

# Narratives on the U.S. Investor Visa Program: Job Creator and Entrepreneur

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## INTRODUCTION

A rising number of nations have begun to offer citizenship or residency through investment schemes.<sup>1</sup> More than 100 nations worldwide presently have investment programs for citizenship or residency. The concept of offering citizenship or residency through investment first emerged in 1984 in St. Kitts and Nevis, a member of the British Commonwealth. Shortly after that, in 1986, Canada started a similar program. Investor immigrant programs were established by the United Kingdom, Spain, other EU nations, and Asian nations such as Singapore and Hong Kong in the 2000s.

Citizenship or residency through investment programs, often called “visas for millionaires” or “selling visas and citizenship,” have drawn criticism for catering to the wealthy.<sup>2</sup> They have come under scrutiny in the context of political and legal frameworks.<sup>3</sup> Scholars have explored the essence of citizenship and the appropriate criteria for its attainment. However, few studies have empirically examined how legislators have constructed and evolved the narratives surrounding citizenship and residency for foreign investors in response to domestic economic conditions.

This article examines how an immigrant investor program was conceptualized and has developed through the policymaking process of the U.S. EB-5 Immigrant Investor Program (hereafter the Immigrant Investor Program) while addressing challenges such as fraudulent activity and opposition. The first section explains the economic background that led to the creation of the Immigrant Investor Program and the fundamental principles it embodies. The second section describes the reasons for the unexpected results of the program for legislators. The third section describes the evolution of the program in the aftermath of the 2008 financial crisis. The fourth section discusses the narratives the Immigrant Investor Program has relied on to sustain itself.

By analyzing the policymaking process of the Immigrant Investor Program, this article contributes to bridging the gap between theoretical approaches and political behavior in studies of the relationship between citizenship and immigration. There is considerable work on the relationship between citizenship and immigration in political philosophy and sociology.<sup>4</sup> Some scholars argue that citizenship has become ‘lightened’ without political participation and responsibility.<sup>5</sup> In the extension of the discussion of ‘lightening of citizenship,’ the concept of citizenship and residency by investment has been criticized.<sup>6</sup> What has not been well discussed, however, is why legislators make citizenship

and residency 'lightened' for a particular type of immigrant and how it has been sustained. In this article, I demonstrate that legislators developed narratives of the Immigrant Investor Program to sustain it, and the narratives make the system path-dependent.

## I. IMMIGRANT INVESTOR PROGRAM CREATED

In the early 1980s, the U.S. economy was in recession, and the unemployment rate was high. Legislators began to discuss the preference of foreign investors in immigration policy. In 1981, the Select Commission on Immigration and Refugee Policy published a report. It emphasized that foreign investors "are a desirable addition to the American economy and communities."<sup>7</sup> It suggested a scheme to offer permanent residents through investment.<sup>8</sup>

Legislators attempted to create some preference system for foreign investors. Immigration and Nationality Act Amendments of 1981 (H.R. 4327), which Representative Romano Mazzoli (D-KY) introduced with six cosponsors, became law (Public Law No: 97-116) in December 1981. It "exempts alien investors from immigrant visa numerical limitations if as of June 1, 1978, they: (1) had applied for status adjustment; (2) were qualified as non-preference immigrants; and (3) were exempt from labor certifications because of their actual investment and managerial role in a U.S. business."<sup>9</sup> It also "requires the reduction of the annual total country limitations for foreign medical graduates and investors who adjust their status to permanent resident."<sup>10</sup> A similar bill, S. 1663, was submitted by Senator Alan Simpson (R-WY) with bipartisan four cosponsors. Foreign investors were widely recognized as beneficial to the US economy, which began to be reflected in immigration policy.

In the late 1980s, legislators attempted to include an investor visa program in legislation. Senators Edward Kennedy (D-MA) and Alan Simpson (R-WY) introduced a bill including investor visas with Senators Daniel Moynihan (D-NY) and Christopher Dodd (D-CT) in 1989.<sup>11</sup> At the same time, Senator Charles Schumer (D-NY) submitted a bill including a similar investor visa program.<sup>12</sup> On the other hand, the opponents criticized the investor visa program as "'cheapening" of the value of American society and an assumed loss of economic sovereignty."<sup>13</sup> However, the opposition failed to gain enough support.

The Investor Immigrant Visa (formally named the EB-5 Immigrant Visa: Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) was included in the Immigration Act of 1990. The maximum number of investor immigrant visas is limited to 10,000 per year, including a foreign investor's immediate family. It had a requirement to certify the investor's eligibility for two years of permanent residence and fraud prevention measures such as allowing the Immigration and Naturalization Service (INS) to authorize revocation of permanent residence during the two years.

Endelman and Hardy (1991) explain that the introduction of the investor immigrant visa is driven by "a recognition that foreign investment is both beneficial and necessary to the U.S. economy" and "an awareness that America must resist stiff competition from other countries for the foreign investor dollar."<sup>14</sup> The system of offering an immigrant visa through investment is designed to stimulate the U.S. economy through foreign direct investment. The U.S. lawmakers recognized Canada and Australia as

competitors in the market for attracting foreign investors, which had preceded the U.S. in establishing investor immigrant programs.

