

THE EB-5 VISA AND THE COMMERCIAL REAL ESTATE INDUSTRY

By Bob Brown

Background

The EB-5 Visa, also known as The Immigrant Investor Program, was enacted into law by Congress in 1990. Its purpose, according to the U.S. Citizenship and Immigration Service (USCIS) is to, “Stimulate the U.S. economy through job creation and capital investment by immigrant investors by creating a new commercial enterprise or investing in a troubled business.” There are 10,000 EB-5 visas available annually. The visa offers a Green Card and eventual U.S. citizenship to an immigrant investor (and his immediate family) who fulfills certain criteria.

The immigrant investor is required to make a capital investment of either \$1,000,000 or \$500,000, if the investment is in a Targeted Employment Area (TEA). A TEA is defined as “A rural area or an area that has experienced high unemployment of at least 150 percent of the national average.”

The commercial enterprise must “create or preserve” ten new full-time jobs within two years, excluding the investor and his family. When first passed into law, the immigrant investor was required to create a new commercial enterprise, but under the Pilot Program added in 1992, the investor has the option to invest in a “Troubled Business,” or into a “Regional Center” (a third party managed investment vehicle) which will create the required new jobs.

The EB-5 Program became a particularly valuable mechanism during the 2008 Financial Crisis when real estate developers were unable to get commercial loans. Without a way to raise capital, developers sought out wealthy foreign investors around the globe.

The Program needs to be reauthorized periodically by the president. After expiring in September, President Obama extended it until December 9, 2016. In essence, the program is now in limbo and awaits a decision by President Trump (more on this later).

Some Examples of EB-5 Regional Center Projects

To focus on just a few cities, we can see the impact of the program. With the Chinese in the forefront (eighty percent of EB-5 applicants in 2015 were from China), those foreign investors are helping reshape the New York City Skyline and the city of Miami, while funding derived from the EB-5 program helped rebuild the Las Vegas economy mainly through investments in new casino projects.

In 2013 the first EB-5 project, the Downtown Grand was completed. This was soon followed by the SLS, formerly the Sahara Hotel and Casino. Other immigrant investments went to the Lucky Dragon Hotel and Casino, the Dynasty Hotel and Casino, the Clarion Hotel, and Resorts World Las Vegas.

Major projects in New York that have been approved for EB-5 funding include the Hudson Yards Redevelopment Project being built by the Related Company, a development that will cost about \$20 billion when completed. An impressive \$600 million was raised from Chinese investors who will soon be eligible for U.S. citizenship.

Other efforts include the George Washington Bridge Bus Terminal and the New York wheel.

Acadia Realty found EB-5 investors who pumped \$200 million into their 1.8 million square foot Brooklyn project known as City Point. EB-5 funds account for 42 percent of the project's cost.

Silverstein Properties has utilized the program in the construction of the downtown Four Seasons Restaurant.

Even Wi-Fi projects, such as in the New York City subway system, have been financed through EB-5.

In Miami, Rodrigo Azpurua's Riviera Point Development Group used the program to build a 73,000 square-foot office park in 2013. Those foreign investors who financed it now hold U.S. Passports. Quoted in a January 2017 article in Forbes, Azpurua says, "We saw there was a market need for office space there, but there was no capital. The city wasn't supportive of loans and vacancy was dropping, so we looked for an alternative way to finance deals."

Riviera's latest project using EB-5 is the 155 room Radisson Red Hotel (currently beginning construction) adjacent to the Miami airport. About half of the funds for the project are from immigrants.

Using the EB-5 program, the development firm, Stambul, constructed Miami's Langford Hotel. The firm is now reconfiguring Miami's old, historic post office into an upscale food court.

Company founder, Danial Giraldi, quoted in the same Forbes article states: "We do some due diligence to know who the investors are. They have to meet certain requirements by law, so the U.S is supposed to know where the funds are coming from...As a project developer, this immigration program works as a means for project finance because if you want to find rich people who want to put money to work in the U.S., then this is the way to find them." Giraldi adds, "But if you want to be altruistic about it, the investor visa is a good way for communities to attract capital that creates jobs rather than capital that goes into an empty penthouse."

