

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



Successful Raise – EB-5 Funded Project Closes in Massachusetts



FBI: Texas EB-5 Visa Regional Center a Ponzi Scheme to Defraud Mexican Investors

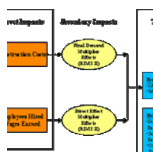


Former EB-5 Visa Regional Center El Monte Being Investigated



Troubled EB-5 Funded Project Files Chapter 11

### Featured Commentary



RIMS II Being Eliminated



Summaries of AAO EB-5 Visa Decisions for 2012



SEC Lifts Ban on General Solicitation



EB-5 Policy Memorandum



EB-5 Regional Center Operators Noble Outreach of New Orleans Lawsuit Update



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### SCAG Region: Compass Blueprint Case Study El Monte Transit Village

**EL MONTE**  
**TRANSIT VILLAGE**



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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.

**CONTACT**

Michael Gibson,  
Managing Director  
Registered Investment Advisor  
CRD #157403  
michael@usadvisors.org  
LinkedIn @EB5Info  
Facebook  
cell : 305.978.1108  
office : 239.465.4160  
Skype: usadvisors.org

Kris Stell, Editor-in-Chief  
kris@usadvisors.org  
Skype: eb5news1

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by MICHAEL GIBSON  
Managing Director

**It has been a busy year**

for federal and state regulators investigating a number of EB-5 schemes that have allegedly been set up to defraud investors, some of those investigations we are reporting here, others we will feature in upcoming issues. Other projects simply fail due not to fraud but to market conditions and one of the most well known ones in the industry has filed for Chapter 11 bankruptcy with the question of what will happen to the investor's immigration petitions and capital invested.

We are featuring a bright spot in the industry with the

successful raise for a building renovation that will create residential lofts, a restaurant and office space in Boston, partially funded by EB-5 investors and would like to invite other Centers and developers to send us their stories to let readers from outside our industry know that the EB-5 visa program can be a vehicle to help bring investment into communities that might not otherwise see capital inflows with the resulting job creation that Congress intended.

Best wishes,  
*Michael Gibson*  
Managing Director  
USAdvisors.org

by KRIS STELL  
Editor-in-Chief

**In this issue of EB-5**

News, we update you on several past EB-5 projects that are facing trouble – either legally or financially or both – all of which we've reported on before and has had some kind of event occur to warrant the update. For instance, one is filing bankruptcy, two are being investigated for fraud, and one for running a Ponzi scheme.

On the flip side is our lead story on the successful closing of an

EB-5 funded project in Boston, which rightly demonstrates how the program is supposed to work.

If you have a successfully closed raise, please send it our way. We'd love to feature you!

*Kris Stell*  
Editor-in-Chief  
USAdvisors.org

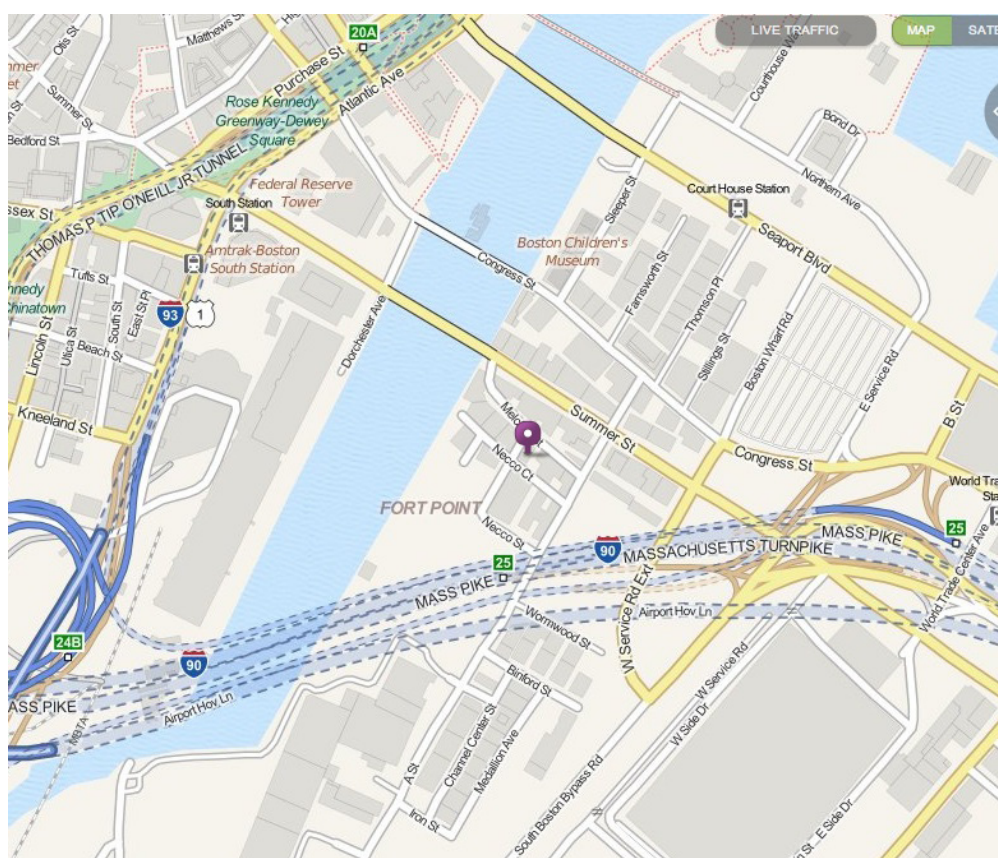
# EB-5 Funded Project Closes in Massachusetts

Project: 49 Melcher Street  
Location: Boston's Seaport District

**B**oston-based regional center, EB-5 Jobs for Massachusetts (EB5MA), has successfully funded its most recent real estate project using EB-5 capital from foreign investors. The Melcher Street Project, located at 49 Melcher Street, is a restoration of a currently vacant, five-story historic building in the Seaport District.

## About the Project

Real estate developer, CRE Management, is transforming the space into 21 residential lofts, two floors of restaurant space, and two commercial office units, while preserving the rustic wood beam ceilings and historic nature of the structure. The apartments in the renovated 49 Melcher Street in South Boston's Fort Point are expected to be available this fall. Reportedly, a 140-seat French bistro called Bastille Kitchen is setting up in the lower levels of 49 Melcher. This restaurant, from Mistral co-owner Seth Greenberg, will cost \$3.5 million, be 8,500 square feet, and include a 70-seat private dining space. Up until this revitalization, Melcher Street was mostly a side street just off the Seaport District, a thoroughway to the surrounding Innovation District.



That is changing as the entire Fort Point area is experiencing quite the revitalization. This development joins other entrants along the street – the 94,220-square-foot commercial building at 51 Melcher and a 38-unit at 63 Melcher with 23 innovation units. There is a push by area developers and brokers to nickname the area “M Block” (think MeatPacking District from New York). The aim is to denote the block as desirable and hip to the 18-35 age demographics. This project's close proximity to the Innovation District, a tech hub that is an important force in the Boston economy, also plays a role. According to reports from Mayor Menino's office, more than 200 companies and 4,000 jobs have been added to Innovation since January 2010.



Seth Greenberg told *The Herald's* Donna Goodison, "Melcher Street has the same character with all the brick and beam buildings. It could be a really good mixed area with some residential [buildings] and really cool restaurants—just a new, modern city-driven neighborhood."

### About the Teams

In January 2012, EB5MA began to work on developing the Melcher Street Project as a new EB-5 opportunity with GFI Partners, a Boston-based real estate investment and development company that had previously collaborated with EB5MA. Additional members of the EB-5 team of professionals were Wright Johnson, who prepared the economic report (initially, and then revised to avoid the tenant occupancy issue), Clem Turner of Homeier & Associates, who provided a review of the securities offering, and Global Law Group, who prepared a review for EB-5 compliance related issues.

"EB5MA independently marketed the project and we are almost fully subscribed with just one spot left. The construction loan closed at the end of April, so the project is now fully capitalized and officially under construction. The additional EB-5 capital, when placed, will reduce the amount of the senior construction loan," said Jillian Fortuna, EB5MA's Chief Operating Officer. "We are excited to participate in the growth and development happening in the Seaport District."

### Working the Project

"At first when we looked at this project, we were proceeding based on the idea that we could count jobs from the new commercial space on the fifth floor. This had been a widely accepted practice in the EB-5 industry, and USCIS had approved I-526 applications for our regional center on a similar mixed-use redevelopment project in New Bedford, which also included these types of indirect jobs. We saw that the Seaport district in



### More on the Area

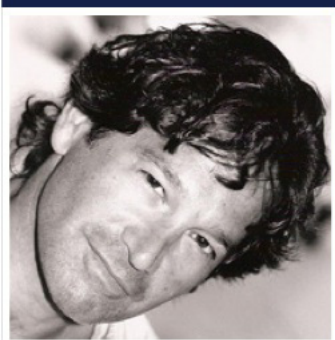
Fort Point is a neighborhood or district of Boston that is named after the location of a fort that guarded the city in Colonial times. This area is also called the South Boston Waterfront or the Seaport District. It was developed in the 1830s by the Boston Wharf Co., which built and owned the industrial loft buildings until the early 2000s. The buildings were used for manufacturing and warehousing goods moved along the channel to Boston Harbor.

Apparel maker Life Is Good recently signed a deal to move into 22,000 square feet at 51 Melcher Street of the Seaport District, where it will house approximately 70 employees in a renovated industrial building. Additionally, restaurateur and celebrity chef Ming Tsai just opened the Blue Dragon restaurant as part of Melcher's growth spurt. Average rents in the area have increased by nearly 13 percent in the last year.



## EB-5 Jobs for Massachusetts

**49 Melcher Street  
Boston, Massachusetts**



### ABOUT Seth Greenberg

With over twenty years of experience acquiring and developing high-end hotel, restaurant and nightlife properties in New York, Boston and Miami, Seth Greenberg is regarded as one of the premiere impresarios of today's hospitality industries.

Following a successful string of over twelve nightclub ventures along the East Coast, Greenberg shifted his focus to developing high-end hotels and restaurants. In 1997, Greenberg established himself as a respected restaurateur with the

opening of *Mistral*, a French-Mediterranean inspired restaurant in Boston. He also participated in the development team for the award winning *XV Beacon Hotel* in 1999.

Restaurateur Seth Greenberg will open *Bastille Kitchen*, a French bistro, in the bottom floor of 49 Melcher.

Renderings of the restaurant are shown on next page.

Boston is currently undergoing a major redevelopment and expansion, and that there is a need for office space. However, the added time and expense that would be needed to defend against USCIS' objections, that these jobs were relocated, plus more importantly the risk to the investors' green cards, we were not willing to go down that road," said Fortuna.

"At the same time, we always understood the need for a tight nexus between the investor's capital contribution and the job-creating business, which is why we created a joint venture with the restaurant."

"I believe the question has to be one of reasonableness. Our goal is to develop commercially viable projects that contribute jobs and value to Massachusetts' economy. The Melcher Street Project does that."

#### Raising for the Project

According to Fortuna, the Melcher Street Project was EB5MA's first experience with raising EB-5 capital on their own.

"As an attorney, and having formerly worked at an investment management firm in Boston, I was particularly concerned with maintaining compliance when it came to the SEC regulations. We ran into many different situations on this year-and-a-half journey. We had to make sure we knew who we could market to, who we could compensate, and how. With the JOBS Act loosening the restrictions on general solicitations, it makes marketing

somewhat easier. However, understanding and applying the SEC rules can be difficult, which is why having competent securities counsel on hand is so helpful."

"Once we figured out what our boundaries were, our next step was making sure we were only accepting accredited investors. We want our investors to be able to fully understand and tolerate the risks and illiquidity of an EB-5 investment. Initially, when we meet with a new potential client, we have an intake sheet that includes an attestation. We will follow that up with a comprehensive investor questionnaire, which includes a list of their assets. We only want to accept qualified investors, someone that can prove they have verifiable sources of funds. Through the vetting process, we found about 25-30 percent of the potential investors we met with were not able to qualify. In the long run, finding this out up front is better than rushing to process an investor through USCIS, ending up with a denial, and having to unwind the transaction," she explained.

"The actual marketing of the Melcher Street Project was relatively easy. Our office is located in downtown Boston, the developer's office is a few streets over, and the project is only a 10-minute walk away. We were glad to spend time with potential investors, answering their questions and addressing concerns. What we saw was an investor cycle that lasted between one to three months, and could be up to six plus months, from the time we first met them, through the vetting process, until they subscribed and deposited their capital.