## II. IMMIGRANT INVESTOR PROGRAM FAILED

In October 1990, the Immigrant Investor Program started. The results were far from legislators' expectations. It was expected to generate \$8 billion in annual investment and create up to 100,000 jobs.<sup>15</sup> Two years after the implementation, 725 people applied, and only 296 visas were approved (see Figure 1). It shows how few visas were applied for and issued to foreign investors, comparing 2.8 million immigrant visas issued.<sup>16</sup>

Some factors were pointed out as contributing to the unexpected results of the Immigrant Investor Program. First, legislators overvalued its permanent residence in competition with similar programs in other nations.<sup>17</sup> They estimated that Canadian permanent residence costs \$250,000 and Australian one \$365,000.<sup>18</sup> Accordingly, they believed the American permanent residency should be \$1,000,000 at a premium.<sup>19</sup> The requirement of the amount of investment and the number of jobs to be created is higher than other investor programs such as Australian and Canadian ones. Second, the American tax law might be considered a burden to foreign investors. A holder of U.S. permanent residence or citizenship pays income tax no matter where he/she lives.<sup>20</sup>

Legislators established the Regional Center Pilot Program in October 1992 to promote the

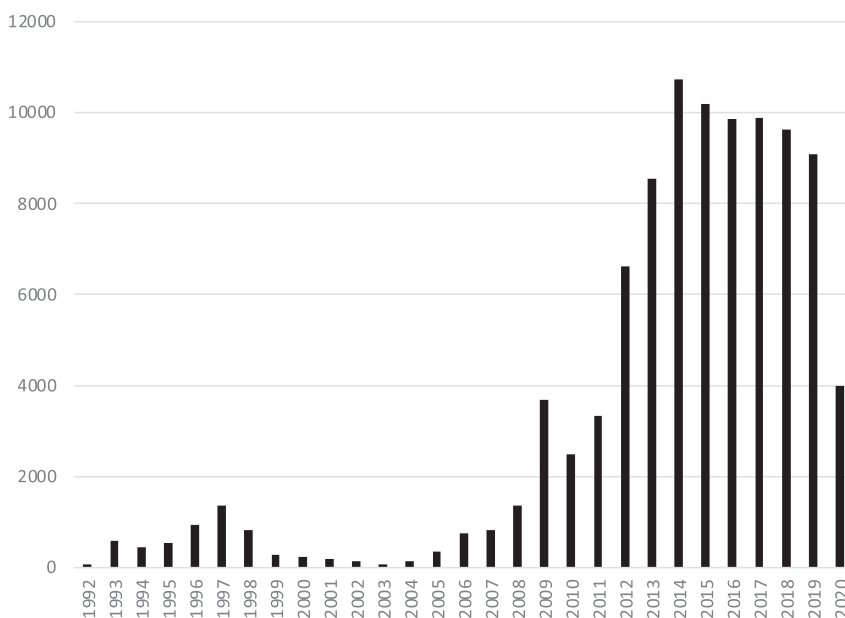


Figure1. The number of immigrant investor visas issued (1992–2020)

Source: Data from Statistical Yearbook of the Immigration and Naturalization Service, 1992–2000, UDJ and Yearbook of Immigration Statistics, 2001–2020, DHS.

Immigrant Investor Program.<sup>21</sup> The Regional Center Pilot Program is a scheme in which foreign investors can invest in new businesses and pool their capital in an economic organization called a Regional Center without operating them themselves.<sup>22</sup> The establishment of the Regional Center Program was a palliative measure that created an investment-friendly environment for investors. The Regional Center Pilot Program was temporary, and the extension would require reauthorization by Congress. The Department of Immigration and Citizenship must approve Regional Centers.

Table 1 compares two measures of obtaining an Investor Immigrant Visa (EB-5 Immigrant Visa) through the Regional Center Program and the standard method of obtaining an investor immigrant visa. The requirements for an investor are relatively relaxed when the investment is made through the Regional Center Program since the jobs created may be indirect, and the investor is generally not involved in the business's day-to-day operations. An investor immigrant visa is converted to a permanent resident visa after investments made through a regional center can create indirect employment and direct jobs.

Nevertheless, the Immigrant Investor Program did not exceed legislators' expectations. Moreover, concerns about fraud were growing. In 1998, the U.S. Citizenship and Immigration Services Administrative Appeals Office (USCIS Administrative Appeals Office) changed an interpretation of the law. For applicants and potential applicants to the Investor Immigrant Program, this change created uncertainty about the program.<sup>23</sup>

In 1998, the legislators actively began discussions on the Immigrant Investor Program again. Senator Bumpers (D-AR) advocated for the termination of the Immigrant Investor Program, while Senator Rockefeller (D-WV) emphasized that the program had created employment opportunities in his state.<sup>24</sup> The main points of the discussion between Bumpers and Rockefeller were whether the program was misused as the sale of citizenship and whether it was abused. Despite his efforts, Bumpers failed to gain sufficient support in the Senate for terminating the program.<sup>25</sup>

Table 1. Comparison of the Two EB-5 Pathways

<b>Standard EB-5 Visa</b>	<b>Regional Center Program</b>
Required capital investment is \$1 million, or \$500,000 in a targeted employment area.	same
Foreign national receives conditional LPR status and after approximately two years must apply to have the conditions removed or leave the country.	same
To have the conditions removed, among other requirements, the immigrant investor must show that he/she created or can be expected to create within a reasonable time 10 full-time jobs for U.S. citizens, LPRs, or other work-authorized aliens. Employment must be direct (i.e., employees working for the commercial enterprise)	Same but the employment can be indirect (i.e., employees not working for the new commercial enterprise)
Investor tends to be involved in daily operations of enterprise.	Investor tends not to be involved in the daily operation of the enterprise.
Visa category is permanent. Does not expire.	Program is temporary; set to expire September 30, 2016.

