

The Source for News and Information on the U.S. EB-5 Visa Program

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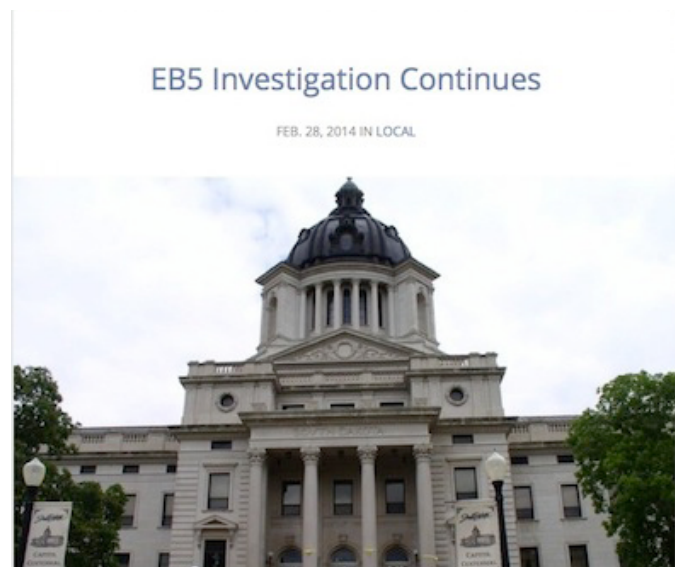
Digging Into the Atlantic Yards Project, pg. 4



China Real Estates Market
Cooling Down and Shadow
Banks Crisis , pg. 18



Real Estate Summit Discusses Alternative
Financing, Such as EB-5, pg. 8



Audit Continues Into South Dakota
Ex-Official, pg. 10



pg. 22



FOCUS

USCIS Stakeholder Meeting Review, pg.19

FEATURES

4 Digging Into the Atlantic Yards Project
Journalist's investigation of this billion-dollar project raises ethical and lawful concerns.

8 Real Estate Summit Discusses Alternative Financing
EB-5 is one of the alternatives.

10 Audit Continues of Ex-Official in South Dakota
Has EB-5 ties, hearings launched.

14 Nominated USCIS Director Will Have Questions on EB-5 to Answer

16 Canadian Minister Hints at New Immigrant Investor Program

17 Rich Chinese Overwhelm EB-5 Visa Program

18 China Real Estate Market Cooling Down and Shadow Banks Crisis
What does it mean to the EB-5 community?

19 First USCIS EB-5 Stakeholder Meeting with Director Nicholas Colucci

22 USCIS Idea Community: EB-5 Immigrant Investor Program



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EDITOR'S LETTER

by KRIS STELL
Managing Editor



The lead article in this issue of EB-5 News is a look at the billion-dollar Atlantic Yards Project in New York City. Journalist Norman Oder, a known critic of the project, has been following and investigating it since the beginning, and raises many ethical and legal concerns, such as using EB-5 funds to pay off prior loans, fraudulent marketing items, and the project being taken over by Greenland Group, a Chinese government-owned organization.

A real estate summit with nearly 300 top real estate executives discussed how EB-5 funding could be an alternative for that industry, with the U.S. expected to remain a top global investment destination, is on page 8.

On page 10 we have more of the South Dakota saga; hearings have been launched that have ties to EB-5. Our issue is rounded out with information on how the Chinese are overwhelming the EB-5 system all while their own real estate market is cooling down, which is followed by a synopsis of the first USCIS EB-5 stakeholder meeting with Director Colucci and the launch of a community idea website for the EB-5 Immigrant Investor Program.

Kris Stell
Managing Editor
EB-5 News



by KRIS STELL
Managing Editor

Digging Into the Atlantic Yards Project

Journalist's investigation of this billion-dollar project raises ethical and lawful concerns.

Journalist Norman Oder has studied and analyzed Forest City Ratner's planned \$4.9 billion Atlantic Yards project in Brooklyn, New York, a project that three years ago, he reports, raised \$228 million through the EB-5 immigrant visa program. They are now working towards raising another \$249 million, and the project's construction schedule has been extended from 10 years to 25 years. His close investigation brings about questions of ethical and lawful concerns.

According to the Empire State Development Corporation (ESDC, the state agency overseeing the project) website, the Atlantic Yards Project is a \$4.9 billion project that includes 16 buildings for residential, office, retail, community facilities, parking, and possibly hotel uses. These buildings will provide approximately 5,325 to 6,430 housing units, 2,250 of which will be affordable. The project also contains eight acres of publicly accessible open space, and the Arena, a venue for the Nets professional basketball team, as well as one for the city's colleges and local academic institutions. The project is expected to create thousands of construction and permanent jobs.

Empire State Development, in conjunction with the Metropolitan Transportation



Atlantic Yards Project rendering.

Authority (MTA), the City of New York, and affiliates of the Forest City Ratner Companies, proposes to implement the Atlantic Yards Project in two phases. Phase I includes the Arena, four residential and commercial towers, along with an updated MTA rail yard and a brand



new subway entrance.

The New York Regional Center/U.S. Immigration Fund, a privately-owned investment pool, is the coordinating entity for the fundraising. The U.S. Immigration Fund has put together materials in English, including a slick brochure and a video with Chinese subtitles, obviously aiming at a broader market. The project is also being marketed through an immigration consultancy in London.

Taking A Close Look

Here's Oder's reports:

- Wednesday, January 22, 2014 – Document reveals Greenland, Chinese investor, will control Atlantic Yards; Forest City Ratner said otherwise or left ambiguity
- Tuesday, January 28, 2014 – Revealed: how New York State helped Forest City Ratner get low-interest loan from Chinese investors, asked for nothing in return
- Thursday, January 30, 2014 – Margin for the developer: Forest City says EB-5 funds used for infrastructure; evidence suggests \$228M used to retire high-interest loan
- Thursday, January 30, 2014 – Exclusive: Forest City seeking \$249M in cheap financing from immigrant

investors (again); Chinese government would profit by selling U.S. green cards to Chinese!

