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Media Outlets Across the U.S. Report on EB-5 Visa Projects

The month of January saw many individual EB-5 projects around the country making headlines. While several news stories considered projects that have been in the making for some time and are finally breaking ground, other coverage provided a glimpse of potential EB-5 initiatives and regional center efforts currently in the works.

Here's a run-down of "in progress" EB-5 regional center projects that made the news this month:

1. [America's Center for Foreign Investment \(ACFI\)](#) – In a Montgomery, Alabama news conference that [received lots of local attention](#), Hybrid Kinetic (HK) Motors displayed a concept car – an Italian-designed "Quaranta" – the likes of which it plans to produce in great numbers upon completion an EB-5-funded auto plant near the Gulf Coast.

It's possible the project could receive additional financing from the State of Alabama down the line, but that will be "an uphill battle" said Governor Bob Riley in comments to the local press. ACFI will have to show the state that it has received at least \$1 billion through EB-5 or other financing before Alabama will even consider assisting HK Motors in its endeavor.



Giugiaro-Designed Concept Car

Commentary in the *Montgomery Advertiser* is skeptical that HK Motors, a Pasadena, California startup, will be able to churn out the millions of cars per year it is predicting. Only since the news conference has the company signed an agreement with the Italian designer Guigiaro, who actually designed and produced the Quaranta in 2008.

2. [Northeast Ohio Regional Center \(NORC\)](#) – An article in Ohio's *Daily Record* [profiled Mike Steiner](#), a recently retired entrepreneur known locally for his success in the insurance business, who be working with NORC to get its projects off the ground. According to the *Record*, "Members of Wooster Growth Corp. viewed the EB5 as a potential vehicle to construct buildings" for a local "research park."

It is worth noting that NORC would not qualify for the \$500,000 EB-5 investment since it is not located in a Targeted Employment Area.

3. [Noble Outreach](#) – The Louisiana-based regional center [made local headlines this month](#) for its groundbreaking on commercial property that will include a restaurant, hotel, and "multipurpose conference center." In what *New Orleans City Business* described as the razing of a "pair of blighted buildings" in Algiers, Louisiana, construction of the new facility is now underway.

According to Regional Center Principal Bart Hungerford, Noble Outreach is "eyeing future projects in New Orleans East." The regional center currently has an exclusive contract to handle all EB-5 investments in the New Orleans area.

4. [Vermont EB-5 Regional Center](#) – Jim Douglas, Governor of Vermont and big EB-5 proponent, [has "finalised a plan" with the South Korean AnC Bio](#) that will create the state's first EB-5 regional center. On the list of projects is a facility that would "manufacture portable dialysis machines, cell therapy machines, vaccines and other bio-medical supplies, as well as conduct cutting-edge research and development," according to local press.

Citizens and local government officials are hopeful that the initiative will bring over 200 biotech jobs to the region. Its construction is a \$50 million endeavor, and the facility is slated to open in 2011.

And here are the "potential" EB-5 projects that made press in January:

1. The Adirondack Economic Development Corporation in Saranac Lake, New York is [preparing its EB-5 regional center application](#), and the nearby Plattsburgh-North Country Chamber of Commerce has placed formation of the North Country EB-5 Regional Center on its list of priorities for the year.

The county wants to expand the terminal at the Plattsburgh International Airport, and it believes EB-5 financing a viable way to fund the expansion.

2. From the *Colorado Business Journal* comes a story on burgeoning EB-5 efforts in that state, in particular the latest push by the development group Waveland Ventures to acquire EB-5 regional center designation. Waveland would form the [Colorado Regional Center](#), which would solicit financing from foreign nationals to fund construction projects in rural areas and ski towns. It looks like operator Chet Schwartz has been careful to pick these locations because they qualify for Targeted Employment Area designation and can receive the lower threshold \$500,000 investment.



Many EB-5 Regional Center Projects – New and Old – Involve Ski Resorts.

Also mentioned in the piece are the two regional centers in Colorado that are already USCIS-approved: the [Rocky Mountain High Regional Center](#) and the [Colorado Intercontinental Regional Center](#).