Source: Carla N. Argueta and Alison Siskin, "EB-5 Immigrant Investor Visa", 2016, April 22, Congressional Research Service, p. 5, Table I.

In 2003, to evaluate the advantages and the disadvantages, Congress not only approved a five-year extension of the Regional Center Pilot Program — an interim initiative promoting the Immigrant Investor Program — but also mandated that the General Accounting Office (GAO) provide periodic reports to Congress regarding the Immigrant Investor Program.<sup>26</sup> In 2005, GAO submitted a report analyzing the factors contributing to the low number of applications for the Immigrant Investor Program. According to the report, USCIS officials attributed the low volume of applications to the “rigorous nature of the EB-5 application process versus other employment-based visa applications,” “lack of expertise among adjudicators,” “Uncertainty of the outcome of adjudication” and “public awareness and media attention.”<sup>27</sup> Besides, immigration lawyers pointed out “requirements may be too restrictive,” “rigorous documentation requirements,” “lack of clear guidance,” and “the lack of timeliness in processing and adjudicating applications” as factors contributing to the low applications.<sup>28</sup>

### III. INVESTOR VISA PROGRAM DEVELOPED AFTER FINANCIAL CRISIS

In the late 2000s, Congress enhanced and promoted the Immigrant Investor Program. Legislation regarding the Immigrant Investor Program gradually increased from 2008, in the aftermath of the global financial crisis. Subsequently, there was a significant surge in legislation in the early 2010s (See Table 2). Many of these legislations aimed at extending or perpetuating the Regional Center Program. In the Senate, for example, in March 2008, Senators Patrick Leahy (D-VI) and Arlen Specter (R-PA) introduced a bipartisan bill (S. 2751) advocating for the extension of the Regional Center Pilot Program.<sup>29</sup> Similarly, in the House of Representatives, Steve King (R-IA) and Zoe Lofgren (D-CA) submitted a bipartisan bill to extend the program in August.<sup>30</sup> In addition to the extension and perpetuation of the Regional Center Program, the legislation also proposed the relaxation of requirements for obtaining an immigrant investor visa and the creation of a new investor visa category.

With the increasing number of bills introduced in Congress, hearings on the Immigrant Investor Program were held frequently to deepen the discussion (see Table 3). Before this period, hearings on the Immigrant Investor Program had not been held. In July 2009, a hearing on the Immigrant Investor Program was held before the Senate Judiciary Committee for the first time. The hearing encompassed discussions about a proposal put forth by the Ombudsman for Citizenship and Immigration Services to extend the Regional Center Program.

The hearings regarding the Immigrant Investor Program since 2009 encompassed a range of subjects, including an evaluation of how Congress could generate employment opportunities through the Immigrant Investor Program during the severe recession following the global financial crisis (September 2011). Other topics included an assessment of the proper functioning and job creation potential of the Regional Center Program (December 2011), the process of designing Targeted Employment Areas (TEAs) and the associated investment conditions, as well as matters of concern and enhancements related to the Regional Center Program (February 2016). These matters were constructively deliberated with stakeholders of the Immigrant Investor Program.

Like Congress, the administration progressively assumed a more active role in overseeing

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Table 2. Legislation regarding the Immigrant Visa Program (EB-5 Visa)