"With all the obstacles and challenges that inevitably





comes with working with the EB-5 program, when I get to meet again with a family that has received an approval and how see how happy they are to be in the U.S., that is truly my favorite part.” ■



## About EB5MA

EB5MA (EB-5 Jobs for Massachusetts, Inc. Regional Center, Boston, MA) received its regional center designation in June 2009. The Melcher Street Project is their third successfully funded venture in Massachusetts. Many investors in the other two EB-5 projects, located in Allston and New Bedford, have already received their I-526 petition approvals and obtained their temporary green cards. (<http://www.eb5ma.com/>)

The Everett Street Project in Allston is a music recording and arts studio. The project was \$2.5 million, with \$1 million of EB-5 funding contributed by an individual investor. The studio is filling a large gap in the local music industry. The New Bedford Urban Renaissance Project is a mixed use real estate project located in downtown New Bedford developed by Columbus Capital Advisor. The developer was seeking \$5 million in EB-5 funds. With the success of this project, 357 new jobs will be created in Massachusetts. There are 10 investors invested in this project, all of them have successfully received their I-526 approvals from USCIS.





# FBI: Texas EB-5 Visa Regional Center

## Ponzi Scheme to Defraud Mexican Investors

**T**exas based EB-5 visa regional center USA Now is under investigation by the FBI for suspicion of money laundering,

wire fraud, the transportation of stolen property and operating as a scheme to defraud wealthy Mexican nationals of their investments. Search warrants indicate that the FBI has been investigating the EB-5 regional center for over a year and records show that funds invested by Mexican investors were transferred into bank accounts controlled by USA Now principals Bebe and Marco Ramirez to pay off personal debts, purchase luxury automobiles, other personal property and pay returns to investors from funds brought in by new investors.

The following information was taken from documents that were seized by the FBI and sworn testimony of Special Agent Benjamin LaBuz whose office conducted an extensive forensic audit and investigation into the movement of funds from the EB-5 immigrant investors to the Ramirez's various personal and business accounts. Prior to joining the FBI, Special Agent LaBuz spent six years in the Office of Inspector General Criminal Investigation Division Department of Veterans Affairs.

### Investor 1: Where did his EB-5 investment end up?

According to the affidavit of one investor from Mexico's Nuevo Leon state, he told FBI investigators that

he gave USA Now \$500,000 that bank records indicate was soon transferred by the Regional Center operator



Case 7:13-mj-01303 Document 1 Filed in TXSD on 07/18/13 Page 1 of 36

AO 106 (Rev. 04/10) Application for a Search Warrant

United States District Court  
Southern District of Texas  
FILED

UNITED STATES DISTRICT COURT JUL 18 2013

for the  
Southern District of Texas

In the Matter of the Search of  
(Briefly describe the property to be searched  
or identify the person by name and address)  
The office of USA Now  
located at  
3700 N. 10th Street, Suite 201, McAllen, Texas 78501

Case No. M-13-1303-M

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A1, incorporated here by reference.

located in the Southern District of Texas, there is now concealed (identify the person or describe the property to be seized):

See Attachment A2, incorporated here by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 U.S.C. 1343	Wire Fraud
18 U.S.C. 1956	Money Laundering
18 U.S.C. 2314	Interstate/Foreign Transportation of Stolen Property

The application is based on these facts:

See Attached Affidavit in Support of Application for Search Warrant, incorporated here by reference.



Bebe Ramirez into the account of another company she ran, Now Co. Loan Services. Later that same day, she wrote a check for \$6,500 as a down payment on a Mercedes Benz 550. This vehicle, along with a Dodge Ram 3500 also allegedly purchased with investor funds, was seized by Federal Agents.

**Investor 2: Where did their EB-5 capital investment funds end up?**

*Investor 2 is a resident of Queretaro, Mexico who invested in the EB--5 program.*

On or about April 1, 2011, Investor 2 wire transferred \$500,000 to the USA Now Regional Center "Escrow Account" (INB Account 4613511) located in McAllen, Texas. The wire originated at Banco Nacional de Mexico, located in Mexico. The wire transfer credit resulted in an account balance of \$500,045 in the USA Now Regional Center LLC "Escrow Account" (INB Account 4613511). On or about April 4, 2011, a \$500,000 check paid to the order of "Bayou Grill" cleared the USA Now Regional Center "Escrow Account" (INB Account 4613511).

The check was signed by B. RAMIREZ. The check was credited to the Bayou Grill LLC account (INB



FD-597 (Rev 8-11-99) Case 7:13-mj-01303 Document 12 Filed in TXSD on 07/23/13 Page 2 of 2

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
Receipt for Property Received/Returned/Released/Seized

File # 318B-JA-63172

On (date) July 19, 2013

item(s) listed below were:  
☐ Received From  
☐ Returned To  
☐ Released To  
☒ Seized

(Name) BEBE RAMIREZ

(Street Address) 9124 N. 23rd

(City) McAllen, TX 78504

Description of Item(s): One white Mercedes GL550 w/ Tx L.P. CP8T140, VIN# 4JGBF8GE8BA728749 ; one white Dodge Ram 3500 w/ Tx L.P. BE53951, VIN# 3D73Y3HL7BG50936

19. Investor 1 is a resident of Nuevo Leon, Mexico who invested in the EB-5 program. i

20. Investor 1 was interviewed by an FBI Special Agent in April of 2012. Investor 1 learned of the EB--5 program when s/he saw advertisements in Mexico. Investor met with M. RAMIREZ, D. PEREZ and E. ARCE at USA Now in McAllen, Texas. Investor 1 was told more about the EB-5 program during this meeting. Investor 1 invested \$500,000 in support of his/her EB-5 Visa.

21. On or about August 3, 2010, a \$300,000 cashier's check from Investor 1 paid to the order of Now Regional Center, was credited to the USA Now Regional Center "Escrow Account" (INB Account 4613511). The account balance after the credit was \$300,050.

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22. On or about August 4, 2010, a \$300,000 check paid to the order of "Now Co. Loan Services" cleared the USA Now Regional Center LLC "Escrow Account" (INB Account 4613511). The \$300,000 account debit resulted in a \$50 account balance in the USA Now Regional Center "Escrow Account" (INB Account 4613511). The check was signed by B. RAMIREZ. The check was credited to the Now Co. Loan Services account (INB Account 4613554). The \$300,000 account credit resulted in a \$302,440.56 account balance in the Now Co. Loan Services account (INB Account 4613554).

23. On or about August 4, 2010, a \$5,000 check made payable to "Barret (sic) Auto Gallery" cleared the Now Co. Loan Services account (INB Account 4613554). The check was signed by B. RAMIREZ. The memo line of the check read "David -- down pymt".

24. On or about August 4, 2010, an additional check for \$1,500 made payable to "Barrett Auto Gallery" cleared the to the Now Co. Loan Services account (INB Account 4613554). The check was signed by B. RAMIREZ. The memo line of the check read "David -- down pymt". The following table summarizes the aforementioned transactions and other transactions that posted on the same day:

10



34. Your Affiant is aware that B. RAMIREZ only had \$17,294.27 available in the Now Co. Loan Services account (INB Account 4613554) prior to the deposit of \$485,000 of Investor 28 \$500,000 investment.

35. Your Affiant is aware that the Law Office of Millin Ortiz represented M. RAMIREZ and B. RAMIREZ in a civil suit filed against them in Hidalgo County, Texas. Your Affiant is further aware that the \$485,000 payment was the result of a settlement agreement between M. RAMIREZ, B. RAMIREZ and the plaintiff in the case.

36. Your Affiant is aware that on June 12, 2012, Investor 2 was interviewed by an FBI Special Agent. Investor 2 stated that s/he was not worried about his/her money because USA Now assured him/her that the money was in an escrow account secured by the United States government.

37. Your Affiant believes that probable cause exists that B. RAMIREZ and M. RAMIREZ, having devised a scheme to defraud Investor 2, caused to be transmitted a foreign wire transfer in violation of Title 18 U.S.C. 1343 (Wire Fraud), when B. RAMIREZ and M. RAMIREZ caused Investor 2 to transmit a foreign wire from Mexico to the United States, which was intended to be used as

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EB-5 investment funds for investor 2, when in fact, \$485,000 was used to pay off a civil suit.

Investor 3

wire originated at Banco Nacional del Norte, located in Mexico. The \$500,000 credit resulted in a \$500,005 account balance in the USA Now Regional Center "Escrow Account" (INB Account 4613511).

On or about June 24, 2011, a \$433,305 check paid to the order of Investor 1 and signed by B. RAMIREZ cleared the USA Now Regional Center "Escrow Account" (INB Account 4613511). The memo line portion of the check read "Return." The \$433,305 account debit resulted in a \$66,700 account balance in the USA Now Regional Center "Escrow Account" (INB Account 4613511). Your Affiant is aware that Investor 1 is a previous EB-5 investor who wanted his/her money back.

### Investor 3 Ponzi Scheme

On January 8, 2013, an employee listed as Chief of Investor Relations for USA Now e-mailed Investor 3. The e-mail included an attachment that detailed Investor 3's interest earned. The statement listed Investor 3's annual rate (preferred return) as The statement further detailed that from June 24, 2011 through January 8, 2013, Investor 3 earned \$21,438.36 interest on his/her \$500,000 investment. Investor 3 provided this e-mail to your Affiant.

Your Affiant, having reviewed bank records, knows that Investor 3 transferred \$500,000 for his/her EB-5 investment on June 24, 2011. Your Affiant knows that \$433,305

42. Your Affiant believes that probable cause exists that B. RAMIREZ and M. RAMIREZ, having devised a scheme to defraud Investor 3, caused to be transmitted a foreign wire transfer in violation of Title 18 U.S.C. 1343 (Wire Fraud), when B. RAMIREZ and M. RAMIREZ caused Investor 3 to transmit a foreign wire from Mexico to the United States, which was intended to be used as EB-5 investment funds for Investor 3, when in fact \$433,305 was used to pay Investor 1.

of Investor 3's investment funds were used to repay Investor 1 on or about June 27, 2011. Your Affiant knows that an additional \$9,595 was used to repay Investor 1 on or about July 21, 2011.

Your Affiant knows that because \$442,900 of Investor 3's investment fund was used to repay Investor 1 that Investor 3 could not have legitimately earned \$21,438.36 interest on his/her investment.

Your Affiant believes

that M. RAMIREZ and B. RAMIREZ are operating a Ponzi scheme in an attempt to conceal the true location of Investor 3's funds.



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001.956.627.3786

### Investor 4: Where did their EB-5 capital investment funds end up?

*Investor 4 is a resident of Tamaulipas, Mexico and an investor in the EB-5 program.*

On April 19, 2011, Investor 4 completed a DDA -- Debit Transaction Form at INB located in McAllen, Texas. The Debit Transaction Form authorized the transfer of \$110,000 from Investor 4's account to be credited to the USA Now Regional Center "Escrow Account" (INB Account 4613511). The \$110,000 credit resulted in a \$110,040 account balance in the USA Now Regional Center LLC

"Escrow Account" (INB Account 4613511).

On April 19, 2011, a \$110,000 check paid to the order of and signed by B. RAMIREZ cleared the

USA Now Regional Center "Escrow Account" (INB Account 4613511). The memo line portion of the check, located in the lower left corner, read "architect fees." The check was credited to the RGV Innovative Business Solutions account (INB Account 4612515). The balance of the RGV Innovative account (INB Account 4612515) after the account credit was \$110,097.01. The balance of the USA Now Regional Center "Escrow Account" (INB Account 4613511) after the account debit was \$40.

On April 19, 2011, a \$55,000 check paid to the order of "Marco Ramirez" and signed by B. RAMIREZ cleared the RGV Innovative Business Solutions account (INB Account 4612515). The memo line of the check, located in the lower left corner, read "Development Fees." The check was endorsed by M. RAMIREZ and B. RAMIREZ and was credited to Bebe Ann Ramirez' Personal Checking account (INB Account 4144724.) The balance of Bebe Ann Ramirez' Personal Checking account (INB Account 4144724) after the account credit was 63,694.53. The balance of the RGV Innovative Business Solutions account (INB Account 4612515) after the account debit was \$55,097.01.

On April 19, 2011, a \$54,000 check paid to the order of "Mercedes Benz" and signed by B. RAMIREZ cleared Bebe Ann Ramirez' personal checking account (INB Account 4144724.)

On or about May 20, 2013, Investor 4 received a document detailing the accounting of his/her investment fund. This document detailed Investor 4's interest earned. The statement listed Investor 4's annual rate (preferred return) as The statement further detailed that Investor 4 earned \$23,309 interest for 441 earning days on a \$500,000 investment.

