

# KIM: Kushners put spotlight on EB-5 “Golden Visa” program

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A year ago I wrote about the controversial EB-5 Immigrant Investor Program, whereby foreign investors (and their immediate families) can acquire coveted lawful permanent resident (LPR) status if they invest \$500,000 in a project that creates at least ten jobs for U.S. workers. With a new administration and rhetoric regarding immigration policy and potential conflicts of interest running hot, this is a good time to revisit the topic.

Jared Kushner is President Trump’s son-in-law and special adviser. Until January, he ran the family-owned Kushner Companies, which is planning to build a pair of luxury apartment towers close to Manhattan. According to news reports, Kushner’s sister Nicole Meyer was recently in China seeking investments from wealthy investors, touting how a \$500,000 investment could lead to LPR status.

The uproar was immediate.

Congress created the EB-5 Program in 1990 to stimulate the U.S. economy through 1) capital investment by foreign investors in 2) new commercial enterprises, leading to 3) job creation. The original aim was boosting disadvantaged areas by spurring the development of **projects that wouldn’t otherwise happen**.

The stated minimum investment is \$1 million, but the threshold is lowered to \$500,000 for projects in a “Targeted Employment Area—TEA” (i.e. a rural area or an area experiencing unemployment of at least 150% of the national average). Since developers know foreign investors’ principal motivation under EB-5 is migration, not return on investment, they view EB-5 as a source of cheap financing. With a large project, the developer can save millions in financing costs vs. conventional borrowing.

**Further, because it’s important to the developer for the project to be located in a TEA, developers have been able to creatively stitch together multiple contiguous census tracts to create “artificial” TEAs.** Thus, a rich neighborhood is magically transformed into a TEA by linking with nearby poorer neighborhoods. Critics of the EB-5 Program cite this “gerrymandering” as a key abuse.

According to a report from the Congressional Research Service (public policy research arm of the U.S. Congress) <https://fas.org/sgp/crs/homesec/R44475.pdf>, there are 10,000 conditional visas available annually for foreign national investors and their “derivatives” (i.e. immediate family members). On average, each investor brings two derivatives, so the 10,000 is split 1/3 investors and 2/3 derivatives. Foreigners receiving EB-5 visas have conditional residence status. After two years, the individual must apply to remove the conditionality (i.e. convert to full-LPR status) by proving sustained investment and job creation. In 2015, **Chinese citizens accounted for 84% of all EB-5 visas**, thirty times more than second place Vietnam.

It makes sense an investor in Beijing is going to feel more comfortable investing in a project headed by a name brand developer located in a major city. Indeed, The New York Times reported Kushner Companies (when Mr. Kushner was still at the helm) received \$50 million in EB-5 financing for a Trump-branded luxury tower that opened late last year near Manhattan. This was hardly unique, as all developers love cheap EB-5 financing.

Unlike the original aim of EB-5, these projects would have happened anyway. Access to cheap financing just increases profits of developers. The winners are major cities and big name developers foreigners are familiar with. The losers are the rural and distressed areas the program was intended to boost. It’s high time to reform this “cash-for-visas” boondoggle.

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