Congress	Introduced	Bill		Sponsor	Cosponsors
105th	1998/9/24	HR.4619	To modify the requirements under the Immigrant Investor Pilot Program in order to permit an alien who joins a limited partnership after the partnership's creation to qualify for a visa under such program.	Patsy Mink [D-HIS. 1990-2002]	1
106th	2000/3/1	HR.3767	Visa Waiver Permanent Program Act	Lamar Smith [R-TX21]	
107th	2001/6/19	HR. 2215	21st Century Department of Justice Appropriations Authorization Act	Sensenbrenner, F. James [R-W-9]	
108th	2003/9/23	S.1642	A bill to extend the duration of the Immigrant Investor regional center pilot program for 5 additional years, and for other purposes	Patrick Leahy [D-VT]	
	2003/9/30	S1685	Basic Pilot Program Extension and Expansion Act of 2003	Charles "Chuck" Grassley [R-IA]	
109th	2006/4/7	S.2611	Comprehensive Immigration Reform Act of 2006	Arlen Specter [D-PA]	
110th	2007/6/8	H.R. 2638	Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009	Price, David E. [D-NC-4]	0
	2007/12/19	HR.4880	Invest in USA Act of 2007	Flake, Jeff [R-AZ-6]	0
	2008/3/10	H.R.5569	To extend for 5 years the EB-5 regional center pilot program, and for other purposes	Zoe Lofgren [D-CA19]	
	2008/3/12	S.751	State Foreign Investment Improvement Act	Leahy, Patrick J. [D-VT]	Sen. Specter, Arlen [R-PA]
111th	2008/7/11	S.3257	Legal Immigration Extension Act of 2008		Sen. Hagel, Chuck [R-NE], Sen. Brownback, Sam [R-KS], Sen. Hatch, Orrin G. [R-UT]
	2009/2/23	HR.1105	Omnibus Appropriations Act, 2009	Obey, David R. [D-W-7]	0
111th	2009/6/3	H.R.2879	To extend certain immigration programs, and for other purposes	Giffords, Gabrielle [D-AZ-6]	
	2009/6/16	H.R. 2892	Department of Homeland Security Appropriations Act, 2010	Price, David E. [D-NC-4]	0
	2009/6/17	H.R. 2918	Legislative Branch Appropriations Act, 2010	Wasserman Schultz, Debbie [D-FL-20]	
	2009/12/10	H.R.4259	Employment Benefit Act	Jared Polis [D-CO2]	Rep. Wu, David [D-OR-1], Rep. Owens, William L. [D-NY-23], Rep. Jackson Lee, Sheila [D-TX-18], Rep. Murphy, Scott [D-NY-20]
	2009/12/15	HR.4321	CIR ASAP Act of 2009	Ortiz, Solomon P. [D-TX-27]	103
	2010/9/29	S.3932	Comprehensive Immigration Reform Act of 2010	Robert "Bob" Menéndez [D-NJ]	Sen. Leahy, Patrick J. [D-VT], Sen. Specter, Arlen [D-PA]
112th	2011/5/17	S.642	Creating American Jobs Through Foreign Capital Investment Act	Patrick Leahy [D-VT]	
	2011/6/14	HR.2161	IDEA Act of 2011	Lofgren, Zoe [D-CA-16]	
	2011/6/22	S.1258	Comprehensive Immigration Reform Act of 2011	Robert "Bob" Menéndez [D-NJ]	11
	2011/9/20	H.R.2972	Creating American Jobs Through Foreign Capital Investment Act	Rick Larsen [D-WA2]	
	2011/12/13	S.1986	Science, Technology, Engineering, and Mathematics Visa Act of 2011	Michael Bennet [D-CO]	0
	2012/5/31	HR.5874	American Entrepreneurship and Investment Act of 2012	Jared Polis [D-CO2]	
	2012/5/24	S.3245	A Bill to extend by 3 years the authorization of the EB-5 Regional Center Program	Patrick Leahy [D-VT]	
	2012/9/21	HR.6493	Global Investments in America's Cities Act	Hansen Clarke [D-MI3]	
	2013/4/16	S.744	Border Security, Economic Opportunity, and Immigration Modernization Act	Charles "Chuck" Schumer [D-NY]	
	2013/5/23	HR.2131	SKILLS Visa Act	Darrell E. Issa [R-CA-49]	
113th	2013/9/20	HR.3163	CIR ASAP Act of 2013	Grijalva, Raul M. [D-AZ-3]	
	2013/10/2	HR.15	Border Security, Economic Opportunity, and Immigration Modernization Act	Garcia, Joe [D-FL-26]	
	2014/3/6	HR.4178	American Entrepreneurship and Investment Act of 2014	Polis, Jared [D-CO-2]	
	2014/5/13	HR.4659	EB-5 Regional Center Extension Act of 2014	Schock, Aaron [R-IL-18]	
114th	2015/1/3	S.1501	American Job Creation and Investment Promotion Reform Act of 2015	Patrick Leahy [D-VT]	Sen. Grassley, Chuck [R-IA]*
	2015/1/28	HR.616	American Entrepreneurship and Investment Act of 2015	Jared Polis [D-CO2]	24
	2015/2/4	HR.719	Continuing Appropriations Act, 2016	Katko, John [R-NY-24]	4
	2015/4/24	HR.2029	Consolidated Appropriations Act, 2016	Charles W. Dent [R-PA-15]	0
	2015/7/29	HR.3370	EB-JOBS Act of 2015	Zoe Lofgren [D-CA19]	0
	2015/10/1	S.2115	Targeted Employment Areas Improvement Act	Flake, Jeff [R-AZ]	0
	2015/10/1	S.2122	Invest in Our Communities Act	Rand Paul [R-KY]	0
	2015/12/17	S.2415	EB-5 Integrity Act of 2015	Jeff Flake [R-AZ]	4
114th	2016/2/10	HR.4530	EB-5 Integrity Act of 2016	Jared Polis [D-CO2]	Rep. Amodei, Mark E. [R-NV-2], Rep. Smith, Adam [D-WA-9]
	2016/9/12	HR. 5992	American Job Creation and Investment Promotion Reform Act of 2016	Goodlatte, Bob [R-VA-6]	Rep. Conyers, John, Jr. [D-MI-13]*
115th	2017/1/24	<del>HR. 1502</del>	A bill to terminate the EB-5 Visa Program and to reallocate the employment creation visas to the other employment-based visa classifications.	Feinstein, Dianne [D-CA]	Sen. Durbin, Richard J. [D-IL], Sen. Grassley, Chuck [R-IA]
	2017/3/27	S.727	Invest in Our Communities Act	Paul, Rand [R-KY]	0
	2017/3/10	<del>HR.1502</del>	To terminate the EB-5 program	King, Steve [R-IA-4]	Rep. Gohmert, Louie [R-TX-1], Rep. Jones, Walter B., Jr. [R-NC-3]
	2017/1/4	HR.244	Consolidated Appropriations Act, 2017	Rep. Cook, Paul [CA-8]	28
	2017/3/20	HR.1825	Consolidated Appropriations Act, 2018	Royce, Edward R. [R-CA-39]	
115th	2017/7/27	HR. 3471	American Job Creation and Investment Into Public Works Reform Act of 2017	Fitzpatrick, Brian K. [Rep.-R-PA-8]	Rep. Evans, Dwight [D-PA-2], Rep. Shuster, Bill [R-PA-9]
	2017/10/6	HR. 3993	American Samoa Investment Act of 2017	Radevagan, Aumua Amata Coleman [Del-R-AS-At Large]	Resident Commissioner Gonzalez-Colon, Jennifer [R-PR-At Large], Del. Sablan, Gregorio Kilili Camacho [D-MP-At Large]
116th	2019/1/22	<del>H.J.Res.31</del>	Consolidated Appropriations Act, 2019	Roybal-Allard, Lucille [D-CA-40]	0
	2019/1/24	<del>HR.1207</del>	To terminate the EB-5 program	King, Steve [R-IA-4]	0
	2019/2/13	HR.1207	U.S. Nationals Employment Act of 2019	Radevagan, Aumua Amata Coleman [R-AS-At Large]	Del. San Nicolas, Michael F. Q. [D-GU-At Large]
	2019/4/9	HR.2173	To amend the Immigration and Nationality Act to reserve EB-5 visas each fiscal year for investors in new commercial enterprises in areas with respect to which a major disaster has been declared by the President.	Gonzalez-Colón, Jennifer [Resident Commissioner-R-PR-At Large]	Rep. LaMalfa, Doug [R-CA-1]
	2019/9/24	S.J.Res.55	A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Acting Secretary of Homeland Security relating to "Immigrant Investor Program Modernization"	Paul, Rand [R-KY]	0
	2019/10/16	S.2903	RELIEF Act	Durbin, Richard J. [Sen.-D-IL]	6
	2019/9/24	S.2540	EB-5 Reform and Integrity Act of 2019	Grassley, Chuck [Sen.-R-IA]	Sen. Leahy, Patrick J. [D-VT]
117th	2019/11/5	S.2778	Immigrant Investor Program Reform Act	Rounds, Mike [Sen.-R-SD]	3
	2021/3/18	S.831	EB-5 Reform and Integrity Act of 2021	Grassley, Chuck [Sen.-R-IA]	1
	2021/4/28	H.R. 2901	EB-5 Reform and Integrity Act of 2021	Stanton, Greg [Rep.-D-AZ-9]	29
	2021/4/13	H.R. 2471	Consolidated Appropriations Act, 2022	Jeffries, Hakeem S. [Rep.-D-NY-8]	7

