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Senators Introduce Startup Visa Act to Create New EB-6 Visa Category for Immigrant Entrepreneurs

In an effort to bring innovation and jobs to the United States, Senators John Kerry (D-MA) and Richard Lugar (R-IN) [have introduced a bill](#) they hope will encourage foreign entrepreneurs to start their businesses here.



Senator John Kerry

The Startup Visa Act, which has received acclaim from the National Venture Capital Association (NVCA), would allow foreign nationals the opportunity to obtain a U.S. green card when they receive at least \$100,000 in venture capital funding from an American investor and acquire at least \$250,000 in total financing. It would create a new visa category for immigrant entrepreneurs, the EB-6, and individuals taking advantage of the program would have to create at least 5 new jobs to actually receive permanent residency.

EB-6 recipients would not be able to count family members employed by a new enterprise toward the total of 5, but only U.S. citizens they employ. By contrast, the EB-5 visa requires an investment from a foreign national to create at least 10 new jobs.

According to Dave McClure, who organized a trip to Washington in which Silicon Valley venture capitalists lobbied members of Congress in support of the bill, "job creation is a national priority. [...] With the Startup Visa Act, we can create thousands of new jobs immediately, and tens of thousands more as these new startups grow into the next Googles, Yahoos, and eBays of their generation."

Business-centered media outlets were all abuzz with last month's introduction of the EB-6 bill. An [article in BusinessWeek](#) cites venture capitalist Jeff Clavier, who says investors "sometimes shy away from even compelling pitches from overseas startups in part because of visa-related hassles" endemic to the status quo. Clavier claims he would likely "give more favorable consideration" to foreign entrepreneurs soliciting funds were the new visa category approved.

Critics of the bill cite its potential for loopholes, in particular the possibility that foreign entrepreneurs would get to stay in the United States even if their businesses fail. *BusinessWeek* quotes Kim Berry, who heads the Programmer's Guild trade group: "We're not opposed to the concept. We're opposed to the loopholes."



Senator Richard Lugar

Of course, there is no guarantee that the Startup Visa Act would bring scores of entrepreneurs to the U.S., although [a press release from the NVCA](#) claims "close to 50 percent of current venture-backed companies were founded by immigrant entrepreneurs." And that's under current immigration law.

If the Startup Visa Act becomes a reality, it's also not exactly clear whether it would "compete" in any way with the EB-5 visa program. To obtain an EB-5 visa, an immigrant must invest at least \$500,000 of his or her own money in a U.S. business. The EB-5 would seem to cater to a different class of prospective green card recipient than the EB-6.

Whether the Startup Visa Act actually stands a chance of passage is unknown. [Inc. Magazine points out](#) that Congressman Jared Polis (D-CO) has "introduced a similar visa-reform initiative" in the House of Representatives, and some postulate that attention to the issue in both chambers means some form of startup visa will receive approval by each. Polis's bill, however, is bundled together with the House of Representatives' "Comprehensive Immigration Reform" package, which is thought to be more controversial than a separate startup visa bill.



NPR: EB-5 Program a Way to Get Financing in a Down Economy

According to National Public Radio, what "[sounds] like a back-alley deal" between foreign nationals and the U.S. government [may be the best way to fund construction projects](#) when the banks are unwilling to provide a loan.

Of course it's the EB-5 program that was the subject of the NPR piece, which included an interview with Justin Huang of [YK America Regional Center in California](#).



California Mini-Mall

Referring to a mini-mall project, Huang tells NPR, "In late '08, we got Bank of America to commit \$50 million on this project, and in '09 they just said we can't help you anymore." He and many others have turned to the EB-5 visa program as an alternative to more traditional funding sources. YK America has already hired several Mandarin-speaking employees, and it hopes to have at least one hundred by 2011.

NPR also quotes [Stephen Yale-Loehr of Miller Mayer](#), who claims EB-5 is a "win-win-win" for U.S. businesses, jobseekers, and immigrant investors. While the program has (and likely always will) have some critics – the Federation for American Immigration Reform, for example, calls EB-5 a "pay-for-play" system – more immigrant investors are utilizing the program every year.

Sometimes the immigrant investors who actually stay in the U.S. are not the investors themselves, but their children, notes NPR. Wang Wei is 22 years old, and "his father is giving him a half a million dollars to invest in a mini-mall in the city of El Centro so that he can stick around" after his student visa expires.



International Immigration Services Attorneys Publish Major EB-5 Article



Brandon Meyer



Karen Caco

[Brandon Meyer](#) and [Karen Caco](#), attorneys with [International Immigration Services, P.A.](#), have published a must-read article on the EB-5 Regional Center program in the prestigious journal, *Immigration Briefings*. Their article is entitled “Spreading Like Wildfire! What Explains the Explosive Growth of EB-5 Regional Centers?”

The authors interviewed numerous heavyweights in the Regional Center field, including Henry Liebman of American Life, Michael Sears of the Capital Area Regional Center (CARc), and several others in order to gain greater perspective on the Regional Center program.

Mr. Meyer and Ms. Caco examine the growth of the Regional Center program in recent years, offer theories on why growth is occurring, and examine the EB-5 program from a historical perspective. This historical perspective yields the not-so-comforting conclusion that the EB-5 program is only as stable as USCIS wants it to be. Therefore, political and bureaucratic risk in the EB-5 context should never be minimized.

Mr. Meyer and Ms. Caco also provide a helpful overview of the process for establishing a regional center in light of recent changes in the Regional Center program stemming from the December 2009 USCIS memo.

“Spreading Like Wildfire” is the first installment in a two-part series written by Mr. Meyer and Ms. Caco. The second installment is scheduled for publication in the next issue of *Immigration Briefings*, and will highlight day-to-day issues faced by regional centers and attorneys active or seeking to practice in the EB-5 arena.

Readers interested in finding out more about this article should contact the authors directly, Brandon Meyer (Brandon@ezusimm.com) or Karen Caco (Karen@ezusimm.com).

Download the article here: ["Spreading Like Wildfire!"](#)



USCIS California Service Center to Host EB-5 Visa Forum for AILA Members

The USCIS California Service Center (CSC) has scheduled an EB-5 forum for March 16, 2010 from 1:00pm to 3:00pm. The CSC will be providing brief EB-5 updates and will open the floor for an informal question and answer session with a panel of EB-5 managers, supervisors, and service center counsel.

The meeting will be held at the California Service Center, 24000 Avila Road, Laguna Niguel, California 92677. AILA members attending the meeting should meet at the south entrance prior to the meeting to be escorted inside.



The meeting is open to all AILA members by RSVP only. If you wish to attend, please RSVP with Robert Nadalin (robert@nadalinlaw.com) before March 8, 2010.



Are you an EB-5 practitioner who would like to contribute an article?
Email Adam Green, Editor: adam@usadvisors.org
or contribute directly at EB5info.com

EB5info.com

Michael Gibson

michael@usadvisors.org

239.465.4160



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