



# EB5info.com

July 2010

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services

Notice of Action

		Application/Petition REGIONAL CENTER PROPOSAL
Receipt # W09000140		
Notice Date May 4, 2010	Page 1 of 8	Regional Center Victorville Regional Center

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Washington, D.C. 20004

Intent to Terminate

**IMPORTANT: WHEN YOU HAVE COMPLIED WITH THE INSTRUCTIONS ON THIS FORM, RESUBMIT THIS NOTICE ON TOP OF ALL REQUESTED DOCUMENTS AND /OR INFORMATION TO THE ADDRESS BELOW. THIS OFFICE HAS RETAINED YOUR PETITION/APPLICATION WITH SUPPORTING DOCUMENTS.**

**THE INFORMATION REQUESTED BELOW MUST BE RECEIVED BY THIS OFFICE NO LATER THAN EIGHTY-FOUR (84) DAYS FROM THE DATE OF THIS NOTICE. IF YOU DO NOT PROVIDE THE REQUESTED DOCUMENTATION WITHIN THE TIME ALLOTTED, YOUR APPLICATION WILL BE CONSIDERED ABANDONED PURSUANT TO 8 C.F.R. 103.2(B)(13) AND, AS SUCH, WILL BE DENIED.**

## Inside

Feature article from attorney Brandon Meyer of International Immigration Services.

Pg. 2

An article from *China Daily* profiles regional center marketing abroad.

Pg. 9

Michael Gibson of EB5info.com and attorney Greg Siskand are featured in the *Wall Street Journal*.

Pg. 11

## Victorville Regional Center

receives "Notice of Intent to Terminate" from USCIS. Attorney David Hirson sent this letter to EB5info.com on behalf of Victorville EB-5 Regional Center.

Dear Michael,

The following are some of my comments on the press articles released by the two local publications in Victorville over the past two weeks in connection with the Notice of Intent to Terminate (NIT) issued by the USCIS to the Victorville Regional Center (VRC). From my personal perspective I am not sure what triggered the Notice of Intent to Terminate (NIT). One would have hoped

that one government agency would have made a courtesy call to the other and the issue would most likely have ended there. The biggest 'offense' in this whole saga was that the Victorville Regional Center reflected four projects in its web site marketing materials.

*Continued on page 6*



## Waffling like a Roadside Diner:

*The CSC Addresses Creative Job Counting Methodologies*

by Brandon Meyer, International Immigration Services

### Brandon Meyer:

Brandon Meyer is an Associate Attorney at International Immigration Services, PA, a full service immigration law firm with offices in Naples, FL (head office), San Diego, CA, and Toronto, Ontario, Canada. Mr. Meyer oversees the San Diego, CA office. He received his Juris Doctorate (law) degree from the University of San Diego School of Law, his Masters of Arts in East Asian Studies from George Washington University, and a Bachelor Arts in Economics from American University.

Brandon Meyer is an attorney with International Immigration Services, P.A. in San Diego, CA.

He can be reached at [Brandon@ezusimm.com](mailto:Brandon@ezusimm.com) and at (239) 261-6777 ext 103.

When I attended the EB-5 Stakeholders Meeting at the California Service Center (“CSC”) in March 2010, a regional center principal asked a question something along the lines of:

*“In the venture capital (“VC”) world, out of ten projects, VC firms expect nine to fail and maybe one will be the next Google. Since this is accepted business practice, can I count jobs using this same approach? Meaning, if four of my regional center projects fail (which, of course they won’t) and project five creates enough excess jobs to satisfy the job creation requirements for the investors in projects one-four, will this work?”*

*“Likewise, can an investor’s money be divided among the five projects or must it all go to one project?”*

The answer provided at the March 2010 meeting was an unequivocal “no” to both questions. I thought this was a reasonable answer. Thinking this to be reasonable and settled EB-5 law, I had a hard time understanding why the regional center principal who asked this question was so incredulous about the response. Now I understand why.

