

NOTES

SELLING CITIZENSHIP TO THE HIGHEST BIDDER: A PROPOSAL TO REFORM THE UNITED STATES EB-5 INVESTOR VISA PROGRAM

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I. INTRODUCTION

According to CNN the United States EB-5 Immigrant Investor Visa program, which allows foreign investors to effectively “purchase” a green card, hit its annual cap for the first time in August 2014 since its inception in 1990.¹ The EB-5 program requires a potential applicant to make a \$500,000 to \$1,000,000 capital investment into a commercial enterprise, and develop a plan to create ten permanent full-time jobs in a Targeted Employment Area.² The United States government will grant the applicant and their dependents, if approved, conditional permanent residence for two years.³ The applicant may petition again within the ninety-day period before the two-year residency expires with proof of investment and job creation in order to be granted permanent residency for themselves and their dependents.⁴

The program, following a 1992 amendment, is aimed at attracting entrepreneurs and applying foreign investments to “regional centers” in order to

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1. Sophia Yan, *U.S. Runs Out of Investor Visas Again as Chinese Flood Program*, CNN HONG KONG (Apr. 15, 2015), <http://money.cnn.com/2015/04/15/news/economy/china-us-visa-eb5-immigrant-investor/> [https://perma.cc/JE4K-ZVKV].

2. *International Immigrant Investor Programs*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/international-immigrant-investor-programs> [https://perma.cc/V57C-KS2A].

3. *Id.*

4. U.S. Citizenship & Immigr. Serv., *EB-5 Immigrant Investor Process*, Dept. of Homeland Sec. (June, 25, 2014), <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process> [https://perma.cc/AL73-Z4JW].

benefit the economy of these particularly troubled areas.⁵ In addition to the United States EB-5 program, several other countries have also adopted similar programs to attract wealthy investors in order to gain economic benefit in exchange for visas.⁶ For example, investor visa programs can be found in Canada, the United Kingdom, and most recently in the Netherlands.⁷ The growing presence of these “gold visas” for the wealthy entrepreneur, as some opponents of the policies call them, suggests that this type of policy has substantial economic benefits. Although these investors are bringing capital into the countries they are investing in, there have been some initial issues with the ability to regulate these policies.⁸ Scholars analyzing the EB-5 have called for more regulations regarding fraud.⁹ The advent of regional centers has provided increased oversight in this area. Public and governmental opinions suggest that many are skeptical about the true economic benefit that these policies create and the high potential for fraudulent applications.¹⁰

In 2015 the EB-5 program again exceeded the number of visas allocated. The application records indicate that the cap was hit even sooner than it was in 2014.¹¹ The increased interest is a striking turn around for the EB-5 program, because pre 2013-2014 there was large amount of rhetoric lobbying for the removal of the

5. *History of the EB-5 Program*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/history-of-eb5> [https://perma.cc/S4V3-R2JY].

6. *See generally*, United Kingdom, *Tier 1 (Entrepreneur) Visa*, GOV. UK (2015), <https://www.gov.uk/tier-1-investor/overview> [https://perma.cc/7QF3-72AQ]; Canada, *Immigrant Investor Venture Capital Pilot Program*, CANADA VISA (2015), <http://www.canadavisa.com/immigrant-investor-venture-capital-pilot-program.html> [https://perma.cc/F9AX-WK8P]; *International Immigrant Investor Programs*, EB-5 INVESTORS (2015) <http://www.eb5investors.com/eb5-basics/international-immigrant-investor-programs> [https://perma.cc/V57C-KS2A] (see the section referring to the policies of the Netherlands specifically).

7. *International Immigrant Investor Programs*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/international-immigrant-investor-programs> [https://perma.cc/V57C-KS2A].

8. *See generally*, United States Government Accountability Office, *Report: Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit*, GAO (Aug. 2015).

9. *See*, Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 536 (2015).

10. Jerry Markon, *Visa Program for Wealthy Foreigners at Risk of Fraud, Report Says*, WASH. POST (Sept. 8, 2015), <http://www.washingtonpost.com/blogs/federal-eye/wp/2015/09/09/visa-program-for-wealthy-foreigners-at-risk-of-fraud-report-says/> [https://perma.cc/QR33-WBJ5].

11. Sophia Yan, *U.S. Runs Out of Investor Visas Again as Chinese Flood Program*, CNN Hong Kong (Apr. 15, 2015), <http://money.cnn.com/2015/04/15/news/economy/china-us-visa-eb5-immigrant-investor/> [https://perma.cc/JE4K-ZVKV].

program due to lack of interest.¹² Statistics show that there is currently an overwhelming interest in the program.¹³ Applicants have even been put on a waitlist and are setting the stage to exceed the visa allocation of the 10,000 investor visas for 2016.¹⁴ The increased interest in the EB-5 program poses a few potential questions that have yet to be answered. Are the requirements of the current system too easy to satisfy? Has the United States government drastically undervalued the price of permanent residency given the abundance of applications, which seem to be ever increasing? Should the United States follow in the footsteps of Canada, and discontinue our current program in favor of a more regulated approach that increases requirements and the amount of the initial investment? These questions can best be answered by delving into the specific policies of several different nations. A cross section of each policy compared to the tangible economic benefits arising from the implementation of each policy could help to provide a stable avenue for the reformation of the United State's EB-5 investor visa program.

The reform and further implementation of these "investor visa" programs have and will become increasingly important in terms of global economy. The nature of these visas and their regulations could help developing countries push their way into the pantheon of global power, while the drain of capital from power houses like China could cause a shift in the opposite direction. In addition, a properly structured policy implemented in a country like the United States could help to boost the economic system. This issue is an important one not just for the applications it has here in the United States, but also in the entire international economy as a whole.

This Note provides an in depth analysis of several different "investor visa" programs and attempts to determine which program provides the greatest approach to maximize economic benefit. In looking at each program it is important to establish the length of implementation, the current requirements, the true economic benefit, and the rhetoric regarding the successes or failures of each system. Section II of this Note provides a brief overview of the EB-5 program and the developments that have led to the increased popularity of the program over the past two years, and the successes and drawbacks of the current policy. Section III discusses other investment policies that can be found internationally in order to determine the most successful aspects of each policy. Section IV focuses primarily on the recent reforms of the Canadian investor visa program and the United Kingdom's Tier 1 program. Section IV also discusses the need for reform of the current EB-5 program. Section V proposes a solution to the plethora of problems currently plaguing the U.S. EB-5 program, through the adoption of increased requirements from the Canadian and British programs that favor economic gain and increased amounts of injected capital. These increase

12. See generally, Lenni B. Benson, *Article: Breaking Bureaucratic Borders: A Necessary Step Toward Immigration Law Reform*, 54 ADMIN. L. REV. 203 (2002); Rick Su, *Article: Immigration as Urban Policy*, 38 FORDHAM URB. L.J. 363 (2010).

13. *Id.*

14. *Id.*

requirements will allow the EB-5 program to garner an increased economic benefit and revitalize the programs original purpose of attracting entrepreneurial investors.

II. HISTORY OF THE UNITED STATES' EB-5 INVESTOR VISA PROGRAM

In the 1990s the United States government was looking for a way to stimulate the economy and increase the amount of skilled laborers. Thus, Congress adopted the Immigration Act of 1990, which reformed the immigration policies of that time. The Act “included changes to non-immigrant visa categories, deportation rules, and increased legal immigration limits, among other important revisions.”¹⁵ The Act created several different legal immigration programs that would allow for immigrants to gain a wide variety of citizenship status.¹⁶ Following the conditional period these immigrants are presented with a chance to apply for a removal of the conditions.¹⁷ The EB-5 program allows for immigrants interested in obtaining United States citizenship to effectively speed up the naturalization process with the introduction of capital into the economy.¹⁸

A. *The Immigration Act of 1990*

Congress passed the Immigration Act of 1990 in order to encourage entrepreneurs and investors, who had an interest in American business, to invest their capital. If they met the statutory requirements of the EB-5 program, then these individuals could utilize their wealth to effectively skip the waiting period for United States visas and “purchase” conditional citizenship.¹⁹ The requirements under the Act include:

- (1) The alien must have established the enterprise; (2) the alien must have invested, or be in the process of investing, new capital in the amount of \$500,000 or \$1 million in targeted employment areas; and (3) the enterprise must benefit the U.S. economy and create ten full-time qualifying jobs.”²⁰

15. *History of the EB-5 Program*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/history-of-eb5> [https://perma.cc/S4V3-R2JY].

16. Immigration Act of 1990, 101 Pub. L. No. 639, 104 Stat. 4978 (1990).

17. *History of the EB-5 Program*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/history-of-eb5> [https://perma.cc/S4V3-R2JY].

18. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 536 (2015) (“The Immigration Act of 1990 created the EB-5 program to allow alien entrepreneurs who satisfy the statutory requirements to be on a fast track to U.S. residency and citizenship.”)

19. See P.J. Tobia & Marina Lopez, *How Chinese Millionaires Buy U.S. Citizenship*, PBS NEWS HOUR (May 14, 2015), <http://www.pbs.org/newshour/updates/chinese-millionaires-buy-u-s-citizenship/> [https://perma.cc/2GQ8-EWPK].

20. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based*

Under this early program the investor had to invest in new commercial enterprises taking on a managerial role “through the exercise of day-to-day managerial control or through policy formulation, as opposed to maintaining a purely passive role in regard to the investment.”²¹ The program allows the applicant to bring all of his dependents into the country as well.²² The spouse and children of an applicant are granted the same two-year conditional residency as the applicant.²³ However, one important aspect is that the dependents of the applicant cannot be one of the ten employed persons in the investment program to satisfy the requirements.²⁴ Self-employment is not allowed because it would not contribute to solving problems in the economy if every applicant’s family members were employed by the investment the applicant made.²⁵ The goal of the program is to foster jobs for current citizens in order to revitalize low income or problem areas.²⁶

Upon meeting these requirements and the requisite investment the individual may begin the process to be accepted into the EB-5 program.²⁷ Once approved, the applicant is given a visa for a conditional two-year permanent residence in the United States.²⁸ Just before the termination of this two-year conditional period the applicants have a ninety-day window during which they can apply to have their conditions removed in order to be granted permanent residence.²⁹ However, there are further requirements the applicants must establish to have the conditions

Immigration Reform to Better Target Immigrant Entrepreneurs and Investors, 18 CHAP. L. REV. 527, 536 (2015)

21. 8 C.F.R. § 204.6(j)(5).

22. U.S. Citizenship & Immigr. Serv., *EB-5 Immigrant Investor Process*, Dept. of Homeland Sec. (June, 25, 2014), <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process> [<https://perma.cc/AL73-Z4JW>].

23. *Id.*

24. *Id.*

25. 8 U.S.C. § 1153 (b) (5) (A) (1994) (“Which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States other than the [investor] and the [investor’s] spouse, sons, or daughters”).

26. S. REP. NO. 101-55, at 21 (1989) (explaining that the main goals of the program are to “create new employment for U.S. workers and to infuse new capital into the country”, addressing the need for employment to go to U.S. citizens to benefit the economy of the targeted area).

27. United States Citizenship and Immigration Services, *I-526 Form*, USCIS (Sept. 24, 2013), <https://www.uscis.gov/sites/default/files/files/form/i-526.pdf> [<https://perma.cc/ZYQ6-GVCU>].

28. U.S. Citizenship & Immigr. Serv., *EB-5 Immigrant Investor Process*, Dept. of Homeland Sec. (June, 25, 2014), <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process> [<https://perma.cc/AL73-Z4JW>].

29. *Id.*

removed from their visa.³⁰ The applicant can remove the conditions on their residency through the satisfaction of requirements that demonstrate a continuance of the initial investment and a creation of employment.

To have the conditions removed the applicant must show:

evidence that [he or she has] sustained [their] investment in the new commercial enterprise throughout your two-year period of conditional permanent residence...evidence that [he or she] created or will create within a reasonable time 10 full-time jobs for qualifying employees...the investor must show that he or she has maintained (not created) the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident.³¹

The applicant can rely on business invoices, payroll records, business licenses, tax documents, employee tax forms, bank statements, contracts (promissory notes), and relevant financial statements to satisfy the requirement.³² If the applicant can demonstrate continued investment and creation of jobs he may be approved to have his conditions waived, which means the applicant and his dependents can enjoy permanent citizenship and its benefits.³³

The congressional intent in passing this Act was not to encourage the purchase of visas, but to inject new capital into problem areas in the United States.³⁴ The goal is to use these invested funds to revitalize certain areas deemed to be problematic or low income.³⁵ By creating jobs in these areas the government hopes to improve the area and create the potential for economic growth.³⁶ Further evidence of Congressional intent can be gleaned from existing academic analysis

30. Departments of Homeland Security, *Form I-829: Petition by Entrepreneur to Remove Conditions on Permanent Resident Status*, USCIS (May 7, 2015), <https://www.uscis.gov/sites/default/files/USCIS/Forms/i-829.pdf> [<https://perma.cc/J8FE-EE5X>].

