

## Homeland Preparedness News

EB-5 Update – One year since reform became law –

A conversation with II USA's Aaron Grau

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### Transcript

**Murtha:** *The following Podcast is a production of Macallan Communications publishers of Homeland Preparedness News. The mission of HPN is to inform and educate the American public about the efforts undertaken by its government and private sector to protect them from the ever-evolving threats to the homeland. HPN can be found at WWW dot homeland prep news.com*

*And welcome to the Homeland Preparedness News podcast. I'm your host Jim Murtha.*

*It's not often that we can put immigration infrastructure and economic development in the same discussion. But today we can. The reason we can is because of a little-known program in the federal government called EB 5. EB 5 has been around since 1990. Its mission is to raise funds from foreign nationals to underwrite the cost of expensive projects that normally would be borne by the American taxpayer. Things like bridges, highways, office parks, hotels, big ticket items that create a lot of jobs.*

*In exchange for their investment for nationals earn interest and something else that for many eclipses any monetary return: a US visa. In March of 2022, Congress passed and the President signed a bill that reauthorized the program for another five years. In addition to a new lease on life, legislation instituted some sought after reforms and how the program was administered and executed.*

*EB 5 fingerprints are all over the country. But most of us know little of the program and its outsized impact on communities from coast to coast. To discuss the new reform legislation and current state of the program, we have invited Aaron Grau to today's podcast. Mr. Grau, is the executive director of II USA, a group that represents regional centers that use EB 5 as a mechanism to build projects nationwide.*

*Aaron Grau of II USA welcome to the Homeland Preparedness News podcast.*

**Grau:** Thank you appreciate you being for appreciate you having me back.

**Murtha:** *Well, you're a good guest. And I've always been fascinated with this program. So I thought it was a good time to revisit it and see how things are going.*

**Grau:** Okay.

**Murtha:** *Last year, as you know, in March, the EB five program was reauthorized, it was billed as a reform measure. So, in a matter of retrospective what was happening under the former legislation that needed to be reformed in the new legislation?*

**Grau:** That's a great question. And the answer to that question, and to every question is, it depends, it depends on who you're talking to.

And maybe even what side of the bed they got out of that morning, but the gist of of the reform really was focused on what is colloquially being referred to as integrity or integrity measures. You know, previously, the, the program unfortunately, was replete, or one would be led to believe that it was replete with fraud and abuse, not by immigrant investors, more by folks in the United States, who were, who were managing or purporting to manage dollars, or those investments, I'll say that the program wasn't replete with fraud. It just so happens that bad news gets clicks. And so, you know, the concerns around fraud and abuse naturally rose to the top of everybody's concern list. And that's a good thing because there shouldn't be any fraud or abuse, ever. That's not

what the program is about is certainly not what II USA is about. But that was the genesis of the conversations around reform. And so a lot of the integrity reforms focused on protecting good faith investors, instilling transparency into the program, for example, there are now requirements, those who are representing investment opportunities in the United States, whether they are broker dealers in the US or they are Migration Agents abroad. They all need to register with the Department of Homeland Security disclose, most importantly, to investors what they're getting paid.

So, as to level set and bring the entire prod program up to a more integrity base. The platform. So all of those reforms were necessary. We're glad they happen. They happened. And they are being implemented? Well, I will say that the industry, the regional centers, and their affiliates are all rising to the occasion implementation of the program is still a big question mark. But to answer your first question, it was it was integrity, and it was an effort to make the program more transparent and protect good faith investors.

**Murtha:** *Okay. Well, that's a good reason. And we'll explore it later in our conversation if that has actually happened. The USCIS United States Citizenship and Immigration Services, which is the agency in charge of all this has been criticized, quite often for long delays in granting EB 5 visas to investors. It takes years. Have the timelines for visas gotten any shorter?*

**Grau:** No, the reform legislation? No, no, they haven't.

**Murtha:** *You didn't even hesitate.*

**Grau:** They've gotten longer. There are studies out or at least, you know, by USAID calculations, in fact, the more money that USCIS collects on this program, for example, it just raised the application fees to participate in the program by hundreds of percent, you know, hunt, I mean, it's 10s of 1000s of dollars for a regional center to participate in this program. That wasn't the case before. The more money they assess on participants, the longer the wait times get, I can't explain it. It's incredibly frustrating. The agency is deserving of the criticism.

**Murtha:** *Okay, let's talk about the delays. I was going to try this later in the conversation. But since you brought it up, is it fair to define the delays in the program? Using as an excuse simple bureaucratic inertia? I*

*mean, it takes a decade to build a road a lot longer to build a dam. Isn't this just the bureaucracy moving at a snail's pace? Because that's the speed with which it's most comfortable?*

**Grau:** Well, I suppose if you want to provide an excuse, if that's an acceptable reason, then yeah,

**Murtha:** *I guess it's more of an observation.*

**Grau:** You know, I don't think excuses. My, it is a valid observation. My observations go a bit further. And I would say that, and I have no basis. I'm, you know, this is consequent to, you know, my observation of the agency participation in, you know, a post implementation lawsuit, just something more or as much of an upfront seat as one can have two agency operations. I think it's not just typical bureaucracy. I think the agency has an incredibly difficult job.

