

Testimony of
Ron Drinkard

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Regional Center Program

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Mr. Chairman and members of the Committee thank you for the opportunity to testify, and I hope my remarks will help you with regards to economic development and job creation.

My name is Ron Drinkard. I am a retired banker and former economic developer. Along with my business partner, Boyd Campbell, we created a Regional Center in Alabama under the EB-5 employment creation visa Program. It is the Alabama Center for Foreign Investment, LLC, and it covers the entire state of Alabama. Through the Center we consult with foreign investors for

consideration of investment in Alabama to enhance economic development and create jobs. The Regional Center Pilot Program has been the primary driver in the EB-5 Program, creating thousands of new American jobs over 16 years.

Unlike other types of foreign direct investment, this Program brings not only the initial investment, typically \$500,000, and the initial job creation, but also in many cases, brings the investor, which provides additional economic benefits.

As a Regional Center we work very closely with USCIS/DHS. We consider ourselves the most conservative Regional Center in the nation and want to make certain that our Center complies with the rules and methodologies for job creation, as well as all other criteria set forth in the Program.

We have one project that is nearing completion with 10 investors who have already escrowed funds. Six other potential investors have committed to escrow funds when the current I-526 petitions, that have been filed, are approved.

We evaluate projects for consideration of an ACFI Regional Center designated project on a regular basis. Such an evaluation includes our in-house studies, as well as that of a well-respected contract economist and a very experienced contract credit analyst. These two additional studies are performed to make certain that we are not overlooking any aspect of the potential project. Our philosophy is that all parties must be happy for the project to be successful. Those parties include, USCIS/DHS, the investor, the project owner, and ACFI. This Program is difficult enough when all parties are happy, but virtually impossible when any single party involved, is not.

I want to thank the former and current managers of the EB-5 Program in the Office of Service Center Operations within the USCIS Domestic Operations Directorate. They have been very helpful and cooperative in providing information, in reviewing our application to become a Regional Center, and in responding to questions in anticipation of specific projects. I particularly commend Robert Kruszka and two of his associates, Kevin Cummings and Joe Whalen. Every time I have ever asked Robert Kruszka for a meeting, he found time to meet with me. Please understand, however, that I have never wasted his time to chit chat. As a result of that, it is my opinion that he knows that if I ask to meet him, it is to the benefit of some portion of the Program. Prior to Mr. Kruszka's involvement, we had the same experience with his predecessor Morrie Berez.

It appears to me that we have the best people possible in those positions, but in so many cases, their hands are tied and they may not be able to provide the kind of service that they might otherwise consider.

Consulting with investors for consideration of investment in projects to enhance economic development and job creation is difficult. In fact, it is the most difficult thing I have ever tried to do.

As I previously mentioned, the folks at USCIS do the best job possible, but there are constraints that make it difficult for them to effectively manage the EB-5 Program. In my opinion, there are

some changes that could be considered that would make the Program much more user friendly, while still complying with all job creation aspects and first and foremost, security aspects.

We were the 17th Regional Center in the nation and the last count I heard was approximately 49 and approximately another 40 applications pending. Even with the tremendous increase in the number of Regional Centers, we are not anywhere near using the entire 10,000 visas allocated to EB-5. Obviously, Congress envisioned this Program to bring more investment into the United States than has been experienced to this point. In my opinion, the primary reason for which additional visas over and above those allocated are not requested is because of shortfalls in the Program itself.

We all know there are no guarantees with this Program. There is no guarantee that the investor will get a green card and there is no guarantee that the original investment will be returned. Every potential investor knows that and we make certain that it is included in the private placement memorandum. We also strongly recommend that each potential investor consult legal counsel so that there can be no misunderstandings. However, even with an investor knowing the uncertainties, they like --all of us here today-- are going to look at that investment in a similar way.

Our experience has been that their first concern is the green card and the second being the return of their original investment at the end to the five year period, if they are not taking an equity position in the project. Their third concern is any return on that investment during the time those funds are invested in a Regional Center project.

