BLECHER & COLLINS, P.C.
Maxwell M. Blecher (State Bar No. 26202)
Mblecher@blechercollins.com
Jennifer S. Elkayam (State Bar No. 238619)
Jelkayam@blechercollins.com
515 South Figueroa Street, 17th Floor
Los Angeles, California 90071-3334
Telephone: (213) 622-4222
Facsimile: (213) 622-1656

Attorneys for Petitioner
DARLEY INTERNATIONAL, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota International Business Institute, a non-profit organization, Respondent.	CV08-05034DDP(PLAx) CASE NO. DECLARATION OF MAXWELL M. BLECHER IN SUPPORT OF PETITION FOR ORDER COMPELLING ARBITRATION PURSUANT TO WRITTEN AGREEMENT Hearing Date: September 8, 2008 Time: N/A Courtroom: N/A

I, Maxwell M. Blecher, declare as follows:

1. I am a partner with the law firm of Blecher & Collins, P.C., and am counsel of record for Petitioner Darley International, Inc. ("Darley"). I make this declaration in support of Darley's Petition for Order Compelling Arbitration Pursuant to Written Agreement. Unless otherwise stated, I have personal knowledge of the matters set forth in this Declaration and, if called to testify, could and would competently and truthfully testify thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of Darley's March 17, 2008 Demand for Arbitration before JAMS to Hanul Professional Law Corporation ("Hanul").

3. Attached hereto as Exhibit 2 is a true and correct copy of Darley's March 18, 2008 Demand for Arbitration before JAMS to Respondent South Dakota International Business Institute ("SDIBI").

4. Attached hereto as Exhibit 3 is a true and correct copy of SDIBI's May 7, 2008 letter responding to Darley's demand for arbitration.

5. Attached hereto as Exhibit 4 is a true and correct copy of Hanul's May 13, 2008 response to Darley's demand for arbitration.

6. Attached hereto as Exhibit 5 is a true and correct copy of Darley's May 15, 2008 letter responding to SDIBI's refusal to submit to arbitration.

7. On or about July 30, 2008, I accessed the website of Respondent SDIBI at http://www.sd-exports.org/ and printed the main home page entitled "South Dakota International Business Institute," a true and correct copy of which is attached hereto as Exhibit 6.

8. Attached hereto as Exhibit 7 is a true and correct copy of the January 29, 2007 CRS Report for Congress.

BLECHER & COLLINS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

9. Attached hereto as Exhibit 8 is a true and correct copy of a December 12, 2006 letter from the U.S. citizenship and immigration services to SDIBI approving its regional center status.

10. On or about July 30, 2008, I accessed the website of Respondent SDIBI at http://www.sd-exports.org/eb-5/regional.htm and printed the page entitled "Regional Center (EB-5 program)," a true and correct copy of which is attached as Exhibit 9.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 30th day of July 2008, at Los Angeles, California.

Maxwell M. Blecher

36832.1

Exh. 1

JAMS
THE RESOLUTION EXPERTS®

Demand for Arbitration Before JAMS

TO RESPONDENT: HANUL PROFESSIONAL LAW CORPORATION
(Name of the Party on whom Demand for Arbitration is made)

(Address) 3699 WILSHIRE BOULEVARD, SUITE 1150

(City) LOS ANGELES (State) CALIFORNIA (Zip) 90010

(Telephone) (213) 386-0008 (Fax) (213) 386-0088 (E-Mail) jsi@hanullaw.com

Representative/Attorney (if known): JAMES J. PARK
(Name of the Representative/Attorney of the Party on whom Demand for Arbitration is made)

(Address) 3699 WILSHIRE BOULEVARD, SUITE 1150

(City) LOS ANGELES (State) CALIFORNIA (Zip) 90010

(Telephone) (213) 386-0008 (Fax) (213) 386-0088 (E-Mail) jsi@hanullaw.com

FROM CLAIMANT (Name): DARLEY INTERNATIONAL, LLC

(Address) 277 LA ESPIRAL ROAD

(City) ORINDA (State) CALIFORNIA (Zip) 94563

(Telephone) (925) 258-0600 (Fax) (E-Mail) Sovtrade@pacbell.net

Representative/Attorney of Claimant (if known): MAXWELL M. BLECHER
(Name of the Representative/Attorney for the Party Demanding Arbitration)

(Address) BLECHER & COLLINS, P.C. 515 SOUTH FIGUEROA STREET, SUITE 1700

(City) LOS ANGELES (State) CALIFORNIA (Zip) 90071-3334

(Telephone) (213) 622-4222 (Fax) (213) 622-1656 (E-Mail) mblecher@blechercollins.com

NATURE OF DISPUTE
Claimant hereby demands that you submit the following dispute to final and binding arbitration (a more detailed statement of the claim(s) may be attached): FOR BREACH OF THE OVERSEAS RECRUITMENT AGREEMENT EXECUTED ON OR ABOUT OCTOBER 18, 2007.

ARBITRATION AGREEMENT
This demand is made pursuant to the arbitration agreement which the parties made as follows (cite location of arbitration provision & attach two (2) copies of entire agreement). SEE PARAGRAPHS 12 AND 13 OF THE OVERSEAS RECRUITMENT AGREEMENT ATTACHED HERETO.

JAMS

THE RESOLUTION EXPERTS®

Demand for Arbitration Before JAMS

CLAIM & RELIEF SOUGHT BY CLAIMANT

Claimant asserts the following claim and seeks the following relief (include amount in controversy, if applicable): BREACH OF CONTRACT; DARLEY WILL SEEK MONEY DAMAGES AND INJUNCTIVE RELIEF.

RESPONSE

Respondent may file a response and counter-claim to the above-stated claim according to the applicable arbitration rules. Send the original response and counter-claim to the claimant at the address stated above with two (2) copies to JAMS.

REQUEST FOR HEARING

JAMS is requested to set this matter for hearing at: SAN FRANCISCO, CALIFORNIA
(Preferred Hearing Location)

Signed (Claimant): [signature] Date: 3/17/08
(may be signed by an attorney)

Print Name: Maxwell M. Blecher

Please include a check payable to JAMS for the required initial, non-refundable $400 per party deposit to be applied toward your Case Management Fee and submit to your local JAMS Resolution Center.

JAMS

THE RESOLUTION EXPERTS®

Demand for Arbitration Before JAMS

COMPLETION OF THIS SECTION IS REQUIRED FOR CLAIMS INITIATED IN CALIFORNIA

A. **Please check here if this ☐ IS or ☒ IS NOT a CONSUMER ARBITRATION as defined by California Rules of Court Ethics Standards for Neutral Arbitrators, Standard 2(d) and (e):**

"Consumer arbitration" means an arbitration conducted under a pre-dispute arbitration provision contained in a contract that meets the criteria listed in paragraphs (1) through (3) below. "Consumer arbitration" excludes arbitration proceedings conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

1) The contract is with a consumer party, as defined in these standards;
2) The contract was drafted by or on behalf of the non-consumer party; and
3) The consumer party was required to accept the arbitration provision in the contract.

"Consumer party" is a party to an arbitration agreement who, in the context of that arbitration agreement, is any of the following:

1) An individual who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, insurance, and other goods and services as defined in section 1761 of the Civil Code;
2) An individual who is an enrollee, a subscriber, or insured in a health-care service plan within the meaning of section 1345 of the Health and Safety Code or health-care insurance plan within the meaning of section 106 of the Insurance Code;
3) An individual with a medical malpractice claim that is subject to the arbitration agreement; or
4) An employee or an applicant for employment in a dispute arising out of or relating to the employee's employment or the applicant's prospective employment that is subject to the arbitration agreement.

If Respondent disagrees with the assertion of Claimant regarding whether this IS or IS NOT a CONSUMER ARBITRATION, Respondent should communicate this objection in writing to the JAMS Case Manager and Claimant within seven (7) calendar days of service of the Demand for Arbitration.

B. **If this is an EMPLOYMENT matter, Claimant must complete the following information:**

Effective January 1, 2003, private arbitration companies are required to collect and publish certain information at least quarterly, and make it available to the public in a computer-searchable format. In employment cases, this includes the amount of the employee's annual wage. The employee's name will not appear in the database, but the employer's name will be published. Please check the applicable box below:

Annual Salary:

☐ Less than $100,000 ☐ More than $250,000

☐ $100,000 to $250,000 ☐ Decline to State

C. **Consumers (as defined above) with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of the arbitration fees.** In those cases, the respondent must pay 100% of the fees. Consumers must submit a declaration under oath stating the consumer's monthly income and the number of persons living in his or her household. Please contact JAMS at 1-800-352-5267 for further information.

Exh. 2

JAMS

THE RESOLUTION EXPERTS®

Demand for Arbitration Before JAMS

TO RESPONDENT: SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE
(Name of the Party on whom Demand for Arbitration is made)

(Address) 1200 SOUTH JAY STREET

(City) ABERDEEN (State) SOUTH DAKOTA (Zip) 57401-7198

(Telephone) (605) 626-3149 (Fax) (605) 626-3004 (E-Mail) bollenj@northern.edu

Representative/Attorney (if known):
(Name of the Representative/Attorney of the Party on whom Demand for Arbitration is made)

(Address)

(City) (State) (Zip)

(Telephone) (Fax) (E-Mail)

FROM CLAIMANT (Name): DARLEY INTERNATIONAL, LLC

(Address) 277 LA ESPIRAL ROAD

(City) ORINDA (State) CALIFORNIA (Zip) 94563

(Telephone) (925) 258-0600 (Fax) (E-Mail) Sovtrade@pacbell.net

Representative/Attorney of Claimant (if known): MAXWELL M. BLECHER
(Name of the Representative/Attorney for the Party Demanding Arbitration)

(Address) BLECHER & COLLINS, P.C. 515 SOUTH FIGUEROA STREET, SUITE 1700

(City) LOS ANGELES (State) CALIFORNIA (Zip) 90071-3334

(Telephone) (213) 622-4222 (Fax) (213) 622-1656 (E-Mail) mblecher@blechercollins.com

NATURE OF DISPUTE

Claimant hereby demands that you submit the following dispute to final and binding arbitration (a more detailed statement of the claim(s) may be attached): FOR BREACH OF THE OVERSEAS RECRUITMENT AGREEMENT EXECUTED ON OR ABOUT OCTOBER 18, 2007.

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JAMS

THE RESOLUTION EXPERTS®

Demand for Arbitration Before JAMS

CLAIM & RELIEF SOUGHT BY CLAIMANT

Claimant asserts the following claim and seeks the following relief (include amount in controversy, if applicable): BREACH OF CONTRACT;
DARLEY WILL SEEK MONEY DAMAGES AND INJUNCTIVE RELIEF.

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Respondent may file a response and counter-claim to the above-stated claim according to the applicable arbitration rules. Send the original response and counter-claim to the claimant at the address stated above with two (2) copies to JAMS.

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Signed (Claimant): [signature] Date: 3/17/08
(may be signed by an attorney)

Print Name: MAXWELL M. BLECHER

Please include a check payable to JAMS for the required initial, non-refundable $400 per party deposit to be applied toward your Case Management Fee and submit to your local JAMS Resolution Center.

JAMS

THE RESOLUTION EXPERTS®

Demand for Arbitration Before JAMS

COMPLETION OF THIS SECTION IS REQUIRED FOR CLAIMS INITIATED IN CALIFORNIA

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1) The contract is with a consumer party, as defined in these standards;
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3) The consumer party was required to accept the arbitration provision in the contract.

"Consumer party" is a party to an arbitration agreement who, in the context of that arbitration agreement, is any of the following:

1) An individual who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, insurance, and other goods and services as defined in section 1761 of the Civil Code;
2) An individual who is an enrollee, a subscriber, or insured in a health-care service plan within the meaning of section 1345 of the Health and Safety Code or health-care insurance plan within the meaning of section 106 of the Insurance Code;
3) An individual with a medical malpractice claim that is subject to the arbitration agreement; or
4) An employee or an applicant for employment in a dispute arising out of or relating to the employee's employment or the applicant's prospective employment that is subject to the arbitration agreement.

If Respondent disagrees with the assertion of Claimant regarding whether this IS or IS NOT a CONSUMER ARBITRATION, Respondent should communicate this objection in writing to the JAMS Case Manager and Claimant within seven (7) calendar days of service of the Demand for Arbitration.

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☐ Less than $100,000 ☐ More than $250,000

☐ $100,000 to $250,000 ☐ Decline to State

C. **Consumers (as defined above) with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of the arbitration fees.** In those cases, the respondent must pay 100% of the fees. Consumers must submit a declaration under oath stating the consumer's monthly income and the number of persons living in his or her household. Please contact JAMS at 1-800-352-5267 for further information.

Exh. 3

SOUTH DAKOTA
INTERNATIONAL BUSINESS INSTITUTE

NORTHERN STATE UNIVERSITY

May 7, 2008

To: Blecher & Collins P.C.
P.C. 515 South Figueroa Street, Suite 1700
Los Angeles, CA 90071-3334

Attn: Mr. Maxwell M. Blecher

Re: Darley International, LLC vs. SDIBI

Dear Mr. Blecher:

This letter serves the purpose of notifying Mr. Maxwell Blecher and JAMS that JAMS lacks the right to decide on the jurisdictional issue on the claimant's breach of contract claim because there has never been a contract between SDIBI and the claimant, Darley International, LLC.

It therefore is my opinion that SDIBI should not be required to respond to any further requests made by JAMS pertaining to this matter.

Thank you.

