

OVERSELLING THE AMERICAN DREAM

Companies promoting the EB-5 visa program promise foreigners a fast track to U.S. citizenship. But half of those who take part fail to win the prize.



Korean immigrant Kyung Kim speaks during an interview with Reuters in New York, November 19, 2010. REUTERS/BRENDAN MCDERMID

BY JAMES KELLEHER, KARIN MATZ
AND MELANIE LEE
SHANGHAI/CHICAGO, DEC 22

IN A CONFERENCE ROOM in an office building in downtown Shanghai, Jason Lee is literally selling the American dream.

Lee runs Maslink, a firm that connects cash-hungry American businesses with Chinese investors keen to move to the United States. His company is part of a global cottage industry that has popped up in recent years to profit from a program that allows foreigners who invest in certain small

U.S. businesses to get on the fast track to U.S. residency and citizenship.

Interest in the immigration program, known as EB-5, is so high that Maslink, which already has offices in Shanghai, Beijing, Hangzhou and Chongqing, is expanding to two more Chinese cities.

Firms like Maslink, and the U.S. companies that pay them, promote EB-5 as a quick, easy way to gain legal entry to the United States -- and to make a potential profit in the bargain.

The pitch is effective. In 2010, nearly 2,000 would-be immigrants, many from China, applied for EB-5 visas, the most ever in a single year, according to U.S. Citizenship and Immigration Services (USCIS), the agency that oversees the program. The surge has been driven in part by a 20-fold increase in the number of U.S. companies looking to participate.

But an examination of EB-5 by Reuters suggests immigrants should think twice before investing in the limited partnerships and unregistered securities that U.S. companies and promoters like Maslink are encouraging them to buy.

Over the past two decades, thousands of immigrants have been burned by misrepresentations that EB-5 promoters make about the program, both inside and outside the United States. Many have lost not only their money but their chance at winning U.S. citizenship.

"I always tell the people who approach me that the EB-5 investment program is a risky business," said Brian Su, a Springfield, Illinois-based immigration consultant who publishes a popular [blog](#) on the program. "If you cannot bear the loss, the total loss of your investment, don't play this game."

But those risks are downplayed by almost everyone involved in the program -- including the USCIS itself. Chris Bentley, the agency's spokesman, for instance, said "the overwhelming majority" of EB-5 investors and their dependents go on to qualify for permanent resident status. An analysis of USCIS's own data, however, suggests that's not true. Nearly half the immigrant investors who won EB-5 visas during its 20-year history have failed to obtain permanent residency.

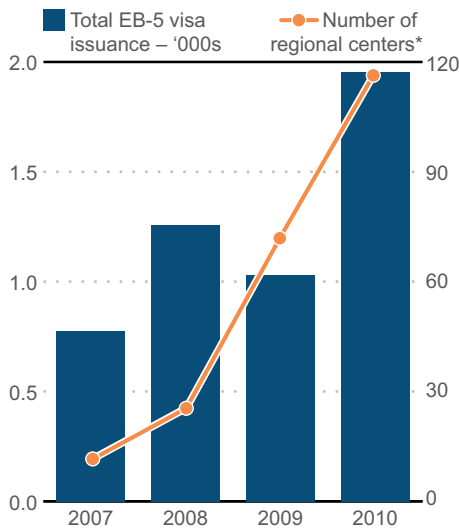
The rise in recent years of an unregulated industry paid to fill the EB-5 pipeline with rich foreigners has only added to the dangers. The U.S. businesses the immigrants are now steered to -- by firms like Maslink and by U.S. immigration attorneys -- are often the ones paying the highest commissions, not the ones offering the best investments, according to the industry insiders who spoke to Reuters.

"It's the Wild West," said Henry Liebman, a Seattle attorney and developer who has been doing EB-5 funded projects almost since the program's inception.

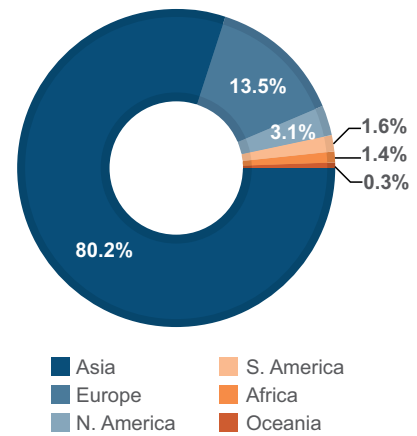
"You're dealing with a bunch of unregulated companies, most of them small, that aren't

Growing EB-5 visa issuance

From 2007 to 2010, issuance of EB-5 visas nearly tripled, and the number of businesses in the program grew 10-fold.



