

## NEWSLETTER | OCTOBER 2010

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### **EB-5 Survey:**

#### **A monthly question for the EB-5 community**

*What happens to an EB-5 investor who invests in a project that fails or invests in a regional center that is shut down by USCIS? [Click to Respond >>](#)*

## **USCIS Orders Victorville Regional Center to Close its Doors**



For the first time ever, USCIS has shut down an operational EB-5 regional center.

On October 20, the federal government sent a final letter informing the [Victorville Regional Center](#) that it was [pulling the plug on the regional center's ability to participate](#) in the EB-5 immigrant investor program. This comes after at least two other letters from USCIS to officials at the regional center detailing concerns over job creation methodology Victorville was using to justify its EB-5 visa projects.

### **USCIS and the "Termination" Saga**

Approved by USCIS on June 19, 2009, Victorville [received from the feds an unprecedented "Notice of Intent to Terminate" in May of this year](#). Among USCIS' chief concerns were changes made to the business plan for one of Victorville's projects, a wastewater treatment facility that would service a nearby Dr. Pepper-Snapple bottling plant.

Other EB-5 visa projects in Victorville's pipeline also caused skepticism among USCIS officials, most notably the construction of a power plant for which the city of Victorville defaulted on needed equipment costs and a railroad project that never came to fruition.

In August, the regional center [received a second termination notice](#) calling into question the jobs it was counting toward totals needed to satisfy USCIS requirements that 10 jobs be created per green card issued. It seems the regional center attempted to include jobs created at the bottling facility among its totals since the plant was a consumer of the service provided by the wastewater treatment utility--methodology ultimately deemed faulty by USCIS.

According to USCIS' second termination notice:

It would appear that your regional center asserts that any newly created public or private entity that provides a commodity or service to commercial consumers, such as a wastewater treatment plant, power plant, solid waste disposal center, etc., would in effect be able to claim credit for the jobs created by the commercial consumers of its services.

### **Victorville's Response**

In light of continued requests that Victorville demonstrate it was able to raise money for its EB-5 visa immigrant investor projects according to criteria approved by USCIS, city spokeswoman Mariana Gitmore told the Victorville Daily Press Tuesday that the regional center was unable to do so.

Speaking on behalf of the regional center, attorney [David Hirson](#) (pictured) sent the following statement to *EB5info.com*:

Victorville Regional Center I, LP wishes to place on record that it regards the termination of the Victorville Regional Center (VRC) by the USCIS as bad in law and incorrect on the facts. The only issue that the USCIS had in terminating the VRC was the methodology used by the economist for proving the number of jobs to be created. Notwithstanding the position of the USCIS, the VRC has obtained an additional third party economist report which satisfies more than the minimum number of jobs that are to be created. The VRC is about to file a formal motion to reopen and a positive response, namely the reinstatement of the VRC, is expected very soon thereafter.



While Victorville, California's local paper reports that the regional center's website, [vweb5.com](#), was still active upon receiving the USCIS notice, it now appears that all marketing for the center's projects has ceased. Access to the website is "Forbidden."

The 28 investors who have already agreed to invest in Victorville's projects are eagerly awaiting any news of the regional center's appeal.

## USAdvisors.org Partners with Chinese Media Group

Chinese television is putting the spotlight on the US EB-5 visa program.



A new partnership between USAdvisors.org, which provides due diligence services to EB-5 investors, and China Stock TV, a division of the FuDong Cultural Dissemination Company, LTD that broadcasts news to an audience of over 100 million Chinese investors, will bring information on EB-5 regional center investment initiatives to viewers across China. As the current format through which potential Chinese investors

receive information about regional center projects involves individual seminars sponsored by regional centers, this partnership provides a new way for interested foreign nationals to obtain information.

In [an interview with the network](#), USAdvisors.org Managing Director [Michael Gibson](#) explains how most Chinese investors receive information from television as opposed to other print or media sources. This would be the first time the US EB-5 visa program has received major attention from a respected finance-focused media network in China.

[Watch Michael Gibson's interview](#) on *EB5info.com*. An [accompanying video](#) explains the FuDong Cultural Dissemination Company's media services and national influence.



