

**Testimony Before the U.S. Senate Committee on the Judiciary
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on

**“Re-authorizing the EB-5 Regional Center Program:
Promoting Job Creation and Economic Development in American Communities”**

Mr. Chairman and Committee members, we are gathered here together to discuss what I think is a dysfunctional portion of a silly little program, which should be allowed to wither and die.

As background, the INA in its employment-based section, permits aliens to secure greencards by investing various sums in this nation.

The most troublesome part of this program relates to the regional centers (largely private-for-profit entities) that identify investments in the U.S. economy that can provide greencards to aliens providing half million dollar level, short-term investments. That sum allows the alien and his family, after two years, to secure a full set of greencards. The other part of the program permits the issuance of green cards for full million dollar investments, without reference to the regional centers. These can be made anywhere in the nation.

It is the regional center part of the program which is up for re-authorization.

My conclusions about the program come after examining the regional center part of the immigrant investment program, from the outside, fairly carefully, and after being retained by the government of Australia, some years ago, to evaluate its somewhat comparable program, from the inside. There are seven reasons for this view:

1. The program is placed in a very odd and non-helpful bureaucratic location for the stimulation of international investment in the U.S.

2. Its scale is all wrong, we are giving too much away for too small an investment. Raising venture capital at half a million dollars a tranche is, to say the least, inefficient. The regional centers, with their half-million schemes, essentially undercut the more sensible million dollar part of this overall program.

3. Such programs, if we have them at all, should be about creating business entities, not passive investments; it should be about creating real jobs, not elaborate calculations about the indirect creation of jobs.

4. The program, by its nature, attracts sub-par investments, and often scandals. Perhaps that is one reason, it has failed, year after year, to reach its legislative goal of 10,000 investment visas.

5. The regional center program is inherently clumsy, and the program is too filled with middlemen, both private and public.

6. The program, which has had more than its share of scandals, should NOT be streamlined; if anything, it needs more checks and balances, not fewer of them as the US Immigration and Citizenship Services is currently suggesting.

7. Further, immigration visas to this struggling, over-populated nation should be regarded as precious, and given only for really significant reasons; to genuine spouses of genuine U.S. citizens, to really talented aliens (such as those in the first employment preference category), and to actual refugees fleeing from real dictators. In this program they go to people who have nothing to offer to the U.S. except a two-year investment of half a million dollars, to people who could not get a visa in any other way, and to people whose financial contribution to the U.S. *is actually less* – according to the Federal Reserve – than the average (mean) net worth of all American families in 2007.

Finally, half a million dollars, in 2011, is not as significant as it used to be, when this program was started twenty years ago.

Bear in mind that the basic deal, with the regional centers, is that all members of the immediate family get permanent green cards in exchange for a two-year investment of half a million dollars; with a family of five that's \$100,00 each. Then the money can be withdrawn.

1. The misplaced program. Let's say that water safety is a good idea, and let's acknowledge that someone dying a preventable death in Great Salt Lake is just as dead, and just as mourned, as someone dying a similar death off a Florida beach. Preventing maritime deaths is a good thing, so is increasing foreign investment. That does not mean that the US Coast Guard is best positioned to run a water safety program in Utah, its nearest assets being a thousand miles away.

Similarly, if our goal is to increase foreign investment in the U.S., there are lots of government agencies and programs – in Treasury, in State, in Commerce – that are far more sophisticated about investment matters, and far better placed to encourage investment – in significant hunks – than the USCIS. Further a relatively minor official in a major Chinese or Swiss bank can probably generate more investment in the U.S. in a single memo, than USCIS

can, huffing and puffing, all year long. A single 32-year-old executive at Goldman Sachs, similarly, could, by opening an attractive IPO to foreign investors, bring more money from overseas than all those EB-5 immigrant families, with their (temporary) half million contributions.

2. The scale is wrong. As I have written in a research paper that the Center for Immigration Studies is about to publish, foreign investment comes to the U.S. routinely, in large volume, with minuscule help from EB-5. In 2010 total foreign investment in the U.S. increased by 1.9 *trillion* dollars,ⁱ according to the U.S. Department of Commerce. My estimate (based on the investors' greencard applications filed two years after the first investment) is that EB-5 investment that year was about \$191 *million*ⁱⁱ, and that was a well-above-average year for the program. So, for every \$100.00 of increased foreign investment that year, the EB-5 program contributed *about one penny*.

