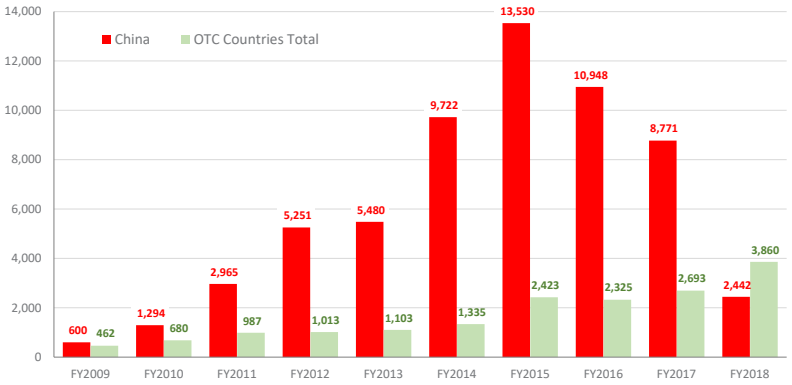
MAP 1: EB-5 Investments Estimates by Investor's Country of Orgin (FY2018)

EB-5 capital investment estimates are based on $500,000 per I-526 filing in FY2018 with 85% approval rate



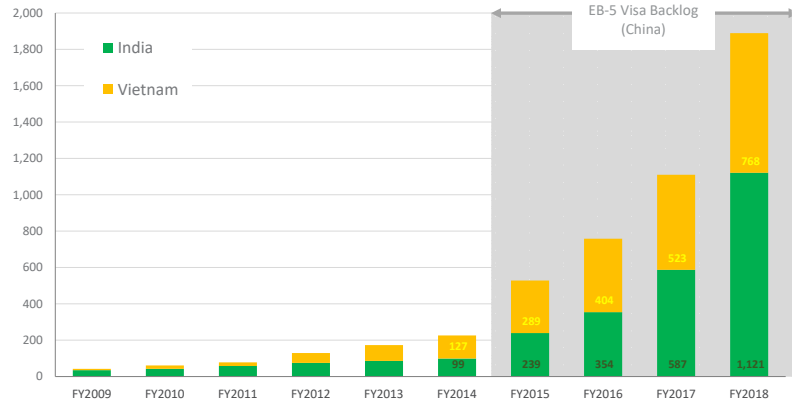
Source: U.S. Citizenship and Immigration Services
Prepared by: IIUSA

FIGURE 2: I-526 Filings by Fiscal Year, China vs. OTC Countries* (FY2019-2018)



** OTC Countries: All countries of chargeability other than China.*
Source: U.S. Citizenship and Immigration Services
Prepared by: IIUSA

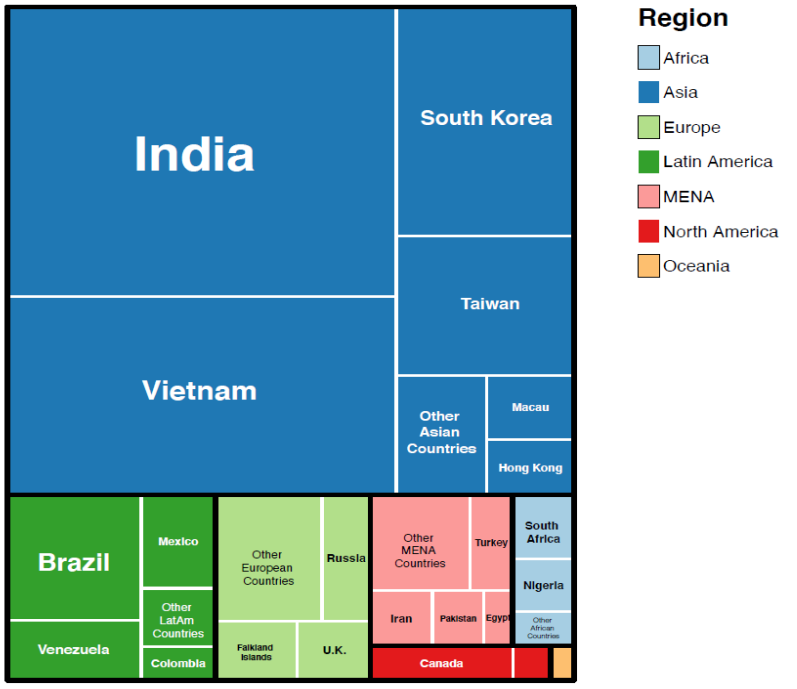
FIGURE 3: I-526 Filings by Fiscal Year, India vs. Vietnam* (FY2009-2018)



Source: U.S. Citizenship and Immigration Services
Prepared by: IIUSA

FIGURE 4: I-526 Filings by Region & Regional Top Markets (FY2018)

**excluding China*



Source: U.S. Citizenship and Immigration Services
Prepared by: IIUSA

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Figure 4 visualizes the trends of new EB-5 investors by region as well as the largest investor markets in each region (excluding China) in terms of I-526 filings in FY2018.[3] Asia remained the largest region in producing new EB-5 capital, accounting for 2,753 I-526 petitions that were submitted in FY2018, 73% of all I-526 filings during that year.

