

A Tentative Research on EB-5 Program: Characteristics, Reasons and Impact (2013—2017)

学院：外国语学院

学号：2013130104029

姓名：张诗敏

指导教师：李杰

摘要

本论文主要研究 2013 财年到 2017 财年期间美国投资移民政策的特点及其成因。全文一共分为 4 个章节。第一章是关于论文的选题意义、标题时间范围界定的原因以及投资移民项目的简析。第二章从美国移民局公布的投资移民政策和申请数据，以及美国国会和众议院关于 EB-5 的提案中，总结了投资移民政策四个特点——实用性，即该政策完全为美国的经济利益所服务；争议性，即该政策在具体实施过程中饱受多位议员的争议；滞后性，即该政策导致大量合格投资人的申请堆积，平均排期不低于 5 年；高风险性，即该项目投资者获得绿卡的成功率无保障，区域中心项目诈骗的案件频发。第三章则主要从文化和政治方面分析该政策特点形成的原因：文化上，美国国家特性受到移民文化的冲击，维护美国特性的需要，必须采取严格的移民政策；政治上：民主党共和党，自由主义和保守主义之争。共和党保守主义，反对移民却偏好两极分化（支持投资移民）；第四章是本文的创新之处，即在中国移民局将成立的背景之下，本章阐释了美国投资移民政策对中国的借鉴意义，达到为我所用的重要性。

关键词：投资移民，区域中心，移民文化，中国移民局

ABSTRACT

The paper studies on the features of American investment immigration policies from 2013 to 2017, and their correspondent reasons. The whole paper is divided into four chapters. The first chapter illustrates the reasons of choosing the topic, explains the time range of my paper and briefly introduces the investor visa program. The second chapter has summarized four features of immigration policies: practicability, which means this policy completely serves for the interests of America; controversy due to the heated debate between the two main Parties in US; hysteresis due to the piling up of a great number of unsolved application and cases in regional center; instability because of the unguaranteed successful rate. The third chapter explains the reasons from the aspect of culture, politics and economy. Under the background of the establishment of China Immigration Office, the fourth chapter is a creative point of this paper, illustrating the importance for Chinese government to use American investment immigration policies for reference.

Key words: investment immigration, regional center, immigration culture, Bureau of Immigration of China.

Contents

Chapter one: Introduction	1
1.1 Brief introduction to EB-5 program.....	1
1.2 Time range of the thesis	2
1.3 Significance of the thesis.....	3
Chapter Two: Characteristics of EB-5 Program	4
2.1 Practicability.....	4
2.1.1 Three elements of EB-5 program.....	4
2.1.2 The achievements of EB-5.....	6
2.2 Controversy.....	9
2.2.1 The frequency of extension.....	9
2.2.2 Related bills	11
2.3 Hysteresis	13
2.4 Instability.....	16
Chapter Three Reasons Related to the Characteristics of EB-5 Program.....	18
3.1 Cultural Reasons.....	18
3.2 Political Reasons.....	20
3.3 Economic Reasons	22
Chapter four: The future of EB-5 Program and its Enlightenment for China.....	23
4.1 The Future of EB-5 Immigrant Policy	23
4.2 EB-5 Program's Enlightenment for China.....	25
Works cited :	26
文献翻译:	29

Chapter one: Introduction

1.1 Brief introduction to EB-5 program

Congress created the Employment-Based Fifth Preference (EB-5) immigrant visa category as part of the Immigration Act of 1990 to promote job creation and encourage capital investment in the United States by foreign investors in exchange for lawful permanent residency (green card) and a path to citizenship. In order to promote EB-5 investment in geographic areas that struggle to attract development, Congress authorized, and the former U.S. Immigration and Naturalization Service set, the lower investment amount of \$500,000 if the investment is made in a targeted employment area (TEA)—defined as either (1) an area that at the time of investment is either a rural area (rural TEA) or (2) an area that has experienced unemployment of at least 150 percent of the national average rate (high unemployment TEA).

Approximately 10,000 EB-5 visas per fiscal year are made available to qualified immigrant investors and their families seeking to immigrate to the United States through the EB-5 Program.

To obtain an employment-creation immigrant visa, a foreign national must submit a Form I-526, “Immigrant Petition by Alien Entrepreneur,” to USCIS. If USCIS approves Form I-526, the foreign national may obtain permanent resident status, on a conditional basis, for two years.” Ninety days before the two-year anniversary of being granted conditional permanent residency, the alien entrepreneur must file a Form I-829, Petition by Entrepreneur to Remove Conditions, at the California Service Center, and officially become an American citizen.

1.2 Time range of the thesis

On February 8, 2013, U.S. Securities and Exchange Commission brought the most notorious Chicago Convention Center Fraud into public, halting \$150 million investment scheme to dupe foreign investors and exploit immigration program. For more specific information, readers can refer to Litigation Release No. 22615 and Civil Action No. 13-cv-982: Securities and Exchange Commission v. A Chicago Convention, Center, LLC, Anshoo Sethi, and International Regional Center Trust Chicago, LLC.

Meanwhile, due to the enormous amount of swindled money and a number of related Chinese investors, reports in domestic China push the controversy about EB-5 to the summit. For example, in CNKI, there are 30 business reports about the case. Then, the EB-5 program was featured in the 2013 congressional debates on immigration policy reform. The comprehensive immigration reform bill passed by the U.S. Senate in June 2013 includes several important changes to the investor program. We can see the Chicago Convention Center was a watershed case in the history of investment immigration. In conclusion, 2013 is an important year for EB-5, so I choose it as the starting point of my research range.

On December 9, 2016, President Barack Obama signed H.R. 2028 (Pub. L. 114-254), a short-term bill passed by Congress, into law. The law includes a continuing resolution to fund the government through April 28, 2017. It extends without any changes in the EB-5 Regional Center Program, E-Verify, the Conrad State 30 J-1 Waiver Program, and the Special Immigrant Non-Minister Religious Worker Program. So in order to keep my paper up to date, I choose April 28, 2017 as the ending point of my paper.

1.3 Significance of the thesis

Theoretical significance of the thesis: The U.S. is the most typical country of immigrants in the world. It is the immigrants who create the country's society, economy, culture and technology; it is generations of immigrants who contribute to the development of this superpower. Thus, US government puts great emphasis on immigration policies which vary with the era, international situation and its domestic demand. In 1990, in order to stimulate the U.S. economy through job creation and capital investment by foreign investors, US Congress created the EB-5 Program. And in 1992, Congress created the Immigrant Investor Program (the Regional Center Program). Although in the USA investment immigration program is a program with such long history, my paper's contents are all about the policies carried out after February 8, 2013.