The document included a history of interest disbursements, one of which was for \$14,268.79 on April 2, 2013. Investor 4 provided this e-mail to your Affiant.

Your Affiant, having reviewed bank records, knows that Investor 4 transferred \$110,000 for his/her EB-5 investment on April 19, 2011. Your Affiant is further aware that Investor 4 made four additional deposits resulting in a total EB-5 investment of \$500,000. Your Affiant knows that \$54,000 of Investor 4's investment fund was used to pur-

chase a Mercedes Benz and an additional \$55,000 of Investor 4's investment fund was used to pay Page Southerland Page, an architectural, engineering and consulting firm, for an investment project not approved by Investor 4.

Your Affiant knows that because \$99,000 of Investor 4's investment fund was used to pay Mercedes Benz and Page Southerland Page that Investor 4 could not have legitimately earned \$14,268.79 of interest on his/her \$500,000 investment. Investor 4 provided your Affiant with a copy of a check from Now Co. Loan Services to Investor 4. The check was for \$14,268.79, which Investor 4 said was for interest earned on his/her \$500,000 EB-5 investment.

Your Affiant believes that M. RAMIREZ and B. RAMIREZ are operating a Ponzi scheme in an attempt to conceal the true location of Investor 4's funds. Statement of Probable Cause to Believe Requested Records are located at 3700 N. 10<sup>th</sup> Street Suite 210, McAllen, Texas 78501.

Your Affiant is aware that on March 22, 2011, USA Now Regional Center received a letter from DHS-USCIS informing USA New Regional Center of its designation as a Regional Center within the Immigrant Investor Pilot Program. That letter stated, in part, "Therefore, in order for USCIS to determine whether your Regional Center is in compliance with the above regulation, and in order to continue to operate as a USCIS approved and designated Regional Center, your administration, oversight, and management of your Regional Center shall be such as to monitor all investment activities under the sponsorship of your Regional Center and to maintain records, data and information in order to provide the information required on the Form I-924A supplement."

Your Affiant has personally conducted surveillance at 3700 N. 10<sup>th</sup> Street, Suite 210, McAllen, Texas 78501 and seen numerous USA Now employees and vehicles known to belong to employees of USA Now parked in the parking lot adjacent to USA Now as recently as July 17, 2013.

#### **Investor 5: Funds used to purchase Dodge Truck**

*Investor 5 is a United States citizen and an attorney in McAllen, Texas.*

On or about June 28, 2011, Investor 5 wrote a \$470,000 check paid to the order of "Now Co Loan Services". The check was deposited into the Now Co. Loan Services account (INB Account 4613554), which had an opening balance of -\$196.20 account credit resulted in a \$469,803.80 account bal-

48. Your Affiant reviewed Texas vehicle registration records and identified a 2011 Mercedes GL 550, Vehicle Identification Number 4JGBF8GE8BA718749, that is owned by B. RAMIREZ. The lien date is listed as April 15, 2011.

49. Your Affiant has interviewed Investor 4, who stated that s/he originally agreed to invest in an oil and energy project with USA Now. Investor 4 was advised that his/her investment in oil and energy was not creating enough jobs and that s/he needed to switch his/her investment. Investor 4 agreed to switch his/her investment to a restaurant chain project.

50. Your Affiant believes that probable cause exists that B. RAMIREZ and M. RAMIREZ violated Title 18 U.S.C. 1956 and 2314, when B. RAMIREZ and M. RAMIREZ, having devised a scheme to defraud Investor 4, caused Investor 4 to travel in or be transported in foreign commerce transmitted to invest \$110,000 of his/her funds for his/her EB-5 visa, when in fact \$54,000 was used to purchase the aforementioned Mercedes Benz.



ance in the Now Co. Loan Services account (INB Account 4613554)

On July 1, 2011, \$50,000 was wire transferred from the Now Co. Loan Services account (INB Account 4613554) to U.S. Bank located in Boise, Idaho. The beneficiary of the check was David Smith Motors, 7 McKinley Avenue, Kellogg, Idaho 83837.

Your Affiant is aware that B. RAMIREZ had -\$196.20 available in the Now Co. Loan Services account (INB Account 4613554) prior to the deposit of Investor 5's \$470,000 investment. Your affiant is further aware that the \$50,000 wire transfer to Dave Smith Motors represented the use of a portion of Investor 5's \$470,000 investment. 5

Your Affiant interviewed Investor 5 who stated that M. RAMIREZ offered to help Investor 5 purchase real estate that Investor 5 previously lost because the property was foreclosed on by a bank. M. RAMIREZ told Investor 5 that M. RAMIREZ would use EB-5 investor money to help Investor 5 purchase the foreclosed property back from the bank.

Investor 5 told your Affiant that s/he wrote M. RAMIREZ a \$470,000 check that M. RAMIREZ was to use to purchase back the real estate that Investor 5 lost due to foreclosure. Investor #5 has been partially repaid.

Your Affiant reviewed Texas vehicle registration records and identified a 2011 Dodge 3500 truck, Vehicle Identification Number 3D73Y3HL7BG509366, that is owned by M. RAMIREZ. The previous owner was David Smith Motors, located in Kellogg, Idaho.

Your Affiant contacted David Smith Motors and spoke with Skip Robinett, manager at David Smith Motors. Robinett confirmed that the aforementioned vehicle David Smith Motors sold was physically located at David Smith Motors in Kellogg, Idaho at the time of sale.

Your Affiant believes that probable cause exists that M. RAMIREZ violated Title 18 U.S.C. 1343 and 1956, when M. RAMIREZ, having devised a scheme to defraud Investor 5, transmitted or caused to be transmitted in interstate commerce a \$50,000 wire transfer for the purchase of a 2011 Dodge Ram 3500 located in Kellogg, Idaho with funds originating from McAllen, Texas that were intended to be an investment for Investor 5.

In 2011, Ramirez was featured in a Foxnews.com article entitled "Wealthy Mexicans Are Increasingly Investing in the U.S. to Escape Cartel Violence": Marco Ramirez, director of USA Now, a Texas regional center that markets itself exclusively to Central and South Americans and

#### Investment Update: Cotulla Grand Opening

Posted by david on July 3, 2013

#### Instalodge Hotel and Suites Exceeds Expectation



USANOW, LLC has a new reason to celebrate this summer season; 232 Rooms in Cotulla, Texas. A mixer at the Alteza Penthouse (Grand Hyatt Hotel San Antonio) marked the first item on the itinerary of the Cotulla Instalodge Hotel & Suites Event. Investors, subscribed and prospective, gathered with the developers of the project, along with representatives of the media (Bloomberg) to inspect the site and operation of the completed Hotel. The venue for the meeting was not trivial; the Grand Hyatt is one project of 5 Bn Dollars Portfolio that the developer of Instalodge has completed. Participants of the event got a guided tour of the development to show them the quality of work and attention to detail the developers expect.



operates in the Texas counties of Webb, Zapata, Starr, Hidalgo, Willacy, Kenedy and Cameron, says

our organization has raised \$90 million from 160 Mexican investors since June 2010 and we expect to have 280 commitments by year end

No criminal charges have been filed against Bebe or Marco Ramirez, or any of their employees, five of which were named in the search warrants granted to the FBI. The EB-5 Center's attorney, Tony Canales told the AP that "the FBI does not understand the business. We think the government is wrong and can explain it."

According to the *The McAllen Monitor*, Marco Ramirez has told the paper that USA Now remains open.

"Our license is in place, we are active and doing great." ■

FD-107 (Rev. 8-1-12) Case 7:13-mj-01303 Document 9 Filed in TXSD on 07/23/13 Page 10 of 10

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
Receipt for Property Received/Returned/Released/Seized

File # 38B SA-63172

On (date) 7/19/2013

Marketing to Mexico, Nigeria & Egypt

(Name) USA Now

(Street Address) 3900 N 10th St, Suite 210

(City) McAllen TX

Item(s) listed below were:  
☐ Received From  
☐ Returned To  
☒ Released To  
☐ Seized

Description of Item(s):

(17) EBS files on individuals, company profile, photography, 100 pages notepad

(18) misc docs; 1 green folder "Nigeria"; 1 Red folder "Egypt"; 1 Manila folder "Mexico"; 1 Manila folder "client lists"

(19) 1 Manila folder titled "Orange Heights"

(20) 9 manilla folders re "Bayou Grill" docs; loose Docs + yellow notepad re "Bayou Grill"

(21) Laptop: Dell inspiron 1510 SN: 4HY2FR1

(22) Data Imaged from computers

(23) OS/11 + OS/12 - Data Imaged from comp

(24) OS/13 - Data Imaged from computer

(25) Wells Fargo doc, notepads w/ notes money, etc. business papers, bus cards

(26) 2 Binders misc: notepads, notes

(27) misc folders, binders

(28) Airline ticket car invoice

(29) 2 folders Nigeria Advertising/Source event

Received By: Christina Muabete (Signature) Received From: [Signature] (Signature)

# EB-5 Regional Center Operators Noble OutReach Lawsuit Update

## New Orleans RC will get new counsel

In April 2012, EB5News.com reported on a lawsuit brought forth by 27 EB-5 visa immigrant investors against New Orleans Regional Center operators William Hungerford and Tim Milbrath, both of which were hired by former New Orleans Mayor Ray Nagin. The investors were seeking an immediate accounting of the whereabouts of their investments as well as relief and answers to their questions concerning the status of their residency in the United States.



The latest in the case, which occurred in May 2013, has the plaintiffs attorneys being dismissed for conflict of interest issues. The court docket stated they had 45 days to enroll new counsel and everything is put on

pause (stayed) until plaintiffs' new counsel enroll. No mention of new counsel is found in the docket currently, but there have been conversations about the file transfer process recently on the docket; on June 5 there was a motion to establish file transfer protocol by the plaintiffs, which implies that new counsel will be entered in the case. Reportedly the dismissed plaintiff's attorney used to work for Hungerford and Milbrath. To date, the accused pair have only made procedural arguments, not answered any specific allegations.

### Noble History

In 2006, Nagin signed an exclusive 30-year deal with Maryland businessmen William "Bart" Hungerford Jr. and Timothy Milbrath to run the city's EB-5 operation. They called their company NobleOutReach, and initially, the process seemed to be on the right track. Hungerford and Milbrath recruited 31 investors and collected \$15.5 million for a pooled investment fund in order to invest in multiple projects to help rebuild New Orleans after Hurricane Katrina. They wooed investors by claiming they had



**William B. Hungerford, Jr. (Bart)**  
President and Managing Director

In his role as President of NobleOutReach, Bart Hungerford is responsible for the overall business, financial, and operational aspects of the firm. His direct involvement has resulted in the successful development and negotiation of the 30-year exclusive contract with the City of New Orleans (NOLA), and the US Government Approval and Re-Designation of the NOLA Regional Center. As Managing Director of the series of NobleFunds, Bart chairs the Funds' Fund Advisory Boards (FAB) and is responsible for the qualification, selection, and allocation of equity investment across portfolio companies that are focused on the many industries requiring massive re-building and re-invigoration within the City of New Orleans (i.e., Orleans Parish). He is responsible for fund formation, legal compliance and disclosure, and has been an active manager since the company's inception.

For over 20 years, Bart has started companies and seen those companies continue to thrive. Additionally, he has served on several non-profit boards. He has been in a broad range of key international management and profit and loss (P&L) responsibilities; his cross-functional, business development, and key management expertise are combined with general management, financial responsibility, operational effectiveness, program/project management, and ultimately, organizational success.



**Timothy O. Milbrath, Colonel USAF, Retired (Tim)**  
Executive Vice President

Colonel Timothy O. Milbrath, United States Air Force (Retired), is a decorated career military officer, and successful businessman. His career military experience includes directly serving three (3) consecutive United States Presidents. His worldwide acumen reaches to the highest levels of heads of state, royal families, and the top corporate leaders. A highly accomplished Senior Business Development professional with over twenty years of success within the public and private sectors. Specific expertise in client development, general management, budgeting, and strategic planning. Proven ability to effectively network, and establish high level relationships within the international diplomatic community. Adept negotiator with an impressive record of developing new profitable business partnerships. Career military experience with Top Secret Presidential clearance and extensive international business experience within the private sector. [Download the Chinese versions of his bio here.](#)





Encouraging investments to help rebuild after Hurricane Katrina was part of Noble OutReach marketing.

**Piles of garbage sit in front of a Lower Ninth Ward house, on August 7, 2008, two years after Hurricane Katrina flooded most of New Orleans, Louisiana. NobleOutReach aims to provide \$1 billion in new investment yearly to help rebuild the city.**

opened five eateries and had big hotels under construction. They said their projects would create 1,500 jobs.

