Questions for the Record
Hearing on the EB-5 Regional Center Program
December 7, 2011

Submitted by Senator Chuck Grassley

Question for David North:

You stated that the investment required of investors has remained the same since 1990, when the program was created. You also said that $500,000 is “not as significant as it used to be.” What amount would you require of investors for both the regional center program and the EB-5 investor visa?

Reply from David North:

As background, half a million in 2011 dollars is equal to $270,000 in 1990 dollars, back when the program began, and every year the real value of the half a million slips a little more.

I think the minimum investment should be for at least $1 million in current dollars, with annual automatic adjustments for inflation. This would apply to both the regional center program and for the balance of the EB-5 program. That would be $1 million per visa, not $1 million per investment.

What would be even better would be to use the notion of selling visas - if we engage in that practice at all -- to bring the money into the U.S. Treasury, as payments, not investments, and start the bidding at $1 million per individual visa, not half a million for a family’s worth of visas, as we have at the present. This proposal, which would bring the U.S. at least five billion dollars a year, is spelled out more thoroughly in an answer to a similar question posed by Senator Klobuchar. Such a direct-sale program would replace the current immigrant-investor program.

Question:

You mentioned that you spent time in Australia, studying their immigrant investor program. We discussed this a bit during the hearing. Do you have additional thoughts on what we can learn from other countries who have immigrant investor programs?

Reply:
Yes, several of them.

In the first place many of these programs are seeking active business people, entrepreneurs, not just people willing to write checks for passive investments.

Second, most of the other English-speaking nations want something more than just money; the program in Great Britain demands that the investor speak English; the programs in Australia and New Zealand demand, variously, that the alien business people be below 45, 55, or 65 years of age.

Third, most of them, excepting Canada, have set higher minimum investments than our $500,000. The Bahamas, which is looking for people to build mansions, has a *de facto* minimum investment of $1,500,000 million. New Zealand wants $7,896,000 minimum for its Class 1 program which has no age limits, and $1,184,000 for its Class 2 program which does. The U.S. is a very soft touch at half a million.

Question:

You suggested that USCIS is not the ideal agency to screen these foreign investments, and that the program is grounded in the wrong place. If the program is not ended, as you prefer, would it be beneficial to involve other agencies with more experience? If so, which agencies?

Reply:

Other agencies are needed for two reasons, to prevent fraud and scandals, and to make savvy decisions about business plans; these are two separate matters.

To prevent scandals every name in every proposal, such as developers and their attorneys, should be checked with IRS and Justice to make sure that they have paid their taxes and have not been indicted for something; if it is a real estate development, a base touch with HUD would be appropriate.

As to advice on business plans, there must be units of the Commerce Department, and perhaps the Small Business Administration, that would be helpful.

Question:

You suggested that we alter the program to be more about creating business entities, not passive investments. What changes would you recommend to achieve this goal?

Reply:

The law could be changed to make it explicit that we want entrepreneurs willing not only to invest their own money, but capable of creating a business with that money, as some other nations have done.

Currently all we ask for is a passive investment, and that is what we usually get.

Question:

If Congress were to eliminate the regional center program, would you support the continuation of the EB-5 visa for investors who bring $1 million of capital for projects in the U.S.?

Reply:

I think the minimum should be $1,000,000 per visa, not per investment, and that value be adjusted annually to account for inflation. This would apply to both programs.

I would prefer, as noted earlier, if we are to sell visas for greencards, to run a straightforward auction for 5,000 visas, with the minimum price being $1,000,000 per visa, not a collection of greencards for the whole family at $500,000, our current price.

Question:

Do you have any suggestions about policies that should be enacted to ensure that investments come from reliable and reputable foreign sources?

Reply:

This is not my field so I cannot be very precise. There are arms of the State Department and Treasury that deal with such matters, and they certainly should be consulted routinely by the EB-5 program.
Keeping crooked alien money out of the program – which really does not attract the sharpest of investors, anyway -- is less of a problem than making sure that decent alien money is not squandered, in the U.S., on less than wholesome schemes.

Question:

In an effort to promote more transparency into the program, what type of data would be most relevant for the agency to make available to the public (possibly via their website)?

Reply:

The **first step** would be to transfer the responsibility for statistical reporting to the Office of Immigration Statistics (OIS)in DHS and away from USCIS. The former is far more sophisticated and open about numbers than USCIS; further OIS is not part of USCIS.

Second, DHS should report, preferably on its website, the number of receipts, approvals, and denials; and appeals from denials, per month or per quarter for each of the three basic forms in the program. It should report, annually, the number of appeals from denials and the actions taken by the Administrative Appeals Office on those appeals. Further AAO should be required by law to publish the names of all parties that are involved in AAO cases, not suppressing them as is the current practice, an odd practice that runs counter to that of all similar government appeals agencies.

The three sets of applications getting this treatment would be:
the I-526, the investor's conditional visa; the I-829, which seeks green cards, confirming the investment; and the I-924, which creates the regional centers. (Some data on the disposition of the three forms, and the current problems with these statistics, can be found in the table that accompanied my testimony.)

Three, USCIS should be instructed to conduct an longitudinal study of say 200 randomly selected I-526 approvals in, say, the years 2004 through 2006, to determine what happened to them. There appears to be a sharp drop-off between those approvals and the approvals of the I-829 forms; such a study would cast light on the internal workings of this currently secretive program.

Four, USCIS should contract with an auditing firm to determine, nationwide, the extent to which funds raised through the program have remained invested in the U.S. after the passage of say five or six years. Similarly, a study focused on the investments from point of view of the actual investors should be conducted, by an outside firm.

Question:

Mr. Stenger discussed how Vermont's regional center requires investors to stay committed to the project for five years, beyond the 2 years required to get a green card. Can you comment on whether some regional centers have more lenient requirements than others? Do you think that all regional centers should be run by the states?

Reply: Again, I have limited knowledge of the implied question here: which entity, the regional center, or the investee (like Jay Peak), or both, or either, sets the rules about when the investment has to be returned?

There are real advantages to the investee – the recipients of the funds – for a more-than-two-year rule. Having long-term money to invest as one sees fit, is always preferable to having "hot money" that has to be turned around quickly.

The disadvantage, however, is a serious one. If a five year-rule is in effect, no one is likely to learn about the fate of those investments for five years. In the case of Jay Peak there was no testimony regarding what had happened to all those investments, from the investors' point of view, all of which I think are less than five years old.

It might be helpful, incidentally, if the investees were required to issue annual financial reports on the state of individual investments, with copies going to USCIS. I am fairly sure that this is not now done.

The second part of the question relates to varying length of investment requirements, and I have no information on that except that there must be variations.

The third part is a policy question, who should run the regional centers? I suppose one could decide to issue new licenses only to state entities, and to grandfather in the existing regional centers that are private, as most are; otherwise, deciding that only states could run regional centers would create a torrent of complaints about the feds changing the rules in the middle of the stream.

It probably would have been the better part of wisdom to have the states run these centers, as the EB-5 program started, but it is a bit late in the game to try to do anything about that now. Both of the regional centers that have been terminated, incidentally, were of the private, for-profit variety.

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