



Federation for American Immigration Reform

**SELLING AMERICA SHORT:**  
***The Failure of the EB-5 Visa Program***

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## Selling America Short: The Failure of the EB-5 Visa Program

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The EB-5 investor visa program raises many concerns, particularly about the associated Regional Center program administered by the U.S. Citizenship and Immigration Services (USCIS). In order to adequately assess the EB-5 program, it is necessary to have information on the cost to USCIS of administering the program, a comprehensive analysis of jobs directly created by EB-5 investors with a verifiable methodology, the sum total of foreign investment, and a detailed list of Regional Centers authorized by USCIS to receive EB-5 investor funds. Due to the lack of transparency by USCIS, information about the EB-5 program must be pieced together from various sources, or is simply unavailable.

At present, the debate about the EB-5 program consists primarily on anecdotal evidence of the success or failure of a handful of investment projects. Analysis of available data strongly suggest that the failure rate has been very high, and that the economic benefits provided by the EB-5 program have been negligible, at best. As the USCIS Ombudsman has noted: “The bill’s supporters predicted that about 4,000 millionaire investors, along with family members, would sign up, bringing in \$4 billion in new investments and creating 40,000 jobs [annually].”<sup>1</sup> However, the most comprehensive study of the program was a 2005 Government Accountability Office (GAO) report which analyzed the performance of the program from 1992 through 2004. The GAO found that after 12 years the EB-5 program had only led to \$1 billion (instead of the predicted \$48 billion) in investments and there was no reliable accounting of jobs created.

*We could not determine how many jobs immigrant investors have established because of the way USCIS credits the number of jobs created by an investor’s*

### Background

The Employment Based 5th Preference (EB-5) Visa, also known as the Immigrant Investor Program, was established by Congress in 1990 to grant foreign nationals legal permanent residency (LPR) status for investing in the U.S. and creating jobs for at least two years (INA §203(b)(5)).

The investment must either:

- (i) create a new enterprise with a direct investment of \$1 million that results in the employment of at least 10 U.S. citizens, LPRs, or other work-authorized aliens in full-time positions, excluding the investor and his/her spouse or children, for a period of two years, or;
- (ii) invest \$500,000 with a Regional Center in a “targeted employment area,” defined as an area with an unemployment rate that is 1.5 times the national unemployment average, with the same job creation requirements.

In 2003, Congress allowed EB-5 investors to invest in “troubled businesses,” defined as a business that has been in existence for two years and must have incurred a net loss of at least 20% of the business’ net worth during the twenty-four months prior to the application. The investment must preserve at least 10 jobs (8 CFR §204.6(e)).

The Immigrant Investor Pilot Program established in 1992 created conditions for Regional Centers that are authorized by USCIS to coordinate EB-5 investments. Regional Centers must demonstrate that their proposed program will:

- focus on a geographic region (8 CFR §204.6(m)(3)(i));
- promote economic growth through increased export sales, if applicable;
- promote improved regional productivity (8 CFR §204.6(m)(3)(i));
- create a minimum of 10 jobs directly or indirectly per investor;
- increase domestic capital investment (8 CFR §204.6(m)(3)(i));
- be promoted and publicized to prospective investors ;
- have a positive impact on the regional or national economy through increased household earnings (8 CFR §204.6(m)(3)(iii)); and
- generate a greater demand for business services, utilities maintenance and repair, and construction jobs both in and around the center (8 CFR §204.6(m)(3)(iv)).

