Urban Land Institute
Spring Member’s Meeting
Houston, Texas

EB-5 Financing: Now In the Major Leagues

Jeff Berkowitz
President & Founder, Berkowitz Development Group
Miami, Florida

Scot Patrick O’Brien
Partner, Akerman LLP
Washington, D.C.

May 14, 2015
What is the EB-5 Immigrant Investor Program?

- Regional Centers

**Current EB-5 Numbers – Now in the Major Leagues**

- Typical Structure and EB-5 in the Capital Stack

**Case Studies – Projects**

- SkyRise Miami
- Other Sample Projects
- Q&A

**Current EB-5 Challenges**

**Future Opportunities**

- Q&A
WHAT IS THE EB-5 IMMIGRANT INVESTOR PROGRAM?
What is the EB-5 Immigrant Investor Program?

- First introduced by Congress in 1990 to create jobs and spur economic development through the use of low cost foreign capital.

- The EB-5 visa category allows a foreign national to invest $1 million in a “new commercial enterprise” that will benefit the U.S. economy and create at least “10 full-time jobs”. Amount of investment reduced to $500,000 if made in a “rural area” or a “targeted employment area (TEA)”. 

- In 1992, the Regional Center Program was enacted as a three year “Pilot,” enabling the job requirement to be established through “indirect” as well as “direct” job creation.

- Program renewed by Congress in September 2012 until September 30, 2015.
What is a Regional Center?

- A "legal entity" means a corporation, partnership or LLC, which can be private company or government entity (such as a Development Authority, City or State) or both.

- Must promote "economic growth" through:
  - improved regional productivity,
  - increased export sales (if any),
  - job creation, and
  - increased domestic capital investment

- "Foreign investment" means a "qualifying investment" which means an investment in a new commercial enterprise that invests in a job creating entity that creates, directly or indirectly, 10 new full-time jobs.

- The "contiguous geographic region" must be comprised of one or more contiguous U.S. Census Tracts in one geographic region.
Growth of Regional Centers

Source: USCIS, Brookings, Homeland Security
*Note: FY12 data through October
CURRENT EB-5 NUMBERS – NOW IN THE MAJOR LEAGUES
The State of Alternative Funding for Real Estate Projects Pre-EB-5

“So...how did our first stage financing go today?”

By Rich Tennant
EB-5 in the News

**THE WALL STREET JOURNAL.**
NY REAL ESTATE COMMERCIAL

**Towers Rise on EB-5 Funds**
Developers Turn to Visa Programs to Help Finance Buildings
- May 27, 2013

**Senior Housing News**
- May 4, 2014

**EB-5 Funding Booms for Senior Living**

**New England Real Estate Journal**

**EB-5 has become the hottest source of alternative funding for Commercial Real Estate projects**
- November 28-December 4, 2014

**How China could save Detroit**
- Salon Media Group

**EB-5: Vermont says EB-5 can work in state hands**
- August 6, 2014
Who is Using EB-5 Financing?

- Direct Investments by Individuals
- Immigration Attorneys/Small Investments
- Real Estate Investment Companies
- Smaller Developers
- Larger Developers
- Public Company Developers
- Public Private Partnerships

“In the Beginning” – 1990 to 2015
Sampling of Companies, Cities and States Using EB-5

**Cities and States (Regional Centers)**
- City of Dallas
- City of Detroit
- City of Frisco
- City of Miami
- Commonwealth of Puerto Rico
- The State of Vermont

**Universities**
- University of Houston, Texas
- University of Miami, Florida

**Restaurant/Eateries**
- BurgerFi
- Golden Chick, Texas
- La Madeleine
- PDQ
- Sakaya Kitchen
- Sonic Corp.
- Twistee Treat
Sampling of Companies Cities and States Using EB-5 (continued)