And here are some highlights of these reports, in which Oder finds many discrepancies in the developers claims and what's actually occurring:

- In a new video, Forest City Ratner CEO MaryAnne Gilmartin tells potential new immigrant investors, who'd offer a low-interest loan in exchange for green cards for themselves and their families, "Several years back, we utilized EB-5 funds to execute other infrastructure improvements in and around the Barclays Center."

Oder: *Documentary evidence from the New York City Department of Finance, as well as Forest City's own statements, suggests the money was used, in large portion, to replace a high-interest land loan from Gramercy Capital. That subverts the intent, if not the letter of the law, which justifies the green cards because each \$500,000 investment is supposed to create 10 jobs.* (See this article for the evidence Oder has on the mortgages.)

- Representatives of the New York City Regional Center (NYCRC), the private firm engaged to market the investment, told potential investors at public events and on webcasts in China that the money would go to an arena.

PROJECT PARTIES

FOREST CITY ENTERPRISES

Forest City Enterprises, Inc., is an NYSE-listed national real estate company with \$9.3 Billion in total assets (as of 10/31/2013). The Company is principally engaged in the development, ownership, management and acquisition of commercial and residential real estate and land throughout the United States. Founded in 1920 and based in Cleveland, Ohio, Forest City's diverse portfolio includes hundreds of premier properties located throughout the United States. They are especially active in their core markets -- New York, Washington, D.C., San Francisco, Boston, Dallas, Los Angeles and Denver -- where they have overcome high barriers to entry and developed a unique franchise.

GREENLAND HOLDINGS GROUP (PENDING PARTNERSHIP)

Established in 1992, Greenland Holdings Group is the largest state-owned enterprise in Shanghai and a top ranked firm worldwide, recognized by Fortune Global 500 and Top 500 China. Firmly rooted in its development principle of "constructing and enjoying a harmonious Greenland together," Greenland Holdings has developed a portfolio that spans more than 65 cities in 24 provinces of China. Greenland expects to enter the Fortune 200 list by 2015, with an expected revenue in excess of 500 billion RMB (\$82.3 billion USD).

EMPIRE STATE DEVELOPMENT (ESD)

ESD is the umbrella organization for New York's two principal economic development-financing entities: the New York State Urban Development Corporation and the Job Development Authority. It is a public authority of the state of New York in the United States that has financed and operated several ambitious state projects by issuing tax-exempt bonds.

METROPOLITAN TRANSPORTATION AUTHORITY (MTA)

The Metropolitan Transportation Authority is North America's largest transportation network, serving a population of 15.1 million people in the 5,000-square-mile area fanning from New York City through Long Island, New York State and Connecticut. MTA subways, buses and railroads carry more than 280 million vehicles a year and provide 2.62 billion trips per year to New Yorkers.

Oder: Just look at one promotional poster for an event aimed to recruit investors. However, as I reported, the arena was already funded, and the marketing effort raised questions about fraud.

• "Atlantic Yards II," as promoted on the project website, is essentially the full project as announced and approved:

6,430 residential units, 627,000 square feet of office space, 8 acres of "park" (actually, privately-owned public space), a new Long Island Railroad yard, and more.

Oder: But investors would not be putting their money into that whole project but rather some vaguely defined \$1.235B "project" subset. As seen in the screenshot on left, 41% of

the \$1.235B "project" would be a senior loan – I'd guess that could include tax-exempt bonds – while 37% would be the developer's capital.

• It offers stale quotes from former elected officials about the entire \$5 billion Atlantic Yards project, leaving the impression that investors' money would go to the overall

project, rather than some vague subset said to be worth \$1.235 billion, thus incorporating the \$249 million sought as a neat 20%.

• It claims that Atlantic Yards would create 9,739 jobs, far more than the 10 jobs per investor (there would be 498) required by the law. (see Job Creation image)

• The remaining 15 towers of the Atlantic Yards project are to be developed by a (pending) joint venture between Brooklyn developer Forest City Ratner and the Chinese government-owned Greenland Group. (Evidence – including the identification of Mike Bloomberg in a brochure as the current mayor and a quote in a video about the arena's one-year

anniversary – suggests the marketing of this project began last fall, not long after the preliminary Greenland deal was signed 10/2/13.)

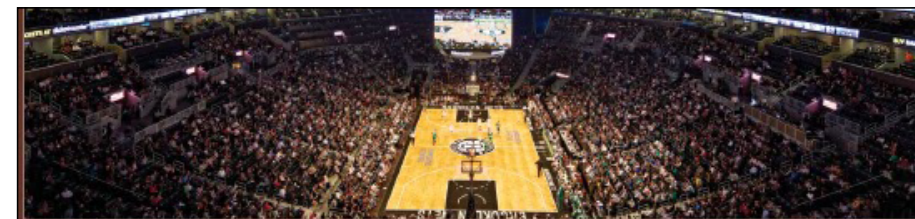
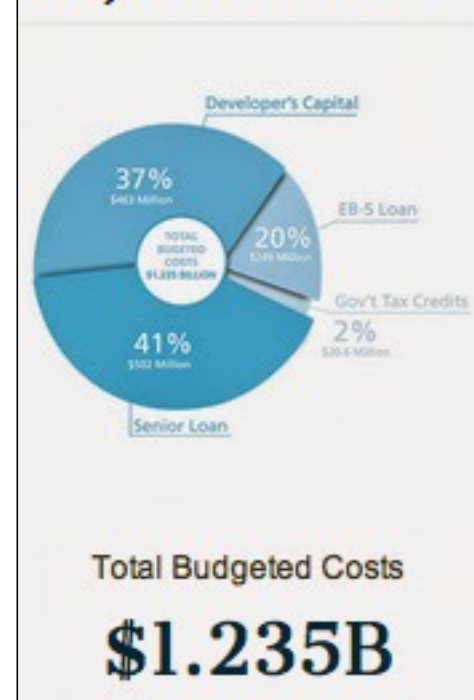
• The Greenland Group, which will contribute 70% of the funds going forward, will control the joint venture. So, though Forest City executives Bruce Ratner and MaryAnne Gilmartin appear in the promotional video, and surely offer more local knowledge and marketing expertise, they will ultimately answer to Greenland – even if the EB-5 project, for legal reasons, is controlled by the American partner.

