

Kate Kalmykov ([00:10](#)):

Hi everyone, and welcome to the Immigration Insights podcast. My name is Kate Kalmykov. I co-chair the Global Immigration and Compliance Group at Greenberg Traurig, and I am your host. I'm honored today to be joined by Marko Issever, a very prominent speaker, a broker-dealer, a veteran of the EB-5 industry. And we're going to be talking today about the role of a broker-dealer in EB-5 offerings. Marko, can you tell us a little bit about yourself, your experience, and your work before we get into the program?

Marko Issever ([00:49](#)):

Yes, thank you, Kate. It is actually my honor to be in this podcast with such a prominent immigration attorney like yourself. You're just too modest, but the credit is due here and you deserve it. On the other hand, you called me a veteran, which I appreciate, but if I am a veteran, I'm really a veteran of interest rate swaps. That's what I really know. I know derivatives, I know interest rate swaps. I know banking. As far as EB-5, it's really a ten-year thing for me. I started this about 10 years ago, and so something I picked up, I guess, because of my background. I used to run the derivative desk of Bank of New York before this. And I'm happy that I almost stumbled to this industry, to be honest with you, and have the pleasure and honor to meet with people like yourself.

Kate Kalmykov ([01:57](#)):

Thank you so much.

Marko Issever ([01:58](#)):

And work with people like yourself.

Kate Kalmykov ([02:01](#)):

So many kind words. Thank you, Marko. So tell us a little bit about why EB-5. What does a broker-dealer do in the EB-5 space and why does a project need to work with a broker-dealer? Why do investors need to work with a broker-dealer? What role do they have in due diligence?

Marko Issever ([02:24](#)):

Yes. Without a broker-dealer, I really want to say that an investor would be pretty much at a loss because the alternative is really for if they have already engaged an immigration attorney for them to go to several regional centers. And these regional centers will basically show them their transaction, is going to highlight what is their strength, and the investor will be basically by themselves to be able to compare one project with the other. And they have, really, very little help in terms of comparing one project with the other and making sure that they're not really, at the end of the day, putting their money in the wrong place. With the RIA that passed three years ago, now more than ever, there is an encouragement, I would say, for investors to be informed. So what do we do? We represent many projects. We put them in a spreadsheet in different columns, and we have 50 odd criteria that we look at.

([03:50](#)):

And I want to say that not every project checks all the boxes. So we're talking about job creation, which is obviously, as you know, very, very important criteria in getting your green card, are talking about our capital structure in terms of equity in the deal, the stability of the transaction, and maybe more importantly, we're also talking about the footnotes. The stuff that is sort of buried in the PPMs. And

typically an investor would get a brochure and the brochure will highlight very, very outline of a transaction. But as the saying goes, the devil is in the details. And when you look at the PPM, where it has to be disclosed, then the truth comes out. So all of that is a broker-dealer's, actually, not only function, but the responsibility to explain to an investor so that the investor can make a informed decision.

[\(05:12\)](#):

I just want to say this, which we are not allowed to have a sort of biased conflicted interest in a relationship with any regional center whatsoever. So this is the first thing I talk to regional centers when we get together and say, we'd love to represent you, but truth be told, when an investor comes to us through an immigration attorney, from a referral, however an investor comes to us, we have to show the investor alternatives. In other words, this is really our function. So we don't have a conflicted relationship.

Kate Kalmykov [\(05:57\)](#):

It's a very important point that you make in order to qualify for the EB-5 Green Card, an investor needs to make an investment in a US business. And for many people, maybe they've never even been in the United States, maybe they're overseas, and even if they are in the United States, they're unfamiliar with many of these deals. Most EB-5 projects tend to be commercial real estate deals and investors are putting their money into a fund, a special purpose vehicle that then is going to provide financing to the project. And for many of them, obviously we can guide them on the immigration, job creation you mentioned is a requirement for the EB-5 program.

[\(06:42\)](#):

Unlike other countries' programs, our program requires that your investment generate 10 jobs per investor, but the investors always want to know, is this a good investment? Is this a safe deal? Does the project have other financing? What does it mean that they have a letter of intent? What if they don't have any equity? What does it mean in terms of position? Where am I in the capital stack? And these are questions obviously that they need to discuss with someone like yourself who can explain it to them. And this list that you mention of 50 criteria is very interesting because it sounds like it covers not just the immigration criteria, but also what they need to consider from an investment perspective.