In addition, 384 (or 10%) I-526 petitions were filed by investors from Latin American countries, led by Brazil, Venezuela, Mexico, and Colombia. While the top regional EB-5 investors markets in Europe were Russia, Falkland Islands, the United Kingdom, the other European countries in total also represented a fair share of new EB-5 investors in FY2018. The list of the biggest markets in MENA (Middle Eastern and East African) countries included Turkey, Iran, Pakistan and Egypt.

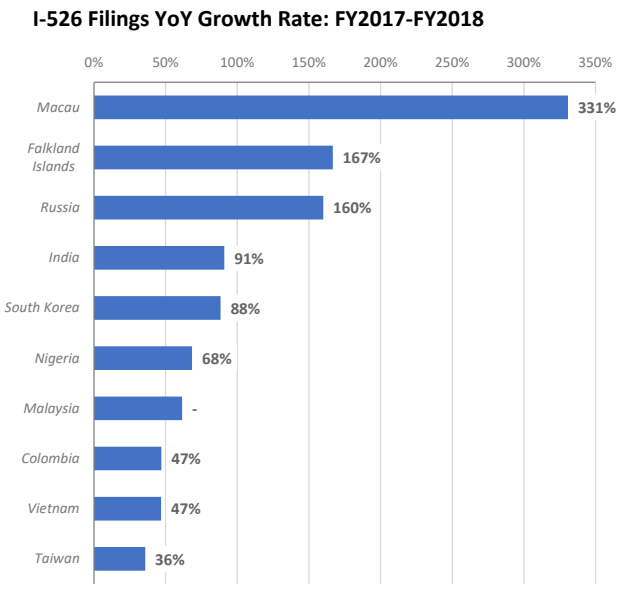
7. Rising Stars: Macau, Russia, Nigeria, Malaysia, Falkland Islands, Colombia ...

With an annual growth of 331% from FY2017, Macau was leading the list of the fastest-growing EB-5 investor markets in FY2018. Falkland Islands was also a rising star in the EB-5 marketplace – the country did not have any EB-5 investors until FY2017, but produced 48 investors in FY2018 with an outstanding growth of 167% year-over-year. The EB-5 market in Russia also experienced a triple-digit growth between FY2017 and FY2018 at 160%.

Additionally, new members of the FY2018 EB-5 rising starts list also included Malaysia and Colombia, the two fast-growing EB-5 investor markets with an annual growth in I-526 filings of 62% and 47% respectively.

FIGURE 5: Ten EB-5 Investor Markets with the Biggest Growth, FY2017 - FY2018

	I-526 Filings		
Investor Markets	**FY2018**	**FY2017**	***YoY Growth***
Macau	56	13	331%
Falkland Islands	48	18	167%
Russia	91	35	160%
India	1121	587	91%
South Korea	405	215	88%
Nigeria	32	19	68%
Malaysia	21	13	62%
Colombia	25	17	47%
Vietnam	768	523	47%
Taiwan	247	182	36%



Data Note: Margin of error: +/- 1.9%.
Source: U.S. Citizenship and Immigration Services
Prepared by: IIUSA

FY2018 has proven to be a year of changes. While the largest EB-5 investor market experienced a year-over-year decline, the demand for EB-5 visas grew consistently in other markets across the world. In particular, not only have alternative investor markets such as India, Vietnam, South Korea, Brazil and Taiwan all demonstrated encouraging annual growth, but also new markets such as Macau and Falkland Islands presented new opportunities for raising EB-5 capital.

3 The number of I-526 from Chinese investors was so high that it distorts the trends of the rest of investor markets.

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EB-5 INDUSTRY BY THE NUMBERS

03/21/2020: USCIS started to apply a new processing approach for adjudicating Form I-526 cases that is based on visa number availability instead of first in first out.

$1.8 Billion: The estimated amount of EB-5 investment raised in fiscal year 2019 based on the number of I-526 filings that USCIS received between October 2018 and September 2019.

165 Days: The advancement of EB-5 final action date for Chinese applicants on the March Visa Bulletin, the largest one-month advancement since May 2015 when the EB-5 visa backlog began to impact investors from China.

91% and 47%: The year-over-year growth of I-526 filings from India and Vietnam in FY2018. These two markets together accounted for nearly 1,900 high-net-worth individuals who invested in the EB-5 Program during FY2018.

20: New members joined IIUSA in the first quarter of 2020. The year-over-year new membership growth of your trade association was 400% in Q1, 2020 - Thank you for your support!

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