Practical significance of the thesis: There are approximately 10,000 visas available annually for foreign national investors and their family members. In FY2015, there were 9,764 EB-5 visas used, with 93% going to investors from Asia. More specifically, 84% were granted to investors from China and 3% were granted to those from Vietnam. As we can see the popularity of EB-5 program among Chinese investors, it is necessary to conduct a specific research on it. (U.S. Government Accountability Office 2) What is more, China nowadays is in the process of Modern Socialist Construction and is in severe need of a great number of high-tech talents. However, a lot of excellent students studying in American Ivy League choose to work in US after graduation, which is an absolute big loss for China. If China wants to attract international talents after establishing Bureau of Immigration of China, we must conduct on a research on the successful American immigration policies. To study on current American immigration policies helps us to know how the US restricts

the number of foreign immigrants and attracts a lot of foreign elites to make contribution to US economy.

Academic Value of the thesis: Researches of American immigration policies conducted by Chinese scholars began in late 1980s and all concentrated on general immigration policies. To make the matter worse, the related academic papers are all out of date, devoting little constructive and instructive meaning for readers to understand contemporary US immigration policies. After searching the CNKI, I found from 2013 to 2016 there are only 4 graduate papers related to investment immigration policy and the most recent one named *The Reasons of the Booming Development of American Immigrant Investor Program* is published on April 1, 2016 by a graduate student in Sichuan International Studies University. The rest of articles are all business reports or analysis about EB-5 program published by immigration companies or agencies. So, in my paper, I exclusively study in investment immigration policy, to which the U.S. government has attached the most importance. I hope through my summary of the features of US investment immigration policies from 2013 to 2017, I can make up the blank area of research on American investment immigration policies.

Chapter Two: Characteristics of EB-5 Program

2.1 Practicability

2.1.1 Three elements of EB-5 program

Firstly, the following is how USCIS (U.S. Citizenship and Immigration Service) illustrates EB-5 on their website

“USCIS administrates the EB-5 Program. Under this program, entrepreneurs (and their spouses and unmarried children under 21) are able to apply for a green card (permanent residence) if they:

- Make the necessary investment in a commercial enterprise in the united states; and
- Plan to create or preserve 10 permanent full-time jobs for qualified U.S. workers.

And I have found more specific requirements in an official guide:

“The "employment creation" visa category is for a foreign national who invests \$1 million in a new enterprise that employs 10 U.S. workers, not including the immigrant, the immigrant's spouse, or the immigrant's children. The amount of the investment only needs to be \$500,000 in a targeted employment area. A "targeted employment area" is a rural area or other designated area where the unemployment rate equals 150 percent of the national average. (USCIS 67)

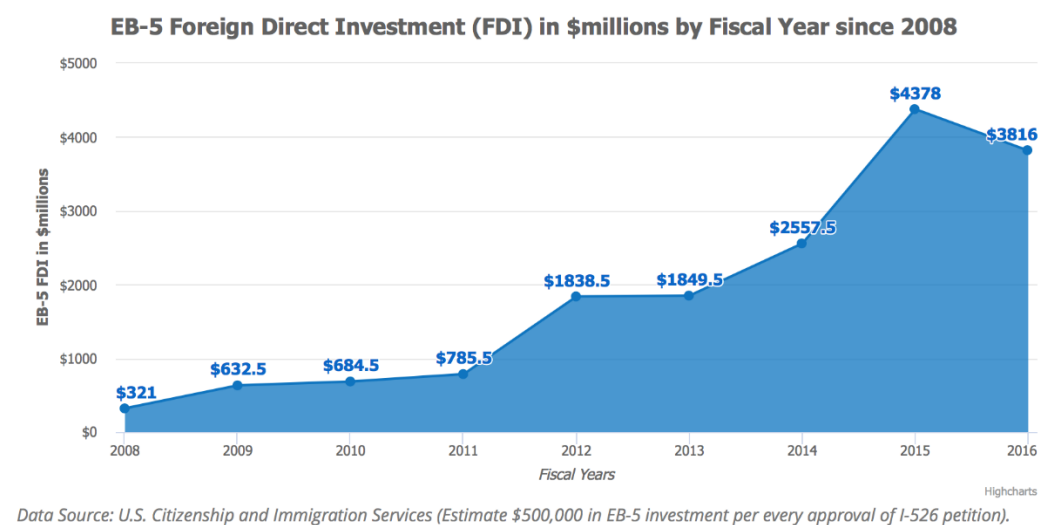
So as we can see, the EB-5 Program is based on three main elements: (1) the immigrant's investment of capital, (2) in a new commercial enterprise, (3) that creates at least 10 jobs. The core concepts are to pool wealthy foreigners' money to a highly risky project where native Americans are reluctant to invest money or rural area programs that cannot afford to borrow money from the bank. That is to say the wealthy immigrants not only invest funds into a high risky commercial enterprise, but the investment must result in the creation of jobs for qualifying employees.

Job creation is the centerpiece of the Program. The project must create at least 10 full- time jobs for American workers for each EB-5 investor. In other words, for each \$500,000 of EB-5 capital invested, the project must create at least 10 EB-5 program-qualifying jobs.

So we can draw the conclusion that the Congress’ goal was to create new employment for U.S. workers and to infuse new capital into the country and to target investments to rural America and areas with particularly high unemployment, areas that can use the job creation the most. Finally, Congress was clear that the goal was not to provide immigrant visas to wealthy individuals.

2.1.2 The achievements of EB-5

Look at the graph below:



(data resources: <https://www.iiusa.org>)

And look at the statistic below:

\$18.4 BILLION

Since 2008, over \$18.4 billion of foreign direct investment has been injected into the U.S. economy thanks to the EB-5 program.

Meanwhile, more than \$10 billion worth of prospective EB-5 capital investment were pending in USCIS by the end of 2016.

\$9.62 BILLION

Contributed to the U.S. GDP via the EB-5 program from FY2010-FY2013

29,300 JOBS

Supported annually by the EB-5 program from FY2010-FY2013

\$2.08 BILLION

In tax revenue generated by the EB-5 program from FY2010-FY2013

(data resources: <https://www.iiusa.org>)

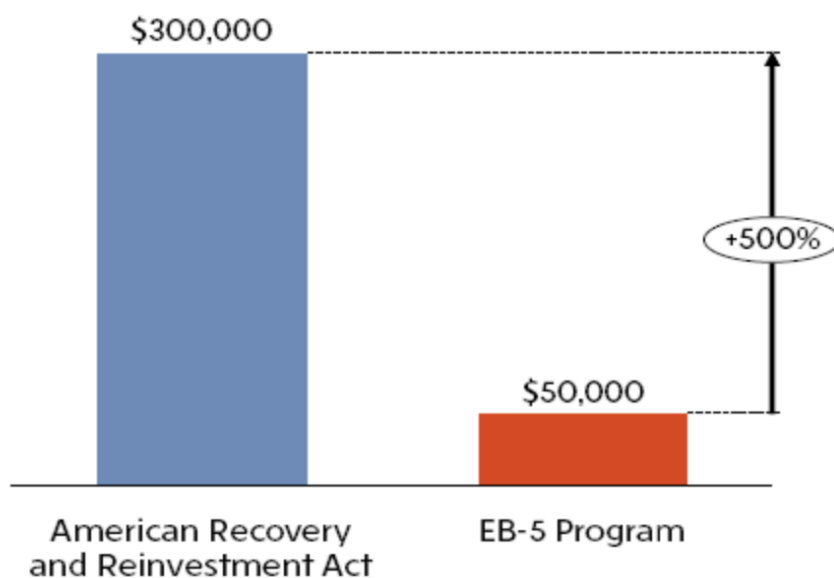
The statistics has showed us the exact amount of money and the number of jobs that EB-5 investors have devoted since 2008. Over \$18.4 billion of foreign direct investment has been injected into the U.S economy thanks to the Eb-5 program. And 29,300 jobs are supported annually by the EB-5 program from FY2010-FY2013.

