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Foreign Investor Visas: Policies and Issues

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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 217,148 nonimmigrant treaty trader and investor visa arrivals in the United States in FY2006. For the same time frame, DHS reported the arrival of 749 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. 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. Recent legislation (S. 1639) has sought to reduce the number of investor visas available. 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, 7.1% of the worldwide employment-based visas (roughly 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 approximately 10,000 visas allocated for the LPR investor visa.

[30] USCIS does not publish an official list of the number of EB-5 Regional Centers that exist. However, in November 2007, USCIS released to the American Immigration Lawyers Association a list of regional centers that were "active" as of October 2007. This list

(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 almost 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 749 in FY2006. 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] Since FY2004, an additional 1,095 immigrant investor visas have been issued. In the earlier years of the program, it attracted a relatively higher rate of derivatives than principals.[37] However, in the last

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[30] (...continued)
included 20 active centers. The list is available at [http://vkvisalaw.wordpress.com/2007/11/12/updated-list-of-eb-5-investor-visa-regional-centers-as-of-oct-2007/], visited May 5, 2008.

[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 the Department of State (DOS) *Visa Bulletin* (No. 111, Vol. VIII) there are backlogs only for all employment-based immigrants in the third preference categories, and for nationals of India and China in the second preference category. All other categories have numbers available for qualified applicants.

[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 (continued...)

three years the distribution of visas between principals and derivatives has more closely approximated parity. Derivatives have historically accounted for approximately 66% of immigrant investor visa recipients, while principals account for 34%.

Table 1. United States LPR Investor Visa Admissions, FY1996-FY2006

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
2006	749	252	497

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

Note: In FY2006, of the total admissions, 469 were new arrivals and 280 were adjustments of status. The new arrivals included 187 principals and 310 dependents, while the adjustments of status included 93 principals and 159 dependents.

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.

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[37] (...continued)
other dependents.

[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.

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 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] Yet, since FY2003, the number of immigrant investor visas issued has increased on an annual basis.

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

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

[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.

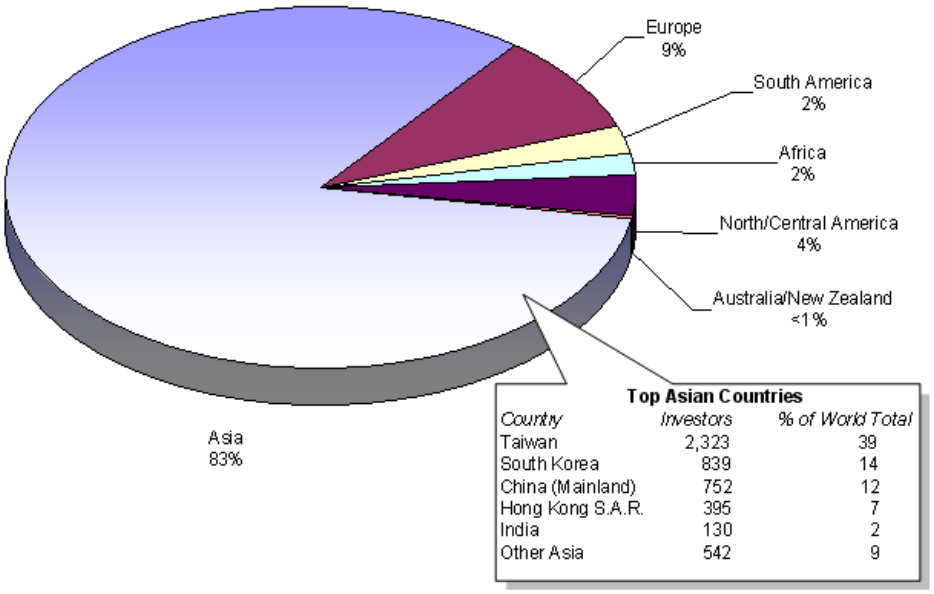
[46] The fact that they qualified for LPR status means that they had successfully maintained their business and 10 full-time qualifying employees for more than two years.

