

Federal program offers investors visas, a lot of risk

Some Texas companies that handle the deals have legal problems, other issues

**By SUSAN CARROLL
HOUSTON CHRONICLE**

May 23, 2011

It's been billed as a way to get a green card "via the red carpet."

Through the federal government's EB-5 investor visa program, wealthy would-be immigrants can sink \$500,000 or \$1 million into a U.S. project that generates jobs and in a few short years, emerge as lawful permanent residents of the United States.

But the rapidly growing visa program is buyer beware. Some Texas companies sanctioned by U.S. Citizenship and Immigration Services as "regional centers" — businesses approved to handle investments for EB-5 visa holders - have dubious track records or are engaged in questionable practices, a Houston Chronicle investigation found.

Consider:

In one extreme case, a Dallas company - the North Texas EB-5 Regional Center - is actively advertising multi-million dollar development projects on land in Farmers Branch tied up in a civil lawsuit and bankruptcy filing. A company executive and two of its officers are named in a pending \$72 million civil lawsuit filed by a major bank in U.S. District Court in Missouri, alleging the businessmen created a separate "straw company" in order to transfer debts and file for bankruptcy.

A Houston company is in danger of violating the EB-5 program's rules by offering foreign investors deeds to waterfront property to help secure their investments. The EB-5 program requires that immigrant investor money be "at risk" - meaning it's not a loan and could result in a loss. Experts on the EB-5 program say that the type of "assurance" offered by the Houston company could end up costing would-be immigrants a visa or green card down the line.

The program lacks transparency. While the government estimates that EB-5 investments have generated \$1.5 billion for the U.S. economy since 1990, USCIS does not publicly disclose how well individual regional centers perform.

The agency denied requests from the Chronicle for information on which centers have successfully helped EB-5 applicants to receive visas or to become green card holders.

Immigration officials say they are working to improve oversight of the regional centers, which have grown rapidly in recent years.

On Thursday, the agency proposed changes to the program, including creating a "decision board" that includes economists and legal counsel to help vet the regional center applications. The agency also plans to hold already established regional centers accountable by requiring them to file more detailed annual reports, said USCIS spokeswoman Maria Elena Garcia-Upson.

Experts from within the EB-5 industry praised USCIS for efforts to reinvigorate and revise the EB-5 program, but warned that more needs to be done - and quickly - to help protect investors.

"If I were an investor, I would run," said Michael Gibson, managing director of USAadvisors.org, which specializes in investigating regional centers for potential EB-5 investors. "There are so many people out there who have checkered backgrounds and suspect projects that for an investor, it's extremely important that they do due diligence on all of the claims made by the centers," he said.

Growing program

The EB-5 program, created by Congress during the recession of the early 1990s, makes 10,000 visas available annually to immigrants who invest at least \$1 million in a U.S. commercial enterprise.

The minimum investment amount drops to \$500,000 if the investment is in an economically disadvantaged neighborhood.

There are two avenues for investors to apply for EB-5 visas. Immigrant entrepreneurs can establish their own businesses in the U.S. or can invest in USCIS-designated "regional centers" - companies that manage investment projects.

To qualify for a green card, the visa holder must be able to show that the investment created at least 10 U.S. jobs within about two years.

Interest in the regional center program has surged dramatically with the downturn of the U.S. economy, as cash-strapped developers and local governments have scrambled to attract foreign investments.

The number of regional centers nationwide has increased from 17 in 2007 to 125 today, and 156 more applications are pending with USCIS, Garcia-Upson said. There are seven regional centers cleared to do business in Texas, including one in Houston that dates to 2007, USCIS data shows.

"The number of regional centers has exploded, and so there is certainly concern about the quality of regional center projects being offered to the immigrant investor," said Steven Parnell, joint managing partner for WhichEB5, a company that provides EB-5 information to immigrant investors.

Parnell said Texas has been a relative latecomer to the EB-5 regional center program. Despite the state's relatively healthy economy and the proximity to Mexico, Texas still does not have any regional center that has proven it can deliver coveted green cards for investors, he said.

Financial problems

The Chronicle's investigation found a range of problems at the state's regional centers.

The North Texas EB-5 Regional Center, LLC, which was approved by USCIS officials in October, has letters of support on its website from a Dallas city councilman and a state legislator.

A company brochure promises foreign investors that their money will be handled by commercial real estate professionals with "a successful track record in Texas." It describes multi-million dollar projects in the Farmers Branch area with grand sounding names - like The Majestic Hotel, Lakeside Lofts and Three Hickory Centre - with anticipated completion dates within two years.

But the center is mired in financial problems. One of its top executives, Steven A. Shelley, and two company officers were named in a \$72 million civil lawsuit filed in March in federal court by Armed Forces

Bank. Attorneys for the bank allege that Shelley and his co-defendants created a "straw company" - FRE Real Estate, Inc. - in December and then filed for bankruptcy to dodge outstanding debts. The court battles involve land in Farmers Branch described in some of the regional center's EB-5 project advertisements, records show.

A spokesman for the regional center and attorneys for Shelley did not return phone calls seeking comment on the bankruptcy filing or the civil lawsuit.

Impossible promises?

Other centers made promises that could jeopardize potential investors' chances at getting green cards, experts said.

The Star of Texas Regional Center, headquartered in Houston, says on its website that it will offer investors "a fee-simple deed" to waterfront real estate as "an exit strategy to provide the investor with a secure return."

The EB-5 program requires that investors' money truly be "at risk," meaning it is not guaranteed by the U.S. government or by a regional center.

If USCIS determines the money was guaranteed against the program's rules, it can deny an investor's visa or green card.

Jim Hayes, the head of the regional center, did not return a reporter's phone call on Friday.

Two EB-5 experts interviewed by the Chronicle said that the deed offer raises serious questions about the "at risk" requirement.

"On the face of it, that's not an at-risk investment," Parnell said. "One never knows how USCIS is going to look at anything. Obviously all of the rules are open to interpretation."

Other investors have proposed projects that some developers say are long-shots to complete, particularly in the short time frame required by the EB-5 program.

Houston developer Dan Nip was one of the first entrepreneurs to establish an EB-5 "regional center" in 2007, with plans to revive a blighted part of Old Chinatown.

He put together plans to build a hotel across U.S. 59 from the George R. Brown Convention Center.

While some developers and consultants said a downtown convention center hotel is badly needed, others said Nip's plans may be impossible in the current economic climate.

Gibson, of USAdvisors.org, has researched Nip's project for potential investors. He called it "way too far out there," particularly since Nip's current plans involve building an under-the-freeway pedestrian bridge.

"There are too many things that would have to happen for him to get funding," he said.

Nip refused to say how many investors - if any - have received visas through his project, but said he is holding an undisclosed amount of money for EB-5 investors in an escrow account.

'Great Potential'

Despite the problems with some of the regional centers in Texas, some industry insiders predicted that good projects will eventually come online here.

"I think it has great potential," Gordon Quan, co-chairman of FosterQuan, LLP, said of the EB-5 regional center program, "but it's like any other investment. You have to look at the track record."

Until he sees a center in Texas that can fulfill the EB-5 program's immigration requirements, Quan said he will have to keep directing prospective foreign investors to out-of-state regional centers in California, Washington and Vermont.

Gibson said there are viable projects now for investors willing to do their homework.

"There are quite a few projects with great fundraising and good managers, using best practices and doing it correctly," Gibson said. "It's just hard to find them through all the noise from the other competing centers."