• Of the current round of funding for the additional \$249 million, Oder summarizes, "While they may have used some EB-5 funds for infrastructure, evidence suggests the money was used significantly to retire a high-interest land loan. But I'd bet a good share of this new \$249 million will be going to help build the new railyard Forest City is obligated to start by next June and finish by 2016."

Taking Issue With the Project

According to a report on BrooklynSpeaks, "The Atlantic Yards project has been sharply criticized by local elected officials for failing to deliver thousands of units of affordable housing on the schedule promised at the time of the project's original 2006 approval. In 2009, the project's construc-

Project Overview



JOB CREATION

As with all projects offered by the US Immigration Fund, the job creation methodology utilized is simple and clear. Atlantic Yards is being developed in partnership with one of the largest real estate moguls in America, a China state-owned enterprise as major shareholder, New York City & State Government, as well as major international financial institutions willing to invest a significant amount of money into the project. USIF believes this development experience coupled with Forest City Ratner Companies understanding and experience with the EB-5 Program translates to the highest level of security that the project will be built and will result in an abundance of jobs created.

RIMS II Econometric Study completed by Dr. Michael Evans utilizes the number of jobs created by construction spending only;

The most conservative methodology accepted by USCIS. An EB-5 petition has never been denied due to eligible construction spending;

The construction cost data from the RIMS II Econometric Study is consistent with the developer's budget and the legal documents;

According to USCIS EB-5 Program requirements each investor is required to create 10 jobs, thus 4,980 jobs must be created in order for all investors to receive their permanent green cards. Atlantic Yards is estimated to create a total of 9,739 jobs, which exceeds USCIS requirements by approximately 95.6% equating to more than 19.6 jobs per investor.

tion schedule was extended from 10 to 25 years — a change that a New York State Supreme Court has ruled was approved illegally. 2,069 of Atlantic Yards' promised 2,250 affordable apartments would remain to be built following the proposed sale. The ESDC memo states that Greenland's approval will be required prior to the start of any new building at the Atlantic Yards site." (insert web shot) (<http://brooklynspeaks.net/node/74>)

"The revelation that Greenland Holdings, a developer owned by the government of China, will control the joint venture responsible for completing Atlantic Yards contradicts previous statements made by FCRC executives. In August, FCRC CEO MaryAnne Gilmartin told the New York Times in an article announcing a prospective sale, "We'll retain our position as the managing member."

"It's outrageous that a project receiving hundreds of millions of taxpayer dollars in exchange

for badly-needed affordable housing for working people from Brooklyn could soon be controlled by a foreign government. ESDC has repeatedly abdicated its responsibility to the people of the State of New York with the Atlantic Yards project and is poised to do so again," said Michelle de la Uz, executive director of The Fifth Avenue Committee.

Oder's investigations go into much further detail on the Atlantic Yards Project, so we encourage you to take a look. ■



Greenland Holdings Group to control build out of affordable housing at Atlantic Yards

Submitted by brooklynspeaks on January 21, 2014 - 11:06am

An internal memorandum by the New York State Empire State Development Corporation (ESDC) shows that a proposed sale by Forest City Ratner Companies (FCRC) of its interest in the Atlantic Yards project to Greenland Holdings Group will result in Greenland's securing decision-making control on the remainder of the project. The sale would result in the creation of a new joint venture between FCRC and Greenland, and Greenland will be allowed to appoint a majority of directors to the new firm's board, including its Chairman and CEO.

The Atlantic Yards project has been sharply criticized by local elected officials for failing to deliver thousands of units of affordable housing on the schedule promised at the time of the project's original 2006 approval. In 2009, the project's construction schedule was extended from 10 to 25 years—a change that a New York State Supreme Court has ruled was approved illegally. 2,069 of Atlantic Yards' promised 2,250 affordable apartments would remain to be built following the proposed sale. The ESDC memo states that Greenland's approval will be required prior to the start of any new building at the Atlantic Yards site.

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"It's outrageous that a project receiving hundreds of millions of taxpayer dollars in exchange for badly-needed affordable housing for working people from Brooklyn could soon be controlled by a foreign government. ESDC has repeatedly abdicated its responsibility to the people of the State of New York with the Atlantic Yards project and is poised to do so again," said Michelle de la Uz, Executive Director of The Fifth Avenue Committee.

by KRIS STELL
Managing Editor

Real Estate Summit Discusses Alternative Financing such as EB-5

On March 7, nearly 300 CEOs, COOs, and other top real estate executives convened at the fifth annual Akerman U.S. Real Estate Summit held in downtown Miami to discuss the latest trends in commercial real estate investment and explore creative avenues for growth. A series of high-level discussions were held throughout the day; Akerman Summit speakers explored the state of the global market and cross-border real estate investment opportunities, as well as alternative financing vehicles such as the EB-5 Visa Program.

In a session focused on capital sources, Annemarie DiCola, CEO of Trepp led a conversation between Tobin Cobb, Co-CEO of Grass River Properties; Pat Goldstein, Head of Commercial Real Estate of Emigrant Bank; and Steve Witkoff, CEO of the Witkoff Group. The group identified the greatest challenges and opportunities within the EB-5 program and how the program is being utilized

in the capital stack. ["Click here to view this session"](#)

Retail executives Michael Cohn, Regional President of Lennar Commercial Investors; Jeff Berkowitz, President of Berkowitz Development Group; Paul Travis, Managing Partner of Washington Square Partners; and Ron Wheeler, CEO of The Sembler Company discussed EB-5 as a creative financing strategy within the retail sector. They explained that retail has not traditionally been the main sector for EB-5 investment, but the program is now emerging as a financing option for retailers. ["Click here to view this session"](#)

In conjunction with the Akerman Summit, the 2014 Real Estate Industry Outlook Survey was unveiled, which found that investor and lender confidence in the U.S. commercial real estate market is

reaching new heights since financial giants fell more than five years ago. Investors have a stronger appetite for real estate assets than in recent years. The U.S. is expected to remain a top global investment destination. In fact, real estate executives indicated that foreign investment will further drive activity across many U.S. real estate sectors, with a third of respondents indicating that the nation will see an increase in foreign spending in 2014. More than half of executives say that the multifamily sector will be the most active market for foreign investment in the U.S., with the majority of capital coming from Europe. In the hospitality and industrial sectors, about half of real estate executives predict that investment will come from Latin America, while capital sources in the retail and office sectors are predicted to primarily be European and Chinese. [Click here to download this report.](#) ■



In a session focused on capital sources, real estate pros identified the greatest challenges and opportunities within the EB-5 program.



