



Lesson from Termination of the Canadian Immigrant Investor Program – Did the US Congress get it right for EB-5 Program?

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IMMACT90 is a legislation that used to be regarded by immigration lawyers as a milestone for deportation issues. The act significantly restructured the U.S. immigration system and included changes to non-immigrant visa categories, deportation rules, and increased legal immigration limits, among other important revisions. For the last few years, however, IMMACT90 is quoted as being the piece of legislation that established the EB-5 program.

Congress established the EB-5 program to stimulate the U.S. economy by giving foreign entrepreneurs the opportunity to permanently live and work in the United States after they have invested in an American commercial enterprise. In 1993, Congress created the Immigrant Investor Pilot Program to increase interest in the EB-5 visa program. This new pilot program established EB-5 Regional Centers. The program has been revised and reformed on several occasions giving us what we have today. In contemplating the reasoning behind the demise of the Canadian Foreign Immigrant Investor Program (FIIP), we ask ourselves, did Congress get it right?

The Canadian Immigrant Investor Program (FIIP)

The Canadian Foreign Immigrant Investor Program (FIIP) had been one of the most popular investor immigration programs in the world. It was created in 1986, 4 years before EB-5 was introduced, by the Canadian federal government to promote the immigration of business people and their families. (There was a flood of immigrants to Canada at the time Hong Kong reverted to China from Britain.) The Quebec Immigrant



Investor Program (QIIP) project will continue to exist withstanding the termination of the FIIP.

The requirements of FIIP went through revisions in 1999 and 2001. It remains the one of the least expensive of programs among the Immigrant Investor Programs in the world. On June 26, 2010, the qualification requirements were doubled and the program was briefly suspended while the new changes came into effect¹. The changes went into effect in December 2010. However, CANIIP continued to have a severe backlog, with a potential wait time of 12 years. The Toronto Sun ran a story on October 7, 2011 that quoted Jim Versteegh, a federal immigration program manager at the Canadian consulate in Hong Kong, stating that there are about 22,491 millionaire investors worldwide who've applied and are waiting to come to Canada.²

New Opportunities?

The termination of the Canadian Immigrant Investor Program certainly brings new opportunities as well as a challenge to the US EB-5 Program. Upon termination, more than 75,000 pending applicants would have to find a new destination to immigrate. Assuming each investor could invest 800,000 Canadian dollar, the grand total would be around US\$30 billion dollars could theoretically be available for direct foreign investment. These investors are likely to choose other destination countries to place their investment.

We believe that the U.S. is the top choice because of the vitality of the economy, superiority of the education and simply the proximity to Canada. Approximately 80% of the pending applicants in the Canadian program are from China.

¹ To be qualified for this program, you need to have at least two (2) years of business management experience, have minimum net worth of CAD\$1,600,000 (legally obtained); alone or with your accompanying spouse, make an investment of CAD\$800,000 and meet certain health and security requirements.

² <http://www.torontosun.com/2011/10/07/immigration-backlog-keeping-millionaires-out-of-canada>



Anyone already dealing with the migrant agencies in China knows that most, if not all agencies handle or have handled Canadian Immigration in the past. This includes the larger first tier agents who seek EB-5 investors. In conversations with migrant agencies over the years, we are often told that many investors would prefer the U.S., but have chosen Canada because the return of their money was guaranteed. The health system also guarantees medical treatment and often a third reason was because that investor already had relatives in Canada. CANIIP is more well-known, this particular program began in 1986. The commissions were also higher than what was received from the U.S.

If even a quarter of the rejected CANIIP would invest in the EB-5 Program in the U.S., undoubtedly EB-5 visa regression for Chinese investors will be a reality. We feel that this is an excellent opportunity to promote Immigration Reform and increase the existing quota (for any politicians who are listening!).

In addition, the available investment funds from the Canadian program may change the landscape of EB-5 marketing. In the past week, Mona Shah & Associates have been approached by several agents from mainland China, Hong Kong, India and Canada for possible transfers of their investors to the EB-5 program. EB-5 regional centers and project owners usually need to budget large dollar amounts for traveling expenses, among other things, to attend overseas Expo, seminars and meetings, and to pay high commissions to the migration agencies. The sudden windfall of investors from the Canadian program may change the method and process of EB-5 fund raising.

