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### **Recession Breathes New Life into US Immigrant Investor Visa Program**

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As state and local governments look for new ways to revitalize their recession-hit economies and spur job creation, an increasing number of them are turning to a historically underused visa program for immigrant investors.

The number of approved visas for the EB-5 visa program has nearly tripled between fiscal year (FY) 2008 and FY 2009, from 1,443 to 4,218 visas, according to the US State Department. Created as part of the Immigration Act of 1990, the EB-5 visa program grants lawful permanent residence to foreign nationals who invest \$500,000 or \$1 million in US businesses and create or preserve at least 10 US jobs.

The number of "regional centers" established to facilitate EB-5 investment projects has also tripled over the last year, from 23 to 74 as of December 2009; 23 centers are in California.

US Citizenship and Immigration Services (USCIS) authorizes certain private corporations or government agencies to become regional centers, which can pool investor money to make large investments in specific geographic areas. The centers have used EB-5 investor capital in a wide variety of projects, including hotels, manufacturing enterprises, farms, restaurants, and technology companies.

The new surge in interest is clearly a reversal of fortunes for the EB-5 program, which came under strong scrutiny in the late 1990s. The program's increased popularity now could prompt further debate over the impact of immigration on the US economy.

Various congressional leaders, including Senators Patrick Leahy (D-VT) and Jeff Sessions (R-AL), have begun to actively promote the EB-5 program as an economic stimulus tool, especially in rural areas and places with high levels of unemployment.

Because experts estimate that up to 90 percent of EB-5 investors choose to invest in industries in rural or "targeted employment areas" — defined as parts of the country where the unemployment rate is at least 150 percent of the national average — political leaders see the program as one way to revitalize ailing local economies.

When Congress created the EB-5 visa category in 1990, its goal was to attract immigrant entrepreneurs to invest in the US economy. The program is based on similar visa programs in Australia and Canada.

Each year, 10,000 EB-5 visas are available for immigrant investors who are willing to invest \$1 million in a US business and who can show that their investments will result in the creation or preservation of at least 10 US jobs. Investors who put their money into businesses in targeted employment areas only have to invest \$500,000.

Participants in the program receive two-year "conditional residence" in the United States after USCIS approves their initial visa petitions. After two years, these visas can be converted into permanent residency if the business investment and the recruitment of employees are sustained. The spouses and unmarried children of EB-5 investors are also eligible to receive permanent residence through the program.

Because the EB-5 program was greatly underused early on, Congress created the Regional Center Pilot Program in 1993. To meet this program's qualifying criteria, participating investors are permitted to count both "indirect" and "direct" jobs that were created as a result of their investment.

As a pilot program, however, the regional centers model has congressionally limited authorization. The program has received several temporary extensions since 1993.

While USCIS statistics do not differentiate between investors participating in the regional centers, and those setting up their businesses independently, officials estimate that roughly 91 percent of the visas go to investors using the regional centers.

The surge in EB-5 interest this year has been especially pronounced among nationals of Asian countries. According to the State Department, 3,340 of the 4,218 EB-5 visas issued in 2009 (79 percent) were issued to applicants from Asia, and 1,979 of these to Chinese nationals. This trend may indicate that the EB-5 investor visa program is becoming an especially attractive option for wealthy foreign nationals who might otherwise face long backlogs in family- or employment-based visa categories.

Supporters of the EB-5 program have emphasized the program's potential as an economic recovery tool, an aspect of the program that has also caught the attention of various federal government agencies and several members of Congress. In a recent hearing before the Senate Judiciary Committee, senators stressed using the EB-5 program to create jobs.

The USCIS Ombudsman expressed similar sentiments in a March 2009 report on EB-5, emphasizing that "in recognition of the present turmoil in the US economy," it was imperative that USCIS facilitate a well-run EB-5 program.

