The Source for Information on the U.S. EB-5 Visa Program

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EB-5 LESSONS LEARNED

Developers Perspectives

FOCUS How Does It Happen? Investors Duped

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EB5Info.com is the source for news and information on the USCIS EB-5 Visa Immigrant Investor program and is powered by USAdvisors, a Registered Investment Advisory Firm, that performs independent Risk Analysis and Due Diligence on EB-5 Visa Regional Center projects to help clients make educated decisions based on facts related to the EB-5 Visa investment.

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EB-5 Newsletters
EB-5 News

by MICHAEL GIBSON
Manging Director

With so many attorneys and service providers traveling to China this month, it will be interesting to see how closely they align themselves with the projects and agents who have paid their way given the recent scrutiny by U.S. regulators over the actions of the project promoters.

Already we have seen a U.S. governor cancel a promotional appearance that involved an EB-5 project given the recent publicity surrounding the program and people associated with that development. We will see a number of photos of these well-known U.S. attorneys side-by-side with the Chinese agents with which they will use to lend credibility and legitimacy that they need to convince their clients to invest and to broker the U.S. securities they have committed to sell.

Time will tell if these industry professionals will distance themselves from the promotional activities and compensation arrangements with the offshore agents for concern over conflict of interests and potential action should there be losses from projects that the agents were promoting.

Best wishes,
Michael Gibson
Managing Director
USAdvisors.org

by KRIS STELL
Editor-in-Chief

In this month's issue of EB-5 News, we feature the stories of two commercial real estate developers who have successfully managed to use the EB-5 program to raise capital to fund their developments. The stories are interesting as they outline some of the issues involved in raising funds from overseas, as well as submitting investor applications to USCIS for approval and hopefully they will give the developer audience some guidance when they get ready to do their raise.

We are also continuing to monitor the developments related to last month's SEC action in the IRCTC case including some fall-out for agents in China who promoted the project, along with a report on a U.S. law firm filing a motion on behalf of the investors.

We have an excellent article from Hong Kong based Attorney Steven Blayney on how Regional Center payments to Chinese migration agents may violate the U.S. FCPA, a subject that has not been explored to date in the industry and an article from Joe Whalen on Material Change.

Kris Stell
Editor-in-Chief, USAdvisors.org

by RON WILKINSON
Developer

Lessons I Learned From My First EB-5 Capital Raise:
A Developer's Perspective

Vantage Pointe Investments, developers of assisted living communities and luxury apartment communities throughout the Southeast, had utilized conventional funding for capital stack needs in much the same manner and from most of the same types of sources used by all developers. When the economy began changing in 2008, we began looking for alternate sources of debt as well as equity. We were introduced to the EB-5 world by happenchance shrugging it off as likely just another government program with little or no substance. Our introduction came during a chance encounter while dining and started as innocent dinner conversation; looking back it was a conversation where one party spoke as if they had knowledge and experience, we know now that the statements made were far from the facts or the truth.

The lessons I "learned" are the experiences I don't like to recall and I certainly intend to never repeat. If I choose one theme to hope you would remember from our journey, it would be that most Regional Centers are only conduits to the United States Citizens and Immigration Services EB-5 program, offering little or no help and offering advice that may take you down roads "less traveled" leading often to expensive u-turns.

Our First Course was Regional Center Chaos

Having no previous experience with EB-5, my first mistake was not thoroughly investigating the Regional Center with which we started doing business. Instead, I relied upon the Regional Center's legal counsel's verbal résumé as well as their online description of what later was proved to be non-existent success. There was no correlation to their fictional résumé and reality. Apparently, no one in the industry polices such information provided on Regional Center websites. We were guilty of assuming and we did not investigate to find out that this Regional Center had at that time **no successful** experience and as of **today they still have none** with the exception of our now fully-funded development, which we accomplished in spite of them. We accomplished this only after asking them to move aside and allow us to take full control.

Relying on the commentary provided by the Regional Center as to their experience and successes, and assuming they actually were telling the truth and knew what they were talking about, we engaged them and handed over a check. That was the beginning of a very expensive series of lessons. We wrote the RC a check thinking we were going to receive as the contract with them stated "guidance and consultation" through the EB-5 process. The fact is we ended up doing 100% of what they were contracted to provide. Relying on the Regional Center's "in-house immigration attorney and co-owner," we began assembling a "team" to provide the PPM, the econometric model, the escrow accounts and search for investors. The team members were selected entirely by this self-elected guru, a soon-to-be-realized huge mistake.

The "attorney" from the Regional Center spoke to us with authority, continually reminding us of his knowledge and experience. He was rarely available for consultation because he **said** he was usually somewhere in the world speaking. He used this as further proof of his

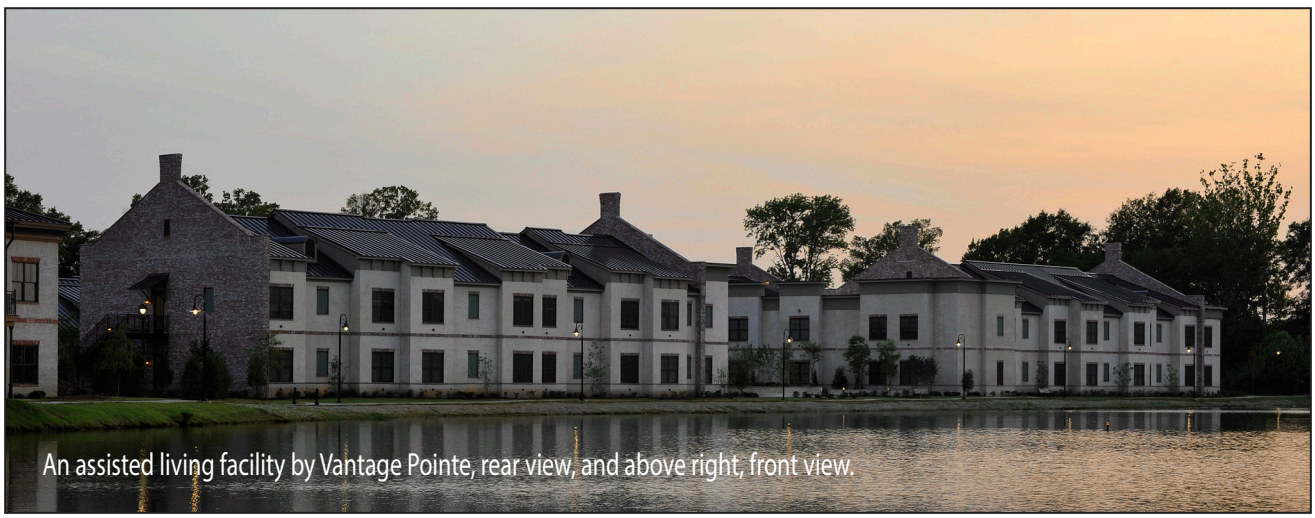
abilities, continually reminding us of his regular speaking engagements at various EB-5 seminars, as if he actually was experienced. My advice: when you seek "experienced" persons to help with your EB-5 project, do not make the mistake that just because they speak at seminars they are speaking from knowledge backed by experience, a combination you must have in your "team" to be successful. Apparently, they allow anyone who can stand and speak to spew forth their version of the needs to be successful at some of these seminars, even though the speakers may have no success in their own program's résumé.

As our own very good real estate and tax attorneys began to try and work with the Regional Center lawyer (in this case I use the identification "lawyer" and hope I don't offend real attorneys), they found they could rarely get the attorney to come to a meeting. They also discovered fairly quickly that when he did show up he was ill prepared to give any help and actually became a detriment to the processing, so much so that we "fired" him and "rented their Regional Center," entirely restructuring the original "consulting agreement."

Lesson learned: there are many poor Regional Centers, and in my opinion, only a very small number that are fully staffed and helpful around the country. Be careful, study, and ask lots of questions, and most importantly, check with all their references before signing on with them.

From Regional Center Chaos we moved to Private Placement Memorandum Confusion

We made our second mistake when we allowed the Regional Center to direct us regarding creation of the various documents that are needed to start the search for investors. We hired a firm the Regional Center immigration lawyer directed us to for assistance in creating a PPM. The firm we hired was a boiler-plate creator of PPMs, i.e., standard forms with no specificity to them. The "real" and specific language for our development



An assisted living facility by Vantage Pointe, rear view, and above right, front view.

still had to be created by our lawyers who already had PPM experience. However, the RC lawyer convinced us we needed to hire this PPM "creator" as our actual "5-star" legal representatives would not be able to comprehend the special content that should be included in an EB-5 compliant PPM, and that to be certain it complied to and met the special needs of EB-5 we must hire "expert" help.

We now know that the RC lawyer's definition of "expert help" was more in line with the "help" he gave and not what you and I would normally experience when receiving true "EXPERT HELP." The company to which we were referred eventually suggested we pay them nothing more as it was obvious to them that our lawyers were much more capable than they were at crafting the language. In addition, they were kind enough to inform us that they really only provided basic forms; however by the time they told us this, we had already paid them $11,000 of an $18,000 fee. Lesson: it is never advisable to let the complexity of the EB-5 process cloud your good previous business experience, and more importantly, that of all your trusted advisors and team members. Many firms and consultants you will meet along the way are only interested in a fee and have no interest in whether you succeed or not.