Notes: The bills colored in gray became law. The bills in the shaded are negative for investor immigrant visas. Source: Data from Congress.gov

the management of the Immigrant Investor Program. In January 2005, the U.S. Citizenship and Immigration Services established the “Investor and Regional Center Unit” as a comprehensive project team with jurisdiction over the Immigrant Investor Program.<sup>31</sup> In January 2011, President Obama launched the Startup America Initiative to foster entrepreneurship throughout the United States. The initiative encompassed enhancing the Immigrant Investor Program Office (IPO) capabilities and reduced application processing time.<sup>32</sup> In 2013, the Investor Immigrant Investor Program Office (IPO) was established to focus on the operational oversight of the Immigrant Investor Program. While only GAO submitted a report regarding the Immigrant Investor Program in the 2000s, a variety of agencies submitted reports in the late 2010s, such as the Department of Homeland Security’s Ombudsman for Citizen and Immigration Services (2009), the Department’s Office of Inspector General (2013).

Furthermore, in April 2015, the Secretary of the Department of Homeland Security (DHS) sent a letter to Senator Charles E. Grassley (R-IA), the Chairman of the Senate Judiciary Committee, and Senators Patrick Leahy (D-VI), the Ranking Member, discussing the Immigrant Investor Program and proposing the reforms.<sup>33</sup> In July, the Obama Administration released the blueprint for comprehensive immigration reform, titled “Modernization & Streaming Our Legal Immigration System for the 21<sup>st</sup> Century.” This blueprint indicated that DHS would implement various enhancements to manage the Immigrant Investor Program.<sup>34</sup> The administration also urged Congress to revise the legislation while instituting a framework to facilitate advancements to promote effective and rigorous operational oversight through multifaced evaluations.

Table 3. Hearings on Immigrant Investor Program

Congress	Date	Congress Chamber	Committee and Subcommittee	Title
111th	2009/7/22	Senate	Committee on the Judiciary	Promoting Job Creation and Foreign Investment in the United States: An Assessment of the Eb-5 Regional Center Program
	2010/5/11	Senate	Committee on the Judiciary	Oversight of U.S. Citizenship and Immigration Services
112th	2011/9/14	House of Representatives	Committee on the Judiciary	Investor Visa Program: Key to Creating American Jobs
	2011/12/7	Senate	Committee on the Judiciary	Reauthorizing the Eb-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities
	2012/2/15	House of Representatives	Committee on the Judiciary	Safeguarding the Integrity of the Immigration Benefits Adjudication Process
114th	2015/3/26, 4/30	House of Representatives	Committee on Homeland Security	Leadership Challenges at the Department of Homeland Security: Allegations of Improper Influence Regarding Special Visas
	2016/2/2	Senate	Committee on the Judiciary	The Failures and Future of the EB-5 Regional Center Program: Can it be fixed?
	2016/2/11	House of Representatives	Committee on the Judiciary	Is the Investor Visa Program an Underperforming Asset?
	2016/4/13	Senate	Committee on the Judiciary	The Distortion of EB-5 Targeted Employment Areas: Time to end the Abuse
115th	2017/3/8	House of Representatives	Committee on the Judiciary	The Department of Homeland Security’s Proposed Regulations Reforming the Investor Visa Program