General
- American Life
- Berkowitz Development Group
- Brooklyn Navy Yard Development Corp
- Discovery Times Square
- Driftwood Hospitality Management
- Florida East Coast Realty (developer on EB-5 project with City of Miami)
- Florida Restaurant Franchise Group
- Forest City Ratner Companies
- Gorman & Company
- Hilton Worldwide
- Hudson Yards
- Hyatt Hotels
- Lennar Corporation
- Marriott International
- Omega Communities
- PDC Capital Group
- Related Companies
- RockBridge Senior Living
- Silverstein Properties, Inc.
- Sony Pictures Entertainment

Texas Entities
- Allied Realty, Texas
- Civitas Capital Group, Texas
- Encore Enterprises, Inc., Texas
- Hines, Texas
- Randall Davis, Texas

Starwood Hotels & Resorts
Stockbridge Capital Group
The Durst Organization
Victor Group
Vornado Realty Trust
Warner Bros
Wyndham Worldwide

Based on publicly available information.
Total EB-5 Capital Invested

FIGURE 2-A: FOREIGN DIRECT INVESTMENTS ($MILLIONS) CONTRIBUTED BY EB-5 PROGRAM BY FISCAL YEAR (1992-2014)

Note: FDI = Number of I-526 Approvals * $0.5 Million
Source: USCIS Performance Analysis System (PAS) by Office of Performance & Quality (OPQ), Data Analysis and Reporting Branch (DARB)
Total EB-5 Capital By Quarter

**FIGURE 3: FOREIGN DIRECT INVESTMENTS ($MILLIONS) CONTRIBUTED BY EB-5 PROGRAM BY QUARTER (FY2013-FY2015, Q1)**

- **FY2013**
  - Q1: $347
  - Q2: $417
  - Q3: $501
  - Q4: $586

- **FY2014**
  - Q1: $727
  - Q2: $715
  - Q3: $567
  - Q4: $550

- **FY2015**
  - Q1: $826

**Note:** EB-5 FDI = Number of I-526 Approvals * $0.5 Million

**Data Source:** U.S. Citizenship and Immigration Services (USCIS) Data Set

**IIUSA Quarterly Data Report**
EB-5- Capital Investment and Jobs

EB-5 Program Results FY 1992-2015 (1st Quarter)
- Over $12.0 Billion in direct foreign investment

EB-5 Program Results FY 2005-2013
- Over $6.5 Billion in direct foreign investment
- Over 131,000 jobs
Where are EB-5 Funds Coming From?

2014 EB-5 Visa Statistics by Immigrant Origin

- Rest of the world, 13%
- China, 87%

Source: U.S. State Department Report of the Visa Office FY14
*Includes China Mainland born and China Taiwan born
Where are EB-5 Funds Coming From?

2014 EB-5 Visa Statistics by Immigrant Origin: Countries Other than Mainland China

- South Korea, 2.1%
- Mexico, 1.2%
- Taiwan, 1.2%
- Vietnam, 1.1%
- Russia, 0.9%
- India, 0.9%
- Iran, 0.7%
- Canada, 0.5%
- Nigeria, 0.5%
- Great Britain, 0.4%
- Egypt, 0.3%
- Hong Kong, 0.3%
- Brazil, 0.3%
- South Africa, 0.2%
- All other countries, 3.6%

Source: U.S. State Department Report of the Visa Office FY14
Typical EB-5 Structure With A Regional Center

- Parent Company
- Real Estate Investment Co. as Managing Member or GP
- Qualifying Investment Fund I, LLC or LP (New Commercial Enterprise)
- Developer’s Project Entity (Job Creating Entity)
- Project
- EB-5 Investors as Members or LP’s
Preferred Types of Projects

There are types of projects for which EB-5 financing is easier to obtain than for others. The “preferred” projects are:

- Generally, any project that will attractive for institutional loan capital will meet the basic feasibility tests for EB-5 investors, however, institutional loans are more efficient as a source of capital. The program is not attractive for startup companies or other ventures that generally require venture capital. The track record and financial resources of the developer (or investors or guarantors) is a critical issue.

