THE U.S. IMMIGRANT INVESTOR PROGRAM: NEW AMERICAN INVESTORS MAKING A DIFFERENCE IN THE ECONOMY

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AMERICAN IMMIGRATION COUNCIL

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EXECUTIVE SUMMARY

The Immigrant Investor Program, also known as "EB-5," has become an increasingly important source of investment for development projects in the United States, attracting billions of dollars to the U.S. economy and creating tens of thousands of jobs. However, the program is unlike any other managed by U.S. Citizenship and Immigration Services (USCIS) in that it is the only visa program whose stated purpose is to create jobs and growth. This mandate creates special challenges and opportunities.

This report discusses how the EB-5 program works, how it has evolved, the problems it has faced, the benefits it has provided, and its future as an important source of economic growth. Through interviews with industry experts and examples of successful models for managing and structuring regional centers and their projects we hope to foster a productive discussion of best practices in the regulation and management of the program and its benefits.

- The history of the EB-5 Immigrant Investor Program dates to 1990 when it was created to stimulate job growth and capital investment. It is the only visa program for investors that leads to permanent residence. An underused program in its earlier years, recently it has grown dramatically, contributing $2.6 billion to GDP, supporting 33 thousand jobs, and generating $346 million in federal tax revenue between 2010 and 2011.[1]
- The program requires that applicants invest $1 million (or $500,000 if the investment is in a rural or high-unemployment area) and create at least 10 jobs. Foreign investors can invest directly in a job-creating business or through "regional centers" designed to promote economic growth in designated areas. As of November 1, 2013, USCIS has approved approximately 400 regional centers,[2] which have become the predominant vehicle for EB-5 investment.
- The EB-5 program is complex and initially suffered from lax oversight. Over the years, USCIS has tightened requirements for establishing the legitimacy of investments, the sources of investment funds, and how funds may be used.[3] Funds must now be "at risk," a return on investment cannot be guaranteed, and all required funds must be invested into the job-creating enterprise.[4] USCIS has centralized processing in Washington, DC and hired experts to oversee specialized aspects such as economics, financial transactions, fraud, and national security. [5]
- Regional centers in Vermont, California, and Pennsylvania provide examples of how economic growth can be promoted successfully through partnerships with state and local agencies. Regional centers may benefit from cooperation with economic development agencies that have expertise in identifying appropriate projects and tracking job creation.[6] The involvement of state and non-profit agencies may also encourage more objective analysis of proposed projects and a focus on higher-quality, long-term economic development.
- The EB-5 program is an effective tool for economic development, attracting, at minimum, $5 billion in direct investment and 85,500 directly-created full-time jobs,[7] principally during the later years of the program's history. In Vermont and Pennsylvania EB-5 became an important alternative source of financing during the financial crisis, providing "patient capital" at low-interest rates when conventional credit sources dried up. In Vermont, it promotes economic diversification and modernization as part of a long-term development plan. In Washington, DC it is creating nearly two thousand jobs in the most economically depressed areas of the city.
- The EB-5 program has become a more reliable manner for foreign investors to obtain U.S. residency as application approval rates have improved. As USICS has clarified legal requirements initial application approval rates have improved from 53% in 2005 to 79% in 2012.[8] The rates of return on investment for the investors remain modest, under 5% for the development projects cited in this report.

- As the EB-5 program continues to grow, legislative reform is needed to strengthen, expand, and permanently authorize what remains a provisional program that expires in 2015.[9] Proposed reforms, like those in the 2013 Senate immigration bill, should make the program permanent, further improve fraud prevention and oversight, and ensure that foreign investors can continue to contribute to jobs and growth in their new adopted country.

INTRODUCTION

The EB-5 Immigrant Investor Program was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The program allows foreign investors to obtain permanent residency in the United States by investing at least half a million to a million dollars in the United States, frequently in economically disadvantaged areas. Although it is still not permanent and requires periodic reauthorization by Congress, the EB-5 investor program has created tens of thousands of American jobs and attracted more than $1 billion in investment in communities across the United States since 2006.[10]

However, a 2005 study by the Government Accountability Office found only a fraction of the 10,000 visas allocated annually to the program were being issued, due primarily to the long and complex application process and changes in financial requirements.[11] Denial rates for investor petitions were also very high. In response, U.S. Citizenship and Immigration Services (USCIS) created an Investor and Regional Center Unit to increase oversight and coordination[12] and issued new draft recommendations designed to accelerate processing and increase efficiency.[13] Since 2005, approval rates have improved: the denial rate for petitions to remove conditions on permanent residency has dropped from 38% in 2005 to 6% in 2012, greatly improving the odds of success and the reliability of the program as a vehicle for investors to obtain residency.[14]

EB-5 investor program has created tens of thousands of American jobs and attracted more than $1 billion in investment in communities across the United States since 2006.

