



December 12th, 2011

Senator Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Response from December 7th, 2011 Hearing

Dear Senator Leahy:

I am pleased to submit testimony in relation to the Judiciary Committee's hearing on the EB-5 Regional Center Program ("Program"). I would like to take this opportunity to respond to testimony given by David North at the hearing. I first would like to thank you for your steadfast support for the Program. It has developed into a very important program, and I am happy to see U.S. corporations, such as Marriott, Hilton, and Hyatt, take such a vested interest in its disciplined continuation. I was able to commission strong letters of support from those corporations, and it was great to hear you read part of the Marriott letter as official record.

I had the pleasure of working with the Vermont Regional Center on my EB5 Sugarbush project, and I am proud to have been able to bring \$20 million to the Sugarbush Ski Resort in Vermont's Mad River Valley. Our investment was able to preserve, or save, hundreds of jobs, and I am pleased to see that the Sugarbush Ski Resort recently has been awarded the precious '1-2-3' award by *Ski Magazine* - #1 in terrain variety, #2 in overall satisfaction, and #3 in service. The resort is clearly not 'dying', as Mr. North had put it.

Before I discuss Mr. North's testimony, below are my qualifications and experience as it pertains to the EB-5 Program. I have been in the EB-5 industry since 2006 when I funded the Sugarbush resort. Currently, I focus my efforts on mixed-use projects under the D.C. Regional Center, which I co-own. I am in the process of funding \$19 million to an urban infill project in Washington, DC. Additionally, I co-authored an article in 2009, which was published in *Bender's Immigration Bulletin*, about an 'integrated Targeted Employment Area definition.' More recently, I have presented to both the U.S. Chamber of Commerce and the Brookings Institute on EB-5 law and policy, and I was asked by USCIS Director Mayorkas to provide comments and feedback about the current TEA definitions in the law. Academically, I received my Master in Policy and Certificate in Urban Planning from the Woodrow Wilson School at Princeton in 1997. I have both private and public sector experience, including working for Public Financial Management (PFM), where I placed \$2 billion in public debt.

Regarding Mr. North's testimony, I would like to focus my rebuttal on the following five topics that were addressed during the hearing:

1. Other countries' investment immigration programs are better
2. The \$500,000 investment amount is too low
3. Only direct jobs should be counted
4. The Program has had too many scandals
5. Immigration visas should only be given for significant reasons

1. Other countries' investment immigration programs are better

Mr. North's main issue is that our EB-5 Program pales in comparison to the other immigrant investor programs around the world. In his written testimony, he highlights that, "*The Bahamas, for example, in effect, requires a \$1.5 million dollar investment, such as in a mansion, before it gives a permanent visa to the alien investor; since our economy is 2,000 times as large as that of those islands, this means that The Bahamas gets 6,000 times as much bang for the buck for its minimal investment than we do for our minimal investment, of a half-million.*" (p. 8)

The EB-5 Program is about job-creation. Each investment, whether for \$500,000 or \$1,000,000, must create at least 10 full-time, permanent jobs for U.S. workers. In addition, the investment must be 'at-risk.' There are no redemptions or guarantees associated with the investment. Other programs do not have these requirements.

It also should be noted that our Program was based on the highly successful program in Canada. It is common knowledge that the city of Vancouver, now very much an international city, was built using immigrant investor funds via their program. Their program, until very recently, had a much lower investment amount, and there was no 'at-risk' requirement or job-creation requirement.

In summary – although many developed countries have their own versions of an immigrant investor program, the U.S. EB-5 Visa Program actually has the highest standards, as it incorporates both a job-creation requirement and an 'at-risk' requirement that is not present in other programs.

2. The \$500,000 investment is too low

Mr. North also claims that the presence of the \$500,000 investment overshadows the \$1,000,000 investments that are available to investors. He says, "*Needless to say, because the regional centers part of the program requires only half a million dollars, the other part of the EB-5 program where the basic level is one million, has just about become a dead letter.*" (p. 3)

I would first like to clarify the misconception that the Regional Center Pilot Program, which is the program that is up for permanent reauthorization, has no correlation to a lowered investment amount of \$500,000. The main benefit of investing via a designated

Regional Centers is that you are allowed to count indirect job creation in addition to direct job creation. It has absolutely nothing to do with the investment amount. This is solely determined by the location of the project. According to the EB-5 regulations, if a project is located in a rural community, or in an area with an unemployment rate which is greater than 150% of the national average, it qualifies for a lowered investment amount of \$500,000.

