

EB-5 Visa-The Employment Creation Immigrant Visa: The Business Plan and the Economic Analysis in Support Of the Form I-924, Application For Regional Center Under the Immigrant Investor Pilot Program

- I. *Introduction:* Yes, the title of this essay is accurate. You really do have to know and understand all of this stuff ***merely to figure out how to get started*** on either a business plan or an economic analysis in support of a Regional Center application. If you don't understand what you need to prove at the end of the process, then you cannot effectively plan as how to achieve your ultimate goal. What is the ultimate goal? As a Regional Center you must have a solid, credible, comprehensive business plan that is supported by a valid, reasonable economic analysis and job creation projection based on feasible forecasting tools and/or accepted economically and statistically valid methodologies such as an econometric¹ model. Whatever the actual business turns out to be it must result in a minimum of ten (10) creditable full-time permanent jobs for each alien investor associated with that particular investment scheme. Scheme is not an inherently bad word. It has gotten a bad reputation in our current society. It is actually a valid word that means at least in part:

Definition of SCHEME²

- 1 *a (1)* : a mathematical or astronomical diagram
 - (2) : a representation of the astrological aspects of the planets at a particular time
- b* : a graphic sketch or outline
- 2: a concise statement or table : epitome
- 3: a plan or program of action; *especially* : a crafty or secret one
- 4: a systematic or organized configuration : design <color *scheme*>

The jobs that are predicated through the for-profit business activities of the new commercial enterprise must eventually be backed up with verifiable evidence. When dealing with the evidence to be produced to back up and prove the predictions about job creation, consider the nature of the investment scheme and the ease or difficulty of producing the required evidence. If the one predicts “indirect jobs” (which in the lingo of economic models will be labeled as both indirect and induced but for EB-5 these are “indirect jobs”) based on “direct jobs”, consider whether these are also “indirect jobs” in relation to the alien investor. If they are then that MUST be explained up front in the Regional Center plans.

¹ In economics, the sub-discipline of **econometrics** has been defined as broadly as the discipline concerned with the development of economic science in concert with mathematics and statistics. It has also been defined more narrowly as the application of mathematics and especially of statistical methods to economics.

<http://en.wikipedia.org/wiki/Econometrics>

An **econometric model** specifies the statistical relationship that is believed to hold between the various economic quantities pertaining to a particular economic phenomenon under study.

http://en.wikipedia.org/wiki/Econometric_model

² <http://www.merriam-webster.com/dictionary/scheme>

One might build a retail store and lease it out but that person won't be hiring the store cashiers, stock clerks, delivery drivers, secretaries, personnel specialists, accountants, and janitors. The developer of the mall won't be signing the paychecks for the guy selling pizza and milkshakes in the food court, selling movie tickets, or plowing the snow or painting the lines in that parking lot. All of those folks may be "indirect" in relation to the alien investor.

Another approach to consider is strictly looking at the capital investment in the aggregate. If a project is going to cost 20 million to complete and the aliens are each investing ½ million and the project only uses alien investors then that's 40 aliens at 10 jobs each for a total minimum of 400 jobs. Will the particular project in that industry which is doable and is feasible on that investment capital amount really create enough jobs to go around? Start with the completed project and do a simple calculation of a job multiplier associated with that industry in that locality in the current economy for a project of that size to see what you come up with in terms of jobs in the aggregate. If there are not enough jobs to go around then you need fewer alien investors than you might be able to get. You need some domestic capital also. That is NOT a bad thing. It is a selling point to play up to USCIS because it is one of the basic requirements. Any day now there may be 300 Regional Centers and more after that. Some will fail and more may spring up. The bottom line is you need to utilize more domestic investors overall. The aliens are in it for a greencard and will join in even if it is not going too well in garnering domestic investors. The Regional Center should look to leveraging the foreign investment dollars to attract domestic dollars to the project. Yes Mr. Texas oil millionaire, we've already got 5 million dollars from 10 alien investors, come join us. The domestic investors are not a consideration for allocation of jobs for the immigrant investors but the jobs created by domestic investments in the same project can be allocated to the aliens in order to lift conditions on their greencards. The ten jobs lifts the conditions on the investor and his/her entire immediate family (spouse and children that accompanied or followed to join). Ten jobs can lift the conditions on one to perhaps five or more people (even abroad investors are not likely to have more than three kids these days but you never know in advance).