*Brandon Meyer (cont.)*

Apparently, “creative” job counting methodologies are creeping back into regional center’s designation applications. In some instances, regional centers believe that their well-meaning and well-intended, but questionable job counting approaches were actually approved by USCIS, when in fact their attorney failed to clearly explain this newly creative approach, which also happened to be missing from the business plan and other materials that were submitted to USCIS. The regional center, reasonably believing that USCIS has blessed their reinvention of the wheel, proceeds to circulate marketing materials to whoever is interested in seeing them. In approximately two to three years, the regional center hopes to deploy their creative job counting approach when their investors reach the I-829 stage. Unfortunately, having good intentions and engaging in best practices are sometimes mutually exclusive.

Having seen this pattern on a couple of occasions when representing individual investors in their I-526 regional center petitions and having been met with various levels of denial and resistance when I raised this issue with the regional center, I decided that I would seek a reiteration of the definitive answer provided in March 2010. The July 28, 2010 CSC Liaison Meeting was my chance. This is where things get interesting... and even less clear.

During the Q&A session of the July 28, 2010 CSC meeting, I asked the following questions:

*“Let’s assume that I’m a prospective regional center investor. I want to invest in a regional center with projects 1-5.*

*“Must my \$500,000 be invested in one of these projects, such as Project 1, or can my money be equally divided among Projects 1-5?”*

*“Consequently, at the I-829 stage, let’s say my funds went to Project 1, which fails to create jobs. If Project 2 creates excess jobs, can I utilize jobs created by Project 2 to lift my conditions?”*



*“Creativity is good for the art gallery, but it really isn’t helping your regional center client in the future. Perhaps you think you’re doing your regional center client a favor by blessing the creative approach, but if the history of the EB-5 program tells us anything, it’s that a “by-the-book” conservative approach wins the race.”*



*“What if a regional center alluded to such a job counting arrangement in their RC designation without explicitly spelling it out? Is there a safe harbor for the investor?”*

I expected to receive three quick “no’s” to these questions and that this would be the end of the matter. Instead, I started getting a meandering, waffling response of “well, it depends on whether the different projects are separate or related, subsidiaries, the particulars of the project, yada, yada, yada. This waffling continued for a couple more minutes before it was abruptly cut off under the guise that I was intentionally asking tricky questions that were case-specific and otherwise trying to trick the CSC into making policy in the field. Thus, it was all my fault and I should feel bad for committing some type of sin! Nothing could be further from the truth. I was merely seeking reiteration of what had been said in the past. Nevertheless, CSC did reveal that these questions were being considered at USCIS headquarters for definitive guidance, the timetable for which was unclear.

Therefore, maybe some type of a more creative approach may be blessed as compliant at some undefined point in the future under certain circumstances that have yet to be determined. So

what does one do in the meantime until this guidance is released, remembering that USCIS spent eight years mulling over regulations to deal with the 800 or so stalled EB-5 cases impacted by the 2002 amendments? After all, life must go on while bureaucrats mull over the fate of the world.

Here are the lessons I believe should be drawn from these experiences.

### **Bottom line to regional centers:**

If your project is solid, there is no need to reinvent the wheel and come up with a highly creative approach to job counting. The project will create the requisite jobs. Creativity is good for the art gallery, but it’s just inviting problems in the future in the regional center context.

### **Bottom line to attorneys representing regional centers:**

Creativity is good for the art gallery, but it really isn’t helping your regional center client in the future. Perhaps you think you’re doing your regional center client a favor by blessing the creative approach, but if the history of the EB-5 program tells us anything, it’s that a “by-the-book” conservative approach wins the race. Don’t be afraid that advocating a conservative approach will result in the prospective regional center taking their business elsewhere. Telling a client what they want to hear may win the business, but it’s not good practice.

Furthermore, creativity and envelope pushing is just exposing regional center investors and their attorneys to a potential future of pain and disappointment. The I-829 denial that was used as an example for the June 2010 EB-5 Stakeholders Meeting makes this point crystal clear.



