EPR
ECONOMIC & POLICY RESOURCES

Practice Points for Business Plans and Economic Impact Studies—Mid-Florida AILA for Ed Beshara's Panel—Jeff Carr (Clearwater, FL October 26, 2018)

- **THE EB-5 PROJECT BUSINESS PLAN: High Quality Investor Petitioner Filing documents are key to securing your client's Requested Immigration Benefits. The business plan is a very important document in your client's case file**
  - Solid client documentation begins with a "Matter of Ho" Compliant Business Plan which covers all Project-relevant areas mentioned in that precedent-setting 1998 decision (was for a Direct EB-5!); including
    - **Business description** (A couple of paragraphs that accurately describe what you are trying to accomplish with the project)
    - **Business structure** (Include a complete organizational chart that clearly labels the NCE and the JCE, management structure, relationship to fund raisers and the Regional Center)
    - **Marketing Plan with target market analysis** (How specifically the new or sufficiently expanded business is going to reach its target market and successfully compete with other businesses in its market area; Best to include a 3rd party market study or at least a real estate appraisal for the property that would be used for bank financing
    - **Competitive/Competitor Analysis** (List the identity of and general approach of the businesses' key competitors)
    - **Key Project Personnel's Relevant Experience** (Highlight the experience of the project managers' and owners' relevant competencies to manage/operate the subject business)
    - **Required Licenses and Permits** (Include an inventory of all needed to develop and operate the business—including when applied for and when received or expected to be received—this is a litmus test for case officers these days)
    - **Staffing timetable for hiring** (Develop quarterly and present annually—but keep it conservative because things happen—very important for Direct EB-5 projects)
    - **Job descriptions** (In as much detail that you can and keep it still reasonable)
    - **Budget & financial projections** (Typically 3 to 5 years—with 5 years preferred—also important to keep it conservative)
  - The EB-5 project business plan is a foundational document
    - **It describes what investments are going to be made** (e.g. how much-from whom) and when
    - **Establishes a timeline for the development** (including construction) and operations of the project
    - **Lays the foundation for the job scoring in the economic impact study** (See below)—which essentially scores the EB-5 program-eligible job impact of the business plan
    - **Investors (YOUR CLIENTS) are going to rely on that information** as they file for the requested immigration benefits. Your client's case will be evaluated on the credibility of this document!

- **THE EB-5 JOB IMPACT STUDY: High quality investor petitioner filing documents also include a compliant EB-5 Job impact study**

- Typically, the economic (job) impact study scores the project development and on-going business operations activities as outlined in the business plan. Can include:
  - **Project development and construction spending**– Which scores the detailed capital investments made in this regard INCLUDING credible back-up/testimony/support for all such expenditures used as inputs into the input-output model for EB-5 eligible job scoring
    - Must only include USCIS-allowed expenditures; typically hard construction costs, demolition, site preparation, infrastructure and some "soft costs."
  - **Operations** – certain business activities will be undertaken
    - Economic study can utilize operations activities for project-created jobs if needed to support the EB-5 capital stack (either projected revenues (most common) or direct staffing projections as the model input)—BUT THIS APPROACH IS CURRENTLY MORE RISKY THAN "CONSTRUCTION ONLY" PROJECTS
    - As with construction expenditures, same credible support for revenues or staffing is needed if Project documentation uses jobs created by operations activity (can ask more questions)
- Job Studies have rules that do not allow all job creation by the Project to be counted for EB-5 Program purposes
  - **"24 month rule" for construction activity** – allows for economically direct and indirect jobs to be counted
    - Presumption is that construction timeline is less than 24 months unless it is proven to be 24 months or longer
    - Increased scrutiny from USCIS to demonstrate that construction timeline is 24 months or longer: USCIS requires credible testimony-support to establish conformance with 24 month rule
    - If sufficient credible evidence is not provided to prove 24 month timeline, or the construction timeline will last less than 24 months, then only economically indirect jobs can be calculated from the construction expenditures
  - **No clear cut guidance on what "soft costs" can be included in EB-5 job impact studies**
    - In general, need to be 3rd party expenditures (such as for architectural and engineering spending), but seems to change from case officer to case officer
    - Conservative approach is recommended—try to stay out of the "grey area" (arguing costs you and your client time—even when you win the argument!)
- Matching up the economic study with the USCIS requirement that job creation be demonstrated within 2.5 years of I-526 petition approval at the I-526 petition review phase of the immigration adjudication timeline can be "tricky"
  - **But this must be done and often determines the EB-5 project's timeline**—which may or may not match the full development-construction timeline of a project

400 Cornerstone Drive, Suite 310 | P.O. Box 1660 | Williston, VT 05495-1660
(802) 878-0346 | (800) 765-1377 | info@epreconomics.com | www.epreconomics.com
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