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

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-FY2007 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 contributing more than 4% of the LPR investors, with a total of 9%. Within the Asian region, the 2,438 LPR investors from Taiwan accounted for almost half of all Asian LPR investors and 34% of the worldwide total. South Korea and China contributed roughly 21% and 13% to the worldwide total, respectively, although when combined with Hong Kong's total, China's contribution increases to 18%. 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



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

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

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 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]

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[49] INA §101(a)(15)(E)(ii).

[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.

- the visa holder must show an intent to depart the United States at the end of the visa's duration of status[55]
- 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]

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[55] 8 CFR §214.2(e)(2)(iii).

[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).

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 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,

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[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).

[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).

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 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]

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[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).

[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.

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]

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 was issued the highest number of E-class visas in FY2007, with a total of 18,808 visas issued. These Asian issuances constitute more than all other regions combined, and represent 49.4% of the worldwide total. Within the Asian region, the biggest user of the E-class visa is Japan, whose nationals accounted for 12,063 of the visa issuances in FY2007, a figure representing 31.7% of the 38,084 worldwide E-class visas issued that fiscal year. Europe's 12,854 E-Class visas accounted for 33.8% of the worldwide total, while the North American share of 3,803 visas represented 10.0%. Oceania's issuance accounted for 1,627 visas, or 4.3% of the total.[82] South America and Africa each accounted for less than 2.5% of the worldwide total, and combined their nationals represented approximately 2.6% of the worldwide E-class visa issuances for FY2007.

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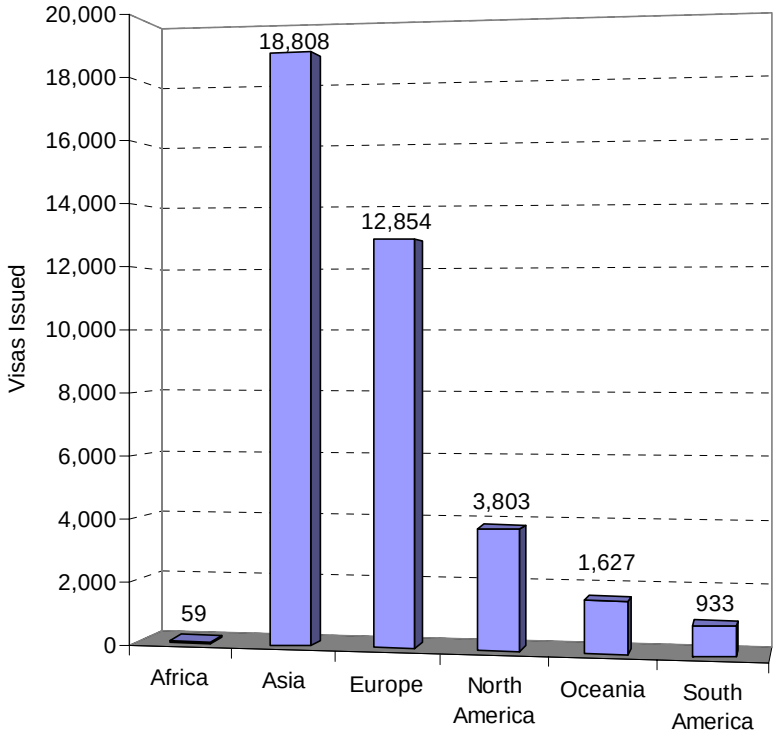
[81] A special category of nonimmigrants classified as the E-3 visa has been established and is only available to nationals of Australia. Although agreed upon under the Australian Free Trade Agreement, the agreement itself contained no explicit immigration provision. Rather, the FY2005 supplemental appropriations 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. 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.

[82] The figure does not include 2,572 visas issued to E-3 applicants under the Australian Free Trade Agreement in FY2007.

Figure 2. E Treaty Trader and Investor Visas Issued by Region, FY2007



Source: Data are from the Department of State, Bureau of Consular Affairs, *Report of the Visa Office, 2007*.

Notes: The figure does not include the one visa issued to an individual with no registered nationality. E-3 visas issued are not included in the figure.

