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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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May 15, 2012

The Honorable Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, DC 20529

Dear Director Mayorkas:

We are writing to express our concerns about the potential for abuse of the EB-5 Regional Center program. We seek your commitment to administratively reform the program to ensure that the original intent of Congress is honored. In particular, we ask you to consider modifications to two aspects of the program, specifically the manner in which Targeted Employment Areas (TEAs) are approved, and the level of investment required from foreign nationals who participate in the program. We request that you report back to us on ways these two issues can be resolved. In addition, we ask you to review the potential for investors to withdraw their funds after they are granted a green card and to investigate the use of third party promoters of the program.

The EB-5 Regional Center program is set to expire at the end of this fiscal year. As members of the Senate Judiciary Committee, which has jurisdiction over our nation's immigration laws, we are working to reauthorize several expiring programs, including the EB-5 Regional Center program. The Regional Center program was enacted to promote job-creating foreign investment in the United States, especially in rural areas or areas with high unemployment. However, recent media reports have suggested that this key goal is not being properly fulfilled by some regional centers.

We are concerned that states may circumvent the intent of the TEA requirements mandated by the Immigration and Nationality Act (INA). The INA allows that up to 3,000 visas of the authorized 10,000 EB-5 visas per year be made available to qualified immigrants if they invest in a defined rural area, or an area which has experienced high unemployment of at least 150 percent of the national average rate. This special allowance for rural and high unemployment areas is significant because it reinforces the intent of Congress that the primary EB-5 program requires a \$1,000,000 investment per immigrant investor. The law provides for a reduction in investment requirement only for those who choose to invest in qualified rural or high unemployment areas.

This concern was highlighted recently by an article in the *New York Times* titled, "Rules Stretched as Green Cards Go To Investors," that was published on December 18, 2011. The article discussed how one regional center created "development zones that are supposedly in areas of high unemployment – and thus eligible for special concessions – but actually are prosperous ones." This practice, referred to colloquially as gerrymandering, runs the risk of violating the spirit if not the letter of the law. According to the *New York Times* and our own research, some states are drawing TEAs to include both high-income areas and low-income areas in order to reach the required unemployment rate. This seems to allow investors to meet the unemployment threshold in an area required to be qualified as a TEA, yet invest in highly desirable affluent areas. This is inconsistent with the spirit of the law Congress enacted in 1993.

We appreciate that many foreign nationals will look to invest in centers that offer the highest return on investment, which may lead them to invest in prosperous areas and disregard the regional centers that have taken the additional financial risk by locating projects in low-income or rural areas. The EB-5 Regional Center program was created with the purpose of guiding investment to these areas in need.

Under controlling regulations, state officials may exercise some discretion in drawing the lines of a TEA, but USCIS has the power and regulatory responsibility to reject any non-qualifying TEA designation. Approving petitions for gerrymandered TEAs is harmful and encourages investments to be steered away from truly rural and high unemployment areas. We ask that USCIS report to us on ways the agency will better oversee the TEA designations. We also request that USCIS promptly review existing TEA designations to ensure that congressional intent is fulfilled, including the rejection of non-qualifying TEA designations. We believe that USCIS should publish guidelines with regard to this matter, and publicize those guidelines to ensure applicants' adherence to the purpose and intent of the law. The guidelines should include a specific single methodology, explicit data requirements from reliable data sources, and standards for determining geographic boundaries.

The second issue of importance is the EB-5 Regional Center's capital requirement for targeted employment areas. The INA requires that investment for fifth category employment-based green cards shall be \$1 million, but provides USCIS with authority to reduce that amount if the foreign investment is being made in a Target Employment Area. Since the regional center program was enacted in 1993, the amount for a TEA investment has remained at \$500,000.

We believe the agency should raise the investment level required, possibly by indexing the investment level for inflation. Had the figure been indexed since 1993, foreign nationals would be required to invest \$867,119.36 in a regional center today, as opposed to \$500,000. We request that you propose an appropriate increase for TEA investment.

The Honorable Alejandro Mayorkas
May 15, 2012
Page 3 of 3

We also request that you review two additional areas of concern, noted above. Congress has always intended that EB-5 investments have a positive impact on regional economies, which can be measured through the creation of new American jobs. The law requires the jobs to last throughout the period of conditional residency. Unfortunately, there is some concern that foreign investors are withdrawing their investments as soon as they adjust from conditional residency to lawful permanent resident. This scenario has potential to jeopardize the jobs that are to be created. We would appreciate discussing with you whether there are administrative remedies to encourage a longer minimum term for investment.

We are concerned about press reports that suggest that certain third party promoters are mischaracterizing the program and the United States visa process in an effort to lure investors. Such conduct only serves to damage the Regional Center Program and to harm foreign investors who seek to invest in the United States. We urge you to exercise any appropriate authority to ensure that both domestic and foreign promoters adhere to rigorous standards of accuracy and ethical conduct. We encourage USCIS to more closely monitor the promotion tactics of regional centers, and require regional centers to disclose the promoters retained to assist in attracting investments.

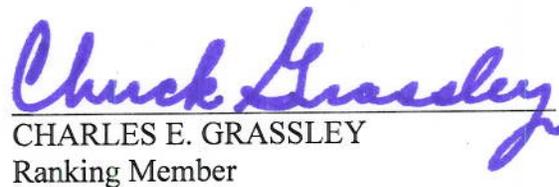
Finally, we ask that as you consider development and implementation of these policy recommendations, you take in to account the need for transparency and a process that will engage all interested parties and provide adequate notice and an opportunity to plan and manage investor expectations and business needs.

We are committed to reauthorizing the EB-5 Regional Center program by the end of the fiscal year to avoid disruption for investors, Regional Centers, and USCIS. In conjunction with this effort, we hope to work with you on the issues we have raised. We look forward to hearing from you.

Thank you for your attention to this issue.

Sincerely,


PATRICK LEAHY
Chairman


CHARLES E. GRASSLEY
Ranking Member