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**How a D.C. EB-5 Venture Helped Bring About the Regional Center Project Approval Process**

Without a doubt, the process of project approval has made EB-5 visa investment a much smoother ride both for regional centers and for individual investors. But how project approval came to exist and what it has to do with a recent blog post from a decidedly anti-EB-5 organization is a different story.



EB-5 Attorney Robert Divine

On February 10, a blogger at the Center for Immigration Studies [published a tirade](#) about an EB-5 investor who was supporting renovation of the Watergate Hotel in Washington D.C.

Long story short: Upon submission of his petition, the investor received (as many investors did in the days before project approval) a Request for Evidence (RFE) from service center operations. The petition was ultimately rejected, the investor appealed, and the Administrative Appeals Office rejected the appeal.

Surface-level analysis of the event provides little more information than this, but there's really more to the story. According to [EB-5 attorney Robert Divine](#) of [Baker Donelson](#) (authorized by his client to talk with us), the saga of the treatment of filings associated with the Watergate Hotel investment ultimately provided a

clear picture of the need for project approval apart from individual investor petitions and at least partly led to USCIS' recognition of the "exemplar petition" process.

Divine did not initially represent the developer. Before he got involved, the regional center had received tardy official processing but unofficial encouragement about its fund documents to be used in numerous projects. By the time investors signed on and filed their individual petitions, USCIS program leadership had changed, and Texas Service Center adjudicators questioned various aspects of the project documents, ultimately denying some. Recognizing a process foul, new program leadership agreed with prior counsel to review and approve a regional center amendment containing revised program documents and to allow interfiling of those documents into the investors' petitions that were reopened and transferred to the California Service Center. Nevertheless, the CSC questioned the new provisions with requests for evidence to each of the individual investors and their counsel, who of course referred these RFE's to the developer.



**Watergate Hotel, Washington D.C.**

The developer and regional center hired Divine, who helped prepare responses to the RFE's but meanwhile openly advocated for a dependable process under which a regional center could present a project to USCIS, discuss key issues with competent USCIS personnel in a businesslike manner, and receive an approval that investors could depend on. He argued that new regulations would not be required, since USCIS already had regulations for approval (and amendment) of regional centers. USCIS management agreed that project approval would be beneficial, and it began what became a process to develop a memo that ultimately was published on December 9, 2009. That memo allows an "exemplar petition" by a regional center in the context of an amendment to the center's designation. USCIS recognized the benefits of adjudicating the project documents one time, dealing with the regional center directly, and leaving only source of funds analysis for individual investor petitions.

As soon as USCIS issued the December 2009 memo, Divine filed a request to approve the Watergate project, and it was approved within two weeks. The investors were encouraged to file new petitions based on the project approval, and most did, but some investors had children who had reached age 21 in the meantime. Thus, they sought to maintain their original petitions and make their best arguments for approval. The published AAO decisions are those cases in which the AAO determined that all of the changes to the

project documents along the way were too “material” to be allowed to amend the original filings. As for the new petitions, unfortunately, financing for the project had fallen through by that time (a Lehman Brothers entity was a major participant originally), and the lender foreclosed on the property. Thus, they could not be approved.

The lesson: Using the EB-5 Visa Program to finance acquisition of the land on which a renovation will take place or to finance renovation of distressed properties creates a difficult “chicken and egg” financing problem. USCIS has not shown itself willing to expedite petitions to meet participating financing parties’ schedules or a bankruptcy court's deadline.

Although it reformed a restrictive processing approach, a move that has proved better for regional centers and investors, USCIS did not change things fast enough to save this particular initiative. If there can be any silver lining to the Watergate project, it is that EB-5 project approval might not exist without it.

Perhaps the name "Watergate" is one that can inspire a bit of optimism, after all.

*The editor would like to thank Robert Divine for his expertise and assistance in developing this article. Without his input, many integral details would have gone unreported.*

photo: [dave\\_7](#)



## **U.S. Government Giving Foreign Investors the Shaft**

by [Boyd Campbell](#), Originally published on [his blog](#).

I've been doing a lot of thinking about EB-5 investors lately.