EB-5 as a creative financing strategy within the retail sector was discussed by retail executives, and state the program as emerging as a financing option.



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- Practices
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Richard Bezold

Akerman Survey Reveals Steady Optimism Among U.S. Commercial Real Estate Executives and Increased Investor Appetite

National Real Estate Leaders Convene at Fifth Annual Akerman U.S. Real Estate Summit to Discuss State of the Industry and Emerging Opportunities
March 12, 2014

Investor and lender confidence in the U.S. Commercial Real Estate market are reaching new heights since financial giants fell more than five years ago, according to a survey conducted by Akerman LLP, a top 100 U.S. law firm serving clients across the Americas. The Akerman Real Estate Industry Outlook Survey, which was unveiled at the fifth annual Akerman U.S. Real Estate Summit, indicates that domestic investors have a stronger appetite for real estate assets than in recent years. Capital availability from a wide range of equity sources also is expected to improve in 2014, with increased activity by institutional forces.

Audit Continues of Ex-Official in South Dakota with EB-5 Ties, Hearings Launched

A February 20, 2014 article in *Aberdeen News* investigates the audit underway of former South Dakota secretary of tourism and state development Richard Benda for expenses totaling approximately \$89,000 that SDRC (South Dakota Regional Center) should have paid under its state contract with Benda's state agency.

The article states that Benda is credited with pioneering recruitment of Asian investors for a handful of South Dakota projects and received many tens of thousands of dollars in reimbursements for expenses in a two-year period that weren't backed up by receipts or other proof, a special audit has found.

Lack of Supporting Documents

Further stating that "while Benda was still a state employee, the contractor paid him approximately \$62,000 for expenses that didn't have any supporting documents."

"We don't know what those were for," said state Auditor General Martin Guindon, whose office conducted the financial inspection. "We

NEWS

EB5 Investigation Continues

FEB. 28, 2014 IN LOCAL




PHOTO: WNAX

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The investigation into the Governor's Office of Economic Development and its connections to the EB5 program and Northern Beef Packers moves to the legislature next week.

Senator Jean Hunhoff of Yankton says the Government Operations and Audit Committee will hold hearings next Friday (March 7th) in Pierre...

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State paid bundle to Benda without receipts

Story Comments (1) Print Font Size

Posted: Saturday, February 15, 2014 1:00 am | Updated: 3:19 pm, Thu Feb 20, 2014.

By Bob Mercer American News Correspondent | 1 comment

PIERRE — The former state official who pioneered recruitment of Asian investors for a handful of South Dakota projects received many tens of thousands of dollars in reimbursements for expenses in a two-year period that weren't backed up by receipts or other proof, a special audit has found.

State government paid approximately \$89,000 to the official, former secretary of tourism and state development Richard Benda for expenses that a private business should have paid under its state contract with Benda's state agency, according to the audit.

don't know there was a problem. There's no evidence for us to show they were paid for legitimate purposes."

In some instances, travel vouchers reimbursed by state government to Benda showed event-hosting expenses without any supporting documents, such as the purpose and the attendees.

The auditor said some receipts were in Mandarin Chinese and listed Chinese currency amounts. Among the reimbursements were payments totaling \$14,700 for translation services reportedly performed by people in China and Philippines that lacked formal receipts and were supported by notations written in English. The final expense payment from the contractor to Benda of \$35,539 came in January 2011, as he was exiting state government to work for the contractor.

The EB-5 Tie-In

The article details that while secretary, Benda had signed the contract in November 2009 with SDRC Inc. (South Dakota Regional Center) President Joop Bollen to manage South Dakota's participation in the federal EB-5 visa program for the Governor's Office of Economic Development as Bollen had previously done extensive work for state government recruiting foreign investors under EB-5. Bollen incorporated SDRC in January 2009.

SDRC arranged pools of \$500,000 loans from participants and charged additional

fees to them. The Aberdeen-based SDRC hired Benda in January 2011, after incoming Gov. Dennis Daugaard didn't retain him.

During Benda's time as a member of Gov. Mike Rounds' cabinet, SDRC arranged major EB-5 loans for large projects in Aberdeen, Huron, Deadwood, Brookings County and Day County. Benda also generated state grants from his office for those projects in some instances.

Two EB-5 loans went for constructing and equipping the now bankrupt Northern Beef Packers plant in Aberdeen and two other EB-5 loans went to the Dakota

Provisions meat-processing operations at Huron.

Benda's later job with SDRC was loan monitor for Northern Beef. During his final month as a state employee, Benda arranged for several major grants to Northern Beef. One was \$1 million from the Future Fund, a program that the governor exclusively controls. In turn, Northern Beef placed \$550,000 in an escrow account for SDRC under a previous arrangement to pay for the Northern Beef loan monitor, who was Benda.

Benda also arranged in December 2010 for two Future



And the CEO Mr. Wang Limin and Southern states EB-5 project director SEZ officials Mr. Joop Bollen South State Tourism Business Development Minister Mr. Richard Benda special plane to go to Beijing New Power Group field trips, group photo before departure

continues next page

Fund grants to be increased to South Dakota Development Corporation, a quasi-government agency that makes loans to projects. One of the grants was increased from \$650,000 to \$1.2 million for SDDC. That was loaned to Northern Beef. The other grant was increased from \$800,000 to \$850,000 for SDDC. That loan wasn't completed. The \$1.2 million was delivered to Northern Beef in early 2011.