U.S. issuance of EB-5 visas by region



* Does not include 88 regional centers pending
Source: U.S. State Department

Reuters graphic/Stephen Culp

"YOU'RE DEALING WITH A BUNCH OF UNREGULATED COMPANIES, MOST OF THEM SMALL, THAT AREN'T REGISTERED WITH ANYONE AND CAN DO WHATEVER THEY WANT."

registered with anyone and can do whatever they want," he said. "It's definitely buyer beware."

A CHINESE WARNING

THE NUMBER OF U.S. businesses seeking immigrant investors through EB-5 has exploded over the past three years.

In 2007, there were just 11 specially designated businesses allowed to offer EB-5 visas to foreign investors in exchange for their cash; today there are 117 and 88 more are applying for the status. Many of the newcomers are commercial real-estate builders looking for alternative funding to keep their projects alive.

"As sources of domestic capital have dried up, developers have tried to scramble to find

other ways to finance their projects either in whole or in part," said Stephen Yale-Loehr, an adjunct law professor at Cornell University Law School and the unofficial dean of the EB-5 bar.

As they assemble their marketing machines, some of them tap former real estate associates who, only a few years ago, were peddling interest-only, subprime and stated income loans, says Michael Gibson, who performs due-diligence on EB-5 projects for immigrants.

"We are seeing people who are coming into the market right now who are offering advice, promoting some of these centers, who a year or two ago were selling mortgage products," Gibson said. "They will tell investors almost anything they can to get them to sign the subscription agreement."

Overseas, the firms pushing the program are coming under scrutiny. In fact, China's ministry of public security issued two warnings this year about EB-5 and imposed new restrictions on the promoters.

Companies like Maslink are now supposed to get approval from Chinese authorities before hosting sales presentations. But Su says the marketers have simply moved their presentations out of public settings like hotel ballrooms and into smaller, more private settings.

"The Chinese government, they realize this EB-5 thing is risky and that a lot of the EB-5

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SURE BET: An advertisement for an investment seminar in Korea seeking investors in Ajin USA, an auto parts supplier for KIA Motors. The ad says the benefits include: "Secure investment opportunities... Guaranteed jobs creation ... Guaranteed return of principal."

companies are not telling the whole story," Su said.

Yet the two agencies in the United States tasked with oversight of the EB-5 program -- USCIS and the U.S. Securities and Exchange Commission (SEC) -- told Reuters they are unaware of any marketing abuses in the program.

To date, only one of the U.S. businesses -- known as "regional centers" in USCIS parlance -- has been decertified despite evidence that many are endangering the immigration status of their investors by violating basic program rules.

MINEFIELD

OVER TWO MONTHS this fall, Reuters reporters in the United States, China and Korea attended EB-5 sales presentations and interviewed dozens of people associated with the program -- from officials at the U.S. agencies that monitor it to the immigrants who have used it, from the attorneys that steer immigrants into specific investments to the U.S. businesses that pay them to do so.

The picture that emerged was troubling. The examination found widespread problems in the way the program is promoted. Some

BLOG

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marketers, for instance, imply or claim outright that the investments they're selling are insured or government backed and that the EB-5 immigrants who invest in them are guaranteed permanent green cards. Neither is ever true.

An analysis of recent rulings by USCIS's appeals office, meanwhile, found that a growing number of the U.S. businesses in the program are inadvertently torpedoing the residency applications of their investors by changing their projects in material ways without first obtaining USCIS approval.

Unfortunately, these missteps often come to light years into the immigrants' residency in the United States, when they petition to have the conditions on their green cards lifted and are denied.

"The problem is that by that time, they've got their house, the kids are in school,

they're friends with the neighbors, their lives are here," said Jose Latour, a former State Department official who practices immigration law in Florida. "And through no fault of theirs, the rug is being pulled out from under them. There is nothing sadder than to see a family that followed the rules and did everything right and then loses because of a third party failing to reach their end of the deal."