- Projects that are “shovel ready”. Investors do not want to tie up capital in Escrows and they want construction to start no later than (and possibly earlier than) approval of their i-526 applications. The program cannot be used at all for pre-development or risk capital, only for construction financing or take out. Ideally, all approvals and firm commitments from other sources, as well as firm construction bids should be in place prior to setting up the Escrow.

- Generally, real estate projects are preferred as the investors look for a “hard asset”, with a potential for repayment of principal after 5-7 years.
Where EB-5 Capital fits within Capital Stack

Equity

<table>
<thead>
<tr>
<th>Capital Stack</th>
<th>The Order of Capital into the Deal</th>
<th>Cost of Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>20% or more</td>
<td>Developer Equity</td>
<td>--</td>
</tr>
<tr>
<td>10-20%</td>
<td>EB-5 Equity (Preferred Stock)</td>
<td>5-8%; 10% extended term</td>
</tr>
<tr>
<td>60-70%</td>
<td>Traditional Bank Debt</td>
<td>4-6%</td>
</tr>
</tbody>
</table>
Where EB-5 Capital fits within Capital Stack

### Debt

<table>
<thead>
<tr>
<th>Capital Stack</th>
<th>The Order of Capital into the Deal</th>
<th>Cost of Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>20% or more</td>
<td>Developer Equity</td>
<td>--</td>
</tr>
<tr>
<td>10% or less</td>
<td>Mezzanine Financing (Preferred Stock)</td>
<td>10-15%</td>
</tr>
<tr>
<td>40%</td>
<td>EB-5 Debt – 1(^{st}) Position Mortgage; or</td>
<td>3-5%</td>
</tr>
<tr>
<td>30%</td>
<td>EB-5 Debt – 2(^{nd}) Position Mortgage Behind Bank Debt</td>
<td>5-7%</td>
</tr>
</tbody>
</table>
Where the Deals Are

Total 2013 EB5 Capital Investment is $1,998,000,000

Data Source: Peer-Reviewed EB-5 Economic Impacts Studies
Map Source: IIUSA
Top 5 States Receiving EB-5 Capital in 2013

2013
California (CA)
Economic Impact Ranking: 1
EB5 Capital Investment: $438,437,500
Jobs Supported: 6,085
Contribution in US GDP: $572,653,094
Federal Tax Revenue: $84,115,675
State/Local Tax Revenue: $50,940,204

2013
New York (NY)
Economic Impact Ranking: 2
EB5 Capital Investment: $379,041,667
Jobs Supported: 6,024
Contribution in US GDP: $543,901,026
Federal Tax Revenue: $84,786,407
State/Local Tax Revenue: $53,828,105

2013
Texas (TX)
Economic Impact Ranking: 3
EB5 Capital Investment: $174,187,500
Jobs Supported: 2,737
Contribution in US GDP: $208,034,491
Federal Tax Revenue: $32,259,897
State/Local Tax Revenue: $7,240,110

2013
Florida (FL)
Economic Impact Ranking: 4
EB5 Capital Investment: $150,500,000
Jobs Supported: 2,755
Contribution in US GDP: $176,893,641
Federal Tax Revenue: $28,815,858
State/Local Tax Revenue: $10,918,299

2013
Maryland (MD)
Economic Impact Ranking: 5
EB5 Capital Investment: $132,857,143
Jobs Supported: 2,042
Contribution in US GDP: $180,321,238
Federal Tax Revenue: $28,542,837
State/Local Tax Revenue: $16,467,267
CASE STUDIES
EB-5 PROGRAM: A SLOW JOURNEY
Soaring 1,000 feet in the air, a beacon of the New Miami, the iconic SkyRise Miami will redefine the city’s skyline. Perched on the shore of Biscayne Bay, SkyRise Miami will be Miami’s most distinctive and visible building for decades to come.
TOURIST DESTINATION IN THE WORLD