Source: Data from Congress.gov

#### IV. LEGISLATOR NARRATIVES: JOB CREATOR AND ENTREPRENEUR

Considering that the Immigrant Investor Program was designed in the late 1980s during a period of rapid globalization, increasing concerns about U.S. competitiveness, and the onset of a recession, the program was constructed with an economic rationale in contrast to traditional immigration criteria like family unification, which often included considerations of race, ethnicity, and nationality. However, the Immigrant Investor Program has continuously faced media criticism, often dubbed as a “visa for the wealthy” due to its perception as an exchange of capital for permanent residence. While similar criticisms have surfaced in Congress, they have not gained widespread support for termination.

It can be attributed to two prevalent narratives associated with the Immigrant Investor Program in Congress: job creation and entrepreneurship. Indeed, a few legislators called for the termination of the Immigrant Investor Program, but it did not turn the narratives upside down. Instead, they tried to change the system using the narratives. No compelling economic and ideological rationale exists to discredit these narratives. Institutions based on the narratives become path-dependent, and it is challenging to change those institutions. The narratives of job creation through investment in the Immigrant Investor Program play the role of immigrants contributing to the domestic economy and serving the national interest. The interpretation of the national interest in the context of immigration policy has undergone significant changes in tandem with shifts in the nation’s social and economic landscape. The Immigrant Investor Program was conceived to invigorate the U.S. economy and generate employment opportunities in response to structural changes and economic recession during the 1980s. This consideration extended to the relationship between immigration and the economy, encompassing the undocumented immigrant population. The Immigrant Investor Program has consistently functioned as a labor-oriented policy, fostering job creation in the U.S. labor market through investor-driven capital. The narrative has remained unaltered since the 2000s and has intensified notably amid economic downturns and surging unemployment rates attributed to the global financial crisis.

In a 2009 hearing in the Senate, which marked the initial hearing on the Immigrant Investor Program, Senator Jeff Sessions (R-AL) said, “It seems to me to meet the needs of people who like to come here and, quite significantly, it seems to me to be the kind of program that serves a legitimate interest of the United States.”<sup>35</sup> Sessions expressed the belief that the Immigrant Investor Program is a transformative initiative for job creation that aligns with the nation’s interests. Professor and immigration attorney Stephen Yale-Loehr from Cornell University highlighted the possibility of securing investments for job-generating projects without utilizing tax revenue from American citizens.<sup>36</sup> Yale-Loehr argued, “Congress and the immigration agency should view the EB-5 program really as an economic stimulus tool, not primarily as an immigration program.”<sup>37</sup> A former employee of the Ombudsman’s office to look into U.S. Citizenship and Immigration Services argued that the Immigrant Investor Program was an “economic development program,” not “immigration-related.”<sup>38</sup> In a 2011 hearing, Representative Lamar Smith (R-TX), the Committee on the Judiciary chairman, said, “The number one job of Congress is to create jobs. We must ensure our policies help private



enterprises, strengthen our economy, create jobs for American workers, and maintain our global competitiveness. The Investor Visa Program plays a part in achieving this goal.”<sup>39</sup>

Another significant narrative is that a foreign investor in the Immigrant Investor Program is an entrepreneur. The spirit of entrepreneurship is a cherished value in the U.S., and as a nation built by immigrants, this pioneering spirit is crucial for the nation’s progress. In a 2011 hearing, Representative Bob Goodlatte (R-VA), the Committee on the Judiciary chairman, argued, “Visas for the wealthy was not a goal of the EB-5 program. It was to attract investors with entrepreneurial talent.”<sup>40</sup>

Along with the prevalence of these two narratives in the Immigrant Investor Program, legislators have been aware of Canada and Australia as rivals that offer similar programs. In a hearing in 2009, Senator Patrick Leahy (D-VI), the chair of the Committee on the Judiciary, said, “This type of immigration program is not unique to us. We have seen how Canada and the United Kingdom have used this very, very effectively. In fact, in the current difficult economy, Canada has been promoting their immigrant investment program all around the world and grabbing these investments.”<sup>41</sup> Professor Stephen Yale-Loehr stated, “I know the EB-5 program in the United States has not raised nearly as much capital as in Canada, for example. I am not an expert on the other immigrant investor programs, but I know, in Canada, they raised \$6 billion coming into Canada in the same period that we raised \$1 billion.”<sup>42</sup>

Considering that the Immigrant Investor Program has been perceived as a type of economic policy aimed at job creation, the narrative has predominantly revolved around optimizing the program’s potential to foster employment and stimulate both domestic and regional economies. As a result, the fundamental issue concerning the Immigrant Investor Program, as perceived by both Congress and the administration, is not whether the investor visa serves as a “visa for the wealthy” but instead centers on the efficacy of implementing the law for its original intended purposes. The core question is whether the Immigrant Investor Program effectively fulfills its designated purpose: benefiting the U.S. economy and generating employment. Is this goal being achieved within legal parameters? If not, where do shortcomings and irregularities lie?

The specific issues related to the program include:

1. Whether the investment destination, use of investment, and investment amount are appropriately determined (designation of Target Employment Areas (TEAs), ambiguity and delineation of target and non-target areas, whether pooled investments by the “Regional Center Program” are gerrymanders at the time of investment (Gerrymander)<sup>43</sup>, and whether the amount of investment should be increased due to inflation.
2. How to address instances of fraud and inadequacy.