In sum, the examination found the EB-5 program is anything but an easy and certain path for wealthy foreigners to get into the United States and stay here. It's a lesson that thousands have learned the hard way over the past two decades and one that experts warn many more will learn in the years ahead.

"If they make a bad investment choice and they end up facing removal, it's disastrous," said Gibson.

"There is no appeal to this denial -- it's a huge burden for someone who has picked up their roots to come to the U.S."

PROMISES, PROMISES

THE U.S. BUSINESSES that have flocked to the program in recent years include companies hoping to buy vineyards in



브루클린 경기장(Barclays Center) 및 인프라 건설 프로젝트



뉴욕주



뉴욕시

HIGH-PROFILE PROJECT: A brochure promoting the EB-5 visa program which reads: "Brooklyn Sports Stadium (Barclays Center) and Infrastructure development project."

California, build gas stations in Guam and turn around troubled dairy farms in South Dakota.

In 2010, Chinese citizens were issued the most EB-5 visas, at 772, followed by South Korea with 295, Britain with 135, Taiwan with 94 and India with 62.

On the day Reuters spoke with Lee in Shanghai, he was selling an investment in an Idaho gold mine that has been closed for decades but which a U.S. business now wants to reopen.

About 20 people showed up to hear his pitch. Lend \$500,000 to the mine

today, Lee said, and you and your family can move anywhere you want in the United States tomorrow. In two years, you may become permanent U.S. residents with a clear path to citizenship. Three years after that, the mine will repay the loan with 500 ounces of gold -- worth about \$650,000 at the time of Lee's mid-November presentation.

That last promise -- repeated in a brochure in Mandarin, which claims the project is the first to have a 100 percent money-back guarantee should the mine fail -- violates a fundamental EB-5 rule. Investments made through the program must be at risk from

start to finish. "The immigrant investor's investment cannot be guaranteed," said Bentley, the USCIS spokesman.

In an email response to a series of questions from Reuters, Sima Muroff, the head of the Idaho company, which does business as the Idaho State Regional Center, denied immigrants were being offered guarantees of any kind. "There is no guaranteed buyback or redemption being promised to investors," Muroff wrote.

Muroff also insisted his company did not have a registered agent working for it in Shanghai, though Lee claimed Maslink was connected to Westlead Capital, the Idaho company's Asia liaison.

But Lee's claim is essentially repeated on the Idaho State Regional Center's website, which touts the "safety" of the investments it's selling and promises the business "will be further backing each investor through an underwritten financial strategy."

It's not alone in making such claims. America's Center for Foreign Investment, a business that is trying to get funding to build hybrid cars in the southern United States, claims on its website it has "the industry's best exit strategy: An opportunity to exchange the \$500,000 investment for \$650,000 worth of publicly traded shares at the fifth anniversary of the investment."

The center's head, a former immigration agency official named James DeBates, was in China promoting the venture when Reuters called for comment, according to a receptionist.

But the company's general counsel, Boyd Campbell, told Reuters "there's no guarantees in life, period" and denied the "opportunity" advertised on the website was an assured payout.

"We're talking about shares of stock," he said. "As you know, shares of stock can go up and they can go down. It may appear to be (a guarantee). But it's not."

Gibson and many others say the claims only get more inflated overseas.

"These investors are coming to the United States and telling us, or their attorneys, that they were given guarantees that their investment was safe and that they would create jobs," he said. He calls the representations "untrue."

Liebman acknowledges the problem. He says he tells the overseas migration consultants he uses that he wants to "review all advertisements before they go out." He also says he goes over what "they can and cannot say" in sales pitches to stay on the

"THESE INVESTORS ARE COMING TO THE UNITED STATES AND TELLING US, OR THEIR ATTORNEYS, THAT THEY WERE GIVEN GUARANTEES..."

right side of the law. But he said: "At the end of the day, you don't know what they said."

WHERE'S THE SEC?

BECAUSE IT IS A hybrid program, involving issues of both immigration and investment, oversight of the EB-5 program is theoretically shared by USCIS and the SEC.

Reuters found that, in practice, the immigration agency devotes no manpower to monitoring the marketing or success or failure of the investments the U.S. businesses sell under the program. The only thing it checks is that the U.S. businesses receiving the money create the jobs they promise.

"USCIS does not police the Regional Centers domestic or international marketing," Bentley, the agency's chief spokesman, told Reuters.

