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Green-card program gets due diligence

As a corporate securities attorney in the EB-5 industry for the past four years, I read with great interest the Feb. 11 article, *Green cards for sale*, and found it contained statements that were either unclear or potentially incorrect.

The statement that, "Investment dollars that pour in can mean healthy profits for developers without normal restrictions or costs associated with traditional financing," is not correct. In today's world, EB-5 investors and marketing agents are quite sophisticated and insist upon arms-length loan documentation, which is the case in the vast majority of all EB-5 regional center projects.

Unlike a traditional loan, there is a tremendous emphasis on the developer to satisfy the job requirement and if it fails, charge-backs and penalties can result. EB-5 money is not necessarily cheap capital since even though the investors may only receive a 1 to 2 percent interest rate, marketing agents, in particular in China, receive extra percentage points on an ongoing basis so the total effective cost of capital is more like 4 to 6 percent.

The implication in the article is that investors are interested in obtaining green cards and are not as concerned about the return they receive. However, investors have two expectations: high probability of receiving the green card approval based upon job creation and of receiving a return of capital once the green card has been issued. Therefore, due diligence has become a major topic in the EB-5 program.

2013 could be a complicated year due to the potential cap on the number of Chinese investors if the 10,000 visa quota is met. However, there is legislation pending in Congress to eliminate that restriction because there would be a complete shake-up in the marketplace if there was a blockage on the immigration of Chinese investors.

In many cases, jobs are created over the course of three to four years, not two as mentioned. The standard to lift the temporary status of the green card when the I-829 petition is filed is whether there is a reasonable likelihood that the projected jobs will be created since, in many cases, the project is yet to be completed and opened.

The article stated that 10 jobs must match each visa, but an applicant may include a spouse and family members who are under the age of 21 at the time of the filing of the I-526 petition. Each family member receives a visa, so there would be multiple visas issued for one applicant that creates 10 direct or indirect jobs. I believe that the average visa application averages 2.5 people.

Given the extreme complexities of the EB-5 program, it is important that the public be fully informed as to the complications and advantages, as well as pitfalls, of undertaking an EB-5 offering for a particular project.

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