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"EB-5 Regional Center Applications"

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Topics of Discussion

- EB-5 regional centers: history
- Regional center applications: nuts and bolts
- Possible legislative changes

EB-5 Program History

- EB-5 category created in 1990
- 10,000 EB-5 green cards available each year
- 3,000 set aside for regional centers (RCs)

EB-5 Program History Cont'd

- Slow start; Congress added regional center pilot program in 1993
- Program started to grow in mid-1990s
- INS restricted program in 1998 with 4 precedent decisions
- EB-5 program has adapted and now on increase, especially through regional centers

EB-5 Regional Centers

- Created to encourage investments in U.S.
- EB-5 regional centers get to count both direct and indirect job creation; petitions filed outside of regional centers can only count direct jobs
- Over 20 regional centers approved so far; about another 20 regional center applications are pending

Basic RC Application Requirements

- Regulations at 8 C.F.R. § 204.6(m)(3) are very general:
 - 1. Must specify geographic area
 - 2. Show how jobs will be created (econometric analysis)
 - 3. Marketing information
- USCIS has added to these requirements over the years

Geographic Area

- Proposed regional center can be as small as part of a city or as large as a state
- USCIS does not like to approve a single regional center application that would cover more than one state
- Application should include:
 - Standard Metropolitan Statistical Areas
 - Rural Areas
 - Targeted Employment Areas as determined by the Governor or designee
 - Census Tracts
 - Unemployment Rates by Census Tract

Economic Activities

- Application can include more than one economic activity
- Examples of approved activities: ski resorts, real estate developments, ethanol plants, dairy farming
- Pros and cons of including more than one economic activity in regional center application

Econometric Analysis

- RC application must include econometric analysis for each economic activity and each geographic area
- The more economic activities you propose and the bigger the geographic area, the more expensive the report will be
- Common econometric models: IMPLAN or RIMS II; USCIS will also consider others

For more EB-5 resources, go to:

<http://www.millermayer.com/resources/immigrant/eb5cont.html>

Econometric Analysis Cont'd

- Econometric report applies model to sample project in specific geographic area
- E.g., how many jobs will be created directly and indirectly by 100,000 sq. ft. shopping center in downtown Newark, NJ
- This allows USCIS to see how general model will be applied to specific projects after regional center is approved
- Sample project can be generic, since RC application may not be approved for a year or more

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Corporate Documents

- RC application must include draft corporate documents such as a subscription agreement, an operating agreement, escrow agreements, and a private placement memorandum that would show exactly what foreign investors would receive before they invested in the project.
- The USCIS wants such model corporate documents to make sure there are no provisions in the documents that would violate EB-5 program requirements.

For more EB-5 resources, go to:

<http://www.millermayer.com/resources/immigrant/eb5cont.html>

Lawful Source of Funds

- RC application must show how potential investors will be vetted so that RC will know that their money was legally obtained
- RC application must explain how it will conduct its due diligence
- Can hire an outside company that regularly does this, or do it itself

For more EB-5 resources, go to:

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Marketing

- RC application must show how RC will promote and market its projects after approval
- RC application should include a marketing budget for first year of operations
- Make sure that all marketing complies with federal, state and foreign securities law restrictions on sales of securities

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<http://www.millermayer.com/resources/immigrant/eb5cont.html>

RC Administration

- RC application must show how regional center will be administered.
- The USCIS sent a letter to the Milwaukee regional center in June 2007 specifying administrative and reporting requirements for regional centers. RC application should follow guidelines set in that letter
- See “USCIS Increases Oversight of EB-5 Regional Centers” at

http://www.millermayer.com/new/eb5_reg_ctr.html

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RC Application Timetable

- USCIS often takes a year or longer to decide regional center applications
- USCIS usually sends a request for more evidence
- Political pressure does not seem to speed up the application process significantly

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RC Applications: Other Factors

- Total cost: Can be a total of \$50,000-75,000, including the economist's fees, the corporate attorney's fees, and immigration legal fees
- Pros and cons of working with a governmental agency

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RC Applications: Post-Approval

- Lots to do after application approved
- Importance of systems

Possible Legislative Changes

- RC pilot program sunsets on September 30, 2008 – efforts to reauthorize
- Overall goal – IIUSA (Invest In the USA Association): lobbying to retain current numbers and to improve EB-5 program (e.g., make Regional Center pilot program permanent, concurrent filing, premium processing)