Joop Bollen
Director, SDIBI

CC: JAMS, Ellen Schuster

1200 South Jay Street, Aberdeen, South Dakota 57401-7198 USA
Phone: (605) 626-3149, Fax: (605) 626-3004, Website: www.sd-exports.org

Exh. 4

Su Ki Kim, Esq. State Bar Number: 242573
HANUL PROFESSIONAL LAW CORP.
3699 Wilshire Boulevard, Suite #1150
Los Angeles, California 90010
Telephone : (213) 386-0008
Facsimile : (213) 386-0088

Attorney for Respondent
HANUL PROFESSIONAL LAW CORPORATION

IN THE MATTER OF ABRITRATION BETWEEN

DARLEY INTERNATIONAL, LLC., Claimant, vs. HANUL PROFESSIONAL LAW CORPORATION, Respondent.	CASE NO.: 1100054680 RESPONSE TO DEMAND FOR ARBITRATION

COMES NOW Respondent, HANUL PROFESSIONAL LAW CORPORATION and responds to Claimant's Demand for Arbitration herein as follows:

I

GENERAL DENIAL

1. The Respondent, under and pursuant to the provisions of the Code of Civil Procedure, Section 431.30, deny generally and specifically each and every allegation, cause of action, statement, matter and thing set forth and alleged in the Demand, and further deny that Claimant has been damaged in the manner or sums alleged or in any sum or sums whatsoever, or that Respondent is indebted to Claimant in the sums alleged or in any sum whatsoever.

II

FIRST AFFIRMATIVE DEFENSE

2. The Demand and each claim for relief contained therein fail to state a claim against Respondent upon which relief can be granted.

III

SECOND AFFIRMATIVE DEFENSE

3. The Demand, and each purported cause of action contained therein, is barred by the applicable Statute of Limitations codified in the California Code of Civil Procedure.

IV

THIRD AFFIRMATIVE DEFENSE

4. Claimant failed to properly, adequately or in any manner notify Respondent of any alleged default, breach, or demand for payment, in writing or otherwise, allegedly resulting in damage and/or loss to Claimant.

V

FOURTH AFFIRMATIVE DEFENSE

5. Claimant, having failed and refused to exercise reasonable diligence to mitigate damages, has unduly prejudiced Respondent, and as a result Respondent is entitled to a credit, reduction, and/or offset against all losses and damages complained of by Claimant, if any there were, in an amount equal to the amount by which such losses or damages could be reasonably avoided.

VI

FIFTH AFFIRMATIVE DEFENSE

6. Claimant and its agents, servants and employees have failed to perform in accordance with the conditions, covenants, and/or obligations on its part to be performed as alleged in the Demand.

VII

SIXTH AFFIRMATIVE DEFENSE

7. Claimant is guilty of bad faith, inequitable conduct and unclean hands with respect to the matter of which it complains herein and is thereby precluded from recovery of any of the purported claims against Respondent.

VIII

SEVENTH AFFIRMATIVE DEFENSE

8. Claimant, in seeking to obtain the relief demanded in the Demand, have unreasonably delayed in protecting any rights it may have, to the prejudice of Respondent, and Claimant should be denied all legal and equitable relief under the doctrine of laches and estoppel.

IX

EIGHTH AFFIRMATIVE DEFENSE

9. Respondent is informed and believe, and based on the belief thereon allege that Claimant knew of each and every alleged act and omission of which they now complains in the Demand, and they expressly or impliedly consented thereto. Claimant knowingly waived and relinquished their rights, if any, to object to any of the alleged acts and omissions of which Claimant now complains in the Demand.

WHEREFORE, this Respondent prays:

1. that Claimant take nothing by way of their Demand and
2. for costs of arbitration herein, and
3. for reasonable attorney's fees, and
4. for such other and further relief as the Arbitrator deems just and proper.

DATED: May 13, 2008

BY: ______________________
Su Ki Kim, Esq.
Attorney for Respondent

PROOF OF SERVICE BY MAIL
(C.C.P. Section 1013)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3699 Wilshire Boulevard, Suite #1150, Los Angeles, CA 90010.

On 5/13/08, I served the following documents:

RESPONSE TO DEMAND FOR ARBITRATION

on all interested parties in this action by placing the original thereof enclosed in a sealed envelope addressed as follows:

Maxwell M. Blecher, Esq. Blecher & Collins, P.C. 515 S. Figueroa Street, Suite #1700 Los Angeles, California 90071	JAMS c/o Ellen Ruth Schuster 2 Embarcadero Center, Suite #1500 San Francisco, California 94111

I am readily familiar with the practice of this office of collection and processing of correspondence for mailing. Under that practice, mail would be deposited with the United States Postal Service on the same day which is stated in the proof of service, with postage fully prepaid, at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing on this proof of service.

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on 5/13/08, at Los Angeles, California.

WAN LEE

exh. 5

BLECHER & COLLINS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SEVENTEENTH FLOOR
515 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90071-3334
(213) 622-4222

FACSIMILE: (213) 689-1944
E-MAIL: MBLECHER@BLECHERCOLLINS.COM
WWW.BLECHERCOLLINS.COM

May 15, 2008

Mr. Joop Bollen
South Dakota International
Business Institute
1200 South Jay Street
Aberdeen, South Dakota 57401-7198

Re: **Darley International v. SDIBI**

Dear Mr. Bollen:

Thank you for your letter of May 7, 2008.

I have reviewed extensive e-mails which clearly demonstrate your involvement in the drafting of the Darley-Hanul contract. Moreover, SDIBI is clearly a third party beneficiary of the contract In these circumstances if you adhere to the position expressed in your May 7 letter, we shall be required to go to court and seek an order compelling you to participate in the arbitration proceeding. For your review (and or review by your counsel), I am setting forth the legal bases of our position.

Under both California and federal law there are certain limited exceptions in which an arbitration agreement can be enforced against nonsignatories under traditional principles of contract and agency law. *See Boucher v. Alliance Title Co.*, 127 Cal. App. 4th 262, 268 (2005); *Letizia v. Prudential Bache Secs., Inc.*, 802 F.2d 1185, 1187 (9th Cir. 1986); *see also County of Contra Costa v. Kaiser Found. Health Plan, Inc.*, 47 Cal. App. 4th 237, 242-43 (1996); *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 194-95 (3d Cir. 2001). The determination of whether or not the arbitration provisions are operative against a party who has not signed the arbitration agreement depends upon the status of such party and its relation to the party who signed the agreement. *American Builder's Ass'n v. Au-Yang*, 226 Cal. App. 3d 170, 178 (1990).

BLECHER & COLLINS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

For example, a nonsignatory has been required to arbitrate a claim "because a benefit was conferred on the nonsignatory as a result of a contract, making the nonsignatory a third party beneficiary of the arbitration agreement." *County of Contra Costa*, 47 Cal. App. 4th at 242. A second exception exists when a nonsignatory and one of the parties to the arbitration agreement have a preexisting agency relationship. *See Madden v. Kaiser Found. Hosps.,* 17 Cal.3d 699, 706-09 (1976); *County of Contra Costa*, 47 Cal.App.4th at 242. A third exception arises under the doctrine of equitable estoppel where the nonsignatory is estopped from avoiding arbitration because it received a direct benefit under the agreement. *Boucher*, 127 Cal. App. 4th at 268-69; *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999).

We urge therefore, that to avoid court proceedings, you reconsider your position and agree to participate in the JAMS proceeding.

Very truly yours,

MAXWELL M. BLECHER

MMB:ra

cc: Mr. Robert Stratmore
Su Ki Kim, Esq.

Exh. 6

ABOUT SDIBI | CONTACT SDIBI | G.O.E.D HOME PAGE | U.S. DEPT OF COMMERCE

South Dakota International Business Institute

SDIBI supports the Governor's Office of Economic Development (G.O.E.D.) in facilitating and enhancing international trade in the state of South Dakota.

SDIBI is a non-profit organization offering assistance to South Dakota exporters through a variety of programs designed to increase international commerce.

Additionally, SDIBI manages the states foreign investment activities including the **EB-5 Regional Center**.

SDIBI RESOURCES

South Dakota International Trade Directory
Identifies South Dakota exporters and products
South Dakota International Trade Statistics - 2007
Export statistics drawn from WISER-Census data
2008 International Business Seminars/Workshops
Keep your knowledge of international business topics, issues and regulations up to date by attending our seminars and workshops.
International Business Recruitment
Attracting foreign businesses to South Dakota
South Dakota Foreign Trade Zone
Located in Sioux Falls, SD
Coface International Credit Reports
International credit reports
International Events Calendar
Trade shows, trade missions, & international conferences
Website Design and Hosting
Affordable website design and hosting available for South Dakota exporters through SDIBI

Additional Resources

- **U.S.D.O.C. - Export Portal**
  A concise guide to expanding your business through export sales.
- **U.S.D.O.C. - Commercial Service**
  Web powered broadcast series aimed at increasing U.S. exports and opportunities for small- to medium- sized businesses.
- **U.S. Department of State - Travel Advisories**
  Before traveling abroad, check with the State Department for advisories and warnings.
- **Major Web Links to Get You Started**
- **Trade Leads on the Internet**
- **Frequently Asked Export Q & A**

Deutsch español

exh. 7

Order Code RL33844

CRS Report for Congress

Foreign Investor Visas: Policies and Issues

January 29, 2007

Chad C. Haddal
Analyst in Immigration Policy
Domestic Social Policy

Prepared for Members and Committees of Congress

Congressional Research Service

Foreign Investor Visas: Policies and Issues

Summary

In the 110th Congress, issues surrounding the entry of foreign investors into the United States are likely to spark legislative debate as Members contemplate comprehensive immigration reform. Congress may face decisions regarding the possible renewal of the immigrant investor visa pilot program, as well as the expansion of the E-2 nonimmigrant treaty investor visa.

There are currently two categories of nonimmigrant investor visas and one category of immigrant investor visa for legal permanent residents (LPR). The visa categories used for nonimmigrant investors are: E-1 for treaty traders; and the E-2 for treaty investors. The visa category used for immigrant investors is the fifth preference employment-based (EB-5) visa category. According to Department of Homeland Security (DHS) statistics, there were 192,843 nonimmigrant investor visa arrivals in the United States in FY2005. For the same time frame, DHS reported the arrival of 346 LPR investors.

When viewed from a comparative perspective, the investor visas of the United States are most closely mirrored by those of Canada. The LPR investor visa draws especially strong parallels to the Canadian immigrant investor visa, since the latter served as the model for the former. Comparing the admissions data between these two countries, however, reveals that the Canadian investor provision attracts many times the number of investors of its United States counterpart. Yet, both countries showed an upward trend in immigrant investor visas in the last two years.

The investor visas offered by the United States operate on the principle that foreign direct investment into the United States should spur economic growth in the United States. According to the classical theory, if these investments are properly targeted towards the U.S. labor force's skill sets, it should reduce the international migration pressures on U.S. workers. To attract foreign investors, research indicates that temporary migrants are motivated most significantly by employment and wage prospects, while permanent migrants are motivated by professional and social mobility. Theoretically, however, it is unclear to what extent potential migration provides additional incentive for investment activity. Investors from developed countries may sometimes lack incentive to settle in the United States since they can achieve foreign direct investment (FDI) and similar standards of living from their home country. Yet, in cases where foreign investors have been attracted, the economic benefits have been positive and significant.

Immigrant investors have been subject to notable administrative efforts in the past couple of years. Attention has been focused on immigrant investment projects, which DHS has sought to expand. In 2005, DHS developed the Investor and Regional Center Unit (IRCU) to govern matters concerning LPR investor visas and investments to better adjudicate petitions and coordinate investments. In part because of these efforts, working with foreign financing from the immigrant investor program has become highly attractive for many domestic investors, particularly through limited partnerships. This report will be updated as warranted.

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Foreign Investor Visas: Policies and Issues

Introduction

In the 110th Congress, issues surrounding the entry of foreign investors into the United States is likely to spark legislative debate. For example, the immigrant investor visa pilot program, which was created to attract foreign investors to permanently emigrate to the United States, is set to expire at the end of FY2008.[1] Additionally, the government of Denmark has lobbied for legislation that would allow its nationals eligibility to enter the United States as E-2 nonimmigrant treaty investors. If such legislation is successful, other governments whose nationals, like Denmark, are currently only eligible for E-1 nonimmigrant treaty trader visas would likely seek similar treatment. Granting visas to foreign investors provides many potential benefits, including increased domestic employment and capital levels. Yet, extending foreign investor visas provides several potential risks as well, such as visa abuses, reduced foreign market growth, and security concerns.

The central policy question surrounding foreign investors — and particularly legal permanent resident (LPR) investors — is whether the benefits reaped from allocating visas to foreign investors outweigh the costs of denying visas to other applicant groups. The subsequent analysis provides a background and contextual framework for the consideration of foreign investor visa policy. After a brief legislative background, this report will provide discussions of immigrant and nonimmigrant investors visas, a comparison of U.S. and Canadian immigrant investor programs, an analysis of the relationship between investment and migration, and finally a review of current issues.

Background

Since the Immigration Act of 1924[2] the United States has expressly granted visas to foreign nationals for the purpose of conducting commerce within the United States. Although foreign investors had previously been allowed legal status under several Treaties of Friendship, Commerce and Navigation treaties, the creation in 1924 of the nonimmigrant treaty trader visa provided the first statutory recognition of foreign nationals as temporary traders. With the implementation of the Immigration and Nationality Act of 1952 (INA), the statute was expanded to include nonimmigrant treaty investors — a visa for which trade was no longer a

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[1] P.L. 108-156.

[2] 43 Stat 153.

requirement.[3] Nonimmigrant visa categories for traders and investors have always required that the principal visa holder stems from a country with which the United States has a treaty.[4] The nonimmigrant visa classes are defined in §101(a)(15) of the INA. These visa classes are commonly referred to by the letter and numeral that denotes their subsection in §101(a)(15) of the INA, and are referred to as E-1 for nonimmigrant treaty traders and E-2 for nonimmigrant treaty investors.