—Congressional Research Service,  
*“Foreign Investor Visas:  
 Policies and Issues,”*  
 January 29, 2007

*business...[I]f there are non-EB-5 investors involved or the investment is part of a greater overall business expansion, USCIS credits the single EB-5 investor with the total of all jobs created even though many of the jobs are not the result of his portion of the investment. In one such example, USCIS credited a single immigrant investor with creating 1,143 jobs based on a \$1.5 million investment. While this investment did not create all 1,143 jobs, for adjudicative purposes...all jobs are attributed to that investor, even if the capital of others is fueling the enterprise.<sup>2</sup>*

The pooling of investment in Regional Centers, and the “expansive concept of job creation including both ‘indirect’ and ‘direct’ jobs,” to use the words of USCIS, makes it extremely difficult to gauge whether EB-5 investments have had any overall economic benefits.<sup>3</sup> Determining indirect job creation is a very inexact “science” at best, but USCIS has never attempted to establish a standard of assessment.

#### Cost/Benefit of EB-5

The GAO found that from 1992 to 2004, 6,024 EB-5 visas were issued to immigrant investors and their dependents (who receive work authorization) and that during that time 653 immigrant investors had been approved for Legal Permanent Resident Status (LPR), or an average of 50 a year.<sup>4</sup> The estimated \$1 billion dollars in investment during that period would average out to \$77 million annually, or \$166,000 per investor, less than the minimum required investment. Key questions left unanswered are: What was the economic benefit of these investments, and how many jobs were created as a result? That information is unavailable from USCIS and it appears likely that USCIS would not be able to provide even a plausible estimate of these two figures.

The cost to USCIS of administering the program from 1992 to 2004 is also unknown. However, it is likely to have been substantial and greater than what was anticipated initially because of the extended adjudication process, officer training (and re-training), and case evaluation. A one-time fee, of less than \$500 during this

time, was expected to cover the expense of handling a case over a two-year period.<sup>5</sup> However, immigration lawyers interviewed by the GAO noted that the process often took 5-7 years.<sup>6</sup> That fee was raised to \$1,435 in 2008 indicating that it was far too low (the current fee is \$1,500), yet there is still no assessment of whether this adequately covers administrative costs.<sup>7</sup> The Congressional Budget Office (CBO) assumes that USCIS will set application fees high enough to offset administrative costs, but does no separate analysis to determine if this is actually happening.<sup>8</sup> If an EB-5 visa holder wishes to apply for LPR status, there is the additional application fee of \$985 for adjustment of status (I-485) and a fee of \$3,750 for the removal of residency conditions (I-829).<sup>9</sup> Keep in mind that these fees are the only revenues generated for USCIS by the EB-5 program, as the capital invested, and any returns on that investment, are handled by Regional Centers or are invested directly in a business enterprise by the immigrant. These fees are expected to cover administrative costs for a case that could take up to ten years for final adjudication.

### Job Creation Benefits

*Bloomberg Businessweek* in August 2011 looked into the claims made by USCIS that the EB-5 program had been responsible for creating 31,000 jobs since its inception. It found that the “31,000 jobs does not reflect the number of people directly employed as a result of an investment but rather jobs that Regional Centers have predicted would be created assuming that the investment is successful.”<sup>10</sup> The reason that USCIS can make such a claim is because the definition of job creation is so expansive. A job can be created directly through an EB-5 investment, saved by investing in a “troubled business,” or created indirectly, which “can qualify as jobs attributable to a regional center, based on reasonable economic methodologies, even if they

are located outside of the geographical boundaries of a regional center.”<sup>11</sup> An investigation by Reuters found that “only 54 percent of the immigrants who start the process of gaining permanent residency using the EB-5 program actually attain it.” This directly contradicts the USCIS, whose spokesman claimed that “the overwhelming majority” of EB-5 investors gain LPR status.<sup>13</sup>

### By the Numbers — 1992 to 2010

APPLICATIONS SUBMITTED	13,719
APPLICATIONS APPROVED	8,382
APPLICATIONS FOR LPR APPROVED	3,127
CAPITAL INVESTMENT	\$1.5 Billion
JOBS CREATED	?????