See our article "The Rise and Fall of South Dakota: A

Cautionary Tale for EB-5 Public/Private Partnerships" more information on this topic.

What Now?

The article states that the Legislature plans to proceed with hearings that will be without Benda. He died Oct. 20, 2013 from a shotgun wound to his abdomen that authorities determined was self-inflicted.

"The state audit confirmed the findings earlier by

Watchdog.org

HOME STATES NATIONAL NEWS VIDEO WATCHBLOG ISSUES

ENERGY ELECTIONS PENSIONS EDUCATION HEALTH CARE

Trying to pick winners, South Dakota comes up a loser

By Kenric Ward / February 21, 2014 / 1 Comment



SUICIDE?: Richard Benda reportedly killed himself amid investigations into EB-5 programs that he oversaw.

SUICIDE?: Richard Benda reportedly killed himself amid investigations into an EB-5 program he oversaw.

By Kenric Ward | Watchdog.org

WASHINGTON, D.C. – Bankruptcies, a suspicious suicide and an FBI investigation have cast a pall over foreign-investment ventures in South Dakota.

The state Legislature voted last week to [launch hearings](#) into five EB-5 investor-visa projects:

Dakota Provisions of Huron;
Northern Beef Packers of Aberdeen;
NextEra Energy's Day County 2

Wind Farm; Basin Electric's Deer Creek generation plant at Elkton; and the Deadwood Mountain Grand hotel and casino.

state Attorney General Marty Jackley that Benda double-billed and was reimbursed each time, for two airline trips to China and one to Las Vegas."

The state contract with SDRC was terminated in September. Its provisions called for SDRC to establish from the extra fees paid by investors an indemnity account to protect state government and an expense account to cover costs for recruiting investors and for related matters. State government won't have access to the money in the indemnity account for six more years under the contract. The expense account had \$28,240, according to Nathan Lukkes, deputy commissioner at GOED. The money was transferred from SDRC to GOED on Jan. 31.

The auditor general's report recommends that GOED attempt to recover approximately \$61,000 from SDRC to cover state government's reimbursement of expenses to Benda that SDRC should have paid.

Hearings Launched Into Projects

In addition to this article on the audit, a Feb. 21 article in Watchdog.org titled, "Trying to pick winners, South Dakota comes up a loser," says that the state Legislature voted last week to launch hearings into five EB-5 investor-visa projects in South Dakota – Dakota Provisions of Huron; Northern Beef Packers of Aberdeen; NextEra Energy's Day County 2 Wind Farm; Basin Electric's Deer Creek generation plant at Elkton; and the Deadwood Mountain Grand hotel and casino.

The article states that SDRC and the Governor's Office on Economic Development used the federal investor-visa program to pump millions of dollars

into the now-bankrupt Northern Beef Packers plant.

"Questions relate to what happened to tens of millions in EB-5 funding," said David North, a policy analyst with the Center for Immigration Studies.

The \$100 million slaughterhouse, funded largely by Asian EB-5 investors, was auctioned off for \$4.7 million in cash and \$35 million in the cancellation of a "somewhat murky debt," North reported.

Another South Dakota paper, the *Madville Times*, ran the below article that provides South Dakota Gov. Dugaard's take on the EB-5 situation in his state, as well as how efforts will be refocused: ■

MADVILLE TIMES

From Madison to Spearfish: real liberal media for the great state of South Dakota

FEB
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Dugaard Continues to Separate Self and State from EB-5

Posted by [caheidelberg](#)

Governor Dennis Dugaard keeps building the wall of separation between himself and the scandal-hobbled EB-5 visa investment program. Check out [his answers to Bob Mercer's question on the program](#).

On Dugaard's knowledge of the EB-5 program:

I was generally aware of the EB-5 program as lieutenant governor, to the same degree that any interested observer might have been. I don't remember ever talking with Governor Rounds or any of the Rounds-era Tourism and State Development (TSD) secretaries about EB-5 while I was lieutenant governor. I have not discussed the program with Governor Rounds or any of those TSD secretaries since I took office in 2011 [Governor Dennis Dugaard, interview with Bob Mercer, "Q and A with Gov. Dugaard: GOED Not Marketing, Soliciting EB-5 Projects," *Mitchell Daily Republic*, 2014.02.20].

On his intentions toward EB-5:

Governor's Office of Economic Development (GOED) is not actively marketing or soliciting EB-5 projects or investments. The office provides information on the program to interested projects. That is a result of the leadership change at GOED and my desire to refocus our economic development efforts. EB-5 is a federal program. Now that the SDRC contract is terminated, GOED will be taking an administrative role in regard to EB-5. If

Nominated USCIS Director Will Have Questions on EB-5 to Answer

In December 2013, President Obama announced his decision to have Leon Rodriguez become the director of USCIS (United States Citizenship and Immigration Services), the agency that oversees the EB-5 Immigrant Visa Program. An article Watchdog.org's Kenric Ward (kenric@watchdogvirginia.org) states that U.S. Sen. Charles Grassley, the ranking Republican on the Judiciary Committee, said he plans to pepper Rodriguez with the same EB-5 concerns he posed to Former USCIS Director Alejandro Mayorkas.

"Citing a Homeland Security Investigations memo, Grassley said another federal agency, Immigration and Customs Enforcement, identified key vulnerabilities in EB-5 visas:

- 1) Export of sensitive technology/economic espionage.
- 2) Use by foreign government agents/espionage.
- 3) Use by terrorists.
- 4) Investment fraud by regional center.
- 5) Investment fraud by investors.
- 6) Fraud conspiracies by investors and regional center.
- 7) Illicit finance/money laundering.