I have heard that using a much more wobbly statistical base (the initial applications of would-be immigrant investors) USCIS is telling journalists that the level of investment in the just concluded fiscal year (2011) was at the \$1.2 billion level. For the sake of argument let us accept that estimate, but even this (probably inflated) number would bring the amount of increased foreign investment up to the level of only *six cents for every one hundred dollars*.

If we do continue such a program, we should, as the other English-speaking countriesⁱⁱⁱ do, require much larger investments than the half million now prevailing.

Needless to say, because the regional centers part of the program requires only half a million dollars, the other part of the EB-5 program where the basic level is one million, has just about become a dead letter.

3. Passive investments or the creations of jobs and businesses. The emphasis in the current regional center part of the EB-5 program is all wrong, it is on making passive investments through these centers for a two-year period, and getting greencards for the investor's family at the end of that time.

This is not a program that seeks to bring entrepreneurs from overseas. Similarly, early in its life the program called for the creation of ten full time jobs for each investment, with the jobs going to citizens and greencard holders who were not members of the investor's family. More recently the jobs do not need to be identified as such, they can be calculated as "indirectly created" by just about any "reasonable" methodology the regional center can conjure up.

The actual creation of businesses and jobs should be the thrust of the program. We also should be realistic about the requirements – what kind of investment – in the real world – can create ten full-time jobs with an investment of \$500,000? Maybe a small restaurant in a small city. But do we really want more little start-up restaurants? Clearly there are basic activities such as farming, mining, and manufacturing where \$500,000 could not possibly create ten

full-time, year-around jobs.

4. Too many questionable projects. As a one-time publicist, both on Madison Avenue and in the greyer confines of government offices, I have often wondered why the EB-5 program, so heartily promoted by USCIS, has not issued a series of press releases about its success stories, or why that agency has not, at least, sponsored an outside evaluation of its own program. (I am, however, expecting one of my witness colleagues to provide a ski-slope success story today.)

The lack of internal research on the program was confirmed in a recent *Los Angeles Times* article which stated: "The USCIS, by its own admission, has failed to closely track the flow of EB-5 money, how the projects are being sold to investors or whether the projects were successful..."^{iv}

Certainly if you are in the business of increasing investment in America over the last 20 years your program must have found some new wonder drug, brought year-around minor league sports to some sports-free small city, converted a dying coal town to an artist's and tourists' center, or done something along one of those lines. That there have been no press releases like these suggest either PR dullness or, more likely, nothing to publicize.

On the other hand, if you pay a little attention to news reports on EB-5 programs, as I have done, you encounter myriad examples of EB-5 projects that have gone wrong, in one of many ways. Here is a small and recent sample:

- o there was a bankrupt dairy farm in South Dakota, where 16 of the 17 jobs created by EB-5 funds, albeit briefly, turned out to be held by illegal aliens^v;
- o a convoluted effort, eventually rejected by USCIS, to use some legitimate money and some questionable (Iranian) funds to revive the old Watergate Hotel in Washington^{vi};
- o a scheme that was so lacking in integrity, in the Mojave Dessert in Central California, that the sponsoring EB-5 regional center itself was terminated^{vii};
- o similarly, a mixed-use real-estate development, in El Monte, California, with a highly controversial set of developers, has collapsed taking down another EB-5 regional center^{viii}.

There are many more.^{ix}

There is a built-in reason for these EB-5 failures. There is, in the broader world, a wide spectrum of investment opportunities.

There are the topnotch ones, which are known to only the innermost of the insiders. Then there are those more publicized good deals in which major Wall Street outfits jostle each other to get a fraction of the play. Further down the ladder, there are other opportunities that can find the needed financing without going beyond familiar sources of capital. And then there

are truly marginal opportunities in which the promoters have to struggle to get any money at all, and are willing to go to the extremes, in this case of: accepting a complex government program and limiting their take to half a million per investor.

It is these bottom-of-the-barrel investment opportunities that predominate in the EB-5 program. If you cannot get money for your new business, except by offering a greencard to every member of the investor's family, maybe it's not a very attractive business.

It is no wonder that the Congressional ceiling of 10,000 EB-5 investor visas has never been approached, let alone filled. In some there were only a few hundred applicants; those numbers have risen recently, however, as USCIS has beaten the drums for this program.

