

NEWSLETTER | JANUARY 2011

- **Seminar Explores Effects of Chinese Court Decision for EB-5 Project Brokers**
- **Chinese Government Addresses Fundraising Schemes**
- **Registration Deadline Approaching for EB-5 Regional Center Marketing and Investor Procurement Seminar**
- **EB-5 Program is Creating Jobs, Says NPR**

Chinese Court Decision a Game-Changer for EB-5 Marketers

The Chinese Supreme People's Court and the China Banking Regulatory Commission have handed down a [new interpretation](#) of Chinese law that will have a significant impact on those marketing the EB-5 visa program to investors.

That's why [EB-5 service provider Brian Su](#) conducted a seminar in January, the purpose of which was to shed light on the new interpretation. He calls the move by China's government "extremely serious" in its implications for brokers selling securities in that country, and he believes EB-5 practitioners should know what the new ruling may mean for their business activities.

Along with Jason Lee, who is on the Board of the Beijing Exit-Entry Administration, Su's seminar focused specifically on the role the Chinese court's decision will play when it comes to marketing EB-5 visa projects to immigrant investors.

Gillian Shuang of PKF China, Lu Sun of Maslink, and Walter Huang, an expert on Chinese securities, joined Su and Lee in seminar discussions.

When it comes to the selling of securities in China, there was already law on the books



Attorney [Julia Yong-hee Park](#) speaking at the seminar

meant to regulate marketing activity. According to Su, however, the court's latest decision was rendered specifically to clarify many existing regulations. Here are some high-level components of which the EB-5 community should be particularly aware:



Brian Su of Artisan Business Group

The Supreme People's Court's Interpretation of Several Issues in the Trial of Criminal Cases about Illegal Fundraising, with the Judicial Committee of the Supreme People's Court promulgated and will come into force as of January 4th 2011.

December 13th, 2010

No. (2010) 18 of Judicial Interpretation

The Supreme People's Court's Interpretation of Several Issues in the Trial of Criminal Cases about Illegal Fundraising

(Adopted at the 1502nd meeting of the Judicial Committee of 22nd 2010)

In order to punish in accordance with laws those criminal acts of public and/or fraud in financing, the judicial interpretation specifies the application of the law in the trial of criminal cases about

Article 1: Any conduct of soliciting fund from the social public in violation of provision of China financial administration act at the same time, unless otherwise specified by Criminal Law public deposits or pooling public deposits in disguised form :

Excerpt of the Chinese court decision – Read an unofficial translation [here](#).

1. All brokers must meet licensing and registration requirements.

2. EB-5 marketers will no longer be able to use "public media" – television, radio, internet, etc. – to promote the sale of securities.

3. Marketers will be barred from promising (or perhaps even discussing) any form of return on an investment.

4. Marketers will be unable to promote financial products to the general public.

Some of those elements, in particular the last three, may be cause for alarm among some brokers promoting EB-5 projects in China, and regional center operators should be vigilant about how their projects are presented abroad.

"It is now very risky for regional centers to ignore" the activities of brokers marketing their projects in China, said Su. If investors experience massive losses on a project, "the authority will go after not only brokers, but also trace to the regional center in the U.S."

Concern over the sale of securities by unscrupulous organizations transcends those transactions made between Chinese EB-5 brokers and investors. During the last few years, several investment-related schemes – some having to do with immigration and others not – have sprung up in China. Many investors lost money, and [provincial governments have become increasingly concerned](#).

An [article in China Daily](#) dated January 5 states that "about 5,400 suspects [have been] arrested in 5,000 cases" of illegal fundraising since 2008. What's more, Chinese police "investigated 10,000 illegal fund-raising cases involving about 100 billion yuan" between 2005 and 2010.

Given the prevalence of such activity, it's little wonder why the Chinese government has become concerned. "At this point, the brokers have to be very very careful about their contact with the investors," said Su. "The brokers should focus on selling the immigration side as opposed to talking too much about investment itself. Any time you are talking about the EB-5 investment, you might be in violation of the law."



Chinese Government Takes on the EB-5 Broker Market

The Chinese government is taking a good, hard look at the EB-5 visa program, in particular those brokers who may not be following the rules.

As noted by [EB-5 service provider Brian Su](#), the Beijing Exit-Entry Administration has [changed its name](#) to the Beijing Exit-Entry Administration General Corps, a move that reflects its increasing role as an enforcement agent.