Are there any lessons to be learned from the closing of the Canadian Investment Visa Program?

The Ministry of Citizenship and Immigration in Canada confirmed in a statement that the existing federal Immigrant Investor and Entrepreneur Programs provide limited economic benefits to Canada. Generally speaking, government sponsored projects are less efficient



due to the bureaucratic procedures and political risks. This is really evident in the case of the Canadians.

- **Little New Money:** There is very little “new” money coming into Canada. Almost all initial investments made through the program come from loans from Canadian banks to provincial governments—unlike EB-5.
- **No Long-Term Economic Contribution:** Most immigrant investors in Canada have not been making long-term positive economic contributions. Statistics have shown that immigrant investors are less likely, compared to other immigrants, to stay in Canada over the medium to long term. They report employment and investment income below Canadian averages and those of most other economic immigrants. Over a 20-year career, an immigrant investor pays about \$200,000 less in income taxes than a federal skilled worker and almost \$100,000 less in taxes than one live-in caregiver.
- **Little Capital Actively Invested:** The amount capital actively invested in economic development initiatives in Canada has been limited. The requirement for provinces to guarantee repayment of the investments after five years limits their ability to invest funds into more high-risk initiatives that tend to reap greater rewards for Canada in terms of true innovation and job creation. In the past 15 years, less than half of the Immigrant investors’ funds are actively invested in the Canada.

In contrast: The EB-5 Program is designed to stimulate the U.S. economy through job creation and capital investment by foreign investors. What creates jobs? Modern economic theories conclude that jobs are created by investment when an opportunity exists. Opportunity is created by innovation and demand. The EB-5 Program increases the capital expenditure with the objective of increasing or creating the capacity for producing goods or services. Yet, the U.S. EB-5 Program needs to clear out the backlog and become more transparent, efficient and effective.

EB-5 Program as a Comparison to the Canadian Program



The EB-5 Program in the US has avoided all of the vices that caused the termination of the Canadian Program. In the EB-5 Program, the investors invest cash or “new money” into the mostly privately owned new commercial enterprise. The investment is placed “at risk” and the return of the funds cannot be guaranteed in any form. The funds are invested into job creating and economic development initiatives.

Job Creation and Money at Risk: The very elements that have caused investors to be cautious of EB-5 have actually proved to be an advantage. Engaging the private sector by placing new capital at risk has undoubtedly boosted the economy. EB-5 projects have sprung up all over the US. One example of this can be seen here in New York City. The Barclays Center in Brooklyn borrowed \$228M in EB-5 money for a \$1.4 billion infrastructure and arena fund that paid for a new subway entrance, parking facilities, municipal water and sewer line upgrades and other work in the vicinity of Barclays Center. The arena, which has been built for the National Basketball Association’s New Jersey Nets, is an anchor of the \$4.9 billion development, that included up to 6,430 housing units and 247,000 square feet of retail space. It has proved to be a success. The developer Mr. Ratner has been quoted saying that he would not have been able to complete the project without EB-5 funding.

Will Canada imitate the US and move towards an EB-5 type of program?

It is our belief that even if Canada implements an EB-5 styled investment program, it still may not give Canada the desired results. This is because the economy and population of Canada just cannot compare to the U.S.



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Mona Shah, Esq. is the principal of Mona Shah & Associates in New York City. The firm has assisted many Regional Centers and Investors in navigating this complex, nuanced and constantly changing area of immigration law. Mona has more than 18 years of legal experience in immigration law and extensive knowledge in EB-5 law. Mona's substantial litigation background includes her representation of clients in both state and federal courts. She has handled complex immigration law appeals before the US Circuit Courts of Appeal nationwide. Before coming to the US, Mona was a Crown Prosecutor in the UK. Mona has authored and published numerous articles and a book and has spoken extensively on EB-5 both in the US and overseas.

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