



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

September 11, 2015

The Honorable John Boehner  
Speaker  
U.S. House of Representatives

The Honorable Nancy Pelosi  
Minority Leader  
U.S. House of Representatives

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate

The Honorable Harry Reid  
Minority Leader  
U.S. Senate

Dear Congressional Leadership:

We write to express our strong support for three immigration programs and to ask you to ensure that they are reauthorized before they sunset on September 30, 2015. The programs are: 1) the EB-5 Regional Center (EB-5) program; 2) the Conrad 30 J Waiver (Conrad 30) program; and 3) the Special Immigrant Non-Minister Religious Worker (Religious Worker) program.

The American Immigration Lawyers Association (AILA) is the national bar association of more than 14,000 immigration lawyers and law professors. Through our representation of individuals and businesses that participate in these expiring programs, we are keenly aware of how they benefit businesses, investors and the overall economy; communities experiencing a shortage of doctors and health care providers; and parishes, temples, and other places of worship that rely on religious workers.

AILA urges Congress to permanently authorize all three programs. Permanent reauthorization is far preferable to a short-term extension of a few years which can result in disruptions in visa processing and make it difficult for businesses and religious institutions to plan. Congress last extended the programs for a three-year period along with the employment eligibility verification pilot program known as E-Verify.

### **EB-5 Regional Center Program**

Created by Congress in the early 1990s to stimulate the U.S. economy, the EB-5 program fosters job creation and capital investment by foreign investors. It is the only immigrant visa program that requires U.S. job creation as a condition for the foreign investor to receive a green card. The program has helped finance the building of hospitals in rural areas,<sup>1</sup> the development of infrastructure, the redevelopment of defunct navy yards,<sup>2</sup> and the establishment of major retail projects in places where economic development is lacking and unemployment is high.<sup>3</sup> EB-5

<sup>1</sup> [http://tucson.com/news/business/green-valley-hospital-s-foreign-investors-get-green-cards-in/article\\_7cd4a4cd-dc84-5865-903c-91555b7395d6.html](http://tucson.com/news/business/green-valley-hospital-s-foreign-investors-get-green-cards-in/article_7cd4a4cd-dc84-5865-903c-91555b7395d6.html)

<sup>2</sup> <http://www.wsj.com/articles/SB10001424127887324678604578342672183089596>

<sup>3</sup> [http://www.bizjournals.com/washington/breaking\\_ground/2014/12/done-deal-wal-mart-signs-lease-to-anchor-skyland.html](http://www.bizjournals.com/washington/breaking_ground/2014/12/done-deal-wal-mart-signs-lease-to-anchor-skyland.html)

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projects have created jobs in construction, food service, retail sales, engineering, the hospitality fields, and numerous other sectors.

This year the DHS Inspector General and the Government Accountability Office issued two separate reports indicating that USCIS needs to improve its oversight of the EB-5 program.<sup>4</sup> In response to concerns about the program, Chairman Grassley and Ranking Member Leahy of the Senate Judiciary Committee introduced S.1501, the “American Job Creation and Investment Promotion Reform Act of 2015,” which reauthorizes the program for five years and includes extensive reforms. AILA supports some of the provisions in S.1501 but does not support the bill in its entirety. If S.1501 were enacted in its proposed form, it would result in sweeping changes impairing the EB-5 program’s utility as a viable investment and job creation tool. In particular AILA has concerns about the following provisions:<sup>5</sup>

1. **Harm to Existing EB-5 Projects.** To prevent a potential rush of applications from being submitted in anticipation of new reforms to the EB-5 program, S.1501 establishes the date of enactment as its effective date. However, this effective date would retroactively impose the new law upon 13,000 existing investors who have invested in EB-5 projects that are already underway. Under S.1501 their cases would be decided under the amended law and, as a result, would be subject to immediate changes in the required investment amount and would be at high risk for denial. This would have a dramatic and unfair impact on investors who have helped finance existing projects and have already created jobs through those investments.
2. **Indirect Job Creation.** Local, state and federal agencies similarly rely on economic modeling and indirect job creation forecasts to assess the costs and benefits of programs and to make critical funding decisions. Current EB-5 law mirrors that practice to predict indirect job creation resulting from foreign investment. Typically EB-5 projects can demonstrate the total number of jobs that are created but cannot track the jobs created by specific investments because funding is pooled. This is referred to as indirect job creation<sup>6</sup>. S.1501 proposes a dramatic departure from established government and business practices by attempting to severely restrict indirect job creation. As is, S.1501 would make most existing EB-5 projects ineligible and would render the program largely unworkable. AILA urges Congress to maintain the counting of indirect job creation as part of the EB-5 program.
3. **Defining a “Targeted Employment Area” (TEA).** In designating Targeted Employment Areas for the EB-5 program, Congress intended to encourage investment

