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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

December 12, 2013

VIA ELECTRONIC TRANSMISSION

John Sandweg
Acting Director
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

Dear Acting Director Sandweg:

I write to inquire about an internal U.S. Immigration and Customs Enforcement (ICE) memo that raises significant questions about U.S. Citizenship and Immigration Services' (USCIS's) EB-5 Regional Center program. The memo is from Homeland Security Investigations (HSI), an investigative arm of ICE. It appears to have been written in response to a request from then-Secretary Janet Napolitano.

One section of the memo outlines "concerns that this particular visa program [EB-5] may be abused by Iranian operatives to infiltrate the United States . . ."¹ Two of the operatives allegedly "facilitate terrorism and are involved in an illegal procurement network that exports items to Iran for use by 'secret' Iranian government agencies."² According to the memo, one of the operatives acted as a representative in the U.S. for an Iranian front company allegedly run by an individual associated with Iran's Islamic Revolutionary Guard Corps.³

This is not the first time that Iranian operatives have been discovered operating in the United States. In the spring of this year, Manssor Arbabsiar, who had both Iranian and U.S. passports, was sentenced for plotting with Iranian military officials to kill the Saudi Arabian ambassador by bombing a Washington, D.C. restaurant.⁴ Earlier this fall, news outlets reported that the U.S. had intercepted an order from Iran to attack

¹ Undated memo, "EB-5 Program Questions from DHS Secretary," Homeland Security Investigations, U.S. Immigration and Customs Enforcement [Attachment].

² *Id.* at 2.

³ *Id.*

⁴ Press release, "Manssor Arbabsiar Sentenced in New York City Federal Court to 25 Years in Prison for Conspiring with Iranian Military Officials to Assassinate the Saudi Arabian Ambassador to the United States," Department of Justice, May 30, 2013, available at <http://www.justice.gov/opa/pr/2013/May/13-nsd-621.html>.

U.S. interests in the event of a strike on Syria.⁵ In light of these facts, it is alarming to see documentation that appears to indicate Iranian operatives used the EB-5 program to try to obtain visas for their associates.

According to the HSI memo, ICE identified seven main areas of program vulnerability with the EB-5 visa:

- 1) Export of sensitive technology/economic espionage;
- 2) Use by foreign government agents/espionage;
- 3) Use by terrorists;
- 4) Investment fraud by regional center;
- 5) Investment fraud by investors;
- 6) Fraud conspiracies by investors and regional center; and
- 7) Illicit finance/money laundering.⁶

The memo states: “The aforementioned vulnerabilities are directly affected by information gaps on the alien beneficiaries of the EB-5 program. Unlike most other permanent resident visa classifications, EB-5 beneficiaries do not need to establish a significant and verifiable background for program eligibility.”⁷

According to the memo, HSI made several suggestions for both information collection fixes and legislative fixes to close loopholes in the EB-5 program. Of the information collection fixes, the memo states: “HSI proposed making changes to the USCIS forms (I-526, I-829, I-924, and I-924A) that are used by RC’s [regional centers] and alien investors. HSI felt that the forms did not collect enough information to determine the validity of either the RC’s, the alien investors or the source of the investor’s funds.”⁸

The legislative changes proposed by HSI were: (1) doubling the minimum investment amount, (2) limiting the program to allow only active investors involved in managing and directing a business enterprise, and (3) eliminating the consideration of induced jobs for meeting the requirements of the program. These suggestions were not included in the technical assistance provided by USCIS in June 2012 when the EB-5 program was being reauthorized. The only HSI recommendation which appeared in any form in the technical assistance was a proposal for providing inflationary adjustments to the minimum investment amount, which is very different from doubling it.

The HSI memo makes clear that overall, HSI believes the Regional Center model has significant flaws and should be abandoned: “The principal change proposed by HSI was that the Regional Center Model be allowed to sunset, as HSI maintains **there are**

⁵ Julian E. Barnes and Adam Entous, “Iran Plots Revenge, U.S. Says,” *Wall Street Journal* (Sep. 6, 2013), available at <http://online.wsj.com/article/SB10001424127887323893004579057271019210230.html>.

⁶ Undated memo, “EB-5 Program Questions from DHS Secretary,” Homeland Security Investigations, U.S. Immigration and Customs Enforcement, at 4.

