PREFACE

This 4th edition of *Immigration Options for Investors and Entrepreneurs* would have decayed in primitive sketches and would not have made it to you as readable material, but for the inspiration and sustained effort of our very talented editorial team. All of these practitioners are pressed for time and busy with their own important primary work, and so it is with immense regard we recognize their contributions. In order to produce more than 70 articles for this edition, they have spent hundreds of hours working with authors to refine and elevate work product that is suited to the needs of our demanding readers. *Thank you* to those repeat editors—David Morris, Kristal Ozmun, Susan Pilcher, and Cletus Weber—who did not succeed in extricating themselves from this endeavor and signed up for another tour in this edition; and to the new editors—Elsie Arias, Erin Corber, Michele Franchett, and Suzanne Lazicki—who in joining the editorial crew for this edition have produced the sparks that help rekindle the flame. Also, *many thanks* are due to AILA Publications and in particular to Danielle Polen, Sarah Redzic, and Richard Link, who showed considerable patience with me as we plodded through the work for this 4th edition. To all I extend deep gratitude.

Thinking back to the work in creating this book, which started a few years ahead of the publication of the 1st edition in 2006, it indeed has been a long journey. While some 36 new authors appear in this 4th edition, more than 125 authors have contributed articles in at least one of the four editions. And the four editions have required the handiwork of 17 editors in all. The book has been a collaborative, adventurous enterprise.

This 4th edition is prepared with a broad audience in mind; however, the primary objective is to equip immigration lawyers with the practice tools for representing clients competently in this complex practice area of immigration law. The immigration lawyer who represents clients when investors and/or entrepreneurs are seeking US immigration benefits will want this book within easy reach.

How complex is the practice area? Any attorney who has represented an entrepreneur knows too well the U.S. immigration framework still does not include a category tailored for founders of startup ventures. The fragility and business realities of a startup typically make for an exceedingly difficult fit when trying to shoehorn the case into the nonimmigrant visa alphabet of H–E–L–O. The immigrant visa categories also stack up as long shots for the typical entrepreneur.

The EB-5 visa category is an entirely different realm of complexity. Start with the anomaly that it is legislated for the "entrepreneur," when in actual practice a very small percentage (probably less than 5%) of all EB-5 visa applicants are true hands-on entrepreneurs. That must be due in part to how the agency (first legacy INS and now USCIS) has adopted adjudication standards and policies in the EB-5 program that are unaccommodating for actual entrepreneurs.

Given the prominence of regional centers in the daily business of EB-5 practice, continuing authorization of the regional center program stands as a very substantial complicating factor for practitioners. More than once in recent times, a panic mentality preceded the imminent sunset date of the regional center program. Central to that panic has been the promotion narrative about an imminent price increase for EB-5 investment. This somewhat self-inflicted chaotic force has been in tension with the need for caution and healthy skepticism when one is tasked with conducting due diligence and ensuring compliance. The following graph depicts well the volatility surrounding 15 short-term reauthorizations of the regional center program in just a four-year period.

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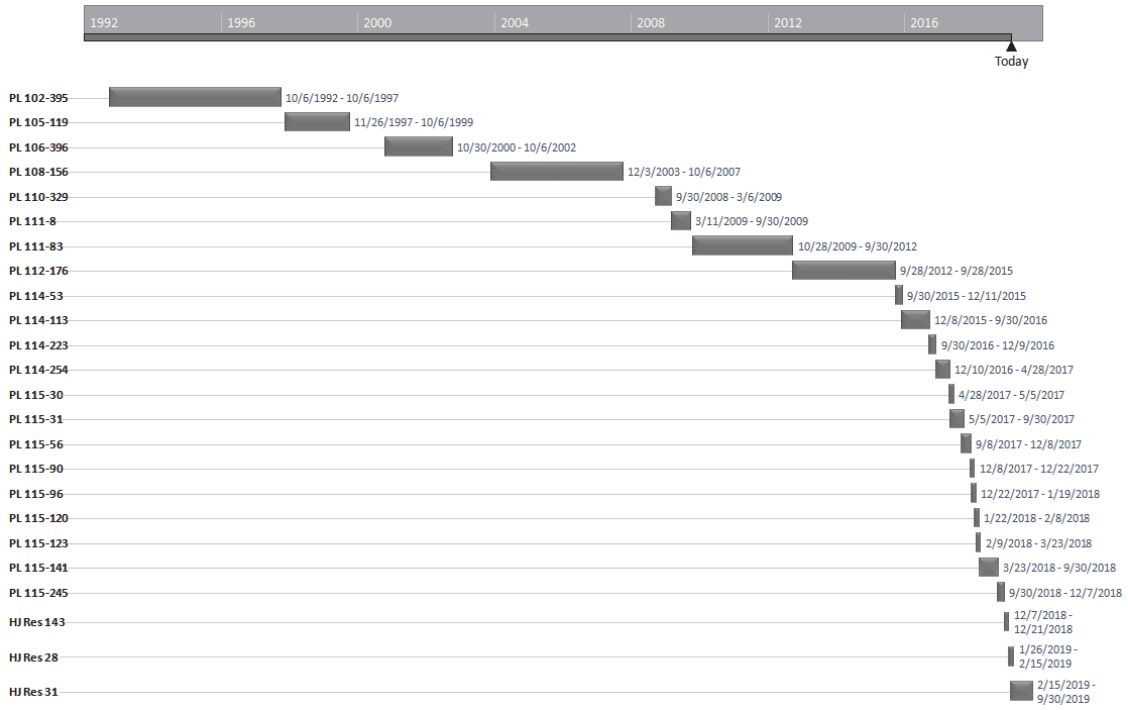
Regional Center Program Authorization History, 1992 to 2019