Underutilized for the first 20 years since its enactment in 1990, the EB-5 Program became popular during the financial crisis when conventional sources of capital dried up. As the market has rebounded, EB-5 capital has evolved into a mainstream source of capital, particularly for real estate development projects.

The EB-5 program created 31,000 jobs in 2013 alone – more jobs than 11 different states have individually created in the last 12 months. What is more, EB-5 investments have funded job-creating projects in all 50 states and across a broad range of industries, including health care, education, manufacturing, energy, agriculture, retail, hospitality, transportation, infrastructure, and real estate.

(EB-5IC 1)

While the 2009 American Recovery and Reinvestment Act, commonly known as the “stimulus” bill, created one job for every \$100,000 to \$400,000 in public spending, the EB-5 program has created tens of thousands of jobs at no cost to taxpayers. (Metrics Hamilton 3)



Source: James Feyrer And Bruce Sacerdote, National Bureau of Economic Research

And I choose an excerpt of a bill of Patrick Leahy, an American politician and the senior United States Senator from Vermont. *“This is a significant economic development breakthrough for Vermont,” said Leahy. “The EB-5 program has been a powerful job and economic development engine in Vermont. When fully subscribed, this program has the potential to contribute \$5 billion to communities around the country each year, creating tens of thousands of American jobs. And all of it is at no cost to American taxpayers.”* (Patrick Leahy 2)

(Vermont’s Regional Center – a national leader in using the federal program -- has been a successful private-public partnership between the State of Vermont and a growing number of Vermont businesses, bringing economic development and job growth to the state since 1997.)

Thus, with no cost from the American tax payers' money and the federal budget, relying purely on the cheap money from the EB-5 program investors, a highly risky rural program can even fueling local economies and creating American jobs.

2.2 Controversy

2.2.1 The frequency of extension

In 2003, Patrick Leahy from Democratic Party led in winning a five-year extension of the program in the Basic Pilot Program Extension and Expansion Act of 2003. In the final days before the Regional Center Program's subsequent sunset date of September 30, 2008, Leahy secured a five-month extension of the program. He succeeded again in March 2009, winning another six-month extension to keep the program running without interruption. In October of 2009, Leahy succeeded in securing a three-year extension of the program in the Department of Homeland Security Appropriations Act. The Program was then authorized through September 30, 2012. But on September 11, 2012, it was extended for three years until September 30, 2015, then extended to December 8, 2015, then to September 9, 2016, then December 9, 2016, and then April 28, 2017.

Let's look at a bill (House of Representatives 1) from the official website :



ABOUT OUR AGENDA RELEASES



SPONSOR	Sen. Patrick J. Leahy
DATE	September 11, 2012 (112th Congress, 2nd Session)
STAFF CONTACT	Sarah Makin

FLOOR SITUATION

On Tuesday, September 11, 2012, the House is scheduled to consider S. 3245, a bill to extend by three years the authorization of four immigration programs, under a suspension of the rules requiring a two-thirds majority vote for approval. The bill was introduced on May 24, 2012, by Sen. Pat Leahy (D-VT) and referred to the Committee on the Judiciary. The Senate approved S. 3245 by unanimous consent.

BILL SUMMARY

S. 3245 would extend for three years, the authorization of four immigration programs due to expire on September 30, 2012. Specifically, the bill would extend the EB-5 Regional Center Program, the E-Verify Program, the Special Immigrant Nonminister Religious Worker Program, and the Conrad State 30 J-1 Visa Waiver Program until September 30, 2015.

COST

The Congressional Budget Office (CBO) has not produced a score for S. 3245.

From the bill, we can get some reasons for extension. Firstly, under a suspension of a rule requiring a two-thirds majority for approval, if two-thirds of the representatives cannot reach unanimous consent, a bill failed. Obviously, on EB-5 program, majority of the representatives had not reached an agreement on a EB-5 reform bill before the expiration day came. Then they have to attach the EB-5 Regional Center program to any continuing resolution or appropriations bill to maintain government operations released, leading the straight reauthorization of the EB-5 Regional Center program cover the remainder of the next fiscal year.

And the most recent extension is to April 28, 2017. The name of the Continuing Resolution from The House of Representatives is *House Appropriations Chairman Hal Rogers today introduced a short-term Continuing Resolution(CR) (H.R.2028) to prevent a government shutdown and continue funding for federal programs and services until April 28, 2017.*

But why the representatives cannot reach an agreement on a EB-5 reform bill for nearly 20 years, the following contents are going to show the controversial points in the EB-5 program reform bills.

2.2.2 Related bills

There are three groups of people in the reform of EB-5 :

- Group A: Make use of EB-5 program but hold the opinion that it needs reforming or be shut down directly. But this group of representatives cannot reach an unanimous bill. The leading representatives in this group is Patrick Leahy and Chuck Grassley.
- Group B: Carry on EB-5 with no reform. The leading representatives in this group is EB-5 Investment Coalition, representing EB-5 programs and regional centers, spending a great number of money and lobbying among the representatives in congress.
- Group C: Shut down EB-5 programs directly, out of the concern of the national security and endless fraud cases in the EB-5 regional centers.

When an EB-5 reform bill was published, representatives representing interests of the three groups either from Democratic Party or Republican Party began to argue.

There are four influential bills from 2013 fiscal year to 2017 fiscal year:

- Policy Memorandum, PM-602-0083, published on May 30, 2013. Subject: EB-5 Adjudications Policy.

This PM provides access to various policies and procedural memoranda which give guidance to USCIS adjudicators in their work of processing applications and petitions for immigration benefits while still protecting national security. Although more than three years has passed, there is still no new documents to refresh or supersede this Policy Memorandum. This policy memo offers the most complete and authoritative instructions to the EB-5 investors. On January 13, 2017, there was still petitions being judged according to definitions in this Policy Memorandum.

- H.R. 4178-American Entrepreneurship and Investment Act of 2014.

This bill was brought by democratic congressman Jared Polis and Joe Garcia along with republican congressman Matt Salmon and Mark Amodei, signifying that both the Democratic and Republican Party are working together this time to promote the reform of EB-5 program.

- S.1501 American Job Creation and Investment Promotion Reform Act of 2015.

The bill was brought by senior United States Senator Patrick Leahy in the U.S. senate judiciary committee and the current chairman Chuck Grassley of the Judiciary Committee.

- H.R.5992 American Job Creation and Investment Promotion Reform Act of 2016.

The bill of 2016 has the same name as the S.1501. It just added some information on the basis of it.

