CORRUPTION RISKS IN THE UNITED STATES EB-5 IMMIGRANT INVESTOR PROGRAM
CORRUPTION RISKS OF THE EB-5 IMMIGRATION PROGRAM


Editing: Georgy Tserkalov
Translation: Victor Sonkin, Vasily Sonkin

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Transparency International Russia (TI-R), the national chapter of the global civil society movement Transparency International, has examined integrity risks in the United States (U.S.) EB-5 Immigrant Investor Program. We have identified areas that are open for abuse for corruption concerning cases of investment by Russian citizens. This work contributes to our “Russians in the USA” series.

The EB-5 program allows foreign citizens to obtain a temporary residence permit and, subsequently, a permanent resident status (a “green card”) in exchange for an investment of $900,000 or $1,800,000, depending on the area (the investment amounts were $500,000 or $1,000,000 before November 2019). The required amount has to be invested in one or more active projects and approved by the U.S. Citizenship and Immigration Service (USCIS). Applicants can transfer money either through a designated “regional center” or directly into a U.S. company.

An EB-5 immigrant investor regional center is an economic unit, private or public, that manages EB-5 investment projects under the purview of USCIS. As of July 2020, there were 771 such USCIS-approved centers, operating across the country.

The EB-5 program had been the focus of political discussions that led to amendments to the program in July 2019. In June 2020, TI-R aims to highlight the persisting flaws of the program and to provide recommendations for improvement. To that end, TI-R has analyzed the program from an anti-corruption lens. We undertook an evaluation of the corruption and money laundering risks that arise during the principal stages of the program. This report covers the bureaucratic and organizational shortcomings of the program, the work of state institutions responsible for its operation, the arguments of the program’s critics, and specific examples taken from case studies of the participants.

In addition, the researchers studied the specific approaches and practices of EB-5 intermediaries—in this study, immigration lawyers, regional centers and consultation centers. We have also taken a close look at the real estate development companies and investigated the ownership of companies on the other end of the EB-5 program that have benefited from incoming investments.

TI-R sees the risks posed by the EB-5 program as part of larger international schemes that enable transnational corruption and illicit financial flows. The investments made by Russian nationals into the US economy for the EB-5 program bear a risk of causing significant economic harm because of corrupt practices implemented and used by new business players and money whose origins are uncertain.

One area of concern with regard to the program’s corruption risk is that as Russia experiences capital flight from the country, asset stripping of banks, and embezzlement of public funds, Russian criminals may arise for criminals to act with impunity abroad. The economic and political situation in Russia during the last six years has led to a mass migration from the country. The investment program allows people with big money to not only migrate and obtain legal residence in the US, but also to transfer ill-gotten money overseas.

Such migration programs exist in many countries, and they encounter similar problems everywhere: they offer corrupt politicians and fraudsters a convenient vehicle for money laundering and an opportunity to obtain legal residence elsewhere, allowing them to skip town, evade law enforcement for prosecution efforts. All things considered, it is increasingly recognized that these programs entail substantial security risks for the host country.

The Immigration Act of 1990, enacted by the US Congress is the governing legislation that addresses immigration policy in the country. Among other things, it established the process for obtaining two-year investor visas under the EB-5 program, which is basically a “green card” for 2 years, a green card for 10 years.

Participation in the EB-5 investment program consists of several steps:

1. Invested at least $500,000 into an existing based in the U.S. project by transferring this money from their account to the legal entity’s account (for example, an account created by a commercial development company);
2. Submitted an application for a green card by working with a lawyer to file a Form I-526 petition that confirms the amount has been transferred into the project’s account and that funds were of legal origin; the application also asks to provide proof concerning the legal nature of the sum to be invested, confirmation that money has been transferred into the account of an approved project, and proof that ten new jobs have been created.
3. Filing the first petition;
4. Collecting and preparing documents to prove the legal nature of the investment, with the assistance of a lawyer;
5. Filing the first petition;
6. Receiving the conditional green card; and;
7. After 2 years, filing the second petition in order to obtain a permanent residence status (10-year green card).

In 2018 and 2019, the EB-5 program helped some 150 Russian citizens obtain their green cards. To apply for the program, these investors were required to do the following:

1. Invested at least $500,000 into an existing based in the U.S. project by transferring this money from their account to the legal entity’s account (for example, an account created by a commercial development company);
2. Submitted an application for a green card by working with a lawyer to file a Form I-526 petition that confirms the amount has been transferred into the project’s account and that funds were of legal origin; the application also asks to provide proof concerning the legal nature of the sum to be invested, confirmation that money has been transferred into the account of an approved project, and proof that ten new jobs have been created.

The first green card obtained through the EB-5 program is valid for two years; it is also considered a “conditional” green card. Two years later, this status is to be reviewed; to do so, an applicant must file a new petition known as an I-829. This petition includes proof that the money is still “in the project” and that the jobs created by the investment still exist. If the investor invests in a regional center project, the center will provide this proof.

For Russian citizens, the average time between submitting a petition for a permanent green card to receiving such status is roughly four years. Citizens of China and India have to wait the longest for EB-5 green cards – up to 10 years – due to the large volume of applications from these countries.

On June 27, 2019, the US Office of Management and Budget issued new rules for the EB-5 investment program. This news led to an increased interest in the program in the immediate run, as participants were eager to invest before an anticipated increase of the minimum investment threshold.

On July 24, 2019, the new rules were published. Starting from November 21, 2019, the minimum amount increased to $900,000 for high unemployment or rural areas (known as a Targeted Employment Area, or TEA) and $1,800,000 for all other areas. Local authorities are no longer able to designate any potential area as a TEA this authority was transferred exclusively to the Department of Homeland Security (DHS). In addition, the number of areas covered by a single application has been limited. Census tract combination for high-unemployment TEAs is limited to the project tract(s), plus some or all of the tracts that are “directly adjacent” to the project tract. Regional centers previously included a group of tracts around the construction site in the application, while just one of them had a TEA status and often was not attached to the project tract. Petitions filed before November 21, 2019, will be reviewed according to the previously existing rules.2

3. Case studies
Researching company ownership information and the biographies of US company owners that have attracted money of Russian EB-5 investors helped us understand the profile of some of the individuals who participate in monetary transactions within this program and the associated risks.

4. Comparative analysis
We have studied the conditions of investment programs in the European Union (EU) countries. EU’s “golden visa” schemes have been a subject of controversy in the past two years. Previous analysis and case examples of abuse by corrupt and criminal, including by Russian nationals, have allowed us to draw lessons for the US EB-5 program.

Key Findings

1. The EB-5 immigration investment program currently faces serious corruption and money laundering risks. For example, insufficient oversight exists for immigration lawyers and consultants who may be providing their clients with false documentation regarding the origin of funds. Further, most of the EB-5 projects are located in areas considered by the Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury (FinCEN) – regulatory agency tasked with enforcing money laundering rules and laws – to be potentially risky.