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**Bottom line to attorneys representing individual investors in regional centers:**

When reviewing a regional center's business plan, partnership agreement, escrow agreement, marketing materials, offering memorandum, etc; if something looks wrong, it probably is. Do not be afraid to raise your concerns with the regional center. While everybody wants to be on good terms with regional centers, you represent the individual investor. The promise of endless case referrals from a regional center (which are frequently made, but rarely fulfilled) should not deter the attorney from representing the best interests of their client.

If the regional center's explanation is unsatisfactory, you may wish to have a serious discussion with your client (within SEC guidelines, of course) about whether they want to proceed with an investment in that regional center. If the regional center fails or something else happens that the investor finds unacceptable, you will get sued along with the regional center if you failed to raise your concerns with the

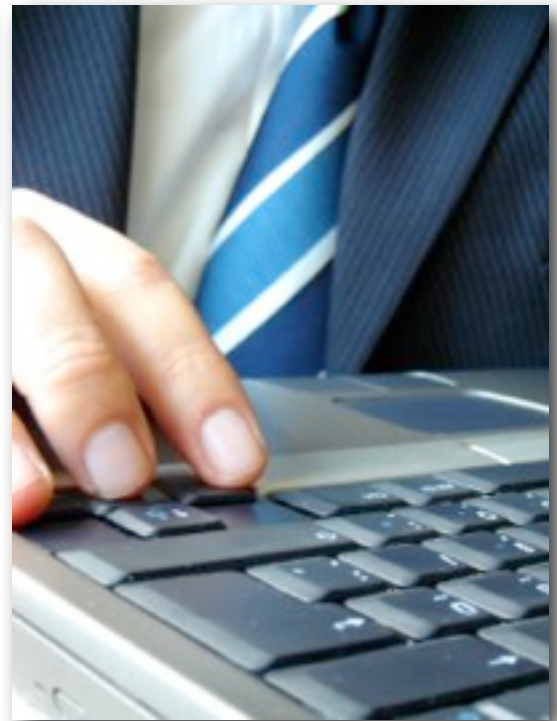
regional center or the client. It's just not worth the risk.

**Conclusion:**

While USCIS seems to waffle on whether a creative approach might be acceptable and may waffle on what circumstances a creative approach might also be acceptable, what is the point in finding out the hard way that a creative approach is not compliant with the EB-5 program?

Again, I refer the reader to the I-829 denial featured in the June 2010 EB-5 Stakeholders Meeting. Conservatism may have a bad name on Air America (which went bankrupt and was quickly forgotten), but sometimes it may be a better approach to EB-5 practice.

I hope that this essay does not come off as too sanctimonious or as the random missives of the naïve and unseasoned. However, nobody benefits from a return to the bad old days of EB-5 practice that characterized the period from 1998 to 2006. Pushing the envelope too far will get us back there faster than any of us can imagine.



## Victorville Regional Center (cont.)

Of the four only one, the Victorville Wastewater Treatment Facility (WWTF) was actually marketed to potential investors. The City of Victorville (City) and the Southern California Logistics Airport Authority (SCLAA) have been extremely conservative and set high standards to be met in handling their Regional Center and in dealing with the investors. I have personally attended many meetings and had discussions about the program with City Council members, City officials and members of the board of SCLAA.

The other three projects were not immediately ready for receiving investment money. The other projects are not proceeding at this time and are put on hold to allow for an improvement in the economy. They are not 'defunct' but simply delayed. Immediately upon receipt of the NIT all the web site was amended to reflect this, thereby removing the main tangible cause for complaint by the USCIS.

The other issues were also puzzling. USCIS had approved an I-526 for an investor. In that package as with all subsequent filings, business plans and econometric reports were filed. The NIT challenges this while stating "... Although a review of the regional center proposal and three Form 1-526 petitions appears to indicate that this project is a viable commercial venture, ....." Subsequent to the NIT the Adjustment of status for the first approved I-526 investor was also approved for the investor and his family.

The RFE for another I-526 investor cases did not deal at all with the business plan issue or the alleged missing econometrics report. Only issues relating to source of funds and a date of birth clarification were raised. Based on my review of the response to the NIT filed by the City, I am confident that this unwarranted "cloud" will be removed very shortly.

