

**David M. Morris, Esq. interviewed for Washington Post (Sunday Edition, Business Section) article on EB-5 "Immigrant investor visa" program (January 10, 2010). For more information on EB-5 program contact David via e-mail at [Morris@VisaLawGroup.com](mailto:Morris@VisaLawGroup.com)**

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### Immigrants invest in U.S. businesses in exchange for visas

By N.C. Aizenman  
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The number of foreigners willing to invest \$500,000 to \$1 million in a U.S. business in exchange for a visa roughly tripled in the past fiscal year, as dozens of cash-strapped enterprises and local governments scrambled to attract wealthy foreign backers through a previously obscure provision of immigration law.

Under the EB-5 visa program, immigrants who can demonstrate that their investment created or preserved at least 10 U.S. jobs after two years are granted legal permanent residency along with their spouses and children.

Although immigrants are allowed to establish businesses under the program, most prefer to invest in "regional centers" -- public or private enterprises that are certified by the government to receive funds from EB-5 investors and that can count jobs indirectly created by the investment toward the 10 required.

The minimum outlay mandated is \$1 million, but immigrants can reduce that to \$500,000 by investing in a regional center or establishing businesses in areas designated as economically disadvantaged.

The program was established in 1990, but potential investors and businesses were often dissuaded by the U.S. government's slow and inconsistent administration of the complex rules. In the past year, however, a gradual streamlining of procedures coincided with the recession and credit crunch to dramatically boost interest in the program.

In a matter of months, more than 50 private and public enterprises were certified as regional centers, increasing the total from 23 to 74. Three are in the Washington area.

With so many more investment opportunities to choose from, the number of immigrants (including investors and their immediate family members) who obtained EB-5 visas jumped from 1,443 in fiscal 2008 to 4,218 in the 2009 fiscal year that ended Sept. 30, according to the State Department.

Most were granted to people from Asia, particularly China and South Korea. Several scholars said they expect the number to double again this year.

"What happens with programs like this is that sometimes, all of a sudden they get discovered, and then intermediaries begin to really promote them both here and internationally," said Demetrios Papademetriou,

president of the Migration Policy Institute, a Washington think tank that recently released a report about the trend.

Statistics on the total invested through the EB-5 program are not available, but the capital infusion has been a boon to Washington area businesses. The Capitol Area Regional Center, a real estate investment fund based in the District, has been working to raise a projected \$250 million from immigrant investors for use in Washington area construction projects.

Perhaps the greatest potential beneficiaries are nonprofit agencies such as the District's Anacostia Economic Development Corp., which was approved as a regional center in June. Over the next three years, the group hopes to raise \$50 million from immigrant investors to develop real estate projects and small businesses in wards 7 and 8 -- a princely sum compared with the \$2 million in private capital it raised for its last major building project in Anacostia.

"Normally, to get equity capital to these areas is almost impossible," said Michael Wallach, chief operating officer of the corporation. "These two wards have the highest unemployment rate in the city and the lowest incomes."

But because the primary motivation of the immigrant investors whom Wallach is wooing is to create enough jobs to meet the visa requirement rather than to maximize the return on their investment, they might prove less skittish.

### **'It was worth it to me'**

Program participant Eric Canal-Forgues, a law professor and businessman from France, is a case in point. In 2007, he invested \$500,000 in a regional center that funded construction of Comcast's headquarters in Philadelphia.

He said it is unlikely that he will get more than a 1 percent return by the five-year point at which he will be allowed to withdraw his money. That will barely cover the roughly \$50,000 in administrative costs of his investment, let alone the loss of value because of inflation.

But Canal-Forgues, 47, who has moved with his wife and two children to Miami, said he has no regrets. "I knew the conditions going in, and it was worth it to me," he said. He said that Miami was attractive because of its financial opportunities and that he plans to open a franchise of children's clothing stores.

But more than anything else, he said, "we really wanted our children to be raised in a dual culture, French and American, especially because I think the educational system at the university level is much stronger here than in France."

Statistics suggest that many EB-5 applicants might also find the program appealing because it is considerably speedier than other options: Nearly 70 percent of immigrants granted investor visas in fiscal 2009 were from China or South Korea, countries whose nationals face decade-long waits for family-reunification visas because of quotas on the annual number allowed in from any one country.

### **Concerns about fraud**

That immigrant investors are more focused on obtaining visas than maximizing profits -- combined with the government's limited capacity for oversight -- has caused even some avid proponents of the EB-5 program to worry that a profusion of fraudulent or ill-advised ventures might soon flourish alongside legitimate ones.

"The thing that concerns me most is that some fly-by-night [operation] will lose a large group of investors' money, and it will poison the well for the rest of us," said David Morris, founder of EB-5 America, a Washington regional center that invested \$20 million to refurbish the Sugarbush ski resort in Vermont in past years and is now raising money for construction projects in the District.

Yet Morris also notes that some of the stricter rules of the EB-5 program -- including the rigid timeline by which the job creation requirement must be met -- do not always mesh with the realities of the business world, with consequences for both immigrant investors and potential business ventures.

For instance one of Morris's clients, Rodrigo Martinez, a Mexican immigrant who lives in Arlington County, was initially keen to invest in a project to renovate the historic O Street Market at Seventh and O streets NW. "The fact that you are helping to have a positive effect on the community that you're joining, I really liked that idea," said Martinez, 27.

But fearing that construction delays would prevent that project from creating sufficient jobs in time, Martinez, who attended law school in the United States and now works as a business consultant, switched his money last year to the Sugarbush resort instead.

Supporters of the EB-5 program also complain that the government's review process for approving potential regional centers is still too slow, especially at a time when a similar Canadian visa program is attracting three times as many immigrant investors.

Stephen Yale-Loehr, a professor at Cornell University's law school and executive director of a trade association of regional centers, said the number of EB-5 visas being granted falls well short of the maximum 10,000 allowed each year.

"There's a lot more that we could be doing to promote the EB-5 program so that it can achieve its true potential in this economic recession," he said.

### **Bipartisan support**

Powerful members of Congress on both sides of the aisle agree. In a rare bipartisan convergence on an immigration issue, Sens. Patrick J. Leahy (D-Vt.), chairman of the Judiciary Committee, and Jeff Sessions (R-Ala.), the ranking member, recently joined forces in an effort to make the regional centers permanent. (The centers were established under a pilot program that has been extended several times since the 1990s).

Leahy said he was impressed by the millions of dollars that EB-5 visa holders have invested in ski resorts such as Jay Peak and other projects in the distressed northeastern region of Vermont.

Because of legislative wrangling unrelated to the EB-5 program, Leahy had to settle for a three-year extension in the fiscal 2010 Homeland Security Appropriations bill adopted in the fall.

Still, Leahy predicted that not only will all aspects of the program soon be made permanent but also that the annual number of visas might be increased.

"Once it's permanent, I think we're really going to see the true value of this," he said. "At a time when we're seeing so many of our jobs exported out of the country, this creates jobs in the United States."

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