2. TEA status may not tightly correlate with the program’s stated purpose of reducing unemployment. Based on 2016, the highest number of TEAs are in some of the most economically attractive areas of the US, such as Florida, New York, and California. The applicants want to invest money in these areas to be sure to get the projects that will be profitable and they will get their money back. Thus, the construction of luxurious residential complexes or office buildings has been dictated by EB-5 applicants’ interests, not by American taxpayers.

3. The EB-5 program has not received enough scrutiny. Europe’s experience with similar Golden visa programs shows that these types of programs attract people who have a background in tax evasion or money laundering. For example, FinCEN has identified California, New York, and Florida – where a large number of EB-5 programs are located – as particularly high-risk for financial crimes.

4. The EB-5 program is notoriously opaque. Information on EB-5 holders, the number of jobs created by a project, the assignment of TEA status, and the amounts of investments in particular projects is not available to the public, including civil society organizations and the media.

5. The USCIS faces significant difficulties conducting scrutiny of EB-5 applicants’ backgrounds and origins of their funds. For example, investor documents are issued by foreign authorities that are often very different from their US counterparts and US documentation rules.

6. Most projects are located in economically stable states, which are popular immigration targets. The projects are created for economic profit, not for the reason of improving the situation in the regions with an unstable economy. FinCEN has determined a list of areas where money laundering companies and deals are most frequent; such deals are done through real estate, through cash payments, through anonymous companies to hide beneficial ownership information. The states with the most activity regarding EB-5 projects are on that list. This is further proof that participation in the program is often no more than a tool for money laundering and obtaining US citizenship.

Conclusions

1. Every step of the EB-5 immigration investment program involves the possibility of high risks of corruption and money laundering. In the course of our research, immigration lawyers offered options to provide evidence of the legal nature of investors’ income sources in a manner that would not provoke suspicions of the USCIS officials. The lawyers are motivated to have a large number of customers which leads to a conflict of interests: their goal is to prepare a good claim for their client to prevent money laundering, as is their responsibility as the gatekeepers of the financial system.

2. Consultation agencies that help people prepare their documents in Russia are very likely to participate in falsifying documents that would confirm the “legal nature” of the investor’s means. They are connected to US-based legal companies and get a percentage cut for every deal with the client. Legal companies in the US are more careful when dealing with their clients; they ignore questions about the possibility of falsifying documents, they ask not to articulate falsifying plans in their presence, but they offer many workarounds which would prevent the source of the required amount the necessary way.

3. Lawyers and regional centers in the US have close relationships, which also leads to a direct conflict of interests. They are more interested in attracting clients than in controlling the legality of the origin of their funds. The existence of tight cooperation with foreign lawyers and regional centers might lead to two-way suppression of infringement history in the work of both parties.

4. In their statements, the opponents of the program, US Senators Chuck Grassley and Dianne Feinstein, point out that there is no verification whatsoever of the biographies and professional experience of the officials of regional centers and owners of the companies serving as the recipients for the money. The examples we have studied indicate that the owners of such companies might be people previously involved in fraudulent activities or closely connected to foreign political actors, which indirectly indicates that the authorized government services do not always perform all-inclusive reviews of regional center associates and investment visa candidates.

5. Projects in rural or high unemployment areas – TEAs – offer regional centers a chance to accept smaller investments ($900,000 instead of $1,800,000). This offer seems more attractive to local investors. Local authorities are interested in attracting money into their regions, and for that reason they easily provide regional centers with permissions to accept the reduced investment amount.

6. Projects in rural or high unemployment areas – TEAs – offer regional centers a chance to accept smaller investments ($900,000 instead of $1,800,000). This offer seems more attractive to local investors. Local authorities are interested in attracting money into their regions, and for that reason they easily provide regional centers with permissions to accept the reduced investment amount. As a result, investments are sometimes raised for the facilities which are bordering high unemployment areas but are not there themselves. Regional centers employees admit they include in an EB-5 investment applications up to 12 areas around the construction site of the main facility; out of those, only one area would have the status of a high unemployment area. This might allow the project’s ability to attract reduced investments.

7. During the last three years, the situation with the program’s intermediaries has remained insecure. Our experiment in 2016 and then again 2019 has demonstrated that the program intermediaries have not changed the rules of their work, and state authorities cannot control their activities at the level which would be abreast of the risks.

Recommendations

1. Greater transparency. DHS must disclose to the public the types of jobs created by a project or investment, how much each project created those jobs, and the duration of contracts in a given project. This information will allow civil society organizations, the media, and others to judge for themselves how effective the projects were and whether the relevant TEA designations were appropriate.

2. Greater collaboration with foreign counterparts. USCIS must collaborate more closely with foreign government agencies and foster greater international cooperation in order to be able to conduct adequate background checks into applicants and the origins of their funds. Even though they were made in November 2019, the core problems remain the same: insufficiently detailed information regarding the origins of funds makes the EB-5 application and investment extremely risky for the US financial system and economy. As discussed in this report, communication with local Russian agencies and lawyers made clear that official documents, including banking documents, are being forged and that Russian authorities lack sufficient oversight of this process. The high risk of receiving false documentation shows why different levels of documentation review must be imposed at different points in the process. Cooperation between USCIS and the local, in-country authorities or anti-corruption agencies of applicants will allow
the U.S. government to confirm the authenticity of applicants’ papers.

3. Greater disclosure of information. DHS should start by applying greater scrutiny to a random group of visa applicants or recipients. These investigations could demonstrate whether such applicants or recipients have been involved in financial fraud, corruption, or other criminal actions and inform the broader effectiveness of the USCIS review and approval processes.

4. Boosting capacity of program intermediaries. The USCIS should provide regional center employees with additional training and other resources for identifying threats to the integrity of the EB-5 program, especially with regard to the investigation of applicants’ backgrounds, document verification, and how investor funds are used in project implementation.

5. Additional oversight of “gatekeepers” to the U.S. financial system. Even well-intentioned private attorneys and consultants can be exploited by foreign actors’ intent on using the EB-5 program as a means of laundering dirty money or escaping liability. Bar associations, state Supreme Courts, and other entities responsible for regulating the legal profession and legal professionals have an obligation to ensure their members are part of the solution, not part of the problem. DHS and USCIS should work with these entities to reprioritize protecting the EB-5 program from corruption, and should push these entities to adopt new, outcome-driven rules that ensure gatekeepers are doing their part to protect the U.S. financial system.

6. Incorporate best practices from the U.S. national security sector into the application and approval processes. The infiltration of ill-gotten gains into the U.S. financial system is an issue of national security—and should be treated as such by the U.S. agencies involved with the EB-5 program. U.S. national security and intelligence agencies use state-of-the-art equipment, tactics, and other resources in their day-to-day work, and the EB-5 program application process deserves no less. DHS and USCIS must make the case for incorporating these national security best practices into the EB-5 program.