Source: Suzanne Lazicki

I certainly grew seasick from the rocking of the legislative boat on EB-5 matters the past few years, and the credit goes to Suzanne Lazicki for keeping track of the legislative activities that have yet to anchor anywhere:

- **Nine** EB-5 reform bills introduced in Congress – from 2015 to 2017
- **Six** staff draft EB-5 reform bills circulated for comment – from 2016 to 2018
- **Five** congressional hearings on EB-5 reform – from 2016 to 2018

Moreover, confusion about applicable legal standards continued to permeate the air of EB-5 practice, highlighted in the wide swings of policy memoranda (from 2009 to 2015) and then in the integration of EB-5 adjudication standards within the *USCIS Policy Manual* in several iterations and amendments (from 2016 to 2019). During this same period, highlighted with notices in the Federal Register in January 2017, USCIS waived the threatening flag of new regulations with a notice of proposed rulemaking (largely concerning targeted employment areas, and a substantial increase in minimum investment thresholds) and an advance notice of proposed rulemaking (involving regional centers – exemplar petitions, monitoring and oversight, and terminations). But like in every year of the past 25, no new regulations have been adopted as of April 2019.

Over time, beginning with the bellwether fiscal year 2009, EB-5 visa usage rose steadily to its peak in fiscal year 2014. EB-5 visa usage finally capped out that year and continues to cap out annually.

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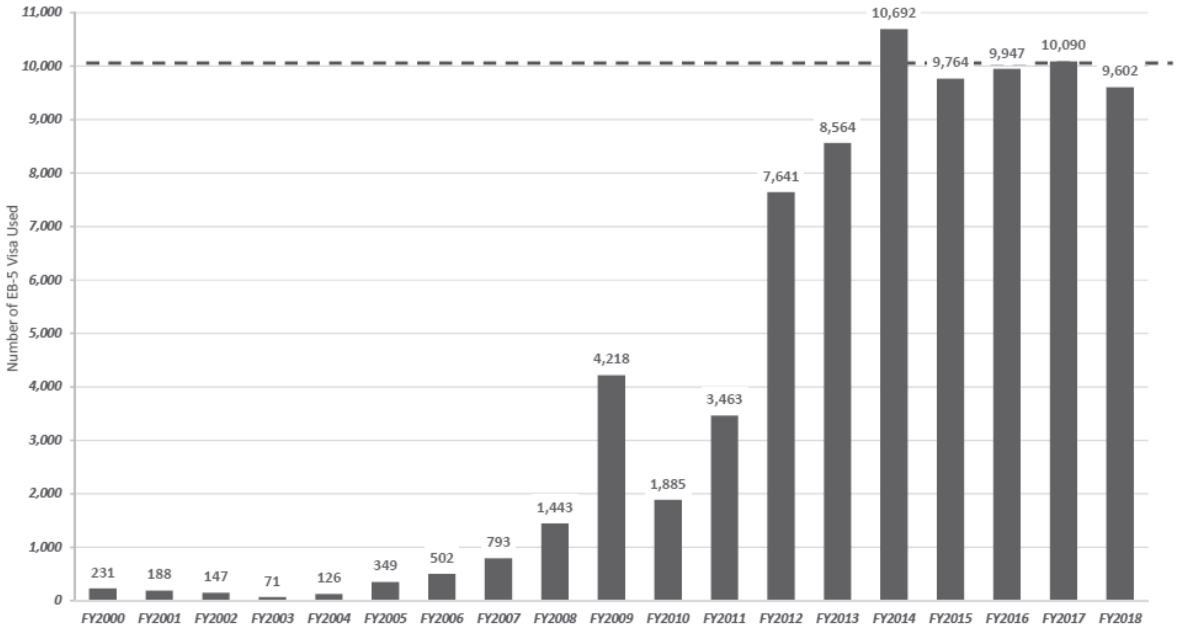
Number of EB-5 Visas Used by Fiscal Year (FY2000-FY2018)



