



## White Paper: Solutions to the EB-5 Visa Waiting Line *by the AILA EB-5 Committee*<sup>1</sup>

### I. Introduction

The EB-5 Immigrant Investor Program (EB-5 Program) is a program to create jobs for U.S. workers while providing lawful permanent residency to foreign nationals who invest in U.S. companies. In the past decade, the EB-5 Program has been a successful tool for financing job creation projects.<sup>2</sup> With [39,443 initial EB-5 petitions \(Form I-526\) filed in the past three fiscal years](#), at least \$19 billion has been invested in the U.S. economy through the EB-5 Program from October 1, 2014 to September 30, 2016. There is no doubt that the EB-5 Program has benefitted the U.S. economy and created jobs for U.S. workers.

Yet, the EB-5 Program is also in need of reform and modernization. Reforms should include a re-evaluation of the number of foreign nationals who may enter the U.S. each year based on their EB-5 investment in a U.S. company. The EB-5 Program requires a foreign national's investment to be "at risk" from the time of filing the initial EB-5 petition (Form I-526) until the final EB-5 petition (Form I-829) is filed within 90 days of the end of the 2 year period of the investor's conditional permanent residency. At the I-829 stage, the investor must demonstrate that at least 10 U.S. jobs have been created. If the investor cannot demonstrate that the requisite jobs have been created, removal proceedings may be instituted against the investor and his or her family.

As a result of a cap on the number of EB-5 visas that may be issued each year, a crisis now threatens the viability of the EB-5 Program. Today, an EB-5 investor from China may be required to wait up to 10 years to obtain a visa to enter the U.S., even after making an investment in a U.S. company.<sup>3</sup> This means U.S. companies will be required to hold or manage "at risk" investment for much longer than the two year time period Congress originally intended. As a result, demand for EB-5 investments will decline significantly.<sup>4</sup> Without an increase in the number of EB-5 visas that can be issued each year, the benefits that the EB-5 Program brings to the U.S. economy will rapidly diminish.<sup>5</sup>

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<sup>1</sup> Special thanks to lead author Bernard Wolfsdorf, Esq., Wolfsdorf Rosenthal LLP.

<sup>2</sup> See [http://www.esa.doc.gov/sites/default/files/estimating-the-investment-and-job-creation-impact-of-the-eb-5-program\\_0.pdf](http://www.esa.doc.gov/sites/default/files/estimating-the-investment-and-job-creation-impact-of-the-eb-5-program_0.pdf).

<sup>3</sup> See [https://www.dhs.gov/sites/default/files/publications/DHS%20Annual%20Report%202017\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/DHS%20Annual%20Report%202017_0.pdf).

<sup>4</sup> There are numerous other immigrant investor programs in the world. Only the U.S. EB-5 Program has a job creation requirement associated with the benefit of U.S. lawful permanent residency.

<sup>5</sup> AILA supports reforms that would reduce the backlogs in all immigrant visa preference categories: both family-based and the spectrum of the employment-based categories. Though the focus of this paper is on the problems created by the backlog that are unique to the EB-5 program, reforms must benefit all currently backlogged categories, and must be designed in a manner in which new backlogs will not be created where none currently exist.

Congress could enact a number of solutions to clear the backlog and maintain demand for a viable and vibrant EB-5 Program along with new legislation to better the U.S. economy. It is time to bring the EB-5 Program into the 21<sup>st</sup> century and create reasonable immigration levels for EB-5 investors in a consistent, predictable manner that match our country's immigration and economic priorities.

## II. Legislative Framework

The INA limits the number of employment-based immigrants to 140,000 annually.<sup>6</sup> Of that number, 7.1 percent, or 9,940 visas are allocated to the EB-5 program.<sup>7</sup> The annual limits on the number of visas that may be issued were established in 1990 and almost 27 years later, have never been changed. In addition to the worldwide 7.1 percent ceiling, the number of immigrant visas made available to natives of any single foreign state may not exceed 7 percent of the total number of visas that are available in a given fiscal year.<sup>8</sup> This amounts to approximately 695.8 EB-5 visas per country per year. The "per country limitation" only applies if demand for EB-5 visas exceeds the 9,940 ceiling.<sup>9</sup>

In addition, Congress drafted the INA so that unused visas in one preference category can be allocated to another preference category, and so that a country which exhausts its annual per country allocation can be allocated visas unused by other countries. For example, though the overall limit of 9,940 remains, when a country doesn't use all of its allotted EB-5 visas, those unused visas may be re-allocated to applicants from mainland China. However, the number of visas used by other countries, such as Vietnam and India, is rapidly increasing, thus reducing the number of visas that fall to China each year. Further, although this number could be supplemented by unused family visas, there have been no unused family or employment visas in recent years.