Immigrant Investors Association (IIA) d/b/a Invest In the USA (IIUSA) is a 501(c)(6) trade association dedicated to promoting the EB-5 program: www.iiusa.org

Individual vs. Regional Center (RC) Investments

- Main difference: Job creation – direct vs. indirect
- RC does not automatically mean \$500,000; RC project has to be in a TEA
- Business model pre-approved by USCIS
- More than 20 RCs approved so far; 70% of EB-5 investors get green cards through RCs
- Main issue for investor: source of funds (Carolyn to discuss)
- Particular representation issues in RCs (Carolyn to discuss)

Article co-authored by Steve Yale-Loehr and Lindsay Schoonmaker:

www.millermayer.com/new/eb5_reg_ctr.html - "USCIS Increases Oversight of EB-5 Regional Centers"

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“EB-5 Immigrant Investors: Filing the Regional Center- based I-526”

**Carolyn S. Lee, Partner
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Topics of Discussion

- General procedure
- Difference between individual/standard EB-5 petitions and RC petitions
- Source of funds
- Common misperceptions
- Due diligence

Article Co-authored by Carolyn S. Lee and Steve Yale-Loehr:

www.millermayer.com/resources/immigrant/eb5cont.html - “EB-5 Immigrant Investors”

General Procedure

- File I-526 with either TSC or CSC
- As of Oct 1, 2008, CSC
- RC proposals to CSC perhaps by end of 2008
- Processing times vary: Avg 4-6 months
- After approval file I-485 or CP for CPR.
- Within 90 days of 2 yr anniversary of CPR admission file I-829.
- Can appeal I-526 denial; no appeal from I-829 denial

Article Co-authored by Carolyn S. Lee and Steve Yale-Loehr:

www.millermayer.com/resources/immigrant/eb5cont.html - "EB-5 Immigrant Investors"

Form I-526

Proposed changes in the next version

- RC info
- Dependents' info
- Filing form for RC proposals with fee'd in process?

Article Co-authored by Carolyn S. Lee and Steve Yale-Loehr:

www.millermayer.com/resources/immigrant/eb5cont.html - "EB-5 Immigrant Investors"

Differences in RC-based I-526

- RC is a party
- Initial due diligence, intake procedures (ex: questionnaires, PoAs, Subscription Agmnts, Escrow)
- **I-526**: comprehensive business plan, project documents job creation documents
- **I-829**: sustained investment; job creation
- RFE on business, RC drafts global reply
- **Econometrics** vs. business plan/I-9s
- Investor must provide SOF

Article Co-authored by Carolyn S. Lee and Steve Yale-Loehr:

www.millermayer.com/resources/immigrant/eb5cont.html - "EB-5 Immigrant Investors"

Source of Funds: Common Sources and Issues

FTIRCP: “Identifiable business source”

- **Earned income** – can be straightforward, but document how earned, tax returns.
- **Gift** – issue: documenting donor’s lawful source of funds; applicable taxes paid on gift
- **Old money** – issue documenting history of funds
- **Investor vs. investor’s company** – issue: observe the corporate veil: individual petitioner must make investment
- **Trusts** – existence, beneficiary, net worth, instruction, authority, amount, where deposited.

Article Co authored by Steve Yale-Loehr and Christopher Repole:

www.millermayer.com/EB%NYLJ0405.html – “Show me the Money: Proving Lawful Source of Funds for EB-5 Immigrant Investors”

Common Misperceptions

- *"It's RC so \$500,000 vs. \$1M."*
- *"It's CIS-approved so it means the project-side will be approved."*
- *"As a legal advisor, I don't need to know about economic methodology."*
- *"It's easy."*

Due Diligence

- What is the basic business model (ex: loan to businesses; equity for acquiring property)
- How many investors have had their I-526s approved?
- How many denied?
- RFEs – if so on what issues; when; how resolved?
- What economic methodology do you use to calculate total impacts?

Article Authored by Carolyn S. Lee: www.millermayer.com/new/eb5ethics.html -
“Ethical and Practical Considerations in EB-5 Representation”

Due Diligence cont'd

- How many I-829s have been filed through your Regional Center?
- Any I-829 denials/RFEs?
- What's your mechanism for ensuring that the required number of jobs is created?
- What documents will you provide for the I-829?

Questions?

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