### REUTERS, “OVERSELLING THE AMERICAN DREAM OVERSEAS”

Since, according to the GAO, the USCIS credits an EB-5 investor with all “created” jobs, even if non-EB-5 investors are involved in the enterprise. When USCIS’s accounting methods are understood, it is apparent that the 31,000 jobs they claim are attributable to the EB-5 program after 18 years (1,722/year) likely not accurate. The first is that there is no verifiable way to know if even one permanent job has been created or saved in the United States as a result of the EB-5 program; the second is that even with such a low threshold of proof, almost half of EB-5 investors are unable even to persuade USCIS that they indirectly had any impact on job creation/retention. More recently, in January 2012, a spokesman for USCIS was quoted in a Virginia newspaper as saying that the EB-5 program has injected \$2.1 billion into the U.S. economy and created 41,940 jobs.<sup>14</sup> Even if every EB-5 investor has only invested the minimal \$500,000, total investment should be at least twice as high, and the number of jobs created, based on EB-5 petitions approved for permanent LPR status, should also be at least double the number issued by USCIS.

**TARGETED EMPLOYMENT AREAS** — The designation of Targeted Employment Areas (TEAs) allows an EB-5 investor to invest only \$500,000 in order to encourage activity in areas that normally do not invite capital investment. However, there have been clear examples where some areas have been essentially gerrymandered to create TEAs in areas that do not suffer from high unemployment or a lack of capital investment. One such project is located in Lower Manhattan, one of the wealthiest areas in the world.<sup>15</sup> USCIS also located the Watergate Hotel in a TEA, despite the fact that this is one of the most affluent areas in Washington, D.C.<sup>16</sup> The TEA designation has also been used by developers in the U.S. to attract foreign investment to projects that have not been financed domestically because of the high risk of failure, or because local residents have opposed new development.<sup>17</sup> As recently as December 2011, USCIS Director Alejandro Mayorkas acknowledged that the program “might need more scrutiny.”<sup>18</sup>

**REGIONAL CENTERS** — A Regional Center is a private enterprise that is authorized by the USCIS to accept EB-5 investments and pool them with other investments to finance a business start-up or expansion. There are 3,000 visas allocated annually for EB-5 investors who invest through Regional Centers. Although a small number of this total are granted each year, Regional Centers handle approximately 85 percent of investments and USCIS estimates that 90-95 percent of those who apply for LPR status are those who have invested in Regional Centers.<sup>19</sup> After the conditional residency period, when investors apply for permanent residency, Regional Centers must demonstrate that individual investments have created or saved at least 10 jobs. The number of centers has grown exponentially in recent years, though the information available about the centers has been substantially curtailed by USCIS. In 2004 there were 26 Regional Centers operating. As of November 2011, there were 201 Regional Centers

listed on the USCIS website. However, information that was previously available about these centers has been removed by USCIS.<sup>20</sup>

Regional Centers that are the most troubling aspect of the EB-5 program. Because econometric models are used to outline how many jobs are created or predicted to be created due to the EB-5 investment, jobs created through investments made by Regional Centers are impossible to estimate, as noted above. There is virtually no oversight for the centers, which are handling millions of dollars in cash. And information about their operation is not available to the public. Many centers make misleading claims or illegal guarantees to foreign investors, and some are affiliated with immigration lawyers who steer clients to certain centers. Reuters attended EB-5 presentations in the United States, China, and Korea and found:

*...widespread problems in the way the program is promoted. Some marketers, for instance, imply or claim outright that the investments they're selling are insured or government backed and that the EB-5 immigrants who invest in them are guaranteed permanent green cards. Neither is ever true.*<sup>21</sup>

One immigration attorney compares the situation to the “Wild West,” and said “You’re dealing with a bunch of unregulated companies, most of them small, that aren’t registered with anyone and can do whatever they want.”<sup>22</sup> It is a vast understatement to say that USCIS does not closely monitor the Regional Centers, and admittedly the agency does not monitor at all marketing claims made about the EB-5 program by the centers.<sup>23</sup> In 1998, 900 cases with pending applications for LPR status were suspended because after eight years, the Immigration and Naturalization Service (INS) still had not developed guidance on how adjudi-

cators should interpret the EB-5 regulations.<sup>24</sup> What INS found when it reviewed these cases was that:

*hundreds of applications did not comport with the statute and EB-5 regulations...[I]n June and July 1998 AAO [Administrative Appeals Office] issued what has become known as “precedent-setting decisions” that clarify how adjudicators should interpret EB-5 regulations. ...In August, 1998...EB-5 adjudicators determined that most of the suspended applications should be denied. However, according to USCIS officials [in 2004], the majority of the denial letters were never processed and the cases remained pending.<sup>25</sup>*

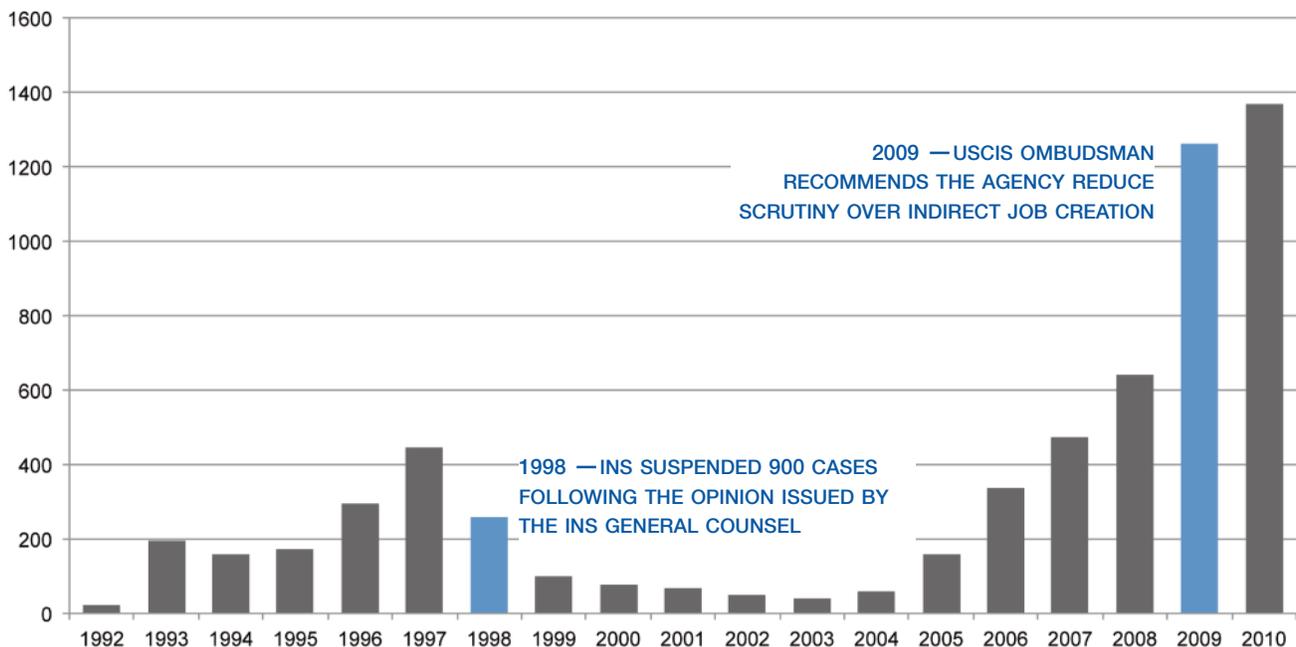
Surprisingly, the Department of Homeland Security (DHS) has not yet clearly defined how adjudicators should determine the eligibility of EB-5 applicants, nor to have come up with a tangible way to measure the success or failure of individual investment. DHS

has also not implemented controls to eradicate systematic fraud in the program. In 2009, the USCIS Ombudsman did acknowledge that:

*Concerns of insider access, suspicions of abuse, misrepresentation, and fraud surfaced in the mid-1990s at the same time that the EB-5 program was experiencing its most significant usage. Some of these concerns were later proven in a federal court case leading to convictions for immigration fraud, wire fraud, money laundering, and conspiracy against the principals and officers of an EB-5 investment business.<sup>26</sup>*

Yet the same Ombudsman’s report recommended that officers should not thoroughly scrutinize the documents and evidence provided by immigrant investors “absent clear evidence of fraud.”<sup>27</sup> If USCIS fails to look for fraud it is unlikely to find evidence of the fraud inherent in the EB-5 program.

### EB-5 Visas Issued to Foreign Investors



SOURCE: USCIS AND CONGRESSIONAL RESEARCH SERVICE

## Conclusion

The EB-5 program has yielded negligible economic benefits while wasting taxpayer dollars and squandering billions in foreign capital. Fraud has been endemic in its operation, and foreign nationals attracted by investment opportunities or the promise of an easy path to permanent residency have found themselves in a web of bureaucracy and uncertainty. There are better ways to attract foreign capital that are already in place, as evidenced by the fact that the EB-5 program accounts for only approximately 0.01 percent of foreign investment in the United States.<sup>28</sup> Foreign investors are avoiding a convoluted and opaque federal program that has proven to be extremely risky for

past investors. It is as if the EB-5 exists to provide the operators of Regional Centers easy access to the cash of unsuspecting foreigners.

The EB-5 program clearly has not produced the promised results, and DHS has consistently failed to demonstrate a commitment to sufficient oversight of the program to combat fraud. The most recent USCIS EB-5 “initiative” does not indicate that there will be much beyond a new public relations campaign. Since the EB-5 program has proven to be of limited, if any benefit to the American people, and foreign investment through the program has not been an important component of business start-ups in the U.S., the EB-5 program should be eliminated.