One that they are not constructed to do. The Department of Homeland Security, in my opinion, post 911 was established to forgive my paraphrase, they were established to keep the bad guys out there were established to protect the homeland from bad things.

They were not constructed or developed to evaluate complex economic development projects.

Or to process the nature of applications from high-net-worth individuals are individuals who are able to cobble together enough money to make an investment, the size of \$800,000 into the US economy. Those types of people are not going to be your typical bad guys.

You know, it's crazy for me to think that a person would stroke a check for \$800,000. And then, if they were a bad guy, sit on their laurels and wait for 568 years before they can even come into the country. There's a disconnect there. My point is, is that it's not just bureaucracy. The USCIS is overwhelmed with a task that it is not equipped to address. And its mission is not focused on accomplishing and when you combine typical bureaucracy with a lack of capacity and an instinct to say no to someone coming into the country, as opposed to saying, yes, we want your job creating dollars, then you've got a recipe for disaster, you've got a recipe for

the development of policies that are not only bureaucratically, lethargic, but they're completely contra to congressional intent. And so the wait lines get longer, and the arguments and the discussions become more banal. And it is an incredibly frustrating experience.

Following the level of effort it took to pass the reform and Integrity Act to begin with. I want to stay on the delays a little bit longer here.

**Murtha:** *I read an article about this and the impact it has, because of the long delays faced by some of the investors. Some of the money that they put into the program is being redeployed to other projects unrelated to their original investment. Is that causing a problem?*

**Grau:** Overall, for me, regional centers for for the investors? Well, again, the answer is it depends. Because it wasn't a problem. It's not a it's not a welcome development. For investors, I'm sure they would rather see a return on their investment and a return of their capital soon. But the law requires that an immigrant investors money remains, quote, at risk during the time of their immigration application process, or what's referred to as the sustainment period. And the definition of the sustainment period is an entirely different conversation at this point.

But because it takes so long to process, an immigrant investors immigration application, more, you know, quite frequently the economic development project in which they invested to begin with, where their money must remain at risk started and ended. But they can't get their money back because the law says it has to remain at risk while they are being processed for immigration. So, what do you do with the money? It has to remain at risk? So, it is redeployed into another project. Is that a problem? I guess it really depends on your perspective.

**Murtha:** *Well, let me mention it. The article that I read said that some of the projects were not looked upon kindly by the investors, I guess, I don't know what they were. There was no specifics given in the article.*

**Grau:** So, I will preface my remarks by saying Yeah. So, it was some projects were far afield what the original investment was, and I guess it upset some of the investors and I thought, well, maybe this is a problem? Well, I

mean, I don't want to, I don't want to push it aside, but at this, you know, because but at the same time, I have no insight as to, for example, what the offering agreement was between, you know, the initial offering agreement was between the investor and the project, or the nature of the projects, or why investors might have issues with them. I just couldn't speak to it.

**Murtha:** *Let's go to the USCIS. Last month, in mid-April, they hosted an event for the EB 5, I'm calling them stakeholders. That means everybody that's involved in a program, and it was billed as an update on the agency's work implementing the reform legislation. I've read more than a few reviews about the whole event, and how bad it was.*

*How the staff was, ill prepared to discuss the kind of detail that the people on the on the call or the webcast wanted to. Do you agree with that assessment that it was a missed opportunity for USCIS?*

**Grau:** Oh, yeah. It also was, well, they didn't they build it as an engagement session. Well, first of all backup. This session was initially scheduled March 20.

Yeah, the end of March. We postponed it a month, until April 25, presumably to prepare and yet and they also articulated to stakeholders that they would be covering three topics of paramount importance. One of them was questions that stakeholders had about a certain form called the 956 K, which I alluded to earlier, which requires promoters to register with the Department of Homeland Security. There's a lot of questions about definitions, etc, etc. So, the 956 K was one of the topics they were going to address. The other topic they were going to address was this one that I also alluded to reference was sustainment period, confusion.

Some would say there's confusion about how long the sustainment period is, and when it starts and when it ends. And the third one that they were going they're supposed to address was billed largely as regional center operations. But not the least of which focused on how those regional centers who were no longer soliciting investments, how they would be treated under the reform and Integrity Act. So, three, so this was scheduled to be in the March, they postponed until the end of April, to presumably prepared to discuss three critical issues with regards to operations and implementation of the law. They opened up the program, this engagement session by right off the bat saying they were not going to talk about sustainment, they were not going to talk

about regional center operations. So right off the bat, everybody was wondering, well, what What in heaven's name are we going to talk about?