31. U.S. Citizenship & Immigr. Serv., *EB-5 Immigrant Investor Process*, Dept. of Homeland Sec. (June, 25, 2014), <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process> [<https://perma.cc/AL73-Z4JW>].

32. *Id.*

33. *Id.*

34. Beth MacDonald, *The Immigrant Investor Program: Proposed Solutions to Particular Problems*, 31 LAW & POLY INT'L BUS. 403, 409 (2000) ("The main goals of the program are to create new employment for U.S. workers and to infuse new capital into the country and not to provide immigrant visas for wealthy individuals.").

35. S. REP. NO. 101-55, at 21 (1989).

36. Ofc. of the Citizenship & Immigr. Serv. Ombudsman, *Employment Creation Immigrant Visa (EB-5) Program Recommendations*, Dept. of Homeland Sec. (Mar. 18 2009), https://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf [<https://perma.cc/EQ6W-9CAZ>] ("Congress sought to attract entrepreneurial immigrants to the United States who would invest capital to create jobs for U.S. workers, and thereby stimulate the economy.").

of the program. One such scholar, believes that

[t]he requirement of active engagement in the new enterprise is aimed at targeting an entrepreneur's human capital investment contribution; this demonstrates Congress's intent to attract entrepreneurs and not merely investors. The Senate Report also reveals specifically that the purpose of the EB-5 program was to create jobs for U.S. workers and to infuse new capital into the U.S. economy, 'not to provide immigrant visas to wealthy individuals.'³⁷

This demonstrates that the initial intent of the program was to ensure that entrepreneurs, who were willing to take a managerial role in a business, were able to apply their capital to expedited citizenship while also benefiting the economy.³⁸ Although the program worked in theory, there was still a lack of interest and some reforms were needed in order to ensure the program's success.³⁹

B. Further Reforms

Following the implementation of the Immigration Act of 1990 some reforms had to be made in order to improve interest in the program. Initial interest in the program was low possibly due to the state of the international economy.⁴⁰ However, under the reforms of the Appropriations Act of 1993 and later the Basic Pilot Program Extension and Expansion Act of 2003, the EB-5 program was able to draw an increasing amount of interest.⁴¹ These expansions slowly led to the situation of the current EB-5 program, which has met the visa cap for the past two years.⁴² With the program's expiration date now set for September 30, 2017 there

37. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 537-538 (2015).

38. *Id.*; See also Ofc. of the Citizenship & Immigr. Serv. Ombudsman, *Employment Creation Immigrant Visa (EB-5) Program Recommendations*, Dept. of Homeland Sec. (Mar. 18 2009), https://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf [<https://perma.cc/EQ6W-9CAZ>].

39. Beth MacDonald, *The Immigrant Investor Program: Proposed Solutions to Particular Problems*, 31 LAW & POL'Y INT'L BUS. 403, 410-413 (2000) (explaining the weakness of the 1990 Act).

40. *Id.* at 412-413 (explaining that Congress may have overestimated monetary value of U.S. citizenship compared to the more competitive rates of early Canadian and Australian programs)

41. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 538-540 (2015). See also, James Kelleher et al., *Special Report: Overselling the American Dream Overseas*, REUTERS, (Dec. 22, 2010) <http://www.reuters.com/article/2010/12/22/us-usa-immigration-business-idUSTRE6BL2KJ20101222> [<https://perma.cc/58P3-F2YZ>].

42. Sophia Yan, *U.S. Runs Out of Investor Visas Again as Chinese Flood Program*, CNN HONG KONG (Apr. 15, 2015), <http://money.cnn.com/2015/04/15/news/economy/china-us-visa-eb5-immigrant-investor/> [<https://perma.cc/JE4K-ZVKV>].

are sure to be some further developments as congress has it eyes set on reform.⁴³

a. The Appropriations Act of 1993

The Appropriations Act of 1993 helped to amend and expand the existing policy for the EB-5 program. The Act created the “Immigrant Investor Pilot Program” that allowed investors to inject their capital into “a regional center in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.”⁴⁴ This amendment allowed the foreign investors to have an opportunity to apply their capital directly to problem areas in the United States.⁴⁵ The requirement for the amount of capital to be invested remained the same, but now the investor did not have to establish the job creating entity.⁴⁶

The 1993 Act also increased oversight because it allowed the government to monitor the investments being made into the approved regional centers and ensure the creation of jobs and benefit to the economy.⁴⁷ The requirement for ten full-time jobs was easier to meet under this system because the investor could apply capital to the “regional center” and indirectly create the jobs.⁴⁸ These regional centers could be any area that applied and met the requirements.⁴⁹ The requirements under the Immigrant Investor Pilot Program are as follows:

- (1) clearly describe how the regional center will promote economic growth in the specific geographical region;
- (2) provide in verifiable detail

43. 115 P.L. 31, 244 Stat. 298, at Sec. 542 (May 5, 2017); *See also*, Carolyn S. Lee & Steve Yale-Loehr, *Congress Poised to Extend EB-5 Regional Center Program Until September 30 Without Changes*, NAT'L LAW REV. (May 3, 2017), <https://www.natlawreview.com/article/congress-poised-to-extend-eb-5-regional-center-program-until-september-30-without> [<https://perma.cc/R8MW-9G6U>].

44. Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992).

45. *Id.*

46. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 529 (2015) (“The ability to invest in regional centers to satisfy the new commercial enterprise requirement affords the alien investors more flexibility in meeting the program's stringent requirements, because now the alien investors can passively invest and indirectly create jobs through regional centers.”).

47. *I-924 Application*, EB-5 INVESTORS (2016) <http://www.eb5investors.com/eb5-forms/i-924-application> [<https://perma.cc/E7XX-ARKX>] (explaining that the regional centers must gain governmental approval before becoming established to accept investments); *See* United States Citizenship and Immigration Services, *I-924 Form*, USCIS (Mar. 18, 2015) <https://www.uscis.gov/sites/default/files/files/form/i-924.pdf> [<https://perma.cc/REF2-ZRKX>].

48. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 538 (2015).

49. *I-924 Application*, EB-5 INVESTORS (2016) <http://www.eb5investors.com/eb5-forms/i-924-application> [<https://perma.cc/E7XX-ARKX>].

how jobs will be created indirectly through increased exports; (3) provide the amount and source of capital committed to the regional center; (4) contain a detailed prediction regarding the manner in which the regional center will have a positive impact on the economy; and (5) are supported by economically or statistically valid forecasting tools.⁵⁰

The 1993 Act allowed areas that have satisfied these requirements to reach out to hungry investors who were seeking citizenship, seeming to benefit both parties.⁵¹ This benefit came to the investor who could take an indirect approach to the investment, as opposed to the direct managerial position the investor had to take before the amendment.⁵² The use of regional centers also benefits the areas deemed to qualify because of the influx of new capital that is used to create jobs and stimulate the problematic economy of the area.⁵³

The 1993 Act effectively amended the requirements of the previous program eliminating the requirement for the investor to play a day-to-day managerial role in the business.⁵⁴ “Therefore, an EB-5 immigrant can now immigrate to California by passively investing in a regional center located in a targeted employment area in, say, Kansas for the amount of \$500,000.”⁵⁵ Some saw this as a great benefit because the ease of access increased interest in the program, and allowed investors to ply their cash to one area while living in a more desirable location.⁵⁶ However, other scholars viewed this amendment as problematic, because it allowed investors to take a backseat and wait for their investment to ripen into a permanent citizenship.⁵⁷ These scholars believed that the regional center program changes the initial intent of the immigrant investor visa, to garner the attention of capital flush entrepreneurs, into a system that allows investors to effectively

50. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 538-539 (2015); See also 8 C.F.R. § 204.6(m)(3).

51. *Id.*

52. *Id.* at 529.

53. *EB-5 Regional Center*, EB-5 INVESTORS (2015) <http://www.eb5investors.com/eb5-basics/eb-5-regional-center> [<https://perma.cc/L7PN-GAXR>].

54. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 529 (2015)

55. *Id.* at 540.

56. *Id.* at 541

57. See generally Christine Ryan, *Comment: Too Porous for Protection? Loopholes in EB-5 Investor Visa Oversight Are Cause for National Security Concern*, 16 SAN DIEGO INT'L L.J. 417, 427 (2015) (“[A]n alien investor who is investing money through a Regional Center is not required to consider, much less actually create, 10 full-time jobs”); Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 543 (2015) (“[T]he United States is not actually attracting many immigrant entrepreneurs”).

purchase citizenship.⁵⁸

b. What Is a Regional Center?

A regional center is “an organization designated by United States Citizenship and Immigration Services that sponsors capital investment projects for investment by EB-5 investors.”⁵⁹ These organizations are developed in order to provide another way for investors to meet the requirements of the EB-5 program without a direct investment.⁶⁰ The regional center acts as an agent for both investors and companies looking to create and complete projects.⁶¹ The centers provide a service that links the two parties in order to accomplish the shared goal of employment and economic revitalization.⁶² This change helped to make the program more accessible because now investors could place their capital into existing programs designed to create jobs.⁶³ Regional centers are for investors who are only concerned with obtaining permanent citizenship, and do not want to take on a managerial role in their investment.⁶⁴ These regional centers can be publicly or privately owned.⁶⁵

To become a regional center a business requesting authorization must have completed the I-924 form and satisfied the requirements established by the United States Citizenship and Immigration Services (“USCIS”).⁶⁶ The USCIS implemented these requirements to ensure that the regional centers will provide

58. See Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, at n. 117 (2015) (addressing the idea that the initial goal was to attract entrepreneurs in order to facilitate the creation of new business to stimulate the economy, but a large majority of investors are taking the regional center route and this is causing a lack of entrepreneurs and demonstrates the ability to purchase citizenship).

59. *EB-5 Regional Center*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/eb-5-regional-center> [<https://perma.cc/L7PN-GAXR>].

60. *Id.*

61. *Id.*

62. Invest in the USA, *EB-5 Regional Center Program*, IIUSA (2014), <https://iiosa.org/en/eb-5-regional-center-investment-program/> [<https://perma.cc/GSD2-LSJB>]; See also, *EB-5 Regional Center*, EB-5 INVESTORS (2015) <http://www.eb5investors.com/eb5-basics/eb-5-regional-center> [<https://perma.cc/L7PN-GAXR>].

63. See Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 540 (2015).

64. Invest in the USA, *EB-5 Regional Center Program*, IIUSA (2014), <https://iiosa.org/en/eb-5-regional-center-investment-program/> [<https://perma.cc/GSD2-LSJB>].

65. *Id.*

66. *I-924 Application*, EB-5 INVESTORS (2016), <http://www.eb5investors.com/eb5-forms/i-924-application> [<https://perma.cc/E7XX-ARKX>]; See United States Citizenship and Immigration Services, *I-924 Form*, USCIS (Mar. 18, 2015), <https://www.uscis.gov/sites/default/files/files/form/i-924.pdf> [<https://perma.cc/REF2-ZRKX>].

EB-5 applicants with the requisite number of created jobs for each investment.⁶⁷ These businesses can be any entity that “is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment within the EB-5 program.”⁶⁸ Potentially eligible businesses include governmental agencies, partnerships, corporations and any other existing U.S. commercial entity.⁶⁹

The potential applicant must provide specific evidence that their plan for the regional center has satisfied each requirement.⁷⁰ The first requirement is the geographic position for the regional center, and the evidence to be provided is a detailed map of the exact location for the proposed regional center.⁷¹ The business must prove that ten jobs will be created by each of its EB-5 investors through the proposed regional center.⁷² This is often the most difficult portion to gather evidence for because the business must provide a business plan, economic reports, financial projections for the proposal that will demonstrate how funds will be spent, offering documents including a private placement memorandum, the subscription agreement, questionnaires for accredited investors, and an LP or LLC agreement for the proposal.⁷³ The business must include a description of the promotional activities it seeks to use.⁷⁴ In doing so they must provide the plan for all promotions, determine the amount of funds to be allocated to promotions, provide evidence of funds that are being used for promotion, and a strategy of how they plan to attract potential investors.⁷⁵ The business must provide some measure to prevent fraud and ensure that the money taken from investors has been acquired legally, which will often include the acquisition of previous bank statement from the investor.⁷⁶ Finally, the business must provide proof that the proposed regional center will comport with all the EB-5 regulations, by providing “documentation of the business structure of both the regional center and the new commercial enterprises that will be affiliated with the regional center.”⁷⁷

67. *I-924 Application*, EB-5 INVESTORS (2016), <http://www.eb5investors.com/eb5-forms/i-924-application> [<https://perma.cc/E7XX-ARKX>] (These requirements ensure the creation of jobs through predetermined business models and investment plans for the target area)

68. David Hirson & Nima Korpivaara, *Becoming and Operating a Regional Center*, EB-5 INVESTORS (2016), <http://www.eb5investors.com/eb5-basics/become-eb5-regional-center> [<https://perma.cc/FP88-NM8B>].

