

Hospitality Law

Hotel Owners and Investors: 'Checking In' on the EB-5 Program

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Mr. Wildes

As America's markets struggle to regain their footing, the hospitality industry has actually seen a spike in profits and economic growth. This refreshing change of pace is largely attributed to the steady stream of international tourism that has kept many hotels, restaurants and other tourist attractions thriving despite current economic conditions. Hotel owners have taken notice of this dichotomy, and are now seeking ways to perpetuate their surge in profits. Fortunately, Congress has created provisions within our American immigration laws that would help keep the hotel business booming, while simultaneously infusing money into our economy and creating more job opportunities as well.

The EB-5 visa program was incorporated into the Immigration and Nationality Act (INA) to encourage foreign businesspersons to invest their resources in American markets. The preferential treatment and limitless renewals that E-visa holders would enjoy upon approval encourages foreign investors to participate in U.S. businesses. Moreover, American entrepreneurs are have incentive to persuade wealthy persons abroad to help fund their projects with the promise of a relatively unconstrained stay in the U.S. for themselves and their families. Since its inception, the amount of EB-5 programs has exponentially increased, accounting for over a billion dollars of revenue, especially in tourist friendly regions with international acclaim.

About the EB-5 Visa:

First enacted in 1992, Congress enacted the EB-5 visa program to encourage foreigners to participate in new commercial enterprises. The new laws were aimed at stimulating economic activity and job growth, while allowing eligible aliens the opportunity to become lawful permanent residents. To qualify, the investor must either have established the business, or, re-established an existing one. The projects can be any kind of "commercial enterprise" such as hotels, resorts, and any of its wholly owned subsidiaries that add to the business's profits.

To ensure that the investment will expand past its initial phases, the EB-5 visa also carries a "job requirement" mechanism within its terms and conditions. The investor has a duty to create or preserve at least 10 full-time jobs for qualifying U.S. workers within approximately two years of the immigrant investor's presumed admission to the United States as a Conditional Permanent Resident. Given the manpower it takes to run virtually all avenues of the hospitality business, recruiting 10 employees to work in destination hot spots makes this process much less strenuous on the employer. And, for the more adventurous entrepreneur, the minimum cost of investing either within a high-unemployment, or rural area in the United States is \$500,000—rather than the \$1,000,000 markup to get the more popular real estate.

During its development phases, lawmakers needed to create a proper avenue to handle the intake of capital and investment schemes from those who had the qualifying resources to come into America under the EB-5. As a result, the USCIS created Regional Centers to receive immigrant investor capital. Simply stated, regional centers are areas designated by the United States Customs and Immigration Services (USCIS) as eligible to receive immigrant investor capital after the organizers have made a satisfactory showing that their business plan(s) will be both lucrative, sustainable, and promote job opportunities. These centers are especially attractive because they remove the burden on foreign investors to manage and direct the proposed operations. Now, investors have the liberty and discretion to choose from a variety of business proposals, without having to perform the added legwork.

Currently, there are more than 135 EB-5 regional centers across the country, the most successful of which have been tied to the hospitality industries located in almost every desirable vacation spot. For example, Vermont's regional center derives the most foreign income from its skiing/tourism industry that houses thousands of international tourists during peak seasons. At the other end of the spectrum, Orlando's Regional Center strategically located in the middle of Florida, stretches from the Gulf to the Space Coast, with summer attractions that continue to be fueled by foreign investments. Together, the profits generated by these booming industries attracts more foreign resources to our shores, increasing revenue and employment at substantially less costs to domestic owners.

How the EB-5 will affect the Hotel Industry:

As foreign investments increase, so does the quantity of domestic capital, real estate, commercial buildings, local businesses, and over goodwill in the host economy. The availability of flexible capital creates more jobs without increased taxation to local citizens. In the tourism industry, the high quantity of workers needed to run any given hotel/restaurant/resort enterprise is yet another reason why these particular businesses need to be infused with a boost from foreign investors. Additions and renovations to our bustling hotel industry create more income derived from foreign pockets that in turn, take the pressure off of local business owners to pick up the slack, while simultaneously raising their competitive value. Therefore, attention must be focused on the EB-5 program as an instrument of economic development, rather than a way of increasing immigration—admittedly, a currently disfavored concept among Americans, given the series of anti-immigration legislation enacted by a growing number of state leaders.