That, theoretically, leaves the SEC. But most of the investments are structured in a way that exempts them from the registration and reporting requirements of U.S. securities laws.

As a result, John Nester, chief spokesman for the SEC, says his agency has "no mechanism" for monitoring the marketplace. He said a search of the SEC's database using terms like "EB-5," "regional center," "immigration and visa resource center" and "immigrant investor program" turned up no past or ongoing enforcement actions or investigations.

That lack of oversight creates a surveillance and enforcement void, where promises to immigrants that either violate the basic rules of the EB-5 program or misrepresent the nature of the investment or its risks go undetected.

Just last month, USCIS implemented a new annual reporting requirement for businesses participating in the program. The agency says the change will increase transparency by requiring them to disclose how much immigrant money they take in each year and how successful their foreign investors are in winning permanent green cards.

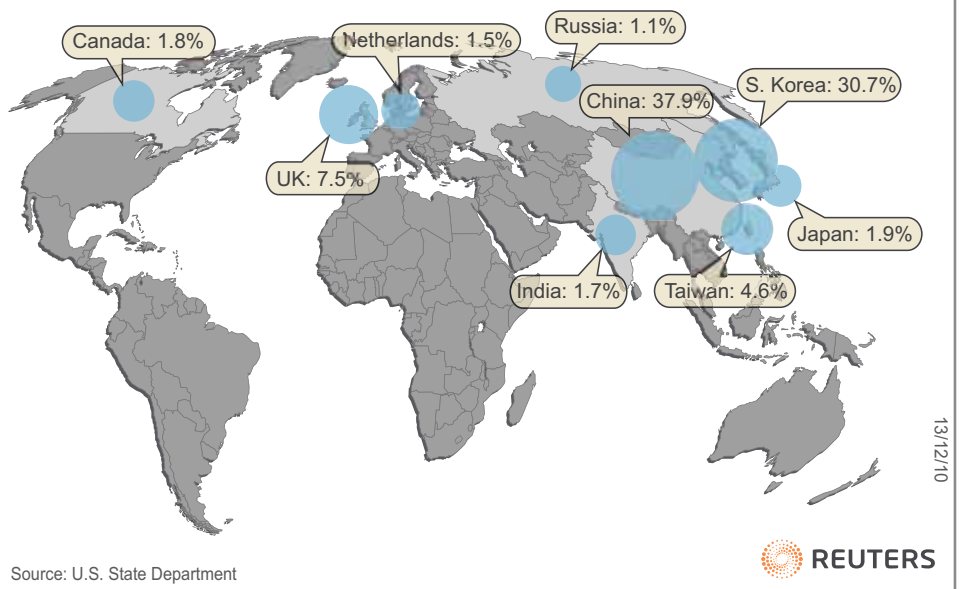
But the annual filing -- known as an I-924A -- does not require the businesses to disclose how they market the EB-5 program, how the investments they sell to the immigrants perform as investments or how much they are paying recruiters and attorneys in finders' fees.

"There's a sort of common sense element

U.S. EB-5 visa issuance

Citizens of China, Japan, Taiwan and South Korea accounted for more than 75 percent of EB-5 visas issued by the United States.

Countries accounting for more than 1 percent of total EB-5 visas, 2007-2009



missing from the EB-5 process," said Latour, the former State Department official and immigration attorney. "If the SEC got involved there would be a lot of enforcement issues going on."

THE PITCH

THE DETAILS OF the sales pitch that firms like Maslink make to potential investors overseas change, of course, depending on what U.S. business they're representing on a given day.

The closer remains the same: Make an investment in Company X today, they say, and you and your immediate family can move to the United States tomorrow.

It sounds too good to be true. Yet the deal, at least in broad outline, is bona fide, the result of a change to U.S. immigration law made during the recession of 1990 to create jobs and lure rich immigrants to the country.

Since then, 10,000 special visas, known as EB-5s, have been set aside annually for foreign entrepreneurs, and their immediate family, who agree to invest as little as \$500,000 in ventures that will either create

or save 10 U.S. jobs within two years of their arrival.

Originally, the immigrants were on their own. But in 1992, the EB-5 program was tweaked, ostensibly to make it more investor-friendly, and private U.S. companies were permitted to get into the act and directly solicit money from the investors. The 1992 change has never been made permanent but has been successively extended for 18 years now. It is scheduled to sunset in 2012, but a number of powerful lawmakers, including Democratic U.S. Senator Patrick Leahy of Vermont, are working hard to extend it again.