69. *Id.*

70. *I-924 Application*, EB-5 INVESTORS (2016), <http://www.eb5investors.com/eb5-forms/i-924-application> [<https://perma.cc/E7XX-ARKX>].

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

*c. Basic Pilot Program Extension and Expansion Act of 2003
and Subsequent Reforms*

The Basic Pilot Program Extension and Expansion Act was an additional Act passed in order to increase government oversight of the investment visa program and extend the program for a number of years.⁷⁸ In regard to the expansion, the Act amended the Appropriations Act of 1993 and changed the term of year to be effective from ten to fifteen, which extended the immigrant investor program to 2008.⁷⁹ Congress offered this extension because the Appropriations Act was set to expire in 2003.⁸⁰

In addition to the extension of the investor visa program, the Act created a system for an increased amount of government oversight due to problems arising following the Appropriations Act.⁸¹ The Act required that starting no “later than 1 year after the date of the enactment of this act, the General Accounting Office shall report to Congress on the immigrant investor program.”⁸² Following the enactment, in December of 2003, the General Accounting Office began to issue reports to Congress that contained information regarding:

- (1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program;
- (2) the country of origin of the immigrant investors;
- (3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;
- (4) the number of immigrant investors that have sought to become citizens of the United States;
- (5) the types of commercial enterprises that the immigrant investors have established; and
- (6) the types and number of jobs created by the immigrant investors.⁸³

This requirement enabled Congress to identify and correct many of the issues that were hindering the immigrant investor program from being successful.⁸⁴

The reports of the General Accounting Office revealed that only a portion of the ten thousand visas allocated for the program were being granted.⁸⁵ This

78. Basic Pilot Program Extension and Expansion Act, 108th Congress (Dec. 3, 2003), <https://www.congress.gov/108/plaws/publ156/PLAW-108publ156.pdf> [<https://perma.cc/8ZBA-KQ6D>].

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. United States Government Accountability Office, *Report: Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit*, GAO (Aug. 2015) (The GAO reports provide consistent analysis of the program and allow for changes to be recommended in order to increase the overall success of the program.).

85. *History of the EB-5 Program*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/history-of-eb5> [<https://perma.cc/S4V3-R2JY>].

information led to more reforms of increased oversight and proper allocation of visas in order to increase the success of the program. For example, one of these reforms led to the creation of the Investor and Regional Center Unit (“IRCU”) in 2005.⁸⁶ The IRCU as a “specialty unit of USCIS has oversight of the EB-5 program, including case auditing, form design, regulation development, and policy creation.”⁸⁷ The creation of the IRCU led to increased internal coordination and improved the overall performance of the immigrant investor visa program.⁸⁸ In 2009 another reform was made to centralize the processing of applications.⁸⁹ Under the previous system the applications were processed in both Texas and California, but the reform created the California Service Center and the California location became the sole processing center.⁹⁰

d. Administrative Appeals Office Decisions

There have been two significant interpretations from the Administrative Appeals Office (“AAO”) that have placed additional restrictions and regulations on the EB-5 program: the *Matter of Ho* and the *Matter of Izummi*.⁹¹ Emily C. Kendall believes that these two decisions caused a restriction in the ability for immigrant investors to take advantage of the EB-5 investor visa program.⁹² Kendall’s reasoning is that these decisions added increased regulations to those individuals that wanted to achieve the investor visa through the traditional route, by starting a business with their investment and taking a continuing role in the development to secure permanent residence.⁹³ However, with the increased amount of interest in and ease of access to the regional centers it is no longer a substantial burden for these immigrant investors to attain permanent residency.⁹⁴

86. *Id.*

87. *Id.*

88. *Id.*

89. Change in Filing Location for EB-5-Related Petitions and Applications and Regional Center Proposals, 74 FED. REG. 6, 912 6, 913 (Jan. 9, 2009), <http://www.justice.gov/sites/default/files/eoir/legacy/2009/01/09/fr09jan09.pdf> [<https://perma.cc/3KET-KVA8>] (explaining that the regional center processing will be centralized to the California Service Center).

90. *History of the EB-5 Program*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/history-of-eb5> [<https://perma.cc/S4V3-R2JY>].

91. *Matter of Ho*, 22 I. & N. Dec. 206, AAO (July 31, 1998); *Matter of Izummi*, 22 I. & N. Dec. 169, AAO (July 13, 1998); See also Emily C. Kendall, *Essay: Green Cards as the Ultimate Dividends: Why Improving the U.S. Investment Visa Program will Encourage the Economic Recovery by Increasing Foreign Investment and Creating Jobs For Americans*, 27 GEO. IMMIGR. L.J. 579 (2013).

92. Emily C. Kendall, *Essay: Green Cards as the Ultimate Dividends: Why Improving the U.S. Investment Visa Program will Encourage the Economic Recovery by Increasing Foreign Investment and Creating Jobs For Americans*, 27 GEO. IMMIGR. L.J. 579, 586 (2013).

93. *Id.*

94. *I-924 Application*, EB-5 INVESTORS (2016) [http://www.eb5investors.com/eb5-forms/i-](http://www.eb5investors.com/eb5-forms/i-924-application)

The use of these regional centers prevents the investor from having to meet these stringent requirements themselves, because the regional centers are satisfying them through their extensive application process.⁹⁵

The *Matter of Ho* (“*Ho*”) placed increased requirements on immigrant investors that were applying through the I-526 form, which was the original method of the immigrant investor program.⁹⁶ Under that program the investor would take on the managerial role in the business and form the ten employment positions himself to ensure the removal of conditions.⁹⁷ Following the decision in *Ho* the immigrant investor had to provide increased information regarding the business plan in order to be approved by the USCIS.⁹⁸ This increased information regarding the business plan required evidence of the jobs to be created by the initial investment, and when the individuals being employed would be hired.⁹⁹ Although it could be said that these increased requirements could deter immigrant investors, that logic is now problematic because with the use of the regional center program an investor can effectively side step a majority of the planning.¹⁰⁰ For the investor that wants to take on a managerial role this should not be a problem to satisfy, because ensuring the creation of jobs and having a structured business plan is essential to having the conditions removed to achieve permanent residency.

The other major decision that the AAO made in regard to the immigrant investor program was the *Matter of Izummi*. The decision increased the requirements regarding the promissory note to fulfill the investment.¹⁰¹ Following this decision investors must have a secured promissory note for fair market value in the U.S., and all balances due on the note must be paid within a two-year

924-application [<https://perma.cc/E7XX-ARKX>] (explaining that the under the regional center program the regional centers must satisfy the initial requirements that were previously delegated to investors, under the regional center program the high burden is no longer on the individual investor so the AAO decisions in *Matter of Ho* and *Matter of Izummi* do not place an additional burden on the investors who seek to use the regional centers program to secure a visa).

95. *Id.* (explaining that regional centers must meet stringent requirements and establish a business model to ensure the creation of jobs).

96. United States Citizenship and Immigration Services, *I-526 Form*, USCIS (Sept. 24, 2013), <https://www.uscis.gov/sites/default/files/files/form/i-526.pdf> [<https://perma.cc/ZYQ6-GVCU>].

97. See U.S. Citizenship & Immigr. Serv., *EB-5 Immigrant Investor Process*, Dept. of Homeland Sec. (June, 25, 2014), <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process> [<https://perma.cc/AL73-Z4JW>]; 102 P.L. 395, 106 Stat. 1828 (Oct. 6, 1992).

98. *Matter of Ho*, 22 I. & N. Dec. 206, AAO (July 31, 1998)

99. *Id.*

100. Emily C. Kendall, *Essay: Green Cards as the Ultimate Dividends: Why Improving the U.S. Investment Visa Program will Encourage the Economic Recovery by Increasing Foreign Investment and Creating Jobs For Americans*, 27 GEO. IMMIGR. L.J. 579, 586 (2013).

101. *Matter of Izummi*, 22 I. & N. Dec. 169, AAO (July 13, 1998).

period and any extensions of the repayment schedule cannot be provided.¹⁰² If the promissory note itself does not represent that the investor is in the process of applying capital to the business then, “the petitioner must substantially complete payments on the promissory note prior to the end of the two-year conditional period.”¹⁰³ These changes helped to ensure that the investor is actually paying into the business and prevents fraudulent activity and non-payment.¹⁰⁴

e. Obama Administration Extensions

President Obama extended the immigrant investor visa program several times during his presidency.¹⁰⁵ Although the investor visa program has not been permanently renewed, the continual renewal of the program demonstrates its popularity and economic benefit. In 2009, President Obama extended the program for three years, and it was set to expire on September 30, 2012.¹⁰⁶ Before the program expired President Obama reauthorized the three-year extension in order to extend the program to September 30, 2015.¹⁰⁷ As the program neared its expiration date President Obama signed an executive order to extend the program until the end of the fiscal year, December 11, 2015.¹⁰⁸ News outlets reported that

102. Emily C. Kendall, *Essay: Green Cards as the Ultimate Dividends: Why Improving the U.S. Investment Visa Program will Encourage the Economic Recovery by Increasing Foreign Investment and Creating Jobs For Americans*, 27 GEO. IMMIGR. L.J. 579, 587 (2013).

103. *Matter of Izummi*, 22 I. & N. Dec. 169, No. 11, AAO (July 13, 1998).

104. *Id.* (explaining that these changes were made to curb the presence of fraudulent activities and prevent non-payment through secured promissory notes).

105. See 111 P.L. 83, 123 Stat. 2177 (Oct. 28, 2009); 112 P.L. 176, 126 Stat. 1325 (Sept. 28, 2012); Jacob Sapochnick, *Update: Government Shutdown Averted: Congress Extends the EB-5, Conrad 30, and Religious Worker Programs Until December 11, 2015*, VISA LAWYER BLOG (Oct. 1, 2015), <http://www.visalawyerblog.com/2015/10/01/update-government-shutdown-averted-congress-extends-the-eb-5-conrad-30-and-religious-worker-programs-until-december-11-2015/> [<https://perma.cc/F8X5-SZS7>]; Chris Fuchs, *Temporary Spending Bill Extends ‘Investor Visa’ Program*, NBC NEWS (Oct. 1, 2015), <http://www.nbcnews.com/news/asian-america/temporary-spending-bill-extends-investor-visa-program-n436791> [<https://perma.cc/P3SW-NBCX>]; 114 P.L. 113, 129 Stat. 2242, at Sec. 575 (Dec. 18, 2015); Joshua Breisblatt, *Congress Funds Government and Extends Immigration Programs for Ten Months*, IMMIGR. IMPACT (Dec. 18, 2015), <http://immigrationimpact.com/2015/12/18/congress-funds-government-and-extends-immigration-programs-for-ten-months/> [<https://perma.cc/U9EC-UA85>].

106. 111 P.L. 83, 123 Stat. 2177 (Oct. 28, 2009); See also Bernard P Wolfsdorf et al., *EB-5 Immigrant Investor Program – A Changing Landscape*, WOLFSDORF IMMIGR. L. GROUP (2012).

107. 112 P.L. 176, 126 Stat. 1325 (Sept. 28, 2012); 114 P.L. 53, 129 Stat. 502, at Sec. 131 (Sept. 30, 2015); See also Melany Tellez, *President Obama Renews EB-5 Immigrant Investor Program – The Green Card Alternative for Foreign Investors*, DLA PIPER (Oct. 10, 2012), https://www.dlapiper.com/en/us/insights/publications/2012/10/president-obama-renews-eb5-immigrant-investor-pr_/ [<https://perma.cc/B3DT-D6CC>].

108. Jacob Sapochnick, *Update: Government Shutdown Averted: Congress Extends the EB-5, Conrad 30, and Religious Worker Programs Until December 11, 2015*, VISA LAWYER BLOG (Oct.

the “controversial immigrant investor program that provides a pathway to American citizenship popular among Chinese citizens who invest in American businesses in exchange for green cards has been extended through Dec. 11.”¹⁰⁹ The extension speaks to the increase interest over the past two years, and demonstrates that in order to continually inject capital into the economy this type of system needs to be in place.