Characterizing Mayorkas' responses as vague or nonex-

Watchdog.org

HOME STATES NATIONAL NEWS VIDEO WATCHBLOG ISSUES

ENERGY ELECTIONS PENSIONS EDUCATION HEALTH CARE

Obama choice to run controversial immigration program faces a fight

By Kenric Ward / February 14, 2014 / 18 Comments



HOT SEAT: USCIS nominee Leon Rodriguez will walk into a grilling by Sen. Charles Grassley.

HOT SEAT: USCIS nominee Leon Rodriguez will walk into a grilling by Sen. Charles Grassley on the immigration investor-visa program.

By Kenric Ward | Watchdog.org

WASHINGTON, D.C. – Hard questions about a controversial investor-visa program await President **Barack Obama**'s choice to head the embattled **U.S. Citizenship and Immigration Services**.

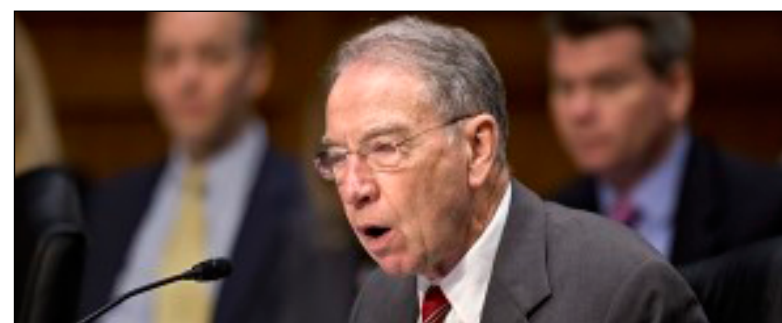
Leon Rodriguez was tabbed last December to lead the agency that oversees the **EB-5** program, which grants green cards to foreign nationals who invest \$500,000 to \$1 million in select U.S. companies.

Former USCIS Director **Alejandro Mayorkas** is under investigation by **DHS' Office of Inspector General** for his handling of EB-5 applications.

The **Securities and Exchange**

Commission also is looking into the EB-5 regional

center that funds Virginia Gov. **Terry McAuliffe's GreenTech Automotive Inc.**



Senator Charles Grassley wants answers.

istent, Grassley cited another ICE memo asserting that EB-5 "may be abused by Iranian operatives to infiltrate the United States."

"When Homeland Security's law enforcement database, TECS, has a hit on someone applying for a regional center, Citizenship and Immigration Services sends an email to the law enforcement agency that put the record in," Grassley said.

"But the problem is that Citizenship and Immigration Services isn't waiting for law enforcement. ... If law enforcement doesn't get back to (USCIS) soon enough, they just go ahead and approve the person's application.

"That's not coordination — it's a sham. It should be simply unacceptable to any of us who are concerned about the national security of our country."

If confirmed, Rodriguez would leave his post as the director of the Office for Civil Rights at the Department of Health and Human Services, which he has held since September 2011. He was previously Chief of Staff and Deputy Assistant Attorney General for Civil Rights at the Justice Department.

In addition to overseeing the administrative operations of the Civil Rights Division, Rodriguez's leadership portfolio includes civil rights matters involving discrimination based on national origin and immigration status, legislative affairs and community outreach.

The Senate Judiciary Committee — chaired by U.S. Sen. Patrick Leahy, a Vermont Democrat and fervent EB-5 advocate — has yet to schedule a confirmation hearing for Rodriguez.

Rodriguez's full bio here.

Mayorkas has been nominated to become the No. 2 official in the USCIS's parent agency, the Department of Homeland Security. For more on the investigation into him, visit here. ■



THE EB-5 VISA INVESTMENT MARKETPLACE

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- Independent research, due diligence and risk analysis reports on the investments and principals
- Invest directly: get higher quality investments at lower costs (no agents or finders)



Canadian Minister Hints at New Immigrant Investor Program

CanadaVisa.com has reported that Canadian Minister of Citizenship and Immigration, Chris Alexander, was in mainland China recently and spoke there about the future of the recently cancelled Federal Immigrant Investor Program.

Minister Alexander explained that the investor program, which is scheduled to be closed, was no longer serving the best interests of Canada. Moving forward, the program will become an "immigration investor capital pilot, [with] a larger

not have a choice in terms of what they invest in and where.

To coordinate the new program, the government of Canada will be working with professional private-sector managers. A competition will be held to select these



investment in an at-risk project focused on the start-up side of the venture capital spectrum". Such a program is similar to ones already in place in Australia and some European countries.

The article further details how the Minister also stated that the required investment will be more than double the current amount of \$800,000. In addition, the funds will be invested for a longer period of time. Investors will deposit their money into a single fund, and will

managers.

This pilot program will be established with the intent of eventually creating a new investor program that is more suitable to Canada's current economic needs. Further information on this program is expected to be released in the coming months.

See the Jan/Feb issue of EB5News.com for industry reaction on the cancellation of the Canadian program. ■

Rich Chinese Overwhelm EB-5 Visa Program



This CNN Money article discusses the dramatic surge in interest from the Chinese into the EB-5 Immigrant Visa Program and how it is threatening to overwhelm the program.

According to the article, "the number of applicants

is now so great that the government might run out of permits. The demand from mainland Chinese eager to move abroad has already led the U.S. government to warn the program could hit a wall as early as this summer."

Chinese nationals account for more than 80% of visas issued, compared to just 13% a decade ago, according to government data compiled by CNNMoney. That translates to nearly 6,900 visas for Chinese nationals last year, a massive bump up from 2004, when only 16 visas were granted to Chinese.

"The program has literally taken off to the point [that] in China, the minute anybody hears I'm an immigration lawyer, the first thing they say is, 'Can we get an EB-5 visa?'" said Bernard Wolfsdorf, founder of the Wolfsdorf Immigration Law Group. "There is a panic being created in China about the demand [getting] so big that there is going to be a visa waiting line," he said.

The article further explains how EB-5 visas are capped at 10,000 annually (includes spouses and children) and that currently there are 7,000 pending applications. Here for the complete story. ■



China Real Estate Market Cooling Down and Shadow Banks Crisis

What does it mean to EB-5 Investors?