Several aspects of the program make it particularly inviting to foreign-born investors. Unlike other visa categories, the EB-5 program allows applicants to self-petition for visas; they do not need a family member or employer to serve as an immigration "sponsor." Immigrants with approved EB-5 visa petitions can also enter the United States immediately, as there is no backlog in the EB-5 visa category, at least for now.

But despite a dramatic increase in the program's popularity, the number of visas issued in 2009 was still less than half of the 10,000 annual allocation.

Experts have generally attributed underuse of EB-5 visas to a number of factors, including an onerous application process, easier and more inviting investor visa programs in other countries, such as Canada, and investor uncertainty about the stability of the program. They also highlight the fact that many potential investors shied away from the program in late 1990s, after the US immigration agency claimed to have found fraud in a number of EB-5 applications and temporarily suspended processing.

Proponents of the EB-5 program — among them some state governments, local government development agencies, and chambers of commerce — believe that participation would increase if the regional center program was converted from a temporary to a permanent model. Several government agencies have also recommended a permanent version, stressing that doing so would further reassure potential investors of the program's stability.

Recent attempts to make the regional center model permanent have not succeeded. Earlier this year, senators Leahy and Sessions introduced an amendment to the Department of Homeland Security Appropriations bill that would have made the regional center program permanent. The amendment was excluded from the final version Congress passed in October. Instead, the regional center program was extended for an additional three years.

Given that much of the surge in EB-5 interest seems to be tied to the current economic climate, it is unclear whether state and local governments will remain as interested in promoting the program in the future. Their involvement will certainly play a role in determining whether the full potential of the EB-5 program is realized in years to come.

- Read the Department of State [update on EB-5 visa use](#) in 2009.
- Find the USCIS list of [EB-5 regional centers](#).
- Read the March 2009 USCIS Ombudsman [report on EB-5 visas](#).
- For expert testimony on the EB-5 program, read the [written statement](#) of immigration law professor Stephen Yale-Loehr before the Senate Judiciary Committee last summer.
- Read more about the US economic recession and its impact on immigrants in the Migration Information Source feature [Immigrants in the United States and the Current Economic Crisis](#).

## Policy Beat in Brief

**ICE Audits.** Immigration and Customs Enforcement (ICE) plans to audit 1,000 US businesses suspected of hiring unauthorized immigrants, targeting businesses connected to "public safety and national security." Assistant Secretary John Morton made the announcement just four months after the government audited 654 businesses suspected of immigration violations, resulting in 61 "Notices of Intent to Fine" (NIFs), the first step in charging an employer for immigration violations. In April 2009, Homeland Security Secretary Janet Napolitano announced that ICE would shift the focus of its immigration enforcement program to target employers who hire unauthorized immigrants.

- Read the [ICE press release](#) on the new employer audits.
- Read more about employer audits in the [April 2009 Policy Beat](#).
- Read the MPI report [DHS and Immigration: Taking Stock and Correcting Course](#).

**Reports on Detention Policies.** Three new reports have found that the government's policies have caused immigrants to be detained unnecessarily and have limited immigrants' access to legal counsel. The reports are from the Constitution Project, a Washington-based think tank; Human Rights Watch; and the Department of Homeland Security's Office of the Inspector General (OIG). In August, ICE announced plans to move toward a detention system designed specifically for "civil" detention. To date, however, the agency has not issued any additional guidance detailing what its new civil detention system will look like, or when it will be implemented.

- Read the reports from the [Constitution Project](#), [Human Rights Watch](#), and [OIG](#).
- Read the MPI report [Immigrant Detention: Can ICE Meet its Legal Imperatives and Case Management Responsibilities?](#)
- Read more about ICE's plan to restructure immigration detention in the [August 2009 Policy Beat](#).

**BIA Decision on Stepchildren.** Unauthorized immigrants applying for cancellation of removal in deportation proceedings will now be allowed to count their stepchildren as "qualifying relatives," according to a new decision issued by the Board of Immigration Appeals (BIA). Under current immigration law, an unauthorized immigrant in removal proceedings may apply for cancellation of removal if he or she can demonstrate 10 years of continuous presence in the United States, good moral character, and "exceptional and extremely unusual hardship" to a US citizen or permanent-resident spouse or child if the immigrant were deported. The new BIA case, *Matter of Hugo Portillo-Gutierrez*, holds that stepchildren may also be considered "qualifying relatives" in cancellation of removal cases.