Eventually, we had to scrap the PPM and let our own attorneys craft the document. The RC "lawyer" advised us to include a fee of $90,000 per investor for the administrative fee, the bulk of which would go to the RC which was co-owned by the RC "lawyer." We were very fortunate that the "boiler plate" PPM firm advised us that this administrative fee was double the norm and we should consider reducing it. In reality, the fee should only be related to the services you or the RC provide and you should investigate what the fee pays for in terms of both your cost and that of the foreign investor partner.

Don't leave the investor out of this, they are the most important aspect of the EB-5 process and are truly "on your team." The investor needs your help. Never assume a fee is necessary just because you are told that it is, get to the facts and leave behind the myth. ***The lesson learned here is that no matter what you are told, unless you have previous experience with the person or firm you are dealing with, be sure to check the cost and/or expenses by comparing them to successful EB-5 deals.*** Never allow your experience to be trumped, trust your instincts, and look at the information and numbers thrown around by inserting them into your economic models. The only difference between EB-5 dollars and your normal capital raise is there are many more people involved in the EB-5 system that know little more than you, but are good at convincing you to lose sight of your common sense. Look at things you normally look at, such as the "cost of money." In the end, the financial responsibilities are yours, not the "circus" magician.

A Crash course in how not to create an EB-5 Team

We assembled the first team, using guidance from the Regional Center. Do not assume that because you hire someone that they are acting in your best interest; usually they are, but if the advice you get is flawed, such as was our case, you will end up with team members that only want a fee for giving you something that later you will find you must scrap and do again using better third-party providers. We had to do just this for such work as the econometric models, the PPM, the escrow agreements and a colossal number of documents that can be overwhelming. Never forget that providers of bad advice beget providers of more bad advice.

We assembled a team to provide the econometric models and to identify the targeted employment area (TEA) site as it relates to being within a zone that is 150% of the national unemployment rate, allowing investors to pay $500,000 in lieu of the higher $1 million investment. We discovered that hiring an economist does not mean you simply pay for the report, sit back and wait and you get what you need and/or ask for. If you are not very knowledgeable about the nuances of the zoning and job creation calculations, you may pay for a report that initially says something that will not work for your specific development later, unbeknownst to you. This may relate to the total potential equity or debt you can raise from your foreign

investor partners as well as your job creation calculations. We discovered, without the guidance of the RC, that there are several methodologies for calculating the zone you fall within and the job count you may use. Unfortunately, it was too late in the process for us to make changes and benefit from more accurate numbers.

The report we originally received, although correct, fell far short of depicting the best information to benefit us, the developer, and our foreign investor partners. Had we not developed good connections and previous experience with the county Industrial Development Board and the state authorities for Census Tracts approval, we would not have succeeded in having the site deemed to be within a TEA for the $500,000 investment. This again was work we were told by the Regional Center that their economist would handle. What we did not know was that the job creation calculations made by the RC's suggested economist, although correct, were not reflective of the various methods allowed and did not include the most beneficial information for job creation. As a result, we ended up with a job creation of 62 jobs versus the correct or most beneficial count of 170 jobs. We therefore raised only $2 million in foreign investor partners when we wanted $3 million, and could have raised $4 million easily. However, because of the poor advice along with the omission of the second calculation within the econometric model we had to settle for raising $2 million dollars.

Engaging a Broker and Escrow Agent Should be done with Great Attention to Detail

We had become skeptical of ever achieving the goals of utilizing EB-5 as a source of equity funding via the association and continued problems we encountered relying on the original Regional Center. We restructured our contract with them as stated above and moved forward with a different relationship, one of our only renting the "conduit," (the Regional Center) to USCIS. Although now in control of our destiny and under the guidance of good, well-meaning qualified persons, such as Michael Gibson, USAdvisors, and Dr. Scott Barnhart, Barnhart Economic Services, LLC, our economist, we still had residual fallout to deal with related to the poor advice from the RC. During the phase of I-526 review, submittal and processing, we were issued RFEs (Request for Evidence) from USCIS for all four investors, and the focus within the RFE were issues easily avoided with proper guidance and advice:

a. Request for Opinions – this is something a good Regional Center would be able to provide, it cost us an additional $18,000.

To avoid this type of problem, ALWAYS make sure that you paper the escrow directions with specificity so that there is no one other than the owners that controls the releases of these funds.

b. Request for amendments to the Business Plan – creation of the business plan was completed and provided to the Regional Center lawyer for his review and comments. The plan, as submitted, had numerous flaws regarding language that needs to be woven into the fabric of the business plan within the PPM. The omission of expected verbiage within the business plan resulted in an RFE that ultimately required the entire business plan to be rewritten. The cost to us was an additional $15,000 to redraft with the proper input and submit with their comments to USCIS, another cost that should have been avoided and included in the "fee" you will recall we already had paid the Center.

c. Econometric model questions required that we hire a firm rather than allow the original firm to reply on our behalf. We hired Barnhart's firm who reworked the entire econometric model, made comments to USCIS per their RFE request, and charged us $7,000. This was actually $8,000 less than what we had already paid for a report that was on the surface correct, but underneath was not what USCIS wanted or needed. This is the report that had it been correct we could have raised an additional $2 million dollars without delay.

We scrapped almost the **entire** initial work product as well as the third party vendors at some time during the process. Some of these were scrapped and reworked as late as the issuance of RFEs (Request For Evidence) from USCIS staff.

We Were Seduced into Assuming our Broker Agency was Actually on our Team

Just when you think you have overcome all obstacles and when you want to celebrate with your partners, both foreign and domestic, by breaking the administration and equity escrows and starting on your construction, we found out that we were not quite complete with our "lessons learned during our First EB-5 capital raise." The brokerage firm we engaged had issues within their firm and the partners of the firm that were not involved at any point in the raising of the capital or any of the daily tasks suddenly became interested because

they had to sign off on the release of the escrows. They discovered they had money coming in and wanted all of it not just a part of those fees. We were not a party to the arrangements made between the Regional Center and the broker. However, we became a "hostage" to be used in the efforts of the broker to take in all the administration fees and decide who gets what if any of the funds. We therefore became entangled in their dispute with their soon to be former partner, the Regional Center and the escrow agent.

To avoid this type of problem **ALWAYS** make sure that you paper the escrow directions with specificity so that there is no one other than the owners that controls the release of these funds. Do this in your original documents to show exactly who is to get what amount from the administration funds and control the flow of those funds. Always control the cash during the process and make plans to do so at the end of the process. There are too many opportunities to be involved with those that may take advantage of your lack of knowledge and in doing so create unnecessary agony at the time you should have nothing but Joy.

Our Non-EB-5 Experienced Design/Construction/Development and Operations Team

In closing, we fortunately were surrounded by our very experienced group of development and operations team personnel, we knew what we were doing and brought to the table a combined 97 years of development and operations experience. We knew what we were doing on the development, construction and operations side, we created a capital stack that stands solidly beside our foreign investment partners, both in the way of strong domestic equity and debt pieces complementing the foreign investors equity and making them feel comfortable that we were confident in our development. We created a comfortable ratio of econometric jobs created to investors and left more than a 50% cushion for error giving assurance and comfort to the foreign investment partners that we stood with them financially, understood their needs as it relates to citizenship and were truly their "PARTNERS."

The entire journey from our first application some time in November of 2011 ending with our breaking of escrow sometime in late November of 2012 was approximately 12 months; however, prior to the first application we went through five months "learning" most of the lessons mentioned above.

We paid our dues and we are not leaving the "club." We are already on our second, third and fourth developments that include EB-5 capital raise alongside conventional debt and our personal cash equity rounding out the capital stacks.

We are thankful to USAdvisors, Michael Gibson, without whom we would have walked away from the program. We are better off for having persevered and we have created a fabulous team along the way. In addition to the above mentioned developments, we are

also working to help others make use of what we believe will be a significant source of capital funds in the future.

In closing, the good news is we succeeded! The story above does not have to be the journey you take and the fact is that there are a lot of very good and qualified people involved in this program. Stay close to the qualified folk and you will find friendships both foreign and domestic that will enhance your life. You will also enjoy an optional source of funding that may not meet all your needs and your timing, however, when this program can help, know there are good people here to help. ■

Ron Wilkinson (RWilkinson@VantagePointeHomes.com) is a developer with Vantage Pointe, Luxury Apartment Communities, Market Rate Assisted Living Communities, doing EB-5 Facilitation.

A New Company Rises

Our new team consists of myself, Ron Wilkinson (RWilkinson@VantagePointeHomes.com) of Vantage Pointe Investments as the developer and Chris Neese (chris@aaageb5.com), president of our new company Allied American Advisory Group, a company created after our experiences to focus on opportunities surrounding EB-5 and located in the Nashville, Tennessee market, providing equity and debt sources as well as facilitation services to assist other avoid our experiences.

Russ Russell, (lmr@CHLAW.COM) Capell Howard Law Firm Montgomery, Alabama, our legal advisor and document origination coordinator.

Ron Drinkard, (http://www.acfi-usa.com/management.html) co-owner of a Regional Center.

There was also Dr. Scott Barnhart (scottwbarnhart@gmail.com), Barnhart Economic Services, LLC, our economic adviser and creator of our econometric models.