#1

FLORIDA
7 of the Top 10 U.S. Attractions.
5 of the Top 10 World Attractions.
127 million projected by 2020
FLORIDA TOURISM SPENDING

$82 billion spent in 2014
Miami: 1920-2020
A Century of Change
MIAMI

MIAMI is the 2nd most visited city in the U.S. by overseas travelers

1. New York
2. Miami
3. Los Angeles
SKYRISE MIAMI
A BUILDING LIKE NO OTHER

Wind base shear = 23 million pounds (1,500+ elephants)

Over 30,000 tons of reinforcing and structural steel (more than 3 Eiffel Towers)

1.15 million ft. of post-tension cable (218 miles or 425 tons of 0.6” strand)

Driving 130 piles 150 ft. deep to support the tower

Designed to withstand wind speeds of 186 mph (1,700 year 3-second gust)

100,000 cubic yards of concrete (a 4 ft. wide sidewalk from Miami to Tallahassee)

1,000 ft. high
SKYRISE MIAMI CONCEPTUAL RENDERING
MAIN INDOOR AND OUTDOOR OBSERVATION DECKS
Miami’s skyline and ocean views are already some of the most beautiful in the world. Now imagine how those views will be magnified by the soaring height and unlimited vistas of the SkyRise Premium Observation Decks.
SKYRISE MIAMI MEMBER’S CLUB AND PREMIUM OBSERVATION DECK
SKYRISE MIAMI ENTERTAINMENT

SKY HIGH CLUB
Miami and South Beach are already known for the finest, most exclusive private clubs anywhere. But the SkyRise’s Club, perched almost 1,000 feet above the glittering skyline, will be one of the most exclusive in the world.

SKYRISE RESTAURANT
If fine dining is an experience, then the new SkyRise Restaurant will rival the finest dining anywhere. The only difference? This experience will begin almost 1,000 feet above Miami’s incredible views.

SKYRISE NIGHTCLUB
All of the elegance and excitement of Miami’s club scene will now be topped by this ultimate nightclub perched almost 1,000 feet above the earth.

SKYRISE BALLROOM
Major events in South Florida and the Americas will be planned in the SkyRise Ballroom, where each elegant event promises to be out of this world.

SKYRISE CONFERENCE CENTER
Major exhibitions and corporate meetings in South Florida and The Americas will be planned in the SkyRise Conference Center.
SKYRISE MIAMI ATTRACTIONS

SKY PLUNGE
Sky Plunge can be described as base-jumping using a sophisticated bungee-like safety system by which jumpers are attached to a high-speed controlled-descent wire.

SKYRISE DROP
Just like parachuting out of an airplane, riders will experience the thrill of free fall followed by the jolt of extremely rapid deceleration. SkyRise Drop Miami is destined to become one of the most exciting rides in the world.

SKYRISE FLYING THEATER
The dream of flying comes to life in our motion-based simulator. That only starts to explain the thrill of flight that theater-goers will enjoy in the SkyRise Flying Theater. Similar to Soarin® at Disney World's® Epcot®, the SkyRise Flying Theater will make dreams a reality.
SKY PLUNGE

- 570Ft. Thrill Ride
- Only Plunge in the World Inside a Building
- Reaching Speeds of **55 MPH**
SKYRISE DROP

- 650 Ft. Drop
- Fastest/Longest Drop in the World
- 12 Passengers
- 95 MPH Speed
SKYRISE DROP

- 650 Ft. Drop
- Fastest/Longest Drop in the World
- 12 Passengers
- 95 MPH Speed
SKYRISE FLYING THEATRE

- Capacity 72 Riders
- 6 Minutes Duration
- Movie will Feature the Best Views of South Florida and Miami
- Same Manufacturer as Soarin® at Disney World’s® Epcot®
SKYRISE FLYING THEATRE
THE TEAM