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 FY2006 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 50.3% of the nonimmigrant investor visa admissions into the United States. In FY2005, Japan accounted for the majority of nonimmigrant investor admissions with 83,478 admissions.[83] South Korea's 14,149 nonimmigrant investors admitted account for 6.5% of the United States total for FY2006. It is worth noting that the fast growing markets of China and India (the world's two largest population centers) combined for slightly more 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.

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[83] 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.

Table 2. Nonimmigrant Treaty Trader and Investor Admissions, FY2006

Country (or Region) of Origin	Number	Percentage of Total
Asia:		
Taiwan	4,252	2.0
South Korea	14,149	6.5
China[a]	729	0.3
Japan	83,478	38.4
India	294	0.1
All other Asia	6,343	3.0
Total for Asia	109,245	50.3
All Other Regions:		
Europe	79,599	36.7
South America	5,463	2.5
Africa	258	0.1
North America	17,354	8.0
Oceania	4,837	2.2
Unknown	392	0.2
Total	217,148	100

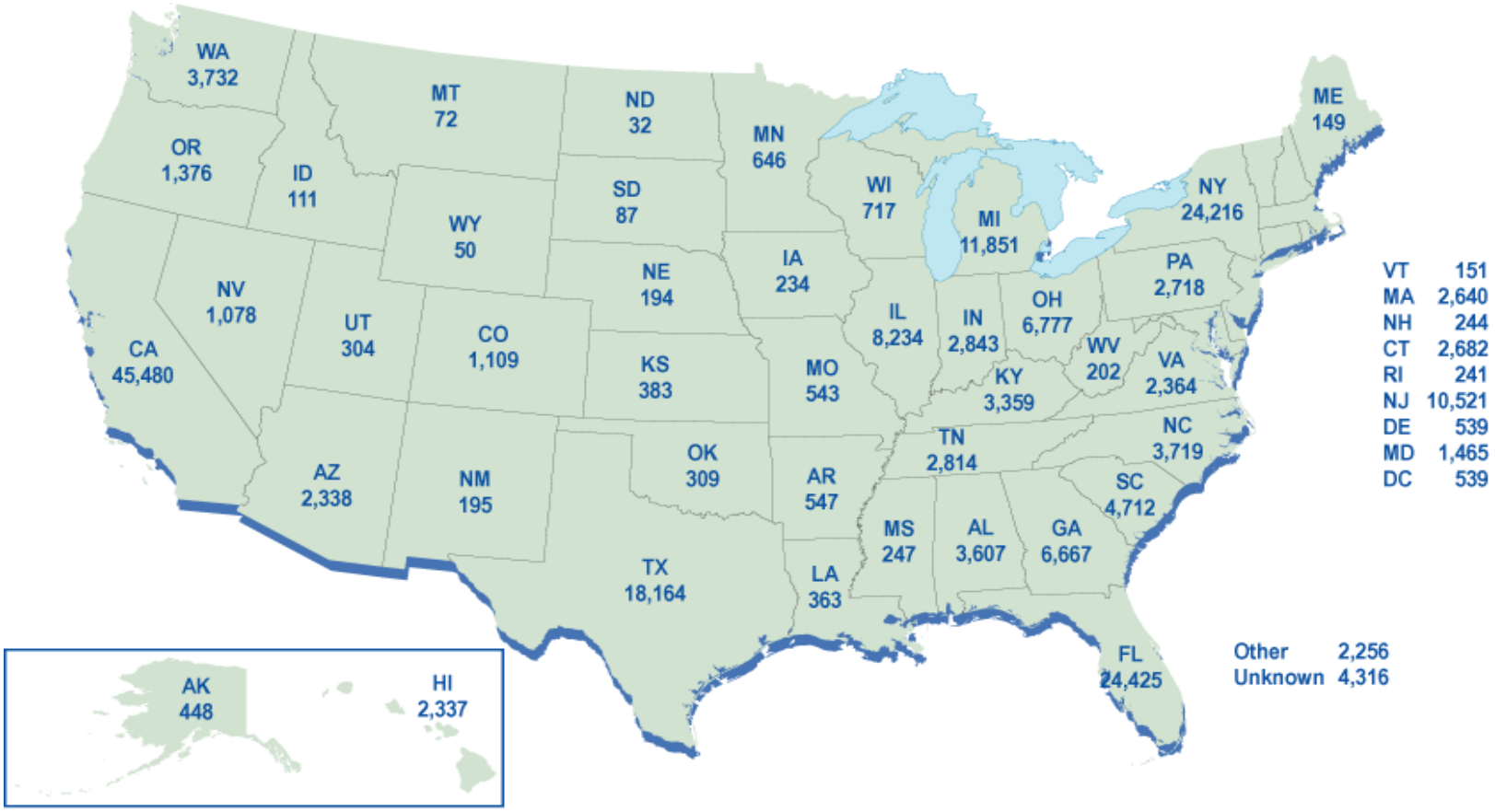
Source: CRS presentation of Department of Homeland Security Office of Immigration Statistics FY2006 data.

