



2017 AILA EB-5 Investors Summit

Congress created the EB-5 immigrant visa program more than 25 years ago to encourage immigrant investors and entrepreneurs to invest capital that would create jobs in the United States. Over the last 10 years, this congressional intent has been realized, as developers have increasingly turned to EB-5 capital to fund their projects, and the number of investors and their family members immigrating to the United States in the EB-5 category has risen exponentially. During this period of unprecedented growth in the program, however, problems have developed. USCIS adjudications have become much more complex, unscrupulous players have entered the industry, and enforcement actions have exerted undue influence over the posture of USCIS inquiries and practices, as well as on proposed legislation and regulations. The need for attorneys to convey information, share insights, and collaborate on strategies to represent regional center and investor clients effectively, therefore, has never been more urgent.

The 2017 AILA EB-5 Investors Summit is designed for both entry-level and seasoned EB-5 practitioners and professionals. The faculty will address cutting-edge issues through in-depth panel discussions featuring experts in immigration, securities, and business law, highly respected economists, and other well-regarded professionals in the industry. The conference program emphasizes legal and policy analysis, compliance, due diligence, enforcement, and ethical considerations, so that attorneys will be able to identify and provide counsel on EB-5 ineligibility matters, devise strategies to help their regional center or investor clients navigate complex legal and business issues, and respond effectively to USCIS or other government challenges.

Friday and Saturday December 8–9, 2017

Aria Resort & Casino

3730 South Las Vegas Boulevard

Las Vegas, NV

FRIDAY, DECEMBER 8, 2017

Day Coordinator: TBD

7:15 am– 5:00 pm **REGISTRATION AND EXHIBITS**

7:55 am– 8:00 am **OPENING REMARKS**

Elsie Hui Arias, Conference Program Chair, Los Angeles, CA

8:00 am–9:00 am **EB-5 BOOTCAMP: PRACTICAL TIPS ON FILING YOUR FIRST CASE**

This panel is geared towards practitioners new to EB-5, or for practitioners who require a brief refresher of the general principles of EB-5. Panelists will provide legal insight and practice pointers for filing an EB-5 case for the first time.

- Evaluating EB-5 as an Option for Your Client (and Alternatives to EB-5), Including Admissibility, Visa Backlog, and Age-Out Considerations for Children
- Overview of Scope of Client Representation

(DL) = Discussion Leader

** = Invited Speakers, Not Confirmed*

- All events, sessions, and conference materials are subject to change -

- Summary of EB-5 Requirements, Including Investment of Capital in a New Commercial Enterprise (NCE), Source of Funds Principles, and Job Creation (Direct vs. Regional Center Investment)

Faculty:

Farah Abbas (DL), Washington, DC

Samuel Duggins Newbold, New York, NY

Christian Andrew Triantaphyllis, Houston, TX

9:05 am–10:05 am

HOT TOPICS: LEGISLATIVE AND AGENCY UPDATES

In this open forum, panelists will cover the current issues impacting the EB-5 program. Audience members will have the opportunity to ask questions about related, pressing matters.

- USCIS Policy Manual Changes
- Update on Administrative Rulemaking
- Update on Legislative Reforms and Regional Center Program Extension
- New Agency Developments and Trends

Faculty:

Carolyn S. Lee (DL), AILA EB-5 Investor Committee Chair, Ithaca, NY

Enrique Gonzalez III, Coral Gables, FL

Peter D. Joseph, Executive Director, IIUSA, Washington, DC

10:05 am–10:20 am

NETWORKING BREAK

10:20 am–11:20 am

PROTECTING YOUR EB-5 PRACTICE: ETHICAL ISSUES AND MINIMIZING RISK

Representing EB-5 clients can be professionally rewarding, but this particular area of law also can involve substantial conflicts of interest and other ethical issues. Experts in the field of professional responsibility will address key ethical dilemmas encountered in EB-5 practice.