7. New criteria for project selection. The U.S. government should prioritize EB-5 projects based on their actual value to society: building luxury apartment complexes do not create long-term jobs, yet have become a priority for regional centers.

Part 1. European Union: Heightened scrutiny over investment immigration programs
The phenomenon of investment migration is newer in the European Union, where most programs were established, scaled up or revamped following the 2007–2009 financial crisis. Many EU countries have mechanisms in place for the facilitation of investment-based migration but about a dozen have set up special schemes – commonly known as “golden visa” programs – in which the primary qualifying requirement is a large and passive form of investment, e.g., in luxury property, a national development fund, government bonds or shares in an existing company. These schemes tend to offer a fast-track route to citizenship or residence with low requirements for physical presence in the country.

Currently, three EU member states sell passports and 12 trade with residency rights through investment migration programs. The two lists overlap, as three countries – Bulgaria, Cyprus and Malta – trade with both. In addition, Hungary operated a residency scheme between 2013 and 2018, which was terminated following scandals and controversies related to its abuse by corrupt and criminal actors.

EU golden visa schemes require varying amounts of investment. Residency can cost €250,000 in Greece and Latvia, whilst a Cypriot passport can cost €2 million.

The European golden visa market is highly diverse. A potential customer can browse through over a dozen of schemes and make a choice of their favorite destination based on their willingness to pay, the ease of paperwork, the processing time and other factors – a scenario that risks triggering a “race to the bottom” when it comes to standards of due diligence and transparency. No two schemes are identical in how they are set up and run. With this diversity in design comes a diversity in the corruption risks of each scheme.

In the US, a comparable risk arises whereas administrative and socioeconomic circumstances make it easier to get EB-5 visas and green cards in some states than in others. Each state is responsible before all others for the regional centers and companies attracting money from investors on its territory, what the level of the lawyers practicing in the state, and which areas in the state is considered a territory with low employment.

In March 2018, OCCRP’s Gold for Visas investigations illustrated the rampant phenomenon of citizenship and residency for sale to the ultra-rich with little checks in Europe.

Global Witness and Transparency International’s report, released in 2018, emphasizes that, despite the stated standards of verification of people and companies involved in investment programs, scandals regularly flare up in many countries due to lack of transparency and inaccurate enrollment information. Transparency International and Global Witness have been persistent about the unacceptable risks these schemes pose to the global anti-corruption and anti-money laundering efforts and the decisive solutions that are needed.4

EU golden visa schemes share three qualities that produce high levels of risk. The first is the particular profile of the applicants and the high amount of investment required of them. The second is the lack of operational integrity in the governance of the schemes. The third is the lack of harmonized standards and practices at EU level.

The European Getaway study showed that Russian nationals are among the top 5 nationalities of beneficiaries in all countries where information could be obtained through public sources or Freedom of Information Requests. For example, over 12 thousand Russians had purchased residency permits in Latvia between 2010-2017. Another favorite destination for rich Russians is evidently Spain, where 4,715 Russians bought residence rights between 2013-2018.5

The economic security of the entire European Union is compromised when citizenship is granted to a person who was or is currently involved in corruption schemes in their home country, who uses international companies in corruption schemes, or who is involved in the illegal diversion of funds to offshore companies. A person who has been granted citizenship under the investment program is granted the freedom of movement in all EU countries, the right to vote and stand for election, as well as the right to create business entities in all EU countries.6

Golden passport programs faced numerous situations of providing citizenships to PEPs and regular people accused of money laundering and embezzlement.

In 2017, the names of the individuals who had acquired Cypriot citizenship through the country’s citizenship-by-investment program were leaked and reported on by The Guardian.7 The list reportedly included hundreds of Russian nationals such as Leonid Lebedev, currently under a criminal investigation in Russia, and Alexander Ponomarenko. Lebedev is a former senator from the Chuvashia Republic and co-owner of Sintez Group (oil production, energy, development). Ponomarenko is a multimillionaire and Chairman of the Board of Directors of Sheremetyevo International Airport. He is also a business partner of Arkady Rotenberg,7 Russian billionaire sanctioned by the U.S. Treasury in 2014.8

The U.S. should take note of the developments in the EU. Increased attention to the rampant phenomenon in the EU and recognition of the unacceptable risks these schemes pose to national security and integrity have been well documented. The European Parliament, for example, has called for these programs to be phased out.

The great and historic interest in the EB-5 program and relative affordability mean more people apply for a residence permit in the U.S. through investment, and this results in greater responsibilities for the U.S. Department of Homeland Security. The total number of EB-5 visas issued in 2019 was 7,889.10

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Part 2. Areas of high risk for US-based monetary transactions

A series of investigations based on information from the Panama Papers, conducted by a group of journalists from the International Consortium of Investigative Journalists (ICIJ), McClatchy, and the Miami Herald, were awarded a Pulitzer Prize in 2017. These articles describe the numerous cash withdrawal schemes used by politically exposed persons from different countries. Among the leaders whose associates were named in the documents are Chinese leader Xi Jinping, former Ukrainian President Petro Poroshenko, current Russian President Vladimir Putin, and many others. Transparency International-Russia conducted an investigation in 2016 into the purchase of apartments in Trump Towers in Miami by Russian businessmen, criminal leaders, and politicians. Materials published in the Russian version of Forbes Magazine showcase examples of money laundering facilitated by the purchase of real estate in these elite residential complexes.

The history of Miami’s development is closely linked to the drug trade. The banking system and real estate sector of the city experienced rapid growth during the “cocaine era” in the late 1970s and 1980s. The principles of “fast money” and “fast trades” was typical throughout the entire state: the proceeds from drugs imported from Latin America were quickly converted into funds for construction, but before reaching the real estate sector, this money was laundered through offshore companies, law firms, and banks.

New York is also on the list of states with high corruption risk. As in Florida and California, a large amount of luxury real estate is under construction or has been constructed, and this attracts wealthy investors from around the world. Among them are politically exposed persons or people from their immediate circle.

For example, former Ukrainian Prime Minister Yulia Tymoshenko has been charged with money laundering through real estate purchases at the address 14, Wall Street in New York City.

Gabriel Popoviciu, a Romanian businessman, was also included in the investigative journalists’ reports. He made a fortune opening restaurants in Romania under the KFC brand name and other American chain restaurants, as well as from the construction of shopping malls. Popoviciu was accused of bribing Romanian civil servants to buy large swaths of land and obtain construction permits in certain locations. The businessman owns three apartments in the expensive Olympic Tower complex in Midtown, New York. After the investigation began, he removed his name from the list of owners, with only his wife and daughter mentioned in the documents. His funds were frozen in Romania, but everything remained unchanged abroad.