Construction Goes Vertical at New EB-5 Funded Office Center

As the West Broward, FL office market strengthens, Riviera Point Holdings, LLC has launched vertical construction of its $17 million The Professional Center at Riviera Point, the Miramar market's first new Class A office development since 2009. Located on a four-acre site at University Drive and the Florida Turnpike, the "green," 70,000-square-foot business complex is Broward's first multi-tenant office development being funded through job-creating international EB-5 investment, according to Riviera Point CEO Rodrigo Azpurua, CCIM.

General contractor Itasca Construction Associates is on track to complete the first of the Professional Center's two four-story buildings this fall. "We're focused on being first to market with a new generation of environmentally friendly, corporate-quality space in Miramar," said Azpurua. "It's an ideal time in the market cycle for a complex geared to attract hundreds of new jobs, while creating real value for prospective tenants and our investors."

"Coming out of the ground when other local projects are still on the boards is a crucial advantage," said Jon Blunk, senior director for leasing agent Cushman & Wakefield. "As markets in Broward's western suburbs improve, absorption and demand are steadily rising." In Miramar's nearly 1.9 million-square-foot office market, for example, Cushman & Wakefield's Miramar Submarket Report showed an overall vacancy rate of 13.6 percent at year-end 2012 – down from 16.2 percent a year earlier.

Corrales Architectural Group of Boca Raton designed the office complex with flexibility to accommodate a single space user or various firms in each of the two buildings. The buildings are designed to achieve Leadership in Energy and Environmental Design (LEED) certification from the U.S. Green Building Council, with energy- and water-saving features including high efficiency electrical and HVAC systems, high-performing, low-emitting glass,

Tips for Using EB-5 Funding

After successfully managing development of seven Florida commercial developments totaling about 1 million square feet, principals of Riviera Pointe Holdings turned to EB-5 investors for the first time to fund the $17 million Professional Center at Riviera Point.

CEO Rodrigo Azpurua, an attorney and real estate executive who emigrated to the U. S. in 2001 from Venezuela, reports the EB-5 funding process can be lengthy and extremely complicated, but definitely worth pursuing with conventional lending sources tight.

"It requires the developer have a firm grasp of the process, and just as importantly, the ability to convey it clearly to foreign investors who don't understand the complexities of U.S. laws," said Azpurua.

Rodrigo Azpurua

"Using EB-5 funding also requires carefully managing procurement of consultant and construction services since a developer won't have the luxury of making draws against a pre-approved construction loan. "It's crucial to structure contracts to match up with the very unique way that EB-5 money flows, coming in $500,000 at a time as investors' applications are approved."

and low-flow plumbing fixtures.

Strategically growing its portfolio of commercial real estate developments, Riviera Point Holdings is currently acquiring additional properties in Dania Beach and Doral for development as EB-5-funded projects, Azpurua said. The Professional Center at Riviera Point qualified as an EB-5 investment opportunity under the U.S. Citizenship and Immigration Services (USCIS) program, and is part of the Florida Regional Center EB-5 Investment, LLC. The building is funded primarily by investors from Venezuela, Argentina, Spain, Russia and China, and as his team assembles funding for the second building, Azpurua said interest is particularly high from Venezuelan and Argentinian investors concerned about their respective nation's political uncertainties.

The EB-5 program allows a foreign national interested in obtaining permanent U.S. residency to do so by investing in a commercial enterprise that generates at least 10 jobs for U.S. workers for two years. The EB-5 Visa then becomes permanent. The qualifying investment for a project such as Riviera Point, which is located in a Targeted Employment Area (TEA), is $500,000. In non-TEA locations, the qualifying investment is $1 million. According to an economic impact study by Wright Johnson LLC of Palm Beach, The Riviera Point development will result in creation of 441 jobs from the construction and operation of the center once fully tenanted.

For information, visit www.rivierap.com and its blog at www.solideb5plan.com. ■

How Does It Happen?

250 Investors Duped For More Than $145 million – A Chicago Convention Center

IN THE JANAURY 2013 issue of EB5info.com, we ran an article titled, *"SEC & USCIS Take Action to Stop EB-5 Visa Scheme Committing Fraud."* The article reviewed how the SEC and USCIS have coordinated to stop the activities of Anshoo Sethi and the EB-5 designated Intercontinental Regional Center Trust of Chicago (IRCTC) from continuing to misappropriate funds from overseas immigrant investors in connection with the "A Chicago Convention Center LLC" offering that he and Chinese migration agents were heavily promoting to investors.

The Securities and Exchange Commission (SEC) alleges that Anshoo R. Sethi created A Chicago Convention Center (ACCC) and Intercontinental Regional Center Trust of Chicago (IRCTC) and fraudulently sold more than $145 million in securities and collected $11 million in administrative fees from more than 250 investors primarily from China. Sethi and his companies duped investors into believing that by purchasing interests in ACCC, they would be financing construction of the "World's First Zero Carbon Emission Platinum LEED certified" hotel and conference center near Chicago's O'Hare Airport. Investors were misled to believe their investments were simultaneously enhancing their prospects for U.S. citizenship through the EB-5 Immigrant Investor Pilot Program, which provides foreign investors an avenue to U.S. residency by investing in domestic projects that will create or preserve a minimum number of jobs for U.S. workers.

The SEC alleges that Sethi and his companies falsely boasted to investors that they had acquired all the necessary building permits and that several major hotel chains had signed onto the project. They also provided falsified documents to U.S. Citizenship and Immigration Services (USCIS) — the federal agency that administers the EB-5 program — in an attempt to secure the agency's preliminary approval of the project and investors' provisional visas. Meanwhile, Sethi and his companies have spent more than 90 percent of the administrative fees collected from investors despite their promise to return this money to investors if their visa applications are denied. More than $2.5 million of these funds were directed to Sethi's personal bank account in Hong Kong. Click here for the full story. http://www.sec.gov/news/press/2013/2013-20.htm?goback=%2Egde_3747690_member_213182006

Not Acting Alone

EB5info.com Managing Director Michael Gibson stated, "The U.S. firms participated in this offering by making it a reality without doing any KYC investigations or independent due diligence to verify the claims being made by Sethi. If you look at all of the U.S. professionals who are responsible for putting together an offering package and subsequent I-526 application for residency, you will see a list of firms and service providers who should have known better:

- Securities attorneys
- Immigration attorneys
- Economists
- Escrow Agents
- Financial Institutions (Loop Capital)
- Public officials (State and local, ie. the Governor of Illinois)
- Feasibility study providers
- EB-5 "consultants" & finders

"Together they provided Sethi the credibility that he needed to promote this fraud and convince people to invest. Without the support of the above, some of which traveled to China to promote the investment, he would never have been able to persuade the Chinese investors to subscribe.

"The Chinese migration agents are only the point of the spear in this conspiracy. It is easy to overlook the involvement of an entire industry of U.S. persons who directly or indirectly support these fraudulent offerings by creating the documents, structure and legitimacy that are required by these con men to perpetrate their fraud on unsuspecting investors.

"That Sethi committed fraud in misrepresenting the risks involved in the investment appears to be clear, that is not unique in the EB-5 program. The real story here is how many U.S. firms and individuals contributed to the losses suffered by the investors through providing him the structure, marketing material and legitimacy that he surrounded himself with to support the fraud over a very long period of time.

"That Chinese migration agents don't care about their clients should not be news to anyone here on this board. The truth is that many U.S. firms, attorneys and service providers don't care either as they are more concerned with capturing the finders and commission based fees involved in the transaction and not at all concerned about the activities of the issuers or the well-being of their investor clients (in the case of immigration attorneys).

"Hopefully the SEC / DOJ will continue their investigation into the activities of the U.S. firms and individuals that participated in the offering and marketing that supported the fraud committed by Sethi / IRCTC. If not the regulators, then the investor's attorneys who could easily go after the assets of the U.S. firms involved to bring relief to their clients for their losses." ■

See news article from China next page.

Huge Chicago EB-5 Multi-Hotel Project Under Scrutiny by Investors

Posted by Michael Gibson on Tue, Nov 29, 2011 @ 01:20 AM

1 Tweet 0 +1 2 Share

Several Chinese agents and investors are calling into question the claims being made by a new EB-5 Visa Regional Center, The Intercontinental Regional Center Trust of Chicago.

Many are calling this project the new Atlantic Yards due to the extremely large size of the offering ($249.5 million) and the claims being made by its promoters and migration agents in China. The agents need to heavily promote issues of this magnitude in order to raise such an exceptionally large offering (most EB-5 visa project offerings are under $50 million) in a very short period of time.

In order to raise this much capital from an extremely large number of investors (499), the migration agencies in China and elsewhere often make exaggerated claims to meet their quota. If successful, they can earn well over $100,000 - $150,000+ for each investor ($45,000 from the subscription fee plus a percentage of the loan collected by the General Partners).

The Chinese investors are not aware that these agents are collecting such large fees. It is not disclosed to them, and most foreign investors believe that these migration agents are paid only a very small amount ($5,000) and are working on investors' behalf.