Although EB-5 was criticized from the start as a citizenship-for-sale scheme, supporters, including Yale-Loehr of Cornell, insist the program, including the 1992 change, is good for the country on many levels.

"No. 1, it's a win for the U.S. businesses that might not be able to finish a project but for foreign financing," he said.

"No. 2, it's a win for the foreign investor, obviously, because they get a green card out of it. No. 3, it's a win for the U.S. taxpayer because they are seeing the benefits of an



BOOM TOWN: People walk along Nanjing road, the main shopping area in Shanghai October 26, 2007. REUTERS/ALY SONG

increase in economic activity at no expense ... and No. 4 it's a win for U.S. workers because jobs are being created."

A ROCKY HISTORY

YET FOR MOST OF ITS HISTORY, the EB-5 program has been a disappointment and an embarrassment.

Its backers hoped it would attract at least 2,500 immigrant investors a year. But during its first two decades, it attracted, on average, only about 400 foreign entrepreneurs a year.

The little publicity it did get was frequently negative, which probably discouraged many foreigners from participating in it.

In the late 1990s, the program was temporarily halted, and hundreds of immigrant investors were thrown into legal limbo amid allegations the legal department of the U.S. immigration agency -- then known as the Immigration and Naturalization Service (INS) -- had ruled in EB-5 matters in ways that were preferential to a business called AIS, which had been set up by former INS insiders.

No one in AIS or the INS was ever formally charged in the affair. But the probe effectively sabotaged the residency applications of hundreds of immigrant investors and

hundreds more of their family members, some of whom - 11 years later - remain in limbo.

Two years after AIS, the operators of a company called Interbank Group were convicted of dozens of counts of visa, mail and wire fraud in a scheme that targeted EB-5 investors. Two of the company's operators went to jail. But hundreds of the immigrants they lured to this country wound up having their permanent residency applications denied.

"A lot of people got burned," said Latour.

And just last year, four Koreans who invested in a South Dakota dairy farm through EB-5, lost their entire investment when the price of milk collapsed and the operators of the farm stopped paying the mortgage.

When the four, who had invested a total of \$2 million in the dairy, tried to step in and save the venture, they discovered their partner had left their names off the title. When they tried to sue in state court, the case went nowhere.

QUICK AND EASY?

ONE OF THE MOST COMMON claims promoters make about EB-5 is that the program is a quick and certain way to

get a permanent green card. USCIS data contradicts that rosy picture.

In all, 13,719 immigrant investors have applied to participate in the EB-5 program since 1990, according to USCIS.

But 4,489 of the applicants were rejected outright for any number of reasons, including an inability to prove to the government's satisfaction that the funds they proposed to invest came from legal sources. Another 848 are still pending.

Of the 8,382 immigrant investors who were allowed into the program and granted conditional visas over the years, 5,748 have theoretically been in the country long enough to apply for unconditional green cards -- the permanent resident status that represents the finish line.

So how many have actually reached that milestone during the past 20 years? Just 3,127 investors. The other 2,621 have either had their applications for permanent residency rejected, fallen into some sort of legal limbo or just given up and gone back home with their families in tow and their dreams broken.

In other words, only 54 percent of the immigrants who start the process of gaining permanent residency using the EB-5 program

actually attain it. That's a coin toss, not a slam dunk. Yet the businesses marketing the program promote it as a sure thing.

At a recent seminar in Seoul, an agent for the Kookmin Migration Consulting Co., working on behalf of the New York City Regional Center, told would-be investors if they invested in the company's latest project their permanent green cards were "guaranteed." He also implied the investors would be financing the construction of the new home for the New Jersey Nets NBA basketball team.

In a subsequent interview with Reuters, George Olsen, managing principal of the New York City Regional Center acknowledged the claims were "not accurate" - the investors will finance the rebuilding of a rail yard and some related infrastructure near the new basketball court -- and promised he would jump on Kookmin "with two feet."

"But that's what's frustrating," Olsen said. "You can't be at every seminar, you can't be at every meeting, you can't be in the room when one of these people is talking. To raise \$100 million, you have to get 200 investors. That's a lot of people. So there's a certain amount of mass marketing that has to go on. And once you get into that realm, it's hard to control."