II. *“Pilot Program” To Implement The Provisions Of: § 203(b)(5) of the Immigration and Nationality Act (INA) (8 USC § 1153(b)(5)). [See: 8 USC 1153 Note: Pilot Immigration Program, as amended]*

The text of the above cited INA section follows. The portions of § 203(b)(5) in this essay, that have been underlined mainly pertain directly to the business plan while the portions that are shown in **bold mainly pertain directly to the economic model/analysis**. Lastly, the items that are shown in **both underlining and bold have a bearing on both** the business plan and the economic model/analysis. First come the statutory evidentiary requirements to be concerned about. The regulations that follow or are interspersed will be treated in a like manner. Lastly, *italics, underlined italics, and “some” of the bolded text indicate extra emphasis, citations, or already present in the copied CFR. [Added discussion and most citations are bracketed.]*

INA § 203 [8 USC § 1153] ALLOCATION OF IMMIGRANT VISAS

(b) Preference Allocation for Employment-Based Immigrants. - Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(5) Employment creation. -

(A) In general. - Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise (including a limited partnership)— *[EB-5 is allotted around 10,000 visas.]*

(i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of **investing, capital** in an amount not less than the amount specified in subparagraph (C), and *[Invest and capital, among other specific important terms, are defined in 8 CFR § 204.6 and don't over look other CFR's and the INA. There are four EB-5 specific AAO Precedent Decisions that one must read and digest before embarking on this adventure.]*

(ii) which will **benefit** the United States **economy** and **create full-time employment** for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters). *[When counting employees, you have to know who does **not** count as well as who **does**.]*

(B) Set-aside for targeted employment areas.- *[If the Regional Center plans to base its promotional efforts on the reduced investment amount, it had better identify such areas from the very beginning of the planning process before even thinking about filing an I-924, Application for Regional Center Under the Immigrant Investor Program. That crucial decision will dictate the course for many, if not all, aspects of the business plan options, investment vehicles, targeted industries, etc...]*

(i) In general. - Not less than 3,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise described in subparagraph (A) which will create employment in a targeted employment area.*[The number stated is a minimum, not a maximum portion of the overall 10,000 visas. "new commercial enterprise" is also defined for EB-5 purposes.]*

(ii) Targeted employment area defined. - In this paragraph, the term "targeted employment area" means, at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate). *[Investing within a TEA must be*

proven at the I-526 stage but must be considered and determined long before that.]

(iii) Rural area defined. - In this paragraph, the term "rural area" means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States). *[Don't be fooled, there are small towns inside MSAs and THEY only count as high UNEMPLOYMENT areas, NOT rural.]*

(C) **Amount of capital** required. -

(i) In general. - Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be \$1,000,000. The [Secretary of Homeland Security], in consultation with the Secretary of Labor and the Secretary of State, may from time to time **prescribe regulations** increasing the dollar amount specified under the previous sentence.

(ii) Adjustment for targeted employment areas.- The [Secretary of Homeland Security] may, in the case of investment made in a targeted employment area, specify an amount of capital required under subparagraph (A) that is less than (but not less than 1/2 of) the amount specified in clause (i).

(iii) Adjustment for high employment areas.-In the case of an investment made in a part of a metropolitan statistical area that at the time of the investment – *[To date, this clause has never been given any effect.]*

(I) is not a targeted employment area, and

(II) is an area with an unemployment rate significantly below the national average unemployment rate, the Attorney General may specify an amount of capital required under subparagraph (A) that is greater than (but not greater than 3 times) the amount specified in clause (I).

(D) Full-time employment defined.--In this paragraph, the term "full-time employment" means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position³.