## Endnotes

- 1 “Employment Creation Immigrant Visa (EB-5) Program Recommendations,” Office of the U.S. Citizenship and Immigration Services Ombudsman, March 18, 2009, p. 1, fn 3 ([http://www.dhs.gov/xlibrary/assets/CIS\\_Ombudsman\\_EB-5\\_Recommendation\\_3\\_18\\_09.pdf](http://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf)).
- 2 “Immigrant Investors: Small Numbers of Participants Attributed to Pending Regulations and Other Factors,” Government Accountability Office, GAO-05-256, April 2005, p. 19 (<http://www.gao.gov/new.items/d05256.pdf>).
- 3 “EB-5 Immigrant Investor Pilot Program,” USCIS, OLA Congressional Conference, February 29, 2011, [http://www.uscis.gov/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/2011%20National%20Immigration%20%26%20Consular%20Conference%20Presentations/EB-5\\_Immigrant\\_Investor\\_Pilot\\_Program.pdf](http://www.uscis.gov/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/2011%20National%20Immigration%20%26%20Consular%20Conference%20Presentations/EB-5_Immigrant_Investor_Pilot_Program.pdf), accessed February 1, 2012.
- 4 “Immigrant Investors,” GAO, p. 16.
- 5 “U.S. Citizenship and Immigration Services’ Immigration Fees and Adjudication Costs: The FY2008 Adjustments and Historical Context,” Congressional Research Service, June 12, 2007, p. 35 (<http://trac.syr.edu/immigration/library/P1984.pdf>).
- 6 “Immigrant Investors,” GAO, p. 11.
- 7 “U.S. Citizenship and Immigration Services’ Immigration Fees and Adjudication Costs: Proposed Adjustments and Historical Context,” Congressional Research Service, July 16, 2010 <http://www.ilw.com/immigrationdaily/news/2011,0421-crs.pdf>
- 8 “H.R. 5569: A bill to extend for five years the EB-5 regional center pilot program,” Congressional Budget Office Cost Estimate, May 9, 2008 (<http://www.cbo.gov/ftpdocs/92xx/doc9244/hr5569.pdf>).
- 9 “New Application and Petition Fees Go Into Effect on Nov. 23, 2010,” USCIS, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=92c5e116de9eb210Vgn-VCM10000082ca60aRCRD&vgnnextchannel=5b33aca797e63110VgnVCM1000004718190aRCRD>, accessed February 1, 2012. The fee to apply to become a Regional Center is \$6,230 (I-924). One could argue that this is a revenue generator for USCIS since the agency does not expend resources monitoring the Regional Centers.
- 10 “The EB-5 Program: Create American Jobs, Get a Green Card,” *Bloomberg Businessweek*, August 4, 2011 (<http://www.businessweek.com/magazine/the-eb5-program-create-american-jobs-get-a-green-card-08042011.html>).
- 11 EB-5 Policy Adjudications, United States Citizenship and Immigration Services, Policy Memorandum, PM-602-XXXX, January 11, 2012.
- 12 “Overselling the American Dream Overseas,” Reuters, December 22, 2010, <http://www.reuters.com/article/2010/12/22/us-usa-immigration-business-idUSTRE6BL2KJ20101222>, accessed February 2, 2012.
- 13 Ibid.
- 14 “AsiaTown’ project in the works near Green Run area,” *The Virginian-Pilot*, January 28, 2012 (<http://hamptonroads.com/2012/01/asia-town-project-works-near-green-run-area>).
- 15 “Rules Stretched as Green Cards Go to Investors,” *The New York Times*, December 18, 2011 (<http://www.nytimes.com/2011/12/19/nyregion/new-york-developers-take-advantage-of-financing-for-visas-program.html?pagewanted=all>). See also “Atlantic Yards Report,” <http://atlanticyardsreport.blogspot.com/2010/12/anatomy-of-shady-deal-faq-and.html>.
- 16 USCIS, File No. WAC 09 007 5 15 16, “Decisions Issued,” September 21, 2010 ([http://www.uscis.gov/err/B7%20-%20Form%20I-526%20and%20I-829/Decisions\\_Issued\\_in\\_2010/Sep212010\\_01B7203.pdf](http://www.uscis.gov/err/B7%20-%20Form%20I-526%20and%20I-829/Decisions_Issued_in_2010/Sep212010_01B7203.pdf)). See footnote 1 in document
- 17 “AsiaTown’ project in the works near Green Run area,” *The Virginian-Pilot*, January 28, 2012.
- 18 Rules Stretched as Green Cards Go to Investors,” *The New York Times*, December 18, 2011.

- 19 "EB-5 Immigrant Investor Pilot Program," USCIS.
- 20 A list of Regional Centers can be found on the USCIS website, "Immigrant Investor Regional Centers," <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=d765ee0f4c014210VgnVCM100000082ca60aRCRD&vgnnextchannel=facb83453d4a3210VgnVCM100000b92ca60aRCRD>, accessed February 2, 2012.
- 21 "Overselling the American Dream Overseas," Reuters, December 22, 2010.
- 22 Ibid.
- 23 Ibid.
- 24 Immigrant Investors," GAO, p. 8.
- 25 Ibid, p. 13.
- 26 "Employment Creation Immigrant Visa," USCIS Ombudsman, p.7.
- 27 "Employment Creation Immigrant Visa (EB-5)," p. 2.
- 28 "U.S. Net International Investment Position at Yearend 2010," U.S. Department of Commerce, Bureau of Economic Analysis, BEA 11-34, June 28, 2011 (<http://www.bea.gov/newsreleases/international/intinv/2011/pdf/intinv10.pdf>); David North "The Immigrant Investor (EB-5) Visa A Program that Is, and Deserves to Be, Failing," Backgrounder, Center for Immigration Studies, January 2012, p. 1 (<http://www.cis.org/articles/2012/investor-visa-program-is-failing.pdf>).