The sale and refinancing of real property are common sources of EB-5 investment monies for Chinese investors. However, recent changes in the Chinese banking sectors may make it harder to obtain a home equity loan in China.



by Yi Song, Esq.

Since late last year, there are mounting signs that the housing market in China is cooling down. One such sign is that Chinese real estate gurus have been aggressively investing overseas. A few notable

examples: one of the leading Chinese real estate developers – Greenland, acquired 70% equity of the Atlantic Yards project in New York City late last year. As a direct response to the acquisition, the 498-investor EB-5 project, Atlantic Yards II in New York City was fully subscribed in under three months. In another example, the Chinese development company, Dalian Wanda, acquired the landmark property the Edificio Espana in Madrid (right) for €260 million euros (approximately \$356 million dollars).

In China, smaller transactions with “shadow banks” are on the verge of crisis. “Shadow banks” are unregulated financial companies that borrow and lend money to private investors at a higher interest rate. These banks have issued home equity loans to a significant number of EB-5 investors. An increasing number of Chinese developers have had difficulties in making repayments on time on construction loans. It raises further concerns about the stability of the banking sectors in China.

Are the days of shadow banks coming to an end? Statistics[1] show that \$160 billion worth of loans were issues in January 2014 from unregulated financial institutions in

China. However, in February, virtually none were issues. At the time of writing this article, the author received feedback from various EB-5 investors of different calibers, who have stated that it has become increasingly difficult to refinance their property in the past few months.

China has maintained a 10% inflation-adjusted growth rate in the past two decades[2]. It is the world’s second largest economy following the United States. In the past year, China’s growth rate has fallen into single digits. China is in the process of adjusting its old economic growth model that was heavily dependent upon cheap energy and cheap labor.

An isolated incident highlights the shadow bank crisis in China. Last week, depositors queued for hours to withdraw cash outside of a rural bank in Yancheng, an eastern city in China. Rumor has it that rural banks, rural credit cooperatives are running out of cash. The new leadership in China has allowed the market forces to play a greater role in the economy. This is an indication that China will gradually clear out wasteful financial resources, starting from the shadow banks and will establish a deposit insurance scheme to enhance the stability of the banking system.

The author disagrees with the pessimistic views that the real estate market in China is a bubble that will shortly burst. Despite the increasingly greater role the market plays, the government will ultimately control the flow of credits and debts in the banking system. Chinese government is not overly indebted in comparison to the United States or other European countries.

The current changes in the banking sectors may have further impacts on the ways EB-5 investors source their investment capital. ■

Courtesy to John Cassidy’s article “Is China the Next Lehman Brothers” in the *New Yorker*.

[1] www.telegraph.co.uk/finance/china-business/10688667/Mar-kets-hold-breath-as-Chinas-shadow-banking-grinds-to-a-halt.html

[2] The World Bank Growth Rate Data: <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?page=4>

by MONA SHAH
Esquire



First USCIS EB-5 Stakeholder Meeting with Director Nicholas Colucci

After a gap of 11 months, US Citizenship and Immigration Services (USCIS) finally held the highly anticipated EB-5 Stakeholder Meeting, the first since Director Nicholas Colucci took office. There was no indication of how many people were participating as the meeting was held telephonically. Critical issues such as regional center expansion, processing time, bridge loans, etc. were discussed during the meeting, followed by the usual round of questions and standard “we are not answering this...too fact specific...we are doing our best, give us a break” type of answers. Notwithstanding this, we did feel that this session was particularly informative. Below is a summary of the key issues and clarification discussed by the USCIS and the stakeholders.

Adjudication Centers: California or DC:

USCIS confirmed that from February 14, 2014, I-924 regional center petitions and I-526 alien entrepreneur petitions will be adjudicated in the Washington, DC field office. Forms I-829 removal of condition and the I-485 adjustment of status petitions continue to be adjudicated at the California



Service Center.

Processing Times:

USCIS stated that the average processing time for I-526 (Alien Entrepreneur petition) and I-829 cases (Petition by Entrepreneur to Remove Condition) is 11 months, which reflects an average processing time for both regional center cases and direct EB-5 cases. When asked if the processing time for direct petitions was considerably shorter than for regional center petitions, USCIS’s polite response repeated the average processing time. Our practical experience is that regional center cases are taking approximately 16-18 months, approved RC petitions around 8 months and stand-alone / direct EB-5 petitions 11-12 months. The processing time for I-924 regional center petitions is now at 12 months.

It was intimated, however, that due to

the loss of 35 staff members (from the CA Service Center) the processing times would temporarily increase. One frustrated caller complained that his clients had been waiting for almost two years!

Public Engagement:

USCIS has started drafting revised EB-5 regulations. The Service stated that it would welcome comments and suggestions on the proposed regulatory changes. In an attempt to move

“One frustrated caller complained that his clients had been waiting for almost two years!”



Director Nicholas Colucci

into 2014, it appears that USCIS is encouraging public engagement through social media. USCIS announced its intention to launch a new cloud sourcing tool called "USCIS Idea Community". It will allow stakeholders to post ideas and comments about the EB-5 Program. Wow! (see article page 26)

In another announcement, again showing a desire to move towards efficiency and the preservation of our trees, USCIS stated that the Electronic Immigration System (ELIS), which was launched May 2013, will be used to reduce paper work. A few direct EB-5 I-526 documents have already utilized ELIS. Regional Centers will also shortly provide an electronic version of organizational, transactional and offering documents in the document library. Upcoming webinars will be held in the following weeks about the features of the document library.

The "Hypothetical" Regional Center:

Ever since the release of the May 2013 memorandum,

excitement over the hypothetical regional center has not ceased. However, there remained considerable confusion over how much detail was actually required, leaving practitioners guessing. At the stakeholder's meeting, it was clarified that a regional center with an actual project, once approved, will receive deference for the Matter of Ho compliant business plan and econometric studies, in stark contrast to a hypothetical project. In the past few months, a tremendous amount of regional centers have been designated as a center with a hypothetical project. At this time, most EB-5 investors and agents do not really understand the difference, eventually the penny will drop. Once USCIS accelerates the processing time, it is recommended that a potential regional center file with an actual project and receive deference at the I-924 level. A hypothetical regional center will not be approved unless it submits verifiable details to prove economic growth and job creation; however, the level of verifiable details for the hypothetical regional center is obviously not as stringent as the regional center with an actual project.