I have summarized the main contents in these four bills:

- Permanent authorization of regional center program: On the basis of a general proposal, for the promotion of economic growth, including increased exports, improved regional productivity, job creation, and increased domestic capital investment. Or: Visas shall be made available through September 30, 2020.
- Expand the definition of TEA : including a military installation closed pursuant to a base closure law; or an area that is within the boundaries established for purposes of a Federal, State, County, or City economic development incentive program.
- Increase the amount of invest capital: Minimum investment amounts: \$800,000 in the case of an investment in an infrastructure project, a manufacturing project, or a project that is physically located in a targeted employment area. Others \$1,200,000. The specified amounts shall automatically be adjusted by the amount of the CPI for every 5 fiscal years.

- Expand the definition of full time employment : The term ‘full-time employment’ means employment in a position that requires at least 35 hours of service per week at any time, Full-time equivalent employment shall be calculated by dividing the part-time hours paid by the standard number of hours for full-time employees.
- Age determination for children of alien investors: An immigrant admitted as a lawful permanent resident on a conditional basis as the child of an alien entrepreneur, whose lawful permanent resident status on a conditional basis is terminated under this section.

And most recently, on April 6, 2017, the House and Senate Judiciary Committee has brought up a motion to the American congress. The main contents are as follows (1) the EB-5 program should be directly shut down if no reforms have been carried out. (2) concerns about the abuse of the program including gerrymandering practices, money laundering, national security violation and numerous fraud cases. (3) any extension of the program must include: meaningful investment differentials, adjusted investment amounts, proper set asides for rural and distressed areas.

In conclusion, the main controversial points to which the representatives cannot reach consensus are always the same: the period of validity of EB-5 program, the definition of TEA and employment rate, the amount of investment capital. They are all directly related to the core interest of the EB-5 program and refer to the interests of a great number of stakeholders such as the investors, EB-5 project managers, government officers and so on.

2.3 Hysteresis

From beginning to end, this two-step application process along with visa issuance typically takes no less than 4 to 5 years. An estimated timeline for each step of the process is as follows (NYU

Center for Real Estate Finance Research 17) .

I-526 application – adjudication process	14 months
Interview followed by conditional visa issuance	3 to 6 months
Time lapse before eligible to file I-829	21 to 24 months
<u>I-829 application - adjudication process</u>	<u>12 months</u>
Total	more than 4 years

From these calculation, we can clearly see the long processing time of every EB-5 investment immigration applicant.

On April 13, 2015, at the Invest in the USA (IIUSA) Conference in Washington D.C., Charles Oppenheim, Chief of the Visa Control and Reporting Division of the U.S. Department of State, reported that the EB-5 China immigrant visa category will retrogress beginning in May 2015. We can further confirm this on the release of the May 2015 visa bulletin:


Characteristics of EB-5 Program

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01JUN12	15APR08	C	C
3rd	01JAN15	01MAY11	15JAN04	01JAN15	01JUL07
Other Workers	01JAN15	15NOV05	15JAN04	01JAN15	01JUL07
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Targeted Employment Areas/ Regional Centers and Pilot Programs	C	01MAY13	C	C	C

Nowhere in the 25-year history of American investment immigration program has witnessed this epic moment. Thanks to the gigantic demand of green card from Chinese people, on May 1, 2015, the retrogression began. Those individuals who were born in mainland China are the only individuals impacted by this news. And from that time on, the only immigrant visa applicants who do not need to wait are the EB-1A green card applicants. Accordingly, this means retrogression of the EB-5 immigrant visa for Chinese investors retrogresses two years and has a cut-off date of May 1, 2013. It means that during the month of May 2015, only those EB-5 investors (and their derivative beneficiaries) with a Priority Date of May 1, 2013, or earlier may apply for an EB-5 immigrant visa.

The dates in the visa bulletin will either move forward, backward, or remain stagnant, and such changes will be reported monthly.

The latest statistical data of I-526 petition in the first quarter of FY2017:



U.S. Citizenship and Immigration Services

Number of I-526 Immigrant Petitions by Alien Entrepreneurs by Fiscal Year, Quarter, and Case Status

2008-2017

Period	Petitions by Case Status			
	Immigrant Petitions by Alien Entrepreneur			
	Petitions Received ¹	Approved ²	Denied ³	Pending ⁴
Fiscal Year - Total				
2008	1,258	642	120	853
2009	1,031	1,265	208	514
2010	1,953	1,369	165	1,125
2011	3,805	1,571	372	3,347
2012	6,041	3,677	957	5,018
2013	6,346	3,699	943	7,131
2014	10,923	4,925	1,169	12,453
2015	14,373	8,756	1,051	17,367
2016	14,147	7,632	1,735	20,804
Fiscal Year 2017 by Quarter				
Q1. October - December	4,395	3,346	236	23,250
Q2. January - March				
Q3. April - June				
Q4. July - September				

(Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, Performance Analysis System (PAS), December 2016)

In the last volume of the chart, we can see the number of pending I-526 from 2013 to now. In principle, the Regional Center cannot receive and use the capital from the investors if their I-526 petitions have not been approved. Thus, no matter how the EB-5 capital demanders are addictive to the EB-5 money, due to the American political environment, congressional legislation to solve the visa bulletin problem is still a long and unpredictable process.

2.4 Instability

First of all, the following is a fraud map identifying some locations of prominent EB-5 scandals

conducted by the Center for Immigration Studies.



(data resources: <http://cis.org/EB5-Investor-Visa-Fraud-Map>)

As reflected on the map, we can see the EB-5 investments are usually in glitzy, downtown locations like Manhattan, Miami, Las Vegas and Los Angeles. The original intent of EB-5 program, to locate these investments in areas of high unemployment, has been thwarted by clever developers and passive government agencies.

On October 1, 2013, the U.S. Securities and Exchange Commission's Office of Investor Education and Advocacy and U.S. Citizenship and Immigration Services jointly issued an Investor Alert : *Investment Scams Exploit Immigrant Investor Program* to warn individual investors about fraudulent investment scams that exploit the Immigrant Investor Program.

In order to study the risks in the EB-5 program, I have counted all the charges and regional center programs charged by SEC. From those cases we can see, the SEC and USCIS are aware of attempts to misuse the profits of EB-5 program as a means to carry out fraudulent securities offerings. Although the SEC has taken emergency enforcement actions to stop allegedly fraudulent securities offerings made through EB-5, there are still endless scandals and cases related to investors' money fraud.

However, foreign investors who invest through EB-5 are never guaranteed a visa or to become lawful permanent residents of the United States. The fact that a business is designated as a regional center by USCIS does not mean that USCIS, the SEC, or any other government agency has approved the investments offered by the business, or has otherwise expressed a view on the quality of the investment. So, every EB-5 visa program applicant has put his or her money into a very dangerous project with low rate of return, regardless of the unpredictable and lengthy waiting time.