Unlike nonimmigrant investors, who come to the United States as temporary admissions, immigrant investors are admitted into the United States as LPRs.[5] With the Immigration Act of 1990,[6] Congress expanded the statutory immigrant visa categories to include an investor class for foreign investors. The statute developed an employment-based (EB-5) investor visa for LPRs,[7] which allows for up to 10,000 admissions annually and generally requires a minimum $1 million investment. Through the Immigrant Investor Pilot Program, investors may invest in targeted regions and existing enterprises that are financially troubled. This pilot program was extended by the Basic Pilot Program Extension and Expansion Act of 2003[8] to continue through FY2008.

Foreign investors are generally considered to help boost the United States economy by providing an influx of foreign capital into the United States and through job creation. For investor immigrants, job creation is an explicit criterion, while with the nonimmigrant visa categories economic activity is assumed to spur job growth. Additionally, foreign investors are often associated with entrepreneurship and increased economic activity. Critics, however, believe that such investors may be detrimental since they potentially displace potential entrepreneurs that are United States citizens.

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[3] INA §101(a)(15)(e)(ii).

[4] INA §101(a)(15)(e).

[5] The two basic types of legal aliens are *immigrants* and *nonimmigrants*. As defined in the INA, immigrants are synonymous with legal permanent residents (LPRs) and refer to foreign nationals who come to live lawfully and permanently in the United States. The other major class of legal aliens are nonimmigrants — such as tourists, foreign students, diplomats, temporary agricultural workers, exchange visitors, or intracompany business personnel — who are admitted for a specific purpose and a temporary period of time. Nonimmigrants are required to leave the country when their visas expire, though certain classes of nonimmigrants may adjust to LPR status if they otherwise qualify.

[6] P.L. 101-649.

[7] INA §203(b)(5).

[8] P.L. 108-156, 8 USC §1324a note.

Immigrant Investors

There is currently one immigrant class set aside specifically for foreign investors coming to the United States.[9] Falling under the employment-based class of immigrant visas, the immigrant investor visa is the fifth preference category in this visa class.[10] Thus, the immigrant investor visa is commonly referred to as the EB-5 visa.

Goals. The basic purpose of the LPR investor visa is to benefit the United States economy, primarily through employment creation and an influx of foreign capital into the United States.[11] Although some members of Congress contended during discussions of the creation of the visa that potential immigrants would be "buying their way in," proponents maintained that the program's requirements would secure significant benefits to the U.S. economy.[12] Proponents of the investor provision offered predictions that the former-Immigration and Naturalization Service (INS) would receive approximately 4,000 applications annually. These petitioners' investments, the drafters speculated, could reach an annual total of $4 billion and create 40,000 new jobs.[13] The Senate Judiciary Committee report on the legislation states that the provision "is intended to provide new employment for U.S. workers and to infuse new capital into the country, not to provide immigrant visas to wealthy individuals" (S.Rept. 101-55, p.21).

Requirements. As amended by the Immigration Act of 1990,[14] the Immigration and Nationality Act (INA) provides for an employment-based LPR

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[9] The INA provides for a permanent annual worldwide level of 675,000 legal permanent residents (LPRs), but this level is flexible and certain categories of LPRs are permitted to exceed the limits, as described below. The permanent worldwide immigrant level consists of the following components: family-sponsored immigrants, including immediate relatives of U.S. citizens and family-sponsored preference immigrants (480,000 plus certain unused employment-based preference numbers from the prior year); employment-based preference immigrants (140,000 plus certain unused family preference numbers from the prior year); and diversity immigrants (55,000). Immediate relatives of U.S. citizens as well as refugees and asylees who are adjusting status are exempt from direct numerical limits. For further discussion see CRS Report RL32235, U.S. Immigration Policy on Permanent Admissions, by Ruth Ellen Wasem.

[10] The INA provides that each category of immigrants has a set of preferences for the classes within that category. These preferences determine the priority of visa distribution for each category depending on certain formulas provided for in the INA. In the case of the LPR investor visa, being the fifth preference (and therefore the lowest) within the employment-based category, it has an annual maximum visa allocation of 10,000.

[11] 3 Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, § 39.07 (Matthew Bender, Rev. Ed.).

[12] For debate on this issue, see 136 Cong. Rec. S7768-75 (July 12, 1990).

[13] The West Group. *New Pilot Program for Immigrant Investors*. 70 Interpreter Releases 1129. August 30, 1993.

[14] P.L. 101-649.

investor visa[15] program designated for individuals wishing to develop a new commercial enterprise[16] in the United States (INA §203(b)(5)). The statute stipulates that

- The enterprise must employ at least 10 U.S. citizens, legal permanent residents (LPRs), or other work-authorized aliens in full time positions. These employees may not include the foreign investor's wife or children.
- The investor must further invest $1 million[17] into the enterprise, such that the investment goes directly towards job creation and the capital is "at risk."[18] However, if an investor is seeking to invest in a "targeted area"[19] then the required capital investment may be reduced to $500,000.[20] For each fiscal year, 10,000 visas are set aside for EB-5 investors, of which 3,000 are reserved for entrepreneurs investing in "targeted areas."[21]
- The business and jobs created must be maintained for a minimum of two years.[22]

According to regulations, enterprises being proposed need not be backed by a single applicant.[23] Multiple applicants may provide financial backing in the same enterprise, provided that each applicant invests the required minimum sum and each applicant's capital leads to the creation of 10 full-time jobs. The applicant may also combine the investment in a new enterprise with a non-applicant who is authorized to work in the United States. Furthermore, each individual applicant must demonstrate that he or she will be actively engaged in day-to-day managerial control

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[15] This visa category is for permanent immigrants and should not be confused with the E-2 Treaty Investor nonimmigrant visa.

[16] Since 2002, applicants have also been allowed to invest funds in "troubled businesses." These businesses must have been in existence for at least two years, and must have incurred a net loss of at least 20% of the business' net worth (prior to the loss) during the twelve- or twenty-four-month period prior to filing the petition (8 CFR §204.6(e)).

[17] These funds must be demonstrated to have been obtained lawfully. Generally, any burden of proof to show qualifying status for an EB-5 lies with the applicant (8 CFR §204.6(j)).

[18] Depositing the funds into a corporate account does not qualify as making the investment "at risk." Clear guidelines for demonstrating that the capital is"at risk" do not exist in the regulations (8 CFR §204.6(j)).

[19] "Targeted areas" are either rural areas or areas with unemployment rates of at least 150% of the national average. A "rural area" is defined as one not within a metropolitan statistical area or the outer boundary of a city or town with a population of 20,000 or more.

[20] 8 CFR §204.6(f).

[21] INA §203(b)(5).

[22] 8 CFR §204.6(j).

[23] 8 CFR §204.6(g).

or as a policymaker.[24] Petitions as a passive investor will not qualify.[25] However, since limited partnership is acceptable, regulations do not prevent the investor from living in another location or engaging in additional economic activities.

Immigrant Investor Pilot Program. The Immigrant Investor Pilot Program differs in certain ways from the standard LPR investor visa. Established by §610 of P.L. 102-395 (October 6, 1992), the pilot program was established to achieve the economic activity and job creation goals of the LPR investor statute by encouraging investors to invest in economic units known as "Regional Centers."[26] Regional Center designation must be approved by the Department of Homeland Security's (DHS) United States Citizenship and Immigration Service (USCIS), and is intended to provide a coordinated focus of foreign investment towards specific geographic regions. Areas with high unemployment are especially likely to receive approval as a Regional Center, since they are less likely to receive foreign capital through foreign direct investment (FDI)[27] (although the basic requirements apply to all regional petitions).[28] Up to 5,000 immigrant visas[29] may be set aside annually for the pilot program. These immigrants may invest in any of the Regional Centers that currently exist to qualify for their conditional LPR status.[30]

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[24] This latter criterion may be demonstrated through board membership, status as a corporation officer, or qualifying as a limited partner under the Uniform Limited Partner Act (ULPA) (8 CFR §204.6(i)).

[25] 8 CFR § 206.6.

[26] A Regional Center is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment.

[27] FDI is defined as an investment made by a foreign individual or company in an enterprise residing in an economy other than where the foreign direct investor is based.

[28] The basic requirements for Regional Center designation state that applicants must show how their proposed program will:
- focus on a geographic region (8 CFR 204.6(m)(3)(i));
- promote economic growth through increased export sales, if applicable;
- promote improved regional productivity (8 CFR 204.6(m)(3)(i));
- create a minimum of 10 jobs directly or indirectly per investor (8 CFR 204.6(m)(3)(ii));
- increase domestic capital investment (8 CFR 204.6(m)(3)(i));
- be promoted and publicized to prospective investors (8 CFR 204.6(m)(3)(ii));
- have a positive impact on the regional or national economy through increased household earnings (8 CFR 204.6(m)(3)(iii)); and
- generate a greater demand for business services, utilities maintenance and repair, and construction jobs both in and around the center (8 CFR 204.6(m)(3)(iv)).

[29] These 5,000 visas represent a subset of the 10,000 visas allocated for the LPR investor visa.

[30] As of June 1, 2004, there were 26 Regional Centers in the United States (USCIS, *EB-5 Immigrant Investor Pilot Program*, Background, June, 2004). Since then, a number of Regional Centers have been added (for example, see letter from Thomas E. Cook, Director

(continued...)

The Basic Pilot Program Extension and Expansion Act of 2003[31] extended the pilot program through FY2008. In response to this legislation USCIS decided to develop a new unit to govern matters concerning LPR investor visas and investments.[32] On January 19, 2005, the Investor and Regional Center Unit (IRCU) was created by the USCIS, thereby establishing a nationwide and coordinated program. USCIS believes that the IRCU will serve the dual purpose of guarding against EB-5 abuse and encouraging investment.[33]

The USCIS approximates that between 75-80% of EB-5 immigrant investors have come through the pilot program since it began, and that limited partnerships constitute the most significant portion of this group.[34]

LPR Investor Visa Numbers

In contrast to the high number of applications for other employment-based LPR visas,[35] the full allotment of 10,000 LPR investor visas per fiscal year has never been used. As **Table 1** below shows, the number of LPR investor admissions peaked in FY1997, with 1,361 admissions, or 13.6% of the program's visa supply. In subsequent years, the program declined markedly, before increasing up to 346 in FY2005. Despite the low numbers of overall investor admissions, the program has seen a marked increase since the implementation of the Immigrant Investor Pilot Program expansion in 2004.

From FY1992 to FY2004, the cumulative total amount invested into the United States by LPR investor visa holders was approximately $1 billion and the cumulative number of LPR investor visas issued was 6,024.[36] In the earlier years of the program, it attracted a relatively higher rate of derivatives than principals.[37] However, in the last three years the distribution of visas between principals and derivatives has more closely approximated parity. Derivatives have historically accounted for

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[30] (...continued)
of USCIS's Office of Program and Regulations Development, to Bruce V. Malkenhorst, Executive Director of The Redevelopment Agency of the City of Vernon, December 23, 2005).

[31] P.L. 108-156.

[32] USCIS, *EB-5 Immigrant Investor Pilot Program, Background*, June, 2004.

[33] Ibid.

[34] Based on CRS discussions with Morrie Berez, Chief Adjudications Officer, USCIS Investor and Regional Center Program, November 20, 2006.

[35] According to a recent issue of the Department of State (DOS) *Visa Bulletin* (No. 99, Vol. VIII) there are backlogs for all the employment-based immigrant categories except LPR investor visas.

[36] U.S. Government Accountability Office, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors*, GAO-05-256, April 2005, pp. 8-11.

[37] Principals are the actual investors. Derivatives are comprised of spouses, children, and other dependents.

approximately 67% of immigrant investor visa recipients, while principals account for 33%.

Table 1. United States LPR Investor Visa Admissions, FY1996-FY2005

Fiscal Year	EB-5 Visa Admissions	Principals	Derivatives
1992	59	24	35
1993	583	196	387
1994	444	157	287
1995	540	174	366
1996	936	295	641
1997	1361	444	917
1998	824	259	565
1999	285	99	187
2000	218	79	147
2001	191	67	126
2002	142	52	97
2003	64	39	25
2004	129	60	69
2005	346	158	188

Source: CRS presentation of U.S. Department of Homeland Security Office of Immigration Statistics FY2005 data.

According to data from DHS' Performance Analysis System, in the time span of FY1992 through May 2006, authorities had received a cumulative total of 8,505 petitions for immigrant investor visas. Of these petitions, 4,484 petitions had been granted while 3,820 had been denied[38] — an approval rate of 52.7%. Furthermore, in this same time span, officials received 3,235 petitions for the removal of conditional status[39] from the LPRs of immigrant investors. These petitions were granted in 2,155 cases (a 66.6% approval rate), while the remaining 910 petitions for the removal of conditional status were denied.

Although numerous possible explanations for the overall low admission levels of LPR investor visas exist, the notable drop in admissions in FY1998 and FY1999 is due in part to the altered interpretations by the former-INS of the qualifying requirements that took place in 1998.[40] The 21st Century Department of Justice

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[38] The discrepancy between the petitions granted, denied, and received is due to some petitions remaining unadjudicated.

[39] "Conditional status" for an LPR immigrant means that the final approval of the LPR is contingent upon fulfilling certain requirements. For immigrant investors, the conditional status lasts for two years before the applicant is reviewed for final approval.

[40] The West Group, *Sections 203(b)(5) and 216A of the Immigration and Nationality Act*, 75 Interpreter Releases 332, March 9, 1998.

