



# VISA APPLICATION

PASSPO

## Bringing Dignity to the EB-5 Immigration Process



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A bipartisan group of representatives, led by Representatives Maria Elvira Salazar (R-FL) and Veronica Escobar (D-TX), have introduced an updated version of the Dignity Act (H.R. 3599) to fix what they call the nation's fractured immigration system. The authors of the bill call it the first serious bipartisan immigration solution proposed by Congress in more than a decade. Notably, while this bill is not yet law and remains subject to revisions, it does contain several positive and promising features. The intent of the bill goes beyond the EB-5 Program; however, the short analysis herein is focused specifically on what positive impacts could inure to the benefit of the EB-5 Investors making large investments in the United States under the EB-5 Program.

"Our broken immigration system is frustrating Americans, causing people to suffer, and fracturing our country - economically, morally, socially, and politically. A solution is long overdue," Rep. Salazar said in a statement.

Rep. Salazar's Office recently stated that "we have not seriously reformed our immigration system in almost 4 decades - longer than any other policy Congress deals with....It has created a security crisis, an economic crisis, and a moral crisis. [Rep. Salazar] ran for Congress to address this issue, knowing that it is extremely difficult both in terms of policy and politics. The Dignity Act was years in the making, because it required a lot of homework and conversations with current Members of Congress to get it right. When introduced last May, it was the first time in a decade a major bipartisan immigration reform effort had even been proposed."

From an EB-5 standpoint, and in particular, "Division E: Unleashing American Prosperity and Competitiveness," provisions would have a material advantageous effect on the EB-5 Program as described below.

As stated by Rep. Salazar's Office, "the Dignity Act has three main goals - stop illegal immigration, address the population already here, and modernize the legal immigration system. The changes to the legal immigration system in the Dignity Act are designed to work together, and by excluding derivatives, raising country caps, and ensuring no one legally approved for a visa waits more than ten years, we can, not only, reduce the backlogs, but have a functioning family and employment-based immigration system that is responsible for workforce needs. These policies are all critical to achieving this outcome."

The recently adopted EB-5 Reform and Integrity Act of 2022 (the "RIA") while tremendously helpful in giving the EB-5 Program much needed reform and attaching greater integrity driven burdens to all parties associated with such program, as a standalone employment based program, the RIA was not set up to address the overarching visa supply issues that continue to plague several employment based programs such as EB-1, EB-2 and EB-3 or other programs focused on refugees or the Dreamers.

While there are many benefits stemming from the Dignity Act, when focused purely on impacts on the EB-5 Program alone, the below summary shows the potential for significant, positive impacts thereof:

#### 1. 110-Year Gap Limit on Visa Backlogs. 201(b)(F).

201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) was amended by adding the below language:

"(F) Aliens who are beneficiaries (including derivative beneficiaries) of an approved immigrant visa petition bearing a priority date that is more than ten years before the alien submits an application for an immigrant visa or for adjustment of status."

While the benefits of such addition would provide much needed relief under EB-2 and EB-3, specific to EB-5, the pre-RIA retrogression impact on EB-5 investors and their respective derivatives born in countries subject to possible retrogression, due to high demand, would get some much-needed relief. As of the date hereof, the March 2024 Visa Bulletin sets a priority date for pre-RIA EB-5 investors born in Mainland China at December 15, 2015. While this appears to numerically be an eight-to-nine-year wait, when the actual data is examined, it could easily be upwards of fifteen or more years. As a result, the Dignity Act would assist in capping the backlog to 10 years.

**2. Increase in Per-County Cap from 7 Percent to 15 Percent.** The 7% cap has been roundly criticized for many years. The effect of more than doubling that percentage from 7% to 15% would not only ensure a greater number of visas being available for pre- and post-RIA investors, particularly those born in retrogression-prone countries, but would also push higher demand within the EB-5 Program.

**3. Eliminate Derivatives in Calculating Visa Numbers.** This is particularly helpful for ensuring visa numbers are not eaten away by the derivative children. Recent USCIS data showed that that only about one-third of the EB-5 visas go to principal investors, while the rest go to their family members (derivatives).<sup>1</sup> By excluding children under the age of 21 from the visa availability line, the total number of visas will automatically increase.

**4. Elimination of "Aging Out" by a Minor.** Right now, under pre-RIA Regulations, a child (21 years old or younger) is subject to "aging out" once a Form I-526 Petition for an applicant is approved. This particular provision seeks to ensure that such children will, in addition to not being counted against a visa number (as shown above) but would also be protected from age-outs which remain a recurring problem for many EB-5 Investors.

**5. Allowing Employment by Spouse.** The goal of this provision is to allow a spouse of an alien spouse admitted for residency to immediately engage in employment in the United States. This is a practical solution to an obvious problem and follows the logic of the H-4 visa grant that was originally focused on tackling this same issue.

## CONCLUSION

The above proposals are supported by the EB-5 industry and their participants, together with pending and future EB-5 petitioners. The net result will be to greatly expand the funding of EB-5 capital for job creation and development activities that traditionally have enabled the creation of hundreds of thousands of jobs and enabled the development of billions of dollars of projects in the United States. In addition, the increase in the number of EB-5 conditional residents will provide a significant benefit to our economy, our culture, our educational institutions, and our tax revenue dollars, since generally, once a petitioner becomes a conditional resident, they pay tax on their worldwide income. ■

<sup>1</sup>See <https://crsreports.congress.gov/product/pdf/R/R44475>.