Partly as a result of these reforms and partly in response to the tight financial markets created by the recession, the popularity of the EB-5 program as a vehicle for raising capital has increased dramatically. The number of EB-5 visas issued to foreign investors increased from a low of 64 in 2003 to more than 1,300 in 2008, according to a 2010 government-commissioned study by ICF International.[15] Since 2008, in response to the recession and financial crisis, the usage of the program has grown further. The number of visas issued to investors in regional centers, economic entities that manage the vast majority of investment projects using the program, reached 6,514 in 2012, according to a privately-commissioned peer-reviewed study released by the Association to Invest In USA (IIUSA) in 2013.[16] A total of 6,627 visas were issued in 2012, including non-regional center direct-investment projects.[17]

Table 1. IIUSA Economic Impact Study of All EB-5 Spending, 2010-2011 (2011 dollars reported)

Impact Type[18]	Jobs Supported	Contribution to GDP	Tax Revenue	
			Federal	State/Local
Direct Effect	14,347.1	$1,005,527,372	$142,727,764	$71,557,335
Indirect Effect	7,277.4	$683,142,214	$86,769,617	$50,797,702
Induced Effect	11,723.0	$962,380,800	$117,292,930	$96,082,826
Total Effect	33,347.5	$2,651,050,387	$346,790,317	$218,437,866

Source: MiG, Inc., *Economic Impacts of the EB-5 Immigration Program 2010-2011: An Economic Development Program for the Twenty-First Century,* June 7, 2013.

As use of the EB-5 program has increased, its economic impact has grown. According to the ICF study, it added an estimated $700 million (in 2009 dollars) to U.S. GDP, or an average of $117 million per year, from 2001 to 2006.[19] These investments generated or saved an estimated 12,000 jobs between 2001 and 2006, or approximately 2,000 annually.[20] The 2013 study from IIUSA found that the program and associated spending supported more than 33 thousand jobs and contributed over $2.6 billion to GDP between 2010 and 2011, while generating over three hundred million dollars in federal tax revenue[21] (Table 1). A report from the Brookings Institution earlier this year estimates that the program has created 85,500 direct full-time jobs and attracted approximately $5 billion in direct investment since its creation.[22]

Given the growth of the EB-5 program and interest in its development, this paper examines in greater detail the opportunities and challenges of this unique visa program. The following discussion and analysis of the use of the regional center model is based on in-depth interviews with the representatives of established regional centers in Vermont, Pennsylvania, California, and Washington, DC; a non-profit economic development agency in Philadelphia; and the Governor of Pennsylvania. Their observations offer insight into best practices and the challenges of balancing the needs of investors, development projects, and local communities.

RISE OF THE EB-5 PROGRAM: THE BASICS

The EB-5 program is currently the only visa program designed to allow foreign investors to gain permanent residence (a "green card") in the United States. It requires a minimum investment of $1 million, or $500,000, if the investment is in a rural or targeted high unemployment area where unemployment is 150% of the national average. The investment must also result in the creation of at least 10 jobs. If the investor's initial application is approved, the investor receives conditional residence in the United States. After two years, the investor can apply to have the conditions removed and have their conditional residency made permanent, but only if the investment has resulted in the creation of a minimum of 10 jobs as required.

To qualify for the EB-5 program, immigrants can invest directly in a job-creating business, or can invest through regional centers approved by USCIS to promote economic growth in designated areas. A regional center is an economic entity, public or private, that promotes economic growth, regional productivity, job creation, and capital investment. An official "Regional Center" designation from USCIS requires approval of a proposal showing how the center will promote economic growth in a geographical region within the United States.[23] Although the designation of regional centers does not imply government endorsement, investments through regional centers can take advantage of a more expansive concept of job creation, including both "indirect" and "direct" jobs, in order to qualify the applicant for the visa.[24]

Regional centers are multiplying and have become the predominant vehicle for EB-5 investment. As of November 1, 2013, USCIS has approved approximately 400 regional centers.[25] Though the designation of a regional center does not imply endorsement by the federal government of any investment or eliminate or reduce risk, established regional centers can serve an important role by vetting investors and investment projects to ensure high-quality, long-term job creation. The Vermont Regional Center, which is owned, operated, and managed by the state of Vermont, provides an example how partnership with the state can improve accountability, transparency, and economic growth. Other regional centers such as CanAm Enterprises, CMB Regional Centers, and the Washington DC Regional Center benefit from partnerships with non-profit economic development organizations whose mission is to create sustained, quality economic growth in targeted areas.

The regional center program continues to grow in popularity and now the vast majority of investment in the EB-5 program is handled by regional centers. We will examine regional centers in Vermont, Pennsylvania, California, and Washington, DC and how they create economic growth and balance the needs of investors, development projects, and local communities.

EARLY CHALLENGES AND SUBSEQUENT REFORMS TO THE PROGRAM

The focus of the EB-5 investor program must remain on job creation and economic development and, like all visa programs, it must be subject to meaningful and diligent oversight. However, the EB-5 program is the most complex program that USCIS oversees and is unique in that it involves the review of business plans and economic models that are not normally part of the agency's expertise. Early in the program's history, few rules existed governing how investment funds were to be spent, what the geographic limits of the investment should be, or whether returns on investments could be guaranteed, among other issues. Over the years, USCIS has tightened requirements and overhauled processes in an effort to address the unique regulatory demands of the program.