The former is "waiting for the economy to improve" before it seeks investors. Colorado Intercontinental, on the other hand, is already working on plans to take downed timber harvested in response to the local beetle kill plague and process it into cellulosic biofuel to join corn-based ethanol in diluting the quantity of

petroleum in the nation's fuel supply. The federal government mandates that a certain percentage of the nation's fuel supply come from non-petroleum sources.

3. The St. Louis region is [attempting to receive EB-5 regional center status](#) in an effort to fund "startups at plant and life science incubators and [send funds] into potential uses for [an] old Chrysler plant." According to the *St. Louis Dispatch*, which reported the story, EB-5 suddenly became a way to fund these endeavors as recession realities made it harder to tap traditional sources of private financing.

The paper quotes Muzaffar Chishti of the Migration Policy Institute in Washington, who responds to criticisms of the EB-5 program as a "green cards for sale" scheme by noting that 10,000 visas is not really such a large quantity. Even if the U.S. were to issue the maximum number of EB-5 visas available each year, they would still only make up a fraction of the visas awarded to immigrants annually.

4. A New York state legislator [is proposing that his district seek EB-5 regional center status](#) so that it can invest more in local tourist infrastructure – in particular a hypothetical ski resort called the Adirondack Club and Resort.

Such a project, as the EB-5 community is well aware, would not be the first time an EB-5 regional center was set up to develop a ski resort.



EB-5 the "Hottest Thing" in Immigration Law Practice?

Ever since the recession began, the market for H-1B nonimmigrant work visas has waned significantly, and many immigration law firms that once considered the H-1B their bread and butter are singing a different tune.

Demand for the EB-5 visa, which was once so obscure that few immigration attorneys had experience working with it, has increased substantially. Many major media publications – including the *Washington Post* and *Forbes.com* this month – have covered the explosive growth of EB-5 regional centers and the increasing number of applications for EB-5 visas from foreign national immigrant investors, and the explanation for those events usually goes something like this: Bank aren't lending; developers need financing for their projects; they're using the EB-5 program until the banks start lending again.



Ron Klasko

An [article in this month's *Legal Intelligencer*](#), however, quotes immigration attorney Robert S. Whitehill who attributes increasing interest in the EB-5 visa to "the diminished value of the American dollar compared to the euro and the recent emergence of newly wealthy people in China, as well as in Russia and other oil-rich countries."

While there was still little to no interest in the program until about 2006, by 2008 it was becoming common to see regional centers represented at immigration conferences, the *Intelligencer* reports.

The piece also profiles [Ron Klasko, an immigration attorney](#) who runs what the *Intelligencer* describes as an "immigration boutique" – the Philadelphia law firm Klasko

Rulon Stock & Seltzer – who has been traveling the globe to promote the EB-5 program to interested investors.

Klasko also works directly with [CanAm Enterprises](#), which runs [the two EB-5 regional centers in Pennsylvania](#) as well as one in Hawaii and another in California. CanAm Enterprises recommends that their investors work through Klasko's firm, although the investors are under no obligation to do so.

Comparing the individual EB-5 process to the regional center program, the *Intelligencer* again turns to Klasko:

Klasko said there are numerous advantages to the regional center EB-5 application process compared to the individual EB-5 process.

First and foremost, he said, individual EB-5 applicants are usually required to invest \$500,000 more than regional center investors are unless the enterprise is located in a rural or high unemployment area.

Also, Klasko said, it's often very difficult for individual EB-5 applicants to prove that their investments have directly created 10 new jobs.

"Most startup companies don't have 10 employees," he said.

And for those individual EB-5 applicants looking to purchase an existing business and restructure it to form an eligible new enterprise, the restrictions imposed by the USCIS have "pretty much made that impossible."

"Our rules on expanding existing businesses are pretty tough to meet," Klasko said.

"Investors have to show net worth will increase by at least 40 percent, as well as adding 10 employees."

