

NEWSLETTER | DECEMBER 2010

new this month...

- **Major Media Outlet Publishes Harsh Critique of EB-5 Program:** *Reuters* provides investigative reporting and tough analysis of program in a lengthy expose. **(page 1)**
- **Deadline to Participate in ILW.com Phone Seminar Rapidly Approaching:** Just two sessions remain in the "EB-5 for Experts" phone series. **(page 4)**
- **EB-5 Stakeholders, Economists Comment on Letter From Dir. Mayorkas to Sen. Leahy:** Prominent voices in the EB-5 community weigh in on recent USCIS statements about indirect job counting methodology. **(page 5)**

Reuters Investigates Unsavory Side of the EB-5 Visa Program

In a sweeping and highly critical expose of the EB-5 visa program, [a December Reuters story](#) asserts that foreign brokers are "overselling" the possibility of permanent residency to prospective immigrant investors.

Not only does the *Reuters* piece condemn players in the overseas broker market for misleading investors with empty promises of an easy route to U.S. residency, but it casts a suspicious eye on USCIS' ability to competently administrate the EB-5 program.

According to Chris Bentley, USCIS spokesman whom *Reuters* quotes in the story, "the overwhelming majority" of EB-5 visa hopefuls later receive permanent resident status, a claim disproven by USCIS' very own data, which suggests that about "half of the immigrant investors who won EB-5 visas during [the program's] 20-year history have failed to obtain permanent residency."

SPECIAL REPORT

OVERSELLING THE AMERICAN DREAM

Companies promoting the EB-5 visa program promise foreigners a fast track to U.S. citizenship. But half of those who take part fail to win the prize.



BY JAMES KELLEHER, KARIN MATZ AND MELANIE LEE
SHANGHAI/CHICAGO, DEC 22

IN A CONFERENCE ROOM in an office building in downtown Shanghai, Jason Lee is literally selling the American dream.

Lee runs Maslink, a firm that connects cash-hungry American businesses with Chinese investors keen to move to the United States. His company is part of a global cottage industry that has popped up in recent years to profit from a program that allows foreigners who invest in certain small

U.S. businesses to get on the fast track to U.S. residency and citizenship. Interest in the immigration program, known as EB-5, is so high that Maslink, which already has offices in Shanghai, Beijing, Hangzhou and Chengqing, is expanding to two more Chinese cities.

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Stephen Yale-Loehr

Also documented by *Reuters* is the [regional center](#) explosion of 2009-10, a phenomenon that continues to the present moment with almost 90 more regional center applications currently being processed by USCIS.

Prominent voices from the EB-5 community are featured in the story, among them [Stephen Yale-Loehr](#), an immigration attorney who *Reuters* declares the "unofficial dean of the EB-5 bar," and attorney [Jose Latour](#), who runs the popular blog "Immigration Insider." [Michael Gibson of USAadvisors.org](#) also contributes to the piece.

"As sources of domestic capital have dried up, developers have tried to scramble to find other ways to finance their projects either in whole or in part," Yale-Loehr told *Reuters*, noting just how attractive foreign investment capital has become to players in a down real estate market.

According to Gibson, many former peddlers of sub-prime mortgages are now promoting regional center projects and "will tell investors almost anything they can to get them to sign the subscription agreement."

Citing the practices of Maslink, a firm that markets the EB-5 program to Chinese investors, *Reuters* reveals how firm operator Jason Lee's pitch to prospective investors violates a fundamental rule of EB-5 law by suggesting that investors will get all of their \$500,000 investment back if the project – in this case, the re-opening of an Idaho gold mine – were to fail.



Michael Gibson

By law, EB-5 investments are required to be at risk throughout the lifetime of the project. There is never any guarantee that the investor will receive repayment of his or her principal, much less any return on the investment itself.



Jose Latour

Reuters also reveals a number of EB-5 program blunders that have occurred over the years, one of which is the recent case of four Korean investors who "lost their entire investment" in a [South Dakota](#) dairy operation "when the price of milk collapsed and the operators of the farm stopped paying the mortgage." As soon as the investors tried to intervene and save the venture, they realized their names were not on the title, and they were unable to bring their case to state court.

EB-5 practitioners interviewed for the piece still contend that the program, in a very general sense, is sound. Yale-Loehr claims that

EB-5 is essentially a win-win-win-win for the U.S. business, the investor, the taxpayer, and the American worker.

Even so, the expose paints a critical picture of what the EB-5 program has brought upon the immigrant investor community that has sought to utilize it:

In all, 13,719 immigrant investors have applied to participate in the EB-5 program since 1990, according to USCIS.

But 4,489 of the applicants were rejected outright for any number of reasons, including an inability to prove to the government's satisfaction that the funds they proposed to invest came from legal sources. Another 848 are still pending.

Of the 8,382 immigrant investors who were allowed into the program and granted conditional visas over the years, 5,748 have theoretically been in the country long enough to apply for unconditional green cards - the permanent resident status that represents the finish line.

So how many have actually reached that milestone during the past 20 years? Just 3,127 investors. The other 2,621 have either had their applications for permanent residency rejected, fallen into some sort of legal limbo or just given up and gone back home with their families in tow and their dreams broken.