NobleOutReach emphasizes the Katrina disaster and the purpose of the funds to help rebuild New Orleans (hence the name Noble Outreach as was explained to Michael Gibson of EB5News.com in 2007 by Tim and Bart in a meeting they had in Washington DC). Hurricane Katrina, the worst natural disaster in U.S. history, struck the region on Aug. 29, 2005, flooding 80 percent of the city, dispersing the city's 450,000 inhabitants and causing more than a billion dollars in damages to residential property in Orleans Parish alone.

"'We're giving these people an option,' explained Milbrath, a retired Air Force colonel who was chief of staff of the White House Military Office during three presidential administrations and worked in the United Arab Emirates before joining NobleOutReach. 'You can live in Moscow, for example, and still invest in the New Orleans recovery effort. The city was totally devastated, so this is a good time to get in there and share in the profits. This

is not a charity. We're going in with private equity.'"

During this time, NOBLE was a frequent fixture at EB-5 conferences handing out Mardi Gras beads and large checks. Their \$40,000-\$60,000 finders fees paid to attorneys and others was at the time the highest in the program. Many immigration attorneys took Bart and Tim up on their offer and now their clients are probably wondering who was keeping an eye out for their interests.

In December 2010, Hungerford and Milbrath broke ground on their biggest project. "This is groundbreaking and hopefully a little over a year from now, we'll be opening the door to a WOW restaurant, conference center, training facility that will be out here on the front side and a hotel on the backside," Hungerford said, as reported in wwltv.com's January 2013 article by David Hammer, 'Investors say visa program with ties to Nagin is wrought with fraud.' More than two years later, the site is an empty lot with a few rusty girders.

## Where Did the Money Go?

Here's one piece: "When the immigrant makes his \$500,000 investment, there's a service fee of 12 percent, which we collect to cover our marketing and travel costs," Milbrath explained to EB5news.com in 2012. "We don't pay New Orleans, and the city doesn't pay us. We collect it directly from the investor, because the city cannot be in a conflict of interest with the investor. That's why they need a private company like us."

The plaintiffs allege fraud, saying Hungerford and Milbrath spent \$6 million from the investment fund to buy a 49 percent interest in a Maryland consulting company called Bay-NOLA-Mgmt – a company they run. And for just \$200 of their own money, Hungerford and Milbrath got a 51 percent, majority ownership of Bay-NOLA-Mgmt. Ledgers collected by the plaintiffs through the lawsuit show some 30 investment companies set up by Hungerford and Milbrath, primarily in Louisiana, Maryland and Delaware between 2008-2010, with names like Bartone (Bart One) and Timone (Tim One), Bay-Bourbon-Ritas, Bay-NOLA-Hospitality, Bay-NOLA-Ventures-MD, VP-NOLA, VP-NOLA 1, VP-NOLA 2 and VP-NOLA-WOW, both articles explain. The complaint filed states that Hungerford and Milbrath never disclosed to plaintiffs that the fund's investments would be structured in such a complicated and non-transparent manner.'

The fund did buy into three PJ's coffee houses (two at Tulane University and one on Canal Street downtown), the Rita's Tequila House on Bourbon Street and Mau-repas Foods, a Bywater restaurant and cocktail bar that opened in 2012. The wrench is that although these have been successful projects, USCIS is not counting these jobs toward the number needed for investors' green

cards.

## What It Means to Investors

Investors also say that Hungerford and Milbrath were ignoring what the U.S. Citizenship and Immigration Service was telling them: That the main recipient of the funds, their Bay-NOLA-Mgmt consulting firm, was not a qualified job-creating entity for the New Orleans center. The lawsuit alleges that they put at least \$500,000 of the investment dollars into that enterprise after it had already been rejected by the feds, reported wwltv.com.

Furthermore, Hungerford and Milbrath wrote a letter to their investors in 2011 that USCIS would now only count the jobs created at the Algiers hotel, conference center and WOW Cafe project, which is zero jobs. Result being some investors now face deportation.

"This entire episode has been extremely wrenching for them," lead plaintiff attorney James Rodgers said. "They have put out their money, they've put out their time. They played by the rules and now they face complete loss of their effort after having been invited in to help make an investment to improve things in the city of New Orleans. And as it turns out, everybody seems to be losers in this," ends the wwltv.com report. ■

Next page photo: Tim Milbrath and William Hungerford working it hard in the Big Easy.



## Nagin Indictment

# Investors say visa program with ties to Nagin is wrought with fraud



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Posted on January 31, 2013 at 11:34 PM

Updated Friday, Feb 8 at 4:09 PM

**David Hammer / Eyewitness News**

**Email:** [dhammer@wwltv.com](mailto:dhammer@wwltv.com) |

**Twitter:** [@davidhammerWWL](https://twitter.com/davidhammerWWL)

### Related:

- Nagin enters not guilty pleas

NEW ORLEANS -- A little-known federal immigration program – one that's created thousands of jobs and brought billions of dollars in investment to other American cities and towns – has fallen flat in New Orleans, and the investors allege that the men former Mayor Ray Nagin hired to handle it are committing fraud.

It's called the EB-5 Visa program. Foreign investors who give at least \$500,000 to designated investment centers, including New Orleans, get visas to live and work in the U.S.

# Troubled EB-5 Funded Project Files Chapter 11

Northern Beef Packers laid off workers, needed more funding, eventually files Chapter 11 bankruptcy

In February 2012, EB5info.com reported on issues and setbacks surrounding the creation of Northern Beef Packers in Aberdeen, SD, an EB-5 funded project of the South Dakota Regional Center (SDRC), an independent and privately-owned company established in late 2008. There were lawsuits over commission disagreements and nuisance concerns, a civil lawsuit, and all told by 2011, 20 companies had filed liens against the plant in excess of \$10 million. With this history of lawsuits, liens, and tax issues, the NBP project was still not operational nearly six years after the site was purchased by the original developers. Now this \$115 million processing plant has just filed for Chapter 11 bankruptcy.

## Setbacks, Lawsuits, Issues

The concept for Northern Beef Packers (NBP) first began in 2005. The idea was to build a small beef processing facility that would focus on producing high-quality beef from local family farms and ranches. The original investors were unable to attract enough conventional financing to get the plant finished and open, so they turned to the EB-5 Program. After enduring all of these setbacks, including flooding rains and a global recession, the facility opened its doors on October 17, 2012. The company is led by Gen-



eral Partner Oshik Song, the first EB-5 investor. Song comes from a successful manufacturing background in Korea. At one count there were 69 other Korean investors under the EB-5 Program associated with this project.

Early in this process, one obstacle overcome involved the EB-5 funding and if a state lending license was necessary. The South Dakota Banking Commission made the decision in 2010 that this group of secret investors didn't need a state lending license to make a short-term \$30 million construction loan to Northern Beef Packers to complete and start operating the plant. The loan was described during the 15-minute hearing as the last major piece in reviving the stalled project. The \$30 million loan was due in 2013 or sooner. Without this loan, combined with the urgency of Northern Beef's needs and "apparent inability" to



Citing not enough capital to buy cattle, NBP laid off 108 workers and reduced processing to only three days a week.



find traditional financing, would “as a practical matter end” the hopes of Northern Beef and the EB-5 investors’ group to complete the project if Epoch (the actual lender of the \$30 million was Epoch Star Limited, a special purpose entity incorporated in the British Virgin Islands and wholly-owned by Pine Street) was required to go through a state licensing process, Wai Yee Christine Ma said. Ma, a resident of Hong Kong, China, is a director of Anvil Asia Partners, a Cayman Islands-incorporated company. Anvil Asia manages Pine Street Special Opportunity Fund I, also incorporated in the Cayman Islands.

One particular lawsuit was a direct result of the EB-5 Program. A group of Chinese EB-5 investors filed a lawsuit against Song and his organization that handled the EB-5 investment contracts in October 2011. The lawsuit does not involve the Northern Beef Packers corporation directly. The suit was directed at the person and the organization contracted by the state to handle the recruiting and processing of investors under the EB-5 provisions. It listed the defendants as SDRC, Inc., a South Dakota corporation; and Joop Bollen, an individual resident of South Dakota, who is managing director of SDRC Inc.

The plaintiffs alleged that the Investment Fund was mismanaged in contradiction to the agreements signed onto by the investors, but this lawsuit was voluntarily withdrawn less than a year later after the plaintiffs understood the facts regarding the organizational structure. While Joop Bollen was listed as the sole originator and manager of the SDRC and the SD Investment Fund 6, it is actually managed by SD Investment Fund LLC 6, the general partner. SD Investment Fund LLC 6 is owned by SDRC Inc. The SD Investment Fund LLC 6 (SDIF Limited Partnership 6) is where the funds contributed by the investors were deposited and held for eventual distribution to Northern Beef Packers.

All this aside, in January 2013, the company released a statement announcing that it had successfully completed its final round of financing, bringing the total financing raised to over \$150 million. It also stated that the company had hired over 350 employees to date, and that it would continue to grow its skilled workforce to over 500 employees in the weeks ahead as production continues to increase. At full capacity, the processing plant is capable of harvesting 1500 head of cattle



In 2008, EB5News.com’s Michael Gibson, left, interviewed Joop Bollen of the SDRC and the SD Investment Fund 6.

The plant never did reach its promise of 1,500 cattle a day.



per shift, resulting in more than one million pounds of boxed beef and offal products produced every day at the facility.

### Today’s Issues

However, by the middle of April, NBP laid off 108 workers citing a lack of working capital to buy and process cattle, plant officials said. At a news conference about the layoffs, president and CEO of the company David Palmer said the layoff is expected to be short term and that the plant needs to raise about \$20 million more.

In an article by the *Aberdeen News*, company officials were quoted saying, “This is an unfortunate setback, but we are confident that this is only temporary. The employees at Northern Beef Packers have been our biggest asset thus far, and we expect to begin rehiring and expanding our operation as soon as the additional

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## 260 beef plant layoffs: 'It was inevitable,' worker says

Lay offs the latest blow to \$115 million processing plant



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Northern Beef Packers (December 4, 2012)

By Jeff Natalie-Lees, [jnatalie-lees@aberdeennews.com](mailto:jnatalie-lees@aberdeennews.com)

7:10 p.m. CDT, July 24, 2013

### Related

- Workers shocked, worried after layoffs



County won't pay for beef plant's TIF bonds



Northern Beef Packers laid off 260 workers Wednesday, leaving only six employees to watch over the vacant plant while it goes through Chapter 11 bankruptcy.

"We were all called into a meeting at 10:30 a.m. and told that we were being laid off," said Jeffery LaCroix, who worked on the slaughter line. "They handed us a sheet that told us about filing for unemployment. They told us no other information. They said nothing about the checks they owe us. They did say they hoped we would be able to come back to work for them sometime, but they did not know when."

The employees have not been paid for more than two weeks.

financing is in place."

Employees could be called back as soon as mid- or late July, he said. Northern Beef had about 420 employees before the layoff. Those let go were mostly production employees on the slaughter and packaging sides of the plant, said A.J. Munger, director of business development, pricing and marketing. Munger said the problem has been a lack of financing, which has prevented the plant from buying cattle. Reportedly, NBP were only processing cattle three days a week.

Northern Beef has never come close to operating at its planned capacity of 1,500 cattle a day.

### Files Chapter 11

On July 19, Northern Beef Packers filed Chapter 11 bankruptcy in order to reorganize its debt and hopefully emerge stronger. According to Bollen, the plant is the newest, most up-to-date beef plant in the U.S., so the possibility also exists that it could be sold. "Northern Beef does have a good chance to come out of this



Home > Farmforum

## Beef plant owes millions to creditors, bankruptcy documents show



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By Scott Waltman, swaltman@aberdeennews.com

5:31 p.m. CDT, July 22, 2013

Northern Beef Packers owes money to 277 unsecured creditors, including more than \$1 million to a prime investor, according to documents filed in federal bankruptcy court.

Two new mechanics liens, both modest, have also been filed against the beef processing plant on the southwest side of Aberdeen.

According to bankruptcy court documents, Northern Beef Packers has estimated assets of more than \$50 million but less than \$100 million and estimated liabilities of between \$10 million and 50 million.

Home > Farmforum

## Workers shocked, worried after layoffs



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By Jeff Natalie-Lees, natalie-lees@aberdeennews.com

12:38 a.m. CDT, July 25, 2013

Northern Beef Packers employees began streaming into the Department of Labor office to file for unemployment benefits and look for jobs shortly after they were laid off Wednesday morning.