States in the Geographic Targeting Order (GTO) list created by FinCEN are places where a large volume of purchase and sale transactions in real estate use offshore companies and cash payment transactions. Investment projects involving people interested in money laundering in a foreign country in these states pose a particular threat. Criminal group members use limited liability companies (LLCs) to buy real estate in Miami. This makes it very difficult for investigators to establish the owners’ real names. The main types of legal entities used for money laundering in the state are limited companies (Ltd.), limited liability partnerships (LLP), and limited liability companies (LLC). In addition to

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the confidentiality, investors can receive significant property tax benefits while hiding all information about ownership.¹⁹ Failure to align AML measures such as GTOs with the EB-5 programme creates additional loopholes that incentivise the use of the EB-5 programme by criminals and the corrupt. The corruption risks related to the GTOs areas are increased by inherent risks of immigration investment programs.

Part 3. EB-5 program: Green card in exchange for investments

3.1 Basic rules

The EB-5 program first started on November 29, 1990, with the passage of the Immigration Act. Visa issuance to investors is regulated by Section 1153(b), 8 U.S.C. According to the act, the visa is issued to immigrants who enter the U.S. intending to create an enterprise that will provide at least ten jobs and which will receive investments of at least $500,000 or $1,000,000 dollars (depending on whether the project is in an area with high unemployment or rural areas, or not). The quota for these visas is not allowed to exceed 7.1% of the total number of visas issued.

Details of the application of the law (for example, the content of the I-526 visa application form) are set out in the Code of Federal Regulations. Specifically, in Article 204.6, Section 8. They comply with conditions set forth in Volume 8 of the U.S. Code of Federal Regulations, Article 1153.

The main requirement demanded of the investor seeking to obtain an EB-5 visa, and later, a residence permit, is to create ten jobs for qualified workers. But there are some nuances. If they establish a new commercial enterprise in a non-economically unstable region, the president of the company is obliged to create ten jobs within this company. However, if a company launches in an area with a high unemployment rate, the applicant does not have to create jobs within the company — any ten jobs created in the region due to the establishment of the new enterprise will count toward that ten-job total. If the applicant invests in an existing business that is experiencing difficulties, they are not required to create new jobs, but must maintain employee headcount for at least two years.

A business experiencing difficulties is defined as a company that has been in existence for at least two years prior to the date of application by the investor and has been suffering net losses for the last 12-24 months at the time of application. The net loss during this period has to be at least 20 percent of the company’s total assets.

3.2 Criticism and scandals surrounding the EB-5 program

For many years the program has been criticized for failing to perform its main function — helping economically unstable regions. There’s also been criticism of the risk of “dirty money” investments, as well as the insufficient oversight from government services over regional centers and investors. The main proposals to change the program included increasing the minimum amount of investment from 500,000 to 1,350,000 dollars, and reducing the number of projects in Southern California, Seattle, New York, and San Francisco.

Throughout the history of the program, investors’ money was repeatedly stolen when the recipients of investment, whether companies or individual entrepreneurs, invested them in the development of their businesses or the purchase of real estate. The company USA Now raised money from investors and invested it in a restaurant. Since this happened before the firm received official status as a regional center from the U.S. Citizenship and Immigration Service, investors did not receive a visa. In June 2019, a lawsuit was filed against the Golden California Regional Center, which had raised $555,000 (the sum of investment and payment for the work the center completed) from ninety Chinese investors three years earlier, and stopped replying to communication. Investors sent money to the Palo Alto regional center’s project account, but in 2018 its employees stated that the project would not be developed further, and the previous agreement was canceled. Investors were unable to receive their investments back and sued.

In 2013, the U.S. Immigration Service and the Securities and Exchange Commission (SEC) published rules to help investors avoid fraud. The main recommendations included: ensuring that the establishment of the regional center had been approved by the Immigration Service; requesting proof that papers were sent to the Immigration Service by the regional center; obtaining evidence from the local district administration that the regional center had received a building permit, and so on. The issuance of these rules reflects the U.S. government’s concerns about the lack of vetting for regional centers and development companies.

One of the main allegations Senator Chuck Grassley makes against the EB-5 program is the lack of background checks on employees. For many years he has spearheaded the initiative to reform the program. In his reports and speeches he calls the program «corrupt» and “opaque.” His main arguments include: money may be spent by the companies that accept investments before the project’s business plans are approved;

Regional centers may charge customers additional fees beyond the required investment;

Jobs created need not necessarily be created inside a facility that attracts money; jobs created in the area as a result of this project are also counted, and the proof of job creation is rather conditional;

The origin of the money from foreign investors is not checked thoroughly: for example, explanations that the money was received as a gift or is a bank loan are considered convincing.

Employees in regional centers are not required to pass a background check of their personal and professional lives;

The process of investment receipt is not transparent: it is not clear what regional centers tell investors about the project that’s accepting investments;

Absence of restrictions on the types of objects allowed to be part of the investment program — expensive hotels, casinos, and resorts may also accept investments on preferential terms if they are located in an area that’s considered to have a high level of unemployment.

California Senator and Democratic Party representative Diana Feinstein criticized the program when Jared Kushner, the son-in-law of President Donald Trump, held a conference in Beijing advertising the EB-5 program to Chinese entrepreneurs and inviting them to invest in the construction of his large residential complex in Jersey City. She pointed to the existing conflict of interest. Although Kushner resigned as CEO of the company in January 2017, several months before the incident, his sister continued to work there. Kushner’s companies received money from investors under the EB-5 program while he was still actively participating in its operations.
Part 4. Intermediaries in the EB-5 investment program

The investor applies to the program’s intermediaries when applying and investing. They have the opportunity to deposit the funds directly to the company (meaning invest in a new or existing business) or apply through a regional center. After a full or partial investment, they must file a petition with the Citizenship and Immigration Service. To do this, they hire an immigration attorney. Communication with each of the intermediaries in the program partly defines the final result — whether the investor will receive a green card, and whether the full amount of investment will be recouped. We have analyzed potential risks that may arise while the investor is working with the intermediaries of the program.

4.1. Companies that attract investments

In 2016, Transparency International-Russia employees through the FOIA request received a list of regional centers and private companies from the U.S. Department of Homeland Security that accepted money from Russian investors under the EB-5 program of that year. The list included companies owned by Russian businessmen and politicians who were suspected of financial fraud before or after participating in the program.

The owners of these companies, Uglanov and Lysich, raised money under the EB-5 program but should be identified as politically exposed persons (PEPs). PEPs are people who, whether they hold public office or not, directly influence the distribution of public resources and/or political processes. PEPs in the U.S. are controlled by the Department of the Treasury: its Foreign Assets Control Agency (OFAC) has several programs in place to combat corruption-related crimes involving foreign nationals.