Has built almost One Half a Billion sq. ft. of commercial and residential buildings.
ONE WORLD TRADE CENTER

One World Observatory

- Amenities
  - Indoor Observation Deck (102nd Floor)
  - Dining (101st Floor)
  - Gift Shop & Special Events (100th Floor)

- Winning Bid: Legends Hospitality Group (NY Yankees/Dallas Cowboys)

- Rent- $875 million/15 year lease
  - $60 million per year

- 3.8 million projected annual visitors
EMPIRE STATE BUILDING

Indoor and Outdoor Observation Decks

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2012</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attendance</td>
<td>4.3 MM</td>
<td>4.186 MM</td>
<td>4.05 MM</td>
</tr>
<tr>
<td>Revenues</td>
<td>$101.8 MM</td>
<td>$ 91.9 MM</td>
<td>$ 80.6 MM</td>
</tr>
</tbody>
</table>

Source: 10K (12-31-14) Empire State Realty Trust

2014 Revenues – 111.5MM

9.5% increase over 2013
TIMELINE
January, 2011
• Started process
• Hired
  - SEC counsel (PPM)
  - Economist
  - Immigration counsel

July 11, 2011
• Filed I-924 Application for Regional Center Designation
  - Gables Station – Exemplar project

February 23, 2012
• Received Request For Evidence (RFE)
  (Tenant occupancy)

June 4, 2012
• Filed Response to RFE

April 18, 2013
• Received Intent to Deny

May 16, 2013
• Response to Intent to Deny
  (changed Gables Station to hypothetical project)

July 29, 2013
• Received Request for Clarification (RFC)

August 5, 2013
• Response to RFC

September 30, 2013
• MMRC approval

February 18, 2014
• Filed Exemplar for SkyRise Miami

March 4, 2014
• Request to Expedite Exemplar

April 14, 2014
• Request to Expedite Denied

September 22, 2014
• Exemplar Approval

**Total Time:**
3 years 9 months
MARKETABILITY Of Your Project
2 MAJOR CONCERNS:

Am I Going To Get My Green Card?

Am I Going To Get My Money Back?
Miami Metropolitan Regional Center (MMRC) received its USCIS Regional Center Designation on September 30, 2013. MMRC is the EB-5 sponsor of the SkyRise Miami project and is responsible for providing the foreign investor’s lawyer with all the necessary documentation establishing SkyRise Miami’s USCIS approval. MMRC will also provide the investor’s lawyer with proof, at the I-829 petition stage, that the invested funds were at risk for the required two years and that the required 10 jobs were created.
On September 8, 2014, the State of Florida designated the SkyRise Miami project as being located within a Target Employment Area.

LOCATED IN A TARGETED EMPLOYMENT AREA, ALLOWING FOR US$500,000 INVESTMENT
On September 22, 2014 USCIS issued its letter approving the SkyRise Miami project. This approval, sometimes called an “Exemplar Approval”, means that when a foreign investor files his/her I-526 Petition, USCIS’ review will focus mainly on the investor’s qualifications and source of funds documentation since the project’s EB-5 qualifications including the total number of jobs to be created, have been preapproved. Having project approval will shorten the time for the investor’s I-526 petition approval.
USCIS has approved SkyRise Miami’s Job Study which means that it has approved both the methodology (how the jobs were counted) and the total number of jobs to be created (6,701).
EB-5 investors in the SkyRise Miami project receive a first lien priority on the assets of the project. This is the best legal position to hold since USCIS prohibits any guarantee of a return of the investment. A first lien means that the investor has first rights in the event of a default to recover their investment.
SkyRise Miami had an independent third party, International Theme Park Services, Inc., perform an in-depth economic feasibility study establishing the project’s long term financial success and ability to repay the EB-5 loan upon its maturity. This study is available for review by a potential EB-5 investor.