THANK YOU, GOVERNOR

IN THEIR PRESENTATIONS abroad, many EB-5 businesses also emphasize the role USCIS played in their designation, implying a level of government vetting and support that anyone would find reassuring.

The agent from Kookmin, for instance, said during the Seoul sales presentation that the government of New York state was involved in the rail yard project. Olsen said that claim was inaccurate as well.

But such claims get made over and over again -- especially outside the United States.

In a move that seems designed to further confuse would-be investors, centers in South Dakota, Vermont and Idaho, among others, have even brought elected officials along on their overseas sales pitches. Gibson calls the practice "a serious concern."

Still, the visits by high-profile politicians, including sitting state governors, continues, encouraged by the overseas promoters.

"We ask them to invite their government officials," said Hong Yu, a project manager based in Florida for the Wailian Overseas Consulting Group, which, like Maslink, works to find investors for the program. "That's very important ... to the Chinese people. Chinese people think, 'OK that project is government



IN LIMBO: Korean immigrant Kyung Kim shows off his family's passports during an interview with Reuters in New York, November 19, 2010. REUTERS/BRENDAN MCDERMID

supported.' ... It feels safer."

But the impression is utterly false. Bentley, the USCIS spokesman, is unequivocal on the point: Just because a business has been designated as an approved EB-5 investment "does not mean that the projects are government-backed or guaranteed."

DOUBLE DIPPING

ANOTHER BIG PROBLEM with the program: The attorneys the immigrants rely on as they navigate the EB-5 maze in the United States are often deeply conflicted, accepting commissions from the businesses they steer the immigrants to. It's a practice the lawyers

do not always disclose and one that may violate U.S. securities laws.

In May, the SEC published something called a denial of no-action letter in response to a request it received from a Virginia law firm known as Brumberg, Mackey & Wall.

In a nutshell, the SEC made it clear that attorneys cannot help effect transactions in securities -- and be compensated for it -- unless they are also registered broker dealers. The case was not an EB-5 case, but its relevance to the program is crystal clear.

"That caused a lot of alarm," said Latour because most of the lawyers accepting commissions from EB-5 businesses are not registered broker dealers. Still, the practice is widespread and businesses acknowledge they pay the commissions.

"There's about a half dozen or so attorneys that do a significant amount of EB-5 work

and don't take referral fees," said Liebman.

"The other God-knows-how-many attorneys out there, do take the referral fees. Now, we insist that they disclose that they took it. We tell them they shouldn't take it. And if it does go wrong, that it's not a waivable conflict."

In an effort to clean up the business and head off increased regulation by the government, several dozen businesses that accept investors through the program have started a Chicago-based trade group called the Association to Invest in the USA (IIUSA).

One of its first orders of business has been to educate attorneys about the risks the finder's fees entail. These include not just potential SEC action but possible malpractice suits if immigrant clients watch their investment sour.

"There are entrepreneurial attorneys

out there who, I suppose, found a way to rationalize the activity," said David Andersson, an immigration attorney and regional center owner who acts as the trade group's president. "Maybe they disclosed it to their clients. Maybe they didn't ... We certainly took it on as an issue of education."

MATERIAL CHANGES

WHAT CONCERNS IIUSA MORE, he says, is the danger that one of the new centers will misinterpret the program's rules and put immigrants in jeopardy. "This is our worst nightmare," Andersson said.

An examination of recent decisions handed down by USCIS's administrative appeals office suggests the nightmare is already happening. Dozens of EB-5 immigrants have had their final residency applications denied because the businesses they invested in deviated from the plans filed with USCIS. These are the plans the immigrants must cite when they first apply for their conditional green card, using a form known as an I-526.

And it isn't just businesses new to the program that are making mistakes, the analysis shows.

In a case earlier this year, an immigrant had invested in a partnership run by the Philadelphia Industrial Development Corporation and CanAm Enterprises, one of the biggest and oldest EB-5 companies. The partnership originally loaned money to a building materials company, which planned to use the funds to expand its warehouse and hire new workers.