On the heels of the third extension expiring President Obama signed into law an omnibus bill for the spending budget for the 2016 fiscal year that included an extension of the EB-5 investor visa program.¹¹⁰ The bill contained a provision that extended the immigrant investor program for regional centers through September 30, 2016 with no amendments or new provisions.¹¹¹ Invest in The USA (“IIUSA”), an immigrant investor visa advocate, believed that this extension was a victory but also felt “disappointed that Congress did not take this opportunity to pass a long term reauthorization and reform package.”¹¹² Although no long-term renewal was passed, this extension is still a major success for the program. The program has again been extended in an unaltered state and is now set for expiration on September 30, 2017.¹¹³ However, as the IIUSA concerns mentioned, there is still a need for a substantial reform.

1, 2015), <http://www.visalawyerblog.com/2015/10/01/update-government-shutdown-averted-congress-extends-the-eb-5-conrad-30-and-religious-worker-programs-until-december-11-2015/> [<https://perma.cc/F8X5-SZS7>].

109. Chris Fuchs, *Temporary Spending Bill Extends ‘Investor Visa’ Program*, NBC NEWS (Oct. 1, 2015), <http://www.nbcnews.com/news/asian-america/temporary-spending-bill-extends-investor-visa-program-n436791> [<https://perma.cc/P3SW-NBCX>].

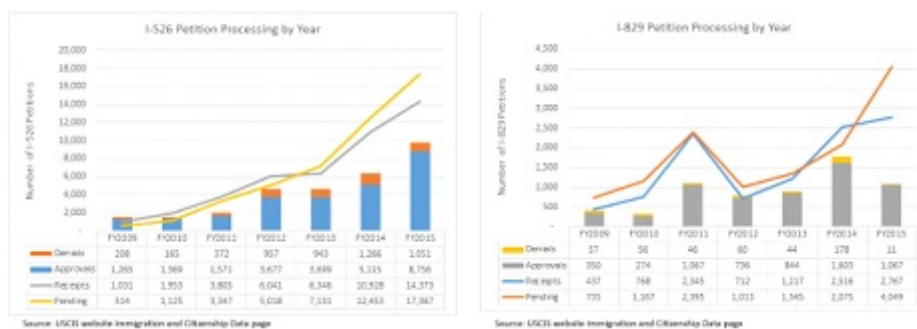
110. 114 P.L. 113, 129 Stat. 2242, at Sec. 575 (Dec. 18, 2015); *See also* Joshua Breisblatt, *Congress Funds Government and Extends Immigration Programs for Ten Months*, IMMIGR. IMPACT (Dec. 18, 2015), <http://immigrationimpact.com/2015/12/18/congress-funds-government-and-extends-immigration-programs-for-ten-months/> [<https://perma.cc/U9EC-UA85>].

111. Gary Chodorow, *President Signs EB-5 Extension into Law*, U.S. & CHINA VISA LAW BLOG (Dec. 20, 2015), <http://www.lawandborder.com/president-signs-eb-5-extension-into-law/> [<https://perma.cc/66QT-AKX6>].

112. Invest in The USA, *Omnibus Legislation Would Extend EB-5 Program to September 30, 2016*, IIUSA (Dec. 15 2015), https://iiusa.org/blog/press-room/statements/omnibus_legislation_would_extend_eb5_program/#comments [<https://perma.cc/L93Y-AMW5>].

113. 115 P.L. 31, 244 Stat. 298, at Sec. 542 (May 5, 2017); *See also*, Kristen W. Ng, *EB-5 Program Extended Until Sept. 30, 2017*, NAT'L LAW REV. (May 8, 2017), <https://www.natlawreview.com/article/eb-5-program-extended-until-sept-30-2017> [<https://perma.cc/AC4X-7987>].

f. Historical Success



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Since its inception in 1990, the EB-5 program has received a large amount of criticism. Early on, the EB-5 program received little interest and many academic writings and public opinions called for the repeal or reform of the system.¹¹⁵ These individuals believed that the current restrictions were too strict and deterred potential applicants from applying. This is an interesting approach because, as previously mentioned, most of the reforms that were made to the EB-5 programs did nothing to relax the requirements.¹¹⁶ In many respects the reforms

114. EB-5 STATISTICS, *FY2015 I-526 AND I-829 STATISTICS*, LUCID (Nov. 19, 2015), <http://blog.lucidtext.com/category/eb-5-statistics/> [<https://perma.cc/V55J-B29Y>] (graph depicting the rising interest in the immigrant investor program and the removal of condition for permanent residency, illustrates the historical success of the program); See also, Angelo Young, *EB-5 Immigrant Investor Visa Could Face Big Changes If Lawmakers Have Their Way*, INT'L BUS. TIMES (Dec. 10, 2015), <http://www.ibtimes.com/eb-5-immigrant-investor-visa-could-face-big-changes-if-lawmakers-have-their-way-2220782> [<https://perma.cc/A6BX-75FL>] (see the graph on visas issued from 2008-2015).

115. See Rick Su, *Article: Immigration as Urban Policy*, 38 FORDHAM URB. L.J. 363 (2010); Lenni B. Benson, *Article: Breaking Bureaucratic Borders: A Necessary Step Toward Immigration Law Reform*, 54 ADMIN. L. REV. 203 (2002); Kathleen Pender, *Feinstein Calls For End to Controversial EB-5 Immigration Program*, SFGATE (Nov. 4, 2015), <http://www.sfgate.com/business/networth/article/Feinstein-calls-for-end-to-controversial-EB-5-6610957.php> [<https://perma.cc/2CAN-K4V6>]; Jerry Markon, *Visa Program for Wealthy Foreigners at Risk of Fraud, Report Says*, WASH. POST (Sept. 8, 2015), <http://www.washingtonpost.com/blogs/federal-eye/wp/2015/09/09/visa-program-for-wealthy-foreigners-at-risk-of-fraud-report-says/> [<https://perma.cc/QR33-WBJ5>]; Editorial Board, *It's Time for the Corporate Visa Giveaway to go Away*, WASH. POST (Sept. 6, 2015), https://www.washingtonpost.com/opinions/its-time-for-the-corporate-visa-giveaway-to-go-away/2015/09/06/72b78ea0-50d3-11e5-9812-92d5948a40f8_story.html [<https://perma.cc/UQ9R-A7BW>].

116. See Section II (A) & (B).

of the late 1990s and early 2000s led to increased requirements and an increased level of oversight. However, as the graph above depicts, these increased requirements are not causing a drop in interest. For the years of 2014 and 2015 the approvals and pending request were higher than they have ever been, suggesting interest in the program is growing.

FY2014 EB-5 Visa Statistics by Immigrant Origin						
	Direct Investments		RC Investments		5th Total	% of Total
	\$1M not in TEA	\$500K in TEA	\$1M not in TEA	\$500K in TEA		
	5th Employ. Creation	5th Target Employ Areas	Regional Pilot Program	Regional Target Areas		
China Mainland born	67	95		8,966	9,128	85.4%
South Korea	8	10		207	225	2.1%
Mexico	11			118	129	1.2%
China Taiwan born	4			122	126	1.2%
Vietnam				121	121	1.1%
Russia	8			92	100	0.9%
India	5	8		83	96	0.9%
Iran	10	1		65	76	0.7%
Canada	6	3		43	52	0.5%
Nigeria	5			45	50	0.5%
Japan		2		47	49	0.5%
Great Britain	3	4	1	33	41	0.4%
Egypt				37	37	0.3%
Hong Kong		1		29	30	0.3%
Brazil		2		28	30	0.3%
South Africa				22	22	0.2%
All other countries	34	29	-	317	380	3.6%
Total	161	155	1	10,375	10,692	100.0%
% of total	1.5%	1.4%	0.0%	97.0%	100.0%	

Source: US State Department Report of the Visa Office 2014, Table V (Part 3)
<https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2014AnnualReport/FY14AnnualReport-TableV-PartIII.pdf>

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The removal of the requirement for the investor to assume a managerial position in the new investment made this program more attractive to foreign investors. The removal sparked more interest among the immigrant investor crowd.¹¹⁸ This is because it allowed the investors to take a secondary role and

117. EB-5 Statistics, *FY2014 EB-5 Visa Stats by Country*, LUCID (Dec. 10, 2014), <https://ebfive.files.wordpress.com/2014/12/fy2014visas.jpg> [<https://perma.cc/UJH5-WELN>] (graph demonstrating the increased interest in the regional center 'RC' program accounting for 97% of the total visas issued in 2014, and the increased interest from primarily Chinese investors).

118. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 Chap. L. Rev. 527, 541 (2015).

merely put up the capital instead of dealing with the creation of commercial enterprise and jobs.¹¹⁹ The introduction of these regional centers allowed the investors' involvement to be even further removed. Investors could now invest in a targeted area through an EB-5 sponsored investment program that was designed to create sustainable employment. Perhaps these are the changes that led to the immense popularity that the EB-5 program enjoys today.

The EB-5 program still maintained its strict regulations and requirements to apply and to remove the conditions on the applicant's visa.¹²⁰ Interest in the program grew steadily throughout the 2000s, and now for the past two years the allocation of EB-5 visas has been met at an alarmingly fast rate.¹²¹ The quotas for these visas are being met faster than ever before, suggesting that the program is currently successful. However, this does not necessarily mean that the EB-5 program is beneficial to the economy.

The EB-5 program has been met with an astounding number of interested investors plying their cash toward the possibility of citizenship. This may be due to the regulations being too easy to satisfy. Now every foreign citizen with a million dollars in capital can come to the United States and almost be guaranteed citizenship if they meet the requirements. In the United States many are calling for an end to the EB-5 program because they believe that the economic benefits are not justified by the ease of access the program is providing to wealthy immigrants.¹²² The tension in recent years has become so great that even Congress has taken notice.¹²³ "Legislation authorizing the program is set to expire in September, and although Congress has re-authorized it in recent years, members of both parties have proposed a series of substantial reforms this time around."¹²⁴ However, the Obama administration was able to extend the current program without amendment through September 30, 2016. The program is likely to undergo close scrutiny given the support for amendments by reformers prior to the extension, and the push for the programs termination by some members of

119. *Id.* at 429 (explaining the indirect investment process as a removal of the day-to-day managerial role).

120. Departments of Homeland Security, *Form I-829: Petition by Entrepreneur to Remove Conditions on Permanent Resident Status*, USCIS (May 7, 2015), <https://www.uscis.gov/sites/default/files/USCIS/Forms/i-829.pdf> [<https://perma.cc/J8FE-EE5X>].

121. Sophia Yan, *U.S. Runs Out of Investor Visas Again as Chinese Flood Program*, CNN HONG KONG (Apr. 15, 2015), <http://money.cnn.com/2015/04/15/news/economy/china-us-visa-eb5-immigrant-investor/> [<https://perma.cc/JE4K-ZVKV>].

122. Editorial Board, *It's Time for the Corporate Visa Giveaway to go Away*, WASH. POST (Sept. 6, 2015), https://www.washingtonpost.com/opinions/its-time-for-the-corporate-visa-giveaway-to-go-away/2015/09/06/72b78ea0-50d3-11e5-9812-92d5948a40f8_story.html [<https://perma.cc/UQ9R-A7BW>].

123. Jonathan O'Connell, *Buying Visas with Investments is Big Business. And Congress is Taking Notice*, WASH. POST (June 28, 2015), <http://www.washingtonpost.com/news/digger/wp/2015/06/28/buying-visas-with-investments-is-big-business-and-congress-is-taking-notice/> [<https://perma.cc/7FTR-PJUH>].

124. *Id.*

Congress.¹²⁵ This is an issue that should have been at the top of every presidential candidate's platform, because it contributes to an increasingly high influx in the number of immigrants and provides a sustainable amount of capital. As it stands the EB-5 program has been extended again without change by Congress, and is now set to expire on September 30, 2017.¹²⁶

III. FOREIGN INVESTOR VISA PROGRAMS ABROAD

The United States is not the only country that has attempted to cash in on the investments of foreign entrepreneurs in exchange for conditional citizenship. In fact, as the prevalence and popularity among immigrants grows more countries are adopting such policies. Such as, the United Kingdom's Tier 1 program, which is similar to the EB-5 program, but differs in some key areas. The British system also represents one of the more established programs and offers a comparison to a fully developed program. Canada's recently enacted Immigrant Investor Venture Capital Pilot Program provides insight as well. Although this program was revised and reopened in 2015, the investor visa is not a new concept in Canada. Before the current investor visa program Canada had a program that was similar to the EB-5. However, it was terminated on June 19, 2014 because the Canadian government found that there was not enough substantial economic benefit.¹²⁷ The new program seeks to remedy this problem by requiring increased capital to be invested and stricter regulation on which individuals can apply for the new investor visa.