*International Theme Park Services, Inc.*
SkyRise Miami has all of its entitlements and commenced construction in September, 2014. Completion is currently projected for late 2018.
SkyRise Miami’s developer is legally obligated to spend the first US $30 million of project development cost before any EB-5 funds are released from escrow.
As of March 1, 2015, the developer has spent approximately US $20 million. This means that the developer, as well as the other equity investors, have a significant financial investment in the project and have millions of dollars at risk (total of US$130 million).
$130,000,000 IN EQUITY (30%) BEHIND EB-5 LOAN

The total equity (cash) is US $130 million. This represents 30% of projected development cost. This amount is at risk and sits behind the EB-5 first priority lien.
SkyRise Miami’s developer has a 35 year history of developing numerous major commercial real estate projects. The developer enjoys an enviable success record and many of its projects have earned numerous awards.
WORLD CLASS CONSTRUCTION TEAM

SkyRise Miami has assembled a world class construction team which has developed more than one half a billion square feet of commercial and residential properties. The team has been involved in building and designing such iconic structures as The One World Trade Center in New York City, Shanghai Tower in Shanghai and the Burj Khalifa in Dubai.
SkyRise Miami has the support of all the major community organizations in Miami-Dade County, Florida and officials at the federal, state, county and city level. In addition, 69% of the City of Miami residents voted in favor of having SkyRise Miami built on public land and agreed to a 99 year ground lease on land owned by the Government.
The land on which the project is being built is owned by the City of Miami. The City of Miami Commission unanimously voted and 69% of the resident’s voted in favor of not only building SkyRise Miami, but also agreed to a 99 year ground lease.
MIAMI-DADE COUNTY, FLORIDA
Invests $9 Million in SkyRise Miami

OBLIGATION BOND PROGRAM;
APPROVING
ALLOCATION OF $9,000,000.00 FROM PROJECT 124 TO
SKYRISE MIAMI, LLC TO FUND SKYRISE MIAMI
PROJECT;
AND DIRECTING COUNTY MAYOR OR

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of December, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: ____________________________
Deputy Clerk

Approved by County Attorney as to form and legal sufficiency.

Juliette R. Antoine

Approved

Mentor

Agenda Item No. 12(A)(1)
12-10-14

RESOLUTION NO. R-121-14

RESOLUTION WAIVING ADMINISTRATIVE RULES FOR ECONOMIC DEVELOPMENT FUND PROJECT 124 OF BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM; APPROVING ALLOCATION OF $9,000,000.00 FROM PROJECT 124 OF SKYRISE MIAMI, LLC TO FUND SKYRISE MIAMI PROJECT; AND DIRECTING COUNTY MAYOR OR DEPUTY COUNTY MAYOR TO NEGOTIATE THE TERMS OF A GRANT AGREEMENT WITH SKYRISE MIAMI, LLC PURSUANT TO BOND PROGRAM'S ADMINISTRATIVE RULES AND PRESENT SUCH GRANT AGREEMENT OR, ALTERNATIVELY, A REPORT FOR CONSIDERATION BY BOARD

WHEREAS, Appendix A to Resolution No. R-94-04 (“Public Infrastructure Resolution”), lists projects eligible for funding from the Building Better Communities General Obligation Bond Program (“Bond Program”) by project area, Commission district, project description, street address, and project cost; and

WHEREAS, one of the projects listed in Appendix A to Resolution No. R-94-04 is Project 124, as defined in the Resolution and approved by the voters for funding in Project 124 of the Building Better Communities General Obligation Bond Program (“Project 124”) with a project description that states “The project is designed to spur economic development and attract new businesses to the area and

WHEREAS, the goal of Project 124 is to encourage new economic development which will have a long-term positive impact on the local economy;

WHEREAS, Skyline Miami, LLC proposes the construction of a multi-use entertainment center and tourist attraction at Bayfront Park.

RESOLVED, that the Board of County Commissioners hereby resolves to allocate $9,000,000.00 from Project 124 of the Bond Program to Skyline Miami, LLC, and that the Mayor or Deputy Mayor of the County hereby be directed to negotiate and enter into a grant agreement with Skyline Miami, LLC for the use of the funds so allocated.