The sanctions program aimed at citizens of Ukraine and Russia was launched in 2014 in response to political developments in Ukraine. The sanctions were imposed on individuals and companies that, in the opinion of the U.S. Treasury Department’s Office of Foreign Asset Control, “undermine Ukraine’s democratic processes and institutions.” Financial transactions carried out to support this kind of activity in Ukraine are also under supervision. The property of Russian civil servants in the U.S. is also in the sanctions list and isn’t permitted to be transferred, sold, exported, etc. Restrictions have also been placed on financial transactions involving property related to the industrial sector in Russia and on transactions related to the people already on the sanctions list.23

In 2013, an Intergovernmental Organization called the Financial Action Task Force (FATF) published a document entitled «Recommendations 12 and 22,» requiring financial institutions to treat the families and associates of politically exposed persons like the sanctioned persons themselves. FATF specifically focuses on foreign nationals. The families and close associates of foreign PEPs are linked to higher corruption risks in domestic and international financial transactions when establishing new ventures and working in existing ones.24

In the United States, these recommendations are implemented through the Financial Crimes Enforcement Network (FinCEN). This is a bureau in the Treasury Department that recommends, among their other directives, that banks conduct legal due diligence of clients on the list of foreign PEPs.22 The agency’s recommendations list the main approaches that foreign PEPs use to enter the U.S. market: using offshore companies to conceal their property, selling government assets to U.S. corporations, and/or purchasing real estate. Most commonly, foreign PEPs’ real estate transactions involve large sums of money, non-transparent financial transactions, or complex transactions involving multiple participants which allows large amounts of money to be laundered in one move.25

The Financial Crimes Network also lists the main reasons a transaction should be flagged for extra scrutiny: the use of a third party (company or person) to conceal the name of the PEP; the use of their family and close relatives as company owners; the transfer of finances to accounts in a country to which the PEP does not have an obvious link; real estate or other assets belonging to states with corrupt regimes, including foreign high-ranking civil servants.24


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4.2 Case study #1: Connections to the political elite

Three companies, Smile Land, Inc., Protogroup, Inc., and Daytona Parking Garage, LLC are owned by Alexey Lysich from St. Petersburg. All three are American companies, registered in Florida. The Lysich family, with Alexei’s father Pyotr Lysich at the helm, has been engaged in the hotel and food business in St. Petersburg since the 1990s.

In 2014, Smile Land, Inc. had transferred $710,000 to an offshore company, Solinger Trading Limited, registered in the Bahamas and published in Panama Papers. In 2016, the U.S. Revenue Administration (IRS) began reviewing the company. Lysich stated that Solinger Trading Ltd. acted as an intermediary in purchasing fruits and vegetables for Protogroup, Inc. and the total sum of the transaction was $71 million, on which Solinger Trading Ltd. paid a commission of one percent.25

The IRS found that Solinger Trading Ltd. was not involved in the sale or production of goods, but helped other companies reduce their tax burden illegally.26

Also, a former partner of the Lysich family, Semyon Kremer, filed a lawsuit accusing Alexey Lysich of demanding that Kremer sign a forged backdated document about the $710,000 to Solinger Trading Ltd for purchasing fruits and vegetable and submit it to the IRS. According to Kramer, he refused to sign the papers, broke off relations with the Lysich family, and went to court. The case is still pending and was transferred to Florida by request from the Lysichs.27 Originally it was in the jurisdiction of New Jersey, where Kramer resides.

Alexey Lysich is a co-founder of the Walkanye Limited offshore company, which is registered in the Seychelles.28 Information about this company was also disclosed in the Panama papers. When asked by a journalist from The Daytona-Beach News Journal in 2018, Lysich stated that the person was «probably his namesake.»29 However, the Panama Papers display the Russian home address of the founder.20 In Roseneet, the Russian Unified State Register of Rights on Real Estate, Alexey Petrovich Lysich and Irina Alekseevna Lysich are listed as the owners of an apartment at the aforementioned address in St. Petersburg. A woman with the same name manages Daytona Parking Garage, LLC, a company that also raised money from a foreign investor under the EB-5 program in 2016.

Moreover, Walkany Ltd. was mentioned as a co-founder of the British company Avysen LLP, registered in 2012.30 According to its official documents its ownership was transferred to Alexey Lysich’s father in 2017. A few years earlier Avysen LLP purchased 22 percent of the same Protogroup, Inc. Avysen LLP also held 30 percent of Lysich’s Daytona Parking LLC’s assets and invested in U.S. company Inqvis, Inc.21, also owned by Alexey Lysich.32 Avysen LLP had $12 to $44 million on its books in various years.23 Thus, the offshore companies Walkary Ltd. or Solinger Trading Ltd. could serve as an entrepôt for family money coming from Russia to the British Avysen LLP for further investment in their own American companies. Both Solinger Trading Limited and Avysen LLP were registered by the law firm Mossack Fonseca.

Alexey’s father, Petr Lysich, owned construction, hotel, and retail businesses in St. Petersburg. He owned the Staybridge Suites and Holiday Inn Moskovskoe Vtoroa, 55 hotels According to Contour Focus Lysich’s total income, 2017 added up to 485 million rubles. According to a source with access to databases of private information, in 1998 Petr Lysich was involved in a criminal case on tax evasion in Russia. It was subsequently withdrawn.

For the last 20 years, the senior Lysich, together with the former head of the St. Petersburg Stock Exchange Viktor Nikolaev, has been a co-founder of the St. Petersburg company, Petrobalt-T LLC. It owned a grocery store in St. Petersburg. In the early 90s Nikolaev worked as the First Deputy Head of Glavsnab in the Leningrad Executive Committee. After the establishment of the St. Petersburg Commodity Exchange he became its president. The official website of the exchange published a certificate of registration, signed by Vladimir Putin, who at the time worked as the Chairman of the

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32 According to the Beta Companies House registration office, company names are listed as Daytona Parking LLC and Inqvis LLC. The Bureau is just the registering authority and there are known cases where inaccurate information has been added to the database.
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Mossack Fonseca was suspected of setting up offshore companies for politically exposed persons, senior government officials, and businessmen to carry out illegal activities: buying real estate, withdrawing finances, etc. Many statements were made about offshore companies registered by it in Nevada. In particular, Argentine prosecutors found links between these entities and former presidents Cristina Fernandez de Kirchner and Nestor Kirchner. They faced charges of corruption.28