Marko Issever [\(07:27\)](#):

Correct, correct. So whether they're going to be in a senior position or whether there is a senior loan and then they're behind it, and there is really no sort of a cookie-cut answer. You and I, last year, we had a opportunity to talk together. We had a conversation, and back then, if I recall, we were talking about a senior loan being better than a senior position. But things have changed. And this is not a religion that you have to be tied to and you cannot change your opinion. And I have changed my opinion, believe it or not, since the last time you and I spoke, I have changed my opinion on that topic. And the reason is because interest rates have been quite high and it doesn't make sense anymore for very, very good sought-after projects to go and get a senior loan, giving the senior position to the EB-5, we know what the benefit of that is.

[\(08:34\)](#):

You're the first one that is going to get the money from the capital stacks [inaudible 00:08:39]. That's obvious. And no longer do you have to be suspicious that nobody wants to lend this project money and that's why they don't have a senior loan. That's not the case. We're seeing many, many very good projects that don't have a senior loan. And, mind you, when there is not senior loan, in return what we

get is more equity. So we're seeing a lot of 50/50 deals, 50% equity, 50% senior position EB-5. Typically, we used to see a 60% debt, 20% EB-5 and 20% equity. So having more equity and not having somebody above you, has obviously its advantages.

Kate Kalmykov ([09:28](#)):

Well, and the market is certainly dynamic. I appreciate you saying you've changed your mind on things. Of course, in immigration we're constantly changing things because the government is changing things and changing their requirements. And also there's market changes. And one of the trends that I think we've seen since the Reform and Integrity Act was passed in 2022 is that more US-based investors are choosing EB-5 for their green card path. And I think there's multiple reasons for that. The first being that the RIA allowed them for the first time to file their green card application concurrently with the EB-5 petition, which allows them to remain in the United States, which is critical if your work visa is expiring, if your student status is expiring and you're looking to stay here, that's super important to you. It also gives work and travel authorization while the green card is pending. And the second reason is India is very backlogged. If you're applying for a green card in an employment-based category like EB-2 or EB-3, you could be looking at delays of up to 60 years, six zero, which is wild.

Marko Issever ([10:41](#)):

[inaudible 00:10:43].

Kate Kalmykov ([10:42](#)):

So a lot of projects now understand that there's this untapped market of US-based investors here in either a student status or a work visa status. And how did they work with a broker dealer to source those investors to help match them up and make their project marketable to these US-based investors?

Marko Issever ([11:09](#)):

Yes. So what you are referring to in sort of the lingo is the Reg D, what we call the Reg D investors. And the Reg D investors, first and foremost, have to be accredited. So the regional centers directly when they work with us, with these investors, we have a onboarding mechanism where we check that they are accredited and they have the wherewithal to be able to invest in the project. But at the same time, I mean-

Kate Kalmykov ([11:45](#)):

And, of course, now we're talking about sort of the interplay between immigration and securities laws with Regulation D, Reg D, being onshore investors, there's a different way in which they can subscribe to a project versus someone offshore.

Marko Issever ([12:02](#)):

Right. So there are different exemptions from registration with SEC. So if they are in US soil, they use the Reg D. If they are applying from overseas, then they can use Reg S. So just technically speaking, they must have heard it while they are outside the first time about the project. Very difficult to prove, but that's what Reg S would require and they have to apply from overseas. So that really is applicable for people who want to move as a family. They're overseas, not the type of people that you're talking about. So the type of people you're talking about, the students, mostly Chinese, maybe others, but

mostly we're seeing tremendous amount of Chinese students with F-1 Visas taking advantage of this concurrent filing aspect.

[\(13:02\)](#):

And as you said, in the market H-1B visa-holding Indian workers, they're EB-2, EB-3, not in this lifetime, they're going to have to find another alternative. So we hold joint seminars, working with a broker dealer lends credibility to the regional centers projects because obviously we wouldn't be doing those joint marketings if we didn't believe that the project hold water and we put the project through the scrutiny. And I have to tell you, Kate, there are so many more projects that we reject and we don't put them into our portfolio of offering or then the ones that we do take and once it goes through that process, then we can market those projects together. Yes.

Kate Kalmykov [\(14:10\)](#):

What about EB-5 projects, looking to raise money for the first time, obviously we've been through really an up and down really since COVID with the markets, with interest rates, which you mentioned, and EB-5 financing remains attractive to many groups, but it seems that for many of them it's daunting because there's securities laws, there's immigration laws, there's marketability. What advice are you giving to them in terms of getting into the EB-5 game or not?