Close coordination between Congress and the administration is essential to address these challenges. It is due to the need to oversee the movement of funds, which, unlike normal immigration, is far removed from the movement of individuals. Structural problems are likely to arise in a wide range

of areas, from the source of funds for an investment to understanding its flow (and the difficulty of disclosing this information to foreign banks), assessing whether it is a target employment area, evaluating the project in which it is invested, calculating job creation. Nevertheless, different agencies have jurisdiction over these issues. Close coordination between Congress and the relevant agencies is crucial for administering and overseeing a complex program. However, such coordination was not initially established when the program was launched.

Problems began to be addressed after the increase in the number of immigrant investor visas issued, which led to audits, inspections, and evaluations of the Immigrant Investor Program by various government agencies. Reports on the program have been submitted since late 2010 by some agencies, examining the Immigrant Investor Program from multiple angles. In response, congressional hearings also witnessed and facilitated constructive discussions with witnesses from relevant government agencies. Consequently, close inter-agency collaboration and systems have been established to sustain the Immigrant Investor Program.

## CONCLUSION

The narratives of the Immigrant Investor Program have been prevalent and powerful in policymakers. Narratives have reinforced the institution, and it has become path-dependent. The typical negative narrative surrounding immigrants is that immigrants take jobs away from domestic workers when the unemployment rate is high. On the contrary, the Immigrant Investor Visa Program turns the pervasive negative narrative on its head with the narratives of immigrants creating jobs and entrepreneurs through investment. Legislators reinforce the narratives of the Immigrant Investor Program — job creator and entrepreneur — and the program has been developed despite criticisms such as a visa for the wealthy.

### Note

This article is a developed version of my paper that was published in the 2021 annual conference proceedings of the Japanese Association of International Politics, titled “Capitalized Citizenship: Through U.S. Immigrant Investor Program” in Japanese.

<sup>1</sup> See Christian H. Kälin, *Global Residence and Citizenship Handbook* (Zurich, London, Hong Kong: Ideos Publications, 2012).

<sup>2</sup> Madeleine Hooper and Kate Sumption, “Selling Visas and Citizenship: Policy Questions from the Global Boom in Investor Immigration,” Migrationpolicy.org. September 30, 2014, <https://www.migrationpolicy.org/research/selling-visas-and-citizenship-policy-questions-global-boom-investor-immigration.>; Nail Parmar, “The Millionaire Residency Visa,” *Wall Street Journal*, September 20, 2013.

<sup>3</sup> For a comprehensive discussion of investor citizenship, see Jelena Džankić, *The Global Market for Investor Citizenship: Politics of Citizenship and Migration* (Cham: Palgrave Macmillan, 2019).

<sup>4</sup> On the relationship between citizenship and immigration, see Rogers Brubaker, *Citizenship and Nationhood in France*

- and Germany (Cambridge: Harvard University Press, 2002); Irene Bloemraad, Anna Korteweg and Gökçe Yurdakul, "Citizenship and Immigration: Multiculturalism, Assimilation, and Challenges to the Nation-State," *Annual Review of Sociology* 34, No.1 (2008):153–179; For discussions of transnational citizenship, for example, see, Rainer Bauböck, *Transnational Citizenship: Membership and Rights in International Migration* (Cheltenham Etc.: Edward Elgar, 1994).
- <sup>5</sup> See Christian Joppke, *Citizenship and Immigration* (Cambridge: Polity Press, 2010).
- <sup>6</sup> See Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge: Harvard University Press, 2009); Takeshi Miyai, "The Pros and Cons of Immigrant Investor Programs: On the Justifiability of the Preferential Treatment of Wealthy Immigrants," *Migration Policy Review* 8 (2016): 155–170.
- <sup>7</sup> US Congress, Senate, Committee on the Judiciary, Subcommittee on Immigration and Refugee Policy, *Final report of the Select Commission on Immigration and Refugee Policy : joint hearings before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary and Subcommittee on Immigration, Refugees, and International Law of the House Committee on the Judiciary, Ninety-seventh Congress, first session on the final report of the Select Commission on Immigration and Refugee Policy, May 5, 6, and 7, 1981* (Washington, DC: US Government Printing Office, 1981), 182.
- <sup>8</sup> Ibid.
- <sup>9</sup> H.R. 4327–97<sup>th</sup> Congress (1981–1982), Passed Senate amended (December, 16, 1981).
- <sup>10</sup> Ibid.
- <sup>11</sup> S. 358, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. (1989).
- <sup>12</sup> H.R. 4165, 101<sup>st</sup> Cong., 2<sup>nd</sup> Sess. (1990).
- <sup>13</sup> Gary Endelman and Jeffrey Hardy, "Uncle Sam Wants You: Foreign Investment and the Immigration Act of 1990," 28 *San Diego L. Rev* 671 (1991): 675.
- <sup>14</sup> Ibid., 671.
- <sup>15</sup> Ibid., 675.
- <sup>16</sup> US Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service*, 1994 (Washington, D.C.: US Government Printing Office, 1996).
- <sup>17</sup> Ronald R. Rose, "Fixing the Wheel: A Critical Analysis of the Immigrant Investor Visa," 29 *San Diego L. Rev* 615 (1992).
- <sup>18</sup> Ibid.
- <sup>19</sup> Ibid.
- <sup>20</sup> Ibid.
- <sup>21</sup> The Regional Center Pilot Program was included in House Bill 5678, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Pub. Agencies Appropriations Act, 1993) and was enacted on October 6, 1992 (Pub. L. 102–395).
- <sup>22</sup> A regional center is defined by the Immigration and Naturalization Service as "any economic unit, public or private, which is involved with promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital." whether public or private, engaged in promoting economic growth, including increasing exports, improving regional productivity, creating jobs, and increasing domestic capital" (8 C.F.R. § 204.6 (e)).
- <sup>23</sup> "Employment Creation Immigrant Visa (EB-5) Program Recommendations, March 18, 2009" US Department of Homeland Security, Office of the Citizenship and Immigration Services Ombudsman, accessed August 23, 2023, [https://www.dhs.gov/xlibrary/assets/CIS\\_Ombudsman\\_EB-5\\_Recommendation\\_3\\_18\\_09.pdf](https://www.dhs.gov/xlibrary/assets/CIS_Ombudsman_EB-5_Recommendation_3_18_09.pdf).
- <sup>24</sup> Congressional Record -Senate, S4981–S4989, May 18, 1998.
- <sup>25</sup> U.S. Senate Roll Call Votes 105<sup>th</sup> Congress - 2<sup>nd</sup> Session, May 18, 1998.
- <sup>26</sup> The Basic Pilot Program Extension and Expansion Act of 2003, P. L. 108–156.
- <sup>27</sup> US Government Accountability Office, *Immigrant Investors Small Number of Participants Attributed to Pending*