## US EB-5 Practitioners to be Featured on Chinese Television

As part of its partnership with the China Stock TV news network, USAdvisors.org will film and conduct interviews with attorneys, securities analysts, service providers, regional centers, and project managers in many major US cities from November of this year through February 2011. The focus of the interviews will be to give Chinese investors a source of correct information, best practices, and issues of concern on the EB-5 visa



immigrant investor program from professional practitioners not filtered through the Chinese agent/broker market. We are inviting a select group of knowledgeable professionals to discuss topics related to the process of applying for and investing in EB-5 projects to a large audience of Chinese investors.

USAadvisors.org will visit the following cities on these dates:



**Miami**, [November 22-26](#), 1633 North Bayshore Drive, Miami, Florida 33132, Marriott Biscayne Bay Hotel



**New York**, [November 29-December 3](#), 85 West Street at Albany Street, New York, New York 10006, Marriott Downtown



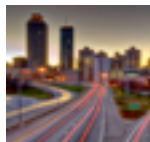
**Los Angeles**, [December 9-10](#), 333 South Figueroa Street, Los Angeles, California 90071, Los Angeles Downtown Marriott



**San Francisco**, [December 13-17](#), 55 Fourth Street, San Francisco, California 94103, San Francisco Marriott Marquis



**Houston**, [January 10-14](#), 5150 Westheimer, Houston, Texas 77056, JW Marriott Houston



**Atlanta**, [January 17-21](#), 3300 Lenox Road, Atlanta, Georgia 30326, JW Marriott Atlanta Buckhead



**Chicago**, [January 24-28](#), 540 North Michigan Avenue, Chicago, Illinois 60611, Marriott Downtown Magnificent Mile



**Washington D.C.**, [January 31-April 4](#), 1331 Pennsylvania Avenue Northwest Washington D.C., DC 20004, JW Marriott Hotel

For more information or to be a part of the filming, contact Michael Gibson at 239-465-4160 or email [michael@usadvisors.org](mailto:michael@usadvisors.org).

## Atlantic Yards Project Making Waves with Chinese Investors

New York City developer Forest City Ratner (FCR) has been very active in China during the month of October.

According to EB-5 service provider [Brian Su](#), FCR's project, which is being handled by the [New York City Regional Center \(NYCRC\)](#), "[presents a lot of pressure and challenges to other EB-5 projects that are currently being marketed in China](#)" largely due to the star power of its unlikely promoters.

The EB-5 project involves financing for infrastructure at Atlantic Yards, FCR's gargantuan construction project in the heart of Brooklyn. Atlantic Yards, in addition to residential towers and retail facilities, has already received funding for a new New Jersey Nets basketball stadium. On October 13, the Nets played the Houston Rockets in Beijing as part of a large marketing event targeting Chinese immigrant investors.

According to *The National*, an Abu Dhabi news blog which [covered](#) one of NYCRC's China seminars:

Some were dressed in suits, some in casual and even worn-out clothing, but all of the Chinese in the banqueting hall had one thing in common – money, or access to it.

About 200 potential investors had streamed into the west Beijing hotel to hear about an opportunity in New York that seems well-calibrated to a changing world: Green Cards in return for interest-free credit.

The roadshow was showcasing the biggest-ever use of the US government's EB-5 scheme, which offers Green Cards to foreigners who invest US\$500,000 (Dh1.8 million) in America for two years, thereby creating at least 10 new jobs.

Officials from the New York City Regional Centre (NYCRC) are touring China to drum up 498 investors with the aim of contributing \$249m to the city's biggest property project outside Ground Zero.

Some have criticized the New York project, suggesting that its use of EB-5 is merely an excuse to exploit low-interest financing for a portion of the project the developer could have afforded anyway. Others emphasize that the Nets stadium itself has already received full funding.

Whatever the case, the presence of American basketball stars in Beijing definitely helps FCR's project stand out. A seminar held in Beijing's Minzu Hotel brought over 200





prospective investors, a large number of whom [signed up "on the spot"](#) to invest in the project. The roadshow, which includes 9 dates, will continue through November 5.