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Committee for External Relations of the Mayor’s Office of Saint-Petersburg. Victor Nikolaev is also the co-founder of the non-profit partnership called «DIP-Club,» which unites more than twenty diplomats, politicians, and entrepreneurs, including Yuri Kovalchuk and Sergei Naryshkin. Yuri Kovalchuk was included in the U.S. sanctions list for being part of Vladimir Putin’s «inner circle» and is, in the words of the U.S. Treasury Department, «a close associate of the head of the Russian Foreign Intelligence Service and is also on the U.S. and EU sanctions lists. According to paragraph 49 of the FATF Guidelines, politically exposed persons should include not just high-ranking officials, but also persons from their inner circle (close associates). The FATF explicitly mentions business partners as such «close associates.» A similar approach was demonstrated in Article 3.11 of the European Union’s Directive N 2015/849, which includes the concept of «close associates» including «persons who, together with the PEP, own a legal entity or legal structure or have other business relationships with the PEP.» The establishment of a legal entity by Viktor Nikolaev in concert with politically exposed persons (Naryshkin and Kovalchuk) should also be interpreted as a general business relationship and ownership of a general legal structure together with a politically exposed person. Thus, the partner of Sergei Naryshkin and Yuri Kovalchuk, Viktor Nikolaev, should also be classified as a PEP. It can be concluded that Lysich Senior’s Russian business partner is a politically exposed person. According to anti-money laundering legislation, a relationship with politically exposed persons creates additional money laundering risks. Persons classified as PEPs and their business partners should undergo additional checks when opening accounts and performing financial transactions. The UN Convention Against Corruption sets out a duty for authorities to closely monitor not just the bank accounts and sources of finances of people with public authority, but also the accounts and sources of their close circle. At the same time Russian law, when determining the need for enhanced control over Russian officials, refers only to the closed list of PEPs, which does not comply with the recommendations of FATF (paragraph 1 of Art. 7 115-F2). Only concerning foreign PEPs is there an indication of a need to use these recommendations (paragraph 4 of the same article).

Petr Lysich, with powerful connections in Russia and abroad, moved to the United States in 2007 and settled in the home of his friend, Semyon Kremer, in New Jersey. Together they registered Smile Land, Inc. They also bought land in Palm Coast, Florida, and built a Days Inn by Wyndham hotel. His son, Alexey, also moved to the United States. Together they built another hotel and bought several houses and apartments in Florida worth between $1,300,000 and $3,000,000.

The owners of this property are Petr Lysich himself and his sons, Dmitry and Alexey. Semyon Kremer also mentions a house in Palm Coast located at 61 Points of Woods, Palm Coast, FL in his accusations. In the suit, Semyon Kremer claims that Alexey Lysich rents out the property, but does not pay taxes on profits.

In 2018, Alexey Lysich’s company Protogroup, Inc. began construction of another $192,000,000 hotel on the coast in Daytona Beach, Florida. The construction attracted the attention of local newspaper journalists from The Daytona-Beach News Journal and they contacted Alexey Lysich directly. In a telephone conversation he responded that the statements made by the IRS were «nonsense» and that his family had no ties to Russia’s political elite.

41 The original text of the FATF guidelines uses the term “politically exposed persons” while the Russian translation posted on the Federal Service for Financial Monitoring (Rosfinmonitoring) website uses “public officials”, which, in our opinion, is not a correct translation
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44 -/-.
Another company on the list provided by the U.S. Department of Homeland Security, Niko Petroleum Retailers LLC, belonged to Pavel Uglanov, the former deputy minister of industry and energy of the Saratov region. He was accused of attempted large-scale fraud in Russia and sentenced to three years in prison.46 Niko Petroleum Retailers LLC was based in Broward County, Florida.

Uglanov held the position of deputy minister of industry and energy in 2011, owned a network of Niko gas stations and at the end of that year he moved to the U.S. and opened a Niko Petroleum gas station. In Miami he bought several properties worth between $1,430,000 and $1,780,000, including an apartment in the Trump Hollywood complex.46 In 2016, his company raised investment money under the EB-5 program. The same year Uglanov returned to Russia.

Upon his return he tried to buy a position at the Russian Federal Agency for Fishery and paid a former deputy of the United Russia party Alexei Krasilnikov about 15,000,000 rubles (approximately $202,000).47 Krasilnikov convinced him that he could help get him appointed to the Agency.48 Later, he requested another five million. Uglanov went to the police and Krasilnikov was caught red-handed. However, during the investigation Uglanov succeeded to get his money back, conspired with his lawyer and demanded that Krasilnikov pay him around 30,000,000 rubles (approximately $404,000).46 Krasilnikov reported this to the police and a new case was brought against Uglanov, resulting in his detention when he tried to receive his money.48

To get the criminal case started quickly, Uglanov bribed the police officers who controlled the case — Andrey Puchkov, the head of the police department for the Western Administrative Okrug of Moscow and his deputy, Igor Petukhov. Puchkov was later dismissed from his position in connection to the scandal case of investigative journalist Ivan Golunov, who had drugs planted on him by the police in the summer of 2019.49

In October 2018, a district court of Moscow sentenced him to three and a half years’ imprisonment under Article 159 of the Criminal Code of the Russian Federation (an attempt of fraud committed by a group of persons with prior conspiracy on a particularly large scale).50

The examples discussed in our work fall under several indications of such operations: Lysich transferred money to the accounts of an offshore company; his U.S. company’s money transactions raised suspicions with the IRS, his father was suspected in a criminal tax evasion case in Russia; and the companies also had financial ties to a London firm co-founded by the Lysich’s offshore company.51 Pavel Uglanov was a high-ranking official in the Saratov region, after holding that post he moved to the U.S. and started buying expensive real estate. Upon returning home he participated in bribery of officials and was convicted of fraud.

These are just two cases identified based on a limited amount of information received through a FOIA request. Without publication of more details, we don’t know what other EB-5 cases have been. If the one-year sampling of companies attracting money from Russian EB-5 investors, revealed at least 2 cases with questionable participants of the scheme, it is clear that full yearly lists on all investors and projects will show more examples of them.

From March to July 2019, we contacted five regional centers in the United States. Their offices are located in Illinois, California, Florida, and Washington. These are large regional centers with dozens of completed projects. Their representatives suggested that we talk to specific lawyers that the centers had been working with for a long time. According to them, most often it is the regional center that finds a lawyer for the client. If the client has found one on his own, the center contacts them. If the lawyer seems insufficiently qualified, they refuse to cooperate with the client and ask for the client to find a new lawyer. The cost of the services of the regional centers is about 50,000-60,000 dollars.

All the regional centers’ consultants stressed that they are engaged in «elite construction» projects; expensive residential buildings, offices, and five-star hotels. Construction of residential complexes remains the main focus of their work. The centers promise to return the invested money in five to six years from the moment of receipt. They often work with the same developers on several projects in a row. Long-term relationships between the program intermediaries create conditions for internal agreements, corruption schemes, and conflicts of interest.

One of the regional centers noted that Florida, Massachusetts, Arizona, and California are the main destinations for emigration on an EB-5 visa. There is a clear connection here with the areas identified as areas of high risk for dubious money transactions (according to Geographic targeting orders).

In 2016, Transparency International-Russia interviewed ten Russian agencies and seven U.S. lawyers associated with the EB-5 program. In the course of the survey Russian consulting companies stated that illegal origins of funds would not be an obstacle to successful investment. The representatives did not disclose any information about potential difficulties in applying if the client fails to prove the legality of the funds to be invested.52 Russian companies tried to persuade «potential investors» to sign contracts as soon as possible and to transfer operations to U.S. companies with whom they cooperate.