III. Pilot Program Shall Involve A "Regional Center" In The United States:

*A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and **consistent with the purpose of concentrating pooled investment in defined economic zones.** [See: 8 USC 1153 Note: Pilot Immigration Program, as amended]*

³ See Memo at: http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/eb5_17jun09.pdf

8 CFR § 204.6 Petitions for employment creation aliens.

(e) *Definitions.* As used in this section:

.....

Regional center means any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

- IV. “Designated by the Secretary of Homeland Security” on the basis of a general proposal. The Congressional directive was originally for the Attorney General, through the Immigration and Naturalization Service (INS), to write implementing regulations. Those regulations are found in 8 CFR § 204.6(m). USCIS is now the government agency in charge of the Immigrant Investor Pilot Program. The scuttle-but from the recent IIUSA Meeting in DC indicates that regulatory revisions are coming “soon”.

Reminder: Mostly the **Bold=Economic Model/Analysis.** Most Underlining=Business Plan and **Bolded & Underlined=Both.** *Italics and some bolded text indicates extra emphasis, citations, or already present in the copied CFR.*

The establishment of a regional center may be based on **general predictions**, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the **jobs** that will be **created directly or indirectly** as a result of such **capital investments and the other positive economic effects such capital investments will have.** [See: 8 USC 1153 Note: Pilot Immigration Program, as amended]

See generally, **8 CFR § 204.6 Petitions for employment creation aliens.**

- V. **Establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created *indirectly* through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.** . [See: 8 USC 1153 Note: Pilot Immigration Program, as amended] [An Economic Analysis is needed. It must be based on a sound Economic Model that uses the information provided in or inspired by the credible comprehensive Business Plan. Numerous Models are in existence and recognized for their validity, there is no mandate to use any particular Model. Popular choices have been from among: IMPLAN, RIMS II, Redyne, and REMI, but other may exist or come into fashion. Whatever the final decision is, it should take into account the evidentiary requirements that will be needed to prove its effectuation at the I-829 stage. Will the Analysis demand that the alien investor will have to come up with proof of actual “direct employees”? If so, then the alien, through the Regional Center, will have to come up with W-2s, quarterly wage and tax reports, and/or I-9s, all of which must be verifiable as true. DHS runs then premier forensics documents laboratory in all of the U.S. and probably the entire world, and they can check with State tax agencies as well as IRS and USCIS itself runs E-Verify.]

8 CFR § 204.6 Petitions for employment creation aliens.

(j) *Initial evidence to accompany petition*.....In the case of petitions submitted under the Immigrant Investor Pilot Program, a petition must be accompanied by evidence that the alien has invested, or is actively in the process of investing, capital obtained through lawful means within a regional center designated by the Service in accordance with paragraph (m)(4) of this section. **The petitioner may be required to submit information or documentation that the Service deems appropriate in addition to that listed below.**

(4) *Job creation* —

(i) *General.* To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees⁴, the petition must be accompanied by:

(A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

(B) A copy of a **comprehensive business plan**⁵ showing that, *due to the nature and projected size of the new commercial enterprise*, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, *within the next two years*⁶, and when such employees will be hired.

.....

⁴ When the Economic Analysis bases and ties its projection as to indirect job creation on a **base level of newly created jobs** attributable to the alien’s investment in a particular commercial enterprise **rather than** simply to **the dollar amount of the investment**, it is critical to differentiate between “direct employees” **on the alien’s payroll** vs. “direct employees” **of a third party** who are “indirect employees” for EB-5 purposes. Third party direct employees used as “direct jobs” **in terms of input into the Econometric Model** may be termed as “hypothetical” or “base jobs” or some other terminology that clearly distinguishes them as not on the alien’s payroll. This is critical at the I-829 stage as to the evidence that will be required to lift conditions on residence. The classic and easiest example that illustrates this is “mall tenants’ employees” while another could be “factory workers” when the alien is loaning money to an industrialist in order to let that other person or entity build, convert, or expand a factory.