Leydis Estrada and her mother, Rafaela Navarro, were two of 260 employees laid off. They filled out forms at the office at 11:30 a.m. Estrada had worked in the fabrication department on the rip line, she said. She helped cut meat into smaller portions before it was boxed. She was surprised about the layoff.

"They kept telling us that we would start to kill cattle on Monday," she said. "They lied to us."

in a stronger condition and continue to operate," he said. Unfortunately for NBP, it came into operation right when beef prices skyrocketed.

"Most likely there will be loss of capital for the EB-5 investors, I hope not but I don't see how there can't be, and based on USCIS guidelines the visas for the EB-5 investors are going to be fine. Money was invested and jobs were created," Bollen explained.

Shortly after filing Chapter 11, NBP laid off another 260 employees. The laid-off workers have grievances as they learned the week of the layoff that they would not be receiving a paycheck for their previous two weeks of work. Because of the debt protection offered in Chapter 11 bankruptcy, the company doesn't need to compen-

sate its employees until the reorganization has been completed. The laid-off employees are eligible for unemployment benefits. Six employees remain to oversee the bankruptcy proceedings.

The next step for the beef plant is to file documents with the U.S. Bankruptcy Court for the District of South Dakota by Aug. 8. The beef plant owes 277 unsecured creditors in the United States and Korea millions of dollars, with Oshik Song being the largest creditor owed at \$1.04m.

The *Aberdeen News* has compiled a timeline of events at NBP based on newspaper articles from their archives that makes for very interesting reading. ■

# Former EB-5 Visa Regional Center El Monte Being Investigated

After finding only two EB-5 investors and filing suit against the city, TV, LLC is under scrutiny from the SEC

In October 2011, EB5News.com reported and further chronicled in a video documentary of failed projects on how the El Monte Regional Center in El Monte, California had its designation from USCIS revoked, meaning that it could no longer solicit capital or immigrant investors under the EB-5 Immigrant Investor visa program. In the agency's own words, the regional center was "no longer promoting job creation or the kind of local economic development for which it was initially certified to do" under the EB-5 visa program mandate. Now they are being investigated by the SEC for fraud and embezzlement.

## History of Troubles

The City of El Monte originally hired developers Transit Village, LLC (TV, LLC) to transform a 65-acre area around its bus station into a \$1 billion mixed-use development called, fittingly, Transit Village. El Monte received USCIS approval to raise money for the project via the EB-5 investor visa program, and after three years of trying was only able to convince two Chinese foreign nationals who invested \$1 million. However, the project quickly soured as the El Monte Regional Center

## EB-5 Center Failed Projects



### L.A. NOW

SOUTHERN CALIFORNIA – THIS JUST IN

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### El Monte developer accused of fraud, embezzlement [Updated]

June 22, 2009 | 10:51 am

President and CEO of Titan Group of El Monte, Calif. John Leung speaks during a San Gabriel Valley Economic Partnership press conference at their Irwindale, Calif. location May 23, 2001. (SGVN/Staff photo by Leo Jarzomb)

**But after three years of trying to raise funds from China, TV LLC was only able to convince two Chinese foreign nationals who invested \$1 Mio. Then, the two principals of Titan Development Group (the predecessor to TV LLC) John Leung and Jean Lang were arrested on charges of embezzlement and fraud.**



**TV LLC was then acquired by Chinese developer Bang Zhao Lin's Cross Ocean Holdings who has sued the City of El Monte for \$18 Mio. for losses incurred in developing the project and costs associated with the promotion of the project and fundraising.**

had been embroiled in legal troubles that began in 2009. TV, LLC executives John Leung and Jean Lang were arrested for alleged fraud and embezzlement (they were never charged). As for the city, it no longer wanted anything to do with TV, LLC and selected a different developer.

But TV, LLC wasn't through with El Monte. Alleging that the city violated its contract when it select-



ed the new developer, the company filed suit with El Monte for \$18 million. Not only that, but TV, LLC's new owner, Bang Zhao Lin, still wanted to develop Transit Village, and his attorney, Ben Reznik, said the company still had the rights to do so. The city of course filed a countersuit claiming that funds that were granted for the development were misused. Claims were that Lin's Cross Ocean Holdings is simply a front to defraud Chinese nationals of their investment. In July 2012, the city emerged victorious in the \$18 million lawsuit TV, LLC had lodged against it.

Even with these problems, TV, LLC representatives continued to promote the Transit Village project in China and Korea, even using the city's official seal to convince them of the support they have from the City of El Monte. It's also worth noting that TV, LLC had filed for bankruptcy in the wake of its legal proceedings, another issue that Lin's company, Cross Oceans Holdings, had to deal with.

TV, LLC appealed the USCIS termination decision.

In the summer of 2012, the appeal was dismissed by USCIS stating that TV did not have the financial resources nor the support of the city to proceed with the El Monte Regional Center program. It also attracted only two immigrant investors in a more than two-year period.



John Leung

The City of El Monte then filed a countersuit against TV, LLC in October 2012 for \$4 million. The city claims TV did not follow through with its development agreement and alleges Leung and Lang created TV, LLC and another company to hide "fraudulent business schemes and criminal activity," and that they were likely still



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
LOS ANGELES REGIONAL OFFICE  
11TH FLOOR  
6670 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90036-3648

DIRECT DIAL: (323) 985-3852  
FAX NUMBER: (323) 985-3812

June 26, 2013

**VIA EXPRESS MAIL**

TV, LLC  
c/o Jenny Pei Lin  
3535 Lessini Street  
Pleasanton, California 94566-3607

Re: *El Monte Regional Center (LA-4200)*

Dear Ms. Lin:

The staff of the Securities and Exchange Commission is conducting an investigation in the matter identified above. The enclosed subpoena has been issued to TV, LLC ("TV") as part of this investigation. The subpoena requires TV to give us documents and to provide sworn testimony from TV's custodian of records. **Please note, however, that if TV complies with the instructions for producing documents, the custodian of records will not need to appear for testimony at the indicated time.**

Please read the subpoena and this letter carefully. This letter answers some questions you may have about the subpoena. You should also read the enclosed SEC Form 1662. You must comply with the subpoena. You may be subject to a fine and/or imprisonment if you do not.

using the defunct project in the City of El Monte as sink-holes to attract immigrant investors.

### Today's Situation

In a letter dated June 26, 2013, the U.S. Securities and Exchange Commission Los Angeles Regional Office announced it is conducting an investigation into the El Monte Regional Center along with the El Monte Transit Village project (TV, LLC of Pleasanton, CA). The time period covered in the investigation is from Nov. 1, 2009 to present. They have requested records from or related to TV, LLC and "all entities in which it has or has had a controlling interest, all subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners, partnerships, websites and aliases, code-names or trade or business names used by any of the foregoing: AC Landmarks, LLC; EM Incubator, LP; El Monte Regional Center; Pacifica Manufacturer Direct Business Incubator and the El Monte Transit Village project." Namely this is a case filed against representatives of Jean Lang and John Leung, the managing members of TV, LLC and the El Monte Regional Center.

The investigation aims to discover if investors were taken advantage of and if the project promoters were in compliance with securities laws. Jenny Pei Lin, the majority owner of TV, LLC, is the only person named in the SEC subpoena, although it's intended for the former

developers of the El Monte Regional Center and all documents related to the Transit Village project. TV, LLC had until July 10 to produce the documents listed in the subpoena, but Ken Wong, CEO of GEM/AC Landmarks, requested to push back the date to July 17, which was granted.

Regarding the investors, the first of the two, Han Sung Hye, received I-526 (temporary visa) approval from the USCIS in May 2009. On July 3, 2013, she received a notice indicating USCIS intends to revoke the decision made on her case. In return she has filed a formal complaint with the SEC.

In the meantime, El Monte is moving forward with a scaled down version of the El Monte Transit Village, now called the Gateway project, with new developers, El Monte Deputy City Attorney Dave Gondek said, as reported in the SGV Tribune. ■

*Some of the information in this story was provided by Leo A. Guillen, a business consultant with New Idea Touch in El Monte, CA.*

**After three years of trying to raise funds for the proposed Transit Village, rendering below, only \$1m from foreign investors on behalf of the EB-5 program was raised.**

## SCAG Region: Compass Blueprint Case Study El Monte Transit Village





UNITED STATES OF AMERICA

RECEIPT NUMBER WAC-09-162-50775		CASE TYPE I526 IMMIGRANT PETITION BY ALIEN ENTREPRENEUR
RECEIPT DATE May 18, 2009	PRIORITY DATE May 13, 2009	APPLICANT HAN, SUNG HYE
NOTICE DATE December 15, 2009	PAGE 1 of 1	
DAVID Y. KIM LAW OFFICES OF DAVID Y KIM RE: HAN SUNG HYE 3550 WILSHIRE BLVD STE 640 LOS ANGELES CA 90010		Notice Type: Approval Notice Section: Investor - Target employment area, 203(b)(5)(C)(ii) INA
<p>The above petition has been approved.</p> <p>We have sent it to the Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909. NVC processes all approved immigrant visa petitions that need consular action and also determines which consular post is the appropriate consulate to complete visa processing. The NVC will then forward the approved petition to that consulate.</p> <p>This completes all USCIS action on this petition. If you have any questions about visa issuance, please contact the NVC directly. The telephone number to NVC is (603) 334-0700. Please allow 90 days before contacting the National Visa Center regarding your petition.</p> <p>The NVC will contact the person for whom you are petitioning concerning further immigrant visa processing steps.</p> <p>Please read the back of this form carefully for more information.</p> <p>The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa for admission to the United States, or for an extension, change, or adjustment of status.</p> <p>THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.</p>		



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My Case Status

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Your Current Case Status for Form I526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

Enter your receipt number

WAC0916250775

Check Status

Your Case Status:

Post Decision Activity



Acceptance



Initial Review



Decision



Post Decision Activity

Post Decision Activity

On July 3, 2013, we mailed you a notice indicating we intend to revoke the decision made on your case. That notice will explain in detail what action we intend to take. Please read it carefully when you receive it. If you have not received the notice within 14 days of the date above, please call customer service at 1-800-375-5283 for further assistance. If you move, please use our Change of Address online tool to update your case with your new address.

For approved applications/petitions, post-decision activity may include USCIS sending notification of the approved application/petition to the National Visa Center or the Department of State. For denied applications/petitions, post-decision activity may include the processing of an appeal and/or motions to reopen or reconsider and revocations.

You can register for automatic case status updates by email and text message by [creating an account](#).

To submit a service request for an inquiry for an application please click [e-Request](#).

# RIMS Being Eliminated Due to Budget Cuts

**O**n June 19, 2013, the Bureau of Economic Analysis, U.S. Department of Commerce, announced the elimination of its RIMS II product (Regional Input-Output Modeling System) due to budget cuts. RIMS II provides modeled estimates to the private sector and federal, state and local governments on the impact of a change in economic activity on a specific region's economies. For example, RIMS II was used to estimate the economic impacts of Hurricane Katrina and the Deepwater Horizon Event.

RIMS II is based on an accounting framework called an I-O table. For each industry, an I-O table shows the distribution of the inputs purchased and the outputs

sold. According to the RIMS II Handbook, the Department of Defense uses it to estimate the regional impact of military base closings, and State departments of transportation use it to estimate the regional impacts of airport construction and expansion. In the private sector, analysts, consultants and economic development practitioners use RIMS II to estimate the regional impacts of a variety of projects, such as the development of theme parks and shopping malls.

This is the methodology most used in the EB-5 Investor visa program because on average, given the same level of inputs, it will show more job creation than other models such as IMPLAN. Developers who are looking to attract EB-5 capital will ask the economic impact

economists which models will produce the highest job counts as that will influence how much capital they can raise (each investor's investment must produce 10 U.S. FTE jobs) and RIMS II is often the one that can deliver the highest job creation numbers.

The model has also been in use since the inception of the program so USCIS adjudicators at the EB-5 processing centers that oversee both the Regional Center I-924 and immigrant investor's I-526 and I-829 petitions are familiar with it, so it has many fans in the EB5 visa program.

## Model Issues

RIMS II is not without its critics, however.

"The problem with the input-output model is that it is based on a theory that was outdated 50 years ago, it's results are untestable, and it is widely used to "prove" dramatically unrealistic benefits from dramatically stupid projects," wrote Bill Conerly in a March issue of *Forbes*.

"The model begins with an

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Coun



**Bill Conerly**, Contributor

I connect the dots between the economy and business decisions.