*Image courtesy of Wailian.*



## Chinese Public Security Bureau Points out EB-5 Project Risks

*As many EB-5 practitioners are already aware, the Chinese government [has issued warnings to potential EB-5 investors](#) about risks associated with the program. The following document is an English translation from the Chinese-language news site, SINA net:*



Recently, at a meeting of “Exit and Entry Service Association” held by the Division of Exit and Entry Administration Department of Public Security of Canton Province, the speaker from the division relayed to attendees the instructions of the Ministry of Public Security of the People’s Republic of China and pointed out the huge risk of US EB-5 Projects. According to the rule of The Ministry of Public Security, all agencies engaged in EB-5 projects must supply the legal documents signed with a foreign partner (those documents need to be notarized by foreign bodies). Agents should tell the investors the risks involved with EB-5 investment. Some immigration professionals state clearly that people should be aware of the two risks, “investing fund” and “conditional green card,” even though the EB-5 program is strongly accepted by immigration agencies and applicants.

### **Current Status: EB-5 Applicants Increased dramatically in Mainland China**

The EB-5 Program was first introduced to China at the end of 2005. With increasing trade between China and the US, more and more Chinese entrepreneurs need the green card to go to the US for business purposes, expanding their business in the US, as well as sending their kids to study in US. The EB-5 Investment Immigration Program has been expanded since 2007. LiJuan Zhou, CEO of the overseas branch of HONGHAI, said that there are now way more Chinese EB-5 applicants than Korean applicants according to the latest statistic report from OCT--2008 to Sept, 2009--by USCIS. 1795 Chinese from mainland China applied for EB-5 besides 142 Chinese from Taiwan. Sheng Liu, General Manager of the US Project Division of Fei Yang Group, said that USCIS issued more than 1800 green cards to investors in 2009, almost double those issued in 2008. Chinese applicants obtained one fifth of the total green cards, a little bit less than Korean

applicants, but the number of Chinese investors who applied for the green card is increasing the most.

The EB-5 marketing promotion in China also expanded rapidly. For example, in 2005, there was only one EB-5 project being promoted in Guang Zhou. At the end of 2009, however, there were more than 20 EB-5 projects introduced with different scales--some projects are big and some are small, such as a restaurant project.

### **Analysis: EB-5 “Flexible Immigration Requirement”**

Senior Immigration Consultant of GuoFeng LLC, ShaoHeng Lin, indicates the reason why the EB-5 program wins the popularity among the immigration agencies and investors in the last two years is the EB-5 “Flexible Immigration Requirement.”

The EB-5 “Flexible Immigration Requirement” gives you the flexibility to do what you want in the USA: No degree requirement, any age, and no entrepreneur experience requirement. Any person who reaches 21 years old and shows a source of \$500,000 legally (business income, stock gain, house sale, house loan, gifts, etc.) can apply.

In Canton, A lot of people can easily meet the EB-5 requirement. For instance, a kid who wants to study in US, as long as he is 21 years old and has a \$500,000 investment fund from his parents can apply for it and come back to China with a green card after graduation.

The whole family can get the green card if one of the households applies for EB-5. For many Chinese individuals and families, it's an easy and fast way to get a green card. It's also very attractive to the immigration agency. They can turn around cash in a much shorter time since the EB-5 program process only take about 3-8 months.

### **Risks: “Investment Fund” and “Green Card” are two major risks**

According to the EB-5 program, foreign immigration applicants must invest in a commercial enterprise that will benefit the US economy and create 10 full-time jobs in order to get a “conditional green card” for a two year period. Prior to the two-year anniversary of the granting, the EB-5 applicants must submit supporting documents stating they have invested or are still in the process of investing to remove the “condition” and become permanent US residents. 2010 is the first “mature year” for EB-5 investors' “5 year terms.” Whether the EB-5 investors can meet these two requirements is a very sensitive topic.



However, recently the Ministry of Public Security has warned potential immigration applicants that EB-5 projects promoted by some of the immigration agencies belong to private equity activity and have huge risks.