Due to the immense popularity of these programs in the European Union more countries are starting to adopt investor visa programs. The Netherlands adopted an investor visa program to effectively draw in new capital from the international market. The Netherlands presents an interesting dichotomy to the more developed investor visa programs. The Netherlands provides a system of more lenient regulations, while still maintaining significant entrepreneurial and minimum capital introduction requirements. The Netherlands' program is at a

125. See *Id.*; Andy J. Semotiuk, *Where Are We Going With The EB5 Program and Investor Immigration to the United States?*, FORBES (Dec. 17, 2015), <http://www.forbes.com/sites/andyjsemotiuk/2015/12/17/where-are-we-going-with-the-eb5-program-and-investor-immigration-to-the-united-states/#2665cf044693> [https://perma.cc/4EVL-SETB]; Editorial Board, *It's Time for the Corporate Visa Giveaway to go Away*, WASH. POST (Sept. 6, 2015), https://www.washingtonpost.com/opinions/its-time-for-the-corporate-visa-giveaway-to-go-away/2015/09/06/72b78ea0-50d3-11e5-9812-92d5948a40f8_story.html [https://perma.cc/UQ9R-A7BW].

126. 115 P.L. 31, 244 Stat. 298, at Sec. 542 (May 5, 2017); See also, Kristen W. Ng, *EB-5 Program Extended Until Sept. 30, 2017*, NAT'L LAW REV. (May 8, 2017), <https://www.natlawreview.com/article/eb-5-program-extended-until-sept-30-2017> [https://perma.cc/AC4X-7987].

127. Sophia Yan, *Canada Kills Investor Visa Popular with Chinese*, CNN HONG KONG (Mar. 25, 2014), <http://money.cnn.com/2014/02/12/news/canada-chinese-immigration/index.html> [https://perma.cc/9VYT-WAJG].

stage of development where they are still trying to spark initial interest in the program. Thus, the use of such low barriers to potential applicants will encourage them to apply. Each of these programs differs from the EB-5 program in specific aspects.

To determine the successes and weaknesses of each program, relevant to their application in the U.S., it is necessary to discuss each program in full. Understanding the requirements of each program will help demonstrate the individualized need in each country.

A. The United Kingdom's Tier 1 Program

The Tier 1 investment visa program shares a goal similar to that of the EB-5 program, which is to encourage highly skilled workers to come into the United Kingdom and introduce their skill and capital to the economy.¹²⁸ The requirements for the Tier 1 program state that an applicant must have a minimum of about \$2,800,000 of investment funds to apply for Tier 1.¹²⁹ In addition, the applicant must be over eighteen and be able to prove that the money is either the applicant's or their partner's whether married or unmarried (also same-sex partners qualify).¹³⁰ The applicant must also open a UK bank account, and the funds the applicant has must be free to spend in the UK.¹³¹ The UK program also provides students under a general visa to gain financial sponsorship to be admitted to the Tier 1 process.¹³² In addition to these requirements the applicants must also provide documentation as evidence of the individual's investment funds or the investment funds of the partner.¹³³ Similar to the EB-5, this program allows the dependents of the applicant to come to the country on visa as well.¹³⁴ However, in this program the individuals must also fill out an application and supply criminal records.¹³⁵

The program also has a competitive market system that allows an immigrant who invests more capital into the country to increase the speed in which his or her

128. *UK Government Says Immigration Benefits Britain's Economy*, WORK PERMIT (Jun. 12, 2011) <http://www.workpermit.com/news/2008-06-12/uk/government-says-immigration-benefits-british-economy.htm> [<https://perma.cc/YLM6-ZHFX>] (explaining the goals of the Tier 1 program).

129. United Kingdom, *Tier 1 (Entrepreneur) Visa*, GOV. UK (2015), <https://www.gov.uk/tier-1-investor/overview> [<https://perma.cc/7QF3-72AQ>] (providing an overview of the requirements of the British "investor visa" program) (All currency has been changed to United States dollars for ease of comparison the current exchange rate is \$1.00 (USD) to £0.71. Therefore, the £2,000,000 investment requirement is \$2,829,800.00).

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. United Kingdom, *Tier 1 (Entrepreneur) Visa*, GOV. UK (2015), <https://www.gov.uk/tier-1-investor/family-members> [<https://perma.cc/8KKW-QCHD>].

135. *Id.*

application will be reviewed.¹³⁶ This helps to provide a competitive market for visas unlike the EB-5 program where applicants will be reviewed on the same timeline no matter the initial investment. Another way in which the Tier 1 program differs from the EB-5 is that it requires an initial investment of much more capital.¹³⁷ This suggests that British citizenship is going for a premium price, while the cost of citizenship in the United States is at a bargain price comparatively.

B. Canada's Immigrant Investor Venture Capital Pilot Program

The Canadian investor visa program up until 2014 was very similar to the EB-5 program.¹³⁸ The previous program's requirements were not too strict and it required a "low" amount of capital investment for an applicant to be considered for citizenship.¹³⁹ The amount to be invested under the old system was about \$580,000, while the new system requires a non-guaranteed investment of about \$1,460,000.¹⁴⁰ Canada decided to drop the old program in favor of a more strict system that raised the initial investment cost to a much higher number.¹⁴¹ The Canadian Ministry of Finance addressed the failures of the previous systems requirements in a 2014 report stating that, "[f]or decades, it has significantly undervalued Canadian permanent residence, providing a pathway to Canadian citizenship in exchange for a guaranteed loan that is significantly less than our

136. Law Firm Limited, *Immigration: Tier 1 Investor*, LAW FIRM UK (2016), http://www.lawfirmuk.net/investor_e.html [<https://perma.cc/84YL-NV2N>] ("From 2011 foreign investors have been given extra incentives to come to the UK. They can settle quicker if they invest large sums of money and will be able to spend longer periods outside the UK without losing their eligibility for settlement.")

137. *Compare* United Kingdom, *Tier 1 (Entrepreneur) Visa*, GOV. UK (2015), <https://www.gov.uk/tier-1-investor/overview> [<https://perma.cc/7QF3-72AQ>] (£2,000,000); *with International Immigrant Investor Programs*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/international-immigrant-investor-programs> [<https://perma.cc/V57C-KS2A>] (\$500,000 to \$1,000,000).

138. Canada, *Canada Business Immigration - Investor Category*, CANADA VISA (2015), <http://www.canadavisa.com/canada-immigration-investors.html> [<https://perma.cc/C33D-UAVD>].

139. *Id.*

140. *Id.* ("This program was terminated on June 19, 2014. The information on this page pertains to the most recent application cycle. A new federal investor program, known as the Immigrant Investor Venture Capital (IIVC) Pilot Program has since been launched."). *See also*, Canada, *Immigrant Investor Venture Capital Pilot Program*, CANADA VISA (2015), <http://www.canadavisa.com/immigrant-investor-venture-capital-pilot-program.html> [<https://perma.cc/F9AX-WK8P>] (explaining the requirements under this new program that was implemented in May of 2015). All currency has been changed to United States dollars for ease of comparison the current exchange rate is \$1.00 (USD) to \$1.37 (CND).

141. Sophia Yan, *Canada Kills Investor Visa Popular with Chinese*, CNN HONG KONG (Mar. 25, 2014), <http://money.cnn.com/2014/02/12/news/canada-chinese-immigration/index.html> [<https://perma.cc/9VYT-WAJG>].

peer countries require.”¹⁴² The Canadian government felt that they were getting too little of an economic benefit from the system and decided to implement new regulations in 2015.¹⁴³ Under the new requirements for Canada’s Immigrant Investor Venture Capital Pilot Program the applicant must “have a personal net worth of at least [about \$7,300,000]” and must “be prepared to make a non-guaranteed investment in the IIVC Fund in the amount of [about \$1,460,000]”.¹⁴⁴ The applicant must also “demonstrate sufficient language proficiency (CLB 5) in either English or French in all four language abilities (reading, writing, speaking, and listening) by providing results from a language competency test taken in the past two years at an approved testing agency.”¹⁴⁵

In addition to these requirements “the applicant must have a Canadian post-secondary degree, diploma, or certificate of at least one year; or have a foreign equivalent as validated by an Educational Credential Assessment (ECA) report from a designated organization.”¹⁴⁶ However, there is an option to waive the education requirement, and “[i]f the applicant has a personal net worth of [about \$36,500,000] or more, he or she can request an exemption from the education requirement.”¹⁴⁷ This is an interesting requirement because it allows the investor to forego additional requirements purely based off of an increased net worth. The net worth exception is directly correlated with the goal to increase economic benefit, because the program does not want to deny an applicant who can contribute more capital. This policy further demonstrates that Canada’s new reforms are aimed at garnering the maximum amount of economic benefit.

C. Netherlands Foreign Investor Visa

The most recent of the investor visa programs is the Netherlands’, which was implemented in early 2015. The investor visa program has been implemented due to the lack of available capital in the Netherlands.¹⁴⁸ The Netherlands based this decision on the increasing importance “for European startups to maintain a competitive edge, with the support of the right funding and access to networks,

142. *Id.*

143. *Id.*

144. Canada, *Immigrant Investor Venture Capital Pilot Program*, CANADA VISA (2015), <http://www.canadavisa.com/immigrant-investor-venture-capital-pilot-program.html> [<https://perma.cc/F9AX-WK8P>] (All currency has been changed to United States dollars for ease of comparison the current exchange rate is \$1.00 (USD) to \$1.37 (CND)).

145. *Id.*

146. *Id.*

147. *Id.* (All currency has been changed to United States dollars for ease of comparison the current exchange rate is \$1.00 (USD) to \$1.37 (CND)).

148. Kayleigh Bateman, *Netherlands Takes Steps to Become the Startup-friendly ‘West Coast of Europe’*, COMPUTER WEEKLY (Feb. 2015), <http://www.computerweekly.com/feature/Netherlands-takes-steps-to-become-startup-friendly-West-Coast-of-Europe> [<https://perma.cc/EX8Y-8EBP>].

to recharge local economies.”¹⁴⁹ The Netherlands is attempting to join the growing trend of countries offering incentives of citizenship for investors and entrepreneurs who are eager to apply capital to new industries and countries.¹⁵⁰

Under the program “[i]nvestors can obtain a residence permit in the Netherlands by making a minimum capital investment of [about \$30,000].”¹⁵¹ In order to qualify for the Netherlands Investment Program, applicants must “be younger than 60 years of age; and if the applicant is a business person, she or he must own more than 20 percent of the company she or he is considered an independent entrepreneur.”¹⁵² The age requirement is an interesting factor that is not seen in many of the other foreign investor visa programs.¹⁵³ The Netherlands is attempting to target “younger” investors and entrepreneurs because they want an individual who has the potential to grow and continue to invest in the area. The policy deters elderly investors who are applying their capital in order to merely obtain citizenship. The requirement demonstrates the legislative intent to cater only “to attract more international startups to set up business in the country.”¹⁵⁴ The Netherlands policy also allows for the acceptance of dependents of the investor to gain citizenship.¹⁵⁵ “If the entrepreneur has a monthly income of at least [about \$1,500], the applicant has the right to include their spouse, unmarried partner, and children under 18 years of age in their application.”¹⁵⁶ This is similar to the policies of the other investor visa programs and seems to be a staple of the all the investor visa programs.¹⁵⁷

Here it is easy to see the differences in the Netherlands policy compared to

149. *Id.*

150. *Id.*

151. *International Immigrant Investor Programs*, EB-5 INVESTORS (2015) <http://www.eb5investors.com/eb5-basics/international-immigrant-investor-programs> [<https://perma.cc/V57C-KS2A>] (see the section referring to the policies of the Netherlands specifically). All currency has been changed to United States dollars for ease of comparison the current exchange rate is \$1.00 (USD) to €0.91.

152. *Id.* (see the section referring to the policies of the Netherlands specifically).

153. *Id.* (listing each programs requirements: Netherland, Australia, and New Zealand are the only programs with an age cap).

154. Kayleigh Bateman, *Netherlands Takes Steps to Become the Startup-friendly 'West Coast of Europe'*, COMPUTER WEEKLY (Feb. 2015), <http://www.computerweekly.com/feature/Netherlands-takes-steps-to-become-startup-friendly-West-Coast-of-Europe> [<https://perma.cc/EX8Y-8EBP>].

155. *International Immigrant Investor Programs*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/international-immigrant-investor-programs> [<https://perma.cc/V57C-KS2A>] (see the section referring to the policies of the Netherlands specifically).

156. *Id.* (see the section referring to the policies of the Netherlands specifically) (All currency has been changed to United States dollars for ease of comparison the current exchange rate is \$1.00 (USD) to €0.91).