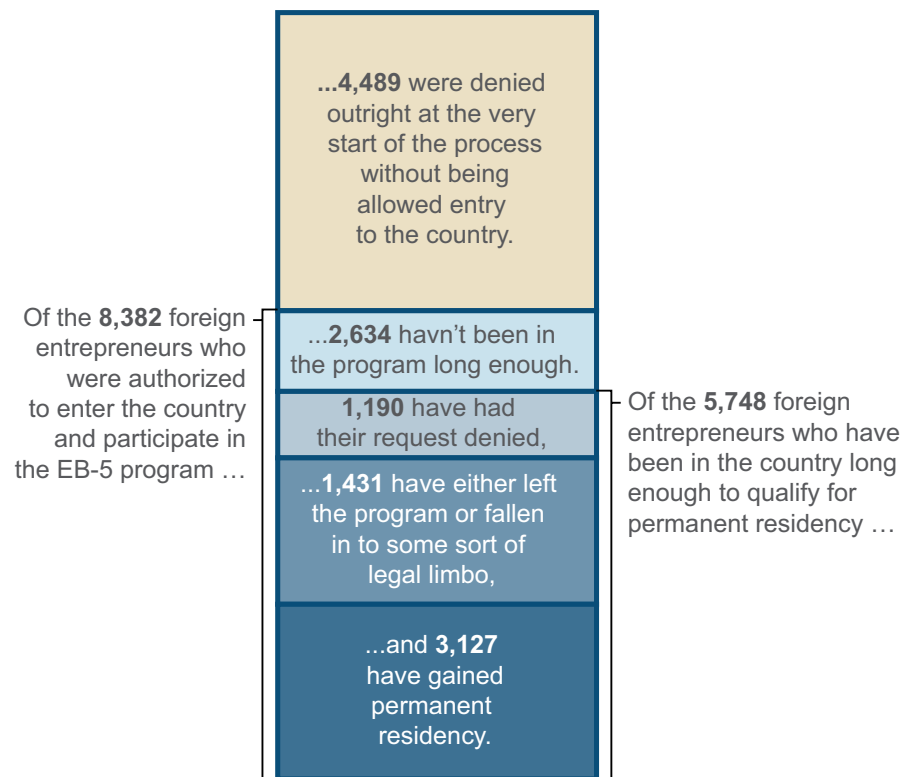
But the downturn in the U.S. housing market stopped that expansion in its tracks, and the building materials company returned the loan. So the partnership, by unanimous resolution, decided to loan the money to a developer building an upscale steakhouse, which opened a few months later.

From a business perspective, it was a perfectly reasonable change of tack. But the switch jeopardized the applications of the immigrants who invested in the partnership. When one of them applied to get his permanent green card in 2008, USCIS denied the petition. When he appealed, USCIS's administrative appeals office ruled against him.

Over the past year and a half, there has been a raft of such adverse "material change" rulings against immigrants. In some cases, the businesses insist they informally communicated the changes to USCIS personnel, who told them not to worry about them. The USCIS has rejected their appeals,

The EB-5 visa gamble

Of the 13,719 foreign entrepreneurs who sought EB-5 visas during the program's first 20 years...



Source: USCIS, Thomson Reuters



Reuters graphic/Stephen Culp

08/12/10

saying: "the opinion of a single USCIS official is not binding and no USCIS officer has the authority to pre-adjudicate an immigrant-investor petition."

To Ira Kurzban, an immigration attorney who has been representing hundreds of immigrants stranded by the crackdown on the EB-5 program in the late 1990s, it's *deja vu*.

"The agency has a short memory," he said. "They've taken the position that if it's quote a new material change, you have to file a new I-526 petition, which is ridiculous. And they're applying it retroactively."

The repercussions are borne entirely by the immigrants, not by the EB-5 businesses that make the error. In fact, during the 20-year life of the program, only one regional center has been stripped of its designation. That was earlier this year, when the Victorville Regional Center in California was kicked out of the program because it "could not demonstrate that they had any viable capital investment projects to offer to EB-5 investors that comply with the EB-5 job creation requirements," according to Bentley.

By the time the USCIS acted, however, Victorville had signed up three foreign investors, according to Bentley. They will now have their conditional green cards revoked and will either have to start the process again or leave the country.

With the U.S. economy limping along and the unemployment rate stubbornly high, experts worry many of the new EB-5 projects will fall short of the program's strict job creation requirements, which have to be met within the first two years of the immigrant's residency here. As a result, many more of the immigrants will be forced to pack up their families and go back home.

