

USCIS Response to Independent Study of the EB-5 Program

The EB-5 Immigrant Investor Program provides conditional visas to immigrants who invest in the U.S. and create jobs. Created in 1990 by Congress, the employment-based immigrant visa category allows for immigrant investors to receive conditional resident status in the U.S. for a two year period. Applicants must invest \$1 million, or \$500,000 in rural areas or areas of high unemployment, in a U.S. business, and their investment must be responsible for the creation or preservation of 10 or more full-time jobs.

In 2009, USCIS commissioned an independent study to assess the impact of the EB-5 program on the U.S. economy. The study was conducted by a contracting firm with expertise in economics. The study report represents the independent findings and recommendations of the firm and should not be considered to reflect official USCIS policy or procedure.

In the first section of the study, the firm was asked to report on the estimated contribution of the EB-5 program to the U.S. economy. Due to financial and time constraints, the firm used a small convenience sample of EB-5 petitions, which was not intended to be representative of the EB-5 program's investor population. Therefore, the conclusions reached in this section of the study are *estimates* and should not be considered or cited as indisputable evidence of the EB-5 program's contribution to the U.S. economy.

Moreover, the economic impact calculator supplied by the contracting firm was based on EB-5 investments across many industries and regions and on economic data that was relevant to the time period studied. As such it should not be utilized as a prospective method to establish indirect job creation for particular EB-5 cases. Individual EB-5 applications and petitions require an economic analysis, supported by contemporaneous data, which is specific to industry and region.

In the next section of the study, the firm was asked to compare immigrant investor programs in the United Kingdom, Canada, and Australia to the EB-5 program. Because significant changes have been made to the immigrant investor programs in all three of the countries used for comparison since the independent study was completed, the comparisons presented in the study are less informative today.

In the third section of the study, the firm was asked to assess the EB-5 program's application and adjudication process. The following items summarize USCIS' response to the study's recommendations.

- *Increase Program Awareness Through Targeted Marketing and Publicize the Unique Benefits of the EB-5 Program.* As the government agency responsible for the adjudication of immigration benefits, USCIS must remain impartial and cannot market one visa choice over another. However, USCIS recognizes that the EB-5 program is very important to our nation's economic growth and has developed enhanced materials to provide comprehensive information to the public on the unique benefits on the EB-5 program.
- *Allow Applicants to Track Their Progress.* USCIS agrees with this recommendation. Indeed, USCIS's forthcoming Transformation initiative will deliver a simplified, Web-based system for all benefit seekers to submit and track their applications. This new, account-based system will provide customers with improved service and greater transparency. It will also enhance USCIS' ability to process cases with greater precision, security, and timeliness.
- *Create a Customer-Supported Adjudication Process.* While USCIS cannot provide legal advice to those seeking immigration benefits before the agency, USCIS agrees that transparency and support in the EB-5 program can be enhanced. In May 2011, USCIS proposed fundamental enhancements to streamline the EB-5 process. The first of these enhancements, direct email

communication for regional center applicants, was introduced in September 2011. This customer service tool provides I-924 applicants with the opportunity to have a direct line of communication with USCIS during the adjudication process. For additional information on the EB-5 program, please visit www.uscis.gov/eb-5-investor.

- *Rotate EB-5 Adjudicators Less Frequently Than the Standard Two Years.* USCIS does not rotate EB-5 adjudicators every two years. In fact, USCIS recognizes that adjudicators who gain the skills necessary to adjudicate EB-5 applications and petitions should continue to contribute their expertise in this area.
- *Streamline the Application Paperwork.* USCIS agrees with this recommendation and is continually looking for ways to streamline the EB-5 application and petition process. For example, in November 2010, USCIS released forms I-924 and I-924A to standardize the process of applying for Regional Center designation. As discussed above, USCIS also proposed fundamental enhancements to further streamline the EB-5 process earlier this year.
- *Pre-approve Regional Center Projects.* USCIS has already taken several steps to provide guidance on this issue since the study was completed. In December 2009, USCIS released a memo that established a process through which an “exemplar Form I-526 petition” can be reviewed as part of a Regional Center designation proposal. The exemplar I-526 petition process is meant to streamline the EB-5 adjudication process by facilitating the adjudication of the related I-526 petitions and identifying any issues that could pose problems when USCIS is adjudicating the actual individual petitions. USCIS will continue to study the exemplar I-526 petition process and its role in EB-5 adjudications.
- *Reduce EB-5 Investor Risk.* The law requires that immigrant investor funds be placed “at risk.” The program is designed to spur economic development and job creation, which is best served when capital is invested in a manner that can result in either losses or gains. USCIS does not and cannot advise on the suitability of particular investments given a particular person’s risk tolerance, and potential investors are urged to conduct due diligence on prospective investments and to consult as appropriate with professional investment advisors. Moreover, the program by design entails a certain degree of risk because investors can only achieve unconditional lawful permanent resident status if their investments have in fact created at least 10 jobs for U.S. workers at the end of the two year conditional residency period. This uncertainty is a creation of statute and is outside of USCIS’ authority to change.
- *Create a Program for High Net-Worth Immigrants.* USCIS is limited to the language of the current EB-5 statute, which establishes the Regional Center program. This recommendation would be more appropriate for the legislative branch; it could not be implemented by USCIS through regulation.
- *Delegate the Economic and Business Assessment for EB-5 Adjudications to the Department of Commerce.* USCIS has held discussions with the Department of Commerce (DOC) about the EB-5 Regional Center program; however, at this time there is no planned role for DOC in adjudicating EB-5 applications and petitions.