

**Immigration Law - EB-5 Investment Projects. – SEC Clears Way to Attract
EB-5 Immigrant Investors**

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Intro:

Mr. Andrew Cuevas, Esq., is the President of Cuevas & Associates, P.A., and Vantage Property Title Company. Cuevas & Associates, P.A. provides legal services in the areas of Community Association Law, Business Immigration law, and Real Estate law, including title insurance services through Vantage Property Title Company. 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 our website at www.cuevaslaw.com, and select the icon for **Newsletters**, then choose the area of law you are interested in.

EB-5 Investment Projects. – SEC Clears Way to Attract EB-5 Immigrant Investors

The EB-5 Investment Immigrant Visa, which results in obtaining the United States permanent residency, has become hugely popular for those foreign investors who wish to invest in existing commercial enterprises in order to obtain the United States Permanent Residency. However, a problem frequently faced by the Regional Centers offering investment opportunities and permanent residencies to foreign investors is the Regional Centers ability to attract investors to their projects without running foul of SEC regulations.

On July 12, 2013, following the April passage of the Jumpstart Our Business Startups Act (“JOBS Act”), the Securities and Exchange Commission (SEC) announced the elimination of the ban against general solicitation for Regulation D offerings on July 10, 2013. This announcement will change the way EB-5 Regional Centers seek investors and conduct business by allowing Regional Centers to engage in previously prohibited solicitation activities to attract investors for Regional Center projects. This major shift signals a new era for EB-5 adjudication and could prove monumental in how Regional Centers attract investors through the EB-5 green card program.

The SEC requires registration of all offers by a company to sell securities unless they meet certain exemptions. To register an such offers with the SEC if a very expensive and lengthy process. The SEC provides certain exemptions to the general registration rule, and these exemptions are governed by SEC Regulation D, which are intended to make access to capital markets possible for small companies for which the cost of SEC compliance often proves prohibitive.

Prior to the Security and Exchange Commission's July 10th announcement, Reg D offerings faced several offer restrictions to ensure that small businesses were not targeting vulnerable consumers. One such restriction was the prohibition against "general solicitation" for a Reg D offering. For EB-5 Regional Centers, the "general solicitation" prohibition proved a major hindrance to EB-5 investment strategies because announcing availability in a Regional Center for EB-5 applicants was considered to run afoul of Reg D offering limitations.

The SEC's recent announcement has removed this "general solicitation" barrier, and in doing so, has provided immediate relief to EB-5 Regional Centers seeking interested investment opportunities for their capital and will likely lead to an increase in demand within the EB-5 program. While this news should be regarded with optimism, the new offering procedures will permit sponsors of EB-5 pooled investment vehicles to engage in general solicitation of investors and advertise their private offerings ONLY under certain terms and conditions, including a requirement that all purchasers in the offering are "accredited investors". An "accredited investor" is defined as:

- An individual with net worth (or joint net worth with a spouse) that exceeds \$1million at the time of the purchase, excluding the value (and any related indebtedness) of a primary residence; or
- An individual with an annual income that exceeded \$200,000 in each of the two most recent years or a joint annual income with a spouse exceeding \$300,000 for those years, and a reasonable expectation of the same income level in the current year.

Moreover, EB-5 Regional Centers engaging in general solicitation activities will be required to verify through "reasonable steps" that EB-5 investors are accredited. The SEC has not yet issued guidance on the steps necessary to satisfy the reasonableness requirement, however EB-5 Regional Centers engaging in general solicitation activities should be prepared to obtain guarantees of income requirements for all investors.

In short, the SEC's latest announcement lifting the general solicitation prohibition for Reg D offerings is a welcomed sign and good news for EB-5 Regional Centers. However, the optimism surrounding this announcement must be tempered by the uncertainty surrounding "accredited investor" designation and the steps required to ensure compliance with this designation."

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. An interested person should consult with their legal counsel to obtain explanations of all issues addressed herein.