Marko Issever [\(14:43\)](#):

It's a great question. I was talking about it actually yesterday with a colleague of yours, about this because it's really, everybody's trying to find the right answer for your question. And I really want to say it depends. It really depends what kind of project we're talking about here because we're talking about first time. So first time, at least on the developer side, there's no track records. So no track record on the developer side has to somehow be matched with some kind of a track record, at least on the regional center side. So if the project is large enough, if the project is attractive enough to one of the more well-known regional centers, then my advice would be to take that project to them.

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And once they team up the developer with a established regional center, the mere fact that the regional center has looked at the project and decided that this is a project that will probably be placeable, I think that would end up as a successful offering. If that's not the case, and usually that's not the case because of the size of the project. So if the size is too small, let's say they're looking for 10 investors, the job creation doesn't justify. There are no jobs to justify for teaming up with a regional center, then they have to rent the region center.

Kate Kalmykov [\(16:24\)](#):

And even just the costs of putting together the EB-5 offering for 10 investors probably doesn't make sense for a project because you have to pay an immigration attorney, securities attorney, economist, business plan writer, and you of course. So that comes out pricey.

Marko Issever [\(16:41\)](#):

Right. So for those projects, I mean the only realistic recommendation I can make is sometimes they are sponsored or the developers are foreigner themselves. So in other words, they have their own potential investor base. So in those cases, I think it's more hopeful where they can come to place, a company like yours where you will help them with the paperwork, with the offering, we can definitely give them advice how to make the project attractive, whether it's the rate, whether it's the capital stack, whatever

it is. I mean, all those criterias that we're talking about, the ratios as I call them, you can make the ratios strong enough so that when they go out themselves, they will be able to find reception. But unfortunately, many of the times, I have to say this, that they don't listen to us and they're just too attracted with the overall cost attractiveness of the funding.

[\(18:00\)](#):

And they go and spend all this money upfront and they unfortunately cannot get investors. And that's very sad. By teaming up with the right professionals, whether in, as you said, in the business plan writing, immigration attorney, security attorney, broker dealer, the offering will be fine. We will be able to put it together within a reasonable cost. The question always is the question mark whether it's going to be placeable. And as I said, just to summarize, if it's a big enough project that is attractive to established regional center, definitely I recommend them to take it there at least for the first couple of projects. This way they will be able to get introduced to the marketplace.

[\(18:54\)](#):

But if not, then by all means they can. There is a concept of renting regional center. They can rent a regional center and try to find their [inaudible 00:19:05] themselves. What we say to them is that we will take the project, we will do the due diligence on the project, we will give them every advice possible. But I'm telling you here, full disclosure that we're not going to be delivering them 10, 15 investors. We wouldn't do that with a bulge bracket like a big project anyways, as I said in the very beginning, we have an obligation as a FINRA, SEC, by the way, state of Connecticut because we're registered in state of Connecticut and now USCIS, like four government authorities, we are monitored by all of these. So we have an obligation to show investors many, many deals, but what we can do with the first time developers is to guide them at the right path so that they don't end up spending, as you said, lots of money and not get anywhere.

Kate Kalmykov [\(20:03\)](#):

And what about investors? We touched up this on the beginning. You have the list and you guide them, and now they're really trying to make a choice. What are you really focusing on at this point and what kind of questions are they typically asking? I'm assuming it's with exit strategy and fund return. Those are, especially since the price increase, very important for people. It's a misconception that a lot of super high net worth people do, the EB-5 program. A lot of people have saved money. A lot of people are even taking loans to do the EB-5 program, and the primary motivation is always relocate the family. So for the most part, the children can study and work in the US, so obviously fund return from what I hear is a big concern for them. But what about you when you're working with investors?

Marko Issever [\(20:58\)](#):

Great question. So the very, very first question, depending on where they are coming from, if they're really afraid of retrogression sort of coming in very soon as, is it rural, is it not? Is it rural? Is it a urban TEA? Is it infrastructure, does it have the set a size with it. Some have this, I would say a misconception that a rural deal is risky and an urban TEA is less risky. I would say that there are risky rural projects and non-risky rural projects, and there are risky urban TEAs and non-risky urban TEAs, because that's just one criteria, but from many. So the capital structure, the track record, all of these come into play when we're looking at their exit strategy, hundred percent. How are they planning to refinance or sell the project to be able to pay the investors where in the capital stack this investor is. All of these things we're going through with the investor while they're selecting the project, many of them, not surprisingly, are also very sensitive on the tenor.

