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Smaller ventures struggle to benefit from EB-5 investor program

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Although the government's EB-5 Immigrant Investor Program can be tapped by any company for any project, massive development projects continue to be the most popular destination for EB-5 funds, while smaller ventures in search of this foreign capital struggle to attract investors.

While Citizen and Immigration Services' allowing foreigners to obtain temporary residency status by investing $500,000 in high unemployment areas — half of the standard $1 million requirement — might have the effect of encouraging investment in smaller projects, that's not been the case. Until April, the entire city of Los Angeles was deemed a so-called Target Employment Area — meaning big real estate projects like the $168 million Marriott hotel near L.A. Live have an easy time of raising money. Ironically, even small non-real estate projects that require only the minimum $500,000 investment often ask for $1 million as a way of cutting costs by bringing on fewer investors, say lawyers.

Specifics of small EB-5 projects are rarely made public, and a spokeswoman for the regulatory agency said it was unable to provide names of individual projects or project breakdown by state, size or unemployment zone.

According to immigration and finance lawyers, small ventures that have sought to take advantage of the program — including startups, films, wineries, franchise restaurants, agricultural companies and music projects — face a set of hurdles, namely lack of access to investor recruiting networks, complications with the job-counting requirements, little company name recognition and investor uncertainty regarding equity investment.

"Nowadays, I probably get more calls from developers who want to do the small one-, two-, three-investor EB-5 projects," said Meyer Law Group's Brandon Meyer, who works out of the immigration law firm's San Francisco and Solana Beach offices. "Unless they have someone through personal connections that's willing to make the investment, the chances of finding the investor to do it is practically nil."

That's in part because small projects are up against regional centers, organizations that sponsor large projects and do massive recruiting across key countries like China, which accounts for more than half of all EB-5 investment.

"If somebody approaches [the recruiters] and says, 'Would you market this project for 10 investors?' they can't afford to market it at $30,000 a day for the seminar," said Linda Lau, Los Angeles of counsel at Mitchell Silberberg & Knupp LLP and president of Global Law

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Small ventures struggle for EB-5 investment

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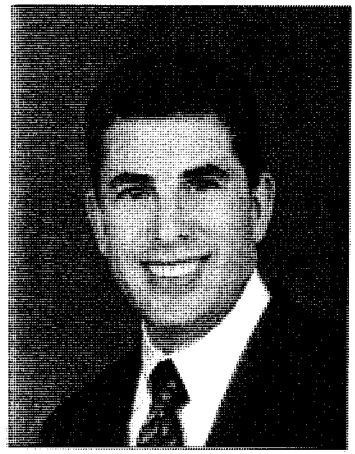
Group Corp. in South Pasadena. "If they have their own networks, it's very easy to raise. If they have no network, it's very difficult."

EB-5 was signed into law during the 1990 mini recession as a job creation bill, but was seldom used prior to the Great Recession, when financing was readily available. The project must create 10 jobs per investor within two years. Regional center projects count both direct payroll and indirect jobs — jobs outside the company assumed to have been created as a result of the project — toward the required 10-jobs benchmark, while smaller direct investment projects only count direct jobs, which makes the smaller jobs a tougher sell to investors.

Further toughening the sell is lack of name recognition. While small projects may pay anywhere from 2, 5, 7, 10 or even 20 percent on the principal, much more than the typical 1 percent from large regional center projects, investors eyeing first and foremost a Green Card are often happy to accept lower rates of return in exchange for the perceived security a household name affords.

"These direct businesses are not well established. Not like Hilton building a hotel complex," said Los Angeles-based Sinnott Law Group's Sasha Sinnott, who works on small EB-5 projects, many of which are in Orange County. "They've never heard of Orange County. ... It's always easier if it has a brand name."

Further complicating matters is that investors in direct investment projects make equity investments, not the case with regional center projects which have investors invest in LPs. While the prospect of owning equity might seem appealing, lawyers say some investors simply don't want the responsibility — or uncertainty — of being involved in day-to-day company work, and would prefer to take a hands-off investment approach.



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But given all the challenges small direct investment projects face, such projects "will become the game in town" in part because of the backlog at USCIS for processing regional center investment applications.

"USCIS is taking so long to process," Sinnott said of the one and a half to two years the agency now often takes to process applications for regional center projects. "With direct projects, the wait is half that amount of time. It's very transparent for an officer at USCIS. 'I know how this burger franchise is going to create 10 jobs.' Investors don't want to wait. They want to come here now."

But Sheppard Mullin Richter & Hampton LLP's John D. Tishler, a Del Mar-based partner who works on large projects, doesn't expect to see that shift. He sees investors continuing to gravitate toward the perceived security of well-known large regional center projects, even if the wait is longer and rate of return lower.

"This is a market where people primarily are looking to get a visa. And looking to get their money back," Tishler said. "Rate of return is a pretty distant third in the marketplace right now."

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