Notes: The data also include 2,123 individuals who were admitted on E-3 visas for free trade workers from Australia. The vast majority of these workers were Australian nationals.

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

The Department of Homeland Security (DHS) offers statistics on the admissions of nonimmigrants and their destination state. **Figure 3** indicates the destination states of nonimmigrant treaty trader and investor visa admissions into the United States for FY2006. The state with the highest number of nonimmigrant investors as their destination in FY2006 was California with 45,480 admissions, accounting for 21.2% of the admissions total. Following California, the next three biggest recipients of nonimmigrant investors were Florida, New York, and Texas with 24,425, 24,216, and 18,164 admissions each, respectively. In the respective order, these state admissions accounted for 11.4%, 11.3% and 8.4% of the admissions total in FY2006. The only other states with a combined total of more than 10,000 nonimmigrant treaty trader and investor visa admissions were Michigan and New Jersey. Michigan was the destination state of 11,851 nonimmigrant investors admitted, while New Jersey attracted 10,521 admissions. These totals accounted for 5.5% and 4.9% of the United States admissions total, respectively. The remaining states represented the destination states for approximately 37.3% of nonimmigrant traders and investors.

Figure 3. Nonimmigrant Treaty Traders and Investors Admitted, FY2006



Source: CRS presentation of Department of Homeland Security Office of Immigration Statistics FY2006 data.

Note: The data do not include individuals who were admitted on E-3 visas for free trade workers from Australia.

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.[84]

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).[85] The Canadian government additionally offers an entrepreneurial visa for foreign nationals with a net worth of $300,000 (Cdn).[86] 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.[87] Between 1986 and 2002, the Canadian investor visa program attracted more than $6.6 billion (Cdn) in investments.[88] From FY1992 through FY2004, United States LPR investor immigrants had invested an estimated $1 billion in U.S. businesses.[89]

According to published accounts, the Canadian investor visa was developed initially to attract investors from the British colony of Hong Kong.[90] The visa was created in 1986 in response to the significant numbers of investors seeking to migrate

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[84] 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.

[85] Citizenship and Immigration Canada, "Business Immigrant Links: FAQs," March 31, 2007, at [http://www.cic.gc.ca/english/information/faq/immigrate/business/index.asp], visited September 20, 2007.

[86] Ibid.

[87] Ibid.

[88] 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.