Six out of seven U.S. consultants noted that it is imperative to prove the legality of the money being invested. One suggested contacting an experienced attorney who specializes in working with Russian investors and could arrange documents in a way that no one would doubt the legal origin of funds.

Insufficient control on the part of the relevant Russian authorities leads to violations of official rules for documentary when applying for EB-5 visas. Since nine out of ten surveyed Russian companies stated that lacking documents regarding the origin of the investment would not be a problem when applying, the authors of the study concluded that Russian companies often forge documents, providing false information on the sources of funds. U.S. companies are under stricter control, evidenced by the fact that just one in seven intermediaries surveyed suggested circumventing the rules. However, Russian partner companies are likely to continue to supply clients to their U.S. counterparts and help them prepare documents that do not reflect the real sources of funds.

Russia ranked 137 out of 180 in the 2019 Transparency International corruption perception index. The general level of corruption in different governmental services in Russia increases the risks of issuing forged documents. In 2018, almost 6 thousand people were convicted for bribes in Russia.53 However, Russia’s Justice Ministry has proposed exempting officials in “exceptional circumstances” from anti-corruption regulations in the new draft legislation.54

There are numerous cases of violation of law by police officers and regulatory authorities. The recent cases include police officers selling drugs in Moscow55 and police officers planting drugs to an investigative journalist.56
From March to July 2019, we conducted ten interviews with lawyers working in the U.S. on EB-5 investor applications: four Russian-speaking and six English-speaking. Introducing himself as an investor from Russia, the investigative journalist told the lawyers that they wanted to apply for green cards for himself, his wife, and minor daughter, and that he had a small private business that did not generate significant profits.

The origin story for the funds was as follows: his father worked as deputy governor in one of the Russian regions, he resigned five years prior and retired. There are currently no documents that confirm that he earned this money in civil service. It was also said that his official salary was not sufficient to earn such a sum of money. All the lawyers interviewed replied that it was necessary to confirm the legality of the origin of the funds, but suggested specific ways to circumvent this rule, for example, by providing certificates and contracts from familiar entrepreneurs for paid consulting services by the father. Every lawyer also stated that a contract for the sale of real estate is one of the most convenient ways to demonstrate the legal origins of funds. One of the lawyers interviewed noted that the longer ago the apartment was bought, the better, because in the past housing costs were lower, and therefore the purchase of an apartment would not be considered as evidence of high income of the father. In cases it was stated the father wasn’t planning on selling his real estate, the lawyers suggested concluding a conditional contract of sale with friends or relatives. Several lawyers noted that their clients did exactly that.

One of them called the situation «ideal» if the apartment was obtained through privatization. He also suggested procuring a loan from a bank against the security of the apartment, but it still would be necessary to prove the legality of the funds for the purchase of the apartment. Another lawyer noted that the submission of documents proving the payment of taxes from the entire salary was not necessary. If «the client’s father received a grey salary on any personal bank account that belonged to him, the excerpt of this account would be sufficient to prove the legality of the origin of funds.»

Another lawyer noted that the position of the father should not be indicated in the documents at all, and the arrival of funds should be formalized through the sale of apartments or loans secured by real estate. «We will show your diploma, documents about your company, credit. Your father’s information could provoke unnecessary questions. If in general the application seems convincing then no additional questions usually arise,» she said. Her clients received green cards without additional checks in the past, but recently government officials have been «asking more questions.»

Only one out of ten lawyers replied that the only move for an «investor» was to find a friend or relative who could prove the legality of the entire amount to be invested. All the lawyers we interviewed in July noted that the news about possible changes in the rules of the program triggered a large influx of clients who started to provide documents in a hurry.

Two of the ten law firms we contacted have offices in Russia. They assist American lawyers in preparing documents. The lawyer at a Moscow firm suggested showing the receipt of funds in a variety of ways: the official salary of the father and his pension, cash loans backed by real estate or funds from the sale of real estate, the salary of the client, or shares in companies, stock, securities. She also suggested making a deal with any company and asking them to nominally register the client at a job to show additional salary. According to her, if it is possible to prove the legality of the origin for the 400,000 dollars, it will not be a problem for their company «to prepare documents showing the receipt of a hundred thousand more.» If even more money is needed, «it will be more difficult.» According to consultants, when applying for a green card under this program, the U.S. authorities consider income in the past 15 years.

The average cost of American attorneys’ services for submitting documents under the EB-5 program is $25,000-35,000. Another $20,000-25,000 is needed for the preparation of documents and filing a petition. The average waiting time after filing is two years. If the petition is approved, they will need to prepare the interview forms which cost $2,500 per person. In two years, it will cost $5,000 per family member to remove green card restrictions. Each stage is accompanied by additional costs for the document delivery.

U.S. lawyers in turn help with understanding what documents are available for the petition, trying to provide additional solutions for difficult situations, and maintaining relationships with regional centers. Regional centers in the U.S., attorneys, and Russian intermediary companies work in tandem, recognizing that their profit only increases when they’re creating favorable conditions for the client at each stage of document processing. This creates a conflict of interest — the regional centers have agreements with attorneys who help their clients petition for a green card, so they send clients to them, depending on their language and country of origin. Lawyers advise their clients to apply only to specific regional centers.
During the 29 years of the EB-5 program, there were two investment tiers: $500,000 and $1,000,000. Projects located in areas defined as rural or areas of high unemployment provided regional centers with the opportunity to accept a reduced investment of $500,000 instead of $1,000,000, making the offer more attractive to investors.84

The vast majority of regional centers accept reduced investments. To obtain appropriate permits from the State Economic Development Agencies, they must demonstrate that their project is located in or near a Targeted Employment Area (TEA).

The process of obtaining this status and the number of districts that receive it is also a vulnerable part of the program. The list of areas with TEA status is updated every year. The official rule is that the unemployment rate in the area in question should be 1.5 times the national average. Volume 8, Section 204.6 of Volume 2016 of the U.S. Code states that each state may determine TEAs by applying to the U.S. Bureau of Citizenship and Immigration Services. The state government must notify the Bureau of an agency, board, or other government body that will have the authority of designated areas of high unemployment. Local state governments are interested in attracting money to their region and are very active in sending applications.

The regional centers we contacted offered the "investor" the opportunity to invest in the construction of facilities in the prosperous states of California, New York, Florida, and the District of Columbia, as well as in the districts and cities of Oakland, Alameda (bordering the rich areas of San Francisco), San Jose, Manhattan, Brooklyn, Washington, Miami. All of these projects have received permission to accept reduced investments.

It is important to note that the applications do not deal with districts or large territories, but instead with small census tracts — the population of these areas ranges from 1200 to 8000 people.85 It is enough to have one TEA status land plot in the district to successfully obtain a permit to collect reduced investment amounts, explaining it with the proximity of this land plot to the construction site.

