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For wealthy elites, investment can buy residency in U.S.

BY MELISSA SANCHEZ AND ALFONSO CHARDY

Every few months, Miami attorney Marisa Casablanca flies to South America to meet with wealthy individuals who want to invest \$500,000 for the chance to immigrate legally to the United States.

In Colombia and Peru, she gives presentations on the investor visa that's big in China and growing in popularity in Latin America. In Venezuela, where fears of kidnappings make the rich queasy about sitting in a single room together, she arranges one-on-one meetings with potential clients.

"We've definitely seen an increase in interest from Latin America, which we attribute to security reasons," said Casablanca. "People I've helped get green cards for in recent years are now contacting me, asking me to please talk to their cousins because they need to get out of there."

And Miami has drawn significant interest from both the Latin American elite looking to escape political instability and drug violence — and the developers who want their money. By investing \$500,000 in a designated high-unemployment or rural area, or \$1 million anywhere else, a foreign national and his or her family can obtain conditional EB-5 visas that become permanent if the investment creates at least 10 jobs for two years.

What's more, experts say, is that the U.S. recession has contributed to a growing EB-5 industry as dozens of private companies seek permission to pool investors' money in order to finance projects such as hotels and housing developments that can't get traditional loans from banks. For the foreigners, applying through a so-called EB-5 regional center lets them live in the U.S., put their children through school here and sit back while somebody else manages their investment and worries about fulfilling the job creation requirements.

"It's access to capital," said Emilio González, a former director of U.S. Citizenship and Immigration Services under President George W. Bush. "It satisfies the U.S. need to create jobs and it satisfies an investor's need to get a green card for whatever reason."

In recent months, the Obama administration has promised to streamline the EB-5 process in order to encourage more foreigners to make investments that will create jobs. The program is estimated to have created about 34,000 jobs since its inception in 1990. Meanwhile, two U.S. senators recently proposed a similar program that would grant visas to foreigners who spend \$500,000 on real estate as a way to bolster the housing market.

In the 2009 fiscal year, about 1,000 foreigners applied for EB-5 visas, according to USCIS. The number doubled in 2010. And, in just the first 10 months of the 2011 fiscal year, 3,355 foreigners had petitioned for the visa, of which about 1,400 have been approved.

More than half the applicants are Chinese. However, in the past two years petitions from Latin Americans rose by about 71 percent, with Venezuela and Mexico leading the way. Government statistics show that 95 Latin Americans applied for the program in the 2010 fiscal year. Another 163 applied in the first 10 months of 2011. Of these, USCIS approved 44 petitions in 2010 and 68 in 2011.

The pace of growth has caused many to sound alarms of caution, warning potential investors to carefully research regional centers before turning over any cash. According to USCIS estimates, about 90 to 95 percent of EB-5 petitioners invest through regional centers, which match projects to willing foreign investors, shepherd the applicants through the visa process and collect \$30,000 to \$50,000 in fees along the way. Projects range from a ski resort in Maine to renewable energy in California.

“A lot of people think that they just put their \$500,000 in this project that has been approved by the government, everything is taken care of,” said Stephen Parnell, joint managing partner of Which EB-5, a private company based in Boca Raton which helps foreigners choose where to invest. “But it’s not. They don’t look at the job creation element.”

For foreigners who can afford it, the “easy part” is getting the conditional EB-5 visa, said Parnell. After choosing a regional center based in one of dozens of cities across the U.S., their money goes into an escrow account while USCIS reviews their application, which must meet typical immigration requirements. The petitioner must also be able to document that the money was obtained legitimately. If USCIS approves the petition, the money is released to the regional center, which then uses it to finance a project in an approved industry. At this point, the foreigner can enter the U.S. on a two-year, conditional green card.

“What makes it permanent is that your money in this project creates the required number of jobs,” stressed Parnell.

Not all projects have met the requirement. News reports have documented fraud and other problems at regional centers that have stalled projects and failed to create 10 jobs per investor. In other cases, regional centers made modifications to projects without approval from USCIS, which hurt investors’ ability to get the visa conditions removed two years later.