Please do not hesitate to contact me with any questions or concerns that you may have.

Thank you.  
David

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*"They are not 'defunct' but simply delayed. Immediately upon receipt of the NIT all the web site was amended to reflect this, thereby removing the main tangible cause for complaint by the USCIS."* -David Hirson

# Feds threaten to halt Victorville's foreign investor program

July 11, 2010

by Brooke Edwards

This story from the *Victorville Daily Press* first publicized the termination notice that the Victorville Regional Center received from USCIS last May.

Federal officials intend to halt the city's efforts to raise much needed funds through loans from foreign citizens unless Victorville can convince them it hasn't misrepresented itself in marketing the program and that projects deemed "defunct" are still viable. [...]

Victorville gave developer Inland Energy an exclusive contract to raise \$25 million through the program. Though officials with the Newport Beach-based company promised to raise all \$25 million by mid-May, only \$3 million has been transferred to Victorville to date.

When officials were questioned in late May about why Inland had fallen short of its pledge and why none of those six investor applications had yet been fully approved, they declined to offer an explanation.

Now the Daily Press has learned that the USCIS on May 4 issued a rare notice of "intent to terminate" Victorville's regional center, giving the city until July 27 to respond to a slew of concerns with the local program and putting all immigration petitions on hold.

USCIS originally gave Victorville permission to raise EB-5 funds for four projects at Southern California Logistics Airport[...]

Until recently, all four of those projects were listed on brochures and websites promoting the regional center.



Victorville Regional Center/W09000160  
Page 8

opportunities that are available to EB-5 alien investors within the Victorville Regional Center to objectives of the Immigrant Investor Pilot Program.

### III. DECISION

This letter shall serve as notification to the Victorville RC of USCIS' intent to terminate the regional center and participation in the Pilot Program pursuant to the provisions of 8 CFR 103.3(a)(2) 33 days from the date of this notice in which to offer evidence in opposition to the termination cited herein. Any response to this notice must demonstrate that the Victorville RC center within which aliens seeking to obtain permanent resident status will be able to successfully invest in a new commercial enterprise (as defined in 8 CFR 204.6(m)(3)) qualifying investment that will benefit the United States economy and indirectly created through the new commercial enterprise.

If the response includes a request for a favorable determination by USCIS regarding the conditions of the operation of the regional center and the scope and nature of project opportunities that formed the basis for the approval and designation of the regional center, such an amendment request must provide documentation relating to the investment projects to be considered.

In the interim period USCIS requests that the Victorville RC remove all references to the regional center posted on its own website, the City of Victorville, CA's website, or the website of promoters, principals or agents that are affiliated with the Victorville RC. Additionally, please note that USCIS is terminating the regional center designation as a regional center. Additionally, please note that USCIS is terminating the regional center designation as a regional center. Additionally, please note that USCIS is terminating the regional center designation as a regional center.

In the event you do not respond within the timeframe noted above, the regional center will be terminated and you will receive written notification of the termination of the Victorville RC's regional center designation. You may appeal the termination under the provisions of 8 CFR 103.3(a)(2). If you do so, your notice of appeal must be filed within 33 days of the date of the final decision to terminate in accordance with 8 CFR 103.3(a)(2). Pursuant to 8 CFR 103.3(a)(2), the appeal should be filed with the required fee of \$585 and any supporting documentation or brief. This fee is payable to the Administrative Appeals Office.

Please mail any evidence you wish to provide in opposition to the termination of the regional center noted below and include a copy of this letter on top of your submission.

But after reviewing available records, a letter from the USCIS to Victorville's attorney states that the last three projects "may not be viable, and that this fact may have been known to the promoters" of the city's regional center before it was approved. [...]

USCIS outlined concerns with each of these three projects:

"The city defaulted on equipment for the planned VV2 power plant, taking a \$50 million loss on the project. The city has entered into agreements to try and sell the valuable land, plans and permits still intact for VV2, but so far those have fallen through."