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So there is no conversation that goes without asking my opinion about the lawsuit that is going on between IIUSA's plead, I guess, and USCIS. People are puzzled the way that is going on. And I just basically say it's [inaudible 00:22:44] above my pay grade to decide what's going to happen. But for the most part, I think whichever way it ends up it will probably be almost a non-event, because most of the projects, good projects, at least, their tenors are within five years. I mean there are some, three plus ones and four plus ones and all that. But I mean, I think, at the end of the day, people are going to realize that this whole thing a non-event but I think one thing good that came out of it is that the old way of looking at things, it's hopefully not going to be the case anymore, especially where you needed to wait for tremendous adjudication delays. And so once that goes away, whether it is going to be two year of usage of the capital by the developer of five, I think what the dictating part will be, the actual PPM, tenor and extensions.

Kate Kalmykov [\(23:57\)](#):

And of course this whole confusion stems from the fact that we had a statute passed in March of 2022, and to date, we haven't had any regulations promulgated. And typically the agency would promulgate regulations within a year. They try to do this by issuing non-binding policy guidance. And so this is why we have this litigation ongoing now. And now we're sort of halfway through the reauthorization of the EB-5 program. The program is now set to expire September 30th, 2027, and investors have to file by September 30th, 2026 to be grandfathered under the RIA of 2022. So I don't even know at this point if the agency has any intention because they haven't set it publicly to promulgate regulations at this point.

[\(24:50\)](#):

And who knows what this program will look like, if it'll be reauthorized, if it is reauthorized, what it will look like. And of course we have the proposal of the gold card by the new administration and it'll be interesting to see if that will be impacting EB-5 in any way. But that's a discussion for a different podcast probably. So Marko, we've talked about how you work with investors, how you work with projects, how you work with regional centers, how do you work with immigration attorneys, how do we work together to help our clients pick a successful project, get them through the EB-5 process? All the way through until they get the permanent green card and even naturalize if they so desire?

Marko Issever [\(25:38\)](#):

Thank you very much for this question. In fact, I will put a plug into one of my articles that I wrote that actually got published by IIUSA where I was basically claiming that immigration attorneys would be doing a disservice to their clients if they are afraid of EB-5 and therefore never bring that up. So it's incredible, and we're talking about immigration attorneys that have been in business for a long time, they can do an E-2 or an L-1 or a O-1 all of that stuff in their sleep just because there is a investment component on the EB-Five. They're just afraid. The way we work together is by each person's, I like to call it, stay in their lane. The immigration attorney's job, at least the way I see it, is to make sure that the investor's source of funds is really old master, so to speak.

[\(26:44\)](#):

And I can't emphasize how important that is because at the end of the day, when you invest in a project, I would say 99.999% of the time, if you're going to get an RFP or a denial, it's going to be either because of source of funds or project had some problem. The only other one, it would be fraud, I guess, that they found something in your background, which for the most part, the type of people that we're dealing with is not going to be the case.

[\(27:22\)](#):

So while that's happening, the source of funds, our job is, as I said before, to guide the investor. So immigration attorneys, one thing they shouldn't be doing is taking the investor and sending them to 2, 3, 4 regional centers and leaving them alone there, time for the investor to be able to make a decision. Unfortunately, that also happens where the attorney will send them to three regional centers they work with and they say, pick one of them and come back. And that is sort of almost implied in there, is there some investment advice going on because why these three and not the other nine or these three and not the other 10 or whatever it is. So when they come to us, as I said, we're not conflicted. At the end of the day, we're not bound to any one of these regional centers, any of these projects. What we want to do is we want to match the investor's, for lack of a better term, utility curve.

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In other words, their risk return sort of appetite to the projects in the marketplace. I am happy to say that we represent most of the projects. We don't represent everything, but we present most of the projects that are worth investing in the marketplace. So they get a very nice cross-section of rural, urban TEA type of projects, and we guide them. So this way the immigration attorney can [inaudible 00:29:12] that they know that their investor is being taken care of, their client is being taken care of in terms of the investment side of things. So they can focus on the immigration aspects of the 526 petition.

Kate Kalmykov [\(29:29\)](#):

[inaudible 00:29:29]. Well, thank you so much, Marko, for appearing today on our podcast, for sharing your insights. I think people don't talk enough about the role of a broker dealer in EB-5 offerings, but it's absolutely necessary. It's necessary for the project, it's necessary for the investors and for the community in general because you certainly perform tasks that, for example, I cannot, when investors need investment advice, they need to know who to go to and what to look at in deciding on a project. So thank you so much.

Marko Issever [\(30:03\)](#):

Thank you. Thank you for the opportunity, Kate. It was a pleasure and honor to be in your program.