Appropriations Act (2002)[41] provided remedies for those affected by the former-INS' 1998 decision, and provided some clarification to the requirements to promote an increase in petitions.[42]

A 2005 report from GAO[43] listed a number of contributing factors to the low participation rates, including the rigorous nature of the LPR investor application process and qualifying requirements; the lack of expertise among adjudicators; uncertainty regarding adjudication outcomes; negative media attention on the LPR investor program; lack of clear statutory guidance; and the lack of timely application processing and adjudication. It is unknown how many potential investors opted to obtain a nonimmigrant investor visa or pursued other investment pathways. A recent law journal article on investor visas suggested that the two year conditional status of the visa and the alternate (and less expensive) pathways for LPR status often dissuaded potential investors from pursuing LPR investor visas.[44]

According to the GAO study, of the LPR visas issued to investors, 653[45] had qualified for removal of the conditional status of LPR visa (not including dependents).[46] GAO estimates that these LPR investors invested approximately $1 billion cumulatively into their collective enterprises and 99% kept their enterprise in the same state where it was established.[47] The types of enterprises these investors established were often hotels/motels, manufacturing, real estate, or domestic sales, with these four categories accounting for 61% of the businesses established by LPR-qualified investors. Furthermore, an estimated 41% of the businesses by LPR-qualified investors were set up in California. The subsequent states with the highest percentages of established enterprises were Maryland, Arizona, Florida and Virginia with 11%, 8%, 7%, and 7% respectively (for examples of current investment projects see **Appendix B**).

As **Figure 1** shows, LPR investors admitted to the United States between FY1992-FY2004 were predominantly from Asian countries. Asia accounted for approximately 83% of LPR investors in this time span, a total that is over nine times larger than the second highest contributing region. Europe was the only other region

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[41] P.L. 107-273.

[42] 3 Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, § 39.07 (Matthew Bender, Rev. Ed.)

[43] U.S. Government Accountability Office, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors*, GAO-05-256, April 2005, pp. 8-11.

[44] Mailman, Stanley, and Stephen Yale-Loehr. "Immigrant Investor Green Cards: Rise of the Phoenix?" *New York Law Journal*, April 25, 2005. At [http://www.millermayer.com/EB5NYLJ0405.html], visited January 23, 2007.

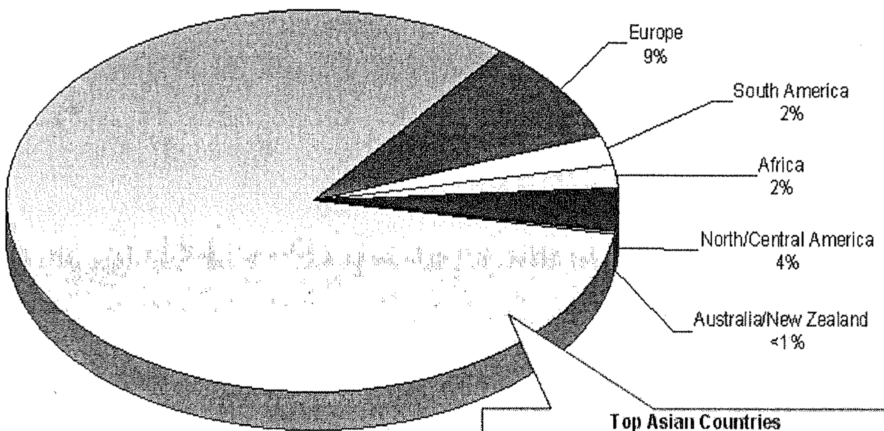
[45] Of these investors, 247 (or 38%) applied for U.S. citizenship.

[46] The fact that they qualified for LPR status means that they had successfully maintained their business and 10 full-time qualifying employees for more than 2 years.

[47] GAO's report stated it could not provide reliable figures on the number of jobs created by these enterprises.

contributing more than 4% of the LPR investors, with a total of 9%. Within the Asian region, the 2,323 LPR investors from Taiwan accounted for almost half of all Asian LPR investors and 39% of the worldwide total.. South Korea and China contributed to the worldwide total 14% and 12%, respectively, although when combined with Hong Kong's total, China's contribution increases to 19%. The country totals for the three largest Asian LPR investor contributors are more than the sending totals of the four smallest sending regions combined.

Figure 1. LPR Visas Issued by Region and Select Asian Countries of Origin, FY1992-FY2004



Top Asian Countries

Country	*Investors*	*% of World Total*
Taiwan	2,323	39
South Korea	839	14
China (Mainland)	752	12
Hong Kong S.A.R.	395	7
India	130	2
Other Asia	542	9

Source: CRS presentation of GAO analysis of DOS Bureau of Consular Affairs data.

Nonimmigrant Investor Visas

When coming to the United States as a temporary investor, there are two classes of nonimmigrant visas which a foreign national can use to enter: the E-1 for treaty traders and the E-2 for treaty investors. An E-1 treaty trader visa allows a foreign national to enter the United States for the purpose of conducting "substantial trade" between the United States and the country of which the person is a citizen.[48] An E-2 treaty investor can be any person who comes to the United States to develop and direct the operations of an enterprise in which he or she has invested, or is in the process of investing, a "substantial amount of capital."[49] Both these E-class visas

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[48] §101(a)(15)(E)(i) of the Immigration and Nationality Act (INA).

[49] INA §101(a)(15)(E)(ii).

require that a treaty exist between the United States and the principal foreign national's country of citizenship.[50]

In the majority of cases, a commerce or navigation treaty serves as the basis for the E-class visa extension (though other bilateral treaties and diplomatic agreements can also serve as a foundation).[51] A number of countries offer both the E-1 and E-2 visas as a result of reciprocal agreements made with the United States, although many countries only offer one. Currently there are 75 countries who offer the treaty class visas. Of these countries, 28 offer only the E-2 treaty investor visa while 4 countries offer only the E-1 treaty trader visa (see **Table 3** in **Appendix A**). In the cases where a country offers both types of visas, an applicant who qualifies for both types of visa may choose based upon his or her own preference. Such decisions, however, would depend upon the specific nature of the business as the E category visas carry different qualifying criteria for renewal.

Although each category has some unique requirements, other requirements cut across all categories of nonimmigrant investor visas. An applicant for any of the nonimmigrant investor categories must satisfy the following criteria:

- the principal visa recipient must be a national of a country with which the United States has a treaty.[52]
- the principal visa recipient must be in some form of executive or supervisory role in order to qualify as a treaty trader or investor[53]
- the skills the principal visa recipient possesses must be essential and unique to the enterprise under consideration[54]
- the visa holder must show an intent to depart the United States at the end of the visa's duration of status[55]

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[50] 8 CFR §214.2(e)(6).

[51] 2 Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, § 17.06[2][a] (Matthew Bender, Rev. Ed.).

[52] Spouses and child dependents are not subject to the same nationality requirements as they can be nationals of any country, regardless of whether that country has treaties with the United States or not.

[53] There is no set formula for determining whether a person's role is sufficient to qualify, but is determined on a case by case basis using a number of different factors. These factors normally include such considerations as salary, position, duties, degree of control, and the number of employees under the applicant's supervision.

[54] A nominal position (e.g. having the title of manager) or title is not sufficient grounds to qualify for an E-class visa. Individuals with highly specialized skills or knowledge pertinent to the employer's business may also qualify, although if the individual's skills are determined to be of only a specialized nature that person must qualify for an H-1B visa (for highly skilled professionals). An example of a skill that has been rejected by DOS as an essential skill is knowledge of a foreign language.

[55] 8 CFR §214.2(e)(2)(iii).

- if investing in an existing enterprise, the applicant must show that the employer of the treaty trader or investor must be at least 50% owned by nationals of the treaty country.[56]

A person granted an E-class visa is eligible to stay in the United States for a period of two years.[57] Although an applicant is obligated to show intent of departing the United States at the end of the visa duration, the E-class visas may be renewed for an indefinite number of two year periods provided that the individual still qualifies.[58] Spouses and child dependents are granted the same visa status and renewal as the principal visa holder so long as the child is under the age of 21, after which the child must apply and qualify for his or her own visa.[59]

Generally with the E-class visas, the individual may not engage in other employment than that which is stipulated,[60] although incidental activities are generally allowed.[61] If any E-class individual wishes to change employer, he or she is under obligation to contact the Department of State (DOS) and apply for adjustment of status.[62]

E-1 Treaty Trader[63]

The E-1 formally traces back to the 1924 Immigration Act, although merchants working under treaty terms were recognized visa holders prior to this act.[64] Under current law, the E-1 visa is to be issued to an individual who engages in substantial trade between the United States and his or her country of nationality. According to

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[56] This criterion is more salient in the cases of smaller companies since ownership is more constant and concentrated. Large publically traded companies are largely not saddled with having to demonstrate ownership by nationals.

[57] 8 CFR §214.2(e)(19).

[58] 8 CFR §214.2(e)(20).

[59] 8 CFR §214.2(e)(4).

[60] 8 CFR §214.2(e)(8).

[61] The rules on such incidental activities are quite flexible. The governing principle of such incidental activities is that the primary trade or investment activity remains paramount (see 9 FAM §41.40 n7 (Visa TL-872 February 20, 1975, i.e. prior to 1987 revision) and 9 FAM §41.11 n.3.1).

[62] 8 CFR §214.2(e)(8).

[63] Although technically being a "trader" category as opposed to an "investor" category, there is sufficient grounds for believing that the E-1 traders should be included with the other investor categories. Although their activities must be related to trade, they are still allowed to make investments in United States enterprises. Also, investor categories such as the LPR investor visa have previously held requirements that investments must positively effect export levels in the industry where an investment is occurring (USCIS, *EB-5 Immigrant Investor Pilot Program*, Background, June, 2004).

[64] The term "treaty merchant," for example, traces its roots at least back to the 1880 treaty with China to conduct trade (Treaty Between the United States and China, Concerning Immigration, November 17, 1880, art. I, 22 Stat. 826).

immigration regulations, trade is defined as "the exchange, purchase or sale of goods and/or services. Goods are tangible commodities or merchandise having intrinsic value. Services are economic activities whose outputs are other than tangible goods."[65] This expanded definition of trade into the service sector allows for a fairly broad understanding of what trade may entail.

The term "substantial trade" has never been explicitly defined in terms of monetary value. Rather, the term is meant to indicate that there is an amount of trade necessary to ensure a continuing flow of international trade items.[66] For smaller businesses, regulatory qualification for treaty trader status may be derived from demonstrating that the trading activities would generate an income sufficient to support the trader and his or her family.[67] The qualifications for sufficient volume or transaction have not been explicitly set in the regulations,[68] but a minimum qualification is that more than 50% of the business's trade must flow between the United States and the treaty country from which the E-1 visa holder stems.[69]

E-2 Treaty Investor

The E-2 investor visa is a visa category that stems from the 1952 Immigration and Nationality Act (INA). The qualifying applicant for such a visa is coming to the United States in order to "develop or direct the operations of an enterprise in which he has invested, or is in the process of investing a substantial amount of capital."[70] Unlike the E-1 visa, the business need not be engaged in trade of any kind. However, the same rules concerning ownership are still applicable.[71] In cases of ownership of an enterprise, the regulations require that the E-2 visa holder control at least a 50% interest in an enterprise.[72] The burden of proof for E-2 qualification lies with the applicant in the same manner as with the other E-class visas.[73]

There is no explicit monetary amount for what constitutes a "significant amount of capital." The DOS has operated under a regulatory proportionality principle that dictates that the amount an individual invests must be enough to ensure the successful establishment and growth of an enterprise, and there must be some level of investment risk assumed by the treaty investor.[74] Because of this proportionality

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[65] 8 CFR §214.2(e)(2), as amended by 56 Fed. Reg. 10978, 10979 (1989).

[66] 8 CFR §214.2(e)(10).

[67] Ibid.

[68] Ibid.

[69] 8 CFR §214.2(e)(11).

[70] INA §101(a)(15)(E)(ii).

[71] 8 CFR §214.2(e)(3)(ii).

[72] Certain joint ventures have been deemed permissible by the United States, provided that each joint venture partner have veto power over decisions by the other partner.

[73] 8 CFR §214.2(e)(12).

[74] 8 CFR §214.2(e)(14).

regulation, an investment in a small to medium-sized enterprise is acceptable.[75] For smaller sized investments, the DOS generally requires that the investment amount be a higher percentage of the enterprise value.[76] For higher valued enterprises the investment percentage becomes less relevant, provided that the monetary amount is deemed substantial.[77]

As further grounds for regulatory qualification for an E-2 investor visa, investments in marginal enterprises are not eligible for acceptance.[78] Consequently, the DOS applies a two-pronged test for marginality.[79] On the one hand, the enterprise in which the applicant seeks to make an investment must be capable of providing more than a minimal living for the investor and his or her family. However, the rules are capable of recognizing that some businesses need time to establish themselves and become viable. Consequently, as a second prong of the test, the investor's enterprise must be deemed capable of making a significant economic impact within five years of starting normal business activity. If neither of these prongs is successfully passed, the enterprise is deemed marginal and the application is rejected.[80]

An additional category of E-class nonimmigrant visa — the E-3 visa for Australian nationals — does exist, but it is set aside for use by specialized workers, and not for investors or traders.[81]

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[75] 9 FAM §41.51 n.10.4, as amended, TL:VISA-322 (October 10, 2001).

[76] Visa Bulletin, Vol. V, No. 20 — Nonimmigrant Treaty Investors U.S. Department of State, Visa Office (1982).

[77] Ibid.

[78] 8 CFR §214.2(e)(15).

[79] 2 Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, § 17.06[3][c] (Matthew Bender, Rev. Ed.).

[80] Ibid.