One of the regional centers that had opened a new project in Alameda County, California, in the spring of 2019 received a permit after applying to the Governor's Office for Business and Economic Development. In turn, the office sent an official document notifying the Immigration Service (we have a letter to this effect). The construction site is not an area of high unemployment, but the center had included two other nearby sites, one of which already had this status. However, the official data on the current year’s unemployment rates are determined in the following year — information on 2019 U.S. unemployment rates will be published on May 20, 2020.

Another regional center’s project is the construction of a residential complex in Auckland, 20 kilometers from downtown San Francisco. This project has also received permission to collect a preferential amount of investment. The center has included 12 territories around the construction site in its letter, one of which has the TEA status.

Another center represents projects under construction in New York. Their residential complex, hotel, and business center will appear in the following districts — Chelsea, Midtown West (near Times Square) and Flatiron (near Madison Square). Plots in these expensive areas of New York City also have the opportunity to attract investment on "preferential terms."

According to the representatives of regional centers, it is common practice to include between three and twelve districts around the construction site, while only one of them holds TEA status. In their applications they state that the future project will create jobs for the residents of the TEA area. Even if it loses its status the next year it will not affect the investment project: the money will be collected, and construction will begin.

TEA status is given to a site based on the results of a population census, calculated by the proportion of unemployed people in relation to the total number of residents. All major cities in the United States have their disadvantaged areas, where people who have been living on cash benefits and/or are engaged in informal activities for years live. These areas are home to "social housing."81,82 At the end of the project’s construction, regional centers and the implementing companies do not provide any official information to confirm that people from high unemployment sites were indeed employed on the project.

The US Department of State statistics on the total numbers of EB-5 visas shows that the increase in the number of issued visas occurred in 2008-2009 when the US economy had been suffering from the global financial crisis. In 2008, the number of EB-5 visas increased almost three times compared to the previous year and almost ten times compared to 2005: 2005—158, 2007—471, 2008—1,099, and 2009—3,222 visas.83 The figures kept rising with the biggest Asian share in the total number. In 2014, the total number of the EB-5 visas was 9,228 and investors from Asian countries got 8,897 of them. The situation remains the same nowadays. In 2019, the USA issued 7,889 EB-5 visas giving 85 percent of them to Asia with China, South Korea, Vietnam, and India as leaders. It is interesting to mention that four investors from North Korea also received green cards through the program in 2019.

Impact of the programme

There is no publicly available information about the TEAs or finished projects. Based on the number of I-526 forms received by USCIS,84 we can conclude that around $7 billion in capital investment is made through the program annually. The actual number of annual applications is higher than the number of issued visas because of the yearly quota of 10,000 visas. The reasonableness of the investment is questionable in regards to the economic risks that it brings in the country. Additionally, the residential complexes do not create long-term jobs and aim to meet requests of specific wealthy social groups.

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<th>Table on visas for EB-5 investors issued in different years</th>
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84 USCIS. “Number of Service-Wide Forms by Fiscal Year To-Date, Quarter and Form Status.” Accessed January 23, 2020. URL: https://cis.uscis.gov/site/default/files/2018-02/AIForms_2017.pdf.
The new Fairness for High Skilled Immigrants Act (H.R. 1044) was introduced in the House and Senate in 2019. This activity can increase the per-country cap on family-based immigrant visas from 7% of the total number of such visas available that year to 15%, and eliminates the 7% cap for employment-based immigrant visas. It also removes an offset that reduced the number of visas for individuals from China. If the act goes through the Congress, the waiting time for Chinese investors will be significantly reduced.

Shruti Shah, President of the NGO Coalition for Integrity, and former Vice-President of Transparency International USA, said: “It is important to discuss not just the mistakes and failures of the EB-5 investment program itself, but also the basic lack of positive results. The program was conceived as an aid to economically unstable regions in the U.S., but it did not achieve its goal even after many years — the states at the bottom of the economic rating do not have investment projects because their geography is disadvantageous to regional centers and investors.”

The main problems remain insecurity and non-transparency. The poor checks run on the applicants and lack of information during all stages of the program make it very vulnerable to money laundering and tax evasion.

No information is publicly available on the specific numbers of TEAs. However, based on the list of EB-5 projects received through the FOIA request in 2016 and the number of experimental interviews with regional centers’ representatives presented in the list, we concluded that the highest number of TEAs were located in New York, Florida, California, and Texas. The new rules from November 2019 made DHS responsible for the TEA assignation taking this responsibility from states’ authorities. However, it does not resolve the key transparency issues: information on TEA assignations and causes of the assignations should be regularly published. The authorities have to publish an explanation of the causes of an area getting such status.

The TI-R’s analysis of the list of companies that used investments from Russian EB-5 applicants in 2016 revealed two cases with high corruption risks. There is no available information on who obtained visas through these companies. The experiment with lawyers and regional centers focused on their professional methods showed that these steps create significant risks of using forged documentation and money laundering. Thus, the high unemployment status of the districts is received by territories in the richest states, authorities do not check backgrounds of employees at regional centers, immigration attorneys and regional centers work in tandem to increase each other’s profits, lawyers offer options on how to present illegal income so authorities do not have any questions, and Russian consultants are ready to falsify documents.

The system of checking of regional centers should be much more developed and stricter. The found violations of the anti-money laundering regulations should lead to serious consequences for the lawyers and regional centers’ managers (professional sanctions, license suspension, etc). The USCIS needs to monitor the lawyers’ work since lawyers have considerable authority in the process of preparation of applications and they are in personal contact with investors for a long time. Lawyers help petitioners to prepare and assemble documents on the origins of income. The regional centers create a business plan and written form where they explain that an investment will create at least 10 new jobs and positive economic impact.

The USCIS website contains information about the EB-5 Regional Center Compliance Reviews that aim to “verify their information and enhance the integrity of the program”. The USCIS employees research information in government systems, review commercial and public records, and conduct site assessments. They can also ask regional centers to provide additional information. However, “if the regional center principal expresses an unwillingness to participate in the site assessment, the visit will be canceled”.66

The USCIS employees’ background.

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It is hard to predict whether the new EB-5 rules will change the way the investment program works — it all depends on how the U.S. Department of Homeland Security will monitor its implementation, how lawyers and regional centers’ work will be controlled, and which projects will be chosen to receive the investment. However, the system, which for many years has been generating high corruption risks at each stage, requires a systematic and long-term restructuring.

Center for Anti-Corruption Research and Initiatives "Transparency International – R",
107031, Moscow, Rozhdestvenskiy bul'var, 10/7, Bld. 1, Office I
+ 7 (495) 915-00-19

Autonomous non-profit organization
"Center for Anti-Corruption Research and Initiatives"
Transparency International-R"
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