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The lax regulatory framework and the discovery of fraudulent investment schemes[26] early in the history of the EB-5 program led to changes in the late 1990s that tightened the requirements for establishing the legitimacy of proposed investments, the sources of investment funds, and how the funds may be used.[27] Now, funds invested must be "at risk," a return on investment cannot be guaranteed, and all of the required funds must be invested into the job-creating enterprise.[28] More recently USCIS has made an effort to centralize operations and to obtain the expertise needed to oversee the specialized aspects of the program.[29] The adjudication of petitions has been centralized in Washington, DC and specialists have been hired in economics, financial transactions, and fraud and national security, while background checks of applicants have been expanded to include regional center businesses and executives, in addition to the investors.[30] In May 2013, the agency issued a memorandum on adjudications policy in an effort to clarify financial and job creation requirements, among other issues.[31]

John Barrett, an economist with Performance Economics, LLC, believes the recent overhaul of the immigration agency's processing of EB-5 cases has been necessary to provide the technical expertise needed to properly manage the program and to improve oversight, consistency, and efficiency. "About 3 years ago, the EB-5 programs were like the Wild West, people were submitting projects with economic analysis that was dubious. They had very few economists and the staff was overwhelmed," says Barrett. In addition, USCIS did not have the expertise to deal with complex securities issues that these projects involved. "There are very strict securities rules about who can raise the money…and these issues were being ignored because they didn't have the staff. Now they have the economists and securities lawyers on staff to cut back on fraud and they have succeeded in sniffing out high-profile fraud cases."

The additional manpower and expertise at the agency has led to increased scrutiny of proposed EB-5 investment projects. In fact, scrutiny may have become excessive, according to Barrett. "Now it's like USICS is doing the due diligence for the investor. But at some point it must be the investor who should be responsible for reading the business plan. USICS should not be requiring that the projects be risk free… In 2011 you could put together a business plan that is almost skeletal, not any more. They want to see an analysis of the local market, with a realistic forecast of your competition, and how the increase in supply will affect prices. Previously you could just use historical prices. Now business plans need to be much more solid."

Requiring investors to have their own counsel, separate from their immigration counsel, could also help ensure investment projects are properly scrutinized. Overseas consultants who promote EB-5 investments can cause problems if investors don't have advocates defending their interests, according to Patrick Hogan, President of CMB Regional Centers in California. "The problems are with the unscrupulous overseas consultants who charge the investors too much and put them in crappy programs," says Hogan. "You would also have less failures if investors were required to have their own counsel. [At CMB] [w]e require that there is a wall between us and the investor. We want them to have their own advocate."

While the scrutiny of regional centers and their projects increases, the program's efficiency, flexibility, and consistency must also improve if it is to remain a reliable and effective source of investment funds. The consolidation of program processing in Washington, DC may be helping to improve efficiency. According to Barrett, initial applications for regional center certification used to take 12 to 15 months, while the most recent reports says they now take 4 and a half months. The process has also been made more flexible so that regional centers can more rapidly expand their geographical area and the industries they participate in. Excessive processing times had been the leading complaint by investors and regional centers, and these improvements have been important to allow projects to respond to the real-world needs of the market.

Although the policy guidance issued in May 2013 helped to establish more consistent adjudication standards, there remains more to be done. For instance, EB-5 investors, regional centers, and their representatives seek clearer guidance on the calculation of indirect job creation, such as jobs created by tenants in buildings made possible through EB-5 investments. USCIS has ruled inconsistently on whether and how to calculate the impact of such jobs and how much to credit investors for making those positions possible. Barrett argues the agency can establish a clear and reasonable standard for assessing tenant job creation. "The 2013 memo put something in writing that projects can depend on, but USCIS still does too much ad hoc policy making," says Barrett. "They should have a stakeholder meeting so we can talk and come up with reasonable rules for getting credit for tenant jobs, for example. We need metrics that we can point to, standards should be consistent... USCIS should make rules and abide by them."

MODELS OF SUCCESS: STATE AND NON-PROFIT DEVELOPMENT AGENCY INVOLVEMENT

The way that regional centers are managed, who they collaborate with, and how they structure their loans can impact the EB-5 program's effectiveness in fostering high-quality economic growth. Regional centers should be designed to emphasize the pursuit of long-term goals and to avoid short-term profits, undue risk-taking, and conflicts of interest. State governments and local non-profit development agencies are well-suited to contribute to these goals because they have an interest in the long-term success of local economies and the experience and expertise to identify appropriate development opportunities.

State Management and Oversight in Vermont

The Vermont EB-5 immigrant investor visa program has established itself as an example of a state-managed EB-5 investment program that separates the regional center from its investment projects in order to maintain strict oversight and focus on long-term economic goals. Established in 1997, the program is one of the oldest immigrant investor programs and benefits from its backing by the state of Vermont. According to Brent Raymond, Director of the Vermont EB-5 program, the Vermont program is unique in that it is the only regional center that is state government-owned, operated, and managed, ensuring that the projects in the program are subject to strict state oversight.

"Most other regional centers are both the regional centers and the investment project, there's no separation," says Raymond. "The regional centers charge for approval of projects, so there's a financial incentive to accept. Vermont is a public/private partnership, but we are separate and can more objectively assess and ensure compliance…We approved less than 5% of projects. We make sure they have the in-house expertise or outside consultants to ensure that they can properly process the forms [and] respond to investor inquires. We also examine the fundamentals of the project; even if the business plan is very good and projections on job creation and revenue are realistic, we look for long-term commitment to the state and to the state economy…The main purpose of this program is to create good jobs and economic development in Vermont...We do not want short-term profit at the expense of long-term success."