Some immigration lawyers warn that applying for an EB-5 visa is a risk because if the required number of jobs is not created, the applicants might end up in a deportation process. Tammy Fox-Isicoff, a Miami immigration attorney, said that USCIS requires a

new application from the investor if the project is modified, which can prolong the process.

“USCIS has negated the most important premise of the EB-5 program, that an investor will be awarded permanent residence after sustaining an investment for a two-year period,” she wrote in an informative essay on the program for potential investors. “An investor should go into this investment like any other investment — with extreme caution.”

It’s unclear how many EB-5 visa holders have ended up in legal limbo or deportation proceedings. But between 2005 and 2010, USCIS denied 14 to 38 percent of petitions annually from EB-5 visa holders who asked to have the conditional status removed.

There is no ranking or reporting system to compare the track records of regional centers, which numbered 11 in 2007 and have ballooned to 171 as of August 2011. For the first time in EB-5 history, USCIS is requiring regional centers to file annual reports starting this year.

Still, in many cases regional centers are too young to even have track records. Among them: the South Florida Regional Investment Center, which gained designation from USCIS to operate as a regional center in the hotel and tourism industry in 2009.

In its first project, it found 14 foreign investors who contributed a total of \$7 million toward a \$12 million commercial build-out at the Marina Blue condominium tower at 888 Biscayne Boulevard. The project is still under construction and none of the investors have reached the two-year mark and applied to have their conditional status removed. If all goes according to plan, the project will generate well over the required 140 jobs, said David Hart, a Miami attorney who co-founded the regional center.

Hart is now looking for foreign investors for two other projects, including a Hilton hotel in Coral Gables. Despite its location in a wealthy neighborhood with low unemployment, the hotel project qualifies for investments of \$500,000 instead of \$1 million because of a legal maneuver called Census tract aggregation. The regional center combined the hotel area’s Census tract with neighboring tracts that have higher unemployment rates in order to achieve designation as a Targeted Employment Area (TEA).

“You’re basically creating an artificial TEA so you can attract the \$500,000 instead of the \$1 million,” said Hart. “It’s still going to create hundreds of jobs. Whether the jobs are from Coral Gables or a few blocks away, you’re still creating jobs for South Florida workers.”

EB-5 experts advise those who are considering applying to the program to hire a financial advisor to help them evaluate a variety of factors, including the diversity of funding for individual projects and leadership of the regional center. However, other factors like name recognition have often been enough generate massive interest.

For example, when Sergio Pino announced in 2009 his intention to start a regional center to finish developing the 350-acre site at its Century Grand community in Doral, the response was overwhelming — particularly from China, Venezuela and Mexico.

“The moment it got out that I was applying for one of these centers, I probably had anywhere from 800 to 1,000 families that had an interest in doing it,” said Pino, of Century Homebuilders.

The project hasn’t gotten off the ground. Pino said unrelated bank litigation has stalled construction and delayed his application to create a regional center.

“At this time we’re not moving forward with the regional center, but as soon as we get our financing straight we will continue with the EB-5,” he said. “Especially when banks are closed for business, this is a great investment not just for developers but for anybody.”

That’s an opinion shared by Karla, an EB-5 holder from El Salvador who lives in Miami. Karla asked not to use her last name because she doesn’t want people to know her family can afford a \$500,000 investment.

Karla was a baby when her family left El Salvador as the civil war there got under way. They lived briefly in Guatemala, where another civil war soon broke out, before moving to Miami. Karla and her family had always lived in the U.S. legally with a series of visas, including student and work visas. But one by one, they expired. Her parents eventually returned to El Salvador; she wanted to remain.

“I was upset because I basically grew up in this country for 30 years and my options for living legally in this country had become limited,” said Karla, who is 34. “I started seeing the EB-5 visa as a last resort.”

After careful research and the help of Casablanca’s office, Karla applied last fall for an EB-5 visa through a regional center in California that was financing an infrastructure project. About six months later, when her application was approved, she obtained a conditional permanent residency.

“I realize that investing the money is basically a risk, and that’s a little scary”, she said. “There’s no guarantee that the green card will become permanent. But I wanted to stay here and I have faith it will work out.”

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