- Read the new [BIA decision](#).

**"Virtual Fence" on US-Mexico Border.** The first permanent segment of the "virtual fence" along the Southwest border is scheduled to be completed and handed over to US Customs and Border Protection (CBP) at the beginning of January. The 23 mile-long segment of "fence," which consists of cameras, ground sensors, and radars mounted on towers, is intended to counter drug and human smuggling. In related news, CBP also announced it would begin using unmanned predator drones to patrol portions of the Caribbean Sea and the Gulf of Mexico. The agency has used drones to patrol land borders since 2005.

- Read more about the virtual fence in the [March 2008 Policy Beat](#).

**Federalization of Immigration System in CNMI.** The Commonwealth of the Northern Mariana Islands (CNMI) began using the immigration laws of the United States in late November. While CNMI, a self-governing commonwealth since 1976, is subject to most US laws, the Pacific island territory had administered its own immigration system. Citing concerns over border security, Congress passed the Consolidated Natural Resources Act of 2008, extending US immigration law to CNMI for the first time.

- Read the [USCIS press release](#) on the transition to US immigration law in CNMI.
- Read more about the CNMI transition in the [April 2009 Policy Beat](#).

**E-Verify Seal of Approval.** USCIS will allow companies participating in the federal E-Verify program to feature a special "I E-Verify" logo on their products and in their advertisements. Homeland Security Secretary Janet Napolitano said the move will help

bolster support for the program, which allows US employers to check whether new employees are authorized to work by entering the employees' biographic information into an online database.

- Read the [DHS press release](#) on the "I-Verify" campaign.
- Read more about E-Verify in the [July 2009 Policy Beat](#) and in the MPI report [The Next Generation of E-Verify: Getting Employment Verification Right](#).

### State and Local Policy Beat in Brief

**Arizona Immigration Enforcement Provisions.** The Arizona Supreme Court dismissed a lawsuit challenging the constitutionality of a new law that makes it a misdemeanor offense for a local government employee to fail to report an unauthorized immigrant while administering a public benefit or service. The League of Arizona Cities and Towns had argued that the new law violated a prohibition against including regulations on multiple subjects in a single bill.

- Read the Arizona Supreme Court's [decision](#) dismissing the suit.
- Visit the MPI Data Hub for the latest stats on immigrants in [Arizona](#) and for the [State Responses to Immigration](#) data tool.

**Legal Arizona Workers Act.** The Maricopa County, Arizona, county attorney has filed the state's first civil complaint for a violation of the Legal Arizona Workers Act that took effect in January 2008. The act requires all Arizona employers to enroll in the federal E-Verify program, and authorizes the state to take away the business licenses of employers found to have hired unauthorized immigrants.

- Read the Maricopa County Attorney's Office [press release](#) on the new complaint.
- Read more about the Legal Arizona Workers Act in the [January 2008 Policy Beat](#).

**Ohio Lawsuit on Vehicle Registration.** A court in Ohio rejected a lawsuit that sought to prevent the Ohio Bureau of Motor Vehicles (BMV) from cancelling the vehicle registrations of Ohio drivers who could not show proof of legal residency. In October, the Ohio BMV sent notices to more than 47,000 vehicle owners, informing them that their registrations would be cancelled if they did not provide an Ohio driver's license, identity card, or proof of Social Security number by December 8, 2009. The Ohio BMV has said the policy change is intended to ensure that Ohio drivers are not using fraudulent identification documents in order to register their cars.

- Read the [petition for an injunction](#) against the Ohio Bureau of Motor Vehicles.
- Visit the MPI Data Hub for the latest stats on immigrants in [Ohio](#) and for the [State Responses to Immigration](#) data tool.

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