Development Agency Partnerships in Pennsylvania

Regional centers that are not state operated can improve the quality of investment projects and local job creation by partnering with non-profit state and local development agencies with expertise in economic development.[33] CanAm Enterprises, LLC administers regional centers in Pennsylvania in partnership with non-profits like the Philadelphia Industrial Development Corporation (PIDC). "They are the best source of job-creating business, because that's their mission too," says Tom Rosenfeld, President and CEO of CanAm. "We work with the states and the cities because they do their due diligence and do not want to be involved with problematic projects. We will not do start-ups where we're not sure if the jobs will be created. We look for established companies where we know that the project will get completed…If they are public projects we are much more comfortable."

Sam Rhoads, Senior Vice President of PIDC, agrees that their partnership with CanAm has enabled their regional center to better assess the quality of potential investments. PIDC is the city of Philadelphia's economic development arm charged with increasing employment and improving the economic climate. "We've been around for 50 years, the funds we've been using usually require some sort of benefit such as creating or retaining jobs," says Rhoads. "We are used to using sources of funds that require this…When we make a loan we always collect data about job creation and retention; that is part of our job. For us it's second nature. The other part is, non-profit economic development organizations like us, to the extent that you have an old one like us, we are tapped into what is going on in Philadelphia and the potential investments, we have our fingers on the pulse… That's been a winning formula for us, but not all non-profits are the same."

Development Agency Partnerships in California

Patrick Hogan, President of CMB Regional Centers, believes in the value of partnering with non-profit development agencies, while recognizing that this does not guarantee success. Development agencies can fail and loans should be structured in such a way to ensure repayment. CMB, which stands for "Closed Military Base," began by redeveloping former military bases in California in the 1990s to counter the economic damage to communities caused by base closures. One of their first projects in 1998 involved a direct public sector investment to the Inland Valley Development Agency ("IVDA") in the amount of $650,000 for the redevelopment of the former Norton Air Force Base.[34] However, IVDA was dissolved in 2011 as part of a reform of California's redevelopment agencies.[35] [36]

Fortunately, CMB structured their loans to IVDA as bonds in order to ensure repayment by the state. "Our loans survived the redevelopment agencies…. because we structured them as bonds," says Hogan. "Bonds are the first ones to be repaid by the state of California. California has recognized these obligations. Now we're getting paid back early, before we were promised, and [that will happen] in at least 3 or 4 more projects." CMB's investment of $650,000 in seed capital in infrastructure at

Norton Air Force Base helped attract additional funds that generated over 1,200 new jobs.[37] The redevelopment has also increased California's tax base. The air force base was not paying taxes and was worth only around $1 billion before redevelopment, according to Hogan, and now it has been repurposed as San Bernardino International Airport with an assessed value of $5 billion.

EB-5 INVESTMENT AS A TOOL FOR ECONOMIC DEVELOPMENT

In addition to creating tens of thousands of jobs, attracting billions in investment, and contributing to GDP and tax revenue, the EB-5 program can also be a strategic tool for fostering high-quality growth in difficult economic times. During the economic crisis, it emerged as an important source of low-interest-rate financing when other conventional sources of financing were frozen by the credit crisis. In addition, when part of a long-term economic development plan, EB-5 financing can be used to diversify the economic base of a region and modernize local economies.

Contributions to Job Creation, GDP, and Tax Revenue

According to IIUSA, in 2010 and 2011 the EB-5 program supported over 33 thousand American jobs, contributed over $2.6 billion to GDP, and generated over $346 million in federal tax revenue[38] (Table 2). Brookings has estimated that the program has created 85,500 direct full-time jobs and attracted $5 billion in direct investment since its creation, with nearly half of these benefits accruing in the last 3 years.[39] However, Brookings' numbers are based on the minimum job creation requirements and may underestimate the program's impact. IIUSA estimates that EB-5 has attracted more than $8.6 billion in investment over the programs lifetime.[40]

Table 2. IIUSA Projections of Economic Impact of EB-5 Spending, 2010-2011 (2011 dollars)

Projection	Jobs Supported	Contribution to GDP	Tax Revenue	
			Federal	State/Local
2010-2011 Actual Results	33,347.5	$2,651,050,387	$346,790,317	$218,437,866
Impact per Year	16,673.8	$1,325,525,194	$173,395,159	$109,218,933
Impact per Visa	8.3	$659,958	$86,331	$54,378
Fully Subscribed 10,000 visa cap	83,015.9	$6,599,577,762	$863,306,739	$543,783,585
Fully Subscribed 20,000 visa cap	166,031.9	$13,199,155,524	$1,726,613,478	$1,087,567,170

Source: MiG, Inc., *Economic Impacts of the EB-5 Immigration Program 2010-2011: An Economic Development Program for the Twenty-First Century,* June 7, 2013.