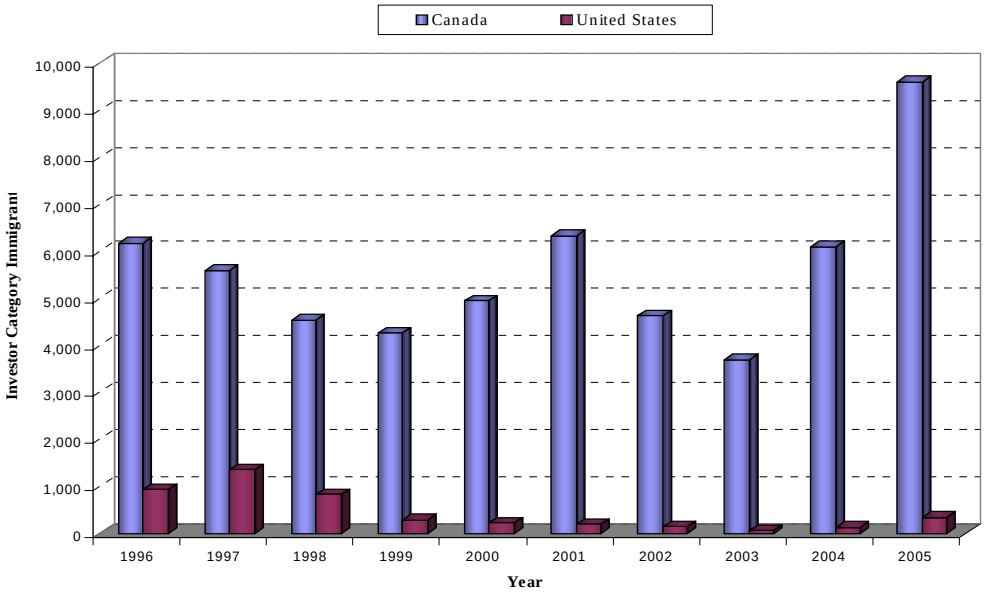
[89] U.S. Government Accountability Office, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors*, GAO-05-256, April 2005, pp. 8-11.

[90] 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.

from Hong Kong in anticipation of the transfer of the colony from British to Chinese 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.[91] These immigrant investors from Hong Kong, along with other immigrant investors, have cumulatively invested over $3 billion in the Canadian economy.[92]

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).

[91] Ibid.

[92] Citizenship and Immigration Canada, "Business Immigrant Links: FAQs," March 31, 2007, at [http://www.cic.gc.ca/english/information/faq/immigrate/business/index.asp], visited September 20, 2007.

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 investment locations. If the investors are motivated purely by the economic returns, then economic theory[93] 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.[94] 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.[95] 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

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[93] 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.

[94] 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.

[95] Ibid.

States. The classical trade theory asserts that trade and migration are substitutes,[96] and that trade liberalization should reduce migratory pressures.[97] 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.[98] 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.[99] 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[100] 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.[101] One of the arguments put forward is that trade and migration are complementary for

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

[97] 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.

[98] 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.

[99] 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.

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

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

countries with different levels of development.[102] Under such a scenario, economic 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.[103] 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.[104] 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.[105] 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.[106] Such investment, the theory dictates, would promote job growth both in the United States and abroad.[107] Instead, targeting investors from capital abundant countries for sector

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[102] 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.

[103] Ibid.

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

[105] 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.

[106] 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).

[107] 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.

specific investments would serve a more complementary role for the global market.[108] 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.[109] 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.[110] The Japanese governments have also complained that the post-9/11 customs regulations and

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[108] The complementary roles would be achieved through what economists refer to as "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.

[109] 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.

[110] 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.[111] 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.[112] 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).[113] The RIMS II multipliers have become a significant factor in assessing indirect economic activity and employment effects for Immigrant Investor Pilot Program petitions.[114] 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.[115]

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[111] Ibid.

[112] Ibid.

[113] 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.

[114] 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)).

[115] 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.[116] 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.[117] 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.[118] Additionally, the creation of the Investor and Regional Center Unit (IRCU) has allowed greater scrutiny of applications through

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[115] (...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).

[116] 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.

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

[118] 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.[119]

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.[120] In 2005, concerns were raised by both Members and advocates that the IRCU still did not process applications quickly enough,[121] and that staff members had competing obligations within IRCU.[122] 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.[123] 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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[119] 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).

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

[121] 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.).

[122] 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.

[123] 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**).

Current Legislation and 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.[124] 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**).

The E-2 Nonimmigrant Investor Adjustment Act of 2007 (H.R. 2310), introduced by Representatives Heather Wilson and Sue Wilkins Myrick, would amend the E-2 treaty investor visa rules, allowing visa holders to adjust directly to LPR status after holding the visa for five years. In addition to being otherwise eligible for a visa, the individual would be required to invest at least $200,000 in an

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[124] P.L. 108-156.

enterprise and to create full-time employment for at least two individuals. The legislation would allow for up to 3,000 E-2 visa holders to adjust to LPR status on an annual basis.