Approved by County Attorney as to form and legal sufficiency.

Juliette R. Antoine

JRA
INDEPENDENT CO-MANAGER

In addition to providing audited financial statement, an independent third party co-manager will be appointed whose sole duty is to the EB-5 investor and whose is responsible for ensuring that the EB-5 funds are properly spent on the project.
AUDITED FINANCIAL STATEMENTS

SkyRise Miami will provide the EB-5 investor with audited financial statements from a “Big Four” accounting firm. The developer wants to ensure complete financial transparency and give the EB-5 investor confidence that his/her investment is properly being utilized in the project.
<table>
<thead>
<tr>
<th>Project</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barclays Center</td>
<td>$228M</td>
</tr>
<tr>
<td>Hunters Point San Francisco</td>
<td>$200M</td>
</tr>
<tr>
<td>Hudson Yards</td>
<td>$800M</td>
</tr>
<tr>
<td>Four Seasons World Trade Center</td>
<td>$250M</td>
</tr>
<tr>
<td>SLS Hotel Las Vegas</td>
<td>$400M</td>
</tr>
<tr>
<td>Brooklyn City Point Development</td>
<td>$200M</td>
</tr>
<tr>
<td>5th &amp; Columbia, Seattle</td>
<td>$250M</td>
</tr>
<tr>
<td>Hollywood Park Redevelopment (LA)</td>
<td>$188M</td>
</tr>
</tbody>
</table>
SELLING YOUR PROJECT
CHINA DOMINATES

- 85% of the EB-5 Market
- Agent Network
- In Country Staff
- Seminars (Principals Participation)
- I-526 Approval (14 to 24 months)
- Escrow/Funding Issues
- Cost
  - Administrative Fee
  - Back-End Point
FUTURE of EB-5 PROGRAM
EB-5 Investment into DC Development As First Part of Large Multi-phase Development

Regional Center

Issuer/New Commercial Enterprise

Developer

Project Construction

EB-5 Investors

Equity

1st or 2nd Lien depending on Amount of $ Raised

Project Operation

(Timing Issues)
CURRENT EB-5 CHALLENGES
Challenges with EB-5


Promoter of failed EB-5 project is indicted - August 27, 2014

SEC Case Shows Greater Scrutiny of EB-5 Programs
Visa Program Allows Foreigners to Live in U.S. if They Invest in Job-Creating Businesses - October 18, 2013

*The Seattle Times*

GAO will audit EB-5 program for investor visas

Originally published December 10, 2014 at 7:11 pm | Updated December 10, 2014 at 9:16 pm
Challenges with EB-5

EB-5 Fraud Highlights Risks Of Investor Program

SEC Charged Los Angeles-Based EB-5 Lawyers with Securities Fraud

The dark, disturbing world of the visa-for-sale program

- July 24, 2014
Leading Current EB-5 Challenges

- Renewal of Regional Center Program
- Retrogression for China Visas
- Length of Time – “Slow Money”
- Reliance on China as Source of Investment
- Fraud Concerns
- Historical Lack of Resources and Rulemaking at USCIS
Timing of Project Funding

- Term Sheet, Transaction Documentation and offering and EB-5 filings – 2-4 months
- Regional Center recruits potential investors through marketing: 3 - 6 months (sometimes 12-18 months)
- Investor signs the “offering” documents and sends funds to escrow: 1 month
- Lawyers prepare I-526 documentation: 1 month
- I-526 Filed (alternatively an Exemplar could be 4-6 months)
  Official USCIS Processing Time: 14 months
- Once I-526 approved, funds are released (typically, to the “debt-fund” entity who then loans to Developer). Many projects now permit “early release” with a holdback. Bridge Lenders can fund construction prior to release.
Timing for Foreign Investors: Traditional

