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H.R. 4259 – The Employment Benefit Act

Background on EB-5 Visas

- One of five categories of employer-sponsored visas, the EB-5 immigrant investor visa was enacted by the Immigration Act of 1990 to attract foreign capital to the U.S. and create jobs for American workers in the process.
- Annually, 10,000 EB-5 visa numbers are available, with 3,000 reserved for the pilot Regional Center Program, which provides visa eligibility for foreign investors or entrepreneurs who create at least 5 jobs for U.S. citizens or lawfully authorized immigrants, in a U.S. Targeted Employment Area (TEA).
- To obtain an EB-5 visa, applicants must: (1) establish a business or invest in an existing business that was created or restructured after November 19, 1990; (2) invest \$1 million (\$500,000 in a TEA) in the business; and (3) create full-time employment for at least ten U.S. workers (or 5 in a TEA).

What does “The Employment Benefit Act” do?

- **Streamlines application by providing clear expectations for investors and entrepreneurs:**
 - Permanently reauthorizes the pilot Regional Center Program.
 - Creates an optional \$2,500 Premium Processing fee to expedite review and have a determination of the application within 60 days.
 - Amends the definition of Targeted Employment Area (TEA) to include any of the following:
 - Rural area
 - High-unemployment area (at least 150% of the national average rate)
 - County with 20% or more population decrease since 1970
 - Area within boundaries of a state or federal economic development incentive program, including Enterprise Zones, Renewal Communities, and Empowerment Zones
 - Area designated as a TEA by a state agency authorized by the Governor
 - Area designated as a TEA during two years period before visa application
 - Establishes an up to 4-year max extension period for visa application if applicant can show:
 - Good faith adherence to business model
 - External circumstances outside applicant’s control delaying filing
 - Such circumstances can be resolved within the specified period
- **Increases number of EB-5 visas into the U.S.:**
 - Increases set-aside of visas for the Regional Center Program from 3,000 to 10,000
 - Creates a new class of eligibility, the so-called “Start-up Visa”
 - Foreign entrepreneurs are eligible for a “Start-up Visa” if their business plan attracts either:
 - \$250k from a venture capital operating company (or an entity owned by a v.c.o.c.) that is primarily U.S.-based
 - Registered under Investment Company Act of 1940 or exempt from registration
 - Organized or incorporated, and domiciled, in the U.S., and majority

ownership is U.S. citizens or persons lawfully admitted to the U.S. for permanent residence;

- OR \$100K angel investment (an investment in a commercial enterprise that was not, prior to such investment, owned or controlled by the investor, any family member of investor, or any entity owned or controlled by immediate family of investor) from an angel investor, who is either
 - Any individual who is a U.S. citizen or immigrant lawfully admitted to U.S. for permanent residence, or any entity wholly owned and controlled by U.S. citizens or immigrant lawfully admitted to U.S. for permanent residence;
 - OR a entity with a track record of funding entrepreneurs (at least 5 angel investments totaling at least \$250k during the 3 years preceding the completion of the agreement at hand;
- AND can show that agreement is either in process of being carried out or created the minimum number of required jobs (5 in a TEA, 10 otherwise) or generates a profit and at least \$1M in revenue.

Further Reading

- Businessweek: Let's Give Visas to Startup Founders (http://www.businessweek.com/technology/content/dec2009/tc2009121_842902.htm)
- Wall Street Journal: Start-up Visas Can Jump-Start the Economy (<http://online.wsj.com/article/SB10001424052748704402404574525772299940870.html>)
- Denver Business Journal: Polis wants foreign company founders to be allowed to stay in United States (<http://denver.bizjournals.com/denver/stories/2009/10/05/story2.html>)
- Daily Camera: Kick Start for Start-ups (http://www.dailycamera.com/ci_14173811)
- Publisher's Notebook: Start-up Visa Makes Sense (<http://www.bcb.com/article.asp?id=103691>)
- Wall Street Journal: Investors Try to Open Door to Foreign Entrepreneurs (http://online.wsj.com/article/SB126282269345218789.html?mod=rss_Deals_and_Deal_Makers)
- BBC: New Visa Proposal to Help Create The Next Big Thing (<http://news.bbc.co.uk/2/hi/technology/8417510.stm>)
- CNN Money: What to Create Jobs? Import Entrepreneurs (http://money.cnn.com/2009/12/14/smallbusiness/entrepreneur_visa/index.htm?section=money_latest)
- Science Magazine: Two U.S. Bills Seek to Lure Immigrant Entrepreneurs (<http://news.sciencemag.org/scienceinsider/2010/02/two-us-bills-seek-to-lure-immigr.html>)
- Denver Post: One small step on immigration (http://www.denverpost.com/opinion/ci_14445193)