Victorville spent \$30 million doing site work to prepare to connect SCLA to BNSF's rail spur, even after an agreement for BNSF to explore taking its rail line to Victorville had expired and BNSF had sent a letter to city officials indicating the company "did not support the concept of an inland port in Victorville." USCIS called BNSF, according to the letter, and verified that the proposal is on "indefinite hold."

No money is budgeted to move forward in partnership with Stirling Capital Investments for infrastructure

work at the airport, with the USCIS asking for proof that progress is coming in the next two to three years.

In the city's response, Economic Development Director Keith Metzler told USCIS these projects "are all active and continue to be under consideration" by the city, insisting that VV2, the rail facility and infrastructure plans "are not 'defunct' they are all simply delayed." [...]

Still, the city insisted that only the wastewater plant, under construction now to accommodate Dr Pepper Snapple's bottling hub, has been marketed for investors. Inland officials, including President William Buck Johns, signed affidavits vowing that they've only promoted the city's wastewater treatment plant as an active investment project. [...]

Not mentioned in the USCIS letter is the fact that the city has been in discussions for VVWRA to buy its wastewater plant since March, with that item back on the agenda for closed session negotiation [within the week].





# EB-5 Program: Trick or Treat for Chinese Investors

by Tan Yingzi

This article published by *China Daily* in July details some of the difficulties faced by regional centers marketing projects in China and includes an interview with Brian Su of Artisan Business Group, Inc.

*“Two years ago, there were only 19 EB-5 regional centers in the US and now we have more than 90 of them.”*

*–Brian Dickens, Idaho Department of Commerce*

WASHINGTON – Brian Dickens, an administrator in Idaho's Department of Commerce, is busy luring Chinese investors to his state through the EB-5 regional center pilot project in the United States.

"The competition among the US EB-5 regional centers is strong," Dickens, who is in charge of setting up Idaho's regional centers, told *China Daily*.

"Two years ago, there were only 19 EB-5 regional centers in the US and now we have more than 90 of them. And the number is increasing fast." [...]

The regional centers offer a wide range of investment opportunities in various industries, including real estate, retail trade, agriculture, manufacturing, construction, technology, clean energy, professional services and the arts. [...]

[Idaho's] regional centers mainly offer investment opportunities in mining and resort projects.

The Idaho state government regards China as one of its major potential markets for the program and has hired Chinese market specialists to help sell the state as an investment



destination.

Dickens made his third trip to China, bringing along Idaho governor C.L. "Butch" Otter to promote the regional centers.

Idaho launched its first regional center in December last year and the second in January. It has not had any success story yet out of the program. But the centers are still new and hopes are still high. "It will happen soon," said Dickens.

Immigrating to the US is still a popular move among rich Chinese people, although it's harder than migrating to Canada or Australia, other favored destinations, EB-5 program marketing expert Brian Su told China Daily. [...]

"But China is the fastest growing EB-5 market," said Su.

Last year, China surpassed South Korea to become the largest source of EB-5 participants, with 1,979 Chinese people getting visas through the program. South Koreans got about 900. [...]

"They are not sophisticated investors," said Dickens. "They are extremely conservative with lower risk tolerance than other foreign investors." [...]

"It is a risky investment," [Su] said. "The number of regional centers is growing too fast and they can barely control the quality of the projects."

Dickens agreed that only 20 percent of all the EB-5 investment projects in the US are compelling. [...]

Zhang [Runan, an immigration attorney] said one of her clients was involved in an EB-5 project in New York in which none of the investors received a green card.

"So investors need to be warned of the risk," she said.



**Brian Su** is the founder and CEO/President of Artisan Business Group, Inc. and EB-5 China Marketing and Field Support Center.

*Mr. Su has extensive experience in international trade, business development, marketing management, and strategic planning. Prior to founding Artisan Business Group, Mr. Su served Illinois governor Jim Edgar and assisted him in his trade mission to China in 1996 and helped him host a numbers of Chinese government and trade delegations.*

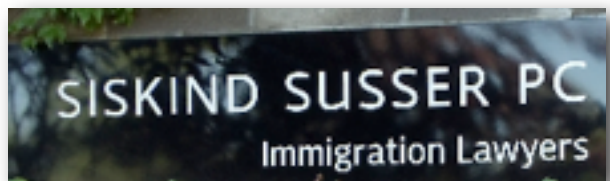
*-Artisan Business Group, Inc.*



## Immigrant Investors, An Underserved Market

By Lynnette Khalfani-Cox

In July, the *Wall Street Journal* profiled both Michael Gibson of EB5info.com and immigration attorney Greg Siskand of Siskand Susser PC in a discussion about providing financial services to immigrant investors.



