Kate Kalmykov (00:10):

Hi, everyone, this is Kate Kalmykov. I co-chair the Global Immigration Group at Greenberg Traurig, and I'm thrilled to welcome you to this episode of Immigration Insights. Today, we have James Sozomenou joining us from Metropolitan Commercial Bank, and we're going to have a very interesting discussion on EB-5, the role of an escrow bank, the Reform and Integrity Act, as well as other visa categories. James, welcome to the program.

James Sozomenou (00:40):

Thanks, Kate, I really appreciate you having me. I know we've done a bunch of these things in the past, but I'm really excited to be on this platform with you. Really appreciate it.

Kate Kalmykov (00:48):

We likewise, are excited. So let's get into one of our favorite topics, EB-5. EB-5 was introduced in 1990 by Congress as a way to entice foreign direct investment into the United States. It also became a vehicle by which US companies could attract foreign direct investment at low interest rates. And in 2008 when we had the real estate crash, the program really took off and became a mechanism by which primarily commercial real estate developers used immigrant investors to fund major projects around the country. The program became immensely, immensely popular, there has been billions and billions of dollars of investment in the United States.

(01:38):

And in 2022 we had a Reform and Integrity Act passed by Congress, because they wanted to ensure, in large part, that the program was used properly, that bad actors were not taking advantage of foreign investors trying to get a green card in the US by using the EB-5 vehicle. And likewise, that the money that investors were going to be investing into projects in the United States was used properly. And so now we have a lot of new compliance requirements for the bank, for attorneys, for projects, and for real estate developers and regional centers, who are the businesses that have the license from the immigration agency to raise funds under the program. So where does a bank come into this, James? Escrow isn't a legal requirement, right?

James Sozomenou (02:32):

Right.

Kate Kalmykov (02:32):

So tell us a little bit about what the bank does in the EB-5 scheme, environment, fields.

James Sozomenou (02:41):

Kate, great question. Banks are generally used in the EB-5 space in an escrow capacity. As you just mentioned, escrow is not a requirement under the EB-5 program, but I think it's safe to say that it has become somewhat of the industry norm to have an escrow agent and an escrow account set up for your investors on the EB-5 side to wire their money to. I think it gives a great sense of security to investors that their funds are being looked after by a third party and a US institution, a US banking institution.

(03:18):

So really what a bank will do, and I want to kind of preface this by saying, there are not a lot of banks in the United States that are involved in EB-5. There are not a lot of US banks that are involved in EB-5, there is a required specialty to this to be able to act inside of the EB-5 program. We here at MCB have a

team of six that are fully dedicated to the EB-5 program. Every day, all day, that's what our team is looking at, is incoming wires, disbursements, things going out, everything involved in EB-5 space.

(03:52):

So really, when you look at a US bank or a US institution, the role should be that of an escrow agent, that of a third party, unbiased, investor-first focus. Obviously we want to make sure that the project is successful and we do not get in the way of a project. However, investor focus and investor safety is paramount to everything when it comes to a US bank working in the EB-5 space.

Kate Kalmykov (04:21):

We've even seen the way escrow is set up, to that point, change over time. So maybe 15 years ago, 10 years ago, a lot of projects would set up the release of funds mechanism to be upon EB-5 approval. An investor wanted to know that their petition would be approved before their money was loaned to the project, but petitions were getting approved in five, six months, so that was reasonable. And fast forward 10 years and the USCIS is taking three, four years to issue a decision, and that's no longer feasible. So, now escrows are structured most cases, and correct me if I'm wrong, that the money is released once the applicant files their application with the USCIS. So escrow has also morphed in structure.

James Sozomenou (05:14):

For sure, for sure. Escrow, as you mentioned, in the past was used and the release trigger was exactly as you mentioned, upon approval. You have to stay very fluid and very current with what's happening inside of this program, because as delays occur at USCIS, as different timelines are required per project, you really have to be fluid, but at the same time maintaining a safety and security around the investors.