⁵ For an in-depth discussion on the USCIS expectations as to the contents of a **credible** comprehensive business plan see: *Matter of Ho* <http://www.justice.gov/eoir/vll/intdec/vol22/3362.pdf>

⁶ The plan will be assessed at the I-526 stage and will allow even longer projections to account for USCIS and DOS processing. At least an additional six months are automatically afforded without request. However, those six months are merely an estimate of the I-526 processing time (see Memo in footnote 3). Once an I-526 is approved, then it could take another six months to go through the I-485 adjustment process inside the U.S. In the alternative, it could take six months to obtain an Immigrant Visa through Consular Processing which is then good for up to six more months before the alien has to enter the U.S. on that Immigrant Visa before it expires. It could afford a total period of two and one-half years to three and one-half years from the I-526 filing date to the job creation “deadline” used when adjudicating the I-829. The alien has a greater amount of time to create jobs than indicated at first glance. Use that time in creating a solid, reasonable, credible Business Plan and Job Creation Projection in the Economic Model/Analysis using sound and reliable methods on valid and verifiable regional demographic and economic data.

(iii) *Immigrant Investor Pilot Program*. To show that the new commercial enterprise located within a regional center approved for participation in the Immigrant Investor Pilot Program meets the statutory employment creation requirement, the petition must be accompanied by **evidence that the investment will create full-time positions for not fewer than 10 persons either directly or indirectly through revenues** [*generated from increased exports (this requirement has been dropped by subsequent legislation)*] **resulting from the Pilot Program**. Such evidence may be demonstrated by **reasonable methodologies** including those set forth in paragraph **(m)(3)** of this section.

(m) *Immigrant Investor Pilot Program*.....

(1) *Scope*.....

(2) *Number of immigrant visas allocated*.....

(3) *Requirements for regional centers*. Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the [Director of the California Service Center], which:

(i) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will **promote economic growth** through increased export sales [exports are no longer required], **improved regional productivity, job creation, and increased domestic capital investment**; [*This requirement has some relationship to (iii) and (iv) below in that it asks how the “Regional Center” will promote growth in a particular area.*]

(ii) Provides in **verifiable detail how jobs will be created indirectly** through increased exports; [*exports are now only an option*]

(iii) Provides a **detailed statement regarding the amount and source of capital which has been committed to the regional center**, as well as a **description of the promotional efforts taken and planned by the “sponsors”⁷ of the regional center**; [*This part can be included in a distinct business plan specific to the Regional Center entity that covers a budget and marketing plan. Particular attention should be paid to verifying that the I-924 Applicant exists as a legal entity empowered to file the form. This can include a breakdown of “fees” charged to the alien investors above and beyond the required minimum investment amount. This can be spread out in a variety of documents such as a*]

⁷ This regulation uses the word “sponsor” to describe the I-924 filer who is now considered an “applicant”. Someone who files an immigrant petition is a “petitioner” and is also the “sponsor” either on an I-864, *Affidavit of Support* or in the role of an employer (or agent who will assist in finding work for a self-petitioner if the self-petitioner cannot do it him/herself). These are important distinctions when trying to apply pre-existing precedents and regulations to the adjudication and appellate review of a new benefit application form that must not be overlooked or applied inappropriately.

charter, bylaws, as part of the Subscription Agreement, Confidential Offering Memorandum, Private Placement Memorandum, brochures, or websites etc... This part has a direct connection with (i) above and (iv) below, may folks miss that point at first.]

(iv) Contains a **detailed prediction** regarding the *manner in which* the regional center will have a **positive impact** on the **regional or national economy** in general *as reflected by* such factors as **increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center**; and *[These are six very specific line items for the economic model/analysis that elaborate on the “economic growth” and “regional productivity” mentioned above. In addition, this part asks how the “Regional Center” will have a positive impact, therefore there is connectivity with (i) and (iii) above.]*

(v) Is supported by **economically or statistically valid forecasting tools**, including, but not limited to, **feasibility studies, analyses of foreign and domestic markets for the goods or services** to be exported, and/or **multiplier tables**. *[The Economist must consider the basic requirements spelled out in the regulations when choosing the economic model to employ to perform the analysis. The Economist must then ensure that when composing that analysis, which must include a job prediction component, that all of the pertinent factors enumerated here and in (iv) above are addressed.]*