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STRATEGIES | 3/01/2013 @ 2:11PM | 646 views

## Good News from Sequester: End to (Some) Bad Economic Analysis

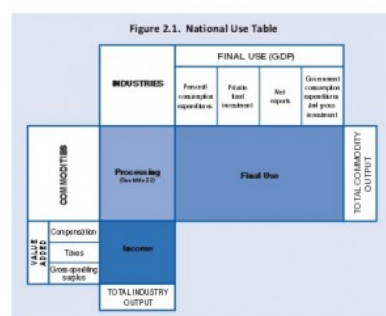
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The sequester is apparently responsible for some really good news: the end of the federal government's Regional Input-Output Modeling System, known to its friends as RIMS II. The end of a government program can be good if the program is bad. The folks who work on RIMS II are good people trying to do good work, but the users of RIMS II are mostly sloppy hired-gun economists and regional analysts, and the results of the program are pretty bad.

RIMS II seemingly answers an important question: if industry X grows in my region, then what impact will there be on industry Y and industry Z, as well as the entire employment and income of the region? Inquiring minds want to know.

The problem with the

The use table. This table shows the goods and services used by each industry and final user (figure 2.1). This table has three sections—a processing section, an income section, and a final-use section.



2

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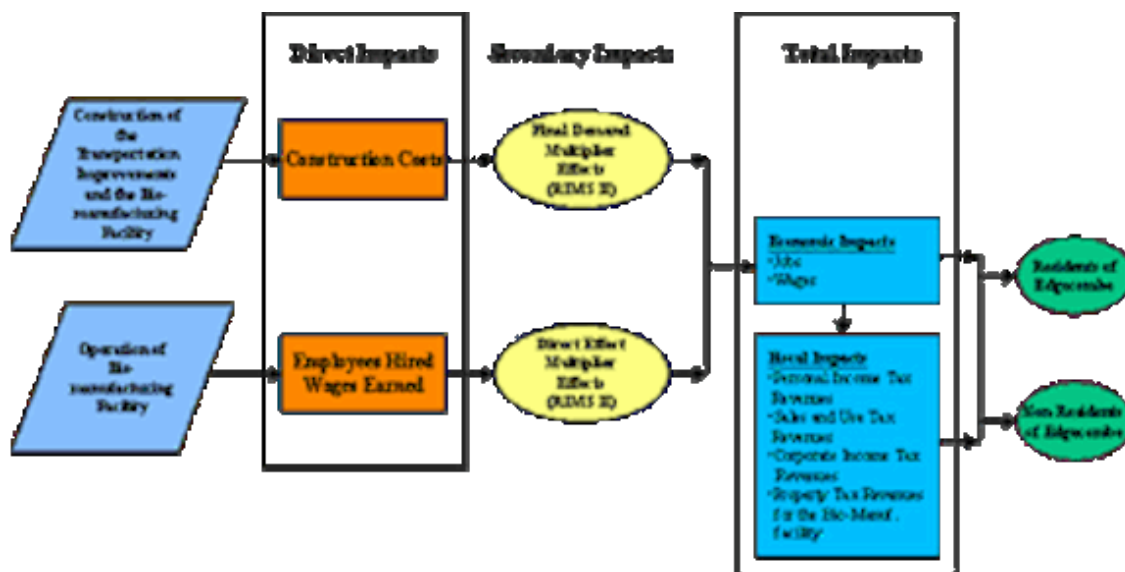
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input-output table, which says that, for example, the steel mill industry uses the output of the iron ore industry, the electric utility industry, as well as labor and some lesser inputs. If there is an increase in steel production, that triggers an increased demand for iron ore, electricity, and labor. Those increases, in turn, trigger increases in the production of the inputs to the iron ore industry, electric utilities, etc. Some of these ripple effects are felt inside the region, others outside. All of these secondary effects feed further secondary effects. Eventually the total impact can be calculated.

"The approach sounds cool, and technically it is. What's wrong, though, is substantial. First, the model assumes no price changes. For instance, if there's an increase in demand for labor, the model assumes that wage rates do not change, and thus the tightening labor market does not impact actual employment changes.

"Second, the input-output model assumes fixed relationships over the time of the forecast horizon. So there is no fracking driving down natural gas prices. There are no new social media companies connecting consumers and businesses in different ways. Books have not been replaced by Kindles, not even in part.

"The third problem is that economic impacts are untestable. They are stated as changes from what the economy would otherwise have done, but that is unknowable. If the model says that a new convention center will add 5,000 jobs in the restaurant sector, you cannot test the result a few years later, because you cannot see what the number of jobs would have been without the convention center," Conerly wrote.

The RIMS II program will continue to accept and process orders, which are fulfilled on a cost-recovery basis, through the end of the fiscal year. ■



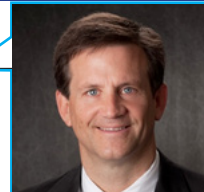
U.S. Department of Commerce  
Economics and Statistics Administration

June 19, 2013

### Impact of Sequestration Reductions on the Availability and Quality of Data from the Bureau of Economic Analysis

BEA understands that all of its analytical products and statistical programs are of high value to public and private sector decision-makers, and thus very careful consideration was given to program reductions in an effort to minimize the impact on data users. Given the reduced funding level, BEA must reduce certain statistical series, but will continue to produce statistics that feed into the estimation of gross domestic product (GDP), statistics required by law, and statistics required for the administration of federal programs. The resulting programmatic reductions are:

**Regional Input-Output Modeling System (RIMS)** - BEA will eliminate its RIMS II product, which currently generates products on demand as events warrant. The RIMS II program will continue to accept and process orders, which are fulfilled on a cost-recovery basis, through the end of the fiscal year. BEA will not build and develop the data needed to update the data set and fulfill orders in future years. RIMS II provides modeled estimates to the private sector and Federal, state, and local governments on the impact of a change in economic activity on a specific region's economies. For example, RIMS II was used to estimate the economic impacts of Hurricane Katrina and the Deepwater Horizon Event.



# Summaries of Administrative Appeals Office

## EB-5 Visa Decisions for 2012

**H**ere are summaries of the 2012 EB-5 Immigrant Investor Visa AAO (Administrative Appeals Office) decisions recently posted by USCIS (United States Citizen & Immigration Service), which can be accessed from and choosing the "Folders" for B7 and K1. A few issues with potentially broad implication, particularly concerning validity of state TEA determinations and counting of indirect construction jobs, appear in these cases, as discussed below.

### Regional Center Applications

Regional center denial affirmed (filed prior to I-924 existence). The applicant in North Carolina suggested but according to the AAO did not prove that it was a non-profit state or county economic development entity operating on behalf of the government. The entity failed to show that any of \$4.3 million available to the



county for economic development was actually available to the regional center applicant for its operating purposes.

The applicant submitted some examples of projects already completed outside the proposed regional

center area as "exemplars" of projects it would pursue, submitted a copy of the RIMS II methodology handbook, and requested an array of 10 or 12 two- or three-digit NAICS codes, but the AAO dismissed those as not relevant, not a good faith effort at providing "verifiable detail" about job creation, and as having been injected into the application after the date of filing

*Note: USCIS normally is forgiving on this point in I-924 applications but brings out that argument*

identifying data deleted to prevent clearly unwarranted invasion of personal privacy  
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship and Immigration Services**

**DATE:** AUG 06 2012 **Office:** CALIFORNIA SERVICE CENTER **FILE:** [REDACTED]

**IN RE:** Applicant: [REDACTED]

**PETITION:** Proposal for Designation as a Regional Center Pursuant to Section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 103-121, 106 Stat. 1874 (1992).

**ON BEHALF OF PETITIONER:**  
SELF-REPRESENTED

**INSTRUCTIONS:**

K1



*as an alternative in case other real reasons for denial might not stick in court.*

The applicant seems to have been laying the foundation for a lawsuit challenging USCIS regulations, which require “verifiable detail” in regional center applications, in light of the subsequently enacted appropriations language requiring only “general predictions.” The AAO stood its ground on the regulations, and it will be interesting to see if the applicant has litigated.

In a similar application in Indiana, an economic development entity requested 12 industries without specific business plans. The AAO analyzed the most specific plan submitted, for a hotel project, and found it lacking in detail and subject to inconsistencies in projecting job creation. It found more vagueness and job creation inconsistencies concerning two bridge construction projects. In discussing the hotel project and a prediction that “construction of the hotel will yield 520 direct and indirect jobs,” the AAO makes a startling statement that:

***“As the business plan does not include any timelines establishing that the construction jobs will last at least two years, the applicant cannot include those jobs.”***

This conclusion, as to the indirect construction jobs, is contrary to the USCIS memo of December 11, 2009, the USCIS Adjudicator’s Field Manual in which it is embodied, and many recent regional center and I-526 approvals, and would undermine quite a few pending projects in the market. We can only hope that the AAO accidentally overlooked the separate treatment of indirect jobs in that broader discussion, perhaps because the applicant’s analysis did not distinguish between the two.

### **I-526 Petitions**

Motion to reopen or reconsider was untimely.

I-526 denial affirmed. Non-TEA, non-RC. The AAO held that:

- a pattern of receiving large, inadequately explained gifts for investment purposes by the petitioner and a convoluted business history and path of funds for the investment;
- a promise to refund the investment if the I-829 is denied is unacceptable [this corresponds to an oblique reference in the USCIS December 11, 2012 memo], and because such a promise must be premised on reserving the funds to honor such promise, it cannot be corrected after the date of filing; and
- the choice to hold the funds in escrow might

mean that the project gets finished without use of the EB-5 funds, eliminating the necessary nexus for approval [no mention of any bridge financing arrangements.

Motion to reopen or reconsider was untimely.

I-526 denial affirmed. Non-TEA, non-RC. The investor made inconsistent claims that she

(a) loaned the money to five different companies outside China that repaid her by paying the proceeds to the NCE and

(b) provided the funds to a friend who arranged the loans to the five entities.

The loans were made a year before the funds were provided to the friend, and there were discrepancies about the amounts that an attorney’s letter could not resolve. Interestingly, the general strategy of moving the funds from her company was not specifically criticized. Only inconsistencies and gaps in documentation were the basis for denial. The project also lacked timeline with milestones to support the projection of job creation.

I-526 denial or revocations (some of both) affirmed. Pages 7 and 10-15 of one of the 17-page decisions are missing, but the other decisions appear to be essentially the same decisions with tiny variations, so the summaries are merged.

### **Case 2, Case 3, Case 4, Case 5**

The investors in one of many joint ventures, organized by a company called Caervision to put TV screens with content into medical offices, was found to have made misrepresentations [giving rise to permanent ground of inadmissibility] about the NCE’s lease of space. Some related entity was alleged to have leased 11,000 square feet of space in Johnstown, Pennsylvania to house the various joint ventures who would sub-lease their respective space. The AAO concluded that only 375 square feet of space had been leased and not even fully furnished, and upon site inspection no meaningful work had gone on, and I-9 documentation about allegedly existing but apparently shared workers had been “altered” to make it appear that certain employees were working for several project entities at the same time.

The parties to the joint venture seem to have been confused with a related corporation, and the tax filings allocate all losses to the joint venture partner, not the investor; thus the at-risk problem. The investor appears

to have claimed regional center affiliation purely by means of location without reference to any agreement with the regional center, so USCIS would consider only direct job creation. USCIS rejected a TEA letter that at time of I-526 filing had been over 1.5 years old based on over 2-year old data. Large and small discrepancies in expenses and financial statements were highlighted.

Apparently on appeal the investor claimed that the business plan had changed to a call center for which only vague plans were laid out, which AAO found to be a material change and generally inadequate requiring denial/revocation. One case added source of funds problem summarized by AAO as follows:

***"The record does not trace the funds transferred by the petitioner's 'close friends' back to her Chinese Citibank debit account. Moreover, the notations for some of the transfers raise concerns about whether these funds were intended for the petitioner's investment."***

I-526 denial affirmed. Non-TEA, non-RC. The investor owned Pau Holdings, LLC, which owned 75% of Pearl Imaging, LLC, which was to operate medical diagnostic imaging facilities without regional center affiliation. The AAO confirmed that the holding company needed to own 100% of the job creating enterprise (without an RC), and the claimed purchase of the remaining 25% after filing was deemed material and too late. The investor failed to show that she had committed the requisite funds to the enterprise, under a factually complex analysis. The AAO held that signing a lease for space with personal funds to back it up does not constitute capital at risk, because the enterprise might generate ongoing income sufficient to make the lease payments. It appeared also that the investor may have purchased

***"The investor appears to have claimed regional center affiliation purely by means of location without reference to any agreement with the regional center..."***

the assets of an ongoing business, so that the jobs involved might not be new.