The Principals and the Deal (Part 1)

Loop Capital

Chicago Convention Fraud Coverage from China

According to the 1 March 2013 report copied below, at least 60 of the investors in the Chicago Convention Center EB-5 project are from Guangzhou Province. According to the article, some of the largest Chinese migration agents in Guangzhou sold the Chicago Convention Center EB-5 project

广州多家移民公司涉及"芝加哥会议中心"项目诈骗事件

2013年03月01日 10:12
来源：南方网

0人参与 0条评论 打印 转发 字号:T|T

本网记者获悉，该项目在中国的推广中，北京、上海、广州多家移民中介都推出过其项目，多家媒体曾对该项目进行宣传报道。广州的移民公司中，有包括嘉城海外、景鸿移民、誉球移民等多家知名机构涉及其中，受损的投资人或达到60人。投资人每人除投入50万美元后，还向中介公司支付了所谓的行政手续费41500美元。但是从该案曝光以来，广州仅有飞洋移民一家主动表示将为投资人争取权益，而其他公司大多对此讳莫如深。北京一家名为世贸通的移民公司在此前一直宣扬是该项目在华的首席代理，但事发后在媒体上表示，后来他们主动退出，并没有客户牵涉其中。

"This reporter has learned that in selling this project in China, numerous immigration agencies in Beijing, Shanghai, and Guangdong promoted this project and several media outlets reported on this project. In Guangdong province, several famous immigration agencies are implicated including Gasheng, EK Immigration, and InterContinental Group, causing losses to as many as 60 persons. In addition to each investor's US$500,000 investment, each investor also paid a so-called administrative processing fee of US$41,500. Since this case has been exposed, in Guangzhou, Fly Overseas Immigration Company has been the only immigration company to affirmatively express that it is trying to protect the interests of investors, whereas the other immigration companies have been unduly reticent on the case. Previously, Beijing Worldway had advertised that it was the exclusive agent of this project in China, but since the SEC case, it has told the media that it had dissociated itself from the project long ago and that none of its clients had invested in the project."

投资移民该如何维权？记者了解到，投资移民骗局属于经济诈骗，一旦投资者发现权益受损，可以通过行政和法律途径维护权利。工商局、公安局等都有相关部门受理此类案件，必要时候可以起诉不良中介。记者提醒，目前这一事件对于移民市场虽有一定的影响，但申请人对于美国移民的需求依旧是非常大的。一方面，申请人需要冷静地看待美国EB-5投资移民，把投资移民的落脚点主要放在移民而非投资获利方面。另一方面，中介不应仅被项目方提供的佣金和利益所吸引，而要从客户角度考虑问题，应该把可能出现的一些投资风险如实告诉申请人，否则会落入陷阱中，损害了自身的公信力。

"How should one protect oneself in investment immigration? This reporter has learned that immigration investment fraud constitutes economic fraud. As soon as an investor discovers that his rights and interests have been injured, he may pursue administrative and legal remedies to protect his rights and interests. The Bureaus of Industry and Commerce and the Public Security Bureaus all have departments that accept such cases. If necessary, an aggrieved party may also sue the immigration agencies. Please be reminded that although this incident has affected the immigration market to some extent, the demand for emigrating to the U.S. has always been huge. On the one hand, applicants must take a calm, rational perspective on EB-5 business investment (placing primary emphasis on emigrating to the U.S. rather than rate of return on investment.) On the other hand, immigration agencies should not only be attracted by the commissions and benefits offered by the EB-5 projects, but rather should take into account their clients interests and disclose potential investment risks to their clients. If not, then the immigration agents may encounter difficulties and their credibility in the marketplace will suffer." ■

Thanks to Steven Blayney, Blayney Consultinng Limited, for this item & its translation.

by MICHAEL GIBSON
Managing Director

Motion Filed on Behalf of EB-5 Chicago Center Project Investors

Attorneys Henry Handler and William Berger of the law firm of Weiss, Handler & Cornwell, P.A. in Boca Raton, Florida have filed a memorandum of law in support of the motion to intervene on behalf of EB-5 visa applicant and investors in the IRCTC Chicago Convention Center project.

The one investor named was Dong Mei Xu, but the motion includes the other investors that were subscribed to the IRCTC Chicago Convention Center project promoted by Anshoo Sethi that was recently the subject of an SEC action.

"This case is about much more than his $500,000 investment that the SEC has sued to recover. Xu and the investors stand to lose their chance at United States citizenship if the court does not act to protect their interest when it fashions any relief in this matter. To be clear, Xu does not bring this motion so that he or the investors can conduct their own investigation of the alleged fraud, or to try to gain some additional recovery from the defendants."

The argument states that not only are the investors seeking to recover the funds wired to IRCTC, but "to intervene in this action as of right under Federal Rule of Civil Procedure 24(a)(2) to protect his ability to use the Escrowed Funds to pursue U.S. citizenship through the EB-5 program."

The action appears to be a plea to allow the investor's funds, once recovered, to remain in escrow and then to re-apply in another project rather than just having the funds, or whatever portion of the funds the government can recover, returned to the investors in order to continue their petition for residency with USCIS, rather than have those applications withdrawn or revoked for lack of investment.

"Xu understands that the SEC has already gathered substantial evidence of the false statements used to lure Xu and the investors into investing in the fraudulent EB-5 program. Xu agrees that the SEC must conduct a full investigation into defendants' conduct and prove that conduct to the court. If the SEC is able to do so, Xu and the investors will have a direct and immediate interest in how assets are recovered and distributed. Accordingly, Xu respectfully requests that this motion to Intervene as of right be granted."

Further, "Xu is not asking this court to determine where his money should be invested. That will be between Xu and USCIS. Xu merely asks this court to maintain jurisdiction over the Escrowed Funds so they can be released from escrow at Xu's direction in the event the SEC prevails."

It is not clear who has contracted with

Dong Mei Xu Motion

Case: 1:13-cv-00982 Document #: 21 Filed: 02/19/13 Page 1 of 12 PageID #:1884

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION	)	
	)	13-cv-982
Plaintiff,	)	Honorable Judge Amy J. St. Eve Magistrate Judge Mary M. Rowland
v.	)	
A CHICAGO CONVENTION CENTER LLC, ANSHOO R. SETHI, and INTERCONTINENTAL REGIONAL CENTER TRUST OF CHICAGO, LLC	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE

For Intervenor/Movant Dong Mei Xu ("Xu"), and more than 250 investors just like him (the "Investors"), this case is about much more than his $500,000 investment that the SEC has sued to recover. Xu and the Investors stand to lose their chance at United States citizenship if the Court does not act to protect their interest when it fashions any relief in this matter. To be clear,

Weiss Handler to file the memorandum and do the legal work but sources in China speculate that they were retained by a large Chinese migration agent whose clients they signed up to this fraud and are now facing pressure from their investors and Chinese authorities to fix the mess they helped create.

UPDATE: We have since been contacted by Henry Handler the attorney whose firm filed the motion with the statement on page 17.

I would like to thank Henry for the clarification and update, that is appreciated. I would also like to add to this that we sent him several emails and made phone calls asking to see if we could get clarity on what the motion was about which, if returned, might have helped avoid our misunderstanding and reporting on the subject.

We did have a very nice chat with his secretary who confirmed that they had received our attempts to communicate, but

con't page 18

> "If the Chinese clients truly want relief, they should take action against the agents, EB-5 service providers, finders and promoters who convinced them to put their trust and capital into such a bogus, worthless offering..."

Mr. Michael Gibson
Managing Director, USAdvisors.org
201 E. Kennedy Blvd., Suite 325
Tampa, FL 33602-2800

Re: *United States Securities and Exchange Commission v. A Chicago Convention Center, LLC, Anshoo Sethi, et al.*
Case No. 13-cv-00982

Dear Mr. Gibson:

We reviewed your Friday, March 1, 2013 online post concerning the Motion to Intervene and Memorandum of Law of Support thereof filed by this firm and our Chicago co-counsel in the above-cited litigation. Your post contains patently false statements of facts interspersed with the Memorandum of Law content. We have been directly retained and authorized to represent 184 individual investors in A Chicago Convention Center, LLC and Intercontinental Regional Center Trust of Chicago, LLC. We are performing legal work on behalf of our individual investor clients. Our clients directed us to preserve their escrowed investment funds and to attempt to provide them an opportunity to continue their immigration applications.

We discovered that our individual investor clients wanted a measure of confidentiality during the litigation process. In connection with an expanded Motion to Intervene, we asked the Court to seal the identities of the first group of Proposed Intervenors identified as John Does 1-90's through a Motion to Seal the Exhibit containing their individual names. The Court granted our Motion, a copy of which Order is attached, in order to attempt to achieve our clients' goals without unnecessary embarrassment which comes from uninformed, speculative and inaccurate posts such as yours.

We hereby demand that you immediately publish retractions of your false accusation as to the identity of our clients and your ascribed motives to their intervention in the Chicago Convention Center litigation.

Very truly yours,

WEISS, HANDLER & CORNWELL, P.A.

HENRY B. HANDLER

Lawsuit con't from page 17

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION	)	
	)	13-cv-982
Plaintiff,	)	Honorable Judge Amy J. St. Eve
v.	)	
A CHICAGO CONVENTION CENTER LLC, ANSHOO R. SETHI, and INTERCONTINENTAL REGIONAL CENTER TRUST OF CHICAGO, LLC	)	
Defendants.	)	

ORDER FOR FILING DOCUMENT UNDER SEAL

This cause coming to be heard on the Proposed Intervenors John Does 1 – 90's (the "Proposed Intervenors") Motion to Seal Exhibit A to their Motion to Intervene, the Court being fully apprised by the Proposed Intervenors and the parties, IT IS HEREBY ORDERED:

1) Proposed Intervenors' Motion to Seal is GRANTED;

2) The Proposed Intervenors shall file with the Court clerk two copies of Exhibit A to be filed under seal pursuant to the manner outlined in Local Rules 5.8 and 26.2. The electronic docket shall reflect that Exhibit A was filed under seal pursuant to this order.