While it has been apparent to interested outsiders for the past year (if not longer) that the EB-5 program has taken off and that many regional center operators are traversing the globe in search of wealthy investors, what may not be apparent is the profound effect the program's growth is having on immigration law practice. Many lawyers with no prior EB-5 experience are learning about the program.

Just a little over a year ago, the number of [USCIS-approved EB-5 regional centers](#) stood at 20. Today, a quick look at the USCIS website shows 79.



ILW.com's EB-5 Panel of Experts: Focus Changes to USCIS / CSC's Interpretation of indirect Calculation of Jobs

by [Michael Gibson](#), USAadvisors.org



After publishing a story about [the upcoming ILW.com "Investors For Experts" panel discussion](#), I noticed that the agenda had changed considerably from its original format reported here in December: [ILW.com hosting panel of EB-5 visa experts](#).

This should not come as a surprise to EB-5 practitioners because of questions raised after an IIUSA / AILA EB-5 stakeholder's meeting with USCIS and California Service Center representatives in December concerning job creation methodologies and the use of RIMS II and other economic models in the counting of indirect and induced jobs inside and outside of the EB-5 regional center.

Michael Gibson

For EB-5 regional centers that do not count or account for direct jobs, these comments were unsettling and many would like clarification on USCIS and CSC interpretation of the law. This subject of counting indirect jobs has obviously taken on much more importance as can be seen from the change in focus and subject matter from the initial announcement of the series:

December 17:

The third and final phone session will be covering EB-5 Regional Centers on January 21, 2010 (registration ends on January 20):

- * Due diligence in selecting a regional center
- * Employment methodologies
- * Co-counsel and other experts

January 18:

THIRD Phone Session on January 21: USCIS On EB5

- * Government Perspective On EB5 Program
- * Follow up on Stakeholder Meeting and Dec 11 Memo

The focus has shifted from questions of due diligence and an internal discussion of job creation methodologies to getting clarity from the USCIS/CSC representative on comments made during the EB-5 stakeholders meeting in December. The question of job counting and creation is of such great importance that the agenda of the call has been completely changed.

The moderator of the discussion will be [Lincoln Stone](#), who has chaired many such EB-5 panels before and is also instrumental in the submission of approved regional centers who rely solely on the accounting of indirect and induced jobs, sometimes also referred to as Capital Injection or Expenditure Methodology, so listeners should pay close attention as he seeks direction from the CSC officials, in particular, Sasha Haskell, whose comments in the stakeholder's meeting caused the recent turmoil.

The economics expert on the panel will be David Andersson, EB-5 Regional Center Principal of the [Whatcom Opportunities Regional Center](#) and member of AUBER: The Association for University Business and Economic Research, and I am sure that he will offer very valuable insight into the importance of this issue as he has been a very strong proponent of the indirect only/capital expenditure model for many years.



Lincoln Stone

While many may disagree with the USCIS/CSC stance, I do believe in the validity of their concern that actual jobs are created (not simply transferred from within or created far beyond the targeted area) and reasonable methodologies are used to prove their creation.

Here's my impression of their stance: The EB-5 visa exists to allow foreign nationals to invest and create a certain number of U.S. jobs in return for a green card, and that by simply stating that since funds have been spent in a targeted region, by default, "x" amount of jobs have been created.

I will use South Florida as an example of why I question this methodology (please forget for a minute that neither Miami nor Ft. Lauderdale qualify as a TEA; this is an illustration only). I can show beyond any doubt that billions of dollars were spent to build some of the most beautiful hotels, condos and office space this side of Dubai.

At the same time, I can also show a vacancy rate of over 80% in many of these luxury apartments, thousands of square feet of unoccupied Class A office space, and a doubling of the local unemployment rate. There is no question that the money was spent, but where are the jobs? By any definition, there was a huge loss of jobs (direct, indirect, and induced) in all sectors of the economy despite a massive investment of capital (both equity and debt). Fortunately, no EB-5 regional center investments were located in this area at the time, but one can see the analogy for Centers located in other regions of the country that might have experienced job loss despite capital being invested.