157. *Id.* (explaining each individual “investor visa” program and offering a list of the requirements for each that can be easily compared to one another).

the more developed policies of the United States, Canada, and the United Kingdom. The Netherlands favors a low barrier to access the visa program. In allowing potential investors access to the country at such a low rate it would seem that the Netherlands has given themselves a competitive advantage to draw in new investors. However, a policy like this will not work to correct the problems with the flooded programs of the United States' EB-5 and Canada's Immigrant Investor Venture Capital Pilot Program. These countries, unlike the Netherlands, have garnered an interest in their programs and do not need a competitive edge. The Netherlands program demonstrates the ability to start with low requirements in the early stages of an investor visa program, but this also suggests that after a certain level of success and interest the program will have to be amended like Canada's recent reforms.

IV. ANALYSIS

Each of the international immigrant investor visas present different approaches to the overall goal of obtaining increased economic benefit and attracting entrepreneurs. To determine which program's approaches are the best it is important to consider the economic benefit of the current EB-5. The EB-5 has been met with some recent success, but is currently plagued by fraud and the inability to meet the demands of investors. The international programs provide a new approach to solving these problems. Each program will be applied to the current immigrant investor policies of the United States to determine the appropriate reforms to be made.

A. Economic Benefit of the EB-5

Interest in the immigrant investor visa program has grown, but it is important to determine the actual economic benefit it provides. To determine the economic benefit of the program it is important to look at its impact on the country. One way to achieve this is to analyze the stream of capital and how it is being used. Regional centers provide an excellent foundation to determine the benefits of the investor visa program. Many advocates of the investor visa program, like IIUSA, describe successful regional center developments in order to establish the economic benefit.¹⁵⁸

There have been several success stories regarding the IIUSA regional center programs. One regional center created a "development of assisted and retirement living communities in Washington State, creating 800 jobs and serving approximately 130 seniors."¹⁵⁹ The economic benefit from this development was

158. Invest in the USA, *EB-5 Regional Center Program*, IIUSA (2014), <https://iiusa.org/en/eb-5-regional-center-investment-program/> [<https://perma.cc/GSD2-LSJB>]; See also, *EB-5 Regional Center*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/eb-5-regional-center> [<https://perma.cc/L7PN-GAXR>].

159. Invest in the USA, *EB-5 Regional Center Program*, IIUSA (2014), <https://iiusa.org/en/eb-5-regional-center-investment-program/> [<https://perma.cc/GSD2-LSJB>]; See also, *EB-5 Regional Center*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/eb-5-regional-center>.

twofold. The development created not only jobs for the community, but also created housing for seniors.¹⁶⁰ The jobs created help to stimulate the economy, but the housing of the seniors also has great economic importance because without EB-5 investor funds the housing would have been developed at the cost of the taxpayers. The funds from investors allowed the citizens of Washington State to preserve their tax dollars for use in other important areas.¹⁶¹ Another regional center funded the restoration of the historic “Alaska Club” building in Seattle, which created a modern hotel that employs almost 100 people and serves over 100,000 hotel guests annually.¹⁶² The economic benefit from the restoration was the creation of jobs for citizens in the target area and the increased tax base from the guests that travel to the location each year.

Regional center investment funds also paid for the redevelopment of a closed Air Force base in Southern California.¹⁶³ The investment turned the abandoned base into a vital commercial area including a distribution center and regional airport.¹⁶⁴ The redevelopment of unused space is of great benefit to California. The true economic benefit comes from the fact that this redevelopment was funded completely by immigrant investors. It was done at no cost to the taxpayers. Additionally, the creation of an airport will certainly lead to substantial economic benefit for the surrounding area with an increase of travel and tourism in the future.

Perhaps the two most notable regional center developments IIUSA attributes to EB-5’s success are the rehabilitation of a building that sparked the revitalization of a Dallas neighborhood and the transformation of an unused Navy yard in Philadelphia.¹⁶⁵ In Dallas they transformed a “100 year old building into a hotel that created over 161 jobs while kick-starting the revitalization of an historic Dallas neighborhood.”¹⁶⁶ The economic benefit from the jobs is apparent through the increase in paying jobs and an increased tax base. The hotel guests

5-regional-center [https://perma.cc/L7PN-GAXR].

160. Invest in the USA, *EB-5 Regional Center Program*, IIUSA (2014), <https://iiusa.org/en/eb-5-regional-center-investment-program> [https://perma.cc/GSD2-LSJB].

161. *Id.*

162. *Id.*; See also, *EB-5 Regional Center*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/eb-5-regional-center> [https://perma.cc/L7PN-GAXR].

163. Invest in the USA, *EB-5 Regional Center Program*, IIUSA (2014), <https://iiusa.org/en/eb-5-regional-center-investment-program/> [https://perma.cc/GSD2-LSJB].

164. *Id.*; See also, *EB-5 Regional Center*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/eb-5-regional-center> [https://perma.cc/L7PN-GAXR].

165. Invest in the USA, *EB-5 Regional Center Program*, IIUSA (2014), <https://iiusa.org/en/eb-5-regional-center-investment-program/> [https://perma.cc/GSD2-LSJB]; See also, *EB-5 Regional Center*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/eb-5-regional-center> [https://perma.cc/L7PN-GAXR].

166. Invest in the USA, *EB-5 Regional Center Program*, IIUSA (2014), <https://iiusa.org/en/eb-5-regional-center-investment-program/> [https://perma.cc/GSD2-LSJB]; See also, *EB-5 Regional Center*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/eb-5-regional-center> [https://perma.cc/L7PN-GAXR].

that will now frequent the area also increase the tax base. The revitalization of the neighborhood is beneficial to the target area because it improved the historic neighborhood improving the overall quality of the area. The investments also transformed a closed Navy yard in Philadelphia into a dynamic, multi-use development for 130 companies and 10,000 employees.¹⁶⁷ The revitalization of this Navy yard provided great economic benefit to the Philadelphia area by adding an increased number of jobs and adding to the business development of the area.¹⁶⁸

There are also a large number of EB-5 regional center projects currently developing in California.¹⁶⁹ CMB Export LLC is one of the primary regional centers developers in California, which is part of a nine regional center parent company.¹⁷⁰ This regional center is currently constructing a resort hotel called The Great Wolf Lodge, in Garden Grove, California.¹⁷¹ The project has been funded entirely by EB-5 investors through the regional center program.¹⁷² The project has a total of 232 investors for a total investment of \$116,000,000.¹⁷³ The projected amount of direct jobs to be created by the development is 4,710, and the creation of 3,525 indirect jobs.¹⁷⁴ The Garden Grove area will gain substantial economic benefit from the resort hotel because it will bring in capital from tourists, and will also create over 8,000 jobs for the areas residents. The immigrant investor program has had a substantial effect on the economy of Southern California through the creation of close to 16,000 jobs and increased resort destinations.

In fact CMB, the parent company to CMB Export LLC, states that their program has created 66,847 direct jobs and 76,892 indirect jobs from immigrant investors alone, and they have a plan to create a projected total of 143,739 jobs upon completion of their current regional center projects.¹⁷⁵ This is a substantial economic benefit that comes at zero cost to taxpaying citizens of the United

167. Invest in the USA, *EB-5 Regional Center Program*, IIUSA (2014), <https://iiusa.org/en/eb-5-regional-center-investment-program/> [<https://perma.cc/GSD2-LSJB>];

168. *Id.*; See also, *EB-5 Regional Center*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/eb-5-regional-center> [<https://perma.cc/L7PN-GAXR>].

169. U.S. Citizenship & Immigr. Serv., *Immigrant Investor Regional Centers*, Dept. of Homeland Sec. (Feb. 16, 2016), <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers> [<https://perma.cc/53BY-PX2B>] (See the list of regional centers, 245 regional centers can be found in California).

170. CMB EB-5 VISA (2014), <http://www.cmbeb5visa.com/> [<https://perma.cc/MPK8-A56G>] (One of the largest regional center providers in the U.S.).

171. CMB EB-5 Visa, *Group 16 Garden Grove Great Wolf Lodge*, CMB (2014), <http://www.cmbeb5visa.com/projects/group-16-garden-grove-great-wolf-lodge> [<https://perma.cc/B4QC-Y2DH>].

172. *Id.*

173. *Id.*

174. *Id.*

175. CMB EB-5 VISA (2014), <http://www.cmbeb5visa.com/> [<https://perma.cc/MPK8-A56G>].

States. This represents substantial evidence of an increased economic benefit coming directly from the regional centers of the EB-5 investor visas. In addition to listing the projected number of jobs and jobs that have already been created CMB stated that they have had 2,479 I-526 approvals and 501 I-829 approvals.¹⁷⁶ That means 2,479 individuals have been approved for two-year conditional residency, and of those, 501 have been able to get their conditions removed and achieve permanent residency.

There are numerous examples of EB-5 investor funding benefiting their target area, creating economic benefit through the creation of jobs, and increasing the tax base.¹⁷⁷ However, there are also examples of fraud that causes a detriment to the target area.¹⁷⁸ In the Government Accountability Office's ("GAO") 2015 report they identified fraud as one of the major problems to be addressed.¹⁷⁹

The fraud risks identified in the program included uncertainties in verifying that the funds invested were obtained lawfully and various investment-related schemes to defraud investors. These assessments were onetime efforts; however, USCIS officials noted that fraud risks in the EB-5 Program are constantly evolving, and they continually identify new

176. *Id.*

177. See Brian Leaf, *It's 2016, Many Ribbons to be Cut in Rockford This Year*, ROCKFORD REGISTER STAR (Jan. 2, 2016), <http://www.rrstar.com/article/20160102/NEWS/160109959/> [<https://perma.cc/W8U5-E25Y>]; Bisnow, *America's Most Notable EB-5-Financed Developments*, BISNOW (Dec. 10, 2014), <https://www.bisnow.com/national/news/capital-markets/Americas-Most-Notable-EB-5-Financed-Developments-41065> [<https://perma.cc/X3DD-CC7C>]; Rick Karlin, *Visas are Lure for China Casino Cash in Schenectady*, TIMES UNION (December 18, 2015), <http://www.timesunion.com/tuplus-local/article/Visas-are-lure-for-China-casino-cash-in-6706265.php> [<https://perma.cc/Z8QW-UFW6>]; Rosalie Murphy, *EB-5 Visa Program Brings Foreign Investment to Valley*, THE DESERT SUN (Oct. 30, 2015), <http://www.desertsun.com/story/money/business/2015/10/30/eb-5-visa-program-brings-foreign-investment-valley/74355346/> [<https://perma.cc/6TAT-BQ7G>].

178. See Security and Exchange Commission, *Investor Alert: Investment Scams Exploit Immigrant Investor Program*, SEC (Oct. 9, 2013), http://www.sec.gov/investor/alerts/ia_immigrant.htm [<https://perma.cc/55WW-7YSV>]; Alby Gallun, *Hotel Developer Pleads Guilty to \$158 Million Fraud*, CHICAGO BUS. (Jan. 13 2016), <http://www.chicagobusiness.com/realestate/20160113/CRED03/160119928/guilty-plea-from-hotel-developer-in-failed-ohare-project> [<https://perma.cc/MD6X-CJ4T>]; James Rufus Koren, *Pair Misspent Millions from Chinese Investors in EB-5 Visa Program, Sec Says*, LOS ANGELES TIMES (Dec. 4, 2015), <http://www.latimes.com/business/la-fi-eb5-investor-fraud-20151204-story.html> [<https://perma.cc/KN7R-W4BP>]; United States Government Accountability Office, *Report: Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit*, GAO (Aug. 2015).

179. United States Government Accountability Office, *Report: Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit*, GAO (Aug. 2015).

fraud schemes.¹⁸⁰

This risk of fraud has an adverse impact on the immigrant investors who are using their capital in hopes of gaining residency in the United States, and could be a factor that left unchecked would deter future investors from the program.

One example of the risk of fraud having an adverse impact on investors is the ongoing case the SEC has filed against Ashoo Sethi.¹⁸¹ Sethi “admitted he used bogus and forged documents to raise money for the three-hotel, 995-room project at 8201 W. Higgins Road [Chicago], which never got off the ground.”¹⁸² According to the investigation “[m]ore than 290 people invested about \$158 million in the hotel through the federal EB-5 program.”¹⁸³ Sethi has since pleaded guilty to fraudulently obtaining the funds and has to date returned \$146.5 million of the money collected.¹⁸⁴ Sethi is still working to obtain the remaining \$12.5 million from the various brokers he initially paid.¹⁸⁵ This type of fraudulent activity has the potential to cause a significant decrease in the number of interested investors. USCIS needs to improve the regional center program and provide a plan to deter fraud through an increased amount of government oversight.

Risk to investors is not the only problem with the presence of fraud in the program. The fraudulent appropriation and misuse of funds has the greatest impact on the targeted area that the regional center aimed to fix.¹⁸⁶ Fraud often leaves undeveloped swaths of land that will remain unused throughout the investigation. In a different case regarding fraud, the SEC found that Robert Yang garnered \$6 million in immigrant investment funds for the building of a nursing

180. *Id.* at 2.

