EB-5 Attorney Workshop

Source of Funds: Overcoming Common Obstacles

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Panel Summary

1. Putting together a successful I-526 Petition
2. Strategies for proving lawful source of funds
3. Country specific issues
4. *Break*
5. Recent Challenges – RFEs, audits, and site visits
6. Tackling indebtedness Issues
7. Looking ahead – proposed changes

Putting together a successful EB-5 Petition

- What is the clients intent?
- Other visa options?
- Who should be the investor?
  - Taxes
  - Residency requirements
  - Criminal/Immigration violations
- Regional center/direct investment/pooled direct?
- Documenting source and path of funds.

Strategies for Proving Lawful Source of Funds

- Administrative Fees
- Company Equity
- Accumulation of Income
  - Stocks/Mutual Funds
- Gift of Funds
- Home Equity

Administrative Fees

- History

  Prior to 2011, admin fee did not need to be sourced.
  Between 2012-2015, USCIS required administrative fees to be sourced.
  In 2015, USCIS confirmed that it did not have any regulatory or statutory authority to require that administrative fees be sourced.

- Should investors document source of administrative fees?

Company Equity

- Types of documents to prove source of funds
  - Funds used to establish company equity
  - Company is active and engaged in lawful business
  - Sufficient funds to lend to investor
- Using undistributed profits as collateral
- Transfer of funds from company directly to project escrow

Accumulation of Income

- Using “net worth” argument
- Type of documents needed to prove accumulation of income
  - Documenting receipt of income
  - Documenting accumulation of income
- Are tax returns mandatory?

Gifts

- Who can gift funds?
- What type of documents are needed from giftor?

Home Equity/Sale

- Types of documents needed to prove source of funds
  - Purchase of property
  - Value of property
  - Loan using property as collateral
- Change in address of property
- Purpose of loan/restrictions on loan
- Owner of collateral
- What if property sold or loan repaid prior to adjudication?

Country Specific Issues - China

- Transferring funds out of China
  - 11 friends and family
  - Parallel transfers
  - Aggregation issues
  - New banking changes in China
- House price vs. decorations for sale of property
- Financial products
- Exponential increase in property value

Country Specific Issues – India

- How to document black money
- Multiple sources of funds
- Hindu Unified Family and co-mingling of funds
- Transferring money out of India

Country Specific Issues - Iran

- OFAC
  - Specific vs. General License
  - Specifically Designated List and Blocked Persons
- Transferring funds
  - Hawala System/Sarrafi
- Banking restrictions on RC's
- Processing times for Iranian investors
- Administrative Processing and Military Service - IRGC

Country Specific Issues - Vietnam

- Cash economy
- Large deposits prior to transfer
- Investment in gold
- Transferring money out of Vietnam

Country Specific Issues – Russia

- Cash Economy
- Distrust of banks – lack of records
- Funds in safety deposit boxes

Recent Challenges and Solutions – RFEs

- Employment History
  - Letterhead
  - From current employee authorized to make such statements
  - Ownership interest in employer

- RFE risks for sale of property
  - Sale of furniture and fixtures in sales documents

- RFE risks for company equity
  - Proving that company is active and engaged in lawful activity

What is the Indebtedness Issue?

- Investor obtains a home equity loan using real property as collateral. Real property is fully owned by a third party (usually parent or child) or co-owned by investor and third party.
- Until 2014, USCIS approved cases with the above fact pattern.
- In late 2014, USCIS began issuing NOIDs/Denials on such cases arguing that 8 CFR 204.6(e) requires investors who invest “indebtedness” as capital to secure the capital on assets owned by the investor

Arguments against Indebtedness

- Investor has invested cash and not indebtedness
- Investor's equity in the collateralized property is more than $500,000
- Co-owner gifted his/her share of the loan proceeds to the investor
  - Co-owners of property listed as co-debtors and co-mortgagors on loan document

Investor Audits

- Inter-agency Communication
  - USCIS, CBP, State Department
- Independent Investigation
  - Facebook, LinkedIn, government databases
- Site Visits
  - Banks
  - Companies
  - Local Landownership Registrar/Recorder

Tips for Site Visits

- Prepare investor as if dealing with H-1B site visit
  - Identify at least 2 point of contacts within the company
  - Train receptionist
  - Request name/badge of officers
  - Take detailed notes and copies of all documents reviewed or provided to the officers.

- Post-Audit follow up
  - How to defend a Notice of Intent to Revoke/Notice of Intent to Deny

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