In terms of the LPR investor visa, the comprehensive immigration legislation introduced by Senators Ted Kennedy and Arlen Specter on May 21, 2007 (as S.Amdt 1150 to S. 1348),[125] would reduce the number of visas available to LPR investor applicants. The Senate proposal (entitled "A Bill to Provide for Comprehensive Immigration Reform and for Other Purposes") would reduce the annual number of visas available to LPR investors to 2,800. Of these visas, 1,500 would be set aside for targeted areas. On June 18, 2007, Senators Kennedy and Specter introduced a subsequent version of the comprehensive immigration reform legislation as S. 1639, which, although not identical to S.Amdt. 1150, keeps the same foreign investor provisions intact. Among those publically associated with negotiating the compromise legislation are Homeland Security Secretary Michael Chertoff and Commerce Secretary Carlos Guteirrez. S. 1639 stalled in the Senate on June 28, 2007, when the key cloture vote failed.

On December 19, 2007, Representative Flake introduced H.R. 4890 (The Invest in USA Act of 2007), which would make the Immigrant Investor Pilot Program permanent. The bill would additionally set the premium processing fee for all immigrant investors at $2,000, while instituting a $2,500 fee to apply for Regional Center designation under the permanent EB-5 Regional Center Program. The premium processing fee would be deposited in the Immigration Examination Fee Account, and the Regional Center designation fee would be deposited in a new account, entitled "Immigrant Entrepreneur Regional Center Account." Funds from both accounts would only permit collections under these provisions to be available for the administration and operation of the EB-5 immigrant investor program. H.R. 4890 would also allow for concurrent filing of EB-5 petitions and adjustment of status for applications through Regional Centers applications, wherein approval of the petition would make a visa immediately available to the alien beneficiary.

Two other bills have also been introduced in the 110th Congress pertaining to EB-5 investor visas. First, S. 2751 (the State Foreign Investment Improvement Act) was introduced by Senator Leahy and Senator Specter on March 12, 2008. The provisions of S. 2751 are the same as those in H.R. 4890, above. Second, on April 2, 2008, the House Committee on the Judiciary ordered reported H.R. 5569, which would extend the EB-5 Regional Center pilot program for five years through FY2013.

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[125] S. 1348 was introduced by Senate Majority Leader Harry Reid as a placeholder while the language for the new immigration reform bill was being negotiated. The placeholder bill that Senator Reid introduced was S. 2611 from the 109th Congress — a bill which had previously passed the Senate.

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
Estonia	E-1	1926

Country	Classification	Year of Visa
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
Netherlands	E-2	1957

Country	Classification	Year of Visa
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.[126] 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.[127] 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).[128] 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.[129] Using the RIMS II multipliers for investment and employment,[130] 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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[126] Based on CRS discussion with Joop Bollen, Director of the South Dakota International Business Institute, November 28, 2006.

[127] 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.

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

[129] Ibid.

[130] 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.[131] 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.[132]

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.[133] 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.[134] 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.[135]

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.[136] However, with the passage of requirements following the Exxon Valdez oil spill[137] (and the ongoing regulations from the Jones-Shafroth

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

[132] Ibid.

[133] On April 26, 2008, CanAm published a press release stating: "CanAm Enterprises, LLC is pleased to introduce the Los Angeles Film Regional Center, which was designated by USCIS on March 24, 2008, and will specifically target investments in the motion picture and television industry in Los Angeles County, California." (CanAm Enterprises, "CanAm Introduces the LA Film Regional Center," Press release, April 26, 2008, available at [http://eb5dvd.com/news.php?inc=3&nid=59], visited May 5, 2008.

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

[135] Ibid.

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

[137] P.L. 101-380.

Act),[138] the civilian shipbuilding industry in the United States became economically viable again.[139] 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.[140]

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.[141] 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.[142]

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[138] 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.

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

[140] Ibid.

[141] Ibid.

[142] Ibid.