

Homeland Preparedness News Podcast

***Transcript**

The future of EB-5 with Aaron Grau of II USA and Rajvir Batra of the American Immigrant Investor Alliance

May 5, 2022

Murtha: The following Podcast is a production of Macallan Communications publishers of Homeland Preparedness News. The mission of HPN is to inform and educate the American public about the efforts undertaken by its government and private sector to protect them from the ever-evolving threats to the homeland. HPN can be found at [www dot homeland prep news dot com](http://www.homelandprepnews.com).

And welcome to the Homeland Preparedness News podcast. I'm your host, Jim Murtha.

EB-5, otherwise known as the Employment Based Fifth Preference category is a little known but very successful immigrant program that permits foreigners from all over the world to invest funds in a multitude of infrastructure projects across the US. Big ticket items like hotels, office towers and highways are built in exchange for green cards that confer residency to the investors in the United States.

This program created by Congress in the early 1990s, has injected billions of dollars in large construction projects that otherwise would have been funded with tax dollars, or not at all.

Overall, the program has been a success with hundreds of projects completed in just about every state. Infrequently, there have been a few bad actors who have misappropriated funds and cost investors a lot of money. But those examples are outliers and not representative of most of the participants.

Given its history and success one would believe that EB-5's continued existence would be just a formality for Congress. But one would be wrong. Last summer EB-

5 met an untimely fate and was sun-setted into the great legislative beyond. Attempts to continue the program fell short, and investors and their billions in capital lay in a grave just waiting for a priest.

But Washington being Washington is anything truly dead? For EB-5, the answer is no. In March, an opportunity in the guise of a \$1.5 trillion omnibus bill provided the defibrillator needed to jumpstart a reform bill that not only extended the program to 2027, but also injected some much sought after reform measures to keep the program on the straight and narrow.

Right now, the details on the regulatory structure of the program are being drawn up. But enough is known now to get an idea of what EB-5 will look like in the coming years. Joining us today to discuss the EB-5 program Aaron Grau the executive director of II USA, a not-for-profit trade group representing various interests in the EB-5 program and Rajvir Batra of the American Immigrant Investor Alliance.

Before we get into the substance of our conversation, I wanted to let our audience learn a little bit more about you and your organization. So, Aaron, tell us a little bit more about the II USA?

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Grau: Well, Jim, thanks for the opportunity. You know, II USA straight up is the industry trade association. For the EB-5 community, the EB-5 ecosystem, it is primarily focused on regional centers. That's how it got its start. But we have a growing number of other members, other stakeholders in the EB-5 community both at home and abroad. Everyone from business developers, bankers, real estate developers, obviously immigration attorneys and a growing number of investors as well have expressed interest in and understanding how the USA works. So, to put a button on it, I mean, II USA, Invest in the USA is the is the EB-5 trade association in the United States.

***Murtha:** Okay, Rajvir Batra, what about the American Immigrant Investor Alliance? What's that all about?*

Batra: Yeah, first of all, thanks for having us here. So, the American Immigrant Investor Alliance or AIA, we are the investor organization in the industry. We are relatively new. We were founded in April 2021, just a couple of months before the lapse of the program happened. And our job is basically to represent investors in front of Congress and in front of other industry stakeholders like II USA. And we

have a growing investor membership. Right now, more than 5000 investors have signed up already. And we were in this for the long haul.

***Murtha:** Okay. All right. Well, let's get let's get into the program itself. By most accounts, the EB-5 program has been a success. I mean, I have catalogued hundreds of really successful projects all across the country. And given that why is it that it suffered a near death experience last summer? Aaron?*

Grau: That's a good question. It'll always it'll be one debated and discussed for the ages. But I mean, the bottom line is that there is an element within the EB-5 community that felt that the deal that we had developed and put in place for passage under the unanimous consent process in the Senate was not quite good enough was not quite what the industry needed or deserved. And so rather, rather than take a bird in the hand, there was an effort to go for two in the bush, and that the outcome of that was elapsed program. And everybody going back to the drawing board, and I don't think I'm talking out of class anymore to just share or put some light on that. But that's essentially what happened.

***Murtha:** Rajvir, how did this limbo period affect the investors?*

Batra: I mean, first-of-all, because I wonderfully, there was, I think, an attempt to chase two in the bush set aside. For investors, I would say, not all investors are the same, you know, it's a very diverse group of people. And, for example, I will tell you, some investors didn't even know the program had lapsed. Some news was coming way before way back in January 2021. So, they have like this range of investors and different situations in positions in their life. And the lapse affected everyone differently. But I would say the overall impact of the lapse was very, very negative especially for investors who are in a huge backlog like Chinese investors. Their kids were aging out. They had invested all this hard-earned money in the United States economy. And they couldn't get their immigration benefits. It was just complete limbo. And I'm glad this lapse over. But it shouldn't ever have happened in the first place.