I can see where the capital expenditure method works in times of rising GDP and declining non-farm payrolls, but I do see the possible need for evidence that direct jobs were created (in the particular EB-5 regional center investment) when the opposite is true, if only

to verify that the foreign nationals' funds did indeed create jobs through the EB-5 regional center's investment. One can argue that on the macro level investment would eventually create jobs, and that might be true in the long term, but unfortunately this is a program with a very short timetable and high standards for removal of conditions at the I-829 stage.

The long term success of the EB-5 program, I believe, will mean that regional centers should be able to demonstrate that U.S. jobs were created, or saved. Simply showing that the investor's money was spent may not be adequate proof to our representatives in Washington of what a valuable program this is or that American jobs were indeed created or saved as a result of foreign nationals investing through the immigrant investor green card program. Empirical evidence would discredit those who say this program is about rich foreigners "buying" green cards by showing definitive proof that investment resulted in expanded U.S. payrolls and a greater U.S. GDP.

Opponents of the program are likely to ask for empirical data that U.S. jobs were indeed created, not simply transferred from one location to another, or that capital invested resulted in increased U.S. GDP through production of goods and services and the creation of employment. It is my belief that the indirect-only capital contribution methodology does not adequately prove the creation of jobs. It may satisfy the requirements of the law as Congress intended, despite concerns from the agency that oversees the program, but I feel that if the program is to succeed there should be a realization that opponents of the program (and immigration in general) may try to block efforts to make this visa program permanent or expand the scope for investment unless the stakeholders here can positively prove that jobs are created through immigrant investment.



What Happens When USCIS Breaks the Law?



Charles Kuck

From [Charles Kuck](#), noted immigration attorney and principal at the [Georgia Center For Foreign Investment and Development](#), comes insightful commentary in the American Immigration Lawyers Association (AILA) Leadership Blog. A long time member of AILA, Kuck comments on the recent "Neufeld" policy memos issued by USCIS and the effects they are having on the EB-5 immigrant investor visa program.

His comments have been echoed by many in the EB-5 community, in particular [EB-5 regional center principals](#) and [EB-5 visa attorneys](#), who feel the direction and guidance from USCIS and California Service Center officials is counterproductive to the intent of Congress when it established the EB-5 visa program.

Here is an excerpt from "What Happens When USCIS Breaks the Law:"

The Neufeld memo on the EB-5 program, essentially makes that job creation program unworkable, and the Neufeld Memo on the H-1B program, literally changes decades of established policy on the most important visa allowing U.S. companies to hire foreign nationals. The USCIS, without any input from the users of the program (really, there was no input), has broken the camel's back. Absent an immediate withdrawal of these memos, it is quite clear that in order to keep these programs workable, additional action will have to be taken. AILA USCIS HQ Liaison Committee has sent to USCIS Chief Counsel Roxana Bacon a detailed letter explaining how the USCIS has fundamentally eviscerated the H-1B program, and has clearly violated the APA. I strongly urge you to read it, to understand the depths to which the USCIS has delved in its war on the H-1B program.

Kuck goes on to state that USCIS issued the said memos so as to "curry favor" with particular elected officials who harbor concerns about both the H-1B and EB-5 visa programs. While he concedes that instances of fraud do crop up in both programs, Kuck also maintains that changing the rules in a way that jeopardizes "legal and correct" utilization of the programs is not the best way to purge either of its fraudulent users. USCIS, he believes, has no business punishing others for its own "failure to police" either program.

Read Charles Kuck's complete article [here](#).



Washington Post Explains Growth of the EB-5 Program, Affirms Bipartisan Support

It was only "a matter of months," [reports the Washington Post](#), before "more than 50 private and public enterprises were certified as [EB-5] regional centers, increasing the total from 23 to 74." In a piece that focuses on the explosive growth of the EB-5 program, the *Post* examines why the number of individuals coming to the United States with EB-5 visas rose from 1,443 in 2008 to 4,218 in 2009.