Contributions to jobs, GDP, and tax revenue tell only part of the story when measuring the impact of the EB-5 program. It can also be used as a strategic source of financing during financial crises and a tool for economic modernization and diversification. Regional centers and their partners report that the availability of capital in a weak economy, the ripple effect of job creation, and contributions to long-term community development and economic diversity can make EB-5 investment a powerful development tool when used wisely and strategically.

An Alternative to Conventional Lending During the Financial Crisis

The financial crisis and the Great Recession of the 2000s was a severe shock to the financial markets and dried up access to credit. It made it very difficult to obtain financing for projects of any size. Across all industries, borrowing to finance plants, equipment, and inventories is common, and after a financial crisis investment declines and these sources of credit dry up.[41] EB-5 investment became an increasingly important source of financing in these difficult economic times, in part by providing access to financing when conventional sources like banks and the bond market became unavailable, and to "patient capital," or investment that does not require rapid returns at high interest rates, as shown by the innovative use of the program in Vermont and elsewhere.

A large ski resort in Vermont called Jay Peak successfully used the EB-5 investor program to obtain capital during the recession. Bill Stenger, CEO of Jay Peak, explains that one of the major advantages of the EB-5 program is that it provides investors who are willing to invest in long-term projects without expecting immediate high rates of return. This allows projects to obtain financing and plan for long-term growth even when a bad economy makes turning quick profits difficult. "In 2007 and 2008 we had good ideas and projects, but financial markets had almost completely collapsed," says Mr. Stenger. "Getting equity capital was very difficult and commercial financing was almost non-existent. We had virtually no alternatives in 2007-2008, and the EB-5 investment was 'patient capital'. The investor puts money in the project, there is no guarantee, you don't have a financial gun to you head… It was essential to have time to build the business, make it successful, to create the jobs."

Leveraging EB-5 Financing for Development in Pennsylvania

EB-5 investment played a key role in financing important economic development projects ranging from hotels to shipyards in Pennsylvania. CanAm, in partnership with the Philadelphia Industrial Development Corporation (PIDC), established the Philadelphia Industrial Development Corporation Regional Center ten years ago. Tom Rosenfeld of CanAm explains how the EB-5 program allowed them to provide affordable loans to a variety of projects that otherwise would not have been able to obtain funding. "The PIDC program was the largest economic incentive program ever in Philadelphia at the state level because of the cutbacks during the economic crises," says Rosenfeld. "It made a lot of deals possible… The classic example is the Philadelphia convention center…the Great Recession happened and they couldn't raise any money in the bond market. But for our funding, that project wouldn't have gone forward. The hotel projects wouldn't have gone forward because you couldn't get money from the banks, particularly at rates that give people a cushion. We could provide it at 2%. That allowed a lot of developers across the country to move forward on projects they otherwise wouldn't have done."

The $600 million that the EB-5 program brought to Philadelphia during the recession served as seed money that attracted additional investment.

The $600 million that the EB-5 program brought to Philadelphia during the recession served as seed money that attracted additional investment, according to Rosenfeld. "EB-5 capital, along with other state and city incentives, enabled Aker Philadelphia Shipyard to survive the lack of demand for new ships during the recession. The preservation of Aker, which is one of very few private shipyards in the country, saved hundreds of jobs and Aker is now employing hundreds more because of the significant demand for new tanker ships." The Aker shipyard is part of the Philadelphia Navy Yard, a 13.5 million square foot development that also leveraged EB-5 money. "At the Philadelphia Navy Yard our investor capital facilitated PIDC's efforts to convert and improve old military buildings into attractive offices, which were leased to promising new companies very cheaply and helped them attend to their other cash flow needs during the recession….the Philadelphia area got approximately $600 million in EB-5 money, and it has facilitated projects worth over $2.4 billion. [The EB-5 program] encourages money from other sources that wouldn't have otherwise gone into the project. And it doesn't cost tax payers anything."

Former Governor of Pennsylvania Edward Rendell agrees that CanAm's EB-5 investment funds were essential to making development projects possible throughout his state. "When the recession hit in 2008 and 2009 capital was very hard to obtain," says Governor Rendell. "During the recession, CanAm provided about 20% of the private equity we were able to put into deals in all the development projects in Pennsylvania. A good example is the Pennsylvania Convention Center in Philadelphia. We needed $700 million, but when the recession hit we got stuck at $600 million, and Tom Rosenfeld got a group [of foreign EB-5 investors] to go in to provide an additional $100 million at very low interest rates. The convention center created 3,000 construction jobs. It provided investment in Pennsylvania when it was very hard to come by."

Economic Diversification and Modernization in Vermont

Vermont's long history with the regional center model focuses on economic diversification and long-term growth. Historically, northeastern Vermont has the highest unemployment and lowest wages in the state, due to loss of manufacturing, lack of infrastructure, and the difficulty of obtaining investment capital.[42] Vermont's EB-5 investor program and the projects it has made possible, such as the Jay Peak Ski Resort, have emerged as important tools in stimulating and modernizing the economy. At a cost of over $785 million, Jay Peak is one of the single biggest projects in the country financed by the program.[43]

"Jay Peak was a well-known alpine ski resort, 95% winter alpine skiing. To be successful we needed to go from a winter-only facility to year-round resort," says Bill Stenger. The projects included a water park, an ice arena, hotels, and a spa facility. Stenger says about $300 million has been raised since 2007 through EB-5. "The entire region has seen a significant economic injection. The developmental phase is construction, injection of construction activity throughout northern Vermont, at properties and in the area. We are now a 4 season operation, $1 million a year, up from $200 thousand 5 years ago, and this means very significant job creation…These projects create construction jobs, hospitality jobs, IT jobs, sales jobs, food and beverage jobs, engineering jobs."