⁷ *Id.*

⁸ *Id.*, at 5.

no safeguards that can be put in place that will ensure the integrity of the RC model.”⁹

Given these concerns with the EB-5 Regional Center program and information gaps on recipients of EB-5 visas, it is important that Congress have statistics on what happens after individuals enter the U.S. on an EB-5 visa. Foreign investors who participate in the EB-5 program may receive conditional permanent residence for a two-year period. However, it seems unlikely that they are ever removed from the country even if the conditions of their conditional status are not met because the required jobs weren't created within the required period.

Therefore, please respond to the following:

1. Please produce all legislative and information collection recommendations made by ICE or any of its divisions for the EB-5 program. Please provide in detail any specific changes recommended for USCIS forms I-526, I-829, I-924, and I-924A.
2. For each of the above recommendations, please identify the date ICE proposed the recommendation and to what entities it was proposed.
3. What is the current total number of EB-5 conditional residents whose request to remove conditional status was denied?
4. Does ICE know how many EB-5 investors who were denied permanent resident status remain in the country? Does ICE know the location of these foreign investors? If so, please provide a status report, including how many are detained, how many are in removal proceedings, and how many have been removed from the country by ICE.
5. Do you or your agency have any information as to why USCIS did not provide Congress with the legislative recommendations made by HSI, as indicated in the attached memo?
6. What is ICE doing to help ensure that USCIS does not provide EB-5 visas to individuals and entities that are involved in international terrorism or proliferation operations, as was the case with Iranian operatives whose goal was to infiltrate the U.S. and export items back to their country?
7. What is the current status of the Iranian case mentioned in the memo?
8. What type of visas did the two Iranian operatives mentioned in the memo enter the U.S. on?

⁹ *Id.*, at 4 (emphasis added).

9. Is the principal of the regional center referenced in the memo in the United States? If so, what type of visa did the principal enter the U.S. on?
10. For each individual associated with the principal of the regional center through TECS subrecord hits, please indicate whether or not the individual has entered the U.S. in the past or is currently in the U.S., as well as what type of visa each individual entered the U.S. on.
11. What is the current immigration status of each of the individuals referenced in questions 8, 9, and 10?

Thank you in advance for your cooperation in this matter. Please respond to these questions by January 1, 2014. Should you have any questions regarding this letter, please contact Tristan Leavitt of my staff at (202) 224-5225. I look forward to your prompt response.

Sincerely,



Charles E. Grassley
Ranking Member

ATTACHMENT

Attachment



EB-5 Program Questions from DHS Secretary

The following information is provided in response to a U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Tasking based on request from DHS, number 66820, titled "Request for Information Implications of ICE Case Against Procurement Agent." The answers to these questions are each marked (U//FOUO):

- 1. (U//FOUO) Please give a brief overview of the EB-5 visa program, including the ability and process of petitioning for additional workers using other visa codes.*

ICE defers to U.S. Citizenship and Immigration Services (USCIS) for a full overview of the EB-5 visa program; however, ICE provides the following information. The EB-5 visa was created by Congress in 1990 as a means to stimulate the U.S. economy through capital investment by foreign investors. A maximum of 10,000 immigrant visas per year are set aside for qualifying foreign investors and their immediate families (spouses and unmarried children under age 21). The basic requirements of the program are that the alien must invest a minimum of \$1,000,000.00 in a new or existing U.S. business, or a minimum of \$500,000.00 if the business is located in a Targeted Employment Area (area at the time of investment experiencing an unemployment rate of at least 150% of the national average) or a rural area, and the investment must either create or preserve a minimum of ten full time jobs for qualifying U.S. workers within two years. The invested funds must be wholly owned by the alien investor and must come from a legitimate source, and the investment must be "at risk". After the qualifying investment is made, the alien and his or her immediate family members may file a form I-526, Immigrant Petition by Alien Entrepreneur. If the form I-526 is approved, the alien and his or her family members can be granted an EB-5 visa and become Conditional Residents of the U.S. Within 90 days of the two year anniversary of being admitted to the U.S. as Conditional Residents, the alien and his or her family members may file a form I-829, Petition by Entrepreneur to Remove Conditions, and become Permanent Residents of the U.S.