- Drafting Client Agreements: Identifying Legal Services and Potential Limited Scope Representation
- Competence: Knowing When to Co-Counsel and When to Use Experts
- Representing Multiple Clients and Obtaining Informed Consent
- Gauging Potential Conflicts of Interest: What to Do When a Conflict Arises
- Knowing Your Client and Coordinating with Agent Intermediaries
- Defending Malpractice and Disciplinary Complaints

Faculty:

Cyrus D. Mehta (DL), New York, NY

Charles C. Foster, AILA Past President, Houston, TX

*Robert Juceam, AILA Past President, New York, NY

11:25 am–12:25 pm

REPRESENTING THE IMMIGRANT ENTREPRENEUR: DIRECT EB-5-BASED INVESTMENTS

Entrepreneurs who opt to invest in an NCE that is not affiliated with a regional center can avoid the uncertainties involved with the Regional Center Program, including looming program expiration, evolving legislative proposals, and entrusting funds with third parties who manage the regional center and NCE. However, direct EB-5-based petitioners also must be vigilant to ensure their proposed investments and business structures meet the complex EB-5 requirements. Panelists will share insights on representing entrepreneurial clients and how best to assist them in achieving their U.S. immigration objectives.

- Immigration Planning for Starting or Acquiring a Business
- Matter Of Ho Business Plan Requirements and the Importance of Documenting Use of Funds
- Considerations with Pooled Capital Investments
- Documenting Direct Employment Creation and Avoiding Related Pitfalls
- Transitioning from E-2 to EB-5

Faculty:

Tammy Fox-Isicoff (DL), AILA Board of Governors, Miami, FL

Charles H. Kuck, AILA Past President, Atlanta, GA

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David Hirson, Costa Mesa, CA

12:25 pm–12:30 pm
12:30 pm–1:40 pm

SPONSORSHIP PRESENTATION: TBD
LUNCH (INCLUDED WITH REGISTRATION)

12:40 pm–1:40 pm

LUNCH PANEL: CHINA-FOCUSED ISSUES

The vast majority of EB-5 investors currently emigrate from mainland China. Understanding the issues and devising strategies specific to Chinese investors is therefore essential to successfully representing these clients.

- Strategies on, and Solutions for, the EB-5 Visa Waiting Line
- Advising and Resolving “Age-Out” Issues for Children
- Redeployment and Job Creation in an Era of Visa Backlogs
- Ethical Issues in Client Representation Through Chinese Migration Agents
- Immigration Planning, Including Interplay with B and F Visas
- Issues at the U.S. Consulate in Guangzhou: Communist Party Membership, Source of Funds, and DS-160 Challenges

Faculty:

Bernard P. Wolfsdorf (DL), AILA Past President, Santa Monica, CA

Linda W. Lam, Pasadena, CA

Nelson K.H. Lee, Seattle, WA

**Julia Harrison, Deputy Chief, USCIS, Immigrant Investor Program Office (IPO), Washington, DC*

1:40 pm– 2:40 pm

ADVANCED SOURCE OF FUNDS AND PATH OF FUNDS ISSUES

Experienced practitioners will offer helpful insights on documenting an investor’s lawful source of funds, tackling complex path of funds issues, and successfully responding to common concerns raised by USCIS in a request for evidence (RFE) or notice to intent to deny (NOID).

- Overview of Source of Funds Requirement and General Tips for Proving Lawful Source of Funds
- Review of Common Sources of Funds and Practical Guidance on Successful Documentary Evidence, Including Use of Loan Proceeds
- Recent Challenges by USCIS: RFEs, NOIDS, and In-Country Audits
- Country-Specific Issues (E.g., Document Availability, Currency Exchange Issues, Etc.)

Faculty:

Robert P. Gaffney (DL), San Francisco, CA

Xiaowei (“Vivian”) Zhu, Santa Monica, CA

Anusree “Anu” Nair, Philadelphia, PA

2:40 pm–2:55 pm

NETWORKING BREAK

2:50 pm–2:55 pm

SPONSORSHIP PRESENTATION: TBD

2:55 pm–3:55 pm

REGIONAL CENTER INVESTMENTS: UNDERSTANDING THE DEAL AND THE CAPITAL STACK

Whether you are the attorney structuring the offering or the attorney representing a foreign national investing in the project, understanding the diverse considerations in typical EB-5 deals is critical to competently representing your client. Panelists will illuminate the interplay between complex business, financial, securities, and EB-5 requirements.