[81] A special category of nonimmigrants classified as the E-3 visa has been established and is only available to nationals of Australia. Although agreed upon under the Australian Free Trade Agreement, the agreement itself contained no explicit immigration provision. Rather, the FY2005 supplemental appropriations for military operations in Iraq and Afghanistan (P.L. 109-16) included §501 creating the E-3 visa category. This visa permits the employment by any United States employer of a qualifying Australian national for a specialty occupation. Unlike the other E-class visas, the E-3 carries an annual cap which is currently set at 10,500. However, the other rules generally remain the same as E-1 and E-2 visas, with admissions for two years and unlimited extensions for qualifying individuals.

The E-3 resembles the H-1B-1 visa which allows for similar admissions of specialized workers from Chile and Singapore. After legislation was passed implementing the Chile and Singapore Free Trade Agreements (P.L. 108-77 and P.L. 108-78, respectively), these new laws carved out a portion of §101(a)(15)(H) of the INA for professional workers entering through the free trade agreements. Unlike the other H-1B requirements, H-1B-1 recipients are only required to be *specialized* workers as opposed to *highly specialized.* This visa category also differs from the E-3 visa in that it allows for an 18 month admission and carries an annual cap of 1,400 for Chilean nationals and 5,400 for nationals of Singapore.

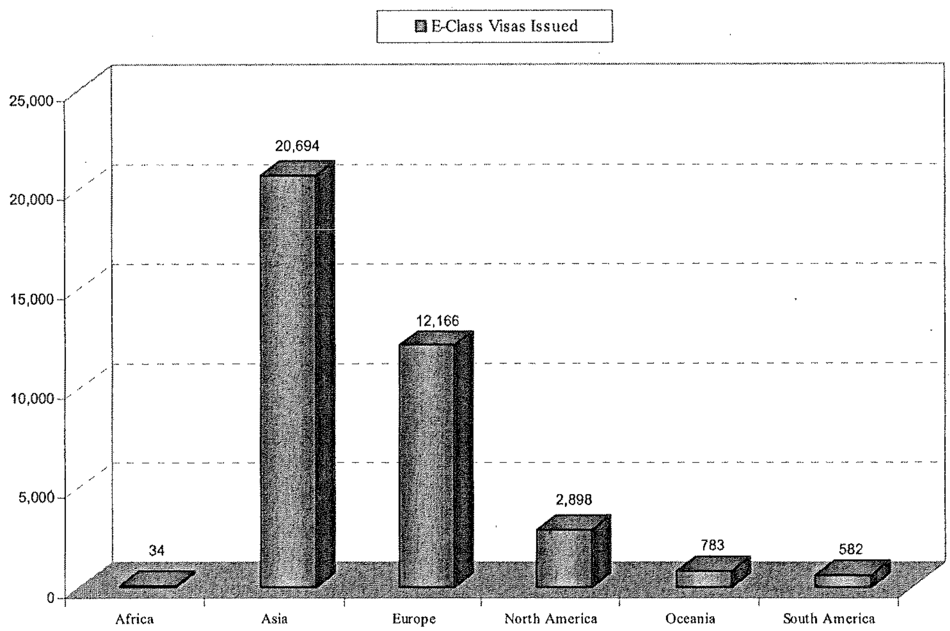
(continued...)

Nonimmigrant Investor Visa Numbers

E-class visas are largely distributed to foreign nationals from the regions of Asia and Europe. This result is not surprising since the majority of treaty countries are in these two regions. Furthermore, one could reasonably expect that the financial requirements embedded in nonimmigrant investor visa categories would result in a high correlation between the nationality of qualifying applicants and country membership in the Organization for Economic Cooperation and Development (OECD) — an organization of capital abundant countries.

As **Figure 2** shows, the Asian region is issued the highest number of E-class visas, with a total of 20,694 visas issued in FY2005. These Asian issuances constitute more than all other regions combined, and represent 55.7% of the worldwide total. Within the Asian region, the biggest user of the E-class visa is Japan, whose nationals accounted for 14,421 of the visa issuances in FY2005, a figure representing 38.8% of the 37,157 worldwide E-class visas issued that fiscal year. Europe's 12,166 E-Class visas accounted for 32.7% of the worldwide total, while the North American share of 2,898 visas represented 7.8%. Oceania, South America, and Africa each accounted for less than 2.2% of the worldwide total, and combined their nationals represented approximately 3.8% of the worldwide E-class visa issuances for FY2005.

Figure 2. E-Class Visas Issued by Region, FY2005



Source: Data is from the U.S. Department of State, Bureau of Consular Affairs (2005)

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[81] (...continued)
For further discussion on the E-3 and H-1B-1 visas, see CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem and CRS Report RL32982, *Immigration Issues in Trade Agreements*, by Ruth Ellen Wasem.

The admissions data on nonimmigrant investors offers more detailed insights into the origins of the visa holders. **Table 2** provides cumulative totals of E-class visa admissions into the United States in FY2005 by region of origin, with a detailed breakdown of the Asian region. The figures listed in **Table 2** show that the Asian region accounted for approximately 50% of the nonimmigrant investor visa admissions into the United States. In FY2005, Japan accounted for the majority of nonimmigrant investor admissions with 72,606 admissions.[82] South Korea's 13,090 nonimmigrant investors admitted account for 6.9% of the United States total for FY2005. It is worth noting that the fast growing markets of China and India (the world's two largest population centers) combined for less than 1,000 admissions. The second largest region of origin for nonimmigrant investor admissions was Europe, with slightly more investors admitted than Japan. And while Europe's 74,338 admissions accounted for 38.6% of the total U.S. nonimmigrant investor admissions in FY2005, the 203 admissions of nationals from African countries accounted for approximately one-tenth of 1% of this same total.

Table 2. Nonimmigrant Treaty Trader and Investor Admissions, FY2005

Country (or Region) of Origin	Number	Percentage of Total
Asia:		
Taiwan	4,613	2.5
South Korea	13,090	6.9
China[a]	769	0.5
India	228	0.1
Japan	72,606	37.8
All other Asia	4,228	2.2
Total for Asia	95,534	50
All Other Regions:		
Europe	74,338	38.6
South America	5,338	2.9
Africa	203	0.1
North/Central America	13,159	6.9
Australia/New Zealand	2,735	1.5
Total	192,823	100

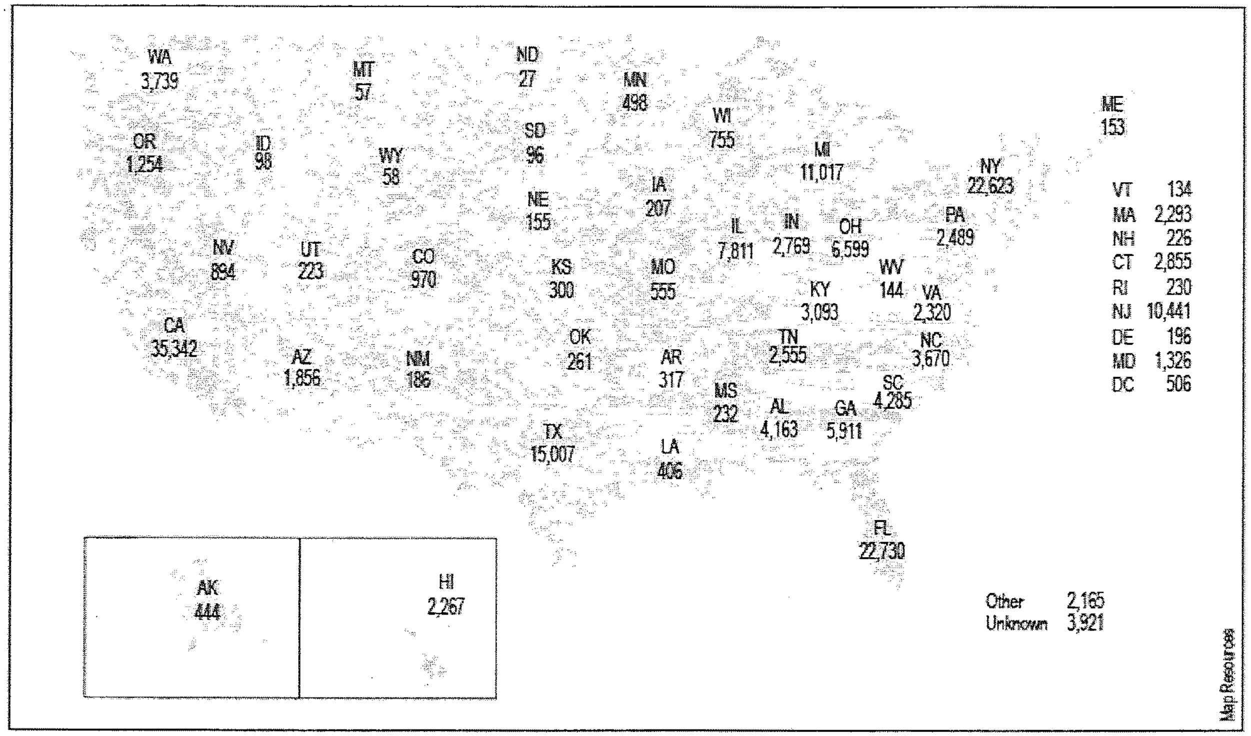
Source: CRS presentation of Department of Homeland Security Office of Immigration Statistics FY2005 data.

a. Denotes People's Republic of China, Hong Kong, and Macau.

[82] Admissions figures differ significantly from visa issuance figures because individuals may leave the United States and return on the same visa, as long as the visa is still valid. Thus, some individuals may be counted multiple times in the admissions data.

The Department of Homeland Security (DHS) offers statistics on the admissions of nonimmigrants and their destination state. **Figure 3** indicates the destination states of E-class visa admissions into the United States for FY2005. The state with the highest number of nonimmigrant investors as their destination in FY2005 was California with 35,431 admissions, accounting for 18.4% of the admissions total. Following California, the next three biggest recipients of nonimmigrant investors were Florida, New York, and Texas with 22,765, 22,705, and 15,048 admissions each, respectively. In the respective order, these state admissions accounted for 11.8%, 11.8% and 7.8% of the admissions total in FY2005. The only other states with a combined total of more than 10,000 E-class admissions were Michigan and New Jersey. Michigan was the destination state of 11,034 nonimmigrant investors admitted, while New Jersey attracted 10,460 admissions. These totals accounted for 5.7% and 5.4% of the United States admissions total, respectively. The remaining states represented the destination states for approximately 31% of nonimmigrant investors.

Figure 3. Nonimmigrant Trader and Investor Admissions by Destination State, FY2005



Source: CRS presentation of DHS Office of Immigration Statistics data.

Historically, more investors have applied to enter the United States as nonimmigrants than immigrants, possibly because the less stringent requirements for the nonimmigrant investor visa make it easier to obtain. However, relative to other nonimmigrant categories, the admission levels of investor nonimmigrants are low. With the ease of movement, technological advances, and ease of trade restrictions, many investors may be choosing to invest in the United States from abroad and enter the United States on B-1 temporary business visas or visa waivers.[83]

U.S. and Canadian Comparisons

Although there are many countries with investor visa programs — including the United Kingdom, Australia, and New Zealand — the Canadian investor program has the strongest parallels to those of the United States. These parallels are in part due to the fact that the U.S. immigrant investor program was modeled after its Canadian counterpart. The Canadian program allows investors who have a net worth of at least $800,000 (Cdn) to make a $400,000 (Cdn) investment through Citizenship and Immigration Canada (CIC).[84] The Canadian government additionally offers an entrepreneurial visa for foreign nationals with a net worth of $300,000 (Cdn).[85] These nationals are required to invest and participate in the management of a certain sized business, and they must produce at least one new full-time job for a non-family member.[86] Between 1986 and 2002, the Canadian investor visa program attracted more than $6.6 billion (Cdn) in investments.[87] From FY1992 through FY2004, United States LPR investor immigrants had invested an estimated $1 billion in U.S. businesses.[88]

According to published accounts, the Canadian investor visa was developed initially to attract investors from the British colony of Hong Kong.[89] The visa was created in 1986 in response to the significant numbers of investors seeking to migrate from Hong Kong in anticipation of the transfer of the colony from British to Chinese

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[83] According to the DHS Office of Immigration Statistics' *2005 Yearbook of Immigration Statistics*, in FY2005 there were 2,432,587 admissions of B-1 visa holders and 2,261,354 admissions for business purposes on visa waivers.

[84] Citizenship and Immigration Canada, "Business Immigrant Links: FAQs," November 11, 2005, at [http://www.cic.gc.ca/english/business/bi-faqs.html], visited January 23, 2007.

[85] Ibid.

[86] Ibid.

[87] Mailman, Stanley, and Stephen Yale-Loehr. "Immigrant Investor Green Cards: Rise of the Phoenix?" *New York Law Journal*, April 25, 2005. At [http://www.millermayer.com/EB5NYLJ0405.html], visited January 23, 2007.