(05:44):

You are correct in saying that the far majority of escrow accounts are set up with a very simple mechanism for release, which is, as you mentioned, proof of filing for the investor of their I-526. And what it does now is it allows projects to be able to access those funds in a timely manner, get that money into the developer's hands, all while making sure that the investor is on the path to adjudication, right? We know that it takes a long time, but we want to make sure that the investor has at least started that process and starting that process requires them to at least file their application. Now, over the course of the last couple of years, we have built this escrow agreement to have a number of release triggers, all in the form of proof of filing. In the past, 797-C notices used to come fairly regularly from USCIS. Those don't seem to come very often anymore. They were replaced with-

Kate Kalmykov (06:52):

This is now giving cash, checks, and letters to certify that we filed because of USCIS can't even adjudicate a case, but they can't even issue a receipt notice timely, which is just wild.

James Sozomenou (07:05):

It's exactly that. And this actually came about a couple of years ago, right after the RIA was put in place. We had a situation, our escrow at that time did not contemplate some of these different things that USCIS may do, and all of a sudden we started seeing these, what we know as now as these lockbox receipt notices. And it's like, hold on a second, what is this? This is very different than what we've seen in the past. So, having to stay current and having to stay fluid, having to work with industry professionals

like yourselves, and then also in-house counsel that understands the program, to be able to understand that there is a shift here, things have changed. How do we make sure that we stay current with this?

(07:47):

So, that's why the escrow template that we have now that's very familiar to most of the industry, it does have many different versions of how an investor can prove that they have filed their application. And as you just mentioned, is it proof of a cash, check? Is it proof of a credit card charge? And those things have to be proof, they have to be cash, they have to actually be charged, it can't be pending, things of that nature. We really do want to make sure that USCIS has in fact received this application, has acknowledged that they've received this application, and then there's a comfort level with being able to release that money down to get into that developer's hands to continue the progress that they've hopefully started at that point with a project.

Kate Kalmykov (08:32):

Absolutely, and I think obviously the change in escrow terms was really because projects can't wait that long for financing, and we're in an environment where everything is super high rate, and they're relying on the EB-5 in many cases to move the project forward. And in the past they've even had to take higher interest bridge financing while waiting for the EB-5, so this is of course very necessary.

(08:58):

Now, it's also interesting that in the RIA, now projects and regional centers have to work with a fund administrator or do audited financials as part of their compliance requirements. And again, this is Congress trying to weed out the bad actors, making sure that money is spent properly. So once money is released or money comes into the bank and you're releasing it, how do you work with a fund administrator? How do you overlap, in terms of the services that you're providing?

James Sozomenou (09:33):

Yeah, sure. A great question, and I actually recall when the RIA got passed. We were all in, I want to say it was back-to-back events, there was Miami and there was Orlando for two different conferences. And there had been some information that had come out and then some more information a couple of days later. And I remember being on a panel, and I guess I'm a serial optimist in this sense, where the very first thing I thought of was, the RIA is here to protect not just the program but to protect all the stakeholders that are involved, to protect the investors, to protect the projects, the regional centers, and as you just mentioned, to hopefully weed out the bad actors.

(10:16):

I think for those that are not familiar with our program, they think that there's a lot of so-called fraud that happens. You and I can both attest that very rarely, if ever, happens with on the investor's side. Unfortunately, if there's ever a bad actor, it would be on the US entity side, whether it's a developer or something along the lines. With the RIA-

Kate Kalmykov (10:40):

So I think obviously those cases make the news, but you and I are in New York City and we walk the streets and I can point to different projects that I've worked on structuring, and it's real and it's concrete and tangible and it's in front of me. And many times I'm super proud to have participated in that.

James Sozomenou (10:58):

Yeah, I say the same thing. I tell a lot of the people we talk to with projects or just doing informational conversations like, "Have you ever stayed at this brand of hotel, where there's a good chance that they used EB-5 on that?" And there's actually a good chance that we were involved as an escrow agent on that. Large chain hotel brands, large restaurants. Some of the largest buildings like as you said, here in Manhattan, have used they form of EB-5.

(11:23):

But what I think the RIA did very well with the implementation of a fund administrator was adding just another set of unbiased eyes into a project to give that integrity and to give that unbiased view of, hey, you are asking for 1.6 million, let's make sure that that money is being spent properly and it is being used in the proper form. In years past, unfortunately there was some wild west type mentality where we can draw down and the money can be used in X, Y, or Z fashion. Now under the RIA, the thought is that having extra eyes on there that have nothing to do with the project are really looking at these things to make sure that the dollars are being spent properly.