181. Security and Exchange Commission, *Investor Alert: Investment Scams Exploit Immigrant Investor Program*, SEC (Oct. 9, 2013), http://www.sec.gov/investor/alerts/ia_immigrant.htm [<https://perma.cc/55WW-7YSV>]; Alby Gallun, *Hotel Developer Pleads Guilty to \$158 Million Fraud*, CHICAGO BUS. (Jan. 13 2016), <http://www.chicagobusiness.com/realestate/20160113/CRED03/160119928/guilty-plea-from-hotel-developer-in-failed-ohare-project> [<https://perma.cc/MD6X-CJ4T>].

182. Alby Gallun, *Hotel Developer Pleads Guilty to \$158 Million Fraud*, CHICAGO BUS. (Jan. 13 2016), <http://www.chicagobusiness.com/realestate/20160113/CRED03/160119928/guilty-plea-from-hotel-developer-in-failed-ohare-project> [<https://perma.cc/MD6X-CJ4T>].

183. *Id.*

184. *Id.*

185. *Id.*

186. See, James Rufus Koren, *Pair Misspent Millions from Chinese Investors in EB-5 Visa Program*, *Sec Says*, LOS ANGELES TIMES (Dec. 4, 2015), <http://www.latimes.com/business/la-fi-eb5-investor-fraud-20151204-story.html> [<https://perma.cc/KN7R-W4BP>]; Alby Gallun, *Hotel Developer Pleads Guilty to \$158 Million Fraud*, CHICAGO BUS. (Jan. 13 2016), <http://www.chicagobusiness.com/realestate/20160113/CRED03/160119928/guilty-plea-from-hotel-developer-in-failed-ohare-project> [<https://perma.cc/MD6X-CJ4T>]; Security and Exchange Commission, *Investor Alert: Investment Scams Exploit Immigrant Investor Program*, SEC (Oct. 9, 2013), http://www.sec.gov/investor/alerts/ia_immigrant.htm [<https://perma.cc/55WW-7YSV>].

home, and instead of using it for the promised project applied the money to personal debts and his own gain.¹⁸⁷ This type of fraud is detrimental to the Chinese investors who were duped into investing and it is also detrimental to the target area. The investigation showed that “nearly two years after construction was supposed to be finished, the building remains a tattered shell, walls down to the studs, no windows or doors, and no sign of ongoing work.”¹⁸⁸ The presence of fraud here has caused an economic injury to this target area.¹⁸⁹ Now citizens of the area will have to deal with the eyesore of an abandoned project while the developer is tied up in SEC litigation, or they will have to take the cost of revitalizing the building to the taxpayers. Examples of fraudulent misappropriations of investor funds provide evidence of the economic damage that the EB-5 program and its lack of oversight can have on the host area.

Fraudulent activity can lead to the backing out of developers and has the potential to deter future investors. While the economic benefits from successful programs are clearly shown through the revitalization of target areas and the creation of employment opportunities, fraud still presents a major problem. The risk of fraud could lead to a decline in the overall applications, but worse yet it could cause potentially vital developments to be abandoned. The EB-5 program has the interest of the global market, but if it is unable to amend its policies to secure more initial capital and improve fraud protection the economic benefit may no longer outweigh the risk.

B. The Benefit of International Approaches to the Investor Visa

It is important to consider the international approaches to the investor visa in order to determine if they could offer an increased benefit in the United States. The first investor visa to be analyzed will be the immigrant investor visa program that recently came into effect in the Netherlands. Although this program is in its early developmental stages, it has some very progressive requirements when it comes to the application and approval process. As mentioned earlier, the Netherlands program has an age cap of 60 on their requirements.¹⁹⁰ This is a very progressive idea because it works to secure young entrepreneurial investors unlike the other investor visa programs of the U.S., Canada, and the United Kingdom. The age restriction allows the economy of the Netherlands to benefit from younger entrepreneurs who want to inject their capital into the region, and it prevents older investors from coming in merely to obtain a visa. Drawing the

187. James Rufus Koren, *Pair Misspent Millions from Chinese Investors in EB-5 Visa Program, Sec Says*, LOS ANGELES TIMES (Dec. 4, 2015), <http://www.latimes.com/business/la-fi-eb5-investor-fraud-20151204-story.html> [<https://perma.cc/KN7R-W4BP>].

188. *Id.*

189. *Id.*

190. *International Immigrant Investor Programs*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/international-immigrant-investor-programs> [<https://perma.cc/V57C-KS2A>] (see the section referring to the policies of the Netherlands specifically).

attention of the younger market allows the Netherlands to secure more long-term investors.

The EB-5 program might benefit from an approach like this because it would promote the influx of younger investors that could offer continued investments to the program. However, an age cap may not be necessary in the EB-5 program because the regional center program does not require additional investments following the removal of initial conditions.¹⁹¹ Thus, an age requirement to ensure young entrepreneurs invest is not necessary because the regional center program is not concerned with entrepreneurial investors. Additionally, the 20 percent ownership requirement would not mesh well with the current regional center programs because a majority of the investors are not interested in the managerial role.¹⁹² The program's requirements will help the Netherlands secure more entrepreneurs rather than individuals effectively "buying" visas.

The British Tier 1 program investor visa has seen a decline of up to 82 percent in the number of applications received in recent years.¹⁹³ This is due to the competition that the United Kingdom receives from other countries that are within the European Economic Area.¹⁹⁴ The Tier 1 program suffers greatly from the competition of other countries that fall within these free travel zones.¹⁹⁵ The individuals that obtain the Tier 1 investor visa often do not stay long enough to

191. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 529 (2015) (because the regional center approach allows the investor to take an indirect role an age cap will not work to further the goal of increased economic benefit as the only concern is the amount of capital).

192. *International Immigrant Investor Programs*, EB-5 INVESTORS (2015), <http://www.eb5investors.com/eb5-basics/international-immigrant-investor-programs> [<https://perma.cc/V57C-KS2A>] (see the section referring to the policies of the Netherlands specifically).

193. Daniel Waldron & Sanwar Ali, *UK Tier 1 Investor Visa Applications Decline by 82%*, WORK PERMIT (Oct. 13, 2015), <http://www.workpermit.com/news/2015-10-13/uk-tier-1-investor-visa-applications-decline-by-82-percent> [<https://perma.cc/6HNM-KDCU>].

194. *Id.* See also, United Kingdom, *Countries in the EU and EEA*, GOV. UK (2016), <https://www.gov.uk/eu-eea> [<https://perma.cc/ZMR2-4GL8>] (explaining free movement of people between member states that are parties to the European Economic Area agreement); See generally, Stephen Kinnock, *Britain can use EEA as comfortable waiting room before Brexit*, FINANCIAL TIMES (July 29, 2017), <https://www.ft.com/content/740780b2-72dc-11e7-93ff-99f383b09ff9> [<https://perma.cc/5928-8WZ8>] (This Note will not address the additional issues that may arise due to the United Kingdom's intended departure from the European Union and the effects it may have on the European Economic Area membership of the United Kingdom, as it is beyond the scope of this Note).

195. Jon Moynihan et al., *Immigration: Britain Can Only Control Who Comes in if We Leave the EU*, THE TELEGRAPH (Jun. 25, 2015), <http://www.telegraph.co.uk/news/newstopping/eureferendum/11698869/Immigration-Britain-can-only-control-who-comes-in-if-we-leave-the-EU.html> [<https://perma.cc/EEZ8-LQXV>].

acquire permanent residency.¹⁹⁶ This is because the British visa allows them to travel freely among any countries within the European Economic Area.¹⁹⁷ However, this is not to say that the Tier 1 program does not have policies that would be beneficial when applied to the EB-5, which does not have the competition of the European Economic Area.

The Tier 1 policies that could provide increased economic benefit to the EB-5 are the increased amount of capital for the initial investment, the use of a competitive investment-processing program, and allowing investors who have same-sex partners to bring their dependents.¹⁹⁸ The increase in the amount of capital for the entry into the program would have obvious economic benefits because there would be more money to apply toward targeted areas and the creation of jobs. Allowing same-sex couples to bring their dependents would be a progressive step that has the potential to increase interest in the EB-5. The U.S. recently legalized the marriage of same-sex couples, so allowing investors to bring their same-sex dependents would not likely be frowned upon.¹⁹⁹

However, the best benefit the Tier 1 program could offer to the EB-5 is competitive application processing policy, which allows immigrants who have the most capital to be processed faster than the other applicants.²⁰⁰ The EB-5 has the interest to implement such a program because the available applications have already been filled for 2015.²⁰¹ If there were a system in place to process applications faster it would create a competitive market of immigrant investors who would inject inflated amounts of capital into programs in order to obtain residency visas faster.

Canada's Immigrant Investor Venture Capital Pilot Program requirements can provide the EB-5 with increase economic benefit. As previously mentioned Canada repealed its old immigrant investor policy due to lack of substantial economic benefits.²⁰² Canada implemented the new Immigrant Investor Venture Capital Pilot Program, which offered the same visa with increased regulations and capital requirements.²⁰³ The Canadian policy requires an investment of about

196. *Id.*

197. *Id.*

198. United Kingdom, *Tier 1 (Entrepreneur) Visa*, GOV. UK (2015), <https://www.gov.uk/tier-1-investor/overview> [<https://perma.cc/7QF3-72AQ>] (providing an overview of the requirements of the British "investor visa" program).

199. *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

200. Law Firm Limited, *Immigration: Tier 1 Investor*, LAW FIRM UK (2016), http://www.lawfirmuk.net/investor_e.html [<https://perma.cc/84YL-NV2N>]; See also United Kingdom, *Tier 1 (Entrepreneur) Visa*, GOV. UK (2015), <https://www.gov.uk/tier-1-investor/overview> [<https://perma.cc/7QF3-72AQ>].

201. Sophia Yan, *U.S. Runs Out of Investor Visas Again as Chinese Flood Program*, CNN HONG KONG (Apr. 15, 2015), <http://money.cnn.com/2015/04/15/news/economy/china-us-visa-eb5-immigrant-investor/> [<https://perma.cc/JE4K-ZVKV>].

202. *Id.*

203. Canada, *Immigrant Investor Venture Capital Pilot Program*, CANADA VISA (2015), <http://www.canadavisa.com/immigrant-investor-venture-capital-pilot-program.html>

\$1,460,000, which is a substantial increase when compared to the mere \$500,000 that regional center investors of the EB-5 program pay for a visa.²⁰⁴ The policy also requires that the applicants have a minimum net worth of about \$7,300,000.²⁰⁵

The EB-5 program could benefit from a reform to increase the initial investment, because the current interest suggests that the price of the regional center program is too “low” because of the flooding number of applicants. There should be an amendment to increase the amount of the investment needed to acquire a U.S. visa. Although, an increase to \$2,800,000, approximately the current investment required to obtain a British visa, could be considered excessive and may cause a decrease in interest. The EB-5 program would also benefit greatly from a net worth requirement. Potentially fraudulent or defaulting investors could be avoided by requiring an applicant to produce bank statements and other financial data demonstrating net worth.

C. Current State of the EB-5 and Need for Reform

The current state of the EB-5 is problematic because for the second year in a row the visa allocation was hit, and GAO reports suggest that the program is still susceptible to fraud. “While the Immigrant Investor Pilot Program part of the EB-5 program is successful, the direct-employment creation part is not working; the United States is not actually attracting many immigrant entrepreneurs.”²⁰⁶ The reason the program is not actually attracting many immigrant entrepreneurs is because current standards allow for an immigrant to invest \$500,000 into a regional center and wait while their residency visa come into fruition. While on the other hand it costs \$1,000,000 for an investor to create his or her own business plan in the target area. The increasing popularity of regional centers is partly to blame for this lack of entrepreneurs because it attracts any individual with the requisite capital. These individuals do not have to create a new business. Instead they can invest in an existing program. However, this does not mean that the system is broken, but it does suggest that it could benefit from a substantial reform.

Risk of fraud is also a cause for reform. Under the current system there is not enough government oversight of regional centers to monitor the use of investment funds. As previously noted this has led to the selfish appropriation of investor’s funds to be used for personal gain. If USCIS is able to develop a plan to increase the monitoring of the funds for regional centers this could offer great benefit to the program. USCIS could achieve this by implementing a business plan of their own that would develop an additional regional center monitoring facility, which

[<https://perma.cc/F9AX-WK8P>].

204. *Id.*

205. *Id.*

206. Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 543 (2015).

could be completely investor-funded and would create jobs in the process.