EB-5 projects have attracted over half a billion dollars to Vermont and created over 10,000 jobs, while diversifying and modernizing the state's economy, according to Brent Raymond. Vermont is investing in a diverse range of projects, including high-tech manufacturing companies like AnC BIO-Korea, a $110 million biotech project. "We want to diversify the economic base of the state, create foreign trade zones, create dovetailing strategies for current companies in Vermont to create a new enterprise and obtain tax credits to create other types of industry opportunities, such as manufacturing and biotech jobs," says Raymond. Bill Stenger is pursuing the bioscience project with AnC BIO, which develops and manufactures artificial organs with hybrid bio-digital technology.[44] According to Stenger, AnC BIO's North American facility will open in 2015 and employ 500 people.

Job Creation in High Unemployment Areas in Washington, DC

The EB-5 program is also being used to transform economically depressed areas like the Anacostia neighborhood in Washington, DC. The site of Skyland Town Center, east of the Anacostia River, was declared a redevelopment zone back in the 1980s. It is located in Ward 8, which is recognized as one of the most economically depressed areas in Washington, with an unemployment rate exceeding 20%.[45] David Morris of the Washington, DC Regional Center says Skyland will be a $190 million mixed-use project financed through a public-private partnership with the city and will bring major economic development to this retail-starved neighborhood.

The project has been one of the top economic development priorities of the last three Mayors, and the DC government spent nearly 6 years acquiring the land at a cost of nearly $35 million, according to Morris. "They are putting in $40 million in bonds funds into the project. The ground breaking will be in July, and will include a Walmart and other retail, and 267 apartments. EB-5 is making a $55 million investment. This is a loan that will pay for all the retail piece of the project. The $40 million in bonds gets construction started and pays for the infrastructure. That will be followed by EB-5 and bank financing. Anacostia has been forgotten in the economic development in Washington, DC, and local groups are very excited about this project. It will create 1,800 construction jobs in addition to several hundred more Walmart and retail jobs."

A RELIABLE PATH TO U.S. RESIDENCY FOR FOREIGN INVESTORS

While EB-5 investor program remains the only U.S. visa program designed to provide foreign investors with lawful permanent residence, for many years the program was underused because of the legal uncertainty surrounding the program's requirements and the frequent denials of applications. In recent years, the program has become a more reliable manner for investors to obtain residency while providing a modest return on their investment.

Improved Approval Rates for EB-5 Investor Applications

EB-5 is now a much more popular and reliable manner to obtain residency in the U.S. as approval rates for initial conditional residence status (I-526 petitions) have improved from a low of 53% in fiscal year 2005 to a high of 89% in 2010, according to USICS.[46] Approvals of applications for permanent residency status (I-829) during the same period have gone from a low of 50% in 2006 to a high of 96% in 2011.[47] The number of conditional green card applications has increased from 332 in 2005 to 4,156 in 2012. [48] (Table 3). USCIS is implementing reforms to encourage use of the program by foreign investors, such as centralized EB-5 application processing in Washington, DC, hiring additional staff to reduce processing times, and issuing detailed policy guidance on evidentiary requirements to reduce legal uncertainty.[49]

Table 3. USCIS EB-5 Immigrant Visa Petition Statistics, Fiscal Years 2005-2012 (3rd Quarter)

Fiscal Year	**Conditional Green Card Petitions (I-526)**				**Permanent Green Card Petitions (I-829)**			
	Receipts	Approvals	Denials	Approval Percentage	Receipts	Approvals	Denials	Approval Percentage
2005	332	179	156	53%	37	184	112	62%
2006	486	336	124	73%	89	106	108	50%
2007	776	473	148	76%	194	111	49	69%
2008	1,257	640	120	84%	390	159	68	70%
2009	1,028	1,262	207	86%	437	347	56	86%
2010	1,955	1,369	165	89%	768	274	56	83%
2011	3,805	1,563	371	81%	2,345	1,067	46	96%
2012	4,156	3,002	775	79%	546	639	42	94%
Total	13,795	8,824	2,066	81%	4,806	2,887	537	84%

Source: USCIS, Immigrant Petition by Alien Entrepreneur (I-526) and Petition by Entrepreneur to Remove Conditions (I-829), Service-wide Receipts, Approvals, Denials, Fiscal Year(s): 2005 – 2012.

Approval Rates and Return on Investment in Vermont

Established regional centers vet investment projects carefully to increase the likelihood investor applications will be approved. According to Brent Raymond, at the Vermont Regional Center all conditional green card applications and permanent green card applications have been approved. "We want to ensure that our record and our status with regard to the EB-5 Regional Center is such a high standard that we are attracting high quality investment and investors. We have many success stories; we have 15 active projects currently and a 100% success rate for I-526 [conditional green card] and I-829 [permanent green card] approvals…We have received over 200 I-829 [permanent green card] approvals. This speaks to the caliber of the projects." Vermont has been successful in ensuring that their investors obtain permanent residency by carefully screening projects to ensure they will create the required jobs. "We use universally accepted economic models to show job creation," says Raymond. "We don't accept in-house economists; we rely on independent third-party economists to evaluate the job creation."