Chapter Three Reasons Related to the Characteristics of EB-5 Program

3.1 Cultural Reasons

American national identity is composed of four parts: race, ethnic belongings, culture (language and religion), and ideology. (塞缪尔·亨廷顿 24) In American history, there is no concept of one single race and ethnic group and the American culture is breaking up and national identity is darkened by endless waves of foreign immigrants. In human history, no society can last forever, just as Jean-Jacques Rousseau has said: "now that Sparta and Rome have perished, which

country can last forever? " Under the condition of lacking common features in race, nation, and culture, American ideology is prettily fragile.

Before the time of 1960s, immigrants in the U.S. were mainly from Europe, after that time, the third wave of immigrants are mostly from Latin America and Asia, whose native culture and living habits are far more different from the American people, so it is much easier for them to culturally keep in touch with their former mother land. In the past, the U.S. has a set of methods to culturally assimilate those foreign immigrants, forcing them to fit into American society. But after 1965, this kind of measures were gone. In the past time, the process of assimilation was much easier, although it was interrupted by the American civil war and the First World War, and there were many legislations to forbid immigrants and restrict the number of immigrants strictly. But nowadays, there are numerous foreign citizens queuing in the line of filing immigration applications. To remove their loyalty to their mother country and assimilate them completely into American society, it will be a much slower and more difficult progress.

Nowhere in the American history has seen such phenomenon that a great majority of immigrants do not speak English. Nowadays, the Chinese-speaking immigrants have taken a great number of the immigrants and their number is soaring. After the Chinese people have arrived in the U.S, they usually live collectively in a concentrated community and communicate among themselves. The original country of the Chinese immigrants encourages them to actively exert their influence on the American society and political circles, earning their own interests. Many American elites support them, spreading multi-cultural theory, diversity and bilingual education, taking charitable actions to take care of them. What is more, in order to reap staggering profits, some American businessmen in the business community satisfy their taste and initiate programs in

accordance with their investing habits. The EB-5 investment visa program is a typical example since 90% percent of the programs' project is in property industry.

In conclusion, the concepts of race and nation is being obliterated in American's national identity, meanwhile its culture and belief are challenged by the immigrants from all over the world, which will be a big threat from the prospective of American and national identity. So the U.S. government has to take practical measures to restrict the number of immigrants. At the same time, it is devising effective measures to attract and only accept wealthy and intelligent foreign immigrants who will bring the U.S. maximum benefits.

3.2 Political Reasons

The Republican Party represents the interest of rising and wealthy elites while the Democratic Party represents the interest of those left behind. Due to essence difference of the two Parties, they cannot reach consensus on the issue of EB-5 program reform.

In the 1980s, economists began documenting a sharp rise in inequality: A small number of people were pulling far ahead, while most Americans saw little or no economic progress. Political scientists began documenting a rise in political polarization: Politicians were gravitating toward the ends of the left-right scale, and it became increasingly possible to use "Democrat" and "Republican" as synonyms for "liberal" and "conservative." Those trends continue to this day: Income inequality today is as high as it was in the 1920s, and political polarization is as high as it has ever been. The Republican Party chose to cater to the interests of that rising elite, perhaps because what the elite lacked in numbers it made up for in the ability and willingness to make large campaign contributions. And so a gap opened up between the parties, with the Republicans becoming the party of the winners

from growing inequality while the Democrats represented those left behind. Money buys influence, and as the richest few percent of Americans have grown richer thanks to unequal forces like technical change, they have become rich enough to buy themselves a party. In this view, the rise of movement conservatism is a by-product of rising inequality. So the Republican party supports and loves inequality.

However, immigration is a deeply divisive issue for the coalition that supports movement conservatism, because movement conservatives cannot simultaneously make tacitly race-based appeals to white voters and court the growing Hispanic and Asian share of the electorate. Over the longer term, immigration will help undermine the political strategy of movement conservatism.

Luckily, the EB-5 immigrant program was designed, providing the best immigration policy for their benefits when the Republican Party is simultaneously supporting inequality and opposing the growing number of nonwhite immigrants.

The following is the immigration policies of Hillary Clinton and Trump in their campaign process. Hillary, from the Republican Party, supported family union immigrants, and had light regulation on illegal immigrants; Trump, from the Democratic Party, restricted illegal immigrants strictly, supported legal immigrant and employment-based immigrants.

In conclusion, Republican Party and Democratic Party have different strategy when dealing with immigration problems. And republican representatives are the main supporters of the reform of EB-5 program. For instance, Chuck Grassley, a member of the Republican Party, is the current chairman of the Judiciary Committee, has always been the contributor of the continuing resolution of EB-5. And Donald Trump, who strongly oppose illegal immigrants and carry out harsh policies to repatriate a large number of non-white immigrants. However, his own hotel business is making

full use the capital from the EB-5 investors. The complex and special political environment result in the controversial EB-5 program.

3.3 Economic Reasons

In a Brookings Institute' EB-5 report, the writers said: *"Difficulties in accessing traditional domestic financing brought on by the Great Recession, along with a rise in the number of wealthy investors in developing countries, have led to a recent spike in interest in the EB-5 Immigrant Investor visa program. The 22-year old EB-5 Immigrant Investor visa program has enjoyed renewed interest since the 2008 economic downturn made traditional bank financing more difficult to access. Recently, many state and local government and business leaders have looked abroad, especially to emerging markets, for capital to help local economies grow by creating jobs through foreign direct investment (FDI)."* (Audrey Singer 3) So, as we can see, after the U.S. was severely struck by the financial crisis since 2008, it was extremely difficult for high-risk programs to raise funds, except the cheap and attractive EB-5 program capital. Because the EB-5 investor's reason for making the investment is to satisfy the EB-5 visa requirements, unlike that of the conventional capital providers, (such as banks, private equity funds, life insurance companies), as long as the investors believe that the investment will qualify for the visa and result in the safe return of his capital, he is willing to accept a below market return on the investment. So it is not difficult to explain that there are so many fraudulent cases associated with EB-5 program capital.

Meanwhile with the increasing number of Chinese entering in the middle-class group who afford to invest the EB-5 program and would like to become American citizen, through this federal visa program administered by U.S. Citizenship and Immigration Services (USCIS), immigrant

investors may eventually secure permanent residency for themselves and their immediate family by investing at least \$500,000 in a U.S. business and creating or preserving 10 full-time jobs.

In conclusion, the innumerable amount of money associated with the EB-5 program inevitably brings financial crimes. Moreover, some criminals make use of the blind Chinese investors and increase the risk of EB-5 program. At the same time, it is also because of the gigantic economic profits brought by EB-5 visa program, the US government and congress cannot shut down the program directly, but they cannot carry out an unanimous reform bill either.

To sum up, the American identity crisis, the conflicts between Republican and Democratic Party, the tempting economic profits lead to the practicability, controversy, hysteresis and instability of EB-5 program.

Chapter four: The future of EB-5 Program and its Enlightenment for China

4.1 The Future of EB-5 Immigrant Policy

On May 30, 2013, the USCIS published a PM, becoming an official guide in the field of EB-5 program ever since. And on January 01 2017, the USCIS published another proposed rule, giving their suggestion on EB-5 reform. In the 115 pages, the main points are still the definition of TEA area and increasing the investment amount.