The green card concerns are primarily satisfied by project projections and the results of the econometric model done by our contract economist and the results of the analysis performed by our contract credit analyst. Their second and third concerns are normally satisfied by projected project performance, which is also derived primarily from the econometric model and credit analysis.

Normal business risk to the investor is enhanced dramatically through this Program because there are no guarantees, as previously stated, that they will get a green card or the return of their original investment. However, we must strive to find a balance between economic risk and reward. Your consideration of some changes that in my opinion and experience from running a Regional Center that could benefit the Program are:

1. Need for Permanent Regional Center Legislation

The primary impediment has been the lack of permanency to the Program. Even with three-year Program extensions, business people are hesitant to invest without knowing if the law will expire before the goals of the investments can be achieved. Recently, extensions have been tied to fiscal continuing resolutions of very short duration. This conveys to potential investors that the government is not fully behind the Program. The most important step toward making employment creation visas successful is for Congress to enact the Regional Center "Pilot Program" permanently into the Immigration & Nationality Act within the EB-5 statute.

2. Need to Overcome Program History

Obviously, another impediment has been the history of the first decade of the Program. A combination of loose informal interpretations and unscrupulous promoters led to a rash of filings for projects that ultimately were found to be non-qualifying, subjecting hundreds of investors to revocation of their immigration status. The Program managers of USCIS have for the last 5 years have tried to build a solid understanding of the parameters for Regional Centers, projects, and source of funds. At first this effort was too dependent on one officer's personal management. During the last couple of years, USCIS has implemented policies in an attempt to review petitions on a much more timely basis. This effort is through an increased number of adjudicators, who are centralized at the California Service Center.

3. Need for Optional Project Approval Process

One thing that would speed the investment and job creation process is to pre-approve Regional Center projects. Today, such a process does not exist. USCIS has however, in my opinion, been diligent in their efforts to allow Regional Centers to respond to additional request for evidence, in such an event where the project does not have all the data necessary for proper consideration. They have even gone so far as to express that the government's goal is an effort to "get to yes," as soon as possible, assuming that all qualifications are met. We are grateful for that spirit and hope that it will continue and expand.

If a process existed whereby project pre-approvals were possible, we could quite possibly and dramatically reduce the time currently required for an adjudicator to review the documentation. Such a process would enable the adjudicator to only concentrate on the documents submitted with regards to the petition itself. Currently, as I understand, each adjudicator has to completely review and analyze all aspects of the project for each investor, to make certain it meets Program requirements, in addition to, the petition, and any other documents that might accompany that petition.

The California Service Center operates on rigid adjudication rules expressly prohibiting the investor from changing any documents to accommodate USCIS concerns expressed in requests or decisions. The only recourse for an unapproved project is to have each investor individually challenge the decision by appeal to the USCIS Administrative Appeals Office, which can take many months. The only other alternative of which I am aware, is to have each investor individually change the documents and re-file and wait another 6 months or more for adjudication. Many investors with other options will not choose a model like this and will immigrate to other countries. Gentlemen, these are jobs and dollars that could be enhancing our economy and creating new jobs today.

The current process could be construed as wasting government resources while conveying a tremendous sense of difficulty to the very investors we are trying to attract. If the process could be changed and a Regional Center, after obtaining pre-approval from USCIS could designate a project Regional Center qualified, our government would convey a sense of interest and helpfulness, rather than difficulty.

USCIS could consider, upon project pre-approval, the issuance of a notice of such approval to investors to be filed with their petitions and their evidence of source of funds, etc , etc.

In terms of efficiency, this proposal implies a certain amount of hand holding to Regional Centers and the investment enterprises being considered by the investor. This brief hand-holding will take far less time than is now spent by adjudicators on individual petitions and the adjudicators' individual review of the project that accompanies each petition. In addition, I believe that Regional Centers would be happy to pay a premium fee for each project submitted

for the pre-approval process.

It is possible that some Regional Centers have developed certain forms of relatively simple projects that they may deem as not needing pre-approval. If so, perhaps such pre-approval process could be considered as an option, if not a requirement.