(4) *Submission of proposals to participate in the Immigrant Investor Pilot Program.*

(5) *Decision to participate in the Immigrant Investor Pilot Program.*

(6) *Termination of participation of regional centers.* To ensure that regional centers continue to meet the requirements ..., a regional center must provide USCIS with updated information to demonstrate ...[it]... is continuing toserve[] the purpose of... the Pilot Program ..., USCIS shall notify the regional center of the decision and of the reasons for termination. *[When a Regional Center receives approval, the notice will inform it of the obligations as to record keeping and reporting as well as the need to refrain from making changes without submitting an amendment request and obtaining approval first. It is best to be proactive in the Regional Center Proposal in that part specific its business plans and practices to cover these requirements. In addition, it is also wise to be proactive in helping the alien investors qualify on all aspects of the I-526 petition for an immigrant visa and further I-829. In this regard, stating the Regional Center’s plans as to vetting investors as to lawful source and path of funds, questioning admissibility as an immigrant, and performing what is commonly called “due diligence” tasks is as paramount to swift approval as any of the requirements.]*

(7) *Requirements for alien entrepreneurs.*

(i) *Exports.* [This has been dropped as an absolute requirement but is still optional.]

(ii) *Indirect job creation.* To show that 10 or more jobs are actually created indirectly by the business, **reasonable methodologies** may be used. Such methodologies may include **multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services** to be exported, and other **economically or statistically valid forecasting devices** which indicate the likelihood that the business will **result in increased employment**. [The Introduction pretty much incorporates this into the discussion, well, this is a main source for that.]

(8) *Time for submission of petitions for classification as an alien entrepreneur under the Immigrant Investor Pilot Program.* Commencing on October 1, 1993.

(9) *Effect of termination of approval of regional center to participate in the Immigrant Investor Pilot Program.*

VI. More About Evidence

8 CFR § 204.6 Petitions for employment creation aliens.

(g) *Multiple investors* — [The option to pool investments is NOT restricted to Regional Centers only. A group of aliens can join forces independent of a Regional Center **however**, non-Regional Center-affiliated alien investor groups cannot take advantage of “indirect jobs” as predicted by an “economic analysis” based on any forecasting tools such as economic models and multipliers etc.... ALL of their jobs MUST be direct employees on-the-books, full-time and permanent. These employees MUST all be “qualifying employees”. The alien investors, spouses, sons and daughters are NOT included in the total. No illegal aliens count in the total. Part-time positions do not count. A “job-sharing arrangement” does count but is a rare thing in general. Job-sharing means that two (or more) people share one full-time job. That means that they are NOT co-workers working side-by-side. They share one 35 to 40 hour per week job. They both only equal one full-time POSITION when added together. The non-Regional Center-affiliated alien **cannot add up two or more part-time jobs and call it one full-time POSITION**⁸. Any job that is temporary, seasonal, intermittent, or transient in nature does NOT count. Lastly, when independent investors pool their funds, they EACH have to have ten (10) full-time permanent employees, on-the-books and present EVIDENCE to USCIS. Is it even a possibility for five aliens each investing one million dollars to create a business that would require fifty full time employees? I don’t think five million would go far enough to get the required results. Perhaps one one-million dollar investor could achieve 10

⁸ Economic Models that predict indirect jobs do not distinguish between multiple part-time jobs and full-time jobs. They deal in Full Time Equivalents (FTEs). USCIS had difficulty wrapping its head around that concept at first but has come to realize that that is OK after all because of the leeway provided by Congress in creating the Regional Centers in the Immigrant Investor Program.

jobs by the end of the conditional residence period but I am skeptical that even two such alien investors could get the required jobs.]

