

Gateways to Citizenship and Hospitality: Hotel Financing through EB-5

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In September of 2012, the U.S. House of Representatives voted to extend the EB-5 Regional Center Pilot Program through September of 2015¹. This is more than another proverbial act of Congress; it is in fact very timely news for hoteliers. Financing for hotel projects through traditional sources remains scarce, and the EB-5 program can help investors complete the “capital stack” necessary to finance a hotel. Recent high-profile EB-5 hotel investment campaigns include the NYLO South Dallas hotel, the Knickerbocker Hotel in Times Square, and the 377-room Marriott in Los Angeles. With the energy behind these EB-5-funded projects rippling across the country, more hotel developers are considering EB-5 financing as a source for financing new hotels and hospitality careers.

EB-5 Regional Centers

A brief background: The EB-5 visa for Immigrant Investors, created by Congress in 1990, targets qualified foreign investors seeking U.S. citizenship. The visa provides a route to permanent residency (a green card) for foreign nationals who invest at least \$1,000,000 (or \$500,000 in a “Targeted Employment Area”²) in a business while creating or preserving at least ten full-time jobs for U.S. workers³.

Under a pilot immigration program enacted in 1992 and regularly reauthorized since, certain EB-5 visas are set aside for investors in “Regional Centers” designated by U.S. Citizenship and Immigration Services (USCIS) based on proposals for promoting economic growth. Investments made through Regional Centers can take advantage of a more expansive concept of job creation that includes both “indirect” and “direct” jobs. Direct jobs are jobs created within the new business itself. Indirect jobs are created by others when the EB-5-created business buys materials, equipment, and services. The ability to include the creation of indirect jobs permits larger-scale real estate projects such as hotels to become viable EB-5 investments.

The EB-5 program played an important role in financing for new hotel development during the economic downturn. In the aftermath of the financial crisis of 2008, developers were looking for alternative forms of financing when capital from traditional sources evaporated. The EB-5 program has proven to work as an alternative source of financing for new hotel developments and hotel expansions on projects such as the W Hollywood in Los Angeles and the Courtyard by Marriott and Residence Inn by Marriott in LA Live.

The EB-5 program’s Regional Center provision provides the lowest barrier to entry for hotel investments. The USCIS defines a Regional Center as “. . . any economic entity, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment⁴.” The following provides some guidance for hotel investors and developers applying for status as a USCIS Regional Center:

Summary

The EB-5 immigrant visa program, around for more than 30 years, is gaining momentum as a vehicle for financing hotels.

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1. *Determine the proposed Regional Center's geographic area.* The area defined as a Regional Center needs to be contiguous and must contain the proposed project's location. If the project is located within a Targeted Employment Area (TEA) as determined by a state's governor or the USCIS, then the project will qualify for the EB-5's reduced \$500,000-per-investor threshold. Nearly all EB-5 projects are sold to investors at the \$500,000 level; hence, a proposed hotel not located in a TEA would require a minimum investment of \$1 million, which will be difficult to market to investors.
2. *Create an economic report detailing how the EB-5 capital investment will create the qualifying EB-5 jobs, either directly or indirectly.* This analysis must be supported by economically and statistically valid forecasting tools. HVS has been retained for thousands of hotel feasibility studies that determine whether sufficient demand exists to support a proposed hotel. This expertise is invaluable in situations where the USCIS requires evidence of excess demand in job creation models before establishing a Regional Center.
3. *Detail the proposed project's predicted impact on household earnings, demand for business services, utilities, maintenance and repairs, and construction both within and outside the geographic area of the proposed EB-5 project.* These are the construction-related and indirect jobs that prove crucial to qualifying an area for Regional Center status. A qualified economic analyst is critical to certifying this information for the USCIS.

A New Issue: Tenant Occupancy⁵

On February 17, 2012, the USCIS released a memorandum concerning what it calls the "tenant-occupancy" economic methodology. According to the USCIS, this methodology seeks credit for job creation by independent tenant businesses that lease space in buildings developed with EB-5 funding. Many EB-5 Regional Center applicants were sent a standard request for evidence (RFE) that contained the following introduction:

USCIS has concerns that the attribution of certain direct jobs to the EB-5 investment may not be based on reasonable economic methodologies, and therefore do not demonstrate in "verifiable detail" that the requisite jobs will be created. Rather, contemporary economic methodologies appear to indicate that such jobs would more appropriately be attributed to the tenants themselves and not to the regional center because the demand for labor precedes the decision about where to house that labor as a general economic principle.⁶

Conclusion

New hotel construction and acquisitions continue through a select number of developers with deep cash reserves, well-established relationships, and EB-5 financing.⁷ The EB-5 route has gained mainstream acceptance across the hospitality industry, including with leading hotel developers and brands. The program involves taking certain risks but provides a potentially attractive way of raising considerable financing for new hotel development, primarily while funds through traditional sources remain hard to find. The following table shows how the number of EB-5 visas—representing a wide diversity of foreign investors and U.S. projects—has grown since 2006.

EB-5 Visa Issued by Year⁸

FY2006	744
FY 2007	806
FY 2008	1,443
FY 2009	4,218
FY 2010	1,885

FY 2011	3,463
FY 2012	7,641

The 2012 fiscal year realized an especially significant rise in EB-5 visas, and the trend of escalation over the past three years is expected to continue. Hotel developers and investors have driven the strong demand for EB-5 financing. Developers and investors should enlist the guidance of an experienced team of economic and hotel analysts, whose help will prove indispensable toward raising capital and establishing a project or Regional Center in the EB-5 program. In the big picture, Congress's reauthorization of EB-5 Regional Centers will have a positive effect on new hotel project financing and new job creation in the U.S. in the coming years.

¹ USCIS Program Extension Alert <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnextoid=b117cc278d03a310VgnVCM100000082ca60aRCRD>

² Defined as a rural area or a location with high unemployment.

³ These jobs exclude positions held by the investor and members of his/her immediate family.

⁴ U.S. Citizenship and Immigration Services Web site.

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=2785a5f224a2e210VgnVCM100000082ca60aRCRD&vgnextchannel=2785a5f224a2e210VgnVCM100000082ca60aRCRD>

⁵ EB-5 and the Tenancy-Occupancy Issue as Applied to Hotel Employees. Catherine DeBono Holmes, Victor T. Shum. March 29, 2012. <http://www.hospitalitynet.org/news/4055477.html>

⁶ U.S. Citizenship and Immigration Services memorandum of February 17, 2012

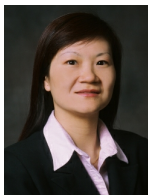
⁷ Report from the 2013 ALIS hotel investment conference

http://hotellaw.jmbm.com/2013/01/alis_conference_2013.html

⁸ U.S. Department of State (through the Association to Invest In the USA)

<http://iiasablog.org/wp-content/uploads/2012/10/IUSA-FY2012-EB5-VISA-STATS-Source-DOS.pdf>

About Li Chen



Li Chen, MAI is a Vice President with the HVS Los Angeles office. HVS leaders now live in and work from 40 markets throughout the North American region, including San Diego, LA, San Francisco, Portland, Seattle, Vancouver, Las Vegas, and Phoenix in the West. Li earned her Master's degree from Michigan State University's Eli Broad College of Business and has extensive hotel experience, including front office and accounting department experience at the Renaissance LAX. Li travels and works extensively in the southwestern U.S. for the Los Angeles team. Contact Li at (310) 755-8293 or lchen@hvs.com.