Under a pilot program first established in 1992, and renewed several times since, the alien investor can invest in a Regional Center (RC) that has been approved by USCIS. When investing in a RC, the alien investor does not have to take an active role in the day to day management of a company, but simply becomes a passive investor in a limited partnership. Another advantage to the alien is that when investing in a RC, the alien does not have to show that ten direct jobs were created or preserved. The business or EB-5 visa holder may petition for foreign workers in the same manner as any other business as long as the minimum of 10 full-time U.S. workers is maintained in order to continue in the EB-5 status. Rather, the created or preserved jobs can be any combination of ten or more direct, indirect or induced jobs, using any reasonable calculation the RC chooses to use. Unofficial estimates from USCIS indicate that over 90% of the applicants for EB-5 visas now invest in these RCs, and a majority of all investments are at the lower \$500,000.00 amount. As of June 2012, there were 205 approved RCs in the U.S., 193 pending new RC requests, and 59 amendment requests to previously approved RCs.

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2. (U//FOUO) Explain the relevance of the EB-5 visa in this specific case, especially the application process and vetting of applicants, such as checks for derogatory information.

The EB-5 program and the RC model in particular, became the focus of an interagency review in early FY 2012. In reviewing the program, ICE Homeland Security Investigations (HSI) representatives learned that USCIS was not conducting background record checks of RC operators, managers, and principals. Based on this review USCIS changed business practices to include checking EB-5 sponsor company names, associated addresses, and individuals against the TECS subject record database. USCIS has since found a number of links between EB-5 sponsors, businesses, principals, and associated addresses, with the subjects of HSI and other agency investigations.

The HSI Visa Security Program (VSP) currently screens all counter-proliferation and export control security advisory opinion (SAO) referrals. VSP is currently in the process of expanding to screen 100% of non-immigrant visa applicants before visa adjudication through the PATRIOT program. PATRIOT is scheduled to begin full screening and vetting of all non-immigrant visa applicants from the 19 overseas Visa Security Units. Expansion to cover all other posts will occur as resources become available. VSP efforts include screening not just the applicant, but also U.S. sponsors/points of contact, addresses, phone numbers and email addresses associated with the visa application against DHS-held information. Any derogatory information identified during the screening is analyzed by a VSP intelligence analyst and referred to an HSI special agent for final vetting and determination. Future plans include expanding the screening process to immigrant, refugee, asylum and other immigration applicants. VSP works closely with partner agencies to conduct post-adjudicated and recurrent vetting of visa applicants for any terrorist connections. In the [REDACTED] investigation, the three identified subjects have TECS records, therefore a related application would be found by VSP screening efforts.

3. (U//LES) Provide an operational update on the actions taken against [REDACTED] and the individuals involved in this case.

In January 2010, the HSI [REDACTED] Counter-Proliferation Investigations Center (CPIC) received information that [REDACTED] and [REDACTED], facilitate terrorism and are involved in an illicit procurement network that exports items to Iran for use by "secret" Iranian government agencies. The investigation revealed involvement by [REDACTED] and [REDACTED] in procuring a variety of goods for Iranian entities and they appear to be associated with a network involved in a series of international assassination and terrorism operations.

In [REDACTED] 2012, [REDACTED] was indicted for his role in exporting electronics to Iran and was subsequently arrested on [REDACTED] 2013. In addition, the HSI [REDACTED] CPIC investigation revealed that [REDACTED]'s place of employment, [REDACTED] is a participant in the EB-5 investor visa program. Based on concerns that this particular visa program may be abused by Iranian operatives to infiltrate the United States, the HSI [REDACTED] CPIC initiated a joint investigation with the HSI [REDACTED] Document and Benefit Fraud Group.

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The investigation revealed [REDACTED] acted as a U.S. representative for an Iranian front company suspected of involvement in facilitating terrorism and proliferation activities. The company,

[REDACTED] appears to be run by [REDACTED] an individual associated with Iran's Islamic Revolutionary Guard Corps (IRGC). [REDACTED] is named in a United Nations report as an entity that smuggled arms to [REDACTED] militia groups. The [REDACTED] CPIC discovered evidence indicating the [REDACTED] network received diamonds as payment for these arms shipments.

Recent developments in the investigation include the discovery of a [REDACTED]-based procurement agent involved in this network, [REDACTED] who appears to represent the [REDACTED] procurement arm of [REDACTED]. [REDACTED] is likely involved in procuring sensitive electronics from U.S. electronics firms with a suspected ultimate destination of Iran. [REDACTED] also appears to be involved with an Iranian electronics firm that, according to open-source information, services Iran's IRGC and the Ministry of Intelligence and Security. A review of electronic correspondence from [REDACTED] email account indicates an association with [REDACTED] an Iranian citizen to whom he passed information regarding explosive components. [REDACTED], an employee of [REDACTED] and a [REDACTED] network associate, was recently arrested in [REDACTED] for allegedly leading assassination and terrorist operations in [REDACTED] and the country of [REDACTED]. [REDACTED] email account also indicates he procured the same size and type of ball bearings found in improvised explosive devices located in [REDACTED] apartment.

