

EB-5 and Indirect Construction Jobs: Emerging Trend for Third-Party Validation

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Intro:

Mr. Andrew Cuevas, Esq., is the President of Cuevas & Associates, P.A., and Vantage Property Title Company. Mr. Cuevas has been practicing law since 1993 in the area of Business Immigration Law and Commercial transactions, including commercial and residential real estate transactions and business acquisitions for foreign investors. If you have any questions regarding this article or any other questions, you can contact Mr. Cuevas at (305) 461-9500 or at acuevas@cuevaslaw.com. If you are interested in reading previous newsletters, please visit www.cuevaslaw.com, select the icon for **Newsletters**, and then choose the area of law you are interested in.

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Construction jobs can be considered in part for purposes of job creation for EB-5 residency applications. However, there is a trend in recent USCIS adjudications challenging claims of construction jobs by means of requiring third-party validation of construction data and regional industry standards. It is important for Regional Centers to provide supporting evidence in advance of filing the Residency petitions for their EB-5 investors.

In failing to meet this standard with an initial Residency application package, USCIS will issue a Request for Evidence for such records. In response, the Regional Center will need to supply associated investors with an evidence package that contains third-party opinions verifying or explaining the claims made in the business plan in relation to the construction activity and their assumptions. These may include the following:

- **General Contractor's Detailed Construction Timeline.** This report breaks down all phases of the build-out, by date and subcontractor specialty/trade. The timeline should provide expected start and completion dates for each distinct activity.

- **Third Party Validation of Construction Timeline.** This expert opinion assesses the project's construction timeline claim and measures the timeline against regional industry norms.
- **Third Party Validation of Construction Costs.** This expert opinion assesses the itemized budget costs and compares them with verifiable data, analysis, and industry standards. Reliable construction costs are important to the USCIS because these are direct inputs to the economic modeling that calculates job creation.

This article is solely a partial explanation of all the issues related to the topic of this newsletter, and is not to be considered legal advice. Persons interested in obtaining more information should consult with their legal counsel to obtain explanations of all issues addressed herein.