In other words, only 54 percent of the immigrants who start the process of gaining permanent residency using the EB-5 program actually attain it. That's a coin toss, not a slam dunk. Yet the businesses marketing the program promote it as a sure thing.

Also listed among *Reuters's* causes for concern is the common practice among immigration attorneys of accepting undisclosed commissions in return for steering clients toward a particular regional center or centers – a glaring conflict of interest that "may violate U.S. securities laws" or even turn into a nasty malpractice suit if a client's EB-5 investment heads south.

The [Association to Invest in the U.S.A. \(IIUSA\)](#) – profiled briefly in the article – came into being in large part to curb some of these less savory practices, in particular the habit of attorneys collecting finders fees.

Whether such actions will ultimately abate or continue thriving is impossible to predict. The picture painted by *Reuters*, however, isn't exactly optimistic.

[Click here](#) to read the entire Reuters report online.



ILW.com EB-5 for Experts Phone Seminar Series – Registration Deadline: January 11



With speakers: [Michael Gibson](#), [Robert C. Divine](#), [Robert Gaffney](#), [J. Bennett Grocock](#), [Michael G. Homeier](#), [Elizabeth Hurst](#), [John Patrick Pratt](#) and [Sarah von Helfenstein](#)

[Click here to register now!](#)

To follow-up to the December 30 seminar, ILW.com will host two more phone sessions on January 13 and February 3. Below are the details from ILW.com:

SECOND Phone Session on January 13: Securities law: Avoiding Litigation and Rescission – REGISTRATION DEADLINE: JANUARY 11, 2011, 11:59 PM!

With so many EB-5 Regional Centers marketing to so relatively few, the pressure is on to deliver investor clients, and the tactics and techniques employed by some of the Centers, their agents and "finders," both in the U.S. and overseas may cause increased scrutiny by the Securities & Exchange Commission and attorneys who specialize in malpractice and litigation on behalf of their investor clients. How can EB-5 practitioners and Regional Centers who have offerings in the market stay safe and avoid potential litigation and rescission? Topics:



- Reg. D & Reg. S offerings (definition of exemption)
- Solicitation and 502(c) rule
- Internet advertising: Lamp & IPO.net
- Seminars: overseas and domestic, rules and practices
- Compensation and fees: definition of Agents & Finders
- Marketing material v. operating documents
- Project failure and investor litigation

THIRD Phone Session on February 3: Valuation & Risk

What factors improve the chance of success in an EB-5 investment, the roles of capital, debt and equity, cash flow and what other factors are critical to making an informed decision in assessing the strength and weakness of the offering. Topics:

- Why proper valuation of risk is important
- Factors used in evaluating risk, research, due diligence
- The importance of capital
- The importance of the timeline in project completion
- Cash flow
- Equity v. Debt
- The role of management, competition & market
- The decision making process
- Comparisons of dissimilar projects
- Risk ratings and standards in risk valuations

[Click here to register now!](#)



EB-5 Stakeholders, Economists Shed Light on December Letter from Director Mayorkas to Senator Leahy

On December 3 2010, [a letter received](#) by the Office of Senator Patrick Leahy (D-VT) from USCIS Director Alejandro Mayorkas confirmed that USCIS interpretation of EB-5 law does, in fact, allow for the counting of indirect jobs outside a regional center's approved geographic boundaries. Although a regional center must still "focus its EB-5 capital investment activities on a single, contiguous area within the defined geographic jurisdiction requested by the regional center," according to the letter, indirect jobs outside the approved investment zone may be included in job creation totals.

For regional center operators, Director Mayorkas's comments assuaged concern over a statement made by a USCIS employee suggesting that indirect jobs created outside a regional center's geographic boundary could not count toward its totals. According to Boyd Campbell of [America's Center for Foreign Investment](#), many EB-5 stakeholders were "horrified" by that assertion.

"We knew this was incorrect because it defied logic, was insupportable by statute law, case law, or regulations, and the California Service Center was ignoring the statement," said Campbell. "But still, we needed some



Boyd Campbell

assurance that someone of Director Mayorkas's stature and authority agreed that this is incorrect."

Many economists' reactions to the letter were positive as well, with [Judson C. Edwards](#) of Edwards Economics offering the following comments:

This letter adds needed clarity for economists analyzing impacts for EB-5 projects. In my opinion, this opens the door for national economic impact studies becoming the standard for all EB-5 job creation models – making enforcement of regional center boundaries applicable only to the location of the direct jobs. Accordingly, the national impacts would provide maximum indirect job creation for qualifying projects and simplify the justification for calculation.

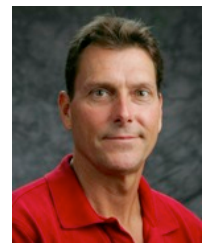


Dr. Judson C. Edwards

Edwards adds, "It will be interesting to see how this 'national focus' will be accepted by USCIS."

While largely a breath of fresh air for EB-5 stakeholders concerned about the future of their job counting methodologies, others in the EB-5 community are approaching the letter with caution.