Further exacerbating the EB-5 backlog for China is the [Chinese Student Protection Act of 1992 \(CSPA\)](#).<sup>10</sup> The CSPA authorized the issuance of 1,000 immigrant visas to students from mainland China. However, 700 of those visas "shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(5) of [the INA] in that year."<sup>11</sup> The other 300 come from the EB-3 category. This theoretically reduces the base number of EB-5 visas available to China (695) to a deficit (-5) in any given year. In effect, nationals of mainland China may only immigrate to the United States under the EB-5 program where there is insufficient demand for EB-5 visas from other countries.

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<sup>6</sup> INA §201(d)(1)(A).

<sup>7</sup> INA §203(b)(5).

<sup>8</sup> INA §202(a)(2).

<sup>9</sup> INA §202(a)(5).

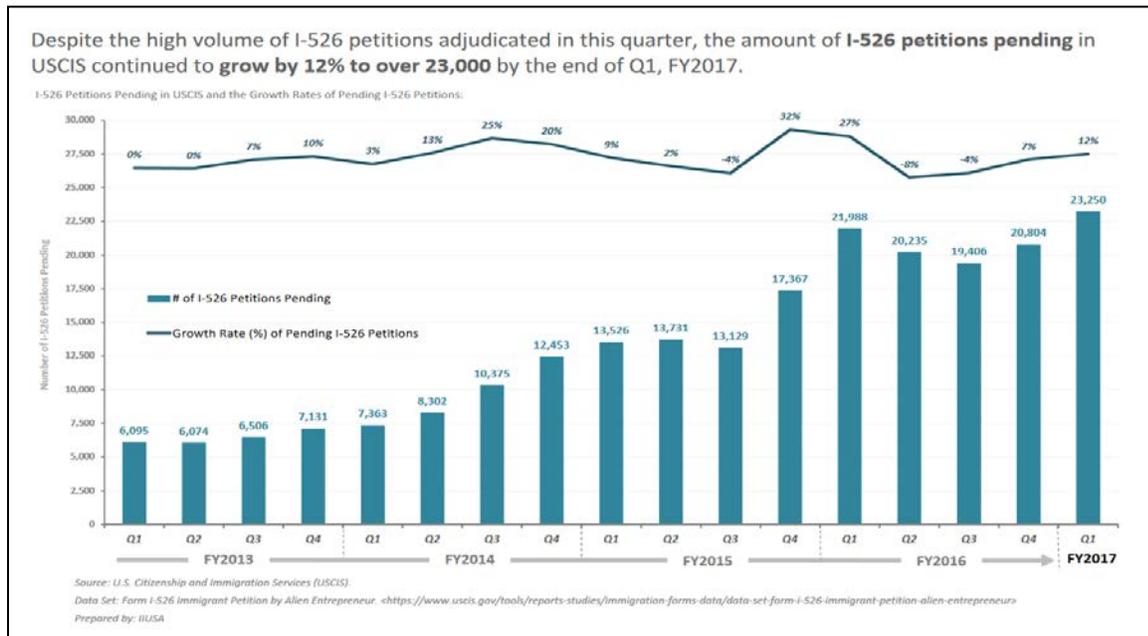
<sup>10</sup> Pub. L. No. 102-404, 106 Stat. 1969 (Oct. 9, 1992).

<sup>11</sup> CSPA §2(d)(2)(B).

### III. Current Visa Number Usage and Wait Line Estimates Illustrate the Need for Action

Until May 2015, the supply of visas was adequate to meet the demand. In FY 2014, the number of EB-5 visas issued reached an all-time high of 10,692. In FY 2015, 9,764 visas were issued, of which 8,156 or 83.5 percent were for mainland China. In FY 2016, mainland Chinese visa usage went up to 9,128 or 85.37 percent of the total.