- OBTAINING A GREEN CARD IS A TWO-STEP PROCESS
- PART 2: I-485 (if in US): 8-12 months
- Overseas Investors: Consular Processing timing varies by Consular Post
  Ranges from 3-6 months
- Child must be under 21 by the time the I-526 is filed: USCIS will require additional evidence to demonstrate the requirements for removal of conditions if at the I-829 “condition removal” stage it is determined there has been a “Material Change” in the project.
Timing for Foreign Investors: Retrogression

- Adverse impact on EB-5 on Chinese investors from mainland China. Investors from Hong Kong, Macau and Taiwan (China) and from other countries will not be affected.

- PART 1: I-526 – Current Estimates: 14 months

- PART 2:

- Overseas Investors: Consular Processing
  Subject to availability of visas – Chinese retrogression

- First ever quota retrogression, moratorium for 5 weeks in 2014, could be longer in 2015

- Quota retrogression may increase the onset of the 21-24 month conditional residence period by 2 years or more.
Retrogression

Concept and consequences to the Investor

- Applies to all visa categories, not just EB-5

- When total of qualified applicants in a category exceed the supply of numbers available for allotment for the particular month, the category is considered to be “oversubscribed” and this particular visa category retrogresses.

- Impact on investors with children nearing 21 years old. If retrogression occurs, the child may be “aged out” and can no longer accompany the immigrant investor.

- With regard to the job creation requirement, in the Direct EB-5 context, the investor is the manager of the business. Visa retrogression may delay the investor’s entry in the US for years. Nonimmigrant visa options?

- EB-5 category has approximately 10,000 visas per fiscal year, not 10,000 spots for I-526 petitions. Assume each EB-5 investor has spouse & one child, approximately 3,000 families can apply for the EB-5 visa per year.
Consequences to the RC/developer, good or bad news?

- **Bad news**: Job creation projections and capital redemption timelines will be directly impacted.

- May Investor dictate that the funds be held in escrow until a visa becomes available, not simply until the I-526 is approved?

- Without alternate financing, this delay could result in an inability to proceed with a project’s development and, potential failure.

- **Good news**: no impact on timing of the release of EB-5 funds. Project will obtain additional time to create the required jobs.

- Qualifying jobs need to be created within two years commence six(6) months after the adjudication of the I-526 petition.

- Likely that the jobs will be created utilizing the EB-5 capital before the investor even enters the US, no need for I-829
Lack of USCIS Rulemaking

- May 2013 Policy Memorandum
- Inconsistent adjudications
- No effective way to communicate with USCIS review officers
FUTURE OPPORTUNITIES
Future Opportunities

- Experienced EB-5 Teams
  - Regional Centers, issuers and developers
- Public Private Partnerships
- Sources of Capital Outside China
  - Latin America (Brazil and Venezuela), India and Russia
- “Class A” Projects and Smaller Projects
- Legislative Changes
Jeff Berkowitz is the President and Founder of Berkowitz Development Group. Jeff holds an active Real Estate Broker's License and is a member of the International Council of Shopping Centers. Prior to founding Berkowitz Development Group in 1985, Jeff was an active partner in the law firm of McCrary Berkowitz & Davis from 1974, and later, the senior partner of Berkowitz & Diaz until he retired from the active practice of law to pursue Real Estate Development on a full-time basis in 1986.

Berkowitz Development Group is a full-service retail development company widely recognized as one of the pre-eminent retail developers in Miami-Dade County having developed a number of high profile, strategically located, and innovative retail projects. BDG specializes in gateway niche projects, involving complex development issues. BDG's expertise includes areas relating to all aspects of development, including leasing, management, construction management, dispute resolution, customer and tenant relations, budgeting, projections, and governmental relations.
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**EB-5 Experience:** Represents regional centers, EB-5 real estate investment companies, and developers. Consults with developers on EB-5 financing. Has lectured on the EB-5 process and regional centers.