Finding new clients is a challenge for all financial advisers. But most advisers are overlooking an untapped and growing client base: wealthy foreign investors seeking to gain permanent residency in the U.S.

Courting well-heeled foreigners looking to relocate to America is "a very niche field," says Michael Gibson, founder of USAadvisors.org. But it's also an area that's wide open for financial advisers.

Gibson's specialty: providing business research and transactional analysis for those trying to get fast-tracked green cards or visas through the EB-5 Visa program.

EB-5 investor status gives permanent residency to foreign nationals who can directly or indirectly create at least 10 jobs in America by investing a minimum of \$1 million here. The investment threshold is dropped to \$500,000 if a foreign national invests through "Regional Centers" in rural areas or urban regions with high unemployment rates.

So Gibson, who also runs the EB5Info.com website, performs due diligence on Regional Centers and creates customized research reports that analyze the likelihood that a center's



investment projects are viable, and will meet government-mandated job requirements.

EB-5 green cards also allow affluent foreign investors (and their family members) to work in the U.S. in any capacity, go to school, or retire here.

"Any financial services firm that does not cater to these people is going to be missing out a huge source of revenue over the next few years," Gibson says. "They're not just opening bank accounts and buying houses," he notes. "Most of the clients we deal with have net assets north of \$5 million and they need a broad array of financial services, including insurance and investments, estate planning, tax services, and help planning for their children."

Greg Siskind, an immigration attorney with Siskind Susser who also runs VisaLaw.com, echoes Gibson's sentiment. "I've not heard of the big Wall Street firms being involved in a major way in this business," he says. "So I think it's an area of opportunity." [...]

Gibson and Siskind offered four recommendations for financial advisers seeking foreign nationals as clients:

- Leverage diversity and foreign language skills [...]
- Investigate multiple Regional Centers [...]
- Establish broader networks [...]
- Deepen conversations with clients.



### Top Recipients of EB-5 Visas in FY 2009

Country	Number
1. China	1,979
2. South Korea	903
3. United Kingdom	324
4. Taiwan	170
5. Canada	85
6. Japan	84
7. India	72
8. Russia	60
9. Netherlands	38
10. Mexico	33
11. South Africa	31
12. Venezuela	30

Source: U.S. State Department, WSJ.com research

*"Any financial services firm that does not cater to these people is going to be missing out a huge source of revenue over the next few years," Gibson says. "They're not just opening bank accounts and buying houses. Most of the clients we deal with have net assets north of \$5 million and they need a broad array of financial services, including insurance and investments, estate planning, tax services, and help planning for their children."*

*-Michael Gibson,  
EB5info.com*

## EB-5 Events



# EB-5 Investor CLE Conference

Friday, August 27, 2010, Seaport Hotel, Boston, MA

### From AILA:

Though greatly underutilized, the EB-5 immigrant visa may be the answer for clients who lack other options as a result of our broken immigration system. This [comprehensive one-day program](#) provides exceptional training in EB-5 investor law for practitioners at every level.

The morning sessions are split into two tracks. Track I, designed for the new EB-5 practitioner, will provide an overview of the law, recommend a protocol for determining whether EB-5 is an appropriate client strategy, and will delve into the details of preparing and filing an EB-5 case. If you are a seasoned EB-5 veteran looking for in-depth analyses of sophisticated legal issues, you will begin your day on Track II, where you will consider country-specific issues presented by a panel of experts, and hear about the many challenges immigration lawyers face as U.S. businesses attempt to use the EB-5 category as a tool to raise capital. The two tracks merge for a series of joint sessions in the late morning and afternoon. Special attention will be given to the effect of recently-issued USCIS memoranda on EB-5 adjudications and practice.

