A NEW IMMIGRATION LAW WAS SIGNED BY PRESIDENT OBAMA ON FRIDAY, SEPTEMBER 28TH, 2012. THE NEW LAW VISA EXTENDS THE EXPIRATION DATES OF THE EB-5 REGIONAL CENTER PROGRAM, THE E-VERIFY PROGRAM, THE SPECIAL IMMIGRANT NON-MINISTER RELIGIOUS WORKER PROGRAM AND THE CONRAD STATE 30/J-1 VISA WAIVER PROGRAM. - By Michael Phulwani, Esq., David Nachman, Esq. and Ridhima Goyal

In an election year, there is generally little movement (and sometimes interest) when it comes to passing U.S. immigration laws. However, on September 28th, 2012, President Obama signed into law an extension of several critical immigration law programs, some of which have had widespread support, such as the Non-Minister Religious Worker Program and the Conrad State 30/J-1 Visa Waiver Program. The EB-5 Regional Center Program and E-Verify, on the other hand, have experienced mixed reception.

Concerns with these latter two programs raise important issues regarding some of the nuances and the practicalities of the U.S. immigration laws. Controversy surrounding the EB-5 Regional Center Program reveals underlying problems between the government and the private sector. The private sector considers the definition of "entrepreneurism" differently making it hard to gauge whether or not the government has an understanding of what this difference comprises.

The EB-5 Regional Center Program, similar to the EB-5 Investor Program, provides for the stimulation of the U.S. economy by overseas investors. The difference between the programs is that the EB-5 Regional Center Program provides for "The Immigrant Investor Pilot Program" through investments that are affiliated with an economical unit known as a "regional center" which is defined as any economic entity, public or private, which is involved with the promotion of economic growth. In both cases (EB-5 Regional Center and EB-5 Investor) there is a minimum investment and a job creation requirement.

The key aspect to note regarding both these programs is that they must result in economic growth within the U.S. Improved regional productivity, job creation and increased domestic capital investment being their goals. These programs, through their requirements, are designed to ensure that this is achieved. But there are worries among the critics of the programs that this project might be systemically flawed.

The EB-5 Immigrant Investor Program was first created in 1992 as a Pilot Program and was originally extended through September 30th 2012 and has now been extended by an additional three years. The requirements for the EB-5 Regional Center Program are as follows . . . before launching a regional center, a proposal must be submitted showing how it plans to focus on a geographical region within the U.S. and how it will promote economic growth within that region.

The proposal must also include verifiable detail of how jobs will be created directly or indirectly through capital investments made in accordance with the regional center's business plan. Finally, the proposal must show the amount and source of capital committed to the regional center and the promotional efforts made and planned for the business project along with how it will have a positive impact on the regional and national economy.

The EB-5 investor program was created by Congress in 1990 as a means to draw foreign investment by offering a U.S. immigration incentive to stimulate the U.S. economy through job creation and capital investment by foreign investors. The above-mentioned pilot program was then enacted in 1992 for investors in regional centers designated by the United States Citizen and Immigration Services (USCIS). Requirements for the EB-5 investor program are as

follows . . . investors must invest in a new commercial enterprise. This means that investors must invest in a commercial enterprise established after November 29th 1990.

If investing in a commercial enterprise on or before this date, that commercial enterprise must be purchased and the existing business must be restructured or reorganized in such a way that a new commercial enterprise results or it must be expanded through the investment so that a 40% increase in the net worth or number of employees occurs. In addition to all of this, there are job creation requirements for the EB-5 investor programs. At least 10 full-time jobs must be created or preserved for qualifying U.S. workers within two years of the immigrant investor's admission to the U.S. as a Conditional Permanent Resident.

In the case of regional centers, these jobs can be indirect jobs. That is, they must be jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor. A foreign investor may only use the indirect job calculation if affiliated with a regional center. The required minimum investment for the EB-5 investor program is $1 million while the minimum for a targeted employment area, what qualifies as a high unemployment or rural area, is $500,000.

The problems arise when considering either of these two EB-5 programs from the entrepreneur's perspective. Investors are attracted by the permanent green cards that their visas convert to after just two years of residency assuming that the above requirements have been fulfilled, even if the project is not completed. This has obviously resulted in adverse reactions by many as it appears as an easy way for wealthy foreigners to move to the U.S. But is the motive an issue if the goal is achieved? Furthermore, can these investors really be said to be taking advantage of the programs when the programs have been designed for this very outcome: to have an attractive purpose for investment. Stay tuned as the EB-5 critics continue to argue that the programs' viability is questionable.

The other program that was extended by the new law was the E-Verify program. E-Verify approaches concerns about U.S. immigration from another angle - enforcement. The E-Verify Program, an internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security (DHS) and Social Security Administration (SSA) records to confirm employment eligibility, allows the DHS to prevent unauthorized employment.