What happens when they get to the I-829 petition stage (removal of conditions) and there is insufficient information from the investment project that the investor's money was "fully invested" as required by federal regulations?

What happens to the investor if there is insufficient information from the investment project that it created at least 10 U.S. worker jobs as required by federal regulations?

What happens to the investor if the investment project fails? What happens to the investor if a regional center fails?

What happens if the investor is approved for removal of conditions but the investment project goes bankrupt?



EB-5 Attorney  
Boyd Campbell

Apparently neither Congress nor U.S. Citizenship and Immigration Services (USCIS) gave much thought to this because it wasn't happening when the law was passed and the regulations were written. It's happening now. As everyone knows, the worst recession in our lifetimes delivered a roundhouse punch to the U.S. economy, and the recovery -- which is occurring in some parts of the United States -- is extremely slow.

It is in this economic environment that EB-5 investment projects are not doing well or failing. Insufficient jobs are being created to cover EB-5 investment project investors (minimum of 10 U.S. worker jobs each). EB-5 investors' money is being lost. And the consequences for the foreign investors -- who, in good faith, put their hard-earned money down and in many cases sent their families to the United States and their children to enroll in school -- are brutal and patently unfair and unjust.

When the investors have insufficient information and documentation to deliver to USCIS along with their I-829 petitions, the petitions are denied and the investor and family members -- if in the United States -- are put in deportation (removal) proceedings.

One can argue about the unfairness and injustice of this for quite awhile, but what we (immigration lawyers, Congress, USCIS, regional centers) need to focus on is how to protect the investors. These problems are not their fault and they should not be denied immigration benefits if their money is lost and/or an insufficient number of U.S. worker jobs is created through no fault of their own.

It is my understanding, although records are incomplete, that USCIS is denying about one-third of the I-829 petitions filed with the California Service Center. This situation is not sustainable if the EB-5 Program is to survive.

News travels fast, and bad news travels faster. If I have a one in three chance of not obtaining a permanent "green card" if I invest through the EB-5 Program, my money is staying home.

There is a precedent in U.S. visa programs for situations where there are failures of eligibility requirements. On October 28, 2009, Congress passed the Department of Homeland Security Appropriations Act for FY2010. Thanks to Brent Renison's organizational skills and relentless lobbying, it contained help for family immigration beneficiaries.

"The Act contains two measures to address survivors' issues: (1) self-petitioning rights for all widow(er)s of American citizens and their children contained in section 568(c) of the Act; and (2) certain survivors' rights for family based, employment based, and other immigrants contained in section 568(d)," Renison wrote.

"The 'widow penalty', whereby spouses of U.S. citizens and their children faced automatic denial of a visa petition if the death of the spouse occurred prior to adjudication and prior

to two years of marriage, effectively ended upon the passage of § 568(c). That section removes the two-year marriage requirement from the current law that permits widows and widowers ('widow(er)s') of U.S. citizens to file a self-petition for themselves and their children.

"By removing the two-year precondition to a current statutory program, Congress retained the widow(er) self-petition procedure including the requirement to show a good faith marriage. The law does not alter the rights of widow(er)s who were married two years or more, who have been able to self-petition since 1990.

"The deletion of the two-year marriage requirement will allow a widow(er) who was married less than two years at the time of the citizen spouse's death to file a Form I-360 self-petition within two years of the law's passage, or within two years of the spouse's death, whichever is later."

Do you see any parallels by applying the above to the troubled EB-5 Program? First, when it was writing regulations for the EB-5 Program, USCIS plucked the "two-year rule" from the marriage fraud amendments without any consideration of its impact in the business world. That is the two-year conditional period during which the EB-5 investor must "fully invest" his or her money and create 10 U.S. worker jobs.

I am, of course, using the analogy of a deceased U.S. citizen spouse for my proposition that failed EB-5 investment projects or regional centers are akin to the death of a petitioning spouse. If an EB-5 investment project fails and I, as a foreign investor, have fully invested my money in good faith, should I be able to self-petition for removal of conditions at the I-829 petition phase? I think it's only fair that I be allowed to do so.