The Guangzhou Exit-Entry Administration has even established new rules for immigration brokers who would like to register as exit-entry service providers, requiring new applicants to deposit a total of RMB 2,000,000 Yuan just to establish themselves.

According to Su, the Guangzhou Exit-Entry Administration [will also recommend](#) additional rules, which include monitoring of immigration-related promotional activities and requiring agencies to publicize the risks inherent to foreign investment.

Also among the administration's proposed reforms are an annual compliance review to be filed for every registered exit-entry agency and a requirement that those agencies promoting [EB-5 visa projects](#) exercise full disclosure of risk.

Such changes would increase the barriers to entry in the immigration broker market and help crack down on unscrupulous players.

These announcements come after two raids by Beijing police on unlicensed EB-5 visa immigration consulting operations in December. The number of illegal firms has risen as



Oriental Pearl Tower, Shanghai

business for EB-5 regional centers has prospered in recent years.

The Beijing Exit-Entry Administration General Corps also indicated last month that it plans to actively seek out and shut down these firms, and it is encouraging members of the public to alert authorities upon coming in contact with any such groups.

The potential EB-5 investor should be wary of these immigration brokers, who often charge very little and make extraordinary promises.

If there's anything [December's sweeping exposé](#) in Reuters proves, it's that those attempting to procure an EB-5 investor green card should exercise great caution in their interactions with this market, which is still largely unregulated and attracts untrustworthy operators.

Photo courtesy of [jjazi](#).



Upcoming EB-5 Regional Center Promotion and Investor Procurement Seminar – Register Now

A [seminar](#) to be held in Las Vegas, Nevada on February 20 will address growing interest in the EB-5 immigrant investor program, in particular its impact on commercial real estate, manufacturing, and financial industries.



NES Financial is sponsoring the event.

According to the seminar announcement, attendees will have the "rare opportunity" to learn about Chinese immigration, trade, and business from representatives speaking on behalf of "migration companies" in China. "VIP speakers" include financial services providers, immigration attorneys, due diligence experts, and professionals whose experience lies in EB-5 project marketing.

The seminar will be led by [Brian Su](#) of the Artisan Business Group and will be sponsored by [NES Financial](#), which provides escrow administration solutions to EB-5 regional centers.

For more information on the speakers, the content of the seminar, or locations and times, please visit the seminar's [official event page](#).

As of February 9, there were only 20 seats left.



NPR: EB-5 Immigrant Investor Program Generates Jobs

On January 18, National Public Radio [reported](#) on the EB-5 immigrant investor program in a broadcast that cast the program in a mostly positive light.



Jay Peak Resort – Jay, Vermont

Reporting for the network, Charlotte Albright provided a profile of the [Jay Peak resort project](#), an endeavor that regional center operator Bill Stenger claims the EB-5 visa program has transformed "from a winter-only ski resort to a true 52-week-a-year resort facility" through nearly \$200 million of capital investment.

Specifically, Stenger is referring to construction of a new water park at the resort that will be covered by a retractable glass dome, keeping it warm enough for guests to swim in year-round. Jay Peak also boasts trails, a hotel, and a golf course.

One notable element of the story has to do with a British EB-5 immigrant investor, Anthony Korda, who also happens to be an [attorney](#). After investing in Jay Peak, NPR reported, Korda brought his family to the United States, set up a law practice, and now works directly with immigrants trying to procure an EB-5 investor visa.

NPR also points out how the growth of the EB-5 program in recent years is due largely to the dearth of domestic capital that has plagued developers since the dawn of the recession, a phenomenon that may reverse course when the economy eventually improves.

Interested investors "rushing to get in the pipeline" are doing so before the regional center pilot program's sunset date in September 2012. Whether Congress decides to extend that date as it has in the past is not yet known. Several of the program's "bipartisan supporters" in Washington "are already trying to drum up congressional support for its renewal," according to NPR.

This report from a large national mouthpiece comes less than a month after a [mostly condemnatory exposé](#) of the EB-5 visa program published by *Reuters*. In that report, brokers promoting regional center projects in China are presented as untrustworthy and less than willing to disclose the extent to which investor funds are at risk.

NPR instead focused on job creation, noting that "investors who have climbed aboard have brought more than \$1 billion into American businesses, generating tens of thousands of jobs."

There is one thing NPR got wrong, however. The report states that there are only "about 80 regional EB-5 centers" in the United States. As the EB-5 community is well aware, that number now sits well north of 100.

Click to [listen](#) to the audio version of this story in your browser.

Jay Peak Resort photo courtesy of [Mark Drago](#)



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