So, they focused in great detail on the 956 K? And the questions were answered, that's all good.

A lot of what was answered, was really just confirming information that was already out there.

But what struck me most, Jim, what struck me most about their missed opportunity was not only that they failed miserably to address key issues after delaying this for a month. But it was the way in which the stakeholders were treated. We were patronized.

We were insulted, that is to say the entire the entire engagement session was demeaning. It failed to do that which the program needs most answer key questions and there was no engagement. You know, there was no opportunity to submit questions during this session. All of the questions that were answered, were pre-selected, who knows when, by the agency, and when I tell you they did so with this Cheshire Cat grin on their face, believing that they were doing something helpful, it is an understatement.

I don't understand how they could take pride in what they did. It was an incredibly frustrating. hour and a half hour and 20 minutes, whatever it was. They ended the session 10 minutes early, leading us to believe that no other questions had been proffered. And in the meanwhile, several questions had been proffered in their chat box that were completely ignored. So, it leaves us wondering, you know, what, what is it about this program that boggles the CIS as much as it does? Is there a what is it? I mean, is it is it just too complicated? Is there a predisposition based on the culture of the agency to protect the homeland to just say no, is it is it?

Is there some animus there? I think that's a ridiculous possibility. But I mean, we're wringing our hands wondering if it might be true. It's just, it was an unfathomably disappointing and frustrating experience. And I was embarrassed for the folks from CIS who conducted the Corps engagements, well, not that it will make you feel any better.

But I've heard instances like this in other departments engaged with the part of the public, which their program interacts. And they've had similar experiences.

**Murtha:** *It seems as though, and this is a rationalization on my part, that there's a level of arrogance exhibited on into part of the permanent bureaucracy in DC, where, you know, they're all civil service. They're not going anywhere.*

*They get to the things when they when they want to, and there doesn't seem to be any sense of urgency that you would find an unbiased on this in a private sector, private sector as a whole other standard of, of operations, that are required to be a success as an employee or a manager, that aren't really required inside a government structure. You know, it's, it's hard to fire somebody, it's hard to discipline somebody. They don't make any more money if they do their job better than somebody else.*

*So, I think, and again, this is a generalization, I'm sure that there are plenty of agencies that are firing on all cylinders, and doing the job that they're paid to do. But you hear these stories, and you were talking earlier about, you know, bad news, getting all the clicks. That's true to some degree. But this is more this happens more often than it should, as far as I'm concerned.*

**Grau:** So it's difficult to hear that. Yeah. I mean, you're right. I mean, there are agencies that are firing on all cylinders. And even if you know, they misfire, routinely, it would not rise to the level of frustration that we experienced on April 25, you know, and in previous lives, I've worked with what some would consider, you know, the worst of the worst, you know, I've been I've had opportunities to engage with the Department of Energy, the Department of Defense, the Department of Education, the Department of Labor. I've never, ever been treated, I've never, I've never been patronized.

And that's what strikes me the most out of all of this. And I'm just wondering where that where that attitude comes from? And let me you know, and I'll step back again, and say this to this particular program, and you and I were talking about it before we jumped on.

It's fascinating, because it combines two incredibly complicated worlds, immigration, and

economic development on their own, those are complicated areas of expertise, you know, economic development, you know, requires understandings of everything from securities law to local politics, in some instances, and the development of capital stacks and investment protocols and offering agreements and a lot of legalese. Immigration, I mean, just look at the news, it's incredibly complicated to throw both of those into the same pot and give it a stir, would give anybody a real challenge.

And so, you know, I can't, I cannot fault anybody for stumbling, you know, when faced with the type of detail that we're talking about here, what I can't excuse is the way in which people pick themselves back up to redress the matters. I can't excuse being patronized. I can't excuse a simple admission of, we don't know, we'll get back to you. Here's a timeline. These are things that I think are not public sector. They're not private sector.

**Murtha:** *It's courtesy, I guess, in my experience it's that kind of attitude is not just doesn't spawn spontaneously, it's probably a something that's the kind of message or attitude that starts at the top and then filters on down. And that's a guess on my part. But I've been around a little bit. I've been around government a long time. And politics and generally, the troops are reflective of the attitude of the general. So yeah, if we can make a loose affiliation between those two things, then we might be on the money on to something here, but you know, it's their government. We only pay for it.*

*That's okay. I got a million of them. Alright, let's move on to the visas, which are sort of central to the whole program. How many are there each year and are there enough projects in the offing to absorb all the people that would that want to come in?*

**Grau:** Yes, there are 10,000 visas per year, and I am just not smart enough to quote you chapter and verse from the State Department bulletin as to how many are available for what country the extent to which some employment visas spillover carryover, that sort of thing.