- What Are the Roles of the Regional Center and NCE?
- What Are the Differences Between Loan and Equity Project Models?
- What Is the Typical Capital Stack? Where Does EB-5 Money Factor into the Equation?
- How Is the Escrow Typically Structured?
- What Are the Additional Issues to Consider If There Are Multiple NCEs Developing One Large Project?

Faculty:

Daniel B. Lundy (DL), Philadelphia, PA

Kate Kalmykov, Florham Park, NJ

Kristal Jeanette Ozmun, Ithaca, NY

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* = Invited Speakers, Not Confirmed

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4:00 pm–5:00 pm

DUE DILIGENCE REVIEW OF EB-5 PROJECTS FOR THE INDIVIDUAL INVESTOR

Navigating the myriad of EB-5 offerings can be a formidable task for investors without proper guidance. Panelists will provide a general framework for investors who require assistance in the due diligence review of immigration, business, and investment considerations of a particular EB-5 project.

- Overview of EB-5 Requirements and Related Immigration Risks in an EB-5 Project
- Business and Investment Risks Through Industry Standards for Underwriting Analysis
- Conflicts of Interest Among the Investors, Agents, Regional Center, NCE, and Job-Creating Entity
- Role of Investor's Attorney in Investor's Choice of Project

Faculty:

Edward C. Beshara (DL), AILA Global Migration Section Steering Committee, Maitland, FL

Angelo A. Paparelli, Los Angeles, CA

**Craig V. Rasile, Securities Lawyer, Miami, FL*

5:00 pm–6:30 pm

FRIDAY EVENING RECEPTION SPONSORED BY CMB REGIONAL CENTERS

SATURDAY, DECEMBER 9, 2017

7:15 am–5:00 pm

REGISTRATION AND EXHIBITS

Day Coordinator:

TBD

7:15 am–7:55 am

SPECIAL EARLY BIRD SESSION—AILALINK TRAINING

See AILALink in action! Developed and maintained by AILA, AILALink is an online research library of fully searchable resources necessary for the successful practice of immigration law—statutes, regulations, case law, agency correspondence, AILA publications, immigration forms, and much more. See what AILALink can do for your practice during this special training! In addition, the presenter will give a brief overview of AILA.org. Learn how to utilize your number one AILA member benefit!

8:00 am–9:00 am

JOB CREATION METHODOLOGIES FOR REGIONAL CENTER EB-5 CASES

The EB-5 category is premised on the principle that jobs will be created as a result of an EB-5 petitioner's investment. Accordingly, providing transparent and convincing evidence that jobs have been (or will be) created within USCIS policy timelines is critical to the successful EB-5 case. Economists experienced in the EB-5 industry will cover essential terminology, demystify job creation methodologies, address current USCIS concerns, and offer practice pointers on understanding and advising stakeholders on the job-creating component of regional center EB-5 cases.

- Accepted Input-Output Models in Regional Center-Affiliated Projects
- Typical Inputs in Job Creation Models: Construction Expenditures (Qualifying Hard and Soft Costs), Revenues, and Onsite Workers
- Ongoing Challenges: 30-Month Requirement, Tenant Occupancy, Guest Expenditures, Etc.
- Differences Between the Two-and-a-Half-Year Rule and Reasonable Time Requirement

Faculty:

Cletus M. Weber (DL), Mercer Island, WA

Scott W. Barnhart, Economist, Riviera Beach, FL

Aaron Goforth, Economist, Los Angeles, CA

9:05 am–10:05 am

SECURITIES LAW AND COMPLIANCE

Featuring securities lawyers with substantial experience in EB-5 matters, panelists will address the intersection between securities regulations and compliance issues with EB-5. Panelists also will offer an overview of current SEC/USCIS collaboration, recent enforcement actions in the EB-5 area, the role of broker-dealers and investment advisors in the EB-5 offering process, and due diligence tips from a securities perspective.