What do you think? Should the federal government give these foreign investors the shaft when they cannot (through no fault of their own) meet all of the requirements for removal of conditions (to the permanent "green card"), or should there be a means to self-petition if an EB-5 investment project or regional center fails?

*Boyd Campbell has practiced immigration and nationality law in Montgomery, Alabama since 1988. He is a member of the American Immigration Lawyers Association and serves on its EB-5 Investors Committee. He is a frequent speaker on investor and employment immigration issues. His clientele includes regional centers and foreign investors. You can read and comment on [his EB-5 blog](#) and his [law firm website](#).*



## BirchLEAF Miami 31 All "Sold Out" of EB-5 Visas

At a time when the growth of the EB-5 program has led to reports of failed projects, misleading overseas marketing, and untrustworthy operators, it's refreshing to hear that perhaps not all is awry on the regional center front.



University of Miami  
Life Science and Technology Park



### BirchLEAF Miami 31 EB-5 Project: University of Miami Life Science and Technology Park

For [BirchLEAF Miami 31 Regional Center](#), one might even say things have never been better. A short [news release](#) offered by the regional center in February proclaims that "it has sold out its full allocation of subscriptions to foreign investors seeking their EB-5 visas."

That means the regional center has finished collecting needed capital from foreign national immigrant investors. What's more, the regional center's cornerstone project is associated with a very visible and well-known institution: The University of Miami.

"BirchLEAF Miami 31 Regional Center is making a \$20 million EB-5 loan to the developer of Building 1 in the University of Miami Life Science and Technology Park," the press release states. The developer, Wexford Miami, LLC, will receive the loan in stages, the final sum being transferred sometime this summer.

In an email to EB5info.com, Ben Cummings, one of BirchLEAF's principals, said the regional center is nearly finished filing all its I-526's. "Our initial I-526's were filed last fall, so we are hopeful we will receive USCIS approvals of those at any time," he said.

A combination of financing from BirchLEAF Miami 31, banks, federal new market tax credits, and cash equity have helped fund construction of the new facility, which sits on university property.

The 8 acre site will include 1.65 million square feet of developed space, nearly all of which will be dedicated to biomedical research. It is located within the Miami Health District adjacent to the Miller School of Medicine. BirchLEAF expects the space to be delivered to tenants by June of this year.



## Las Vegas Seminar a Big Hit With EB-5 Experts and Newcomers Alike

A large crowd gathered for the recent EB-5 investor procurement seminar hosted by Brian Su and the [Artisan Business Group](#). A weekend event, the two-day seminar featured experts from all corners of the EB-5 Visa Program.



The first day's session included presentations from EB-5 practitioners Joseph McCarthy, Jor Law, Michael Homeier, and Suzanne Lazicki, who writes business plans for EB-5 regional centers. All of these speakers demonstrated their experience and expertise when it comes to EB-5 regional center establishment and management.

On the second day, attendees watched as highly influential Chinese migration agents discussed how they select and market EB-5 regional center projects to prospective investors in China. Speakers included Dr. Winner Xing of Worldway Immigration, John Jiang, Managing Director of the Henry Global Consulting Group, Lu Sun of MasLink, Jason Li of Cansine Exit and Entry Services, and others.

Brian Su and USAadvisors.org Managing Director [Michael Gibson](#) helped begin day two by extending their welcome to the guests in attendance. Su later awarded Gibson the Artisan Business Group's 2010 EB-5 Media Prize, a testament to the quality of EB-5 news, information, and sustained community interaction provided by his site, EB5info.com.

According to one attendee, Robert Hobbs, whose EB-5 regional center is currently pending USCIS approval and whom Su quotes in [an update on ILW.com](#), the seminar "shed light on how things are done the right (legal) way."

Indeed, the recent seminar was held in light of several new events that will alter the way EB-5 projects are marketed to Chinese investors. A recent decision by the Supreme People's Court of China could prove a significant game changer when it comes to what EB-5 marketers can and cannot do when it comes to presenting regional center projects to interested investors.

According to Su, practitioners operating in the Chinese agent/broker market may need to stop pushing the investment element of projects and focus instead on the investor's ability

to receive a green card. Recent cases of fraudulent fundraising schemes have put the Chinese government on high alert, and EB-5 marketers will be receiving closer scrutiny.