The current demand for EB-5 visas is based on (a) the number of I-526 petitions currently pending with USCIS; and (b) the number of applicants currently waiting for an immigrant visa from DOS. USCIS estimates that as of the second quarter of FY 2017, there are 22,152 pending I-526 petitions,<sup>12</sup> slightly down from the first quarter of FY 2017 as illustrated below:



Based on the historic I-526 approval rate of approximately 85 percent and an average family size of three, the I-526 petitions pending with USCIS will require approximately 56,000 visas. In addition, as of November 2016, the DOS National Visa Center estimates that there are approximately 22,000 applicants (including spouses and children) waiting for an immigrant visa. With only 9,940 EB-5 visas available each year, the estimated wait time for an investor from mainland China could be as long as 10 years. This estimate was confirmed in the CIS Ombudsman’s 2017 report:

Congress extended the Immigrant Investor (EB-5) Regional Center Program, most recently through September 30, 2017, but a series of short-term extensions has triggered surges in Form I-526, Immigrant Petition by Alien Entrepreneur filings in 2015 and 2016. There is a high demand for EB-5 visas. Investors and their

<sup>12</sup> See [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526\\_performance\\_data\\_fy2017\\_qtr2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526_performance_data_fy2017_qtr2.pdf).

dependents from China who are at the end of the Form I-526 adjudication queue **may have to wait 10 years or longer for immigrant visas under the EB-5 program.** (Emphasis added.)<sup>13</sup>

The July 2017 Visa Bulletin lists the Final Action Date (FAD), or cut-off date, for mainland China EB-5 applicants, both Regional Center and non-Regional Center-based, as June 8, 2014.<sup>14</sup> Only applicants who have a priority date earlier than the FAD may be allotted an immigrant visa. Yet, since May 2015, when a cut-off date for EB-5 China was first established, the backlog has increased almost every month. Moreover, from June to July, the FAD for EB-5 China did not move forward at all.<sup>15</sup> Thus, the forward movement of Chinese EB-5 visa numbers has gone from a crawl to a halt.

The exponentially increasing delay for mainland China applicants is further illustrated by preliminary estimates provided by Charles Oppenheim, Director of Visa Control for the U.S. Department of State at a meeting with IIUSA, the EB-5 trade association in Washington, DC, on April 27, 2017. Mr. Oppenheim estimated that in September 2017, the mainland China cut-off date will move to June 22, 2014, or in a best case scenario, July 1, 2014. For FY 2018, the date will move to some date between September 15, 2014 and October 8, 2014. It therefore appears that the China EB-5 cut-off date will advance at a rate of only 3 to 4 months per calendar year.

In addition, the Date for Filing (DFF) for EB-5 China listed in the July 2017 Visa Bulletin is September 1, 2014. Based on this, only persons with priority dates earlier than September 1, 2014 may assemble and submit required documents to DOS in anticipation of a possible interview. DOS therefore does not expect to see the mainland China EB-5 cut-off date move more than about 3 months in the next Fiscal Year.

If, as proposed, 20 percent of EB-5 visas are “set-aside” for investments in certain geographic areas or industries, an additional two years would be added to the wait time. With the surge in demand from other countries, resulting in fewer visas allocated to China, the waiting line will go beyond 12 years unless action is taken.

#### **IV. Problems Emerging from the Increased Waiting Line**

The rapidly increasing backlog has created a multitude of problems, many of which Congress has repeatedly targeted as areas for reform. In an effort to defer fraud, the EB-5 Program was designed to have a two-year period of conditional residence, during which an investor’s funds must be sustained in the project in order to create 10 full-time jobs for U.S. workers. However, as a result of the long backlog, the two-year conditional residence period will not begin for many years, thus requiring the investor’s funds to be at risk for far longer than expected. This poses unanticipated issues for EB-5 projects that are based on a 5-year loan, and problems for Chinese investors who are subject to the long wait when investors from other nationalities are not.

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<sup>13</sup> See [https://www.dhs.gov/sites/default/files/publications/DHS%20Annual%20Report%202017\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/DHS%20Annual%20Report%202017_0.pdf)

<sup>14</sup> See [https://travel.state.gov/content/dam/visas/Bulletins/visabulletin\\_July2017.pdf](https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_July2017.pdf).

<sup>15</sup> See <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-june-2017.html>.