Source: Annual Report of the Visa Office, Bureau of Consular Affairs, U.S. Department of State
Prepared by: IIUSA

The steep rise in EB-5 visa usage created a tremendous backlog of approved I-526 petitions at the National Visa Center, especially for China-mainland born investors.

EB-5 Applicants with Petitions on File at NVC

Year of priority date

Foreign State of Chargeability	2014	2015	2016	2017	Grand Total
Brazil	10	97	102	51	**260**
China-mainland born	8,827	13,904	7,008	3,095	**32,834**
India	9	78	230	192	**509**
South Korea	7	30	85	237	**359**
China-Taiwan born	8	37	100	101	**246**
Vietnam	10	136	553	413	**1,112**
Rest of World	88	570	529	332	**1,519**

Source: Department of State

Behind EB-5 investment from China, then follows EB-5 investment from nationals of Vietnam, India, South Korea, Taiwan and Brazil.

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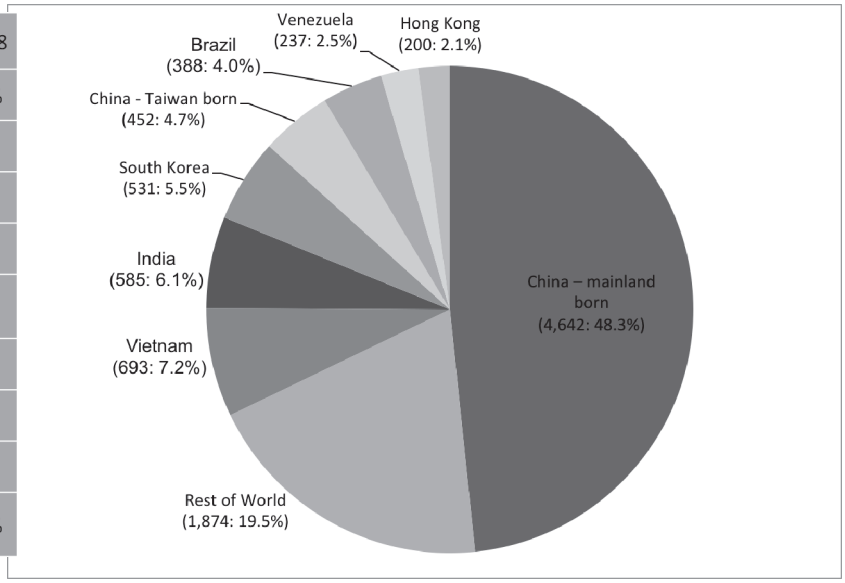
Top Countries of EB-5 Number Use – FY 2018

Country*	FY2017	FY2018
China-Mainland	75.0%	48.3%
Vietnam	4.7%	7.2%
India	1.7%	6.1%
Korea, South	1.9%	5.5%
China-Taiwan born	1.9%	4.7%
Brazil	2.8%	4.0%
Venezuela	1.1%	2.5%
Hong Kong	0.8%	2.1%
All Other Countries	10.1%	19.5%

