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EB-5 Regional Center Program Lapse Strands Investors

Legal Update

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By Immigration Group

This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

The lapse in the EB-5 regional center program has had a major impact on certain investors. According to a report from IIUSA: Invest in the USA, the lapse is hurting more than 32,000 stranded EB-5 investors, putting at least \$15 billion in capital investment and more than 486,900 U.S. jobs in jeopardy.

The report notes that under the current lapse in authorization, U.S. Citizenship and Immigration Services (USCIS) has halted adjudication of all I-526 petitions filed by EB-5 investors affiliated with regional centers. According to USCIS, nearly 12,800 EB-5 investors had a pending I-526 petition as of June 30, 2021, when the program expired. The report says that historically, according to the Department of State, 93.4 percent of the EB-5 visa numbers have been used by applicants who invested through a regional center. This means that nearly 12,000 EB-5 investors with an I-526 petition on file will not receive an adjudication on their EB-5 cases during the lapse of the program and will experience delays in their legal immigration process. Also, visa applicants with a currently approved I-526 petition are not able to receive an EB-5 visa number as of the program's expiration on June 30.

A draft bill, the Foreign Investor Fairness Protection Act (FIFPA), which has not been introduced yet, would help stranded investors if Congress fails to reauthorize the EB-5 regional center program. The bill would protect "job-creating foreign investors from loss of immigration benefits under the EB-5 Program due to expiration of temporary legislation or from future amendments to statute."

A new organization, the American Immigrant Investor Alliance (AIIA), has formed to help stranded EB-5 investors.

Stranded investors are encouraged to write their members of Congress, their ambassadors and AIIA to urge reauthorization of the EB-5 program and passage of the FIFPA.