I-526 denial affirmed. Non-TEA, non-RC. The investor proved that \$5,000 cash was her personal funds, but as to \$1 million+ in inventory transferred from her business in Mexico, the AAO found that she needed to have personally purchased the inventory from her company or otherwise liquidated it before transfer [focusing on a point seemingly missed in one of the cases summarized above], that the self-valuation of equipment was

***"the fact that an area was once an area of high unemployment does not mean that it still is."***

not reliable, that the identities of the transferring and transferee parties were not sufficiently documented, that no transit broker was identified, and that the only premises decipherable for the NCE were her personal apartment not apparently big enough to house the inventory.

I-526 denial affirmed. Non-TEA, non-RC. The investor established perhaps five new employees so far for an existing business purchased, and a 4-page business plan submitted on RFE response was devoid of competitive market assessment to justify projections of future hiring. The AAO refused to consider a new business plan submitted on appeal. The AAO questioned source of funds based on sale of stock that had without explanation increased in value from 3,000 RMB to 150 million RMB in 17 months.

I-526 denial affirmed. Non-RC. Investor first claimed to have purchased the property on which the bank loan of capital was collateralized, but upon USCIS' questioning of her income she claimed that her husband had been given the property as a bonus from an employer whose original support letter and tax filings had made no mention of the property. Also, the investor failed to document and explain how the property had quadrupled in value in two years since acquisition or how the bank had relied on an appraisal dated the day after the loan documents. Also there was a gap in records of bank transfers. In an additional finding that could have significant repercussions for other EB-5 investors, the AAO disregarded a May 18, 2010 TEA designation letter based on 2009 data in an I-526 petition filed on March 25, 2011, stating,

***"[t]he fact that an area was once an area of high unemployment does not mean that it still is"***

Note: Washington state TEA letters do not generally indicate a period during which it is valid. It is unclear whether a state letter explicitly providing for one-year validity would be considered valid by USCIS even after available data has been updated.

I-526 denial affirmed. Non-TEA, non-RC. Investor put \$100,000 into the NCE and showed \$900,000 in her personal bank account, but did not transfer the \$900,000 into the NCE (an existing auto repair and body shop) or into an escrow account or sign a promissory note secured by collateral. Instead, her purchase agreement for the stock required payment by a certain date

***"or such later date as may be mutually agreed to in writing by all Parties"***



The AAO held that the funds were not committed at risk in the NCE under these circumstances. Also the agreement seems to have been susceptible to a reading that it was to replace other capital rather than for expansion of the existing business. The AAO also found several breaks in the path of funds involving the sale of a foreign tourism business and refused to consider new wire transfer evidence submitted on appeal. Finally, the AAO found that the business did not qualify as a "troubled business" for counting preserved jobs. In doing so, the AAO might improperly have compared prior net worth figures to most current year net income figures.

Footnote 2 is worthy of general awareness on troubled business determinations:

***"Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. Where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 18 of Schedule K. See Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/1120s.pdf> [accessed on February 21, 2012] (indicating that Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional deductions shown on its Schedule K for 2007, 2008, 2009, the petitioner's net income is found on Schedule K of its tax returns."***

I-526 denial affirmed. Non-TEA, non-RC. The investor provided funds derived from these assets to multiple private currency exchange dealers, who subsequently invested the funds in the NCE. The AAO questioned the source of these funds as being sufficient in light of living expenses during the period during which they were earned, and it found insufficient evidence of the connection between her capital and the dealers' transfers (i.e., gaps). The AAO in principle refused to consider new evidence of transfers on appeal but nevertheless reviewed the new evidence and found it lacking. The AAO

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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

B7

DATE: AUG 20 2012

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER: [REDACTED]

found the business plan, which initially was to warehouse and distribute pianos but on RFE response was expanded to include importation and sale of eyeglass frames and rental of warehouse space, fatally vague in light of Matter of Ho.

### I-829 Petitions

No I-829 decisions were posted by AAO. This could be because (1) a smaller percentage of I-829 filings are denied, and (2) USCIS is not "certifying" denials to AAO and is accompanying denials with notices to appear in immigration court, thereby removing jurisdiction from AAO.

### Conclusion

AAO continues to require verifiable detail to support regional center indirect job creation projections, detailed business plans for all projects under Matter of Ho, and seamless source and path of funds evidence. AAO's holdings about the duration of TEA designations requires clarification with USCIS, with implications for larger projects that need to subscribe investors across the points at which new data becomes available (usually late Spring). AAO's ruling about construction jobs probably was meant to be focused on direct jobs without awareness of USCIS' different treatment for indirect construction jobs, but USCIS clarification would be helpful to the market.

*Robert C. Divine is the Chairman of the Immigration Group of Baker, Donelson, Bearman, Caldwell, & Berkowitz, P.C., a law firm of 650 lawyers and public policy advisors with offices in 17 cities from Washington, D.C. to Orlando, FL to Houston, TX. ■*

# EB-5 Policy Memorandum

*The purpose of this policy memorandum (PM) is to build upon prior policy guidance for adjudicating EB-5 applications and petitions.*

**O**n May 30, 2013, the USCIS released the EB-5 Policy Memorandum. As stated by the USCIS: "the purpose of this memorandum (PM) is to build upon prior policy guidance for adjudicating EB-5 applicants and petitions. Prior to policy guidance, to the extent it does not conflict with this PM, remains valid unless and until rescinded."

## The Memo

Multiple articles have already been published pointing out the highlights of the memo. Here we concentrate on the comments, thoughts, and reactions of others. Some feel that the memorandum is promising and while others are a little skeptical.

Joe Whalen, an EB-5 consultant and trainer, posted an excellent article regarding the memo and expresses his concerns. In relation to interim or bridge financing on pages 15 and 16 of the memorandum, Whalen writes:

"I would use caution... Please do not let yourself get into a position where USCIS believes that the EB-5 investor shopped around for a successfully completed project to simply 'buy-out.' USCIS still has an eye open for fraud and deception." In relation to material chang-



Joe Whalen

“...I fear that it too will lead investors into being harmed by RCs that try to ‘push it’ beyond reason.”

es, found on pages 22 and 23 of the memo, Whalen also expresses his concern about investors being harmed:

“...I fear that it too will lead investors into being harmed by RCs that try to ‘push it beyond reason. The language in approval notices directing RCs to seek amendments when ‘investment opportunities arise outside of the approved ‘geographic area’ and ‘industry categories’ was just rendered moot and void by this memo. That said, where will the USCIS draw the line in the sand?”

## Areas to Improve

Angelo A. Paparelli, a partner in the Business Immigration Practice Group of Seyfarth Shaw LLP, Los



Angelo Paparelli

Angeles, also shares his comments regarding the memo in his article “Immigration Progress: A Good EB-5 Policy Memo Could Still Be Better.” Angelo states that there is certainly



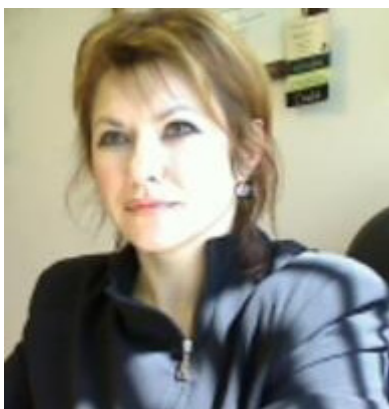
room for improvement when it comes to the EB-5 Policy Memo.

Paparelli also lists his suggestions on how the USCIS could improve the EB-5 Policy memorandum:

- Kill or reincorporate the past
- Republish the policy as a proposed or interim final rule in the Federal Register and allow notice and public comment
- Make sure economists are not EB-5 adjudicators
- Follow existing USCIS regulations in determining when a restructuring or reorganization creates a new EB-5 commercial enterprise
- No EB-5 adjudication without representation
- No unsigned EB-5 adjudications
- It's time for Expedited Adjudication
- It's time for coupling

### Some Improvements Made

While there may be room for improvement in the



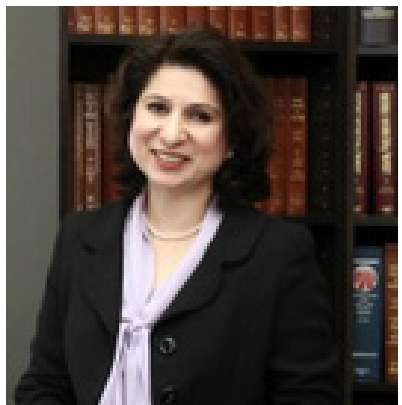
**Kristina Rost**

memo, others are optimistic. Kristina Rost of Maged & Rost PC, specialists in immigration law, shared her thoughts:

"The 5-30-13 Memo is, in my opinion, a solid basic overview of the EB-5 process and it should provide sufficient initial understanding of

the process to USCIS adjudicators. In a way, it is EB-5 101 – and it is comforting to know that the adjudications should be made keeping in mind the core legal principles for immigration through investment."

Mona Shah and Yi Song of Mona Shah & Associates, a



**Mona Shah**

full-service U.S. & U.K. immigration law firm, contributed an analysis of the final EB-5 policy memorandum. They point out that many of the issues in the policy memorandum are not new, just more defined. In their analysis, Shah and Song

“The memo is, in my opinion, a solid, basic overview of the EB-5 process and it should provide sufficient initial understanding of the process of the USCIS adjudicators.”

emphasizes the following areas of the EB-5 program: indirect job creation outside of the regional center, assets acquisition of an existing business, loan model in non-regional EB-5 projects, and project failure after the I-526 approval. In relation to indirect job creation outside of the regional center, they wrote:

"Further to the new Policy Memo, a regional center is no longer required to file a 924 Amendment Petition if the amendment is in the regional center's industries of focus, its geographic boundaries, its business plans, or its economic methodologies. Thus with regard to the job creation section and the regional center amendment section, it is fair to conclude that indirect jobs created outside the geographic boundaries of a regional center can be counted towards the EB-5 job creation even without filing the regional center amendment."

Shah and Song continue their analysis with examples and then continues to go on to discuss the loan model in non-regional center EB-5 projects:

In the last part of their analysis, Shah and Song discuss project failure after the I-526 approval. They note that "the final policy memorandum clarifies that jobs that should be created within a year (reasonable time requirement) of the two-year anniversary of the alien's admission as a conditional permanent resident or adjustment to conditional permanent resident."

To conclude, as Shah and Song have stated in their article, providing clear and practical guidelines on the EB-5 program is an on-going process. The EB-5 Policy Memorandum has made some improvements in the program, but still leaves skepticism. ■



**Yi Song**



# SEC Lifts Ban on General Solicitation

**O**n July 10, 2013, the Securities and Exchange Commission adopted a long-awaited final rule to lift the ban on general solicitation and general advertising for certain private securities offerings. The final rule was adopted pursuant to the Jumpstart Our Business Startups (JOBS) Act passed in April 2012. The lifting of the general solicitation ban will be of particular interest for many different types of companies seeking to raise capital, including startups and private investment funds. The new rules will be effective 60 days after they are published in the Federal Register (or in approximately two months).



These new rules mark a major departure from restrictions on advertising for securities offerings which have been in place for decades. In connection with the new rule, the SEC also proposed several companion rules that, if adopted, will require pre-notification to the SEC and enhanced disclosure on Form D. Following is a summary of these changes:

## **New Rule 506(c) Exemption – Permits General Solicitation**

The new rule amends Rule 506 of Regulation D of the Securities Act of 1933 by adding a new exemption in Rule 506(c), which permits issuers to use general solicitation and general advertising to offer their securities, provided that: (1) all of the actual purchasers of the securities in the offering fall within one of the categories of “accredited investor” under Rule 501(a) of Regulation D, or the issuer reasonably believes all the purchasers fall within one of the accredited investor categories at the time of sale of the securities; and (2) the issuer takes reasonable steps to verify that all the purchasers in the offering are “accredited investors” (as summarized below).

It should be noted that while general advertising is now allowed under Rule 506(c), several existing regulations will continue to apply. First, the antifraud provi-

## **Highlights**

- SEC Now Permits General Solicitation in Private Offerings
- Issuers Must Take Steps to Verify Purchasers’ “Accredited Investor” Status
- Additional Proposed Rules May Impact Usefulness of General Solicitation Exemption

sions of the securities laws will apply to all statements made in any advertisements. Second, general rules applicable to Regulation D offerings, such as integration limits and prohibitions of sales of restricted securities, still apply. Finally, the SEC reaffirmed that use of the new exemption by private investment funds will not disqualify the funds from relying on the exemptions under Sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 if they engage in general solicitation.