3) Access to Exhibit A shall remain limited to the Court and its personnel. Upon the conclusion of this case, Exhibit A is to remain under seal.

Date: March 7, 2013

Amy J. St. Eve

Hon. Judge Amy J. St. Eve
United States District Judge

unfortunatley we did not have a response by the time we published the story. In any event, we stand clarified and hope that if there are any further developments in this case we will be able to report those more accurately.

This contiunes with my opinion on the state of the market, investors and agents: If the Chinese clients truly want relief, they should take action against the agents, EB-5 service providers, finders and promoters who convinced them to put their trust and capital into such a bogus, worthless offering and not look to the U.S. government for help as federal agencies are under no obligation to assist or protect them from making stupid investment decisions or helping Chinese agents unwind a mess they helped create.

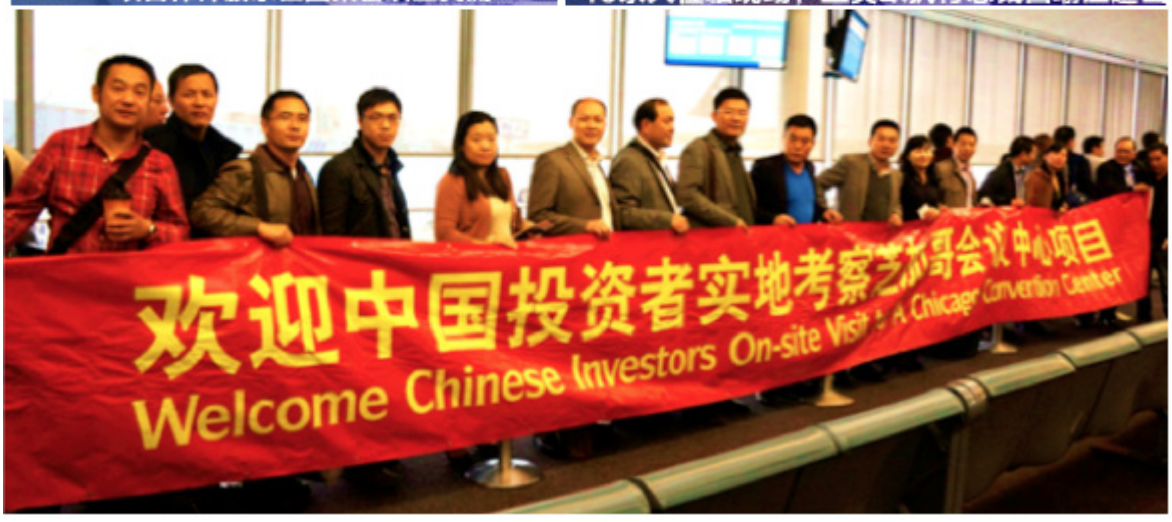
This plea sounds like a cry for help from promoters who were caught with their pants down when the project they were promised millions of dollars in commissions for marketing got caught up in an SEC action.

Typically, these agents would not care once the I-526s had been approved and the projects failed as they would have collected much of their commissions (except for the lost payments on the back end), but in this case the I-526s were not approved by USCIS so they lost the only things they care about: face (their reputation) and money. They are also possibly facing action by Chinese authorities, hence this case to show everyone in China that they are doing something to "help" their clients.

It will be interesting to see if an action will ever be taken by investors against not only the developers, but against those in the industry that supported and promoted the fraud both here and overseas. ■


亚美欧执行总裁昌瑜女士与芝加哥会议中心E
项目律师股东在圆桌会议上交流


伊利诺伊州参/众议员及政府各部门、企业家代
40余人莅临现场，亚美欧执行总裁昌瑜应邀出



by STEVEN BLAYNEY
Esquire

EB-5 Regional Center Payments to Chinese Emigration Agents:

Implications under the U.S. Foreign Corrupt Practices Act

It has been alleged that in some cases some EB-5 regional center projects, in order to gain a competitive advantage in the Chinese market, may pay substantial commissions to Chinese emigration agents in China without informing Chinese investors of such commissions. In the case of the controversial Chicago Convention Center SEC case, it has been alleged that some Chinese emigration agents in China received commissions as high as US$125,000 per investor to promote the EB-5 offering in China.[1] This article briefly analyzes possible exposure to criminal and civil liability under the U.S. Foreign Corrupt Practices Act ("FCPA") and other legislation as well as China's anti-bribery legislation arising out the payment of such alleged "kickbacks" to Chinese emigration agents. The information contained herein is gleaned from the publication entitled *A Resource Guide to the U.S. Foreign Corrupt Practices Act* by the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission (November 2012) ("Resource Guide").

FCPA

In brief, the FCPA prohibits "issuers", "domestic concerns," and certain other persons while on U.S. territory from "…offering to pay, paying, promising to pay, or authorizing the payment of money or anything of value to a foreign official in order to influence any act or decision of the foreign official in his or her official capacity or to secure any other improper advantage in order to obtain or retain business."[2] Since "domestic concerns" basically includes any corporation, limited partnership, or other commercial entity organized under U.S. federal or state law, EB-5 regional centers, their project companies and their officers, members and directors are subject to the FCPA.[3]

Under the FCPA, the term "foreign official" includes "…any officer or employee of a foreign government or any department, or instrumentality thereof."[4] For EB-5 regional centers, the crucial issue is whether Chinese emigration agents may constitute an "instrumentality" of the Chinese government? If so, then the alleged "kickbacks" paid the Chinese emigration agencies in China may invoke liability under the FCPA.

According to the *Resource Guide*, the term "instrumentality" is broadly defined and may include state-owned or state-controlled entities.[5] It would seem that whether a foreign entity constitutes an "instrumentality" of a foreign government turns largely upon the entity's relationship to the foreign government and the extent of control of the foreign govern-

ment over the entity in question. In assessing whether a foreign entity is an "instrumentality" under the FCPA, the following factors are relevant:

- **The foreign state's extent of ownership of the entity;**
- **The foreign state's degree of control over the entity** (including whether key officers and directors of the entity are, or are appointed by government officials);
- **The foreign state's characterization of the entity and its employees;**
- **The circumstances surrounding the entity's creation;**
- **The purpose of the entity's activities**
- **The entity's obligations and privileges under the foreign state's law;**
- **The exclusive or controlling power vested in the entity to administer its designated functions;**

- **The level of financial support by the foreign state;**
- **The entity's provision of services to the jurisdiction's residents;**
- **Whether the government end or purpose sought to be achieved is expressed in the policies of the foreign government; and**
- **The general perception that the entity is performing official or governmental functions.**[6]

Below we consider Chinese emigration agencies in light of the foregoing factors.

- **The foreign state's extent of ownership of the entity.**

The only way to determine the ownership structure of a particular Chinese emigration agency is to inspect its Chinese business license and undertake other appropriate due diligence. I understand that in some cases some Chinese emigration agencies may be subsidiaries of Chinese government departments such as the local Administration for Industry and Commerce, the local Public Security Bureau, or the local government Chambers of Commerce. In other cases, some Chinese emigration agencies may be owned or controlled by current or former Chinese government officials, or Communist Party members.

- **The foreign state's degree of control over the entity** (including whether key officers and directors of the entity are, or are appointed by government officials).

It appears that local Chinese government Public Security Bureau Entry & Exit Administration Departments ("PSB") exercise a high degree of direct and indirect control over Chinese emigration agencies. Under relevant Chinese government regulations, Chinese emigration agents must obtain a specific license from the PSB in order engage in business operations. Only Chinese nationals (without foreign citizenship or foreign permanent residence) may obtain the license. Foreigners need not apply.[7]

- **The foreign state's characterization of the entity and its employees.**

Chinese emigration agents must submit to a quasi-governmental immigration agency association. In Guangdong Province, the relevant association is called the Guangdong Entry & Exit Immigration Service Association ("Guangdong Immigration Association") According to Chinese news reports, the current head of one provincial immigrant agency association in China also runs one of the largest emigration agencies in China. In fact, in China, it is quite common for Chinese government officials to wear two hats; they may be both the regulator, and the party regulated. In some cases, a Chinese emigration agency might, practically speaking, be the PSB. This phenomenon is particularly true where Communist Party members in ostensibly commercial enterprises rub shoulders with Communist Party members in government administrative departments. As a result, the public-private distinction may be somewhat blurred and murky, which is fertile ground for corruption.

The relationship of the Guangdong Immigration Association to the Guangdong PSB is described on the association's website, which provides in part (in English translation):

> "The Guangdong Entry & Exit Immigration Service Association is a lawful organ established for the dual purpose of serving its members and the Guangdong

Provincial Public Security Bureau by functioning as a bridge, link and "staff assistant" of Chinese government administrative departments in order to safeguard the lawful rights and interests of the entry & exit industry, unite lawful organs of the Guangdong Province entry & exit service industry, strengthen the cohesiveness and self-defense of the industry, and promote the economic and social efficiency of the sector. The Guangdong Entry & Exit Immigration Service Association is subject to the operational direction and supervision of its administrative department, the Guangdong Provincial Public Security Bureau, and its registration authority as a social organization, the Guangdong Provincial Civil Affairs Office."[8]

One could infer from the foregoing that the Guangdong Immigration Association considers itself basically to be an extension of the Guangdong PSB.