Is Mr. North suggesting that we should do away with the \$500,000 investment amount, and only allow investors access to \$1,000,000 projects in non-TEA areas? Should the investors be funding in areas such as Bethesda, MD, or in Beverly Hills CA, as opposed to the distressed Anacostia neighborhood of Washington, DC, or the rural areas in Vermont? Or is Mr. North suggesting that we only allow \$1,000,000 investments, regardless of the unemployment rate in the location? This would certainly remove an advantage of the smaller neighborhoods and distressed towns in the country of attracting an investment, as the foreign investors would surely invest in the wealthier areas. I cannot seem to follow Mr. North's logic with this issue.

In short, Mr. North states that, *"If we are going to have an immigrant investor program at all, obviously we should raise the stakes. We can do so, without lifting a finger, by simply letting the regional center program die, thus increasing the minimum investment for immigrants to one million dollars."* (p. 6) For someone claiming to be an 'immigration expert', I would have to question the accuracy of his testimony based on the fact that he is lacking in a basic understanding of the Regional Center Pilot Program.

In summary – it is important to have special requirements for those areas designated as 'Targeted Employment Areas', as it is in those areas that foreign direct investment is needed most. Whether the attraction is a lowered investment amount, or a lowered job-creation amount (10 jobs in TEAs vs. 20 jobs in non-TEAs), or some other difference, it is important for the Program to have that distinction.

3. Only direct jobs should be counted

"Such programs, if we have them at all, should be about creating business entities, not passive investments; it should be about creating real jobs, not elaborate calculations about the indirect creation of jobs." (p. 2)

Mr. North claims that Regional Centers do not need to identify the jobs that were created, as the jobs can be calculated by any ‘reasonable’ methodology that the Regional Center can ‘*conjure up.*’ (p. 3) This statement implies that job-creation is not a priority for the Regional Centers, and that uncommon or unnatural calculations are used to prove job creation. As a Regional Center operator, I’d like to state that this is completely without merit..

As successful Regional Center operators all know, job creation is the most important aspect to the Program. It’s the first question investors ask and the first question I ask of developers. Without a clear record of job creation, the investor’s permanent Green Cards may be at risk. Almost all Regional Centers use one of three economic methodologies – IMPLAN, RIMS-II, or REDYN. These methods are all approved by USCIS and have long histories of economic modeling. IMPLAN, for example, was developed in the 1980’s in coordination between the USDA Forest Service and the Agricultural Economics Department of the University of Minnesota. The Bureau of Economic Analysis (BEA) developed RIMS II in the 1980’s, which is based on an economic accounting framework called an Input-Output table, first developed by Wassily Leontief, and for which he received the Nobel Prize in Economics in 1973. These are not ‘made-up’ methodologies that Regional Centers use. By and large, a few well-known economists who specialize in job-creation modeling for EB-5 purposes submit the economic reports in conjunction with the investors’ immigration petitions.

Using an economic model to predict job-creation is important in the Program, because EB-5 funds are generally leveraged with other forms of capital. It is important to correctly capture the impact the total investments make on the local communities. Mr. North claims that only ‘real’ jobs should be counted; I assume he means direct employees hired by the new business. As we all know, sizeable investments in local communities will have an indirect effect on the area, and the effect goes well beyond the number of direct employees that are hired. Every community is a mini-GDP, and it’s these investments that help to grow the GDP. As local economies grow around the country, our national economy will as well.

In summary – the analytical methods employed by Regional Centers are highly scrutinized by investors. The use of independent, disciplined methodologies is critical to the integrity of the Regional Centers. Disciplined Regional Centers go to great lengths to hire expert economists in order to produce reports that will accurately capture the effect of an investment in a local community.

4. The Program has had too many scandals

“The program, by its nature, attracts sub-par investments, and often scandals. Perhaps that is one reason it has failed, year after year, to reach its legislative goal of 10,000 investment visas.” (p. 2)

There have been a number of real scandals in the investment and accounting industries in the past 20 years. The fall of Enron, Madoff Investment Securities, and more recently, MF Global were all large, serious, and devastating scandals all under the nose of federal regulation. There has been outright fraud, insider trading, and securities violations in all of these cases, yet these industries were not terminated or shut down. In comparison, the negative cases in EB-5 have been few and far between in the past twenty years.