Sections
Browse
Search
Reader Aids
My FR

0
Sign in Sign up

FEDERAL REGISTER

Public Inspection :: Tomorrow's Documents Today

PR Public Inspection :: Proposed Rule

EB-5 Immigrant Investor Program Modernization

An unpublished Proposed Rule by the [Homeland Security Department](#) on 01/13/2017

PUBLIC INSPECTION DOCUMENT

This document is **unpublished**. It is scheduled to be published on 01/13/2017.

Once it is published it will be available on this page in an official form. Until then, you can [download the unpublished](#) PDF version.

Although we make a concerted effort to reproduce the original document in full on our Public Inspection pages, in some cases graphics may not be displayed, and non-substantive markup language may appear alongside substantive text. If you are using public inspection listings for legal research, you should verify the contents of documents against a final, official edition of the Federal Register. Only official editions of the Federal Register provide legal notice to the public and judicial notice to the courts under 44 U.S.C. 1503 & 1507. Learn more here.

DOCUMENT DETAILS

Filed at:
 01/12/2017 at 08:45 am

Scheduled Publication Date:
 01/13/2017

Agency:
[Homeland Security Department](#)

Document Type:
 Proposed Rule

Pages:
 115

Document Number:
 2017-00447

DOCUMENT DETAILS

However, there are still voices suggesting shut down the EB-5 program, especially due to the interest relations between Trump administration and EB-5 program. And they have also expressed the concerns about fraudulent cases, money launderings, homeland security threats in the EB-5 regional center program.

In my opinion, if the EB-5 reform bill passes, there is no doubt that the investment amount is bound to rise. The USCIS will strictly define the EB-5 TEA areas and carry out harsh regulation on regional center programs. But there is still possibility that the EB-5 will still be carried on in a CR without changes, which depends on the efficiency of the Trump administration. There is little possibility that the EB-5 program will be shut down directly, because there are gigantic number of stakeholders in those current programs.

4.2 EB-5 Program's Enlightenment for China

In February 2016, the General Office of the CPC Central Committee and the General Office of the State Council issued the *Opinions on Strengthening the Management of Permanent Residence Service for Foreigners*. In particular, it raised the issue of improving the resettlement management, and pointed out that "further improve the national immigration management and the allocation of duties ", indicating that China has begun to consider establishment of the immigration office.

At present, the group of aging population is expanding in China. China's demographic dividend has gradually gone. Only new international talents will help China's economic growth, and enrich the diversity and richness of China's talent structure. As experts have pointed out, foreign talents often create more jobs, new services, help us to solve the structural problems. Moreover, when the economic-oriented transformation accelerated, there is increasing need for more international talents.

China is the world's first populous country, but not an international population. According to China International Immigration Report 2015, China has continuous attraction for foreigners, being in the third top attractive regions and countries for foreigners. But in order to attract professional foreign talents, enactment of a set of effective immigration policies is urgent. Referring to the successful and attractive American investment immigration policy is necessary.

Works cited :

- [1] Audrey Singer. “The EB-5 Visa Program for Immigration Investors” 2 Dec. 2014.
<<https://www.brookings.edu/articles/the-eb-5-visa-program-for-immigrant-investors/>> 1 Oct. 2016.
- [2] Congressional Research Service. “EB-5 Immigrant Investor Visa”. 22 Apr. 2016.
<http://larexc.org/wp-content/uploads/2014/02/EB5_Report.pdf> 4 Sep. 2016
- [3] Chairman Bob Goodlatte. 13 April. 2014.<https://judiciary.house.gov/wp-content/uploads/2016/02/114-58_98626.pdf> 25 Mar. 2017.
- [4] House of Representatives. “A Bill to extend by 3 years the authorization of the EB-5 Regional Center Program”. 18 Sep. 2012 <<https://www.govtrack.us/congress/bills/112/s3245/text>> 20 Feb. 2017.
- [5] Patrick Leahy, “EB-5 Amendment Added to Immigration Reform Bill”. 28 Aug. 2014.
<<https://www.leahy.senate.gov/press/leahys-eb-5-amendment-added-to-immigration-reform-bill>>
10 Aug. 2016.
- [6] Patrick Leahy “To promote and reform foreign capital investment and job creation in American communities” 3 June. 2015 <<https://www.gpo.gov/fdsys/pkg/BILLS-114s1501is/pdf/BILLS-114s1501is.pdf>> 1 Dec. 2016.
- [7] NYU Center for Real Estate Finance Research. “A Roadmap to the Use of EB-5 Capital: An Alternative Financing Tool for Commercial Real Estate Projects. Supra at note 1”. 14 Feb. 2015.
<<http://nycrc.com/experience.html>> 25 Mar. 2017.
- [8] Rep. Goodlatte, Bob. “American Job Creation and Investment Promotion Reform Act of 2016”
26 Sep. 2016. <<https://www.congress.gov/bill/114th-congress/house-bill/5992/text>> 1 Dec. 2016

- [9] Rep. Polis, Jared “American Entrepreneurship and Investment Act of 2014”. 6 Mar. 2014
<<https://www.congress.gov/bill/113th-congress/house-bill/4178/text>> 1 Dec. 2016
- [10] Rep. Simpson, Michael K. “Further Continuing and Security Assistance Appropriations Act 2017”. 9 Dec. 2016.
- [11] The EB-5 Investment Coalition. “Conservative Economic Analysis Highlights Role Of EB-5 Visa Program in Boosting Private Investment Across Industries, Sustaining Long-term Growth as U.S. Population Ages” 25 June. 2015. < <http://eb5coalition.org/press-room/eb-5-report/>> 25 Mar. 2017.
- [12] U.S. Securities and Exchange Commission. “Litigation Release No.22615” February 8, 2013.
<<https://www.sec.gov/litigation/litreleases/2013/lr22615.htm>> 15 Oct. 2016.
- [13] USCIS, “The Homeland Security Act of 2002 (Pub. L. No. 107–296, 116 Stat. 2135)” 4 Sep. 2002. <<http://www.uscis.gov/sites/default/files/err/B5/>> 14 Sep. 2016.
- [14] USCIS, “8 U.S.C. § 1153(b)(5)(B)(ii), (iii); 8C.F.R. §204.6(e), (j)(6).” 30 Sep. 2002.
<<http://www.uscis.gov/sites/default/files/utf8/>> 14 Sep. 2016.
- [15] USCIS. “Traders Investor”24 Aug. 2006. <<https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Customer%20Service%20Reference%20Guide/TradersInvestors.pdf>>14 Sep. 2016.
- [16] USCIS. “May 2013 Policy Memorandum” 30 May. 2013. <<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5pdf>> 1 Oct. 2016.
- [17] USCIS. “Policy Memorandum PM-602_0083” 30 May. 2013 <<http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB5%20Adjudications%20PM%28Approved%20as%20final%205-30-13%29.pdf>> 1 Mar. 2017.