***Murtha:** The new legislation, and there's quite a lot of it, actually, I guess it's dozens of pages. It includes new integrity measures to clean up some of the rough spots. Aaron, what were some of the rough spots there? And how will the new guidelines work?*

Grau: I think the biggest rough spot was how investors were treated. I think that the integrity that Senator Grassley and Senator Leahy and Senator Cornyn and

ultimately Senator Schumer, and the House Judiciary Committee, and everybody on Capitol Hill was seeking to impart and infuse into the program was a measure of integrity that assured that in the good faith investors were protected from bad faith.

EB-5 individuals, I guess, I guess, right, for example, you know, if an investor crosses all the T's and dotting all the I's, and the vast, vast, vast majority of them do, makes an investment in good faith into a regional center into a new commercial enterprise on a job creating entity, you know, with the expectation and intent of creating us jobs for the purposes of economic development and ultimately receiving a visa green card, having done nothing wrong, and only to see that bad actors within that regional center or within that, that that deal structure. misbehave, causing the entire underpinnings of the deal to go south.

Unfortunately, previously, investors were left really holding the bag, forcing the scramble in an effort to not only save their investment, but also save their place in line toward a legal immigration. That is untenable. It has been for years. And it is, you know, the biggest element of this integrity initiative that I think will have the length, the longevity that it needs. I mean, it's all been about investor protection, and transparency for investors and to the administration.

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***Murtha:** I know the poster child for a bad project was the ski resort up in Vermont. And so does the new legislation pretty much make that almost impossible to happen again?*

Grau: Well, that's a good question. I think it makes it impossible for it to happen again, under the circumstances that had happened in the first place. I'm never going to second guess, the ingenuity of a bad actor. You can't ever legislate good behavior so to speak, you're confident that unfortunately, there will be misbehaving individuals that said it's certainly going to be a heck of a lot harder for anybody to mistreat or take advantage of investors now than it was before and I think that's always the point of public policy is to improve the state of affairs for the participants to protect people who need protection. And you know, unfortunately if a situation arises again II USA in conjunction with, we mean, we will be right back at the table in an effort to eliminate whatever loopholes somebody may have discerned and in the interim, but answer your question more succinctly. Yeah, it can't happen again, not the way it happened before.

***Murtha:** Rajvir did the integrity measures in the new legislation instill a lot more confidence in the program from current investors and maybe future investors going forward?*

Batra: 100% There is no doubt about that, like my organization fully supports the integrity measures in the reform Integrity Act. We think we needed them way back. We're glad they're here. Now, for us, the biggest integrity measure is grandfathering. So, the new law says that any investor who invested before September 30, 2026 would be permanently protected, or the program would lapse again in the future. And this is still a temporary program. It has only been extended till 2027. So right, this could happen yet again, we hope not. But the grandfathering provision will protect all existing investors who have invested till 2026. So that, for us is the biggest integrity measure. We do have concerns with a new bill, specifically about set asides. And I'm sure we'll talk more about the whole regional center redesignation thing going on right now. But on the integrity measures side, we're very happy.

***Murtha:** Would it be logical to assume that the new integrity measures could spawn a whole new round of additional investors?*

Batra: I think that's very, very possible. The EB-5 program, if you look at the news headlines, and the media coverage of EB-5, has largely been negative because of the few bad actors that are in the industry. For example, you're talking about the Vermont ski scandal, I think, I think headlines like that put off investors, especially because these investors, they are living in foreign countries, they are basically handing over their money to projects in the United States. And it's hard to do due diligence when you're outside of the country. So, I think this these new integrity measures will instill a sense of confidence going forward.

***Murtha:** Recently, the US Citizenship and Immigration Services, one of the governing bodies for EB-5 said that the regional centers, the organizations that put together investment groups will have to reapply to participate in the program. And I know that it's received a lot of coverage. Aaron, is this some just esoteric directive? Or is this really going to fowl-up things?*

Grau: This really fowls things up.

***Murtha:** How so?*

Grau: The congressional intent, and I know because I was there, congressional intent was to reauthorize the regional center program and instill it and support it with integrity measures that everybody needed to abide by. And of course, there was going to be some level of reconciliation between USCIS and existing participants in the program vis a vis those integrity measures.

But Congress never intended to eliminate the regional center program and start from scratch. And that's that is what and forgive me far be it for me to seem like I'm biting the hand that feeds me. I mean, II USA wants a productive, bilateral working relationship with USCIS. But unfortunately, their interpretation of the law at this point is so counterproductive. As to as to sort of force my hand and say that they are running afoul of congressional intent. They run the risk of turning the entire law on its head. Because if you force all regional center programs to start from the beginning, the number of issues are exponential and paramount.