Criticisms

While the solid majority of business professionals, developers and economists applaud the benefits of the program, there are serious criticisms to consider.

This, according to a March 2016 article in the New York Times: "The easiest way to gain entry into the United States is not to walk across the border in the dead of night. It is to write a check." The idea of "buying" U.S. citizenship is unnerving to some.

Dianne Feinstein, Democratic senator from California states: "I don't believe that America should be selling visas and eventually citizenship...The right to immigrate should not be for sale."

Other critics point to numerous cases of fraud uncovered by federal investigators, and risks to national security. Further, according to The Times, federal agents have discovered applicants with possible ties to Iranian and Chinese intelligence, and learned that international fugitives who had laundered money had "infiltrated the program."

While the Obama administration was generally favorable to EB-5, and many senators such as New York's Chuck Schumer are supporters of the program, criticism comes from both sides of the aisle.

"It's no secret that the program has long been riddled with corruption and national security vulnerabilities," said Charles Grassley, Republican senator from Iowa.

Developers and other supporters of the EB-5 program have spent millions of dollars to oppose legislation proposed by Senators Grassley and Senator Leahy of Vermont to curtail the program.

In a statement released in August, a Government Accountability Office report found that the agency could not be sure that money used for the visas was not coming from “the drug trade, human trafficking or other criminal activities.”

In 2013, Department of Homeland Security officials suggested that the EB-5 Regional Centers program should end. “There are no safeguards that can be put in place that will ensure the integrity of the regional center model.”

An analysis by the (USCIS) found numerous fraudulent documents when it conducted their investigation. In response, officials at the agency closed 35 “troubled” regional centers since 2014.

But there are other philosophical opponents of EB-5. On the political right, there is a small percentage of anti-immigrant activists who oppose programs which serve to bring more immigrants into the country, even investors who can potentially help the economy and create jobs.

On the political left, there are some who argue that the program is another example of America favoring the rich at the expense of the poor – only this time it involves citizenship. They claim that the one-percenters from abroad are being unfairly favored.

Finally, an article in The Real Deal alerts us to another shortcoming concerning how EB-5 has been managed: “The program is falling far short of its own stated goals,” NYC officials state. Referencing a federal government report from October, the officials assert, “Only 12 percent of EB-5 investment goes to areas with at least eight percent unemployment, a problem that has been exacerbated by gerrymandering of the TEAs that are supposed to bring money into struggling communities.”

The gerrymandering occurs much the way it does every ten years by congress to apportion districts to the benefit of the political party that holds power. In this regard, TEA geographic boundaries are sometimes drawn by including large poverty ridden areas attached to a much smaller affluent one. In this scenario, when a development or a business is approved, the funds are channeled into the upscale area, rather than what it was originally envisioned for – the poorer districts.

How Will the Trump Administration View the Program?

Since his election, President Trump, has not spoken about EB-5, so we can’t be sure what his sentiments are.

Although considerably less sympathetic to immigration than any of his predecessors, the president has consistently hammered home that he will be a jobs creating president. During his recent address to a joint session of congress, he spoke favorably of a merit-based immigration policy – this would seem to indicate that he may take a sympathetic view of EB-5.

In fact, the Trump family (and his son in law, Jared Kushner) actually used the EB-5 program to build the fifty-story, luxury residential building, The Bay Street Tower in Jersey City. Fifty million dollars for the project came from foreign investors with a safe haven for their money and U.S. citizenship on their minds.

Nevertheless, for all its flaws (outlined above), and in need of reform, the EB-5 program has been a job creating machine.

Given Trump’s own past use of the program, his promise to be the “jobs president” and his ties to the commercial real estate community, this might well be one immigration program that survives under his administration.

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