- Primer on Regulation D and S Exemptions (Including Applicability to Foreign Students in the United States)
- Considerations and Options for Accepting Minor Investors

(DL) = Discussion Leader

** = Invited Speakers, Not Confirmed*

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- Investment Advisers Act: Is a Registered Investment Adviser Required for Redeployment?
- The SEC Investigation Process, Timing, and Effect on Pending EB-5 Petitions
- Recent SEC Litigation for Fraud and Against Unregistered Broker-Dealers
- Warning Signs for Avoiding Fraud

Faculty:

Dawn M. Lurie (DL), Washington, DC

Ronald R. Fieldstone, Arnstein & Lebr LLP, Corporate SEC Counsel, Miami, FL

Catherine DeBono Holmes, Investment Capital & Business Transactions Attorney, Los Angeles, CA

10:05 am–10:20 am

NETWORKING BREAK

10:20 am–11:20 am

EFFECTIVELY REPRESENTING REGIONAL CENTER CLIENTS: OBTAINING AND MAINTAINING DESIGNATION, AND ADVISING ON EB-5-ELIGIBLE OFFERINGS

Your developer-client wants to raise EB-5 funds to finance the development of a new hotel or mixed-use project. In this session, panelists will discuss what is involved in forming or affiliating with a regional center, requirements to maintain regional center designation and compliance, and planning EB-5 capital investment projects.

- Considerations for Forming a Regional Center or Affiliating with an Existing Regional Center
- Engaging an Effective Team of Lawyers, Economists, and Other Professionals
- Requirements for Initial Regional Center Designation
- Amendments to Regional Center Designation: What Is Optional and What Is Required By USCIS?
- Maintaining the Regional Center’s Designation, Including Preparing for USCIS Audits, Completing Form I-924A Reports, and Responding to Termination Efforts by USCIS
- Overview of Proposed Regional Center Integrity Provisions and Related Counsel to Regional Center Clients

Faculty:

David M. Morris (DL), Washington, DC

Nima Korpivaara, Newport Beach, CA

Jeffrey E. Champion, Weston, FL

11:25 am–12:25 pm

NAVIGATING THE REQUIREMENTS AND CHALLENGES IN THE I-829 REMOVAL OF CONDITIONS PROCESS

The I-829 removal of conditions process has grown increasingly complex over the years. Projects can fall short of creating sufficient jobs or fail to realize the original objectives of the business plan, resulting in possible material change issues. USCIS’s new policies on redeployment of funds in at-risk activities, investor interviews, and surprise site visits in association with I-829 petition adjudication can further complicate this process. Panelists will review the legal elements for removal of conditions from an EB-5 investor’s permanent resident status, and discuss strategies to address challenges that arise during the I-829 petition stage.

- Existing Legal Framework and Components of Successful I-829 Petitions, Including Job Creation for Direct EB-5 and Regional Center-Affiliated Investments
- Addressing I-829 Challenges: Newly-Raised Concerns with Investor’s Source of Funds, Insufficient Job Creation, Material Change, Redeployment “At-Risk” Requirement, and Sustainment of Investment
- Scope of I-829 Investor Interviews and I-829-Related Site Visits
- Strategies Following I-829 Denials: Representing Investors in Immigration Court and Litigation of I-829 Denials
- Proposed Legislative and Regulatory Changes to I-829 Requirements

Faculty:

Elsie Hui Arias (DL), Conference Program Chair, Los Angeles, CA

Jennifer Hermansky, Philadelphia, PA

Mona Shah, New York, NY

12:25 pm–12:30 pm

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12:30 pm–1:05 pm

LUNCH (INCLUDED WITH REGISTRATION)

1:05 pm–1:35 pm

KEYNOTE LUNCH SPEAKER

**U.S. Congressman Mark Amodei, Reno, NV*

1:40 pm–2:40 pm

LATEST RFE TRENDS IN EB-5 CASES

Unfortunately, it is not uncommon for USCIS to impose new legal interpretations or create new policies in the EB-5 field through the issuance of requests for evidence (RFEs) or notices of intent to deny (NOIDs). Panelists will provide current updates about issues raised most recently by USCIS through RFEs and NOIDs in I-526 petitions and I-924 applications, and propose helpful suggestions to respond effectively to USCIS's assertions.

