

Legislative Update on the state of the EB-5 Immigrant Investor Program

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The EB-5 program has received growing attention in recent weeks. In these days of tight credit, particularly for commercial real estate development, the EB-5 Program provides an attractive alternative to conventional real estate finance for a wide variety of projects. The program creates foreign investment by allowing a person, with qualifying immediate family members, to obtain permanent resident (green card) status by investing in a new U.S. commercial enterprise, and creating or saving 10 full time U.S. jobs. The usual required investment is \$1 million, but this amount is reduced to \$500,000 if the investment is made in a rural area or area of high unemployment. The EB-5 Regional Center Pilot Program permits the U.S. Citizenship and Immigration Services (USCIS) to designate qualified applicants as regional centers eligible to accept EB-5 investments from foreign investors to generate job creating economic development within the United States. Through the Regional Centers, the job creation requirement can be met either directly or indirectly, through the establishment of sufficient economic activity to permit USCIS to conclude that the job creation requirement will be met. After the investment is approved by USCIS, the investor receives conditional residence status for a period of two years. This conditional status is removed and the unconditional permanent resident status is awarded, if the investor shows at the end of such period that the investment has been maintained and that the required jobs have been created or saved. The time to attain this status is relatively short compared to other green card application options.

An important component of the EB-5 Program, the ability to submit applications on the basis of indirect job creation through a Regional Center, is subject to expiration under current law on September 30, 2012. The National Government Affairs & Public Policy

Practice Group at Akerman Senterfitt has been following the legislative efforts to renew this important aspect of the program.

Legislative Update to Status of EB-5 Program

Over the last six weeks, members of Akerman's Government Affairs & Public Policy team have monitored discussions on the legislation to reauthorize the regional center portion of the EB-5 law. *The visa allocation component of the EB-5 program is permanent law*, and allocates 10,000 visas for immigrants that make job-creating investments in the U.S. However, the legislation that created the regional center part of the program is separate, and the regional center program is set to expire on September 30, 2012 unless a legislative extension is adopted.

On March 17, 2011, Senator Leahy, the Chair of the Senate Judiciary Committee, introduced S.642, which would reauthorize the regional center program permanently. Over the course of the year, both the House and the Senate Judiciary Committees held hearings on the issue. The Senate hearing occurred in December.

During the Senate hearing several objections to the bill were raised by Senator Grassley, the ranking Republican on the Senate Judiciary Committee. He is the clear voice of the opposition.

In January, our team met with the Republican staff of the House Judiciary Committee, as well as with the Republican staff of the Senate Subcommittee on Immigration, Refugees, and Border Security, the committee with jurisdiction over S.642. The only change that the House of Representatives intends to make, is to limit the authorization to five years. The Republicans on the Committee favor the bill and have reached out to the Democrats and found more support. The staff has also been working with the office of the Speaker. The House leadership has indicated that it too will support the bill. In the

words of one staff member, "I would bet my paycheck that it will get out of the House successfully."

As a point of caution on this optimism, the House is currently waiting for the Senate to act. Once the Senate passes the bill, some opposition may surface in the House. There is no need for opponents to raise their heads while the bill is still bogged down in the Senate.

In the Senate, Senator Grassley is preparing a list of changes he would like to see in the bill. We have been told those changes may include:

- increasing the amount that must be invested from \$500,000 to up to \$1 million, even through the regional center program
- tightening the rules on overseas promoters
- requiring that projects use E-verify to guarantee that all the jobs created go to legal workers
- transferring the administration of the business sides of the EB-5 process from the Department of Homeland Security to the Department of Commerce

In addition, Senator Grassley may push to add other major immigration bills to S.642. Such an effort would be vigorously opposed by both Senator Leahy and other Republicans on the Judiciary Committee. Everyone understands that if the bill becomes an open debate on overall immigration policy, it will fail.

Regarding Senator Grassley's list of specific changes to S.642, it remains to be seen what his final list will include. If it is reasonable, and the changes will increase the support for the bill by conservative Republican Senators, Senator Leahy will most likely accept them.

The bottom line is that the bill currently has overwhelming support in Congress. However, there is a key member of the Senate that is insisting on changes, and we cannot determine how much damage these potential changes can do to pending legislation.

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