

Green Card Gamble: Investing in the U.S.

By Sandra Hernandez

Los Angeles Daily Journal

Los Angeles Daily Journal Staff Writer

NOVEMBER 10, 2009 | IMMIGRATION

SAN DIEGO - When Bev Pamensky-Murray came to the U.S. from South Africa and invested \$500,000 in a Seattle redevelopment project, she hoped for a big payoff: a green card.

However, she remained in immigration limbo nearly four years after she applied to the foreign investor program.

Her application was placed on hold while U.S. officials poured over it, requesting additional records before finally approving it this September.

"I couldn't plan for the future," said Pamensky, a mother of three who now lives in a San Diego suburb. "This has been really difficult."

Legal observers say Pamensky's story highlights why an obscure program that allows foreign investors to jump to the front of the immigration line in exchange for pouring big bucks into the U.S. remains chronically under-used.

"The implementation of the program so far has been ridiculous," said Tammy Fox-Isicoff, a Miami attorney who spoke about the program during a recent meeting of immigration lawyers in San Francisco. "The agency seems to bend over backwards to find fault with applications."

Established in 1990, the program known as the EB 5 Immigrant Investor Program, allows up to 10,000 foreign nationals to settle in the U.S. annually. Immigrants must invest \$500,000 or \$1 million in a new business that results in 10 new jobs.

Or like Pamensky, immigrants can take part in a 1993 pilot program that requires they invest \$500,000 in government-designated regional centers that pump money into economically troubled communities.

These centers attract the bulk of investors. Currently, nearly a third of the 72 centers are located in California.

In return, a foreign investor and their immediate family receive conditional green cards. After two years, an immigrant can apply to lift the restrictions and receive permanent residency.

But nearly two decades after the EB 5 program was launched, it has drawn scant numbers of investors.

Between 1999 and 2008, federal officials issued just 1,738 permanent green cards out of a pool of 80,000 set aside for investors, according to the Department of Homeland Security.

Last year, U.S. Citizenship and Immigration Service issued 331 such permanent green cards, according to federal figures.

Moreover, the agency, which has publicly acknowledged huge backlogs in nearly every other visa category, has no pending investor cases.

Immigration officials don't speculate on the numbers, said Mariana Gitomer, a spokeswoman for the Department of Homeland Security.

Lawyers said the program is slowly attracting more immigrants, with the majority of investors coming from China, South Korea, Great Britain and Taiwan, according to Bernie Wolfsdorf, president of the American Immigration Lawyers Association and the Santa Monica attorney who represented Pamensky.

But it remains under used, lawyers say, because of the complexity of the program and the U.S. Citizenship and Immigration Service ability to administer it.

"The process for getting through the EB-5 program is like the experience of having a Q-tip pierce your brain," said Angelo A. Paparelli, an Orange County attorney with Seyfarth Shaw. "It's painful."

Experts say applications are routinely rejected for obscure reasons.

"Investors who transfer exactly \$500,000 or \$1 million as required, but who neglect to calculate the cost of the nominal bank wire transfer fee, are routinely rejected based on such minor technical grounds," Wolfsdorf said during a meeting of the American Immigration Lawyers Association in San Francisco.

In July, Michael T. Dougherty, former ombudsman for the CIS, testified before Congress that "uncertainty has plagued the EB-5 program since its inception."

Federal immigration officials said it processes all applications fairly. "We are confident that decisions are being made in a uniform manner," Gitomer said.

The uncertainty has driven away investors, according to attorneys.

"The EB 5 program is still widely perceived as too much of an immigration risk for investors," said Lincoln Stone, a Los Angeles lawyer who specializes in such cases.

"Some investors are skittish about using the EB 5 program because you only get a conditional green card," said, Stephen Yale-Loehr, a New York attorney and executive director of Invest In the USA, a trade association of regional centers, including some in California.

"This is like trying to thread three or four pieces of yarn through a single needle," Yale-Loehr said. "Investors are required to comply with securities laws, immigration law, tax law. You have to have a sense of how many jobs will be created in the future, and then make sure those jobs are in place two years later, along with a host of other requirements."

The agency changed the way it issued these green cards in 1998, after federal officials launched a fraud investigation against Interbank Group Inc., a financial service company that ran Invest in America.

Federal officials filed criminal charges against two men who ran the company and the pair were later convicted of running an immigration visa scam and sentenced to nearly a decade in prison.

The scandal took a toll on the program.

"First, investors were loath to invest for several years after the Interbank scandal," Yale-Loehr said. "Second, immigration officials looked harder at petitions because of the Interbank scandal."

Now lawmakers are poised to revamp the investor program.

Sen. Patrick Leahy, D-Vermont, drafted legislation last month. Vermont's EB 5 program is underwritten by the state.

Yale-Loehr said the proposal could "clarify a lot of key issues to help both investors and the immigration agency understand the proper parameters."

Others describe it as much more detailed.

"Normally, a statute is like a sketch of a picture but this is a case where Congress knows they have to give immigration the whole picture because immigration can't be trusted to interpret it in a reasonable way," said Fox, who has read the draft. "When Congress rewrites it, they will micromanage it."

Unlike other immigration proposals, the program will likely win bipartisan support from lawmakers eager to attract money to distressed areas hit hard by the economic downturn.

Both Leahy and Sen. Jeff Sessions, R-Alabama, have shown strong support for the regional centers in their states.

This summer, business leaders warned lawmakers that flaws in the program are costing the U.S. money.

"Gentlemen, these are jobs and dollars that could be enhancing our economy and creating jobs today," said Ron Drinkard, who runs the Alabama Center for Foreign Investment.

In California, the EB 5 program has largely focused on regional centers, including projects that promise to redevelop former military bases in San Bernardino, or create mixed used shopping centers in Los Angeles.

For Pamensky, the program has yielded minimal financial returns and much stress.

Still, Pamensky, who runs a million dollar business creating scenic backdrops, said the journey is worth it for her three sons.

The program was her last chance to stay in the U.S. Federal officials had refused to grant her earlier petition to stay after she opened a smaller business in San Diego.

"I would tell anyone considering doing this to be prepared, because it takes great stamina," Pamensky said. "I followed the rules, paid taxes and did everything according to the rules and somehow I found that wasn't really good enough."