- Proving Lawful Source of Funds and Path of Funds in Single-Intermediary Currency Transfers
- Tackling Investor Credibility Issues When USCIS Cites Inconsistencies Between I-526 Petitions and DS-160 Applications
- At-Risk, Guaranteed Redemption, and Debt Arrangement Issues
- Limitations on the Use of EB-5 Capital to Replace Bridge Financing
- Challenges to Credibility of the Business Plan
- “Material” Changes and Related Impacts to Individual Investors

Faculty:

Michele A. Franchett (DL), Los Angeles, CA

Carolyn S. Lee, AILA EB-5 Investor Committee Chair, Ithaca, NY

Ignacio A. Donoso, Bethesda, MD

2:45 pm–3:45 pm

REPRESENTING CLIENTS IN FAILED OR FRAUDULENT PROJECTS

All hope is not lost when an EB-5 investor invests in a failed or fraudulent project. Panelists will navigate the legal process of a failed or fraudulent project, and devise creative legal strategies to help honest investors achieve their immigration goals.

- The Roles of the SEC and the Court-Appointed Receiver
- The Role of Immigration Counsel
- Legal Strategies in Bankrupt, Changed, or Fraudulent Projects
- Meeting Sustainment and Job Creation Requirements in Failed Projects
- The Impact of a Regional Center Termination
- Litigation Strategies and Removal Defense

Faculty:

H. Ronald Klasko (DL), AILA Past President, Philadelphia, PA

Susan Pilcher, Los Angeles, CA

Naim Surgeon, Fraud & Recovery Practice Counsel, Ft. Lauderdale, FL

3:45 pm–4:00 pm

NETWORKING BREAK

3:55 pm–4:00 pm

SPONSOR OPPORTUNITY: TBD

4:00 pm–5:00 pm

LITIGATING EB-5 CASES

Processing times for EB-5 cases have become increasingly protracted, and practitioners are seeing an uptick in petition denials by USCIS. In order to compel USCIS to act on a long-pending matter or to reverse an erroneous decision, litigation may be necessary. Panelists will discuss the considerations in determining whether litigation should be pursued, successful legal arguments, and the nuts and bolts of filing complaints in federal court.

- Overview of Federal Litigation Basics: Jurisdiction, Venue, Standing, Exhaustion, Etc.
- Litigating I-526 Petition Denials in Federal Court
- Litigation Strategies Before the Immigration Court for I-829 Petition Denials
- Filing Mandamus Action for Long-Pending Petitions or Applications: Elements, Timing, and Strategies for Dealing with Government Counsel

Faculty:

John Patrick Pratt (DL), Miami, FL

Jeff Joseph, Denver, CO

(DL) = Discussion Leader

** = Invited Speakers, Not Confirmed*

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Carl W. Hampe, Washington, DC

5:00 pm

CONFERENCE CONCLUDES

CONFERENCE PROGRAM COMMITTEE

*Elsie Hui Arias, Conference Program Chair, Los Angeles, CA
H. Ronald Klasko, AILA Past President, Philadelphia, PA
Bernard P. Wolfsdorf, AILA Past President, Santa Monica, CA
Stephen Yale-Loehr, AILA Business Immigration Response Team Chair, Ithaca, NY
Edward C. Beshara, AILA Global Migration Section Steering Committee, Maitland, FL
Jennifer Hermansky, Philadelphia, PA*

John M. Area IV, AILA Education Program Manager, Washington, DC

The Conference Program Committee thanks prior AILA EB-5 Conference Program Committees for building a foundation of excellence in continuing legal education in the EB-5 area. This conference builds on their contributions.

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