For example, if you turn off the lights, and then turn them back on, and expect everybody from to start from scratch, and everybody needs to reapply, and USCIS receives 500 applications, and whatever form USCIS deems is necessary. Who gets who gets recertified first?

Who is it that USCIS decides we're going to work through this application before we're going to do this application and this business is going to get to startup first? It's a real shame because while these regional centers are waiting for recertification, they can do no business. There is no regional center program, it jeopardizes the position of the investors that have relied on those regional centers. And to say that it's really one to fall honestly, it's almost it's a huge understatement.

We have come so far over such a long period of time, to have to face an existential reality of the program. being eliminated because of the unintended consequences of this interpretation is more than disconcerting. It's like building a brand-new car and putting it in the road and not putting an ounce of gas in it. Yes, the program still exists. But guess what, it's going nowhere. It will not fulfill the congressional intent of business and job development. And investors are left once again, holding the bag. It's, it's horrible. And we have been imploring USCIS to consider these unintended consequences. And unfortunately, so far, it seems as though our pleas have fallen on deaf ears.

I know that the investors and their interaction with the program is through the resource centers. So how does this re application process? mess that up?
But I would like to hear from Rajvir? Good luck to you.

Batra: Yeah, so. So, a couple of days ago, USCIS came out with an FAQ page basically. And their statement is that existing investors by and large, should be unaffected by this new re designation, designation process. However, in my opinion, there still will be unintended consequences.

For example, for the next year or two, or however long it takes for USCIS to recertify, these regional centers, they can do no business. And we do not know how many will actually survive this period. What happens if a regional center goes bankrupt or shuts its doors down? And at the I-829 stage, the investor needs jobs, certification, evidence of jobs, job creation, basically, who do the top two, the reason Senators they invested with doesn't exist anymore. So, I think, in theory, even if USCIS says that existing investors are fine, I think there will be unintended consequences down the road, right.

***Murtha:** Being somewhat familiar with this process, I've been around government a long time, I know that the after a bill passes, sometimes that's where the real work begins. And when you're dealing with a bureaucracy whose job is to write regulations to support the framework of the bill, that's where a lot of crazy stuff happens. And I suppose, Aaron, is this one of those things where maybe you gotta go back to the authors, maybe to Grassley or to Leahy, and tell them what's going on?*

Grau: Yes. And we have, unfortunately, there seems to be a level of extreme fatigue on this matter on Capitol Hill. And an indication that, you know, this is obviously an administrative issue now. And again, technically, that may be the case. But there are messages that we that we look forward to sharing with the authors and supporters so that they clearly understand what these unintended consequences will mean to their intent.

For example, you know, as we were said, you know, if these regional centers are out of out of business or no longer able to exercise EB-5 related business, then what responsibilities do they have vis a vis USCIS oversight of the billions of dollars that they've invested on behalf of, of immigrant investors? I would argue not. I would argue that they have absolutely no need to say anything to anybody anymore, because they've just been told that they no longer exist.

If a regional center no longer has an obligation to report its activities on this one at USCIS. I would submit that the transparency element in the effort to eliminate bad

actors from this from this from this program is immediately evaporated. And all of the efforts that Grassley and Leahy wanted to assure elements to assure that were in place are gone, and bad actors could very well end up having a free pass. I don't I think that's what they meant. I don't think that's what they wanted to have happen. So, they need to be made aware of that we haven't taken those steps to open those channels formally yet, but we are in the process of developing, you know, legislative texts that I think can be shared in the near future to reengage on that level.

***Murtha:** Another seemingly esoteric provision of the law is the I-829 Petition final step for an immigrant investor to become a lawful permanent resident in the US. We have heard there's a substantial backlog and processing those petitions. Rajvir. What are the ramifications to those delays and does it affect the EB-5 program?*

Batra: I mean, absolutely. First of all, I just say the statute says that the 829 petition has to be adjudicated within 90 days. That's what the law says. And USCIS is clearly violating that law. So during the lapse, USCIS came out with a statement saying that we they cannot process any existing 526 or 485 forms, because the program has lapsed. However, they did say that they're processing 829 forms during the lapse. I think everyone is asking this question. Now, if all USCIS was doing was process 829 forms for the past nine months during the lapse, why did the backlog increase or decrease during this period? I mean, what the processing times are atrocious. And currently, if you look on the website, it says that the processing times for 829 forms are three, four or five years, even though the law says it should be 90 days. So, I think I mean, the new law has provisions for a fee study, basically giving USCIS a target date, but it's not binding. And we definitely hope that USCIS gets get its act together and starts processing these forms, as you know, as fast as the law says that they should, but I will not be holding my breath for that.