### Registration Information:

AILA Member: \$475  
AILA Member's Paralegal: \$475  
Nonprofit AILA Member: \$325  
AILA Law Student Member: \$275  
Government Rate: \$475

Nonmember Attorney \$675  
Nonprofit Nonmember: \$475  
Nonmember Law Student: \$375

For more information, see [aila.org](http://aila.org).

### CLE Credit:

This AILA conference has been filed for MCLE and specialized credit in appropriate jurisdictions. Participants must designate the state(s) for notification on the registration form and sign the official record of attendance for the state(s) on site. Number of credit hours awarded for each state will be available at the conference. Eligible participants can receive up to 8.4 CLE credit hours.

## In other news...

### EB5info.com Now Available in Russian

It's true: EB5info.com now has a Russian counterpart with a ".ru" URL. To be exact, EB5visa.ru is the address, and it's still a "young" site according to webmaster Igor Kasyanchuk, who is responsible for its creation and maintenance.

When everything is set up, says Kasyanchuk, the site will be visible in Yandex, the popular Russian-language search engine, and should include complete translations of everything published on the English site.

Of course, the purpose of a Russian-language site with information about the USCIS EB5 visa program is to begin making news, events, and contact information for EB5 experts available to a wider audience. Since EB5 visa opportunities are, after all, of global interest, not limiting access to English-speaking readers seems a perfectly natural step. According to Kasyanchuk, the creation of EB5visa.ru may, in the future, serve as a template for creating versions of the site in other languages.

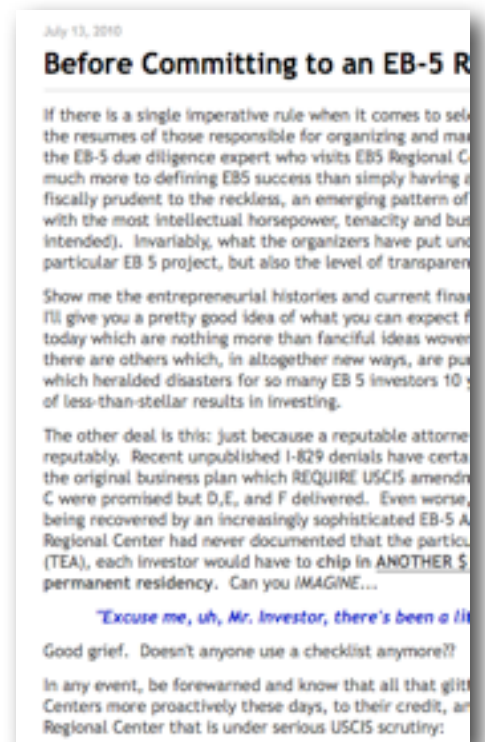
To read about the EB5 visa program in Russian, see EB5visa.ru.

### Updates From the Insider

Many an EB5 visa attorney maintains a web presence, and in that regard Jose Latour is no different. Unlike some reading material focused on immigration law, however, Latour's "Immigration Insider" blog offers a perspective on investment immigration that is fresh, colloquial, and even humorous.

While we at EB5Info.com want to thank Jose Latour for providing such frequent and well-informed commentary, we'll also go ahead and post a "disclaimer" that the views and opinions presented by "Immigration Insider" belong to its author and are not necessarily our own. That said, merely pointing out that some regional centers handling EB5 investment visa projects offer more potential for the investor than others, something often discussed on his blog, isn't exactly a radical suggestion. That some regional centers are more transparent than others is also well-documented.

A typical update on "Immigration Insider" may include coverage of investment immigration news, EB5 regional center observations, or general commentary on the politics of immigration in the United States.



So thanks again, Jose, for keeping the updates in our inboxes and for rarely holding back an opinion! Regular updates from immigration attorneys and others in the EB5 investor visa community are always welcome as they help keep us informed about what's happening in the EB5 visa marketplace.




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

***Contribute directly @ EB5info.com  
or email Adam Green (media contact):  
adam@usadvisors.org***

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