It is clear that there is need for reform in this program, because United States citizenship is no longer being sold at a premium price. In order to achieve the initial goal of benefiting the economy and attracting skilled immigrant entrepreneurs, the program needs to increase the cost of regional center investment and decrease the cost of entrepreneurial investment. If the program were reformed to include increased restrictions in governmental oversight it would attract even more investors because it would reduce the risk of fraud and increase the amount of returns.

V. REFORM TO INCREASE ECONOMIC BENEFIT

As a program's interest increases it should evolve, and in the case of the EB-5 it has grown close to the point of breaking. Reforms need to be made in order to increase the measures taken to prevent fraud. If the system does not evolve to accommodate the growing interest and the increased potential for fraudulent activities, then the program is likely to be discontinued following the 2017 expiration date. The Netherlands program is highlighted because it demonstrates the first step in the levels of progression when developing a foreign investor visa program. The EB-5 is now past the Netherlands stage of development and should be reformed, like Canada's program, to maximize the economic benefit.

A. Adoption of British and Canadian Policies

In reforming the EB-5 program the United States should look to the British Tier 1 program. The implementation of a policy that gives a competitive edge to those who choose to invest larger amounts of capital would be extremely beneficial to the EB-5 program. Applicants are already trying anything they can to get their application processed faster, which is why the visa cap is hit earlier each year.²⁰⁷ By allowing those with increased capital to streamline the process of the application review it would introduce a competitive nature in to the market of United States citizenship and force the most interested to apply more of their capital to achieve the status of residency. This would in turn lead to an increase in the economic benefit through the competitive injection of more capital, and would allow the price of citizenship to fluctuate on a demand basis ensuring the maximum amount of capital.

The next step in reforming the EB-5 program will be the adoption of policies similar to Canada's Immigrant Investor Venture Capital Pilot Program. The EB-5 program needs more restriction. As it stands now the requirements are too easy to meet, evidenced by the fact that in both 2014 and 2015 the limits for visa were met.²⁰⁸ This shows an explicit interest in the program. However, an increase in the minimum investment to \$1,460,000, like Canada, is not necessary. Instead an

207. Sophia Yan, *U.S. Runs Out of Investor Visas Again as Chinese Flood Program*, CNN HONG KONG (Apr. 15, 2015), <http://money.cnn.com/2015/04/15/news/economy/china-us-visa-cb5-immigrant-investor/> [https://perma.cc/JE4K-ZVKV].

208. *Id.*

increase to the regional center program should be made. The immigrant investors are most interested in the regional center program.²⁰⁹ Therefore if an increase to the amount of capital should be applied to the program it should be on the regional center amount. The current amount of \$500,000 is too low and this explains why the visas allocated have been expended.²¹⁰ United States citizenship is currently selling at a bargain price. It is clear that the interest is there and that applicants have the ability to meet the requirements so why not raise them in order to receive more capital.

The EB-5 program should raise the price of the regional center base investor visa to \$1,000,000. This would allow those who want to take the non-managerial route the same avenue of citizenship, but for an increased price. This would provide more capital for the creation of jobs, and the ten-job requirement would be much easier to achieve. The original goal of the program was to acquire skilled immigrant entrepreneurs in addition to substantial economic benefit.²¹¹ Therefore, the current \$1,000,000 requirement for the non-regional center based investments should be lowered in order to incentivize entrepreneurial investors. The requirement for entrepreneurial investments should be reduced to \$750,000, in order to ensure the requisite capital to create the ten jobs and continued support of the target area. This lower rate should help to increase the popularity of the original program.

In addition, the EB-5 program would benefit from the inclusion of a new regulation that requires a minimum net worth. In requiring a minimum net worth to satisfy the requirements the program could ensure that the applicants are not exhausting their available funds in the investment, and could prevent the applicants from being left with nothing to contribute to the economy following the removal of conditions. By ensuring a minimum net worth the EB-5 could add additional requirements to the removal of conditions, such as a secondary investment of a lesser amount to ensure that the applicant was committed to the full citizenship status and promoting the economy. This requirement of net worth would also help to deter fraud or default on the part of the investor, because they could ensure the existence of capital through the presence of bank statements and equity records.²¹²

209. See Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, at n. 117 (2015) (“[A]pproximately ninety to ninety-five percent of EB-5 investors are investing in the [regional center] program”).

210. See James Kelleher et al., *Special Report: Overselling the American Dream Overseas*, REUTERS, (Dec. 22, 2010), <http://www.reuters.com/article/2010/12/22/us-usa-immigration-business-idUSTRE6BL2KJ20101222> [<https://perma.cc/58P3-F2YZ>].

211. Sophia Yan, *U.S. Runs Out of Investor Visas Again as Chinese Flood Program*, CNN HONG KONG (Apr. 15, 2015), <http://money.cnn.com/2015/04/15/news/economy/china-us-visa-eb5-immigrant-investor/> [<https://perma.cc/JE4K-ZVKV>].

212. Canada, *Immigrant Investor Venture Capital Pilot Program*, CANADA VISA (2015), <http://www.canadavisa.com/immigrant-investor-venture-capital-pilot-program.html> [<https://perma.cc/F9AX-WK8P>] (addressing the need for investors to have a minimum net worth as provided by financial records).

B. Increasing Oversight For Fraud Prevention

The EB-5 program also needs to amend the current oversight provisions. The USCIS has some monitoring provisions in place during the creation of regional centers, but has no continued monitoring plan in regards to the use of funds following the investment period.²¹³ In order to decrease the risk of fraud the USCIS needs to develop a system that monitors the spending of the funds at each stage of the regional center's development. USCIS should use their own regional center program to develop this monitoring system. USCIS could develop an approved business plan and form an internal regional center in a target area, then use investor funds to create a fraud prevention center that would have the employment base to monitor each of the approved regional centers. This could also be accomplished with the help of the SEC because an increase in oversight would mean potentially less fraud cases on their docket.

Reducing the risk of fraud is essential to preserving interest in the EB-5.²¹⁴ If the system is plagued with a high amount of fraud it leads to the conclusion that incoming investors will have no guarantee of residency. Thus, amending the current policy in favor of increased regulations that provide more oversight will ensure that individual investors have the highest probability of obtaining permanent residency and the removal of residency conditions.

VI. CONCLUSION

The EB-5 program should be reformed to become a more regulated and restrictive program. In doing so the EB-5 should borrow from the three different immigrant investor visa programs discussed above. The EB-5 should be reformed to include a competitive advantage to those who choose to invest larger amounts of capital, similar to the United Kingdom's Tier 1 investor visa program.²¹⁵ This competitive advantage system would place the cost for citizenship on a sort of sliding scale. The sliding scale would allow for the true price of United States residency to be shown because it would fluctuate with the market demand in order to consistently provide the maximum amount of capital. The use of this program could offer the USCIS an ability to gauge what the fixed price for applications should be. In order to establish the fixed price the USCIS could take a cross section of the applications and determine the average price individuals

213. *I-924 Application*, EB-5 INVESTORS (2016), <http://www.eb5investors.com/eb5-forms/i-924-application> [<https://perma.cc/E7XX-ARKX>].

214. United States Government Accountability Office, *Report: Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit*, GAO (Aug. 2015).

215. Law Firm Limited, *Immigration: Tier 1 Investor*, LAW FIRM UK (2016), http://www.lawfirmuk.net/investor_e.html [<https://perma.cc/84YL-NV2N>] (“From 2011 foreign investors have been given extra incentives to come to the UK. They can settle quicker if they invest large sums of money and will be able to spend longer periods outside the UK without losing their eligibility for settlement.”).

were paying for expedited processing. This system would ensure that as the market fluctuated there would be significant data to determine the going rate for United States citizenship.

The EB-5 should also apply a new regulation for a net worth minimum, in order to ensure continued investments beyond the initial. One of the goals of the EB-5 program is to provide continued investments into the economy of the United States in order to provide target areas with great economic benefit.²¹⁶ With a net worth minimum immigrant investors would have to prove that they have the ability to invest and stimulate the economy beyond the cost of residency alone. The regulation could be satisfied through the use of bank statements and financial equity records similar to the current system in place in Canada.²¹⁷

The two most substantial changes that should be made to the current EB-5 program are a reevaluation of the current minimum investments and a reform to increase government oversight for fraud prevention. The EB-5 program needs to reevaluate the current prices at which they are selling United States residency. It is clear that over the past few years there has been a steadily increasing trend the interest of the immigrant investor visa program.²¹⁸ However, there have been no amendments to reflect this change. If United States citizenship is going to be commodified, should it not fluctuate with the market like any other consumer good? The answer in short is yes. In order to adjust for the increase interest in the program substantial changes need to be made regarding the going rate for citizenship.

The first change needs to address the regional center based program. The evidence provided in this Note shows that this is the more popular of the two investment based programs. This extreme increase in popularity suggests that the current rate of \$500,000 is easily being met, as evidenced by the visa caps for 2014 and 2015 being hit.²¹⁹ Therefore, in order to maximize the economic benefit, the cost of the regional center based investments should be raised. By raising the cost of the initial investment to \$1,000,000 the maximum economic benefit can be achieved at a cost that is still competitive with the large programs of Canada and the United Kingdom.²²⁰ This increase would allow investors who wish to take

216. See Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527, 531 (2015) (explaining the benefit of entrepreneurs over immigrants, entrepreneurs were what the original system required).

217. Canada, *Immigrant Investor Venture Capital Pilot Program*, CANADA VISA (2015), <http://www.canadavisa.com/immigrant-investor-venture-capital-pilot-program.html> [<https://perma.cc/F9AX-WK8Pc>].

218. See EB-5 Statistics, *FY2015 I-526 and I-829 Statistics*, LUCID (Nov. 19, 2015), <http://blog.lucidtext.com/category/eb-5-statistics/> [<https://perma.cc/V55J-B29Y>] (graph is located on page 11 and depicts the steady trend of interest in the EB-5).

219. Sophia Yan, *U.S. Runs Out of Investor Visas Again as Chinese Flood Program*, CNN HONG KONG (Apr. 15, 2015), <http://money.cnn.com/2015/04/15/news/economy/china-us-visa-eb5-immigrant-investor/> [<https://perma.cc/JE4K-ZVKV>].

220. The proposed recommendation would place the investment amount at \$750,000 and

the non-managerial route to do so at an increased expense. The United States should not be giving these investors who do not offer any entrepreneurial benefits a “discounted” rate.

The second change needs to address the entrepreneurial investors who do not want to use the regional center method to watch their investment ripen into residency. Although individuals are still interested in this form of investment, there is not as much incentive when they can approach a regional center with a pre-formulated plan and do minimal work while attaining citizenship. One of the original goals of EB-5 program was to attract immigrant entrepreneurs, but the current system provides incentives for non-managerial investors. These immigrant entrepreneurs should be the investors to get the “discounted” rate because they will be the one to consistently stimulate the economy of target areas with their own innovative business plans. Therefore, the EB-5 program should lower the entrepreneurial immigrant investor visa cost. The initial investment should be lowered to \$750,000 because this would still allow a substantial amount of capital to create the ten required jobs. In addition this lowered rate would act as an incentive for new immigrant investors not to take the expedited route the regional center offers.

The final proposed reform to be made to the EB-5 program is an increase in the amount of oversight the government has to prevent fraud. The reason this reform is so important is because it will give immigrant investors “peace of mind” when investing in the United States. This decrease in risk of fraud will help to garner more interest in the EB-5 program because with lower risk of fraud will come higher residency returns. The USCIS must develop a plan to ensure the continued monitoring of regional centers to ensure there are no misappropriations of funds during development. This is the preservation of immigrant investor’s livelihood and some may not survive to await the outcome of an SEC investigation. The goal of this reform should be to prevent fraud, and ensure the security of investors’ capital.

These reforms to the EB-5 program would work to increase the overall reliability and economic success of the investor visa. It is clear that there are substantial economic benefits that arise from this program and it would be a shame to lose them due to the inability to evolve with the market. In order to preserve the EB-5 and secure its eligibility for a permanent implementation it must show that it has the ability to provide increased benefit and security for not only the immigrant investors bringing the capital, but also to benefit the targeted areas and economy of the United States.

\$1,000,000, which is still competitive with both the investor visa programs of the United Kingdom and Canada. Compare Canada, *Immigrant Investor Venture Capital Pilot Program*, CANADA VISA (2015), <http://www.canadavisa.com/immigrant-investor-venture-capital-pilot-program.html> [https://perma.cc/F9AX-WK8P] (investment of about \$1,460,000); United Kingdom, *Tier 1 (Entrepreneur) Visa*, Gov. UK (2015), <https://www.gov.uk/tier-1-investor/overview> [https://perma.cc/7QF3-72AQ] (investment of about \$2,800,000).