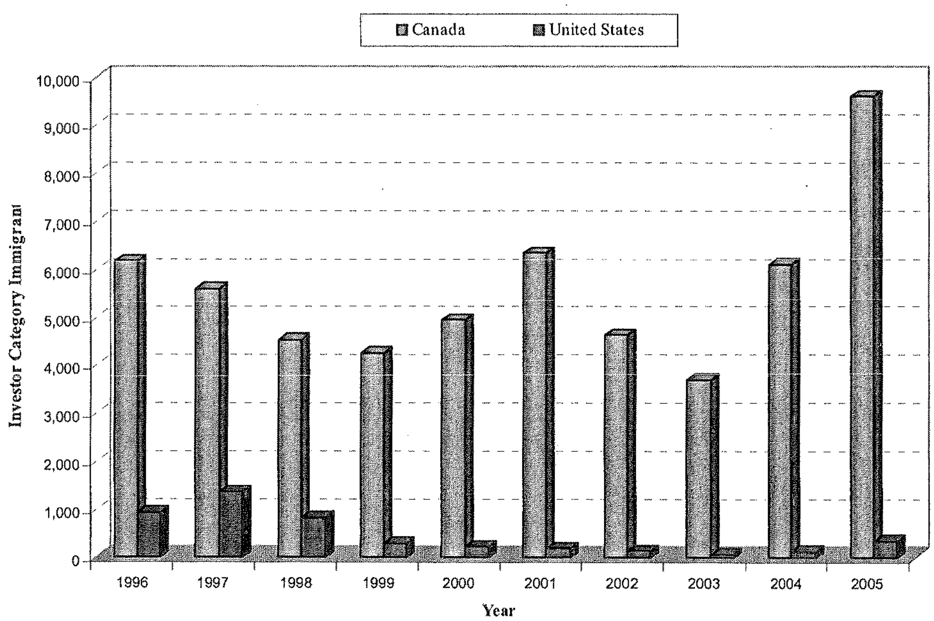
[88] U.S. Government Accountability Office, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors*, GAO-05-256, April 2005, pp. 8-11.

[89] Denton, Herbert H. "Canada Lures Hong Kong Immigrants: Well-Off Businessmen Willing to Invest Are Granted Special Status." *Washington Post*, March 8, 1986, pp. A11, A18.

control. For these investors, the visa offered an opportunity to establish legal permanent residence in a country that was perceived to be more embracing of individual property rights and open markets.[90] These immigrant investors from Hong Kong, along with other immigrant investors, have cumulatively invested over $3 billion in the Canadian economy.[91]

As **Figure 4** demonstrates, the annual number of immigrant investor visas issued over the past decade has remained multiple times higher than that of its United States counterpart. The margin between these two programs was closest in 1997, when the Canadian issuance of 5,595 immigrant investor visas was approximately 400% higher than the U.S. total of 1,361 immigrant investor visas issued. Although these ratios have fluctuated, the sizable Canadian advantage in this measure has remained. In terms of the absolute levels, the Canadian immigrant visa level for 2005 represented a 10-year high, while the U.S. level for the same time period represented approximately 25% of its 10-year high. Both countries have shown an upward trend in immigrant investor visas in the last two years.

Figure 4. Immigrant Investors to Canada and the United States, 1996-2005



Source: Data are from the United States Government Accountability Office (2005) and Citizenship and Immigration Canada (2005).

What is unclear from the data is whether the competition between the U.S. and Canadian program (as well as investor programs in other countries) constitutes a zero-sum game. There are no data available showing the motive for migration among investors, or if they perceive the United States and Canada as interchangeable

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[90] Ibid.

[91] Citizenship and Immigration Canada, "Business Immigrant Links: FAQs." November 11, 2005, at [http://www.cic.gc.ca/english/business/bi-faqs.html], visited January 23, 2007.

investment locations. If the investors are motivated purely by the economic returns, then economic theory[92] suggests that equalizing the program financial requirements should result in more equal rates of petitions. Furthermore, a lowering of the financial requirements should increase the supply for both countries. However, if the immigrant investors are motivated to migrate by non-financial considerations, then equalizing the United States program requirements with its Canadian counterpart is likely to have little impact on the current trends.

Analysis of the Relationship Between Investments and Migration

Classical economic theory has posited that trade liberalization (including the reduction of investment restrictions) establishes a conditional inverse theoretical relationship between foreign direct investment (FDI) and migration.[93] In other words, as trade increases, migration pressures decrease. The theory posits that an increased level of FDI should reduce migratory pressures through growth in the targeted economy. As economic growth produces a higher demand for labor, workers in that economy feel less pressure to seek employment in foreign economies, provided that the new jobs complement the workforce's skills. For example, if economic growth creates demand for skilled labor, then an unskilled labor force should not experience any reduced migration pressures. Thus, while FDI increases host-country growth, there is not necessarily a direct reduction in host-country migration pressures.

The investor visas offered by the United States operate on the principal that FDI into the United States should spur economic growth in the United States. According to the classical theory, if these investments are properly targeted towards the U.S. labor force's skill sets, it should reduce the migration pressures on U.S. workers. Such economic growth from FDI should further spur greater demand for trade. In FDI between capital abundant countries such as the OECD member states (between whom a marked majority of FDI flows), the empirical evidence has largely supported this notion.[94] Furthermore, it has provided an increased per capita income in these states, as well as boosted the general standard of living.

What is less clear from the empirical research is the degree to which potential migration provides any additional incentive for investment activity in the United States. The classical trade theory asserts that trade and migration are substitutes,[95] and

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[92] Xenogiani, Theodora. "Migration Policy and Its Interactions with Aid, Trade and Foreign Direct Investment Policies: A Background Paper." *OECD Development Centre*, Working Paper No. 249, June, 2006.

[93] For a brief discussion, see Xenogiani, Theodora. "Migration Policy and Its Interactions with Aid, Trade and Foreign Direct Investment Policies: A Background Paper." *OECD Development Centre*, Working Paper No. 249, June, 2006, p.36.

[94] Ibid.

[95] For further discussion on immigration and trade see CRS Report RL32982, *Immigration Issues in Trade Agreements*, by Ruth Ellen Wasem.

that trade liberalization should reduce migratory pressures.[96] These basic propositions are generally agreed to hold in the long term. Consequently, in the long term classical trade theory suggests there should be little migration of investors from countries with liberalized trade arrangements with the United States.[97] Instead, these investors would achieve their investments through conventional FDI. Furthermore, the theory suggests that investors would be more likely to migrate from countries with restrictive trade policies (a policy more highly correlated with less economically developed countries).

Critics of the classical economic models contend that despite elegant predictions, the models produced by the theory frequently do not capture the costs of international finance. Such critics argue that foreign investments often occur at the expense of local businesses, and result in exploitive practices of local labor.[98] These criticisms are particularly common when critiquing the economic relationship between capital abundant countries and less economically developed countries (LEDC). According to the argument, more powerful countries can leverage their power to construct investment relationships that shift a disproportionate amount of profits to the capital abundant countries. Simultaneously, a greater share of the costs[99] are shouldered by the less powerful country. Classical economists generally respond by noting that these investments are still producing growth in the LEDCs, making the countries better off than without the investments. However, LEDCs remain a source of contention between the classical economic theorists and their critics.

Less Economically Developed Countries. Some scholars have expressed doubt about the posited trade/migration substitutability, suggesting that the relationship in the short or medium term could look different from the long term.[100] One of the arguments put forward is that trade and migration are complementary for countries with different levels of development.[101] Under such a scenario, economic

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[96] This migratory pressure reduction should occur through the increased exports of unskilled labor-intensive goods, as well as the resulting fact-price equalization and subsequent convergence of wages.

[97] There exists the possibility that foreign investment and capital trade objectives of many investors are accomplished through multinational corporations. Under the construct of a multinational corporation, returns to the investor are achieved through the foreign direct investment by the corporation and through the migration of managers and technical experts to facilitate production efficiency.

[98] For example, see Banerjee, Subhabrata Bobby, and Stephen Linstead, "Globalization, Multiculturalism and Other Fictions: Colonialism for the New Millennium?" *Organization*, vol. 8, no. 4 (2001), pp. 683-722.

[99] These costs may include tax shelters, government sponsored benefits, subsidies, and the like.

[100] Schiff, M. "How Trade, Aid, and Remittances Affect International Migration." World Bank Policy Research Working Paper No. 1376, Washington, DC, 1994.

[101] Xenogiani, Theodora. "Migration Policy and Its Interactions with Aid, Trade and Foreign Direct Investment Policies: A Background Paper." *OECD Development Centre*, (continued...)

growth in a sending country would provide potential migrants with the economic means to overcome relatively high migration costs. Other observers point to such factors as imperfect credit markets and currency fluctuations as significant "push" factors for potential migrants.[102] These latter factors, however, are generally more highly correlated with LEDCs. Therefore, both the complementary and substitutability theories of trade and migration suggest that higher demand for investor out-migration should currently lie in the populations of LEDCs. However, as noted earlier, investor visas issued to regions with LEDCs are relatively few.

What makes the visa program distinct from conventional FDI is that it involves trade through the import of human capital. Consequently, these visas have potential for creating a so-called "brain drain" migration out of less-developed sending-countries.[103] LEDCs are by definition limited in their capital levels, and economic theory would suggest that exporting capital from a capital scarce country would inhibit its growth and development.[104] Classical theorists would argue that the United States would be better served by sending FDI into LEDCs, thereby promoting economic growth in LEDCs and a subsequent higher demand for U.S. goods.[105] Such investment, the theory dictates, would promote job growth both in the United States and abroad.[106] Instead, targeting investors from capital abundant countries for sector specific investments would serve a more complementary role for the global market.[107]

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[101] (...continued)
Working Paper No. 249, June, 2006, p. 31-33.

[102] Ibid.

[103] A large majority of the issued visas have been to foreign nationals from relatively capital abundant countries.

[104] For further discussion of FDI into the United States see CRS Report RS21857, *Foreign Direct Investment in the United States: An Economic Analysis*, by James K. Jackson.

[105] FDI does entail some degrees of risk and reward for both the home and host economies. For the home economy, FDI can improve competitiveness and performance of firms by providing value-added activities, better employment opportunities, better export performance, and higher national income. At the same time, engaging in FDI also runs the risks of lower additions to both domestic investment and capital stock, as well as loss of competitiveness and jobs in certain parts of the economy. For the host economies, the benefits include increases in employment and potential multiplier effects on other parts of the economy through productivity growth. Accepting FDI, however, does run the risk that domestic firms are crowded out of the market (United Nations *World Investment Report*, 2006).

[106] From the classical economic perspective, the immigrant investor pilot program is counter-intuitive. In the case of investors from developed countries there is little incentive for them to settle in the United States since they can achieve similar standards of living and all of their FDI objectives from their home country. As for LEDCs, a drain of their capital may provide short-term benefits to the United States, but would inhibit growth and trade in the long run. The flight of investors from Hong Kong in the late-1980s and the 1990's was a unique economic situation that has since subsided. Other than the Hong Kong scenario, there is seemingly little incentive for investors to relocate.

[107] The complementary roles would be achieved through what economists refer to as
(continued...)

By attracting capital abundant country investors, the United States' economic growth and productivity could be stimulated without adversely affecting the consumption and trade potential of the investor's country of origin.

Temporary and Permanent Investors. Some recent scholarly work has drawn a distinction between the decision-making factors of potential temporary and permanent migrants.[108] Amongst temporary migrants, it is the employment prospects and wage differentials that are significant variables in deciding whether to migrate. Differences in both gains and price levels should affect the cost/benefit calculation of the potential migrants, as these variables will affect potential levels of consumption and savings. For permanent migrants, however, the prospects for professional and social mobility are the main motivating factors.

The distribution of visas among Asian countries shows marked country-specific tendencies among investor visa petitioners. Specifically, the polarization among petitioners towards either immigrant (permanent) or nonimmigrant (temporary) visas suggests that a significant proportion of applicants are substituting immigrant visas for nonimmigrant visas, or vice versa. For example, while Japan accounted for 37.8% of all the foreign nationals arriving on nonimmigrant treaty trader and investor visas in FY2005 (**Table 2**), its nationals represented only 1% of all the LPR investor visas issued in the time frame FY1992-FY2004 (embedded in "Other Asia" of **Figure 1**). Conversely, from the same two sets of data-samples, nationals of Taiwan accounted for 39% of immigrant investors issued, but only 2.5% of nonimmigrant arrivals. In the context of the aforementioned theory, **Table 2** and **Figure 1** above suggest that Japanese investors are seeking to capitalize on wage differentials, while Taiwanese, Chinese, and (to some extent) South Korean investors are pursuing professional and social mobility.

Although some considerations weigh more heavily on the decisions of immigrant and nonimmigrant investors, no single explanation accounts for the behavior of investor visa petitioners. Japan, for example, has some trade restrictions with the United States through voluntary export restraint agreements limiting auto and steel exports to the United States, suggesting from the theoretical standpoint that Japanese investors would choose to temporarily migrate.[109] The Japanese governments have also complained that the post-9/11 customs regulations and

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[107] (...continued)
"comparative advantage." Theoretically, each country should be able to produce a good or service more efficiently than the world average, thereby making the good or service exportable. By attracting investments in these comparatively advantaged sectors, costs should decrease while production increases. Thus, consumers at both ends of a trading relationship are able to consume more goods.

[108] Xenogiani, Theodora. "Migration Policy and Its Interactions with Aid, Trade and Foreign Direct Investment Policies: A Background Paper." *OECD Development Centre*, Working Paper No. 249, June, 2006, p. 31-33.

[109] CRS Report RL32649, *U.S.-Japan Economic Relations: Significance, Prospects, and Policy Options*, by William H. Cooper.

practices of the United States inhibit U.S./Japanese trade.[110] Despite the suggestion by these factors that Japanese investors are temporarily substituting trade with migration, it is also plausible that Japan's weak economic performance has reduced the professional mobility opportunities — a motivation associated with permanent migration. From 1991-2000, Japan's real (adjusted for inflation) average GDP growth rate was 1.4%, and it fell to 0.9% from 2001 to 2003.[111] Yet, regardless of motivation, Japanese investors are predominantly choosing to temporarily migrate to the United States.

The fact that China, Taiwan and South Korea have had strong economic performance in the last decade and relatively higher levels of immigrant investors to the United States, suggests that these investors are migrating for more than financial purposes. These investors may be more strongly motivated by the family and/or social network connections to previously migrated investors and other LPRs in the United States. These theoretically derived motives, however, must be further tested empirically before any conclusive behavioral statements can be made.