• **The circumstances surrounding the entity's creation.**

The reason that the Chinese emigration agents are subject to the administrative jurisdiction of the PSB relates to the phenomenon of the Hukou, which is unique in China. In China, the local PSB has a file on every Chinese citizen (and foreign resident) that the PSB administers under its Hukou system. If a Chinese citizen wishes to move to another city, he/she must apply to have his/her file administratively transferred to the PSB of the destination city. Similar administrative arrangements must be undertaken if a Chinese citizen wishes to move temporarily or permanently overseas.

Over the course of China's market reforms and liberalization many Chinese government functions, particularly commercial functions, were spun off to pseudo commercial enterprises. For example, commercial telecommunications functions were spun off of the Ministry of Information Industry to the state-owned Enterprise, China Telecom (China Mobile). Similarly, some of the commercial services of the PSB, including immigration functions, were spun off to the Chinese emigration agencies, which, in effect, became sideline businesses for PSB officials.

• **The purpose of the entity's activities** – The purpose of the activities of the Chinese emigration agencies is basically to provide an interface between foreign immigration law firms, with which, under relevant Chinese regulations, the Chinese emigration agents are required to enter into cooperation agreements with as a condition of their licenses, and the local PSB which administers the Chinese client's Hukou.

• **The entity's obligations and privileges under the foreign state's law.**

Because of China's licensing regime, which excludes foreigners from engaging in immigration work in China, the Chinese emigration agents enjoy an exclusive, monopolistic position in the Chinese market.

• **The exclusive or controlling power vested in the entity to administer its designated functions.** The Chinese emigration agents are not autonomous. The Chinese emigration agents are directly subject to the PSB, and indirectly subject to the PSB through the PSB's control over the local immigraton agents association.

• **The level of financial support by the foreign state.** It is doubtful whether the Chinese government provides financial support to the Chinese emigration agencies. However, it is foreseeable that a well-connected person in China could use his/her influence to obtain state bank financing to establish a Chinese emigration agency.

• **The entity's provision of services to the jurisdiction's residents.** The quasi-governmental relationship of the Chinese emigration agents to the relevant local PSB is reflected in the fact that the operational business territory of Chinese emigration agents parallels the administrative jurisdiction of its parent PSB. For example, licensed Chinese emigration agents in Guangdong Province may not engage in business activities outside of the PSB's jurisdiction of Guangdong Province.

• **Whether the government end or purpose sought to be achieved is expressed in the policies of the foreign government.**

One might assume that since only Chinese nationals may obtain the Chinese emigration agents license that the Chinese government considers it important to exclude foreigners from this area of work in China. Since Chinese emigration agencies must join the relevant local immigration agency association, which is basically an arm of the local PSB, the system is set up such that Chinese emigration agencies, in effect, become part of the PSB.

• **The general perception that the entity is performing official or governmental functions.**

It is self-evident from the quotation above taken from the Guangdong Entry & Exit Immigration Association website that the association (and its members) considers itself to be an arm of the Chinese government, specifically the Guangdong PSB.

From consideration of the foregoing factors in relation to Chinese emigration agents it could perhaps be argued that reasonable people might differ on the issue of whether Chinese emigration agencies constitute "instrumentalities" of the Chinese government. Accordingly, it may be advisable for U.S. EB-5 regional center principals

to seek the advice of experienced FCPA counsel or seek a U.S. Department of Justice Opinion on whether the particular Chinese emigration agency in question selling their EB-5 project in China might be an "instrumentality" of the Chinese government under the FCPA.

It is important to note that even if Chinese emigration agents are not an "instrumentality" of the Chinese government under the FCPA, the fact that Chinese EB-5 investors are allegedly not informed that the EB-5 offering "subscription fees" and "administrative fees" are allegedly kicked back to the Chinese emigration agents is potentially worrisome since even ostensibly "private" bribery "…may still violate the FCPA's accounting provisions, the Travel Act, anti-money laundering laws, and other federal or foreign laws. Any type of corrupt payment thus carries a risk of prosecution."[9]

Chinese Anti-Bribery Law

China does not currently have a unified anti-commercial bribery law, similar to the U.S. FCPA; however, bribery is prohibited under various Chinese criminal and civil statutes, including the PRC Criminal Law, the PRC Anti-Unfair Competition Law, and the State Administration for Industry and Commerce Provisional Regulations on Prohibiting Commercial Bribery ("Provisional Regulations"). Under the Anti-Unfair Competition Law and the Provisional Regulations, "commercial bribery" includes "acts of unfair competition where a business operator, with the objective of eliminating competitors and with a view to securing a trading opportunity, surreptitiously offers property or other advantages to relevant personnel of the transaction counterparty and other relevant personnel who have an influence on the transaction."[10]

Under the Provisional Regulations, the term "property" means cash and physical goods…in the guise of a promotion fee, sponsorship fee, research fee, service fee, consulting fee, or commission, or through the reimbursement of various expenses in order to sell or purchase merchandise."

In assessing the legality of a regional center payment to a Chinese emigration agent, U.S. regulators are likely to take into account whether in the context of the transaction the payment was "reasonable" under the circumstances and whether it was "improper" under local law.[11]

The information contained herein should not be relied upon as legal advice. Readers seeking advice on the FCPA or other relevant legislation should retain legal counsel experienced in FCPA matters. ■

Steven Blayney is a Hong Kong-based, U.S. qualified lawyer (Washington State) with extensive experience marketing EB-5 projects in China. Blayney speaks and reads Mandarin Chinese fluently. Hong Kong-based agents provide access to the Chinese market and may possibly be exempt from the SEC broker-dealer registration requirement as non-U.S. persons. For more information, please contact Mr. Blayney at Blayney Consulting Limited, BlayneyConsulting@gmail.com.

[1]See SEC & USCIS Take Action to Stop EB-5 Visa Scheme Committing Fraud (Feb. 10. 2013) http://eb5info.web11.hubspot.com/bid/171882/SEC-USCIS-Take-Action-to-Stop-EB-5-Visa-Scheme-Committing-Fraud

[2]15 U.S.C. sec. 78dd-1; 15 U.S.C. sec. 78dd-2

[3]See Resource Guide, p. 11.

[4]15 U.S.C. sec. 78dd-1(f)(1)(A)

[5]See Resource Guide, p. 20.

[6]See Resource Guide, p. 20.

[7]See Article 6(2) of the Beijing Regulations regarding Implementing the Entry-Exit Intermediary Agency Activities Administrative Measures.

[8]See the website of the Guangdong Entry & Exit Immigration Service Association: http://www.gdeia.org/xiehuidongtai/xiehuizhichuang/xiehuijianjie/

[9]See the Resource Guide, p. 20.

[10] See Article 8 of the PRC Anti-Unfair Competition Law (adopted September 2, 1993)

[11]See 15 U.S.C. sec. 78dd-2(c) (1)(2)

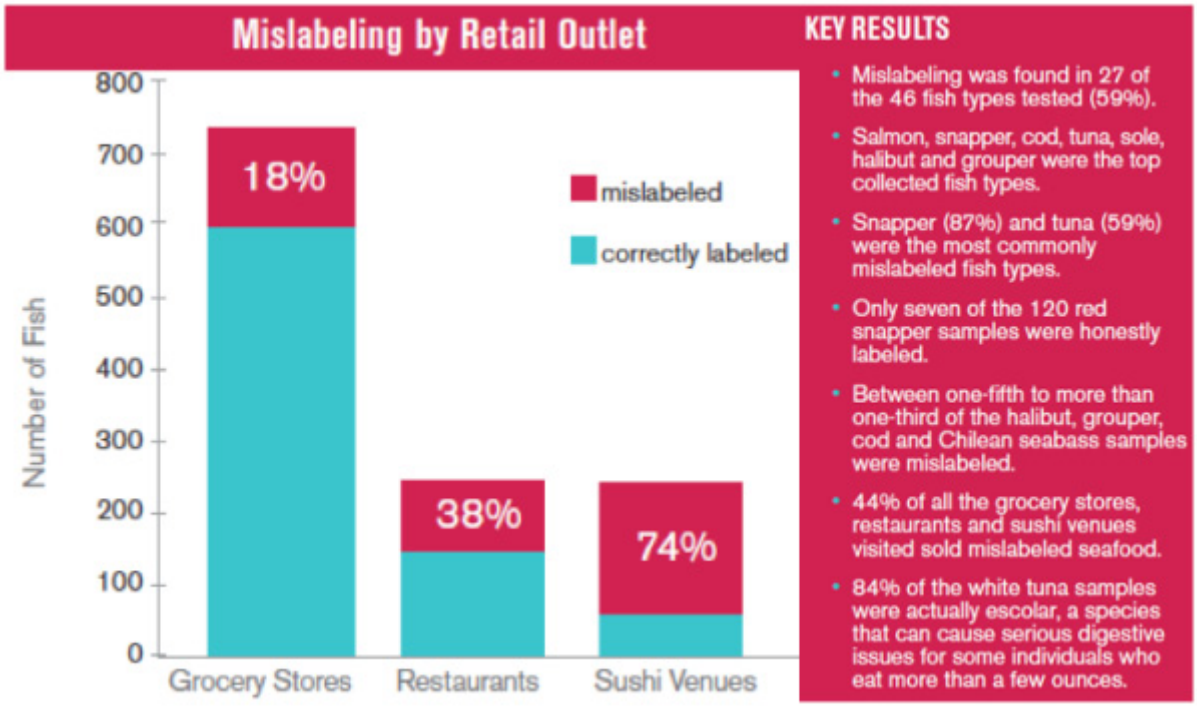
by MICHAEL GIBSON
Managing Director

Oceana Study Reveals Widespread Seafood Fraud

A study recently released by the nonprofit conservancy group Oceana reveals that one in three fish sold in markets and restaurants was mislabeled. What consumers thought they were purchasing turned out to be something else entirely 33% of the time.