***Murtha:** So, is it a matter of manpower? Or just desire or realign priorities inside the organization?*

Batra: Um, I mean, we don't have a lot of evidence for this. But my take on this is that, in the past, there has been an effort to discriminate against EB-5 applications. by USCIS. There is no other explanation for that.

***Murtha:** Are they slow-walking them?*

Batra: Exactly. Yes. For example, back in 2019, when they actually increase staff at the IPO, which is the immigrant program office, the processing time still increased, even though they increase the staffing requirements. So, there is no other explanation for this. They're definitely slow walking these applications. And I hope with the new administration coming in and with a new law, this changes.

Murtha: Okay. Aaron, you have any thoughts on that on the I-829?

Grau: I agree with Rajvir on 829. I'm sorry.

Yeah. I agree. I think that, you know, it is human nature to make certain assumptions based on evidence that's been provided. And time and time and time again, the evidence demonstrates that for some reason, USCIS gives short shrift to the EB-5 program. I will say that on the listening session on the 829, such as it was, they did report that, you know, across DHS, they are there at least 4000 people shy of where they need to be to operate it at full capacity. So, it could very well be a manpower issue. But it's hard for me to believe that's the only the only thing at play. It's just been the same story for too long for any rational person to assume otherwise.

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I suppose there is an intent in the legislation to have the participants conform to the law, but the bureaucracy sometimes has its own ideas and what that what that means exactly.

*Murtha: Alright, with the trillions of dollars allegedly being spent by the federal government on infrastructure, does that materially or substantially change the kinds of projects being funded underneath the EB-5 umbrella?
Aaron, let me start with you.*

Grau: I don't think so. I think we will see an uptick in all things being equal. And we're back at you know, USCIS sees its way clear to allowing the program to go on grow. We've touched on how already, I guess, I don't see a dramatic impact on infrastructure. However, through EB-5, however, there are infrastructure set asides. Now, there is more money, you know, going into infrastructure because of the federal legislation. So, I'm sure we will see an uptick in, in infrastructure projects that include EB-5 resources, and I love it, I think it's a good thing. Certainly something that the country needs and can create jobs.

Murtha: Okay. Rajvir, from your point of view?

Batra: I mean, I completely agree with Aaron, and he's the expert here on the fair project. So, I'll leave it at that.

***Murtha:** Okay. All right. Let me get you out of here with this. I'm an optimist. And I'm going to assume that everything is going to get ironed out. And the program will be operating under the new guidelines. And the program is humming along as intended. What does the program look like, say three years from now? What kind of projects are being built? Are we getting investors from new parts of the world? Aaron?*

Grau: I'm an optimist as well. So, I will share I will share your optimism. And I appreciate I appreciate ending on that note, I think the program looks even bigger and better than it has been at its zenith back in, you know, 2008 to 2015. I think we ended up seeing a lot of new rural projects, which I think was part of congressional intent. I think we see, as I said, an uptick in infrastructure projects. That could include energy related projects, which I think is also fantastic. And as far as other countries, I can tell you that the interest in EB-5 globally is rising. I measure that based on, you know, data that we collect from overseas partners. But also, you know, just subjectively, you know, II USA is facilitating what we call our passport series, which is, in country events across the world, right now we're conducting them in several countries in South America. At the end of May, beginning of June, we'll be in four cities in India. And these events are sold out. There's no more room for interested investors to attend these information sessions. And if that's not an indication of where EB-5 is going in the interest from countries, I'll say non-traditional immigrant investor countries, I don't know what it is. It's an exciting prospect.

***Murtha:** Rajvir look in your crystal ball. And what do you what do you see three years from now?*

Batra: I'm, I'm an optimist as well, both of you guys. I think, in the next two or three years, a USCIS will get its act together, the program will be more efficient, you're going to see processing times come down, hopefully to maybe six to 12 months. And the program won't be the wild, wild west anymore, like it was before the reforms. There is going to be greater oversight over the actors in this industry. And you're gonna see a more positive perception of EB-5 and the benefits and the jobs it creates in the media and among the American society in general.

Murtha: All right, well, that's all the time we have for today's program. Aaron growl via USA and Roger Batra of American immigrant investor Alliance. Thank you very much for a terrific discussion.

Grau: Thanks, Jim. Thanks, Raj. Good to talk to you guys.

Batra: Yeah, thanks for having us here.

Murtha: The preceding podcast was a production of Macallan Communications publishers of Homeland Preparedness News. If you have a topic for a future program, just go to [www dot homeland prep news.com](http://www.homelandprepnews.com) and look for the podcast section on the front page.

Until next time, I am your host Jim Murtha. Be well, be safe and be prosperous.

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