Multiplier Effects. Classical economic theory holds that investments provide for multiplier effects throughout the economy by increasing demand for other goods and services. For example, an increase in demand for corn may increase the demand for storage facilities, which results in an increase in construction contracts. The U.S. Department of Commerce has quantified these effects through the Regional Input-Output Modeling System (RIMS II).[112] The RIMS II multipliers have become a significant factor in assessing indirect economic activity and employment effects for Immigrant Investor Pilot Program petitions.[113] Using the regional multipliers for various industries, foreign investment funds are frequently shown to yield increases in demand across an economy that are several times higher than the direct input by an investor. Thus, despite the relatively low number of investors entering the United States, the impact of each investment by a foreign investor is a multiplied factor greater than the direct investment, depending upon which industry and region is being invested in. Furthermore, studies showing the direct economic investments of foreign investors may not fully capture the economic impact of these investors upon a region.[114]

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[110] Ibid.

[111] Ibid.

[112] For an explanation of the RIMS II multiplier, see U.S. Department of Commerce, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*, Third Edition, March, 1997.

[113] According to the USCIS Chief Adjudications Officer for EB-5 visas, well established input-output models such as RIMS II are useful in assessing investments for limited partnerships, where the direct effects of an investment are difficult to demonstrate (based on CRS discussions with Morrie Berez, Chief Adjudications Officer, USCIS Investor and Regional Center Program, November 20, 2006). Such established economic models are permitted under regulations (8 CFR 204.6(m)(3)).

[114] A recent study commissioned by the National Venture Capital Association found that over the past 15 years, immigrants have started 15% of venture-backed U.S. public

(continued...)

Administrative Efforts

In recent years, significant efforts have been made by administrative agencies to both promote investment by foreigners in the United States economy, and to close perceived loopholes for visa exploitation. At the center of these efforts has been the USCIS' changes to the Immigrant Investor Pilot Program, which addressed fraud concerns and the development of a Regional Center unit for coordination and targeting of foreign investments.

Fraudulent Investments. During the late 1990's, the LPR investor visa was suffering from high levels of fraudulent applications.[115] There has been concern that potential immigrants could use schemes of pooling their funds and transferring the money to demonstrate the existence of sufficient capital.[116] Furthermore, applicants could potentially use promissory notes that would allow for their repayment after a six year time period. Since the LPR was only conditional for two years, some observers feared that these investors could pull out of their respective investments after being granted their LPR, have the promissory notes forgiven, and the enterprise would collapse. As a result, the USCIS has engaged in a policy of not accepting promissory notes, although the regulations state that petitions with promissory notes may be considered for approval.[117] Additionally, the creation of the Investor and Regional Center Unit (IRCU) has allowed greater scrutiny of applications through

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[114] (...continued)
companies. The value of these companies currently exceeds $500 billion, and most of the companies were in technology-related industries. The study found that these companies employ 220,000 people in the United States, and 400,000 globally. Some of the more prominent companies included by the study's criteria include Google, Yahoo!, eBay, and Intel (Stuart Anderson and Michael Platzer, *American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness*, National Venture Capital Association, November 15, 2006, pp. 5-8).

Although the study shows the potential benefits of immigrant entrepreneurs, it does not directly reflect on the investor visa categories. Most of the immigrants that founded these enterprises came to the United States as children, teenagers, graduate students, or were hired on H-1B visas in their mid-twenties. Thus, it is unclear to what extent these individuals would have qualified as either immigrant or nonimmigrant investors under the current regulations. Furthermore, the study's findings includes numbers from both companies wholly founded by immigrants and companies founded through partnerships with United States citizens (Ibid).

[115] Some have expressed concern regarding the investor visas being a means for some foreign nationals to channel illegal funds into the United States. Opponents of the LPR investor visa raised objections during congressional debates by asserting that the LPR investor category would allow individuals to become United States citizens who had profited from drug cartels. According to DHS, there does exist documented past abuses in the alien investor program (U.S. Government Accountability Office, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors*, GAO-05-256, April 2005, pp. 39.). However, since the implementation of the "no promissory notes" policy, the fraudulent cases have largely disappeared.

[116] Based on CRS discussions with Morrie Berez, Chief Adjudications Officer, USCIS Investor and Regional Center Program, November 20, 2006.

[117] Ibid.

increased resources and coordination of petitions processing. Petitioners now must provide extensive documentation that traces the source of their funds to show that the capital was legally obtained.[118]

IRCU Expansion. Prior to the creation of IRCU, the former-INS had been criticized for becoming more restrictive in application reviews for Regional Center designation, including allowing some applications to remain pending for more than three years.[119] In 2005, concerns were raised by both Members and advocates that the IRCU still did not process applications quickly enough,[120] and that staff members had competing obligations within IRCU.[121] Proponents of the Immigrant Investor Pilot Program believe it has attracted a significant amount of capital and that addressing these criticisms would further increase the levels of foreign investments through the LPR investor visa.[122] USCIS has responded to these criticisms by expanding the number of Regional Centers available for LPR investor investments. Most recently, IRCU has been expanded into Western Pennsylvania.

Working with foreign financing from the immigrant investor program has become highly attractive for many domestic investors. A number of current investment projects are using LPR investor financing because it is less costly for the domestic investors. For domestic investors, employing LPR investor funds becomes a significantly cheaper option than a bank loan, since there is no requirement to pay interest on the financing. Additionally, because the enterprises are less saddled with financing debt they are more quickly able to turn a profit. The LPR investor visa

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[118] This practice has made it especially difficult for investors from countries with business practices based on convention (as opposed to legal documentation) to qualify for investor visas. Documentation requirements may force a potential investor to trace funds back several decades, effectively disqualifying investors from countries where credible historical records of income tax documents do not exist (Wolfsdorf, Bernard P., Naveen Rahman-Bhora, Tien-Li Loke Walsh, and Kim Tran. "A Review of the Immigrant Investor Program." Immigration Law Today, July/August, 2006, pp. 27-33).

[119] Lincoln Stone, *INS Decisions Cloud Future of Investor Pilot Program*, 6 Bender's Immigration Bulletin 233 (March 1, 2001).

[120] Rep. Sensenbrenner wrote a letter to USCIS Director Eduardo Aguirre on April 6, 2005 asking the USCIS to institute premium processing and concurrent filing for immigrant investor petitions (Mailman, Stanley, and Stephen Yale-Loehr. "Immigrant Investor Green Cards: Rise of the Phoenix?" *New York Law Journal*, April 25, 2005. At [http://www.millermayer.com/EB5NYLJ0405.html], visited January 23, 2007.).

[121] Letter from Lincoln Stone, Chair of the Investor Committee of the American Immigration Lawyers Association, to Michael Aytes, USCIS Acting Associate Director of Operations, November 16, 2005.

[122] Lincoln Stone, the Chair of the Investor Committee of the American Immigration Lawyers Association, noted the generated level of capital in four targeted areas. According to an informal survey Stone had conducted of four targeted centers (California Consortium for Agricultural Export, Philadelphia Investment Development Corporation, Golden Rainbow Freedom Fund, and South Dakota international Business Institute), these centers had attracted $121.3 million in capital in their two-year existence (Letter from Lincoln Stone, Chair of the Investor Committee of the American Immigration Lawyers Association, to Michael Aytes, USCIS Acting Associate Director of Operations, November 16, 2005.).

petitioners are still able to qualify for conditional LPR status under these investment structures through the multiplier rules for employment and capital that the USCIS employs. Thus, limited partnerships of domestic investors with LPR investor visas has become a popular option for financial stabilization and enterprise start-up in Regional Centers as diverse as Philadelphia and South Dakota.

New Orleans. In the efforts to rebuild the sections of New Orleans damaged by Hurricane Katrina, developers and officials alike have taken an interest in attracting foreign capital. USCIS officials are working closely with New Orleans officials to establish New Orleans as another Regional Center for LPR investor visa investments. Officials at USCIS are hopeful that the program success that the Philadelphia targeted center is experiencing can be replicated in New Orleans. Since being designated a Regional Center, Philadelphia has attracted over 100 LPR investors and most of their investments are being used to help finance the renovation and transformation of the 1100 acre shipyard (for further discussion, see **Appendix B**).

Potential Issues for Congress

Several issues related to investor visas may surface during the 110th Congress. For example, the immigrant investor pilot program is scheduled to sunset at the end of FY2008. The immigrant investor pilot program visa was last extended under the Basic Pilot Program Extension and Expansion Act of 2003.[123] There are currently no other programs for targeting investments by immigrant investors to the United States.

Additional investor visa issues that could surface may relate to temporary investors. In terms of nonimmigrant visas, the Danish government has been lobbying the United States to grant E-2 treaty investor visas to Danish nationals. Originally, this provision was granted to the Danes on May 2, 2001 as part of a protocol to the treaty granting nationals of Denmark E-1 nonimmigrant trader visa eligibility. The protocol was never ratified, however, due to congressional objections over the inclusion of immigration provisions in a trade agreement. Subsequently, Representative Sensenbrenner introduced H.R. 3647, which was passed in the House on November 16, 2005, and would have allowed nationals of Denmark to enter and operate in the United States as investors under E-2 treaty investor nonimmigrant visas. Currently, Danish nationals are only allowed E-1 treaty trader visas. Denmark is one of four countries whose nationals are eligible for E-1 treaty trader visas, but not E-2 treaty investor visas (see **Table 3** in **Appendix A**).

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[123] P.L. 108-156.

Appendix A

Table 3. E-Class Visa Privileges by Year of Attainment

Country	Classification	Year of Visa
Albania[a]	E-2	1998
Argentina	E-1	1854
Argentina	E-2	1854
Armenia	E-2	1996
Australia	E-1	1991
Australia	E-2	1991
Australia	E-3	2005
Austria	E-1	1931
Austria	E-2	1931
Azerbaijan[a]	E-2	1901
Bahrain[a]	E-2	1901
Bangladesh[a]	E-2	1989
Belgium	E-1	1963
Belgium	E-2	1963
Bolivia	E-1	1862
Bolivia	E-2	2001
Bosnia & Herzegovina	E-1	1982
Bosnia & Herzegovina	E-2	1982
Brunei[b]	E-1	1853
Bulgaria[a]	E-2	1954
Cameroon[a]	E-2	1989
Canada	E-1	1993
Canada	E-2	1993
Chile	E-1	2004
Chile	E-2	2004
Chile	H-1B-1	2004
China (Taiwan)	E-1	1948
China (Taiwan)	E-2	1948
Colombia	E-1	1948
Colombia	E-2	1948
Congo (Kinshasa)[a]	E-2	1989
Congo (Brazzaville)[a]	E-2	1994
Costa Rica	E-1	1852
Costa Rica	E-2	1852
Croatia	E-1	1982
Croatia	E-2	1982
Czech Republic[a]	E-2	1993
Denmark[b]	E-1	1961
Ecuador[a]	E-2	1997
Egypt[a]	E-2	1992

Country	Classification	Year of Visa
Estonia	E-1	1926
Estonia	E-2	1997
Ethiopia	E-1	1953
Ethiopia	E-2	1953
Finland	E-1	1934
Finland	E-2	1992
France	E-1	1960
France	E-2	1960
Georgia	E-2	1997
Germany	E-1	1956
Germany	E-2	1956
Greece[b]	E-1	1954
Grenada[a]	E-2	1989
Honduras	E-1	1928
Honduras	E-2	1928
Iran	E-1	1957
Iran	E-2	1957
Ireland	E-1	1950
Ireland	E-2	1992
Israel[b]	E-1	1954
Italy	E-1	1949
Italy	E-2	1949
Jamaica[a]	E-2	1997
Japan	E-1	1953
Japan	E-2	1953
Jordan	E-1	2001
Jordan	E-2	2001
Kazakhstan[a]	E-2	1994
Korea (South)	E-1	1957
Korea (South)	E-2	1957
Kyrgyzstan[a]	E-2	1994
Latvia	E-1	1928
Latvia	E-2	1996
Liberia	E-1	1939
Liberia	E-2	1939
Lithuania[a]	E-2	2001
Luxembourg	E-1	1963
Luxembourg	E-2	1963
Macedonia	E-1	1982
Macedonia	E-2	1982
Mexico	E-1	1994
Mexico	E-2	1994
Moldova[a]	E-2	1994
Mongolia[a]	E-2	1997
Morocco[a]	E-2	1991
Netherlands	E-1	1957

Country	Classification	Year of Visa
Netherlands	E-2	1957
Norway	E-1	1928
Norway	E-2	1928
Oman	E-1	1960
Oman	E-2	1960
Pakistan	E-1	1961
Pakistan	E-2	1961
Panama[a]	E-2	1991
Paraguay	E-1	1860
Paraguay	E-2	1860
Philippines	E-1	1955
Philippines	E-2	1955
Poland[a]	E-2	1994
Romania[a]	E-2	1994
Senegal[a]	E-2	1990
Singapore	E-1	2004
Singapore	E-2	2004
Singapore	H-1B-1	2004
Slovak Republic[a]	E-2	1993
Slovenia	E-1	1982
Slovenia	E-2	1982
Spain	E-1	1903
Spain	E-2	1903
Sri Lanka[a]	E-2	1993
Suriname	E-1	1963
Suriname	E-2	1963
Sweden	E-1	1992
Sweden	E-2	1992
Switzerland	E-1	1855
Switzerland	E-2	1855
Thailand	E-1	1968
Thailand	E-2	1968
Togo	E-1	1967
Togo	E-2	1967
Trinidad & Tobago[a]	E-2	1996
Tunisia[a]	E-2	1993
Turkey	E-1	1993
Turkey	E-2	1990
Ukraine[a]	E-2	1996
United Kingdom	E-1	1815
United Kingdom	E-2	1815

Source: CRS presentation of data from the U.S. Department of State Foreign Affairs Manual, 9 FAM §41.51.

a. Countries with only E-2 visa privileges.
b. Countries with only E-1 visa privileges.