[18]保罗·克鲁格曼,《美国怎么了——一个自由主义者的良知》。中信出版社,2008。

[19]塞缪尔·亨廷顿,《我们是谁?——美国国家特性面临的挑战》。新华出版社,2005。

文献翻译:

May 30, 2013

Policy Memorandum PM-602-0083

SUBJECT: EB-5 Adjudications Policy

U.S. Citizenship and Immigration Services *Office of the Director* (MS 2000) Washington, DC
20529-2000

PURPOSE: The purpose of this policy memorandum (PM) is to build upon prior policy guidance for adjudicating EB-5 applications and petitions. Prior policy guidance, to the extent it does not conflict with this PM, remains valid unless and until rescinded.

SCOPE: This PM is applicable to, and is binding on, all USCIS employees.

AUTHORITY:

Immigration and Nationality Act (INA) sections 203(b)(5) and 216A

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, Pub. L. No. 102-395, § 610, 106 Stat 1828, 1874 (1992)

8 C.F.R. §§ 204.6 and 216.6

I. Introduction

The purpose of the EB-5 Program is to promote the immigration of people who can help create jobs for U.S. workers through their investment of capital into the U.S. economy.

Congress established the EB-5 Program in 1990 to bring new investment capital into the country and to create new jobs for U.S. workers. The EB-5 Program is based on our nation's interest in promoting the immigration of people who invest their capital in new, restructured, or expanded businesses and projects in the United States and help create or preserve needed jobs for U.S. workers by doing so.

In the EB-5 Program, immigrants who invest their capital in job-creating businesses and projects in the United States receive conditional permanent resident status in the United States for a two- year period. After two years, if the immigrants have satisfied the conditions of the EB-5 Program and other criteria of eligibility, the conditions are removed and the immigrants become unconditional lawful permanent residents of the United States. Congress created the two-year conditional status period to help ensure compliance with the statutory and regulatory requirements and to ensure that the infusion of investment capital is sustained and the U.S. jobs are created.

The 1990 legislation that created the EB-5 Program envisioned lawful permanent resident status for

immigrant investors who invest in and engage in the management of job-creating commercial enterprises. In 1993, the legislature enacted the “Immigrant Investor Pilot Program” that was designed to encourage immigrant investment in a range of business and economic development opportunities within designated regional centers. In 2012 Congress reaffirmed its commitment to the regional center model of investment and job creation by removing the word “Pilot” from the now twenty-year old program, and by providing a three-year reauthorization of the regional center model through September 2015.

Our goal at U.S. Citizenship and Immigration Services (USCIS) is to make sure that the potential of the EB-5 Program, including the Immigrant Investor Program, is fully realized, and that the integrity of the EB-5 Program is protected. Through our thoughtful and careful adjudication of applications and petitions in the EB-5 Program, we can realize the intent of Congress to promote the immigration of people who invest capital into our nation’s economy and help create jobs for U.S. workers.

II. The Preponderance of the Evidence Standard

As a preliminary matter, it is critical that our adjudication of EB-5 petitions and applications adhere to the correct standard of proof. In the EB-5 program, the petitioner or applicant must establish each element by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). That means that the petitioner or applicant must show that what he or she claims is more likely so than not so. This is a lower standard of proof than both the standard of “clear and convincing,” and the standard “beyond a reasonable doubt” that typically applies to criminal cases. The petitioner or applicant does not need to remove all doubt from our adjudication. Even if an adjudicator has some doubt as to the truth, if the petitioner or applicant submits relevant, probative, and credible evidence that leads to the conclusion that the claim is “more likely than not” or “probably true”, the petitioner or applicant has satisfied the standard of proof.

III. Ensuring Program Integrity

It is critical to our mission to ensure that we administer the EB-5 program with utmost vigilance to program integrity. Our operational teams work in collaboration with the Fraud Detection and National Security directorate and cases presenting issues relating to fraud, national security, or public safety should be referred as appropriate to law enforcement and regulatory authorities.

IV. The Three Elements of the EB-5 Program

The EB-5 Program is based on three main elements: (1) the immigrant’s investment of capital, (2) in a new commercial enterprise, (3) that creates jobs. Each of these elements is explained below in the context of both the original EB-5 Program and the Immigrant Investor Program.

A. The Investment of Capital

The EB-5 Program is based in part on the fact that the United States economy will benefit from an immigrant's contribution of capital. It is also based on the view that the benefit to the U.S. economy is greatest when capital is placed at risk and invested into a new commercial enterprise that, as a result of the investment, creates at least ten jobs for U.S. workers. The regulations that govern the EB-5 Program define the terms "capital" and "investment" with this in mind.

1. "Capital" Defined

The word "capital" in the EB-5 Program does not mean only cash. Instead, the word "capital" is defined broadly in the regulations to take into account the many different ways in which an individual can make a contribution of financial value to a business. The regulation defines "capital" as follows:

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur [immigrant investor], provided that the alien entrepreneur [immigrant investor] is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

The definition of "capital" has been clarified in regulations and in precedent decisions that our Administrative Appeals Office (AAO) has issued:

- First, the definition of "capital" is sufficiently broad that it includes not only such things of value as cash, equipment, and other tangible property, but it can also include the immigrant investor's promise to pay (a promissory note), as long as the promise is secured by assets the immigrant investor owns, the immigrant investor is liable for the debt, and the assets of the immigrant investor do not for this purpose include assets of the company in which the immigrant is investing.

In our AAO's precedent decision *Matter of Hsiung*, 22 I&N Dec. 201, 204 (Assoc. Comm'r 1998), we reflected the fact that the immigrant investor's promissory note can constitute "capital" under the regulations if the note is secured by assets the petitioner owns. We also determined that:

- (1) The assets must be specifically identified as securing the promissory note;
- (2) Any security interest must be perfected to the extent provided for by the jurisdiction in which the asset is located; and,
- (3) The asset must be fully amenable to seizure by a U.S. note holder.

Second, all of the capital must be valued at fair market value in United States dollars. 8 C.F.R. §

204.6(e) (definition of “capital”). The fair market value of a promissory note depends on its present value, not the value at any different time. *Matter of Izummi*, 22 I&N Dec. 169, 186 (Assoc. Comm’r 1998). Moreover, to qualify as capital for EB-5 purposes, “nearly all of the money due under a promissory note must be payable within two years, without provisions for extensions.” *Id.* at 194. Third, 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).

Fourth, any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. The immigrant investor must demonstrate by a preponderance of the evidence that the capital was obtained through lawful means. According to the regulation, to make this showing the immigrant investor’s petition must be accompanied, as applicable, by:

- (1) Foreign business registration records; or,
- (2) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this list), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the immigrant investor; or,
- (3) Evidence identifying any other source(s) of capital; or,
- (4) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the immigrant investor from any court in or outside the United States within the past fifteen years.