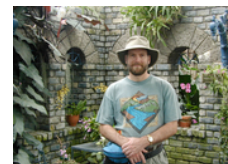
[Scott W. Barnhart](#) and [Alan Hodges](#) of Barnhart Economic Services [released a memo](#) stating that the Mayorkas letter will likely "create more confusion for practicing economists and Regional Center entrepreneurs as the geographic area where indirect job creation can be measured is not defined by USCIS at all.



Dr. Scott Barnhart

"While the economist has a good idea of what the likely impact area is from most types of economic activities," they argue, "the Regional Center principals likely do not and will feel the need to press for greater job creation outside the defined region because of this current ruling."

Both economists also believe the letter may "amplify a trend already underway whereby the geographic areas of proposed Regional Centers seem to be expanding to entire states or multi-state areas, primarily to apply the Regional Center's existing businesses to a larger geographic area, but given the recent ruling, to also increase the indirect jobs created by their economic activity."



Dr. Alan Hodges

[Jeff Carr of Economic & Policy Resources](#) is also skeptical. "I am not sure this is the panacea that everyone thinks it is," he said.

"Some EB-5 projects may actually result in a net loss of jobs outside of the regional center (e.g. a facility location and expansion), so are some folks going to now subtract job losses outside of the regional center from regional center job impacts to arrive at the net new number of jobs?"

Whether Mayorkas's statement provides clarity or confusion, it is sure to affect the way regional centers and economists approach the geographic and job creation models of current and upcoming EB-5 initiatives.



Jeff Carr



South Florida Developer Using EB-5 Program to Fund Unorthodox Marina Project



According to the *Sarasota Herald-Tribune*, a Port Charlotte, Florida developer is pioneering what [the paper calls "a new concept in marina ownership."](#)

Allen Heise, who has found success building condos and commercial complexes in South Florida, plans to construct a type of marina that has existed in other parts of the world for some time – the *Herald-Tribune* lists New Zealand and India as examples – but has never really been attempted in the United States: Fractional marina ownership.

Here's how it works: Marina racks won't be sold to individual buyers, but instead to six different owners. Each boat owner then has the ability to use any boat in the whole complex. That way, the boat owner can choose which type of boat he or she wants to use depending on his or her desired activity. Heise hopes this concept will attract boat owners who want more bang – and more boat – for their buck.

According to Heise, "the average boater only uses his boat 30 days a year." Fractional ownership in a marina should provide more value to boat owners and, if you ask Heise, "[reduce] the cost of boat ownership to about half."

The *Herald-Tribune* reports:

Heise said he got the idea for fractionalized marina ownership from NetJets, the Columbus, Ohio, company that began selling fractional ownership shares in jets back in 1986 and was purchased by billionaire investor Warren Buffet 12 years later.

To make his project a success, Heise said he needs to raise \$34 million — on top of his family's \$3.5 million contribution.

At a time when accessing capital to fund any real estate-related project in Florida is almost impossible, Heise is deploying another novel idea.

He intends to [tap into the federal government's EB-5 visa program](#), which is designed to help foreigners expedite the process of applying for green cards by encouraging them to invest in businesses that create jobs in the United States.

By selling \$500,000 stakes in his marina- management company to 68 foreign investors, Heise expects to raise the needed funds.

Heise also tells the paper that his EB-5 brokers are bringing him 10 to 20 investors at a time. He wants to have a fully operational marina that employs in excess of 150 people by 2012.

To handle demand for boats during busy seasons, Heise will create ownership levels that range from \$30,000 to \$100,000 per year. Those who pay the most money will get the most access to the most boats.

If he can just "take some of [the hassle associated with boat ownership] away" from boat owners, Heise tells the *Herald-Tribune*, this somewhat unusual venture will be successful.



Development and Preservation Reconciled for Milwaukee, Wisconsin EB-5 Initiative

After a battle between preservationists and developers, Milwaukee's Historic Preservation Commission has decided to sanction construction of a \$50 million Marriott Hotel in downtown Milwaukee.

According to the *Milwaukee Journal-Sentinel*, the hotel, which is being financed largely through the USCIS EB-5 immigrant investor program, [will utilize the existing facades](#) of downtown buildings in an attempt to preserve the character of the immediate area. The use of these facades – an alternative to complete demolition of the existing structures – appears to be the compromise the commission was able to reach after hearing arguments from local preservationists and [the Metropolitan Milwaukee Association of Commerce \(MMAC\)](#), which is handling the foreign investment element.



Downtown Milwaukee, Wisconsin

In a report, preservationists noted the structures' past uses, which include housing the first Jewish English-language newspaper in Wisconsin. The buildings are also excellent examples of Italianate design, according to the report.

Steve Bass, on behalf of MMAC, suggested before the commission that the buildings were not actually historic, but "merely old."

Supporters of the Marriott project cite its potential to create 350 to 450 construction jobs and up to 200 hotel jobs after construction. Estimated annual tax revenue from the hotel stands at \$2.26 million.

Although it appears an appeal of the commission's decision may be out of the question – the decision was unanimous – the developer has expressed concern over the feasibility of incorporating existing facades into its construction plan.



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

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