In addition to providing permanent residency, the EB-5 investment program can provide a respectable return on investment. Bill Stenger says Jay Peak's investment projects have delivered for their investors as well as for the local economy. "For our first project, investors will get their money back in 2014, they will have gotten their green cards and gotten a return on investment during the project," Stenger says. He claims the investors will obtain a 2% to 4% return on their investments, with a dividend annual rate paid quarterly based on the project. All Jay Peak projects have been profitable, says Stenger, and he takes a personal interest in every investor and tries to meet them all to make sure the investment meets their needs. "We try to get the investor to visit. They are learning about our facilities, learning about our product," says Stenger. "We want to meet every investor to be sure it's a good fit for them and their family; it must be a win for [the] community and [the] investor and the project."

Approval Rates and Return on Investment at CanAm

Tom Rosenfeld states that CanAm has been able to achieve excellent approval rates for their investors by estimating job creation conservatively when taking on new investment projects and by carefully vetting potential investors. "We look to create a buffer of 20% when we analyze a project's job creation to create a buffer to ensure we met job creation requirements," says Rosenfeld. "We have been able to show the job creation in the 100% of the projects at the I-829 [permanent green card] stage… we vet the applications and screen out the investors that are questionable because we want to maintain our integrity before USCIS. If someone isn't qualified, if the I-526 [initial green card application] is denied, they will get 100% of their investment back, plus any fees. It is not in our interest to accept investors that will not be qualified."

CanAm's projects provide a secure path to lawful permanent residence and a modest return on investment, according to Rosenfeld. The principal purpose of the EB-5 program is to provide affordable loans to investment projects that create American jobs, not to give investors big returns, says Rosenfeld. "The rates of return we provide to investors range from 1.3% to 3%, the return is nominal. We are up front with the investors about that. The important thing is that the loans to the projects are interest-only loans; the projects do not pay any debt service on the principal for 5 years. We provide credit enhancement to the banks…They don't pay us the principal, and the interest rates are low. It frees up the credit with the banks and encourages them to lend on projects they wouldn't otherwise lend on."

THE FUTURE OF THE EB-5 PROGRAM DEPENDS ON CONGRESS

The EB-5 program continues to grow in popularity. Governor Rick Snyder of Michigan has just announced that Michigan will be the second state to establish an EB-5 regional center, in addition to Vermont.[50] If usage continues to increase the annual visa cap may soon be exhausted. Expanding the program would increase its economic benefits. According to IIUSA, if the 10,000 visa cap had been fully subscribed during 2010-2011 the program would have contributed over $6.5 billion to GDP and supported over 83 thousand jobs.[51] If the cap were raised to 20,000 it would have contributed over $13 billion to GDP and supported over 166 thousand jobs.[52] (See projections for 10,000 and 20,000 visa caps in Table 2.)

Despite the increased usage of the EB-5 program, it remains a provisional visa program that expires on September 30, 2015.[53] During the 113th Congress, several bills were proposed that would have permanently authorized the program and further tightened fraud prevention and oversight, including: the Senate comprehensive reform bill, S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act; H.R. 15, a House bill based on S.744; and H.R. 4178, the American Entrepreneurship and Investment Act. EB-5 reforms in S. 744, which passed the Senate in 2013 by a bipartisan vote of 68 to 32, included accelerated processing, compliance with securities laws, mandatory background checks for regional center personnel, and bars to persons involved in securities violations or fraud from regional centers.[54] Cases considered a threat to national security would be denied [55] and oversight and regulation would be provided by the Department of Commerce and the Small Business Administration.[56]

Cases considered a threat to national security would be denied and oversight and regulation would be provided by the Department of Commerce and the Small Business Administration.

The regional centers generally welcome these changes. "Permanency would make the investors and the projects more comfortable," says Brent Raymond. "We would also like more securities policing of industries, and USCIS should look at the principals behind these regional centers, because many of these regional centers are not independent from their projects…[this legislation] will require this of all programs." Tom Rosenfeld also believes reform must address compliance with securities laws. CanAm has become a registered broker/dealer of securities to ensure that investors' rights are protected and conflicts of interest avoided. "The SEC says that if you sell these investments in the U.S. you have to be a registered broker/dealer," says Rosenfeld. "In any offer of assets if there is any material misrepresentation or fraud or lack of disclosure investors have rights. We believe we need to be registered broker/dealers to avoid trouble with anyone and make sure we play the rules of the securities laws. We think that closer regulation of this is really important, that all fees and conditions should be disclosed to investors."

Governor Rendell of Pennsylvania agrees the reforms proposed by the Senate in 2013 are needed to expand the program and strengthen its oversight, in particular by putting the program under the control of the Department of Commerce. "The program should be expanded and made permanent, and quotas should be raised," says the Governor. "However, the supervision should be transferred to the Commerce Department, they have the right people to supervise these projects. With the right people running the program the sky would be the limit."