5. Too many middlemen. There are too many private and public sector middlemen in the regional center program. Meanwhile, in the main-line, million-dollar investment program the whole thing is much simpler, but it is not used much because a half a million requirement beats a million dollar requirement every time. So why not let the regional center program die? That would automatically double the size of the initial investment, and remove most of the middlemen entirely.

I am not philosophically opposed to certain sensible governmental interventions in markets – such as the creation of the social security and Medicare programs – but I must point out to my friends on the right that eliminating the regional center part of this program should be praised by all thinking free marketers.

I think that such de-regulation makes perfect sense, though it would probably reduce the number of visas issued, and probably reduce the amount of money to be raised by this program. The reduction of EB-5 visas, by the way, would allow those visas to flow into the other employment-based categories, which is not a bad thing. Perhaps pending legislation could be amended so that any EB-5 visas not used would go directly into the EB-1 category for really skilled people.

6. Streamlining is NOT the answer. Faced with massive disinterest on the part of potential investors, the new leadership of USCIS has taken a number of steps to promote the EB-5 program, and to modify its administration to attract more successful applicants.

One of the ways to get more successful applicants is to make it more likely that the staff of USCIS says “yes” to the applications than it has in the past. The rarely discussed problem, for the agency's leadership, is that the staff has been much more likely to reject EB-applications than those it sees elsewhere in the agency's programs.

USCIS is an agency that loves to say yes to aliens, whatever they want. In fact, as we show in the attached table, the agency said “no” to less than 1% of the time to one major kind of application, in FY 2009, and said “no” about 8% of its time to all agency forms in FY 2011.

(Prying data out of USCIS, particularly on its “no” decisions, is very difficult.)

In contrast, the staff said “no” to 11, 14, 17, 31, and 45% of the time on various EB-5 applications. A small number of these denials, 28 in FY 2010 were appealed to the DHS review panel, the Administrative Appeals Office, and *all* 28 of the denials were upheld. In short, the staff found a lot *not* to like in the EB-5 applications.

Rather than focusing all its efforts on raising the quality of the applications, USCIS has floated a “reform” program^x that is designed to re-shape the decision-making to get more “yeses” out of the system. There will be (or are) new staff members at the bottom of the decision-making process, and a new command structure within the organization.

Further, in an unusual move, under certain circumstances people who want to open regional centers will be given a right to talk directly to USCIS staff about their proposals. It is often not realized that except in certain categories, USCIS staff makes all their decisions on paper (or computer) records, and rarely see any applicants face to face. If you are a citizen, for instance, and you want to bring to the US a relative dying of cancer in some medically-under-served part of the globe you are not allowed to talk to a USCIS decision-maker, but if you want to create a regional center – why there’s a partial *open sesame* waiting for you.

Given the unusually large number of apparent problems with these applications, as shown by the unusually high number of staff-level denials, as reflected in the table, USCIS should be increasing its checks and balances in this program, not reducing them.

7 Let’s assume that the aliens arriving as EB-5 immigrants have only the half million dollars with them, if that is the case letting them into the country – because they have money -- actually *lowers* the average net worth of American families.

This is hard to grasp, but the average (that’s the mean) net worth of an American family in 2007 was \$556,300, according to the Federal Reserve, and printed in the *Statistical Abstract of the United States*^{xi}. A family arriving with \$500,000 in hand would thus *lower* the average net worth of American families.

If we are going to have an immigrant investor program at all, obviously we should raise the stakes.

We can do so, without lifting a finger, by simply letting the regional center program die, thus increasing the minimum investment for immigrants to one million dollars.

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Table

USCIS Staff Finds More Problems in EB-5 Applications than in Most Others

Applications and years	Receipts*	Approvals	Non-Approvals**	Non-Approval Percentage
nonimmigrant worker visa, FY '09, (I-129); agencywide	295,061	294,016	1,045	0.4%
all agency forms, first three quarters FY '11	4,024,628	3,695,843	328,843	8%
investor's conditional visa (I-526)	FY'09 1,469 FY'10 1,534	1,262 1,369	207 165	14% 11%
investor's green card application (I-829)	FY'09 403 FY'10 330	347 274	56 56	14% 17%
regional centers (I-924) **	FY '10 110 FY '11 146	61 101	49 45	45% 31%
AAO appeals, FY '10 (complete set); EB-5 investor cases	28	0	28	100%

* actual receipts in rows 1, 2, and 6, and sum of approvals and denials in rows 3 and 4; non-approvals in row 2 include both denials and petitions not acted upon, and in other rows denials only. See note immediately below about row 5. USCIS does not consistently publish denial statistics.