The extended period also means projects may have to amend their business plans to remain competitive. The structure of most projects would require a redeployment of invested funds into other areas over time, but Chinese investors may have to remain longer, as opposed to newer investors who can exit earlier. In addition, it must be noted that a “material change” to a business plan could impact visa eligibility. Therefore, the long wait means an increase in risk of loss to the investor not only of capital, but of the underlying immigration benefit as well.

Most pressing for many are concerns surrounding the Child Status Protection Act (CSPA) and “aging-out” children. Since the CSPA only provides protection for the time the petition was pending, the CSPA provides only limited help for children who will reach 21 before they are able to immigrate with their families. This results in families being torn apart unnecessarily.

Problems are exacerbated for “direct” EB-5 investors who have no clear basis to enter the U.S. to manage their investment. Most nonimmigrant visas require the applicant to demonstrate “nonimmigrant intent” which could conflict with the “immigrant intent” evidenced by the filing of an I-526 petition. So while an investor may be required to manage their business, the current framework provides no reliable way for Chinese investors to enter the U.S. and manage their businesses while waiting for their priority date to become current.

## **V. Solutions to the EB-5 China Waiting Line**

To address the rapidly increasing EB-5 backlog and prevent many of the unintended consequences including underuse of the program, a number of actions would have a significant effect on the current backlog.

**AILA Note:** Several of the measures noted below, such as counting derivatives and recapture of unused visas, could and should also be utilized to reduce the backlogs across all immigrant visa categories. Though the focus of this paper is on the need for relief in the EB-5 context, AILA takes the position that reforms to reduce or eliminate the backlogs in both the family-based preference categories and the employment-based categories are critical to a fully functioning and fair immigration system for all. In addition, reforms must be accompanied by an increase in the overall number of visas that are available each fiscal year, and/or other measures to ensure that backlogs are not created in categories where none currently exist.

### **Do Not Count Derivatives Against the Annual Visa Limits**

As discussed above, each I-526 petition uses an average of three visa numbers. Counting only the principal investor against the annual limit on visas would shorten the backlog by approximately two-thirds. This would conform to Congress’s original intent to admit 10,000 investor families, not merely 3,000 investors and their families as is currently the case. The Congressional record regarding the passage of IMMACT 90 confirms this point. Representative Smith (R-TX) stated:

I would like for my colleagues to know that this particular provision of the immigration bill is actually the only provision of the immigration bill that is absolutely guaranteed to create jobs and produce revenue for the U.S. Government.

In fact, if these 10,000 investor visas are taken advantage of, it will create a minimum of 100,000 jobs in the United States, and it will generate revenue of up to \$10 billion for the Government....

This provision, of course, says that 10,000 *investors* may come into the country if they are going to start a business that will employ at least a minimum of 10 employees. That is where the figure comes from of 100,000 guaranteed jobs.<sup>16</sup>

On October 26, 1990, Senator Kennedy (D-MA) said the following with regard to the original EB-5 direct visa category:

Mr. President, 10,000 employment generating visas are provided for investors who invest in enterprises, especially in depressed rural or urban areas, which create a minimum of 10 new jobs for Americans.<sup>17</sup>

Senator Simon (D-IL) similarly stated:

One section of the bill that I am particularly pleased to have had included from my original bill is the employment generating investor visa provision. Following the recommendation of the Select Commission, the bill establishes a new visa category for entrepreneurs [sic] who are willing to contribute to America's economic growth and provide new jobs for Americans by investing in new American enterprises. This one provision will generate over \$8 billion annually in new investment in small and independent U.S. businesses and *provide up to 100,000 new jobs for Americans*-two goals which we need to pursue as quickly as possible....

We have an *investor program that will permit up to 10,000 people* to make investments here, to come to this country and create jobs. It is particularly targeted to areas of high unemployment. I think that will be of great help.<sup>18</sup>

Accordingly, as shown in the Congressional record, the original intent was to admit 10,000 investors through the EB-5 program, creating 100,000 jobs in the U.S. This visa category has had strong bipartisan support both in terms of its original enactment and subsequent extensions. The following charts show the strong support in both the House and the Senate for the original enactment, and for extensions of the Regional Center program:

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<sup>16</sup> 136 Cong. Rec. H12358 (daily ed. Oct. 27, 1990) (emphasis added).

<sup>17</sup> 136 Cong. Rec. S17103 (daily ed. Oct. 26, 1990).