CONCLUSION: EB-5 INVESTORS MAKE VALUABLE CONTRIBUTIONS TO THE U.S. AND THE ECONOMY

While the EB-5 program had a difficult start, in recent years it has emerged as a dynamic tool for promoting economic growth. Improved regulatory processes and regional centers with reliable investment models contribute to the program's security, efficiency, and effectiveness. Moreover, while Congress continues to be gridlocked over immigration reform, the EB-5 program offers successful immigrant investors an opportunity to contribute to their new country. The stories of successful programs in Vermont, California, Pennsylvania, and Washington, D.C. offer an insight into what is possible when this visa program is used wisely.

The benefits that EB-5 investors contribute go beyond the initial investment and the 10 jobs they are required to provide. "When the immigrant investors become residents they become taxable on their worldwide income," says David Morris. "And they bring investment dollars and make projects possible that may not otherwise have been built…It's a federal economic stimulus program that pays for itself and is cost-free to the tax payer." Governor Rendell of Pennsylvania agrees that EB-5 investors' contributions continue long after they obtain residency. "The EB-5 program has created more than 20,000 jobs, good-paying jobs paying above minimum wage throughout Pennsylvania," says Rendell. "In addition, this program brings investors to the United States that are successful entrepreneurs, innovative and creative, above and beyond the money that they provide…it's a home run for everyone."

"It's a federal economic stimulus program that pays for itself and is cost-free to the tax payer."

-David Morris of the Washington, DC Regional Center

Patrick Hogan of CMB gives an example of how dynamic, entrepreneurial investors in the EB-5 program contribute to their communities. One of CMB's investors was an executive in the United Kingdom who sold his company and came to the U.S. "He invested in the Norton airport and created 10 new jobs," says Hogan. "Then he bought one house and leased it out, then went to southern California and bought another house. His wife operates a travel agency that employs people. He set up a successful Irish bar that created 30 jobs and established an Irish festival. This cost us nothing, he paid fees to pay for the [EB-5 application] processing. His substantial worldwide income is now subject to our taxation and inheritance taxes. And he's just one investor."

With proper oversight the EB-5 investor program's impact can be maximized while maintaining its integrity. Well-run regional centers have shown they can foster high-quality, long-term job creation and diversified economic development while maintaining high ethical standards. Immigration reform should make the EB-5 immigrant investor program permanent and strengthen and expand it as an important tool for economic development in communities throughout the United States.

ENDNOTES

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[2] USCIS, "Immigrant Investor Regional Centers," last updated July 8, 2014.

[3] *Matter of Soffici*, 22 I&N Dec. 158 (Comm. 1998); *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998); *Matter of Hsiung*, 22 I&N Dec. 201 (Comm. 1998); *Matter of Ho*, 22 I&N Dec. 206 (Comm. 1998).

[4] *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998). *Izumi* limits the geographic area of the job-creating business, limits material changes to petitions, and forbids payments to the investor from the enterprise while the investor owes money to the enterprise, among other requirements. Invested funds must be "at risk", meaning that a return on the investment cannot be guaranteed.

[5] Memorandum, Office of the Inspector General, DHS, United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB-5) Regional Center Program, December 12, 2013, Appendix B, Management Comments to the Draft Report.

[6] Singer and Galdes, Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development, Brookings-Rockefeller, 2014, 16.

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[8] USCIS, "Immigrant Petition by Alien Entrepreneur (I-526) and Petition by Entrepreneur to Remove Conditions (I-829) Service-wide Receipts, Approvals, Denials, Fiscal Year(s): 2005-2012 (Third Quarter)," accessed July 18, 2014.

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[15] ICF International, Study of the United States Investor Pilot Program (EB-5), May 2010, 10.

[16] MiG, Inc., 2013, 44.

[17] Singer and Galdes, 2014, 7.

[18] "Direct effects" are the changes in industries directly impacted by increased consumer or investment spending. "Indirect effects" are changes in spending by industries impacted by spending changes of directly-affected industries. "Induced effects" are changes in household spending resulting from the increased production in directly- and indirectly-affected industries. MiG, Inc., *Economic Impacts of the EB-5 Immigration Program, 2010-2011*, June 7, 2013, 23.

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[20] Ibid.

[21] MiG, Inc., 2013, 4.

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[25] Ibid.

[26] *United States v. O'Connor*, 158 F. Supp. 2d 697 (E.D. Va. 2001).

[27] *Matter of Soffici*, 22 I&N Dec. 158 (Comm. 1998); *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998); *Matter of Hsiung*, 22 I&N Dec. 201 (Comm. 1998); *Matter of Ho*, 22 I&N Dec. 206 (Comm. 1998).

[28] *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998). *Izumi* limits the geographic area of the job-creating business,

limits material changes to petitions, and forbids payments to the investor from the enterprise while the investor owes money to the enterprise, among other requirements. Invested funds must be "at risk", meaning that a return on the investment cannot be guaranteed.

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[54] S.744, Border Security, Economic Opportunity, and Immigration Modernization Act, § 4804.

[55] Ibid.

[56] S.744, Border Security, Economic Opportunity, and Immigration Modernization Act, § 4803.