Oceana Study Reveals Seafood Fraud Nationwide:

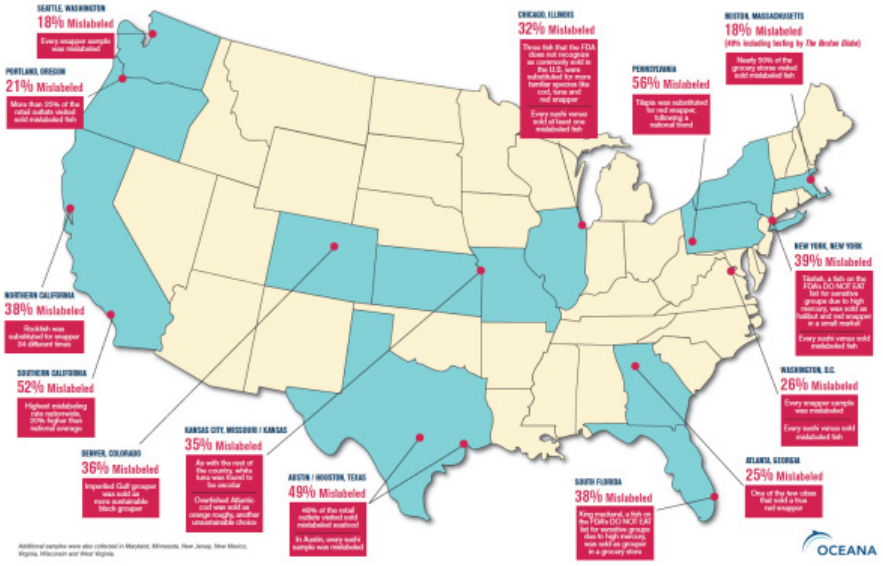
- 59% of the fish that was labeled "tuna" sold at restaurants and stores was not tuna
- Sushi restaurants were far more likely to mislabel their fish than were grocery markets or traditional restaurants
- Snapper was the only fish that was more likely to be misrepresented than tuna: 87% of the time and was actually fish from six different species (rockfish, sea bass, Antarctic toothfish)
- 84% of samples labeled "white tuna" were escolar, an oily fish that can cause uncontrollable, prolonged anal leakages
- In New York, Washington DC, Chicago and Austin,



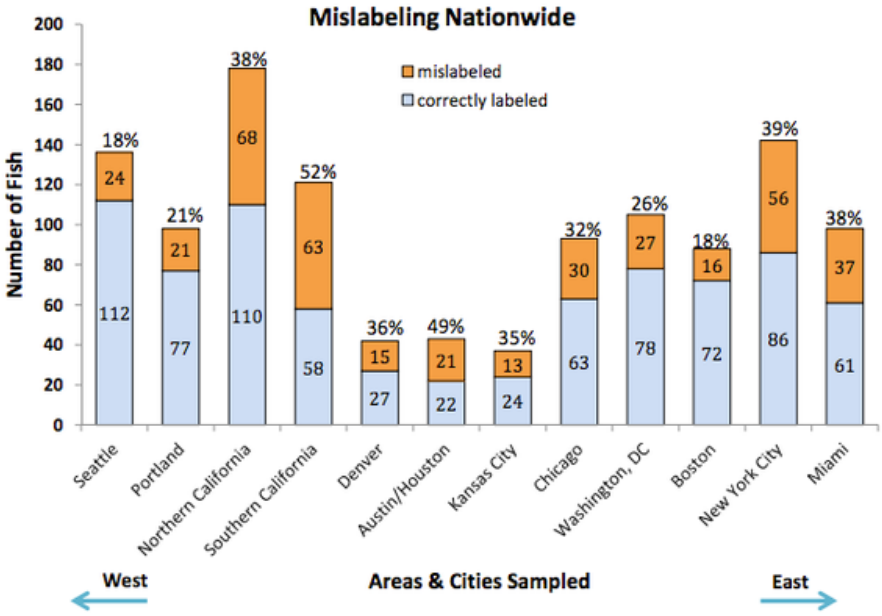
every single sushi restaurant sampled served mislabeled tuna

This is considered to be the largest seafood fraud investigation conducted in the world to date and the results found that what was served or sold was in many cases not what was advertised.

The study sampled seafood from 674 retail outlets in 21 states to determine if they were correctly labeled. Using DNA analysis the scientists found that the most popular (and expensive) species such as snapper and tuna were the most likely to be misrepresented (87 and 59% of the time respectively). Although that should not be a surprise given the profit motive for both restaurants and markets, what was most disturbing was that most of the fraud occurred where one would least expect: in sushi restaurants.



The fraud was especially prevalent in Southern California where 52% of the samples taken were mislabeled. Other cities such as Boston, Houston and Austin came in a close second with almost half of the fish tested being other than advertised, but the misrepresentation and mislabeling were prevalent across the nation.



Perhaps the most disappointing finding was that where one would have expected the least amount of misrepresentation to occur, in sushi restaurants overseen by knowledgeable chefs, the exact opposite was found, the highest level of intentional fraud.

The DNA testing revealed that sushi restaurants mislabeled their fish 74% of the time, and oily escolar or "butter fish," a fish that if over 6 ounces is consumed could lead to explosive gastrointestinal disorders, was substituted 84% of the time for "white tuna."

Seafood con't from page 25

EB-5 and Fish

What does this have to do with EB-5 visa offerings? The analogy for the investors is that what is often presented by the issuers and EB-5 consultants or "experts" may not truly represent the risks involved in the job creation or project development when greed is the motive, fraud and deception the vehicles.

Misrepresentation and lack of material disclosure of the risks contained in the offering by issuers, finders and promoters in the development of the project is unfortunately a daily occurrence in the world of EB5 marketing. The results in those who consume these promises and assurances without verifying the unrealistic claims being made by these agents and "finders" could unfortunately be remorse, disappointment and loss of both residency and capital.

I wonder how that defense will work should the attorneys be implicated in relief actions for issues related to dual representation and lack of due care, even where the potential conflicts of interest and compensation agreements were disclosed to the clients? Would the investor even understand the legal language contained in these disclaimers or are the simply relying on their attorney to keep them safe and informed of the risks involved?

The deception was not limited to investors, however. In the aftermath of the IRCTC debacle it was discovered that many Chinese migration agents routinely held seminars paid for by other Regional Centers only to later convince their clients, after the newbie Center principals had gone back to America, that the project that they were presented in the seminar was "not appropriate"

Investors who turn to those that they most depend on to help guide them, their immigration attorneys, may be the most disappointed of all when they find that those they thought they could trust actually represent the seller (the developers, Regional Centers and Chinese agencies) who dictate that they do not ask too many (or any) questions regarding the credibility or feasibility of the project to create jobs or return the investment at term.

The philosophy appears to be that if the consumers don't know the difference, then what does it matter? Just in case, however, I have a disclaimer that says I only file the paperwork, I am not paid to look after your interests.

Should the client get sick after eating the tainted fish, the chef then says "Hey, I had no idea that fish was mislabeled but it was not my fault, I just work here. I am not the one who bought the fish, I just prepare what I am told to serve."

and were guided into the higher commission paying Chicago Convention Center or other deals with longer standing and better paying Centers whose monthly quotas they had to fill.