While generally electronic and efficient, E-Verify has not been well-received by many employers. Some States are implementing it by law. Also, if an employer wants to afford an employee and international student (F-1 visa holder) the ability to get a 17 month Optional Practical Training extension then they must be a participant in the E-Verify program.

For the critics of the E-Verify program, participation has been described as "ill-advised" and problematic mostly because the employee becomes faced with the problem of proving his or her legal right to work in the U.S., which can become costly to the employee in light of discrepancies identified by E-Verify. This may be a larger issue than it may seem considering the high rate at which E-Verify does not automatically clear legal U.S. workers. However, DHS assures that the program's ability to perform is at higher then 98% reliability.

Thus, while E-Verify may be a useful tool for employers who might want to use it, making E-Verify a federal law (permanently), as presidential candidate Mitt Romney would like, may prove to be counterproductive. For example, we are given to understand that Intel, for instance, had to clear 12% of its legal workforce because they were not automatically given approval through E-Verify. One complaint against E-Verify is that it serves as a distraction from the more important focus on getting more skilled workers into the U.S. rather then putting so much effort into barring illegal immigrants. But this attitude does not solve the issue of rising unemployment within the U.S.

since the bulk of employment of illegal immigrants is not something that even E-Verify would be able to detect.

Dealing with the "unemployment issue" is an important one to the candidates. The only way to ensure that U.S. citizens have enough jobs available to them is to ensure that employers are not hiring illegal immigrants in their place. E-Verify is useful since it protects jobs that are available to U.S. citizens, legal residents and those legally permitted to work in the U.S. Right now, more than 387,000 employers across the U.S. use E-Verify to check the employment eligibility of their employees. However, as it stands, it is questionable whether or not the program is cost-efficient and its implementation should not be made into federal law.

Another program extended by the new law is the Non-Minister Religious Worker Program. The Non-Minister Religious Worker Program, within the EB-4 visa classification, has been received well by religious communities within the U.S. The bill, originally co-sponsored by Senator Charles Schumer, allows religious organizations all over the U.S. to sponsor Ministers, Priests, Rabbis, Cantors, Music Teachers, Sunday School Teachers, Counselors, Kosher Butchers, and many other religious workers.

The Non-Minister Religious Worker Program is able to function by way of a special immigrant category that has been established for foreign national ministers and non-ministers in religious vocations and occupations to immigrate to or adjust status in the United States for the purpose of performing religious work. Although there exists a cap of 5,000 workers who may be issued a special immigrant non-minister religious worker visa during each fiscal year, there is no cap for special immigrant religious workers entering the United States solely for the purpose of carrying on the vocation of an (ordained) Minister, Priest or Rabbi.

To be eligible for the EB-4 religious worker visa, the foreign national must seek to enter the U.S. to work in a full time (not defined necessarily by a 40 hour work week) compensated position for a genuine non-profit (501 (c)(3) religious organization in the U.S. A special immigrant religious worker's spouse and unmarried children under the age of 21 may accompany or follow to join the principal religious worker or adjust status in the U.S.

The extension of the EB-4 program by Congress demonstrates that our politicians remain "spiritually enlightened" about the importance that religious workers coming to the U.S. While there was a great deal of fraud alleged by the DHS in this area of U.S. immigration law, the implementation of standardized site visits to religious organizations and interviews with religious organization staff seems (for the time being) to have put the issue to rest.

Another program extended by the new law is the CONRAD State 30 program. The Conrad State 30/J-1 Visa Waiver Program alters the pre-existing requirement for international medical students who have completed their medical education in the U.S. to return to their country of nationality for at least two years before pursuing a career in the U.S. The program instead offers them an opportunity to be placed in an underserved area of a State.

Under the Conrad State 30/J-1 Visa Waiver Program, the two year home residency requirement under section 212(e) of the Immigration and Nationality Act (INA) can be waived for up to thirty (30) J-1 physicians per State annually. In exchange, the J-1 physicians must agree to practice medicine full-time at a pre-approved sponsoring site for a minimum of three years. These practice sites must be located in federally designated health professional shortage areas (HPSA) or a medically underserved area (MUA). The impact of this program is positive for both the U.S. as well as for international students graduating from medical school in the U.S. as it benefits both parties and their interests.

For more information about any of these programs, please feel free to contact your immigration lawyers and attorneys at Nachman Phulwani Zimovcak (NPZ) Law Group, P.C. David Nachman, Esq. can be reached at 201-670-0006 (x100). Michael Phulwani, Esq. can be reached at 201-670-0006 (x124). Our immigration lawyers and immigration attorneys can also be reached by e-mail at info@visaserve.com.