The piecemeal "streamlining" of EB-5 processing procedures on behalf of USCIS together with the recession and credit crunch have made the EB-5 program a more attractive avenue for financing, the piece explains. Construction projects, in particular, are able to use the program for funding during an era when banks aren't lending.

According to Michael Wallach of the [Anacostia Regional Center](#), the area in which his group is developing real estate projects has the highest rate of unemployment and the lowest income of any location in Washington D.C. Whereas getting equity capital to an area like that would normally be difficult if not completely impossible, the EB-5 program actually provides an incentive to invest in such regions – the opportunity to get a green card through an investment of \$500,000 as opposed to \$1 million elsewhere.



David Morris

Wallach explains: Since "the primary motivation of the immigrant investors [...] is to create enough jobs to meet the visa requirement rather than to maximize the return on their investment, they might prove less skittish" than a more traditional investor.

The *Post* also mentions the potential for fraud in an environment where regional centers are springing up everywhere you look. [Attorney David Morris](#), who was also quoted in the piece, expresses concerns that the efforts of a few fraudulent operations soliciting funds from foreign nationals could "poison the well" for legitimate organizations trying to take advantage of the program.

EB-5 proponents, it seems, also fear that the process of seeing that all conditions are met for regional center projects is still too slow. The Canadian immigrant investor program is also seeing a record number of applicants, the *Post* reports, and its numbers are "three times" that of the EB-5 program. A [recent article on ABC News.com](#) says that many investors themselves "complain that EB-5 runs about as efficiently as the DMV," and some have waited up to a year just to get denied and have to reapply.

Nevertheless, the EB-5 program enjoys bipartisan support. Jeff Sessions (R-AL) and Patrick Leahy (D-VT) have even banded together to try and make the regional center pilot program permanent. As Leahy tells the *Post*, "At a time when we're seeing so many of our jobs exported out of the country, [EB-5] creates jobs in the United States."

And it's hard to argue to be against job creation. Recession or no recession.



NPR: Recession Fuels Growth of Immigrant Investor Program

National Public Radio's Jennifer Ludden has produced a very [balanced and informative piece](#) on the EB-5 immigrant investor visa program. In the audio broadcast published this



month, she speaks with an English investor about his investment in the Marriott Hotel project run by EB-5 principal [Henry Liebman of the American Life Seattle Regional Center](#), as well as EB-5 Regional Center Principal [Ron Drinkard of America's Center for Foreign Investment \(ACFI\)](#).

America's Center for Foreign Investment (ACFI)

The piece outlines the benefits of the EB-5 program for both the foreign national and the United States as a job stimulus program,

but Ludden also mentions its critics, such as Mark Krikorian of the Center for Immigration Studies, who states that despite safeguards against fraud enacted by USCIS after the problems with the EB-5 visa program in the 1990s, it would still be possible for fraudulent petitions to be approved.

Krikorian also believes EB-5 is a way for rich foreigners to simply "buy a green card".

Muzaffar Chishti of the Migration Policy Institute then notes that the majority of EB-5 investors have been from Asia, predominantly from China, and that despite the recent upsurge in applicants, the visa program is still widely underutilized.

Brian Thompson, the American Life EB-5 visa immigrant investor from England states that if the program were better publicized, there would be more demand for the visas. Currently, it is relatively unknown outside of the United States.



The following two articles were written by [Michael Gibson of USAdvisors.org](#) in January 2010 in response to recent attention given to the push for a startup visa bill in both the U.S. House and Senate. Both articles originally appeared on [EB-5 Visa News](#).

Investors Try to Open Door to Foreign Entrepreneurs



From the *Wall Street Journal* comes a story [EB-5 Visa News reported some time ago](#) that illustrates the efforts of a group of U.S. venture capitalists in organizing a grassroots movement to modify the EB-5 immigrant investor visa to allow foreign entrepreneurs to come to the United States under a “start-up” visa program and obtain their U.S. green card in exchange for creating U.S. jobs.