<sup>18</sup> 136 Cong. Rec. S17103 (daily ed. Oct. 26, 1990) (emphasis added).

# Continued Congressional Support

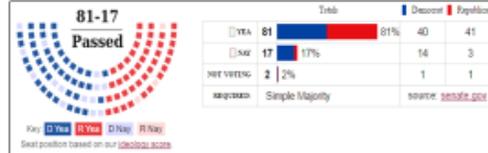
## Immigration Act of 1990

## Regional Center Pilot Program

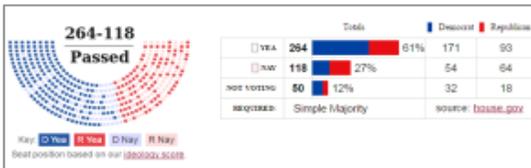
### Senate



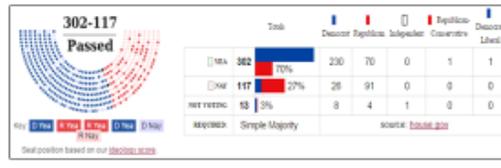
### Senate



### House of Representatives



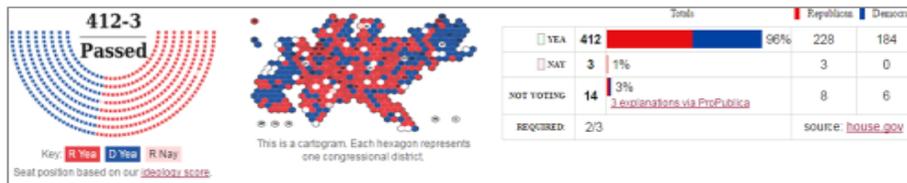
### House of Representatives



## 2012 Regional Center Program Reauthorization

Reauthorization Passed Unanimously in the Senate

### House Vote



When Congress amended the INA to create the Regional Center Program, it unequivocally intended to add 3,000 investors (not 1,000) in certain Targeted Employment Areas (TEA). The plain language of INA §203(b)(5) supports the position that derivatives were not intended to be counted towards the 3,000:

(A) In general---Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise....

(B)(i) In general---Not less than 3,000 of the visas made available under this paragraph **shall be reserved for qualified immigrants who invest** in a new commercial enterprise described in subparagraph (A) which will create employment in a targeted employment area.” (Emphasis added.)

The plain language of subparagraph (B) indicates that the recipients of the 3,000 visas are to “be reserved for qualified immigrants who invest.” There is no indication from the language of the statute that Congress intended this number to be diluted by non-investor family members who would otherwise qualify for derivative visas.

Senator Rand Paul (R-KY) has already introduced a bill<sup>19</sup> which would exempt derivatives spouses and children of EB-5 immigrant investors from counting against the annual EB-5 visa quota. Furthermore, Congress has previously enacted similar policies for other important visa categories. In 2005, INA §204(b)(4) was amended to allow the admission of certain special immigrants who qualify as international broadcasters under the EB-4 preference category. Under this provision, the International Broadcasting Bureau of the United States Broadcasting Board of Governors (BBG), or a grantee of the BBG, may petition for an alien (and the alien’s accompanying spouse and children) to work as a broadcaster for the BBG or a grantee of the BBG in the United States. Notably, this provision specifically excluded spouses and children from the numerical limit in this category:

(4) Certain special immigrants. - Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants described in section [101\(a\)\(27\)](#) (other than those described in subparagraph (A) or (B) thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section [101\(a\)\(27\)\(C\)\(ii\)](#), and not more than 100 may be made available in any fiscal year to special immigrants, **excluding spouses and children**, who are described in section 101(a)(27)(M) [international broadcasters]. (Emphasis added.)

Additionally, under INA §101(a)(27), Congress authorized the admission of Special Immigrant Translators or Interpreters from Iraq and Afghanistan. This category also excludes spouses and children from the numerical limit. As noted in the DOS Foreign Affairs Manual (FAM) at 502.5-11(B)(2)(a):

The derivative spouse and minor, unmarried children of the principal applicant may be included in the case and **do not count against the fiscal year cap for interpreters and translators**. They may accompany the principal applicant or follow-to-join the principal. (Emphasis added.)

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<sup>19</sup> See <https://www.congress.gov/bill/115th-congress/senate-bill/727/text>.