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<sup>4</sup> [https://www.oig.dhs.gov/assets/Mga/OIG\\_mga-032415.pdf](https://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf) and <http://www.gao.gov/assets/680/671940.pdf>

<sup>5</sup> <http://www.aila.org/infonet/eb-5-committee-comments-on-s-1501>

<sup>6</sup> The mathematical formulas used to calculate indirect job creation are economically proven methodologies developed decades before the EB-5 program was created. <http://www.aila.org/advo-media/aila-correspondence/2015/aila-letter-senator-leahy-eb-5-job-creation>

in rural areas or areas with a high unemployment rate of at least 150% of the national average. S.1501 proposes a new definition of TEA to increase the targeting of those areas, but the bill's definition would make it extremely difficult for projects in urban areas to qualify for EB-5 investment and would not necessarily increase project development in areas of high unemployment. AILA recommends further development and discussion of the TEA issue before a new definition is adopted

4. **Fraud Prevention and Program Integrity.** AILA supports measures to enhance the program's ability to prevent fraud and to improve its integrity. However, integrity measures should be balanced with fundamental due process. S.1501 would grant broad, nearly unfettered discretion to the agency to terminate regional centers without notice or the opportunity for rebuttal or judicial appeal. As a result, the bill would likely undermine program integrity rather than enhance it. Moreover, S.1501 would impose strict liability for third party acts over which a regional center or new commercial enterprise has no control. This standard would unfairly penalize many businesses and individuals who should not be held responsible for acts by other parties as long as due diligence was conducted and done in good faith.

There are also two bills in the House, H.R.616, the "American Entrepreneurship and Investment Act of 2015," introduced by Representatives Polis and Amodei, and H.R.3370 the "Entrepreneurial Businesses Creating Jobs Act of 2015," introduced by Representatives Lofgren and Gutierrez. AILA supports these two measures which would make the EB-5 program permanent.

### **Conrad 30 J Waiver Program**

Our nation is facing a serious shortage of primary care doctors.<sup>7</sup> For over 20 years, the Conrad 30 program has helped fill that void by providing a waiver of the 2-year home residency requirement that an international medical graduate on a J-1 visa would otherwise be obligated to serve. Annually, each state is allotted up to 30 slots for which medical graduates can request a J-1 waiver. In exchange for receiving a J-1 waiver, the medical graduate commits to work for at least 3 years in a medically underserved area in the state. If the Conrad 30 program were to expire, many states and local communities would be unable to meet the health care needs of their residents.

AILA supports S.1189, the "Conrad State 30 and Physician Access Act," a bipartisan measure introduced by Senator Klobuchar which would permanently reauthorize the Conrad 30 program and provide an additional 5 waivers per state. A similar measure has been introduced in the House, H.R.1272, by Representative Bera.

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<sup>7</sup> <http://www.theatlantic.com/health/archive/2012/03/the-doctor-is-out-young-talent-is-turning-away-from-primary-care/254221/#sthash.Q107FVqI.dpuf>

### **Special Immigrant Non-Minister Religious Worker**

The non-minister religious worker visa program allows U.S. religious denominations to fill non-minister positions with a qualified foreign religious worker for up to 5 years with a temporary nonimmigrant visa. Non-minister religious workers provide food and shelter to those in need, care for those who are ill or dying, provide counseling, work with youth and young adults, and help their churches, temples and places of worship in many other ways. Non-minister workers are placed in all communities of faith.

AILA supports S.1339, the “Special Immigrant Non-minister Religious Worker Program,” a bipartisan measure introduced by Senator Hatch that would permanently authorize the program.

### **Electronic Employment Verification: “E-Verify”**

The E-Verify program is a federal web-based program through which U.S. businesses can verify the work authorization status of new hires. Use of E-Verify is largely voluntary but is mandatory for certain sectors of the federal government and in some states. AILA recognizes the value of an effective worksite employment verification system to curb illegal immigration. The E-Verify program should not be expanded to make its use mandatory. Past proposals to expand and make E-Verify mandatory would hurt thousands of authorized U.S. workers--people who need good jobs but are at risk of being turned away from work due to errors in the existing program. Industry sectors, especially agriculture, would be devastated if Congress mandated the use of E-Verify without solving other problems in the immigration system. E-Verify has the potential to be an important tool in the effort to address unauthorized employment, but if done in isolation without other immigration reforms, it would inflict tremendous harm on American workers, businesses and the economy.

We urge you to permanently reauthorize the three expiring visa programs before September 30, 2015. If you have any questions feel free to contact Bob Sakaniwa, Senior Associate Director of AILA Advocacy at (202) 507-7642 or by email at [bsakaniwa@aila.org](mailto:bsakaniwa@aila.org) . Thank you for your time and attention to this pressing matter.

Sincerely,



Victor Nieblas  
President



Greg Chen  
Director of Advocacy