YouWen Zhen, General Manager of GuoHeLi investment consulting LLC in Shen Zheng, pointed out two huge risks:

First, Investing Fund Risk: The investors need to fund the project first before getting the visa, and EB-5 projects are not financially guaranteed by the US government, The investing fund cannot be withdrawn within 5 years. The investment must be truly at risk. From the EB-5 procedure, the applicants must fund \$500,000, a huge amount once they start to apply through the agency. While Canada's investor immigration funding is backed up by the Canadian government, USCIS asks all regional centers to clearly state in their contract with EB-5 investors that EB-5 investment must be "at risk" and there can be no mention of redemption rights or guarantees. However, some of the immigration agencies and American personnel ignore this rule and promote EB-5 illegally, as private equity.

Second, Green Card Risk: The EB-5 applicants cannot control and manage the investing process themselves. If the investment failed and did not create 10 jobs during the two years, their green card will be canceled. At the beginning, the applicants and family only get a "conditional green card." There is a long way to go to get the permanent green card; in case the investment fails, they not only lose the green card, but also the investment fund. In China, there are EB-5 investors who got "conditional green cards," but as for today, none of them have successfully changed to I-829. We encourage people to do their own due diligence, especially studying the mutual fund companies who actually run the EB-5 projects before they choose to invest in the project.





## ***Yahoo! Finance Profiles Current State of EB-5 Program***

In a column this month, *Yahoo! Finance* Economics Editor Daniel Gross provided [a brief profile of the EB-5 visa program](#), noting that if the program were "fully utilized, it would bring at least \$7 billion annually and create or preserve 100,000 jobs per year."

These comments [are reiterated in a video interview with Gross](#) that accompanies the column.

Even though nobody can "purchase an American passport," he writes, the prospect of more foreign national immigrant investors utilizing the program should be a welcome boon to areas where EB-5 visa investments are likely to make a large impact--rural areas and high-unemployment TEA's to be specific.



As millionaires are "being minted by the millions" abroad, Gross notes, U.S. companies are themselves investing elsewhere. He sees EB-5 as a way for the United States to make up for those investment dollars that are traveling to places far away and not stirring the cauldron of economic activity at home. Making brief mention of developer Bruce Ratner and the [New York City Regional Center's](#) "controversial" Atlantic Yards project recently profiled by the *Wall Street Journal*, Gross's piece also summarizes how the program may be used as a source of funding for existing initiatives for which American investors are not likely to be found.

If Gross's observation that EB-5 is still producing "lackluster numbers" that are nowhere close to the 10,000 visas USCIS is able to issue each year really can be, as he contends, "chalked up to a failure of marketing," then perhaps this year's explosive growth in the number of regional centers will begin bringing more immigrant investor dollars to U.S. shores.

Last year, the number of EB-5 visa approvals was just shy of 1000. Considering the [level of marketing and competition in many countries--China, in particular](#)--Gross may be content to learn there's a good chance that number will increase.



## The EB-5 Visa, Canada, and High Quality Protein – Reflections on the Northern California Regional Center's Trip to China

by Stephen Weststeyn

We at [Northern California Regional Center](#) traveled to China last month to seek out investment for our current EB-5 project, Weststeyn Dairy Farms. As there are many investors coming to the U.S. from China, we decided to travel there and spend some time informing people of our current project. We traveled to many cities in China, including Beijing and Shanghai, and it was quite the experience.



The timing of our trip could not have been better, noting the changes in the Canadian immigration program that have made the U.S. EB-5 program much more desirable to foreign immigrant investors.

Traditionally, the Canadian immigration program has outperformed the United States EB-5 program quite substantially, and there have been far more Chinese emigrants going to Canada through its immigration program than have gone to the United States. However, Canada has changed its immigration by investment program, and Chinese emigrants see the

United States as a much better deal. This recent change in the Canadian immigration program provided our regional center with the most optimal timing for its China trip.

Also when we were in China, we learned that California Governor Arnold Schwarzenegger was going to be in Shanghai talking about the United States EB-5 program. The star power of Arnold made for very responsive enthusiasm about California EB-5 projects.