- Regulations and Other Factors* (Washington, DC: US Government Printing Office, 2005), 8–10.
- <sup>28</sup> Ibid., 10–11.
- <sup>29</sup> Statements on Introduced Bills and Joint Resolutions, March 12, 2008, 110<sup>th</sup> Congress, 2<sup>nd</sup> session, Issue: Vol. 154, No. 42, S2000–S2008.
- <sup>30</sup> EB–5 Regional Center Pilot Program Extension, House of Representatives, June 09, 2008, 110<sup>th</sup> Congress, 2<sup>nd</sup> session, Issue: Vol. 154, No. 94, H5060–5063.
- <sup>31</sup> "Memorandum, December 11, 2009," US Citizenship and Immigration Services, accessed June 4, 2023, [https://www.uscis.gov/sites/default/files/document/memos/Adjudicating\\_of\\_EB-5\\_121109.pdf](https://www.uscis.gov/sites/default/files/document/memos/Adjudicating_of_EB-5_121109.pdf).
- <sup>32</sup> "Startup America," White House, President Barack Obama, accessed June 4, 2023, <https://obamawhitehouse.archives.gov/economy/business/startup-america>.
- <sup>33</sup> "US Department of Homeland Security, April 27, 2015," US Department of Homeland Security, accessed June 4, 2023, [https://eb5.ru/files/may\\_2015\\_johnson\\_letter\\_to\\_congress\\_re\\_reauthorization.pdf](https://eb5.ru/files/may_2015_johnson_letter_to_congress_re_reauthorization.pdf).
- <sup>34</sup> "Startup America, August 15, 2016," White House, accessed August 23, 2023, <https://web.archive.org/web/20160603102305/https://www.whitehouse.gov/economy/business/startup-america/commitments>.
- <sup>35</sup> US Congress, Senate, Committee on the Judiciary, *Promoting Job Creation and Foreign Investment in the United States: An Assessment of the EB-5 Regional Center Program* (Washington, DC: US Government Printing Office, 2010), 3.
- <sup>36</sup> Ibid., 7.
- <sup>37</sup> Ibid., 7.
- <sup>38</sup> Ibid., 14.
- <sup>39</sup> US Congress, House of Representatives, Subcommittee on Immigration Policy and Enforcement, *Investor Visa Program: Key to Creating American Jobs* (Washington, DC: US Government Printing Office, 2011), 4.
- <sup>40</sup> US Congress, House of Representatives, *Is the Investor Visa Program an Underperforming Asset?* (Washington, DC: US Government Printing Office, 2016), 3.
- <sup>41</sup> US Congress, *Promoting Job Creation and Foreign Investment in the United States: An Assessment of the EB-5 Regional Center Program*, 2.
- <sup>42</sup> Ibid., 22.
- <sup>43</sup> 'Gerrymander' in the Investor Immigrant Visa Program is the delineation of wealthy areas with low unemployment to appear as TEAs (Targeted Employment Areas) or specific rural areas with \$500,000 of investment.

# Narratives on the U.S. Investor Visa Program: Job Creator and Entrepreneur

Saori TEZUKA

## Abstract

A rising number of nations have begun to offer citizenship or residency through investment schemes. More than 100 nations worldwide presently have investment programs for citizenship or residency. These programs have drawn criticism for catering to the wealthy. Besides, citizenship or residence through investment schemes has come under scrutiny in the context of political and legal frameworks. This article explores how the investor program was conceptualized and developed through the policymaking process of the U.S. EB-5 Immigrant Investor Program (referred to as the Immigrant Investor Program) while addressing challenges such as fraudulent activities and opposition. I find that legislators created and reinforced the narratives of the Immigrant Investor Program — job creators and entrepreneurs. The narratives of the Immigrant Investor Program have been prevalent and influential in policymaking, making the program path-dependent.