(1) *General.* The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur by more than one investor, provided each petitioning investor has invested or is actively in the process of investing the required amount for the area in which the new commercial enterprise is principally doing business, and provided each individual investment results in the creation of at least ten full-time positions for qualifying employees. The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur even though there are several owners of the enterprise, ***including persons who are not seeking classification*** under section 203(b)(5) of the Act and non-natural persons, both foreign and domestic, provided that ***the source(s) of all capital invested is identified and all invested capital has been derived by lawful means.*** *[This is an important consideration for the Regional Centers when establishing their plans, practices, and mechanisms for vetting investors and their source and path of lawful funds.]*

(2) *Employment creation allocation.* The ***total number of full-time positions*** created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. [USCIS] shall ***recognize any reasonable agreement*** made among the alien entrepreneurs in regard ***to the identification and allocation of such qualifying positions.*** *[Among the numerous “hyper-technical requirements” consideration must be given to the legality of any arrangements made in not only the agreement discussed in 8 CFR § 204.6(g)(2), but in ALL manner of agreements. Because what’s important is that “...within the ambit of contract law..... Legally cognizability requires that the rules governing the parties’ power relations can be applied to other parties similarly situated and are ‘credible to outside observers who regularly reassess the authority of courts to determine those issues’”⁹(p.131). USCIS is not the only government agency that must be pacified and placated. The Business Plan must encompass everything pertinent to its Standard Operating Plan/Procedures (SOP). The Regional Center will need to develop standardized documentation to be used in its operation. The Securities and Exchange Commission (SEC), Internal Revenue service (IRS), Department of Commerce (DOC), and whatever particular other agencies at the State and Federal levels that have jurisdiction over the industries targeted for invest must be satisfied.]*

⁹ ***VISIONS OF CONTRACT THEORY: RATIONALITY, BARGAINING, AND INTERPRETATION***, by Larry A. DiMatteo, Robert A. Prentice, Blake D. Morant, and Daniel D. Barnhizer. Durham: Carolina Academic Press, 2007. (p. 131) <http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/dimatteo1007.htm>

VII. Conclusion: The requirements for an I-526 petition are best considered by the Regional Center applicant even though they are not specific to the I-924 application. In addition, one must remember to plan ahead to meet the evidentiary requirements of the I-829 petition in the formulation of the economic analysis and the econometric model upon which it is based in accordance with the underlying credible comprehensive business plan. That underlying plan must be realistic from the very beginning. The plan must be based on a sound investment strategy and NOT a get-rich-quick scheme.

Specific points to consider up front: Are the investment opportunities going to create enough jobs to satisfy the requirements for ALL the EB-5 investors the Regional Center can find or will the project have a finite number of EB-5 investor slots? How many domestic investors will the project require? Do the documents that the Regional Center wants to use for the investment satisfy the EB-5 laws? How about the SEC laws? How about the OFAC or IRS? Will the same documents be sufficient for both the foreign and domestic investors or does the Regional Center need two sets? Does the Regional Center want to use an escrow arrangement as a marketing tool to entice and pacify immigrant investors or will such arrangements just hinder the overall project and lead it to fail for both foreign and domestic investors? How much flexibility can the Regional Center build into its arrangements with EB-5 investors before crossing the line into the danger zone of having such arrangements be branded a *material change* or an impermissible redemption agreement or of not being closely enough associated with the job creation or not a real “at risk” investment?

The premise of an investment as asserted in a Regional Center application, i.e. the business plan, economic analysis with indirect job creation projections, and the vetted written documentation, are only “**recommended for a favorable determination**” as supporting prima facie evidence of eligibility for a future I-526 and even further I-829.

A *prima facie showing of eligibility*, through use of previously vetted plans and documentation, is a good starting point but is not the final word. An individual applicant *must still prove complete eligibility for a favorable determination* on the individual petition. A material change to any part of that *prima facie evidence* which had been previously examined may derail an entire project and have negative ramifications upon all EB-5 and domestic investors. A form **I-924** can be used to seek an **amendment** to the plans, analyses, predictions and documentation in advance of individual I-526 petitions being filed *en masse* in order to make sure that any *new prima facie evidence* is still EB-5 compliant.