4. (U//FOUO) Identify the procedural or information gaps in the EB-5 visa program and other similar programs and any recommended mitigating steps to address these risks.

ICE recommends USCIS also be consulted for this information. ICE provides the following suggestions. Through its participation on the inter-agency working group, HSI Identity and Benefit Fraud Unit (IBFU) and other affected agencies identified seven main areas of program vulnerability with the EB-5 visa. These program vulnerabilities are as follows:

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1. Export of Sensitive Technology / Economic Espionage
2. Use by Foreign Government Agents / Espionage
3. Use by Terrorists
4. Investment Fraud by Regional Center
5. Investment Fraud by Investors
6. Fraud Conspiracies by Investors and Regional Center
7. Illicit Finance / Money Laundering

VSP only screened EB-5 immigrant visa applicants who were referred for an SAO relating to counter-proliferation or export control. In 2012, VSP provided guidance to all HSI Visa Security Units to include the EB-5 immigrant visa category in their targeting profiles (beyond only counter-proliferation or export controls).

The aforementioned vulnerabilities are directly affected by information gaps on the alien beneficiaries of the EB-5 program. Unlike most other permanent resident visa classifications, EB-5 beneficiaries do not need to establish a significant and verifiable background for program eligibility. For example, permanent resident classifications for employment require proof of education and/or experience, while family-based visas require positively demonstrating bona-fide relationships. These classifications provide greater information that can be researched, vetted, or cross-checked than that required of an EB-5 applicant. Conversely, the primary requirement for EB-5 eligibility is a lawful source of investment income. However, verifying the legitimacy of investment income sources is difficult. Therefore, the primary qualifying criteria for EB-5 beneficiaries is both limited in scope and hard to confirm.

In addition to the information gap on EB-5 beneficiaries, there are procedural issues associated with the approval and operation of RCs that lead to vulnerability. The HSI review has uncovered serious concerns about the credibility of the RC platform. The nature of indirect job growth is problematic, and based almost solely on a RC's job creation methodology as described in applications to USCIS. HSI conducted research using job creation statistics used by large corporations and the U.S. government stimulus package, and has reason to believe that the RCs are greatly exaggerating their indirect and induced job creation figures. By not having to provide evidence of jobs directly created, the RC inherently creates an opportunity for fraud, where the business goal can be initiating projects that give the appearance of creating job growth, with the sole intent to meet USCIS criteria rather than produce jobs.

Based on the concerns outlined above, HSI made several suggestions for both legislative fixes and information collection fixes to close loopholes in the EB-5 program. The principal change proposed by HSI was that the Regional Center Model be allowed to sunset, as HSI maintains there are no safeguards that can be put in place that will ensure the integrity of the RC Model. In the absence of the elimination of the RC Model, HSI proposed raising the minimum investment amount to \$2,000,000 or \$1,000,000 for Targeted Employment Areas, as the minimum investment amounts had not changed since the inception of the RC Model in 1992. Raising the required investment amount would make fraud more inconvenient and provide a more legitimate basis to meet the job creation goals of the program.

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Additionally, the EB-5 program should be open only to active investors involved in managing and directing a business enterprise, and not to passive partners, which would provide a heightened degree of certainty regarding the intentions of the alien applicant. Passive investors are too far removed from these projects to have any verifiable connections or ties.

Finally, induced jobs should not be used as a measurement of job creation; only direct jobs, and indirect jobs created from suppliers, partner entities, and direct support could be considered. Further, indirect jobs must be verifiable in the targeted geographic area. Induced jobs based on increase in economic activity should not be used towards the requirement of creating 10 jobs. Jobs created directly are easier to verify and substantiate, both by the RC and USCIS.

On September 28, 2012, President Obama signed a three year reauthorization of the EB-5 RC Program. The RC Model was renewed without any changes.

In addition to the proposed legislative edits, HSI proposed making changes to the USCIS forms (I-526, I-829, I-924 and I-924A) that are used by RC's and alien investors. HSI felt that the forms did not collect enough information to determine the validity of either the RC's, the alien investors or the source of the investor's funds. HSI submitted to USCIS a series of recommended questions to be included on the aforementioned forms, as well as additional recommended security checks, to help address the seven program vulnerabilities that were identified.

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