## **New Accredited Investor Verification Requirements**

Issuers seeking to take advantage of this new exemption must also take “reasonable steps” to verify that the investors purchasing securities in the offering qualify as accredited investors. The SEC adopted a facts-and-circumstances based approach which makes issuers responsible for objectively determining whether sufficient steps have been taken by the issuer to verify the accredited investor status of its purchasers. Factors suggested by the SEC include the nature of the purchaser and type of accredited investor they claim to be, the amount and type of information the issuer has about the purchaser, and the nature of the offering, such as the manner in which the purchaser was solicited, and the terms of the offering, such as a minimum investment amount.

Nevertheless, in the final rule the SEC provides a non-exclusive list of methods that issuers may use to satisfy the accredited investor verification requirement, including the following:

- Reviewing copies of any IRS form that reports the



income of the purchaser (such as W-2s, 1099s, Schedule K-1s, and Form 1040s), and obtaining a written representation that the purchaser will likely continue to earn the necessary income in the current year;

- Where the purchaser is relying on the net worth category of the accredited investor definition, reviewing the purchaser's current bank statements, brokerage statements, appraisal reports, and credit reports, for example;

- Receiving a written confirmation from a registered broker-dealer, SEC-registered investment adviser, licensed attorney, or CPA that the issuer has taken reasonable steps to verify the purchaser's accredited investor status; and

With regard to a current investor who purchased securities in a prior Rule 506 offering of the issuer and purchases securities in a generally solicited offering under the new rule, obtaining a certification by the investor that he or she continues to qualify as an accredited investor.

### **Traditional Rule 506 Offerings Can Still Be Used**

While the final rule creates a new exemption under Rule 506(c), the existing Rule 506 exemption, which allows an unlimited dollar amount of sales solely to accredited investors and up to 35 non-accredited investors so long as general advertising is not used, remains unchanged. Issuers conducting traditional Rule 506 offerings without the use of general solicitation can continue to conduct offerings in the same manner and will not be subject to the verification rules described above.

### **Rule 144A Amendments**

In connection with the lifting of the general solicitation ban, the SEC also amended Rule 144A of the Securities Act, which governs the resale of securities to large institutional investors known as "qualified institutional buyers" (QIBs). Under the final rule, securities sold by issuers pursuant to Rule 144A can be offered to persons other than QIBs, including by means of general solicitation, provided that sales are made only to persons the issuer and any person acting on behalf of the issuer reasonably believes to be QIBs.

### **Form D Is Changed to Note Use of the New Exemption**

Form D, which is required to be filed with the SEC within 15 days of the first sale of securities in a Rule 506 offering, now contains a new checkbox to note use of the new Rule 506(c) general advertising exemption.

### **When These Rules Are Effective**

The new rules are effective 60 days after publication in the Federal Register.

### **Additional Proposed Private Offering Rules**

Along with the new final rules, the SEC has proposed companion rules to the new general advertising exemption, which may have a substantial effect on the usefulness of the new Rule 506(c). Under the proposed rules, the SEC would require the following:

- Issuers would be required to file Form Ds 15 days in advance and at the conclusion of a generally solicited offering;
- Issuers would be required to provide additional information about the issuer and the generally solicited offering in the Form D (such as website address, types of investors, types of general solicitation used, and accredited investor verification methods, to name a few);
- Issuers who fail to file a Form D would be disqualified from using the Rule 506 exemption;
- Issuers would be required to include certain legends and cautionary disclosures in written general solicitation materials; and
- Issuers would be required to submit general solicitation materials to the SEC.

The proposed rule is subject to a 60-day public comment period. ■

*Jennifer M. Moseley is a former partner in the Atlanta office of Barnes & Thornburg and a member of the firm's Corporate Department, [jmoseley@btlaw.com](mailto:jmoseley@btlaw.com), [www.btlaw.com](http://www.btlaw.com). The company supplied this information.*

*See next page for a posting by John Tishler on this topic.*

“The lifting of the general solicitation ban will be of particular interest for many different types of companies seeking to raise capital, including startups and private investment firms.”

*Here's more on the lifting of the ban as posted by John Tishler, a partner in the Corporate Practice Group of Shepard Mullin:*



## What the SEC's Elimination of the Prohibition on General Solicitation for Rule 506 Offerings means to the EB-5 Community

On July 10, 2013, the SEC adopted the amendments required under the JOBS Act to Rule 506 that would permit issuers to use broad-based marketing methods such as the Internet, social

media, email campaigns, television advertising and seminars open to the general public. These types of methods are referred to in U.S. securities laws as "general solicitation," and they have until now been prohibited in most offerings of securities that are not registered with the SEC. This is an important development to the EB-5 community because EB-5 offerings very often rely on Rule 506 as an exemption from offering registration requirements.

In addition, the SEC amended Rule 506 to disqualify felons and other "bad actors" from being able to rely on Rule 506. This is also an important development for the EB-5 community, which has developed a heightened sensitivity to the potential for fraud in the wake of the Chicago Convention Center project.

[Read more here.](#)

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



EB-5 Regional Center Project analysis, risk ratings and due diligence  
*Inform your client, protect your practice*

## 2013 AREAA National Convention

This year's AREAA National Convention will be held Sept. 19-21 in Los Angeles, CA and is for the real estate community in order to learn about the latest real estate trends, business strategies, market innovation and networking with professionals dedicated to the Asian American homebuyer market and international business. With a theme of "The Future is Now," this year's AREAA National Convention will equip attendees with the latest tools, marketing and business strategies, and connect with influential leaders from the US and around the world and top producers in the housing market. Topics will span the industry, from leveraging the latest technologies to investing in distressed real estate to working with international investors. For more information, visit <http://convention.areaa.org>.



Asian Real Estate Association of America



# Immigration Webinar

## Four-part webinar series from EB-5 experts

**T**he United States is still considered the “land of opportunity” throughout the world and can provide excellent educational and quality of life options for high net worth individuals and their families. Following a decade of turbulence, the last few years have seen numerous positive developments for investors, particularly those investing in designated regional centers, leading to a surge in EB-5 investor petitions and USCIS approval rates.

Congress’ continuous extension of the EB-5 program reiterates the government’s commitment to the program and the recently released USCIS adjudications memorandum, which has already provided welcome clarity in several key areas, appears to be the start of things to come, helping to stabilize and energize this program that now provides an excellent path to permanent residence for foreign investors and entrepreneurs.

To learn more about this exciting and heavily in demand EB-5 investor program, we invite you to participate in a free four-part webinar series that covers the essentials of the EB-5 program, as well as hot topics and setting up Regional Centers, examining immigration risks, due diligence for investors choosing Regional Center projects, and factors to consider when selecting such a project.

### Immigration Webinar EB-5 - \$500,000/\$1 M Investor Green Cards Part 1

» July 16, 2013  
12:30 PM (PT) /  
3:30 PM (ET)



#### Featuring:



**Bernard Wolfsdorf**  
Attorney  
Past National AILA President



**Jor Law**  
Securities Attorney



**Kevin Wright**  
Principal  
Wright Johnson LLC



**Michael Gibson**  
Registered Financial Analyst

### Industry Experts

The series is presented by some of the top experts in the EB-5 arena today, including:

**Bernard Wolfsdorf, Esq.** – founder and managing partner of Wolfsdorf Immigration Law Group and California Certified Specialist who is also the past president of the American Immigration Lawyers Association.

**Michael Gibson** - Managing director of USAdvisors and a Registered Investment Advisor (CRD # 157403). His previous work experience was with Citicorp where he worked in the Capital Markets and Investment Banking divisions.

**Jor Law, Esq.** - Founding shareholder of Homeier & Law, P.C. As part of his regular corporate and securities practice, Jor routinely advises on EB-5 related transactions.

**Kevin Wright** – Principal at

Wright Johnson, considered one of the foremost experts on the EB-5 Immigration Visa program. Wright has assisted many entrepreneurs in receiving Regional Center designation and subsequent approval.

The slides from the first installment of the series are available online and provide an overview of all aspects of EB-5 visas including “hot topics” and both Regional Center investments and direct/stand-alone EB-5s. This was followed in August by critical issues in EB-5 practice, including due diligence. The remaining two installments are:

- **Advanced Part 3 – Setting-up and Operating Regional Centers on September 18, 2013; and**
- **Hot Topics Part 4, including Securities Issues & Challenges, on November 19, 2013.**

Visit [www.wolfsdorf.com/free-webinar/](http://www.wolfsdorf.com/free-webinar/) for more information. ■

# Publicity and EB-5 Offerings

## What on Earth Are You People Doing?

I'm new to the EB-5 world. What I'm seeing here almost makes me want to run screaming back to my old world, where I practiced corporate and securities law (including at the SEC) for 30 years.

How are you getting away with violating the securities laws? I'm seeing violations of Section 5 of the Securities Act all over the place and this has serious implications for the success of the projects that are being funded by EB-5.

### Fundamentals

Let's start with some legal fundamentals:

The term "security" is very broad and includes many types of investment contracts including LLC and LLP interests, in addition to common and preferred shares.

**Sara Hanks**, co-founder and CEO of CrowdCheck, is an attorney with over 30 years of experience in the corporate and securities field. CrowdCheck helps entrepreneurs through the disclosure and due diligence process. Sara's most recent position was General Counsel of the Congressional Oversight Panel, the overseer of the Troubled Asset Relief Program (TARP). Years prior, while at the SEC and as Chief of the Office of International Corporate Finance, she led the team drafting regulations that put into place a new generation of rules governing the capital-raising process.

All offers and sales of securities made using the means of interstate commerce (phones, email, internet, mail) must be registered under the Securities Act or made in compliance with an exemption from registration.

The only exemptions from registration that are available to EB-5 offerings are conditioned on some very specific restrictions on publicity.

The term "offer" is very broadly interpreted by the SEC and includes any attempt to promote the offering or condition the market for the securities offered.

Most EB-5 offerings purport to rely on Regulation D or Regulation S under the Securities Act, or both. Both have strict rules limiting publicity. The conditions to Regulation D include a prohibition on "general solicitation or general advertising" (GSA). Regulation S includes a prohibition on "directed selling efforts" in the United States (DSE). GSA and DSE are not identical but they do overlap. The following activities would all violate both prohibitions:

An interview by a US radio station with the CEO of a company seeking funding in which he talks about the EB-5 program and mentions that his company is seeking funding.

A video interview posted on an information or news site in which the sponsors of a project seeking EB-5 funding talk in detail about the project and discuss the number of jobs to be created by the project.



by Sara Hanks

Postings of available projects on Regional Center websites.

It doesn't matter that only certain people can actually buy the securities. It's the offer that is violating securities law in these cases.

The remedy for a violation of these prohibitions is rescission. This means the entity selling the securities has to offer to buy them back. You can easily imagine a case in which an EB-5 project getting close to full funding fails because it has to refund early investors.

In all of the above cases, there are ways to publicize deals properly. This might include password-protecting information and complying with "safe harbors" for information aimed at overseas markets. But if you aren't doing that, then you may be violating the securities laws. EB-5 offerings don't exist in their own special universe with its own special securities laws. If you sell securities, you must comply with the laws that regulate the sale of securities, including restrictions on publicity. It's as simple as that. ■

Coming in  
October!

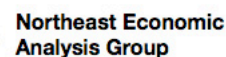
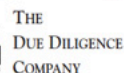
## EB-5 PROJECT DUE DILIGENCE WORKSHOPS



**NEW YORK  
OCTOBER 1**

**AUSTIN  
OCTOBER 14**

**LOS ANGELES  
OCTOBER 29**



**U**SAdvisors will be hosting a series of workshops with several of the leading risk assessment, audit and compliance firms in the U.S. to explain their EB-5 project due diligence process developed for providing broker dealers, financial advisors, developers, Regional Centers and their marketing agents initial risk analysis and ongoing review & audit reports prepared specifically for EB-5 visa investors, their attorneys and advisors.

- The workshops will provide an explanation of the risk evaluation process through the various stages of project development by providing the investors and their advisors background checks and verification of the developer's claims, independent third party assessments of the job creation methodology, TEA designation, development and capital investment risks and other factors necessary to make an informed investment decision.
- Once the initial assessment is complete then the oversight process continues through ongoing project development monitoring and finally the operations phase by providing the investor's with periodic audits, assessments and reviews of the financial conditions of the asset until the exit is complete and the investor's capital is returned.

The purpose of the workshop is to educate the industry stakeholders on the value created by offering the EB-5 visa investors an independent process to verify the claims being presented in the offering documents which should facilitate the capital raise by providing for an independent, transparent, open and accountable process designed to address the immigration (equity at risk, job creation) and investment (return of capital) concerns typical for all EB-5 investors, their attorneys & advisors.

For more information and to reserve a seat, please contact [michael@usadvisors.org](mailto:michael@usadvisors.org). ■