

Daily Journal

www.dailyjournal.com

MONDAY, FEBRUARY 27, 2017

PERSPECTIVE

EB-5: Don't throw the baby out with the bathwater!

By C. Matthew Schulz

A proposal in the Senate would eliminate a well-established U.S. law that has created jobs for US workers, funded American business creation, and saved struggling American businesses since 1990.

The Immigrant Investor Program, often referred to as "EB-5" because it is the fifth preference classification in U.S. employment-based immigrant visas, has been used by American universities, hospitals, redevelopment agencies and municipalities, as well as by private developers, hotels, resorts and a wide range of other small and large businesses to raise funding to start, grow or save businesses that create jobs for workers who are citizens or lawful permanent residents of our country.

EB-5 encourages individuals from outside the United States to invest in and fund the creation of jobs for Americans. The program provides incentives to invest in ventures that create jobs in areas that are rural or suffer from high rates of unemployment. In return for making a level of business investment required to create or save full-time equivalent jobs for at least 10 U.S. workers, immigrant investors are rewarded with lawful resident status for themselves, their spouses and their unmarried children under 21.

EB-5 has proved to be a popular program with American businesses and developers. It has been an important source of funds to save American jobs and create and sustain business, especially during economic downturns that followed the September 11, 2001, terrorist attack and the financial crisis of 2008, both of which resulted in

high rates of unemployment and limited access to traditional sources of capital.

Sens. Dianne Feinstein, D-Calif., and Chuck Grassley, R-Iowa, ranking member and chairman, respectively, of the Senate Judiciary Committee, introduced legislation last month, to eliminate EB-5. Their bill, S.232, would eliminate the EB-5 and redirect the EB-5 visa allocation of less than 10,000 per year to other existing immigrant visa programs.

Why?

Feinstein explains: "The EB-5 program is inherently flawed. It says that US citizenship is for sale. It is wrong to have a special pathway to citizenship for the wealthy while millions wait in line for visas." Her press release points to charges of fraud and abuse, as well the methods used to measure job creation and identify targeted employment areas where the government wants to encourage job creation.

There have been civil fraud charges by the Securities and Exchange Commission and some criminal investigations by the Department of Justice related to EB-5, but the types of fraud are the same as those found from time to time in big real estate development projects (i.e., they are not unique to EB-5) and the number of cases is quite small.

Through legislation authorizing the creation of regulations to implement the EB-5 law, Congress mandated the methods to measure job creation and identify targeted employment areas. But Congress also has the power to pass amendments that could address any perceived defects in the law.

However, past proposals to amend the EB-5 law intended to address certain concerns about the program failed to become law,

even under Sen. Grassley's leadership as chairman of the Senate Judiciary Committee and author of EB-5 bills.

This legislation is not needed. A major portion of the EB-5 program is temporary in nature and expires on April 28, 2017, even if Congress takes no action. By correcting any perceived defects, Congress could avoid repealing EB-5.

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Further, the Citizenship and Immigration Services agency (USCIS) proposed new regulations in last month that include changes to how targeted employment areas are identified, as well as substantial increases in the amount of capital immigrants must invest.

The USCIS estimates that at least \$8.7 billion has been invested and 35,150 full-time equivalent jobs have been created for American workers since 2012 alone.

The U.S. is not alone in rewarding foreign investors with lawful resident status and a pathway to citizenship. The United Kingdom, Canada, Australia and New Zealand all have immigrant investor programs, to name just a few. These countries recognize the value of attracting foreign capital and enjoy the benefits to their local economies.

Many aspiring immigrant families have already made large financial

investments in American businesses. U.S. government processing of visas is very slow and slower still for EB-5s compared with many other types of visas. The investment is made and the funds are tied up for years and years, while the immigration benefit to the investor is delayed. American jobs are likely to be lost when that funding disappears along with the elimination of EB-5. Further, the American companies counting on that funding will likely suffer economic hardship and possible closure. At the very least, these companies can expect to see an increase in the cost of raising capital. That will slow development, decrease job creation and likely lead to an increase in prices for the customers and buyers of these new ventures.

EB-5 fulfills an important purpose. It helps create jobs for Americans, as well as create and save American businesses. Congress can work to fix defects in the program, instead of eliminating it. Don't throw the baby out with the bathwater!

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