It appears that Mr. North is using the excuse of “fraud” to attack another immigration program. If Mr. North had accurately understood the history of the Program, he would see that there have actually been a very small amount of failures in the Program. The Program has been in existence since 1992. Throughout much of the 90’s, while the Program was under the guidance of INS, it was not able to gain much traction, especially in light of Canada’s program doing so well overseas. There was little structure to the program, and a few bad actors were able to cause significant damage to the Program for a long time. The Program was effectively shut down until 2003, when the Department of Homeland Security and USCIS took over jurisdiction. Since then, the Program has been steadily growing in popularity overseas and there have been relatively few failures. Mr. North mentions the *‘bankrupt dairy farm in South Dakota, where 16 of the 17 jobs created by EB-5 funds, albeit briefly, turned out to be held by illegal aliens’* (p. 4) Yes, this is indeed true. The jobs were found to be held by illegal aliens and the investors did not receive their permanent Green Cards. The process worked just as it’s supposed to work. In another example, *“a convoluted effort, eventually rejected by USCIS, to use some legitimate money and some questionable (Iranian) funds to revive the old Watergate Hotel in Washington.”* (p. 4). Again, this is true. This was done by Capitol Area Regional Center. This Regional Center has been trying to bring in investors since 2005 but has failed to do so. The Watergate project was not in a TEA, the operators were issued a formal memorandum by USCIS, and their AAO appeal was denied. This denial is publicly available on the USCIS site. Again, the process worked. I was the first operator to ever put a Regional Center on top of a Regional Center; that is, they were not bringing much-needed capital to Washington, DC, I applied for a Regional Center in the same geographical jurisdiction, and have placed \$28 million into various projects throughout the District. This is yet another example of the program working.

Mr. North is quick to name the one or two ‘scandals’ that the Program has seen in its years, but he refused to name any success stories. Much press has been written about the hundreds of millions of dollars that CMB Regional Center has provided to redevelop former military bases that have been closed due to BRAC realignment throughout distressed areas in California. Small towns in Jay Peak and at Sugarbush were literally saved due to the sizeable EB-5 investments in Vermont. Small wineries, vineyards, and other small businesses in California’s wine country have benefited from EB-5 due to the investments provided by the California Consortium of Agricultural Export (CCAEE) Regional Center, which is one of the most successful Centers to date. Industry leaders such as Marriott have combined EB-5 funds with other funds to build countless hotels,

providing much needed jobs to communities in Seattle, Milwaukee, and Washington, D.C.

In summary – All industries have bad actors. Both regulation and enforcement is needed to ensure that bad actors do not succeed. Looking back on the history of the Program, it is quite clear that, by and large, bad actors have not succeeded. Although further regulation and enforcement is needed to ensure the longevity of the Program, there have been very few failures. Similar to any other industry or business, you do not terminate the entire Program over a few small failures.

5. Immigration visas should only be given for really significant reasons

“Further, immigration visas to this struggling, over-populated nation should be regarded as precious, and given only for really significant reasons.” (p. 2)

Mr. North goes on to say that immigration visas should only be given to spouses of U.S. citizens, refugees fleeing dictators, or to talented foreign nationals. Whatever happened to our nation being ‘a country of immigrants’? As the Statue of Liberty says, “Give me your tired, your poor; your huddled masses yearning to breathe free.” The majority of the EB-5 investors are truly yearning to be free. They want better education opportunities for their children. They want to open businesses here. When asked why wealthy immigrants participate in the EB-5 Program, I say, “They are buying things they cannot buy at home, such as clean air and drinking water, safe food, freedom of press, and public safety. Investors coming from China, especially, yearn for the freedoms held under our democratic republic. Many of our investors are already living in the United States. They are studying at our universities on student visas, or they are working for our companies on work visas. Many of these students, after we educate them and spend many resources on them, are sent home by our immigration policy. To do what exactly? They will essentially end up competing with us in the international marketplace.

I’d like to remind Mr. North that the Regional Centers are not so much competing with one another, but we are competing with Australia, Canada, Singapore, and other first-world destinations for the world’s wealthy immigrants. Most of the Regional Centers are members of IIUSA, which is the EB-5 industry trade association. I am a founding member of the Best Practices Committee and serve on the Legislative Committee. An employee is the Chair of the Membership Committee. We go to the same overseas investment trade shows, and we meet at the events. The EB-5 Program already has high enough standards in terms of job-creation and the ‘at-risk’ requirement. By allowing this Program to ‘wither and die’, as Mr. North suggests it, not only would local communities lose out on important, taxpayer-neutral capital resources, but our nation would lose out on attracting the very best and brightest the world has to offer. And, if that were to happen to the United States of America, a country once founded on the world’s best and brightest, then that would be a shame.

I would like to thank you for the opportunity to contribute my statement to the hearing record. I trust my brief biography above provides enough assurance that I am knowledgeable and passionate about this issue.

Thank you for your time and opportunity to provide this testimony.

Sincerely,



Angelique G. Brunner

President, EB5 Capital
Owner, DC Regional Center
Principal, EB5 Sugarbush