Appendix B

There are currently numerous targeted economic regions set up for the Immigrant Investor Pilot Program for the EB-5 visa category. These targeted areas have focused on different types of investments in order to achieve economic benefits for the given region. Below are descriptions of a couple of the projects that are currently in place under the Immigrant Investor Pilot Program and the results these projects are producing.

South Dakota International Business Institute

The South Dakota International Business Institute (SDIBI), Dairy Economic Development Region (DEDR) is the only regional targeting center currently run by a state government. Approved in June 2005, this Regional Center was the result of a state-wide effort to find an improved method of attracting foreign capital to South Dakota. From the state's perspective, the EB-5 pilot investor program offered a more promising solution than the E-2 nonimmigrant visa, since officials could offer investors the benefit of LPR status.[124] Additionally, the job-creation criterion of the EB-5 visa aligned well with the state's focus on job creation from foreign investments (as opposed to isolated capital injections). In its application for Regional Center designation, the state said it would focus its efforts on attracting dairy farm investors. USCIS agreed to the designation on the condition that South Dakota would allow for limited partnerships of foreign investors with domestic farmers.[125] As a result, South Dakota currently has enterprises fully owned and operated by foreign investors, as well as limited partnerships.

Since the regional designation took effect, South Dakota has attracted 60 foreign investors to its dairy industry (with an additional 10 applications still pending).[126] These foreign investors have injected approximately $30 million into the South Dakota economy, with an additional $6 million in matching funds coming from local farmers. Furthermore, this combined $36 million in invested funds has resulted in almost $90 million in bank financing for the various dairy investment projects. As a direct consequence of these foreign investments, 240 additional jobs have been created and 20,000 additional cows have been brought to South Dakota.[127] Using the RIMS II multipliers for investment and employment,[128] the foreign investments from EB-5 immigrants have resulted in a total of 638 additional jobs and over $360 million in additional funds to the regionally targeted economy.

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[124] Based on CRS discussion with Joop Bollen, Director of the South Dakota International Business Institute, November 28, 2006.

[125] Letter from William R, Yates, Associate Director of USCIS Office of Operations, to Joop Bollen, Director of the South Dakota International Business Institute, June 11, 2005.

[126] Based on CRS discussion with Joop Bollen, Director of the South Dakota International Business Institute, November 28, 2006.

[127] Ibid.

[128] For the South Dakota targeted region, the RIMS II multipliers are 2.9 for investment and 2.66 for employment.

According to SDIBI/DEDR Director Joop Bollen, the pilot program has afforded South Dakota "a tremendous opportunity," not only because of the direct investments and multiplier effects, but because of the other investments made by the foreign investors.[129] According to Director Bollen, the attraction of foreign investors has had significant spillover effects into the restaurant and meat packing industries. As a result, SDIBI/DEDR hopes to focus on attracting additional investments for its meat packing plants. As such, Director Bollen stated that it was of paramount concern to the SDIBI/DEDR that USCIS have sufficient resources to quickly adjudicate EB-5 immigrant visa petitions. If the adjudication process is too long, Director Bollen stated, then the opportunity cost may make a South Dakota dairy investment unappealing to foreign investors.[130]

CanAm Enterprises

CanAm Enterprises is a private financial advising group which serves to structure, promote and administer the Philadelphia Industrial Development Center (PIDC) Regional Center. The group works in conjunction with the City of Philadelphia through the PIDC to facilitate the city development (mainly in the city's shipyard area) and provide investor credibility. This public/private partnership was developed to aid the transition of Philadelphia from a manufacture-based to a service based economy.[131] The main strategy has been to use collateralized loans to attract investments in industries that provide long-term full time employment. By doing so the city hopes that investors will wish to invest in other projects and sectors of the city's economy.[132]

When the Philadelphia Naval Base was closed as part of the base closures of the 1970s, the base was handed over to the PIDC for transformation to civilian use. Despite the city's efforts the shipyard was unable to remain competitive in the ship construction industry.[133] However, with the passage of requirements following the Exxon Valdez oil spill[134] (and the ongoing regulations from the Jones-Shafroth Act),[135] the civilian shipbuilding industry in the United States became economically

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[129] Based on CRS discussion with Joop Bollen, Director of the South Dakota International Business Institute, November 28, 2006.

[130] Ibid.

[131] Based on CRS discussions with Tom Rosenfeld, President & CEO, CanAm Enterprises, November 28, 2006.

[132] Ibid.

[133] Based on CRS discussions with Tom Rosenfeld, President & CEO, CanAm Enterprises, November 28, 2006.

[134] P.L. 101-380.

[135] The Jones-Shafroth Act is a section of the Merchant Marine Act of 1920 (46 U.S.C. 883; 19 CFR 4.80 and 4.80b). Designed to protect the United States shipping fleet, the law requires that cargo moving between U.S. ports be carried by ships that are built in the United States and at least 75% owned by American citizens or corporations.

viable again.[136] The federal government and the city of Philadelphia combined to invest over $400 million into the Philadelphia shipyard. Additionally Norwegian shipbuilding companies were brought in as investors in the shipyard and provided valuable training and human capital to the shipyard. Since production restarted, EB-5 investors have become increasingly important for providing funds to remove production bottlenecks. A recent example includes the use of EB-5 funds for the development of a more advanced painting technology for the ships.[137]

Philadelphia is one of the Regional Centers that has been most successful in attracting foreign investors through the EB-5 visa. There are approximately 60 EB-5 visa investors in Philadelphia who have invested a total of $75 million into the city.[138] Additionally, there are around 30 petitions that are under review for other investment projects. The lead official at CanAm Enterprises told CRS that while they believe the funds have been important to the city, the human capital the investors bring is equally important. This official stated that the investors being brought to the United States represented highly competent entrepreneurs, who not only made investments in the city beyond their initial investment, but also facilitated greater economic activity through exchanges with their existing foreign networks.[139]

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[136] Based on CRS discussions with Tom Rosenfeld, President & CEO, CanAm Enterprises, November 28, 2006.

[137] Ibid.

[138] Ibid.

[139] Ibid.

Exh. 8

U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

HOOPRD 70/6.2.8

Mr. Joop Bollen
Director
South Dakota International Business Institute
711 East Wells Avenue
Pierre, South Dakota 57501—3369

DEC 1 2 2006

Dear Mr. Bollen:

Pursuant to Section 610 of the Appropriations Act of 1993, on April 8, 2004, the South Dakota International Business Institute (SDIBI), Dairy Economic Development Region (DEDR) was initially approved and designated as a regional center to participate in the Immigrant Investor Pilot Program. On December 22, 2004, SDIBI/DEDR requested approval to amend its business plan and expand its job creation multipliers, and this amendment was approved by U.S. Citizenship and Immigration Service (USCIS) on July 18, 2005. SDIBI/DEDR in a request dated December 10, 2006, SDIBI/DEDR again requested to amend its business plan to enable the following commercial activity additions and to augment its approved job creation multipliers as follows:

1. To amend the SDIBI/DEDR business plan to include meat processing and packing operations.[1]
2. To amend the SDIBI/DEDR business plan to include cattle, pork, and other animal feedlots.[2]
3. To amend the SDIBI/DEDR business plan by eliminating the SDIBI/DEDR Regional Center's self-imposed numeric thresholds of 300 dairy cows and/or 3000 heifers per foreign investor, and setting no numerical herd size minimum or maximum for dairy cows, heifers, and/or animal feedlot operations.

Based on its review and analysis of the December 10, 2006, request to amend the previous SDIBI/DEDR designation, USCIS approves this amendment to the designation, business plan and job creation multipliers for the SDIBI/DEDR Regional Center reflecting the above 3 changes. In accepting the amendment, USCIS has updated its records of SDIBI/DEDR's Regional Center approval and designation, business plan, and job creation multipliers to encompass these

[1] These operations would utilize a weighted average RIMS-II indirect job creation multiplier of 3.49 for the areas within the geographic boundaries of the SDIBI/DEDR Regional Center.

[2] Such operations would utilize a weighted average RIMS-II indirect job creation multiplier of 2.66 for the areas within the geographic boundaries of the SDIBI/DEDR Regional Center.

amendments relative to the investment focus of the SDIBI/DEDR Regional Center in the following commercial enterprise activities:

1. Animal dairy farm operations;

2. Animal heifer ranch operations;

3. Animal feedlot operations; and
4. Meat processing and packing operations.

As such, aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with USCIS for these new commercial enterprises located within the SDIBI/DEDR regional center area comprised of the 45 contiguous counties of eastern South Dakota (with the exclusion of the cities of Sioux Falls, Minnehaha County, Aberdeen in Brown County, and Watertown in Codington County), that have been determined to qualify as a "Rural Area" as set forth in 8 CFR 204.6(e). These 45 counties (with the excluded cities noted) are identified and listed in the
Page 2

Attachment to this updated/amended approval and designation letter. Therefore, the minimum capital investment threshold for any individual alien foreign into a new commercial dairy, heifer, beef, pork or other animal farming enterprise through the SDIBI/DEDR Regional Center shall be not less than $500,000.

Alien entrepreneurs who file petitions for commercial enterprises located in the SDIBI/DEDR regional center area must fulfill all of the requirements set forth in 8 CFR 204.6, except that the petition need not show that the new commercial enterprises directly hired ten new employees as a result of the alien entrepreneur's investment. Each individual petition, to demonstrate that it is associated with the SDIBI/DEDR regional center, in conjunction with addressing all the requirements for an individual alien entrepreneur petition, shall also contain as supporting evidence relating to this regional center designation, the following:

1. A copy of this letter of the amended approval and designation.

2. A copy of the approved regional center narrative proposal and business plan, and the approved amendments.

3. A copy of the approved job creation methodology required in 8 CFR 204.6(j)(4)(iii), as contained in the SDIBI/DEDR amended regional center economic analysis which has been approved by USCIS, which reflects that investment by an individual alien investor of at least $500,000 into a new commercial dairy farm, heifer farm, other animal feedlot enterprise or meat processing and packing operation within the geographic area of the amended SDIBI/DEDR regional center will generate full-time employment positions, either directly or indirectly, for not fewer than ten U.S. workers.

4. A signed legally executed and certified copy of the limited partnership agreement between the new commercial dairy and/or heifer farming enterprise and the alien investor.

The designation by the USCIS of the SDIBI/DEDR as a regional center does not reflect any determination on the merits of individual petitions filed by alien entrepreneurs under the Investor Pilot Program. All petitions for alien entrepreneurs who invest within the regional center will be adjudicated by the USCIS on a case-by-case basis and each petition must be fully documented. The individual petitions must be submitted to the California Service Center.

If you have any questions concerning the SDIBI/DEDR approval and designation under the Immigrant Investor Pilot Program, please contact Maurice Berez, Chief Adjudications Officer, Foreign Trader, Investor and Regional Center Program, at (202) 272-8413.

Sincerely,

Paul E. Novak

Paul E. Novak
Acting Chief
Service Center Operations

Attachment

Attachment

Designated Rural Counties Which Are Within the Geographic Boundaries of SDIBI/DEDR Regional Center

	Population		Population
Aurora	2926	Hughes	16684
Beadle	16269	Hutchinson	7731
Bon Homme	7104	Hyde	1573
Brookings[1]	28265	Jerauld	2180
Brown[2]	34666	Kingsbury	5555
Brule	5205	Lake	11040
Buffalo	1994	Lincoln[3]	29302
Campbell	1679	McCook	5864
Charles Mix	9178	McPherson	2723
Clark	3915	Marshall	4272
Clay	13191	Miner	2717
Codington	25929	Moody	6511
Davison	18744	Potter	2508
Day	5891	Roberts	10128
Deuel	4364	Sanborn	2612
Douglas	3310	Spink	6972
Edmunds	4221	Sully	1456
Faulk	2469	Tripp	6177
Grant	7625	Turner	8594
Gregory	4500	Union	13024
Hamlin	5615	Walworth	5562
Hand	3520	Yankton[4]	21452
Hanson	3510		

[1] Brooking county has no population centers, cities or towns with a population of 20,000 or more.
[2] Brown County has no population centers, cities or towns with a population of 20,000 or more except for the City of Aberdeen with a population 24,957 which is excluded from the geographical area of the SDIBI/DEDR regional center.
[3] Lincoln County has no population centers, cities or towns with a population of 20,000 or more.
[4] Yankton County has no population centers, cities or towns with a population of 20,000 or more.

Exh. 9

South Dakota

Regional Center (EB-5 Program)

South Dakota, in collaboration with Hanul Professional Law Corporation, has unique access to Regional Center Immigrant Visas (green cards)!!!

Regional Center status is available for forty-five counties in eastern South Dakota. These are the counties of Aurora, Beadle, Bon Homme, Brookings, Brown, Brule, Buffalo, Campbell, Charles Mix, Clark, Clay, Codington, Davison, Day, Deuel, Douglas, Edmunds, Faulk, Grant, Gregory, Hamlin, Hand, Hanson, Hughes, Hutchinson, Hyde, Jerauld, Kingsbury, Lake, Lincoln, Marshall, McCook, McPherson, Miner, Moody, Potter, Roberts, Sanborn, Spink, Sully, Tripp, Turner, Union, Walworth and Yankton.

What is a Regional Center?

Approved notification from the US Citizenship and Immigration Services

Why settle for a non-immigrant E-2 Visa?

Immigration Procedures

SD EB-5 Investment Details

SD EB-5 Project Summary

Hanul Law Firm

Frequently Asked Questions

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