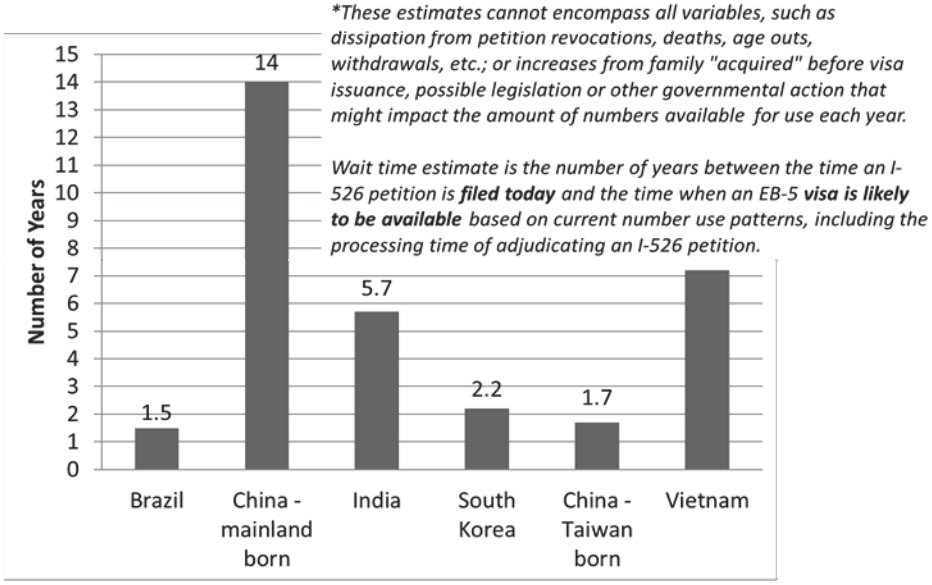


**Sorted by FY2018 ranking*

Source: Department of State

Reaching the annual EB-5 visa cap resulted in visa retrogression for China, and visa backlogs set for China and Vietnam, and later estimated visa wait times for China, Vietnam, and India, in particular.

Potential Wait Time* Until Visa Number Availability If the I-526 Petition is Filed Today (Oct. 30, 2018)



Source: Department of State

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Visa backlogs for the EB-5 category have become a new norm, and the substantial wait times have turned upside down the planning of thousands of families for US immigration. In turn, frustrated expectations have seriously complicated the practice area.

Many EB-5 investor clients are unwilling to wait the 5 or 10 years, or more, it may require for the family to immigrate through the EB-5 investor program. Many current and future clients are opting for migration to other countries. This 4th edition of the book includes articles covering investment-based immigration or citizenship for six countries. Starting in 2006, this book has investigated programs of ten countries, with recurring attention to Canada and Australia in particular. I have commented before that the investment-based immigration programs of other countries provide useful insights about representing clients bound for the United States and offer conceptual models that could be attractive to US program policy makers. But more often it now seems, with visa backlogs and uncertain outcomes in the EB-5 investor program, clients willing to invest are foregoing the United States entirely.

Although this book does not aim to cover the field of global migration by investment, the global context is relevant for many would-be investors who have choices. Several international measures for comparison come to mind, including those that rank the United States at the top of the heap for university-level education. The "Henley Passport Index" (by the private firm Henley & Partners) aims to measure "travel freedom" as indicated by the number of countries providing that country's passport with visa-free travel. The United States and Canada (in the same position at #6) rank very high with 184 visa-free travel destinations. Countries like China (67th) and India (80th) rank quite low on this measure. At the top of the list are Singapore, Japan, and South Korea. By a different measure – the "Human Development Index" produced by the United Nations Development Programme's Human Development Report – the United States drops down the ladder to the 13th position, below Australia, Canada, and many European countries. This Index ranks countries by life expectancy, education and income per capita indicators. Large developing countries, for example like India, rank considerably lower (131st on the list) on this ranking of human development. When gender inequalities are taken into consideration, the United States ranking is 27th on the Gender Development Index. These indices are capturing just a few of the push-and-pull factors that go into the complex considerations of families worldwide in deciding whether to emigrate and if so to which destination.

At the outset I observed that this book endeavors to be a reliable resource for immigration lawyers. Like in the 3rd edition of this book, this 4th edition includes three articles covering lawyer ethics and professional responsibility, which necessarily involve contexts beyond a narrow conception of immigration-only legal services. I count another six articles covering due diligence topics, and certainly many of these topics should be approached by the immigration lawyer as part of a team of professionals with a variety of expertise. This book always has covered securities law, and another six of the articles in this edition cover some aspect of securities law practice. Add to that the articles on anti-money laundering, sanctions, taxation, investment advice, regional economics, escrows, insurance and project finance, and it is no hyperbole to emphasize that it is a highly multi-disciplinary practice area.

We tarried awhile, pausing on the launch of this 4th edition thinking Congress or USCIS would hand down sweeping reform with legislation or regulations. As the final product goes to print, that sweeping reform still has not come and odds are when there is change in law it would be in the form of a minimum price increase and certain additional requirements for oversight and compliance. With all the practice innovation occurring since publication of the last edition in 2014, and with tens of thousands of EB-5 investors already committed to the United States as a destination and needing excellent immigration guidance, we are glad we finally moved boldly to put this book in the hands of practitioners.

Lincoln Stone,

April 2019

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