2013 年 5 月 30 日

政策备忘录 PM-602-0083

主题: EB-5 审案政策

美国公民与移民服务局局长办公室 (MS 2000) 华盛顿特区 20529-2000

目的: 本政策备忘录建立在之前的政策指南之上, 旨在为 EB-5 申请案件的审理提供指南。之前的政策指南在不与此备忘录相冲突的情况下继续有效, 直到其被撤销为止。

适用范围: 本备忘录适用于所有美国移民局员工并对他们有约束力。

法律依据:

- 《移民与国籍法案》(Immigration and Nationality Act, 简称 INA) 第 203(b)(5) 条与第 216A 条。
- 《商务部、司法部、州、司法系统及相关部门拨款法案》Pub. L. No. 102~395, § 610, 106 Stat 1828, 1874 (1992).

•《联邦规则法案》第 204.6 和 216.6 条。

I. 介绍

EB-5 项目的目的是为促进那些通过投资美国经济而帮助创造本国就业的人们移民美国。

为了吸引新的投资以及为美国工人创造新的就业，美国国会于 1990 年设立了 EB-5 项目。EB-5 是基于我们国家促进那些在美国投资于新的、重组的或扩张的企业与项目，并帮助创造或维持美国工人所需之就业的人移民至美国的利益。

在 EB-5 项目中，将其资金投入美国的创造就业的企业和项目中的移民者在两年的期限内有一个有条件的美国永久居民身份。两年之后，如果移民者满足了 EB-5 项目的条件以及其他适格条件，限制条件则被解除，而移民者成为一个在美国的合法的无条件的永久居民。国会设立此两年有条件的身份期间是为了确保法条与规章要求的合规，并保证投资资金的注入得以保持且美国就业得以被创造。

1990 年创立 EB-5 项目的立法所设想的是为在创造就业的商业企业中投资并参与管理的人们提供合法永久居留身份。到 1993 年，国会颁布了“移民投资者试点项目”，设计来鼓励在特批的区域中心内的不同的企业和经济发展机会中的移民投资。2012 年，国会将“试点”二字从这个已经运行了二十年的项目中去除，再次确认了其对区域中心投资和就业创造模式的承诺，并提供了一个区域中心每三年重新授权的模式，到 2015 年 9 月需再次授权。

我们美国移民局的目标是确保 EB-5 项目（包括移民投资者项目，即区域中心模式项目，下同）的潜力得以全面实现，并且保护 EB-5 项目的诚信发展。通过我们对 EB-5 项目中提出的申请的全面及仔细的审查，我们可以实现国会所希望的鼓励在我们的国家经济中投资并帮助美国工人创造就业的人们移民美国的初衷。

II. 优势证据原则

作为基本问题，对 EB-5 申请的审查而言非常重要是我们使用正确的证明标准。在 EB-5 项目中，申请人必须对每一个法律要件以优势证据标准进行证明。（参考 Matter of Chawathe, 25 I&N Dec. 369, 375-376 (AAO 2010)）也就是说，申请人需要证明他所说的更可能是真的。这比“明确且令人信服”以及一般在刑事案件中使用的“排除一切合理怀疑”这两个证明标准要低。申请人在我们的申请审查中不需要排除所有怀疑。即使审查员对事实有些怀疑，如果申请人提交的相关的、有证明能力的以及可信的证据致使对某一项指称的结论是“更可能是这样”或“可能是真的”，申请人则已经满足了证明标准。

III. 确保项目的正直性

对我们的使命而言至关重要是确保我们用最高级别的警觉性来管理 EB-5 项目从而维护其正直性。我们的行动队与欺诈监测及国土安全部官员合作，会将涉及欺诈、危害国土安全或公共安全的案件交由有关执法部门及规范部门处理。

IV. EB-5 项目的三个要素

EB-5 项目是基于三个最主要的因素：（1）移民者资金的投入，（2）于一个新商业企业，（3）创造就业。这三个因素在下文将从原始的 EB-5 项目和移民投资者项目的背景中进行解释。

A. 资金的投入

EB-5 项目是部分基于美国经济将从移民者资金的投入获益的事实。同时也是基于当投入资金是有风险的并投资于一个新商业企业，作为此投资的结果，为美国工人创造了至少十个就业岗位时，美国经济的受益是最大的原因。管理 EB-5 项目的规章在定义“资金”和“投资”时是以上述理论为指导的。

1. “资金”的定义

在 EB-5 项目中的“资金”一词并不仅仅指现金。相反，“资金”一词在规章中被定义为广义的可纳入考虑的多种不同的、具有财务价值、并且可用作投入一个商业的形式。规章中将“资金”一词如下定义：

“资金指的是现金、设备、存货、其他有形资产、货币等价物以及由外国企业家（移民投资者）拥有的资产所担保的债务，前提是外国企业家个人对此债务负有首要责任，并且用于投资移民申请的新商业企业的资产并未用于担保上述任何债务。所有的资金均应以合理市场价值评估后以美元计算。以非法手段（例如犯罪活动）直接或间接获得的资产不属于法案中 203(b)(5) 条所指的‘资金’范围内。”

“资金”的定义在我们的行政复议办公室所发布的规章以及以前的审案决定中得以阐明：

- 第一，“资金”的定义非常宽泛，不仅包括有价值的事物比如现金、设备以及其他有形资产，还可以包括移民投资者付款的承诺（即本票），只要此承诺由移民投资者个人所拥有的资产做担保、移民投资者对此债务负有偿付义务，并且移民投资者所用于担保的资产并不包括其投资的公司所拥有的资产。

在我们的 AA0 颁布的以前的判例 Matter of Hsiung 里，我们确认了移民投资者的本票满足了条例里“资金”的定义，只要此本票是由申请人所拥有的资产作为担保。我们同时也判定：

- （1）担保本票的资产必须被特定地指出；
- （2）任何担保物权必须在其担保的范围内由资产所在地相关管辖机构按法律要求公示生效；
- （3）此资产必须是完全可由美国票据持有者扣押的。

- 第二，所有的资金必须按合理市场价格估值并换算成美元。8 C.F.R. § 204.6(e)（“资金”的定义）。本票的合理市场价格取决于其现有价格，而不是其他任何时间的价格。并且，要满足 EB-5 中作为资金的要求，“本票要求偿还的钱款基本上需在两年的付款期限内付清，且不能延期支付”。同上 194 条。

- 第三，移民投资者必须证明他/她本人是所投入的资金合法持有人。
- 第四，任何以非法手段如犯罪活动直接或间接获得的资产均不能被认为是资金。移民投资者必须在优势证据标准下证明资金是通过合法手段获取的。根据条例规定，要证明这一点移民投资者的申请必须根据情况提供以下支持材料：

（1）国外企业注册证明；或

（2）以移民投资人的名义在五年内提交的公司、合伙企业（或列表里所描述的税务申报来源于的其他任何形式在任何国家或地区提交申请的实体）或个人的税务申报单，包括收入、特许经营、财产（包括不动产、个人财产或无形资产），或其他任何形式的在美国境内或境外的报税所在地提交的税务申报单；或

（3）证明资金的其他任何来源的证据；或

（4）在过去的十五年内在美国国内或以外的任何法庭针对移民投资者的有关金钱的判决的判决书的认证副本或证据证明所有针对移民投资者的有关金钱的悬而未决的政府的民事的或刑事的诉讼、行政程序或任何民间的民事诉讼（不管判决是否已下达）。