The Chinese economy is growing very rapidly, and you could feel that there was a wealth of opportunity to be had in China. Every city we visited confirmed this feeling. One thing we noted when visiting is that there is a need for high-quality protein food sources. The traditional Chinese meal is very low in protein. The Chinese demand for high-quality protein sources will be a huge driver of growth in the global marketplace.

With over 1.5 billion people to feed, China will need to source food products from all over the world in order to feed its populace. In the dairy industry, the Chinese have been one of the largest driving forces of global demand. Rabobank, a large international agriculture

bank, has recently cited milk demand growth to quickly outpace supply over the next decade, leaving tremendous opportunity for the dairy industry in the United States.

There is a great potential in the United States, especially California, to help China quench its thirst for dairy products. California has been the United States' leader in dairy with higher milk production than any other state, and it has some of the most efficient dairy operations in the world. Northern California Regional Center is proud to offer investors the opportunity to invest in a project that will essentially be helping feed the world

Our trip to China was not only an opportunity to inform potential investors of our project thanks to the changing Canadian immigration program and the California governor's visit, but it also provided a chance to see how successful our EB-5 project could be in the coming decade with China's growing demand for high-quality food sources.

*Stephen Weststeyn is a Managing Principal at the Northern California Regional Center. To [list your regional center project in the EB5info.com database](#) or see how your article can be included in our monthly newsletter, contact Adam Green: [adam@usadvisors.org](mailto:adam@usadvisors.org).*



## **Gold Coast Uses Track Record, Global Presence to Find EB-5 Investors**

If you ask Chip Abele, using the EB-5 visa program to fund new development projects is little more than a "different twist" on what he has been doing for years.

"We're putting \$30 million of our own funds into the deal," says the Chairman of [Gold Coast Florida Regional Center](#). "Every one of our dollars" is headed in the same direction as any immigrant investor capital.

The deal Abele is talking about is the regional center's first EB-5 visa project (pictured), a mixed-use retail and residential development in Hollywood, Florida called Hollywood Circle. According to the regional center's first press release, the space should include an upscale hotel, nearly 400 apartments, a restaurant, and a Publix supermarket.



Perhaps a bit more lavish than your average grocery store, Abele says private elevators will give residents direct access to the Publix.

## **Track Record and Global Position**

Gold Coast received USCIS approval in May of this year and was quick to publicize its first project. While some claims, in particular the notion that Hollywood Circle [will bring 18,000 jobs to South Florida in the next five years](#), have led to [a raised eyebrow or two among some EB-5 visa practitioners](#), Abele is confident that Hollywood Circle is a solid investor green card opportunity.

"We were very bullish on the EB-5 program, and we're very bullish on structuring an investment opportunity that we'll present to clients and investors. We have offices in South Africa that have been there 20 years," he says, also adding that for players in the "South Florida real estate market, doing business in Latin America is what you do."

And an already-established global presence – one that now includes Hong Kong and Venezuela in addition to South Africa – is one way Abele hopes Gold Coast will distinguish itself from the growing multitude of EB-5 regional centers, though he admits he and his partners have almost no experience in European or Asian markets.

"We're taking in more than a million dollars a year from state and local government," he says. "We've got state-subsidized funding. We've got Publix."

Gold Coast Florida Regional Center got its start when Abele and his partners opened an equity fund several years ago. The idea was to purchase existing debt on real estate projects in South Florida and work out a debt conversion program with the property owners. It was after the fund closed that they heard about EB-5.

After forming the Broward County Regional Center, the group quickly decided to expand its request beyond the single-county area. The "Gold Coast Florida" name was part of a marketing campaign the state put on in the 1960's. Abele found that nobody actually "owned" the title, and he now has the trademark.

## **Projects to Come?**

As for any additional EB-5 visa projects in Gold Coast's future, Abele is willing to discuss the Great Southern Hotel redevelopment [recently profiled by the Miami Herald](#), though he says it's merely in the center's pipeline.

"It is not a project for the regional center currently," he says. "I have not submitted it or run the economic model on it."