Given the current market conditions, American investors should take advantage of the preferential treatment given to wealthy foreigner businesspersons interested in branching out. Mainly, potential investors are attracted to the freedom to repatriate their domestic earnings in another investment scheme to continuously increase their profit margins. In response, American investors, oftentimes those with great ideas but limited capital need to stress the visa benefits to overshadow the doubt that many foreigners now have in our economic capabilities. Directors of foreign investments need to be confident that US industry officials are willing to overcome the risks of the financial endeavor with other substantial benefits to balance out the long term risks.

Fortunately, United States immigration laws provide such incentives by giving virtually unrestrained access to the U.S. to the investor and their families for as long as the project lasts. As it stands, current immigration legislation permits EB-5 Regional Center investors to work

and retire in the U.S. with their families—all of whom enjoy the ability to work and study wherever they may choose without incurring the risks of reapplication and security from future changes to the existing laws. Moreover, the E-visa's forgiving policies allows re-application even in the event of failure, encouraging investors to persevere with more lucrative ideas to maintain their preferential status. Thus, in the event that an investment falls through, the petitioner is given sufficient time and latitude within the US to recoup their losses without ruining their reputation among their other investment partners and projects.

The scores of regional centers located across the nation, provide ample opportunity for American investors to develop their project investments. When fully utilized it is estimated that the EB-5 program could contribute between \$1.5 – 3 billion in foreign capital to the United States economy each year. With the mechanisms already in place to facilitate such large scale efforts as hotels and resort development, the burden is now on the project owner to reach out. Given the hospitality industries' steadily rising profit margins, investors are encouraged to strike while the iron is hot. Extending the option to get involved with this anomaly in American business with the added bonus of attaching a highly advantageous visa to the arrangement should be the primary focus of most hotel owners.

Recently, hotel giants have caught on to this growing trend, now enjoying tremendous success on account of the EB-5's added perks. From small additions on existing structures, to multistoried projects in the heart of major cities, this industry offers virtually limitless opportunities for foreigners to capitalize on this economic surge. In particular, Marriot Hotels have seen tremendous growth in the western states. In Seattle, the "Marriott Project" is turning a vacant building into a luxury hotel due to a debt-free, \$85 million arrangement, half of which was raised by foreign investors. Subsequently, news of the project's success helped attract more foreign businesspersons to regional centers, having seen the effectiveness of the EB-5 visa at work. Neighboring developing cities have received a much needed financial boost in their local facilities to continue running their business, while hiring new employees with outside funds to pay the difference.

How to Get Involved:

As American banks continue to freeze out investors on account of insufficient resources, the EB-5 program picks up the slack left behind, connecting creative investment ideas to the deep pockets of foreign investors. Our immigration laws are specifically designed to facilitate their connection, shifting the burdens of national economic recovery onto international shoulders. All that is needed to perpetuate this new and exciting phase of success is the confidence, initiative and ingenuity from the American entrepreneur to get involved with their preferred regional center—which history will show is of no shortage in a nation that, despite its recent shortcomings, is still deemed the "Land of Opportunity".

We encourage investors to contact their local regional centers, as well as consult with experienced immigration lawyers who have previously aided clients in proving their financial reliability and project sustainability in their visa petitions. The time to act is now. While investment opportunities are abundant, their availabilities are finite. It is therefore crucial to be as prepared and efficient as possible when marketing an investment project to potential investors. With the right legal aid, American entrepreneurs can streamline the immigration process, structure and document their investment programs, and be well on their way to success amidst the growing number of hotels and resorts thriving from foreign financial aid.

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