** USCIS data in row 5 are presented in numerical totals of proposals and then percentages for denials; the author calculated the numbers of approvals and non-approvals from those data. The FY '11 data are for the first half of the year.

Data Sources: row 1, data from FOIA request to USCIS from Center for Immigration Studies, 2011; row 2, published USCIS data at [http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Static_files/all-form-types-performance-data-2011-june.pdf]; rows 3 and 4, published USCIS data at [<http://www.ilw.com/immigrationdaily/news/2011.0922-eb5.pdf>];

row 5, published USCIS data at [<http://blog.lucidtext.com/category/eb-5-statistics/>]
 row 6, calculated by the author from AAO decision files at
http://www.uscis.gov/portal/site/uscis/menuitem.2540a6fdd667d1d1c2e21e10569391a0/?vgnextoid=0609b8a04e812210VgnVCM1000006539190aRCRD&vgnnextchannel=0609b8a04e812210VgnVCM1000006539190aRCRD&path=%2FB7+-+Form+I-526+and+I-829%2FDecisions_Issued_in_2010]^{xii}

Source of Table: Center for Immigration Studies, Washington, D.C., 2011

End Notes

i. U.S. Commerce Department data as quoted in a recent Bureau of Economic Analysis press release at [<http://www.bea.gov/newsreleases/international/intinv/2011/pdf/intinv10.pdf>]

ii. The \$191 million investment total estimate is based on the number of investors in 2009 who successfully filed I-829 petitions (there were 347 of them that year, according to USCIS statistics, the peak in the program's history). Approvals of these documents confirmed that their investment obligations had been met, and granted the investors, and all members of their immediate families, greencards for life. The dollar total estimate is based on the assumption that 10% of the investments were at the \$1 million level, and the rest at \$.5 million. The math is:

$(312 \times \$0.5 \text{ million} = \$156 \text{ million}) + (35 \times \$1 \text{ million} = \$35 \text{ million}) = \$191 \text{ million}.$

Unfortunately, USCIS has not published data on the total amount of money invested in the EB-5 program.

iii. Other than Canada. The Bahamas, for example, in effect, requires a \$1.5 million dollar investment, such as in a mansion, before it gives a permanent visa to the alien investor; since our economy is 2,000 times as large as that of those islands, this means that The Bahamas gets 6,000 times as much bang for the buck for its minimal investment than we do for our minimal investment, of a half million. (For more on these comparisons, see the forthcoming CIS Backgrounder on the EB-5 program).

iv. P.J. Huffstutter "In U.S. visa program, money talks", *Los Angeles Times*, September 3, 2011, at [<http://articles.latimes.com/2011/sep/03/business/la-fi-easy-visa-20110904/3>]

v. See my Center for Immigration Studies blog: "Case Study: Alien Investor Program Has a Spectacular Failure in S. Dakota" at: [<http://www.cis.org/search/node/south%20dakota>]

vi. See my blog "Another Watergate Mystery" at [<http://www.cis.org/north/watergate-eb5-scheme>] February 20, 2011

vii. See my blog "USCIS Does the Right Thing on Immigrant Investor Scheme in the Mojave" at [<http://www.cis.org/north/mojave-investor-visa-scam>] January 2, 2011

viii. See my blog "Total Crash of Calif. EB-5 Project Makes USCIS Look Careless" at

[<http://www.cis.org/north/total-crash-of-california-eb5-program>] November 28, 2011

ix. For more examples, see the about-to-be published CIS backgrounder mentioned in endnote 3; some of the material in this section of the testimony is drawn from that source.

x. See

[<http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Operartional%20Proposals%20for%20Comment/EB-5-Proposal-18May11.pdf>] **Note:** at first glance there would appear to be a typographical error in our citation -- "Operartional" when "operational" was intended -- but the URL is written exactly as noted in the brackets.

xi. *Statistical Abstract of the United States: 2012* table 721. The average (mean) family net worth among families owning their own homes was even higher: it was \$778,200 in 2007.

xii. The plethora of tiny type seen at the bottom of this table is an illustration of why it is difficult, for outsiders, and perhaps for insiders as well, to work with USCIS statistics.