For now, it seems Hollywood Circle is Gold Coast's primary item for the immigrant investor. Whether that project ultimately stands out against the veritable flood of mixed-use residential/retail facilities being marketed to EB-5 visa investors, however, remains to be seen.

*If you would like your regional center featured on EB5info.com, contact Adam Green, [adam@usadvisors.org](mailto:adam@usadvisors.org).*



## **Big Political Name Uses EB-5 Funds for Electric Car Project**

Former Democratic National Committee Chairman Terry McAuliffe made news this month when he and former President Bill Clinton made a public appearance in Times Square to show off McAuliffe's latest project: an electric car that will be built in the United States.



Using funds from the EB-5 visa program as well as other undisclosed donors, McAuliffe plans to build vehicles that drive at speeds up to 45 miles per hour but are unable to drive on highways. The "MyCar," which is already available in the UK, needs to be recharged every 70 miles and is considered by McAuliffe to be a "neighborhood" vehicle.

The cars will be assembled by Greentech Automotive, which McAuliffe founded last year. In addition to a plant Greentech plans to build in Tunica, Mississippi, McAuliffe is looking to purchase land in both Tennessee and Virginia.

According to *Bloomberg*, which reported on the McAuliffe venture:

He expects the MyCar to go on sale mid-2011, after it's modified to meet U.S. regulations and upsized for American consumers. The first 100,000 [cars] will sell for \$10,000, with federal and state tax credits knocking the price down to around \$8,500, he says.

"No one can afford not to buy it," says McAuliffe.



Three more hybrid cars are planned for as early as 2013: a sports car, a mid-sized vehicle and a subcompact. He won't disclose his backers, saying only that they are "strategic investors active in the green technology area."

*Bloomberg* goes on to describe the amount of money McAuliffe is raising through EB-5 as "infinitesimal" compared to the millions he will need to get this project off the ground.

Some commentators believe McAuliffe's motivation may be, in part, political. After an unsuccessful run for the Virginia gubernatorial nomination in 2009, some view McAuliffe's latest venture as an attempt to show he can bring jobs to Virginia--a move that would give him considerable bragging rights among contenders in any future political contest.



## **EB-5 Reform? New Law Could Change Immigrant Investor Program**

An [article in news blog \*Business Daily\*](#) takes a look not only at the EB-5 visa immigrant investor program in its current form, but also the new Start-Up Visa Act introduced earlier this year by Senators Kerry (D-MA) and Lugar (R-IN). As many EB-5 practitioners are already aware, were the bill to ultimately pass and be signed into law, it would re-allocate a number of the 10,000 EB-5 visas available for issue each year to a new category--the EB-6 visa.

The main purpose of the bill is reform of the EB-5 program, and it includes measures also called for by the Employment Benefit Act, a House bill introduced last December by Representative Jared Polis (D-CO).

According to *Business Daily*, the Start-Up Visa Act "amends current immigration law, lowering the investment threshold to \$250,000 [from \$500,000] in equity funding from qualified super-angel investors or venture capital firms."



These "qualified super-angel investors" would have to meet certain requirements set forth by the Securities and Exchange Commission in order to participate, a rule favored by [attorney Angelo Paparelli](#), who *Business Daily* quotes in the article.

Any qualified venture capital firm must be based in the United States and have been in business for at least two years. Partners must be U.S. citizens and the firm must have made investments in the recent past.

"Immigrant entrepreneurs" who have employed at least five employees after two years or have acquired capital assets worth \$1 million will receive green cards. Developments like these could be serious game-changers for the EB-5 visa program.

While the news blog seems to make no bones about the potential of a bill that includes EB-5 reform and provisions for an EB-6 visa--its article received the title "Change in start-up visa law sure way to lure investment"--it also states that such a bill is unlikely to come before Congress again until sometime next year.

It's worth noting that passage of this law would almost certainly cross into territory occupied by the politics of immigration. According to Business Daily, "[Lawmakers] who tout this bill emphasize the job-creation aspect rather than the political hot potato of immigration reform."

**Are you an EB-5 practitioner who would like to contribute an article?**  
**Email Adam Green, Editor: [adam@usadvisors.org](mailto:adam@usadvisors.org)**  
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