Expansion of Regional Center Geographic Areas:

This is another topic that has caused considerable confusion, even to seasonal practitioners, as USCIS has not issued any clarification since the vague reference made in the May 30, 2013 policy memorandum. At this meeting, USCIS clarified that the new area must be contiguous to the approved regional center geographic areas. A designated regional center in California will not



Actual Regional Center map – a hypothetical RC will not be approved unless it submits verifiable details.

be permitted to operate projects in New York. USCIS will review RC expansions on a fact specific basis by the preponderance of the evidence rule to ascertain if the proposed expansion will actually promote economic growth. The expansion of the geographic boundary may be demonstrated through evidence that the proposed areas is contributing significantly to the supply chain and the labor pool of the proposed project.

Targeted Employment Areas (TEA):

EB-5 projects must submit letters from designated state government agencies to verify the TEA. Questions were raised about the states that do not have a particular designated agency to handle the TEA designation. Under such circumstances, the submitted data by the individual petitioner shall meet the minimum requirements of the targeted employment area. Some states (e.g. New Mexico) do not issue TEA letters until the regional center is designated. For the I-924 petition, individually submitted data is also accepted.

If a regional center project involves a collection of separate TEAs, the jobs can be counted as long as the job creating entity is primarily doing business in a TEA, though the jobs are not created in a particular TEA but in a collection of separate TEAs under the regional center.

Redemption Agreement:

If there is a guaranteed return of investment or return of a portion of the investment, depending on the terms of the redemption, issues may arise as to whether the investors' capital is placed sufficiently "at risk". Whether or not preferred equity will be considered a promise and thereby a redemption agreement is a topic for another day!

Selling a Regional Center:

The sale of a regional center is not prohibited. However, a regional center must notify USCIS within 30 days of any change of address, principals, operation or administration. The regional center must notify USCIS of the sale and USCIS may require the regional center to file an I-924A Amendment, the processing time of which is longer than the I-924 petition. If a project developer has a time sensitive case, the developer is better off by filing a new regional center rather than the purchasing a RC and filing an amendment.

Bridge Loan:

The replacement of bridge financing with EB-5 capital is permitted. The replacement is usually contemplated prior to acquiring the original non-EB5 financing.

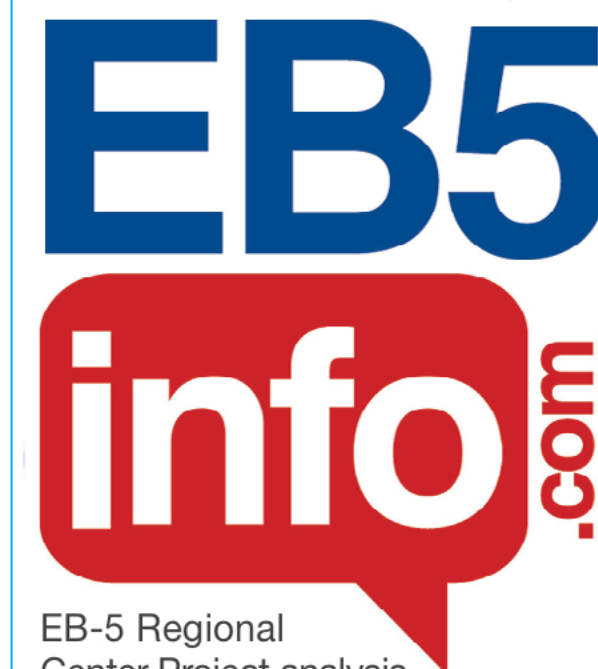
USCIS restated what was written on the policy memo, i.e. that even if EB-5 financing was not contemplated prior to acquiring the bridge loan, it may be allowed as long as the bridge financing is short-term temporary financing, in comparison to long-term debts. It may create complications for EB-5 projects trying to qualify as a troubled business, which use EB-5 capital to pay off the long-term debts. The project should consult experienced EB-5 counsel for details.

Hotel Guest Expenditure Jobs:

Hotel guest expenditures may be permitted. USCIS will review the underlying market studies used in the economic report. Possible evidence that the project can provide include: first, if the occupancy rates for hotel are high in an area, argument can be made that the new hotel serves the unmet demand supported by verifiable data and market studies. Second, the project can provide evidence to prove the new hotel is a differentiated product to a particular market segment and no comparable facility exists nearby. ■

Mona Shah & Associates (MSA) is a full-service U.S. & U.K. immigration law firm.

The Source for Information on the U.S. EB-5 Visa Program



EB-5 Regional Center Project analysis, risk ratings and due diligence
Inform your client, protect your practice

USCIS Idea Community: EB-5 Immigrant Investor Program

On April 23, USCIS hosted a national stakeholder engagement for the EB-5 Immigrant Investor Program. The next idea campaign focuses on the future of the program and potential regulatory changes. Starting Monday, April 28, and active through May 8, you can visit the Idea Community to provide your ideas and feedback on this topic.

USCIS welcomes your

input on potential changes that could be made to the EB-5 regulations and guidance to clarify eligibility requirements and to improve the program's integrity, efficiency, predictability and consistency. Please note that the agency is only seeking individual input, not group or consensus advice. This is your opportunity to share your thoughts!

You are encouraged to participate in the USCIS Idea Community. All you need is an active email address. You'll be able to create your own custom profile, comment on existing ideas, vote on ideas, or submit your own idea. If you have any questions, please email public.engagement@uscis.dhs.gov.

[ment@uscis.dhs.gov](mailto:public.engagement@uscis.dhs.gov). ■

Information from USCIS Public Engagement Division



USCIS Idea Community

Welcome to the USCIS Idea Community feedback community. Please sign in if you've already created an account. If you don't have an account, click register to create an account.

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