Since the current EB-5 immigration reform focus is to bring the program back to its original intent, new legislation can and should make clear that Congress originally intended and still intends to allow 10,000 “investor families” not 3,000 “investor families.”

### Recapture of Unused Visa Numbers from Prior Fiscal Years

To understand the argument for recapture, it is important to understand the various categories in which foreign nationals can obtain an immigrant visa. First are immediate relatives (spouses, parents and minor children of U.S. citizens), which are not subject to any numerical limitation. Second are other family-based immigrants, such as the spouses of permanent residents, adult children of citizens, and brothers and sisters of citizens. Third, are the employment-based immigrants, such as advance degree holders, individuals of extraordinary ability, outstanding researchers and professors, and other professional workers.

In 1990, Congress established a limit of 140,000 on employment-based immigrants, and a limit of 480,000 on family-based immigrants, less the number of immediate relatives who were given green cards from the previous year. For example, in 1989, when Congress was contemplating changes to the immigrant visa laws, there were 217,000 immediate relatives. The total number of family immigrants allowed in 1990 would have been 480,000 minus 217,000, or 263,000. To protect against situations where immediate relatives would consume the vast majority of visas, Congress established a floor of 226,000 (non-immediate relative) family-based visas. To ensure all numbers are utilized, Congress allowed unused family numbers to be reallocated to the employment categories for the following fiscal year, and unused employment numbers to be reallocated to the family categories. Despite this, it is estimated that there are thousands of unused visa numbers from years past. The 2010 CIS Ombudsman report showed that over the years, more than half a million-employment based green cards, and nearly a quarter million family-based green cards went unused.

Fiscal Year	Unused Family Preference Numbers	Unused Employment Preference Numbers	Following FY's Family Preference Limit	Following FY's Employment Preference Limit
1992	5,435	21,207	232,483 <sup>1</sup>	161,207 <sup>1</sup>
1993	3,213	0	226,000	143,213
1994	6,503	29,430	253,721	146,503
1995	0	58,694	311,819	140,000
1996	0	21,173	226,000	140,000
1997	0	40,710	226,000	140,000
1998	20,906	53,571	226,000	160,906
1999	2,299	98,941	294,601	142,299
2000	52,074	31,098	226,000	192,074
2001	2,632	5,511	226,000	142,632
2002	31,532	0	226,000	171,532
2003	64,422	88,482	226,000	204,422
2004	8,449	47,305	226,000	148,449
2005	3,949	0	226,000	143,949
2006	7,148	10,288	226,000	147,148
2007	22,704	0	226,000	162,704
2008	0	0	226,000	140,000
2009	10,662 <sup>2</sup>	0	226,000	150,662 <sup>2</sup>
<b>Total</b>	<b>241,928</b>	<b>506,410</b> ( 180,039 were recaptured by special legislation)		

In 2000, Section 104 of the American Competitiveness in the 21st Century Act (“[AC21](#)”)<sup>20</sup> provided for recapture of 130,000 of lost employment-based numbers. In addition, Section 502 of the REAL ID Act of 2005 amended section 106(d) of AC21 to allow unused employment based immigrant visas from Fiscal Years 2001 through 2004 to be recaptured and used in future Fiscal Years when the yearly quota is reached. However, use of these recaptured visas is limited to Schedule A immigrants including: nurses, physical therapists, performing artists of exceptional ability, and their spouses and children. The total number of visas issued under this provision may not exceed 50,000.

Even after the enactment of these provisions, and despite Congressional intent, unused visa numbers remain. Ensuring that the unused visas are used could help clear the EB-5 backlog and allow Congressional reforms to be implemented in new projects that allow the EB-5 Program to help meet our country’s job creation goals.

### **Remove Per-Country Quotas**

Senator Rand Paul recently introduced S.727, which would remove per country quotas from the numerical limitations. This would put investors from all countries on the same footing, and would impose the same waiting line requirements for everyone, based solely on their priority date, not their country of chargeability. In processing all investors together, projects would no longer need to treat the investments of mainland Chinese differently than others.

It should be noted the House has previously approved a measure to remove the per-country limits across the employment-based categories. On November 29, 2011, the House passed H.R. 3012, the Fairness for High Skilled Immigrants Act,<sup>21</sup> by a landslide 389-15 vote.<sup>22</sup> Introduced by Rep. Chaffetz (R-UT), it proposed to eliminate the employment-based per country cap entirely by 2015 and to raise the family-sponsored per-country cap from 7 percent to 15 percent. If H.R. 3012 became law, it would have significantly decreased the wait times for certain countries in the employment-based preference categories, especially India and China. Wait times in the family-based preferences would also have been reduced.