Arguably, there are 1000s of visas that are available to the EB 5 category that are carried over. But I can't speak to any of that I'm just not smart enough to do it, I can tell you that.

There are 10,000 visas per year allotted to the EB 5 program.

Unique, I believe, I believe, I'll qualify this within I believe, unique to the EB 5 program. derivatives, that is to say, the spouses and children of those seeking to be an investor are also allotted a portion of those 10,000 visas. So on average, if you have one investor, with one spouse and two children, you basically remove two thirds of the available visas to investors themselves. And so arguably, you're down to 3333 visas available to investors. If we didn't count derivatives, it would be phenomenal. Because to answer your second question, there are enough projects in the United States to easily absorb 10,000 investors every year, okay.

**Murtha:** *Let's stay on visas and particularly China. The rhetoric in the bellicosity between the US and China has gotten worse the past couple of years. If memory serves me correctly, Chinese nationals used to be the primary foreign participants in the EB 5 program. Have the difficulties between the US and China affected the participation by the Chinese in the EB five system?*

**Grau:** That's a good question. I'm going to I could step in hot water here. But I'm going to say no, it really hasn't. That's not what has impacted Chinese participation. What's impacted Chinese participation is the backlog of visas available to Chinese investors. And a reluctance among Chinese investors to invest in a project in the United States and wait seven, eight years, until a visa is available for them and their family. It's not the bellicosity between the US and China. It is just a simple numbers game that has slowed the number of investors from from China and hopefully that's, you know, hopefully with certain elements of the new reform and Integrity Act that can be alleviated or ameliorated in some way.

For example, there are set asides in the, in the law, to provide visas for projects or investors in projects that qualify as rural in nature or qualify as infrastructure in nature. And those set asides create new lines that that might impact the backlog. Some would say, it's just going to quickly fill up and create new backlogs for those satisfied categories. We're gonna have to wait and see.

But to the extent geopolitics plays a role in a decision that impacts the viability of the EB 5 program.

Those decisions are based in the US. There are still more than enough Chinese families

who want to get out who want to move their families invest in the United States, and take advantage of everything the United States has to offer outside of China.

**Murtha:** *Which countries are showing the most interest in this program?*

**Grau:** India. We're seeing an uptick in Vietnam. We're also seeing increased interest from Latin American countries. And surprisingly, we are seeing interest from Africa and Nigeria in particular, a lot of folks are asking basic but very cogent, well informed questions about the program, how it works, what they do to get involved.

Even some questions pertaining to the nature of source of funds. And if I mortgaged my house, I'm able to use the, you know, some route some, some pretty detailed questions as well. But it's refreshing to see because it means that there will be new markets for EB 5 pieces in places beyond. Beyond Asia, beyond China, and Vietnam, like I said, India, there's always been a large, a large interest from there. But yeah, Latin America and Nigeria. It's a worldwide interest. It's just a question of making sure people have the right information.

**Murtha:** *Okay, let me end on this. In your opinion, has the reform legislation righted the EB 5 ship in as much as it really needed it? Or is there still work to be done?*

**Grau:** Well, in my view, I think there's work to be done. I think that work is squarely in the court of USCIS. I am proud of all the members of II USA, and as well as many as well as those who are not the industry has risen to the occasion. You know, there was a lot of concern, and Pearl clutching early on that we were just not going to be able to get, for example, Migration Agents and broker dealers to disclose everything that they were earning on these deals for referring investors what, you know, the 956 K that I mentioned before, that just hasn't happened.

You know, the industry has risen to the occasion, the industry understands the need for transparency and honesty, and integrity and fair dealing. It understands that in order for us to win a reauthorization, and 2027 all of that has to be clearly and on the table and tangible to policymakers. The work that has to be done in order to really meet the goals of RIA is not on us. It's on CIS. And I hope that they can rise to the occasion as well.

**Murtha:** *Well, I don't know if you're comfortable with that. But I guess that's the world we live in right here.*

**Grau:** I am not comfortable with it. But it is the world we live in. And there's enough good things in the world we live into. To help me sleep at night many events. So onward. You don't mean there's always room for improvement.

**Murtha:** *Absolutely. I think we can agree on that.*

Well, that's all the time we have for today's program. Aaron Grau of II USA. Thank you for your time and a very interesting discussion.

**Grau:** You bet Jim, thanks so much for having me again, look forward to the next time we connect.

**Murtha:** *The preceding podcast was a production of Macallan Communications publishers of Homeland Preparedness News. If you have a topic for a future program, just go to [www dot homeland prep news.com](http://www.homelandprepnews.com) and look for the podcast section on the front page.*

*Until next time, I am your host Jim Murtha. Be well be safe, and be prosperous.*