'TOO LATE TO GO BACK'

FOR THE VICTORVILLE THREE, the letdown came early in the process. More often it comes years into the immigrants' U.S. stay, when they petition to have the conditions on their green cards lifted and are denied as a result of actions others have taken.

That's what happened to Kyung Kim, a former executive with a Korean reinsurance company who came to the United States with his wife and two children in 1997 through the EB-5 program.

Kim invested with AIS, the company formed by former INS officials that helped troubled textile mills keep their doors open. But shortly after he got in, AIS's luck with the INS ran out.

The company had been structuring its EB-5



MOVING ON UP: A man rides a bicycle loaded with chickens in Nanjing, eastern China's Jiangsu province March 1, 2007. REUTERS/LEO LANG

VIDEO

To see video on this story, click here:

<http://link.reuters.com/cyd43r>

deals creatively, requiring its foreign investors to put up only \$125,000 in cash -- not the \$500,000 originally required under the law -- and taking the other \$375,000 in the form of a promissory note, which it would routinely forgive once the immigrant's permanent residency application was approved.

It was an arrangement the legal office of the INS had signed off on again and again. But when the agency abruptly changed its mind following an internal probe, concluding the promissory notes were an impermissible guarantee, only the immigrants suffered.

The INS went back and rejected hundreds of the applications it had previously approved. In a number of other cases, including Kim's, the agency simply sat on their applications for permanent residency -- refusing to either approve or deny them, according to Kurzban.

He says the plight of the two groups reflects a basic hostility to the EB-5 program inside USCIS itself. "The issue is that there are people within the agency who don't like the EB-5 program and they are doing whatever they can to subvert it," he said.

Bentley at USCIS called the accusation "false." He said drafting regulations to deal with the immigrants stranded by the AIS debacle was "a USCIS priority" though he

acknowledged "we recognize it has been pending in years prior."

For the past 11 years, Kurzban has been fighting the agency on behalf of several hundred EB-5 investors and their families. Because of attrition, he estimates about 100 of the immigrant investors and perhaps 300 of their family members remain in legal limbo. Most of the rest have given up and gone home.

He's won a few rounds along the way, including an appeals court ruling that called the immigration agency's change of heart over AIS illegally retroactive. But the agency continues to litigate and Kurzban fears it may only be a matter of time before he's "fighting 100 deportation proceedings."

To complicate the issue, in 2002, the U.S. Congress intervened in the AIS case, ordering the INS -- now USCIS -- to come up with an equitable way for the AIS investors to become legal. The lawmakers gave the agency 120 days to come up with a plan. Eight years later, it has yet to do so.

Kurzban cites the agency's delay as further evidence of the hostility to the EB-5 program inside an agency that immigrants rely on to be fair and impartial arbiter of their cases.

"Whether they resent it because these are quote rich people, or they resent it because nobody can buy their way into the country, whatever it is, the reality is they're ignoring what the Congress has mandated," he said.

In 2003, Kim went into business for himself, buying a specialty grocery store. Last year, despite the uncertainty he faces, he bought

an adjacent liquor store. In all, he employs 18 workers, nearly double what he promised when he came to this country 13 years ago.

"It's miserable and frustrating," he said of his protracted battle. Horror stories like his have spread back home to South Korea and interest in the program in that country, once the No. 1 source of EB-5 investors, has waned. The Chinese -- at least for now -- have more than taken up the slack.

But Latour and others worry the Chinese

authorities are losing patience with the EB-5 promoters and that a crackdown may be looming, one that would effectively kill the program. "The government is really starting to get very upset with it," he said. "And when China closes its door, everyone is going to follow suit."

For now, Chinese interest in the program remains high. So Lee, Maslink's CEO, says he expects he will be selling the program to strangers in a conference room somewhere

in China come February, when his wife, an Australian, gives birth back home.

"I have no choice," he said. "Business is so good."

(Reporting by James B. Kelleher and Karin Matz in Chicago and Melanie Lee in Shanghai, Yeojung Chang in Seoul and Angela Moon in New York; Editing by Jim Impoco and Claudia Parsons)



AMERICAN DREAM CRUSHED: A U.S. flag that has been trodden on lies on the ground during anti-U.S. ceremony in Azadi Square in Tehran. REUTERS/MORTEZA NIKOUBAZL

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