## Wall Street Journal Article Highlights Risks and Realities for EB-5 Immigrant Investors

In a mostly high-level piece about the EB-5 visa program's impact on the U.S. real estate market, Eliot Brown of the Wall Street Journal hits on an issue of great interest to any immigrant investor: the viability of EB-5 projects.



Brown's [article](#), which ran in early February, notes how the EB-5 program has become a boon to the real estate industry at a time when low-cost financing is hard to come by. This observation has been made before. In fact, a substantial amount of media attention received by the EB-5 program centers on precisely this phenomenon.

What is most worth considering about Brown's story, however, is his observation that the immigrant investor, who may lack "great resources to scrutinize projects" is forced to make his or her own "judgments about viability." As the EB-5 community is well aware, investors risk having their residencies terminated when projects fail. And, as Brown points out, "They also stand to lose their investments."

Most positive media coverage of the EB-5 program seems to overlook this issue or else glosses over it. An [upbeat editorial in Yahoo Finance](#) last fall stated that investors who "made good on their promise to invest, created 10 jobs," and are still in the U.S. to see that "the business is an ongoing concern" after two years are able to apply for permanent residency.

What that statement omitted, however, is the fact that the regional center investor is only supposed to have passive involvement in a business. The day-to-day operation of the business receiving EB-5 financing is not necessarily supposed to be an "ongoing concern" for the immigrant investor. An investor's judgement about the whether a particular project is likely to fulfill USCIS requirements must be made before any money changes hands.

Last December's [Reuters exposé](#) certainly made note of these risks. In an example of a worst-case scenario for EB-5 investors, that report recalled the case of four Korean foreign nationals who "lost their entire investment" when an EB-5-financed dairy operation in South Dakota went under.

Brown does not mention the Reuters piece, but he manages to obtain comments about investor risk from Sam Sutton, one of the managing principals at the [Lake Buena Vista Regional Center](#) in Orlando, Florida. According to Sutton, potential termination of investor residency is "at the heart of the matter." Too many cases of project failure could cause "major problems with the program in general," he said.

Although not Brown's primary focus in covering the EB-5 visa program for the Wall Street Journal, his comments on the possibility of residency termination highlight the importance of due diligence. High risk investments warrant close scrutiny, and some EB-5 projects have -- as far as USCIS is concerned -- failed to deliver on the proposed business plan.

*photo: [selbstfotografiert](#)*



## Are "Slow Federal Government Approvals" a Big Problem for EB-5 Regional Centers?

For some, they certainly are. At least that's what Sam Sutton of Lake Buena Vista Regional Center [told the Orlando Sentinel](#) in that publication's recent profile of the EB-5 Visa Program.

[Lake Buena Vista](#) "is an award-winning, established condominium-hotel development already built and operating with its amenities in place," according to the regional center's marketing material. "The condos are in a rental program managed by a professional hotel management company and offer investors immediate cash flow."



Its proximity to Disneyworld is arguably Lake Buena Vista's biggest draw

But holdups in the USCIS approval process -- what Sutton said amounts to "a silly misunderstanding over paperwork" -- has prevented him from moving forward with the

\$30 million his regional center already collected from immigrant investors. What's more, he worries future investors may put their money in [other EB-5 projects](#) "if they get word that Florida projects are slow to get federal approvals."

Whether Lake Buena Vista's situation has changed since the Sentinel story ran is unknown. Regional center operators were unable to respond to EB5info.com's request for an update prior to publication.

The first phase of Lake Buena Vista's project was actually completed years ago using funds from the EB-5 program. Sutton is waiting on approvals for expansions to the existing resort -- development that will also be financed with immigrant investor capital.

A spokeswoman for USCIS, Sharon Scheidhauer, told the Sentinel that processing EB-5 applications takes time because USCIS needs "to ensure [the regional centers] are legitimate businesses and that they can meet specific job-creation goals." When asked about Lake Buena Vista's application, she declined to comment.

*photo: [PrincessAshley](#)*



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