I also believe that USCIS should consider additional standards for which an applicant should be considered for Regional Center designation. Personal experience indicates that there is a very broad range in the knowledge of the individuals operating Regional Centers. My partner Boyd Campbell and I spent six months putting together our application/proposal to be considered for Regional Center designation. In doing so, the approximate 466 pages we submitted familiarized the two of us with many aspects of the Program. The additional 3 requests for evidence that we received, probably generated another 100 plus pages. This process allowed us to gain more knowledge about the Program and how it should perform.

My partner is an immigration lawyer with 20 plus years experience and I have 34 years of experience in banking, economic development, and governmental relations. We felt very comfortable that between the two of us we could solve almost any problem pertaining to the EB-5 Program. Not only were we wrong, but two years down the road, we still learn something else important about the Program, virtually every week.

Additional standards in the designation of Regional Centers, could ensure that every center become as familiar as possible with the entire EB-5 Program. It would seem that some recent designations have been the result of the center's principals hiring someone knowledgeable of the Program to put together the entire application/proposal. In such an event, those individuals simply will not have the necessary knowledge to comply properly within the regulatory environment of the Program. This can only lead to problems that will not only affect that center, but all Regional Centers.

I don't have a solution to what I consider this as being a very real threat to the Program. I do recommend however, that this situation be cautiously approached for some type of standardization of knowledge embedded within those individuals charged with the operation of a Regional Center.

4. Need for More Than 2 Years to Create Jobs

The fourth possible impediment to EB-5 participation is the interpretation of job creation. The most important issue here is the time within which the 10 jobs per investor need to be created and how they need to be shown. Congress allows investors in Regional Centers to show job creation by "reasonable methodologies." It seems that Congress may have borrowed procedures from the marriage fraud context to require investors to come back to USCIS two years after obtaining "conditional" permanent residence and show that they have sustained their investments and fulfilled the EB-5 requirements.

A recent USCIS memo requires that investors show from the outset that they will create the jobs within the two year period of conditional residence and that they show at the end of the two years that the jobs have already been created or that something unexpected has delayed job creation that will be completed within a reasonable period of time. At that junction, ACFI performs another econometric model using actual employment data that is the primary input in determining the additional job creation resulting from those direct jobs.

However, the USCIS interpretation as expressed in the referenced memo, may exceed the statute. This interpretation could be construed to limit the EB-5 Program to small and simple projects. In effect, this interpretation could possibly eliminate larger, more complex investment projects that cannot produce the job requirement within the two-year period. It is my recommendation that such projects of this nature, could be considered on a one-on-one basis by designated individuals at USCIS to determine if such a project should be considered for a time in excess of the current two year requirement.

Mr. Chairman, I am told you previously expressed your concern about this interpretation.

5. Need for Re-evaluation of MSA restriction

Alabama is well suited for the EB-5 Program in that it is 97% rural in land square miles. A rural area qualifies under this Program for the \$500,000 investment amount. In addition, we only have 26 cities that have a population in excess of 20,000, which also fits well into the rural area category. Unfortunately, we have 28 of 66 counties within the boundaries of a Metropolitan Statistical Area (MSA). The EB-5 statute prohibits the \$500,000 investment amount in an MSA. The General Accounting Office has warned Congress that the existence of an MSA is for statistical purposes only and that state and federal Programs should not be restricted by a prohibition on their activities inside the boundaries of an MSA. We recommend that this matter should be re-evaluated.

6. Need for Interpretation of 'Capital'

Capital is defined broadly by Congress in the EB-5 statute, but USCIS restricts capital invested in this Program to "personal" funds. This restrictive interpretation ignores real world management of capital by couples, families, and small businesses. We recommend that the definition of capital be expanded to include ownership or control of investors' funds and specifically include family members and sole proprietors.

I conclude my remarks by suggesting to the Committee that, while we have concerns with some aspects of the Program, it remains the absolute best way to enhance our economy nationwide with the creation of jobs at virtually no cost to the U.S. government. We are using foreign funds to do a task that our tax dollars are currently funding. We appreciate your concern and efforts to make the EB-5 Program more viable and user-friendly.