### **Remove CSPA Borrowing from Annual Quota that Depletes Chinese EB-5**

This solution was also proposed by Senator Paul in S.727. As discussed above, the mainland Chinese EB-5 quota is decreased because of the decades old CSPA law. Ending this drain on the Chinese EB-5 quota would have a significant impact on the backlog.

## **VI. Administrative Solutions to the Mainland Chinese EB-5 Waiting Line**

In addition to legislative solutions, there are a number of policies that DHS could implement that would help address the problems imposed by the EB-5 backlog.

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<sup>20</sup> See [http://www.nafsa.org/Resource\\_Library\\_Assets/Regulatory\\_Information/AC21 - The American Competitiveness in the 21st Century Act/](http://www.nafsa.org/Resource_Library_Assets/Regulatory_Information/AC21_-_The_American_Competitiveness_in_the_21st_Century_Act/).

<sup>21</sup> See <https://www.congress.gov/bill/112th-congress/house-bill/3012/text>.

<sup>22</sup> See [http://www.nytimes.com/2011/11/30/us/green-card-backlog-may-ease-for-some-from-china-and-india.html?\\_r=2&scp=3&sq=julia%20preston&st=cse](http://www.nytimes.com/2011/11/30/us/green-card-backlog-may-ease-for-some-from-china-and-india.html?_r=2&scp=3&sq=julia%20preston&st=cse).

## **Concurrent Filing of I-526/I-485**

This would alleviate pressure for those who may be in the U.S. awaiting their priority date to become current. Providing investors work and travel permits to eligible investors would be especially helpful in direct EB-5 cases, allowing them the freedom to live in the U.S. and manage their investments.

## **Permit Employment-Based Applicants to File for Adjustment of Status under the “Dates for Filing” Chart in the Visa Bulletin**

In October and November 2015, USCIS allowed persons in the U.S. to file adjustment of status applications using the more favorable Visa Bulletin cut-off dates listed in Chart B, “Dates for Filing.” This allowed individuals with approved petitions to obtain work and travel permits earlier than they would have been able to under Chart A, “Final Action Dates.” Unfortunately, since that time, USCIS has not allowed EB-5 employment-based applicants to file their applications for adjustment of status under Chart A. Allowing Chart A filings softens the visa backlog blow by giving investors earlier access to work and travel permits.

## **Parole for Entrepreneurs**

While the implementation of the International Entrepreneur Rule has been delayed and the rule will likely be withdrawn, parole for investors who need to enter the United States to investigate investment opportunities, and in direct investment cases, to manage their investment makes sense. With no viable visa option for these purposes, a painstakingly prepared and compliant EB-5 business plan may never be implemented to create U.S. jobs.

## **National Interest Investor Category**

The need to significantly improve U.S. infrastructure is a matter of bipartisan agreement. The extreme cost of improving U.S. infrastructure is also beyond debate. The only debate is where to find the money to rebuild our broken and decaying infrastructure. One way of amassing hundreds of millions of dollars of infrastructure funding at no cost to the U.S. taxpayer is through the EB-5 Program.

Given the national interest in encouraging infrastructure investment, there are two potential solutions that are consistent with our present immigration scheme and that would not have the counterproductive result of prejudicing other EB-5 investors who are already in line. First is the EB-2 category which can be utilized by aliens with exceptional ability who will be contributing to the national interest. Infrastructure investment should be deemed to be in the national interest and an investor who makes such an investment should be eligible for an EB-2 national interest waiver. The EB-2 national interest waiver category could also be used for EB-5 investments made in rural areas, certain urban areas, or closed military bases. Unfortunately, the EB-2 category is already significantly backlogged for China. Although the backlog is shorter than EB-5, exacerbating one serious backlog to solve another is certainly not an ideal solution.

An alternative solution, which would require Congressional action, is to create a quota-exempt “special immigrant” category limited to investors who invest a designated amount in an investment deemed to be in the national interest. INA §101(a)(27) describes the categories of special immigrants who are outside of any quota category. A national interest investor could be added as INA §101(a)(27)(M).