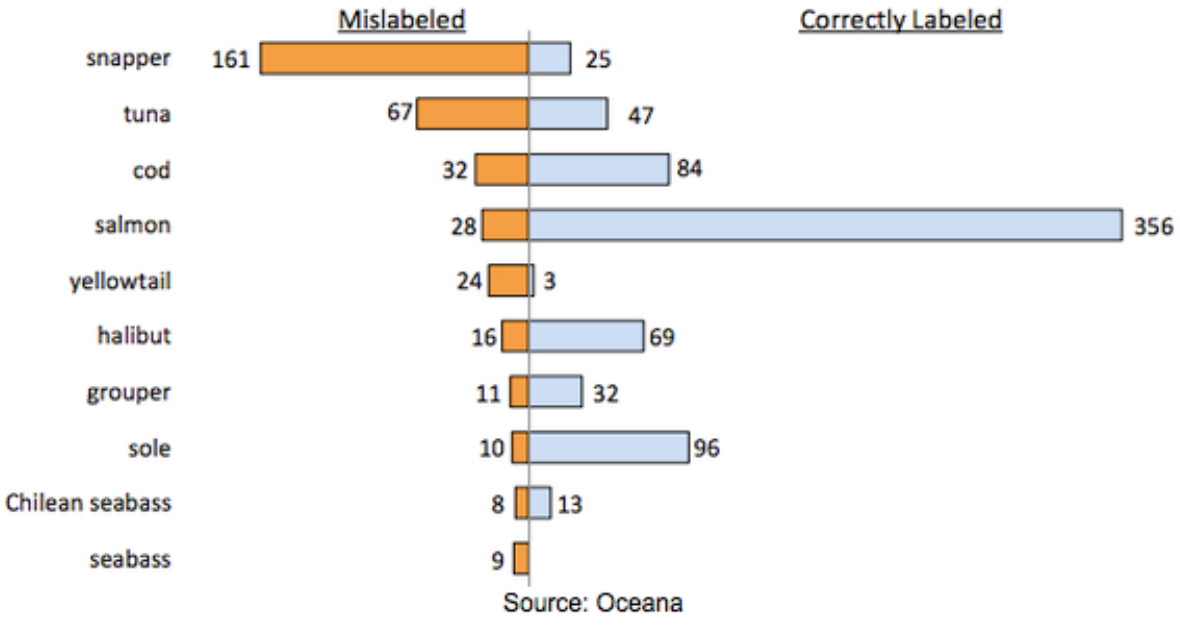
This practice is extremely common as the agents will use the newer, eager Center to pay for the lavish ceremony as "bait", perhaps give them one or two investors, and then switch the bulk of their clients into the project paying the highest commission in the market. I propose naming that tactic the "Escolar" as the effect on the duped Centers and investors is essentially the same.

To put this into context and to change a noun into a verb, if you are a new Center or developer and you come back later this spring from China having spent a lot of time and money to get just a handful of investors, you have been"escolard." If you are an investor and your immigration attorney keeps refering you to the same 5 to 6 Centers with assurances of "good track records," then you are being "escolarded." Bon apetite! ■

Commonly Mislabeled Fish

What You Bought	What You Got
Chilean seabass	Antarctic toothfish
Alaskan/Pacific cod	Pangasius (Asian "catfish"), Atlantic cod, threadfin slickhead, tilapia
Atlantic cod	Pacific cod, white hake
grouper	Pangasius (Asian "catfish"), king mackerel, whitefin weakfish
Alaskan/Pacific halibut	Atlantic halibut, blueline tilefish
salmon (wild, king and sockeye)	farmed Atlantic salmon
sea bass	Antarctic toothfish, Patagonian toothfish
snapper	giltheaded seabream, madai, tilapia, Pacific ocean perch, widow rockfish, yellowtail rockfish
red snapper	Caribbean red snapper, crimson snapper, spotted rose snapper, Pacific ocean perch, yellowtail rockfish, giltheaded seabream, madai, tilapia, white bass
lemon sole	blackback flounder, summer flounder, flathead sole, yellowfin sole
white tuna	escolar

Mislabeling Among Most Commonly Sampled Fish Types



Source: Oceana

Material Change Prohibition for Investors

Dates at least to 1977, NOT 1998

by Joseph P. Whalen

Joseph Whalen

LITTLE KNOWN TO EB-5 practitioners today, the concept of an "investor visa" dates to 1966 through a regulatory interpretation of an obscure reference in the 1965 Act. The former "Special Immigrant" Nonquota/Nonpreference Visa was issued pursuant to former INA § 101(a)(27) [8 USC § 1101(a)(27)] as a Regulatorily Defined Labor Certification Exemption for an "Investor" as an interpretation of the "Other Qualified Immigrant" found in former INA § 203(a)(8) [8 USC § 1153(a)(8)] (1965). Legacy INS promulgated 8 CFR § 212.8(b)(4) in the Federal Register in 1966. This immigration benefit first appeared in the Code of Federal Regulation in 1967. A preference visa for entrepreneurs/investors was made statutory by Congress in 1990, via IMMACT90 at INA § 203(b)(5) as employment-based 5th preference: EB-5.

Matter of Heidari, 16 I&N Dec. 203 (BIA 1977) was decided by the board May 4, 1977. The board DISMISSED this motion to reconsider a dismissal of a prior motion to reconsider an even earlier dismissal of a motion to reopen a deportation proceeding in order to allow filing for adjustment of status as an investor.

The respondent attempted to submit "newly created" evidence that only came into being after he had already been ordered deported and long after the original application was filed and the prior denials and dismissals. The board refused to consider the brand new evidence under the prior regulation when a previous case was already denied under the prior regulation.

The revised immigrant investor classification under 8 CFR § 212.8(b)(4) "now" (in 1977) required an alien to invest $40,000 and be the principal manager of the business and employ at least one USC or LPR employee (excluding self, spouse, and children). The latest revision had become effective on Oct. 7, 1976, pursuant to its having been published in final form at 41 FR 37566, Sept. 7, 1976. The older version was "superseded" and the revision was applicable prospectively. The investment that was the underlying basis of the new investor application commenced after the effective date of the new regulation and was therefore subject to it.

Since, in this case, **the evidence came into being after the effective date**, it had to be considered under the newer regulation. The board found that the respondent had failed to make a prima facie showing of eligibility based on the operative regulation at the time that the evidence came into being. In other words, the BIA would not allow the major material change in the evidence to be considered in connection with the older regulation and also failed to meet the requirements of the newer regulation. The BIA made a policy decision in order to block attempts by unlawfully present aliens to drag things out in the hopes of "getting lucky."

Case found at http://www.justice.gov/eoir/vll/intdec/vol16/2581.pdf, Heidari represents the earlier prohibition against material change for investors, but was not cited in Izummi, which instead was based upon Katigbak. Here is a deeper explanation of Izummi and Katigbak.

Matter of Izummi, 22 I&N Dec. 169 (BIA1 1998) holds, in pertinent part,

> "The board refused to consider the brand new evidence under the prior regulation when a previous case was already denied under the prior regulation."

(3) A petitioner may not make material changes to his petition in an effort to make a deficient petition conform to service requirements.

That same decision goes on to further explain the underlying requirement, thus: "A petitioner **must establish eligibility at the time of filing;** a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971), Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to service requirements." [emphasis added]

Matter of Katigbak, 14 I&N Dec. 45 (Reg, Comm., 1971) is often cited with regard to the general principle as restated in Izummi that one "must establish eligibility at the time of filing[2]" and as expanded upon in the 3rd prong of the 13 prong holding in Izummi, prohibiting the making of material changes subsequent to filing to remedy deficiencies. This is not to be confused with a mere matter of supplying further evidence in response to a request for evidence. The prohibition is against creating new circumstances for which no evidence previously existed in the absence of a material change made subsequent to filing. It should be remembered that both of these precedent decisions involve visa petitions that are tied inextricably to the filing date as the priority date for purposes of obtaining a place in a very long line for an immigrant visa. Such immigrant visa being among the visa preference categories for which there are numerical limitations and country of origin quotas.

The above principles apply to the I-526, which is a visa petition. The filing date of an approved I-526 will transform into a priority date for visa allocation and issuance purposes. To allow major material changes to happen after filing is unfair to those petitioners who wait until they get things in order before filing. The priority date has not been a real consideration for EB-5 until now. It is anticipated that there will be a cut-off date for China this year, probably in the summer.

The I-924 does NOT involve a priority date. It is wide open to material changes in order to make it approvable. The decision must be based upon the entire record as developed during the proceeding and prove to the satisfaction of USCIS that everything is in order at time of the final adjudication. This principle should also apply through the motions and appeal processes. Remember that a Dummy I-526 is actually an I-924 amendment that allows for the advance vetting of the prima facie evidence of eligibility as to the business plan, economic analysis, and transactional documents, exclusive of the individual investors' evidence of lawful source and path of funds. The best one can expect is a Provisional Approval contingent upon successful execution of the planned project/investment.

Knowing all of this, can the pundits and obfuscators who whine about the "big bad" USCIS being unfair really convince anyone that the material change prohibition as applied to an I-526 is so horrible? Ask the well-prepared I-526 petitioner who is in line behind the unprepared I-526 petitioner and let me know! Yes, I am being sarcastic on purpose. That's my two-cents, for now. ■

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MATTER OF HEIDARI

In Deportation Proceedings

A-12072700

Decided by Board May 4, 1977

(1) This is respondent's second motion for reconsideration of the Board's decision respondent's motion to reopen deportation proceedings in order to file an applic adjustment of status under section 245 of the Immigration and Nationality Act an exemption from the labor certification requirement of section 212(a)(14) of th an investor pursuant to 8 C.F.R. 212.8(b)(4).

(2) Evidence submitted in support of a motion for reconsideration must establish

[1]Until recently the decision as noted on the EOIR website listed this as a BIA precedent and the actual I&N Decision credits it to what was then INS, Regional Commissioner, it was actually rendered by the AAO which incorrectly called itself AAU, of what was INS (now AAO of USCIS). AAU was renamed AAO in 1994, under Janet Reno. I got EOIR to fix this error online.

[2]On April 17, 2007, 72 FR at 19105 added 8 CFR § 103.2 Applications, petitions, and other documents. (b)(1) Demonstrating eligibility at time of filing. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition. http://edocket.access.gpo.gov/2007/pdf/E7-7228.pdf