The proposal, which has recently gotten the support of several congressmen and senators in Washington and lawmakers across the country is similar to the EB-5 visa in that it provides the investor with a conditional green card in exchange for his or her investment, but unlike the EB-5 visa “pilot” or passive regional center program, the start-up visa requires that the investor also be actively engaged in the formation of the venture and creation of U.S. jobs. That would mirror more closely the traditional or “stand-alone” active EB-5 visa, sometimes referred to as the “Million Dollar Green Card,” but would allow the foreign born investor to qualify for entry for a lower amount.

The effort is headed by very well known venture capitalists Brad Feld, Dave McClure, Eric Ries, and others, and the effort is both well funded and organized. They are already using

their intimate knowledge of social media tools like Twitter to promote awareness and understanding of the program, and have managed to send several thousand Twitter feeds to members of Congress in support of their ideas.

This quote from their website illustrates their point that not only is foreign capital or equity needed for the enterprise to be successful, but also the entrepreneurs themselves:

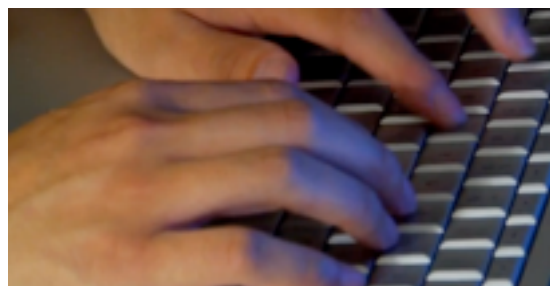
The United States has a similar program – the EB5 visa category, which allows immigrants to invest \$1 million or more and generate ten jobs as part of that investment [4]. However, that category is limited to investors, and not the entrepreneurs who are going to drive that value creation. The impact of this visa category could be dramatically increased if we focus on the entrepreneur who creates the business, as opposed to focusing solely on the investor holding capital. Small changes can dramatically increase the efficacy of this program and increase our economic competitiveness in the future.

If you would like to know more about the Startup Visa, you can visit the website [here](#). Tracking of the results of their campaign can be found [here](#).



Incubating Change to Immigration Law with the Startup Visa Movement, EB-5 Visa Assessment From Silicon Valley

A slightly different angle from the IT/Tech community on the Startup Visa was featured in [a story published by Tech Crunch](#) in October of 2009. It is interesting to note the author's take on the EB-5 visa's limitations for Silicon Valley entrepreneurs, especially concerning the two year timetable for creating jobs, and the fact that capital typically comes from other sources (not the entrepreneur):



First off, the EB-5 requires that an immigrant invests \$1 million (or \$500,000 under certain circumstances) of their own money in a new business. This rule ignores the fact that tech startups are often backed by venture capitalists, and it overemphasizes the role of money instead of assessing a foreigner's talent and ambition as primary factors. The EB-5 is also only given to immigrants who can promise to create 10 full-time jobs within 2 years, which doesn't mesh well with the reality that successful startups (while creating plenty of new jobs in the medium and long-runs) often maintain deliberately low head counts in the short-run.

This emphasis on allowing the foreign born entrepreneur to come in and create a company that employs Americans through his or her hard work, effort, and ingenuity rather than solely through the investment of capital is quite different from the current EB-5 immigrant investor visa program.

I think it would be good for *EB-5 Visa News* readers to consider whether this initiative is positive or negative. Would it make the EB-5 visa program more inclusive, or might it steal some of the thunder from [EB-5 Regional Center projects](#)?

At some point the efforts of those involved in the EB-5 community will have to reach out to these individuals who are obviously intelligent, motivated and well funded, to see if there is common ground and/or to combine forces to carry the message to our representatives in Washington that foreign investment in the United States is good for creating jobs and increasing the standard of living for both the immigrant investor/entrepreneur and American citizens as a whole.



Miller Mayer Releases Video Explaining EB-5 Program Basics

From New York [immigration law firm Miller Mayer](#) comes [this video](#), which is arguably the most concise description of the EB-5 visa program yet made available by any EB-5 practitioner. Thanks goes out to Miller Mayer for making this available.



Click to [watch the video](#).

Are you an EB-5 practitioner who would like to contribute an article?
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