(12:13):

What we've done here at MCB, we work with all of the fund administrators in the EB-5 space. We've created a way for not only very simple and ease of transaction, both from an online banking platform, but as well as a documentation standpoint. Made it very simple for all parties, the NCE, the JCE, the banks, the fund administrators, to be able to complete transactions in a seamless manner, to do things efficiently because Kate, as you know, if you're holding up developers' money, someone's going to start yelling. And then that trickles down all the way, and you don't want to be the last person on that ladder getting yelled at because it's you that's holding up that transaction. So, working with the fund administrators I think has been an integral part of the success that we've seen post RIA.

(13:07):

I would say probably 90% of the deals that we have on platform right now are using a fund administrator. I think that just like escrow is not a requirement, as you mentioned, there are options to be able to submit for financial audit. But I think what we can tell from our platform is the far far majority of projects are using a fund administrator in one way, shape or form. Some use every bell and whistle that a fund administrator may offer, some have a scaled down version because they do more things in-house but they want to make sure, this is the regional center I'm speaking of and the NCE operators, they want to make sure that they are compliant and that there are additional eyes, but they may be able to do certain things in the background. But fund administration, I think, although not new in the financial world, we all know that, it was very new of an introduction to the EB-5 space. And I personally think it was a very positive change that came under the RIA.

Kate Kalmykov (14:10):

Absolutely. Anything that gives investors confidence in using the program as a vehicle for immigration, ensures its continuity.

(14:19):

Can you walk us through the process of opening an escrow account, right? For those not familiar with it, it's not an escrow account that the investor holds. It's an escrow account on behalf of the fund. So walk us through that and the fund that's going to give either a loan or preferred equity to a project. So walk us through that process and what you're looking for in terms of onboarding clients.

James Sozomenou (14:44):

Again, we try to make the process as seamless as possible. Kate, you can attest to this, the EB-5 world is very small. There are only a handful of very active operators, both on the regional center side, on the law side, on the fund administration, all the different players that are needed to be able to put an offering together, kind of a small world.

(15:08):

So the document that we use, we do have a template of an escrow agreement. And generally the way it works is, whether it's myself or someone on my team, we'll be engaged in a conversation with the regional center and/or the attorney representing the project. We'll discuss what that project really looks like. We'll get an idea on all the key players that are involved. We don't make a determination on whether it's a "good" project. We just want to make sure that all the T's are crossed and the I's are dotted when it comes to being able to put together this offering.

(15:42):

So an offering will look like, as we know, a PPM, because this is a securities offering. So what the bank will ask for is, we do need to see a as close to final copy of that PPM, and in conjunction with this escrow agreement that we have. We'll help blend those two documents together so that the project can feel as comfortable as possible and the bank feel as comfortable as possible with this offering out at market, to be able to then raise capital. So my team will interact with the regional centers and again, and/or the attorneys that are representing the project, to put together this offering, make sure the language is cohesive between the two so that there's never really an instance where someone can point to one document and then point to a different one and say, "Hey, there's a discrepancy here. Which one takes precedent?" Right? We want to make sure that those two documents are out at market and reading correctly.

(16:41):

Very simple physical process, meaning as far as collecting information from the actual entity to open the account. April Feely was my co-lead here at MCB. Her team runs the operational end. They're extremely, extremely efficient with collecting the information that they need, such as operating agreements and things of the like, to be able to physically open the account. But what we'll do is we will work hand-in-hand with the regional center and/or attorneys to get that document in place, have a comfort level. We all agree that this is the best document that can possibly be in place for this, let's execute against this. We'll turn it over to operations, they'll open the account. And now, project, you can actively raise money, you're able to now market your project, get an investor, feel confident in giving them the wire instructions to be able to send their money into MCB. We'll hold it here in escrow and then await the written direction, the release triggers to make sure that everything goes according to plan.

(17:45):

As I mentioned earlier, I do have a team of six here that solely focus on the EB-5 end of things. Their names are very familiar with the folks in the EB-5 space, they deal with these people through email constantly. They're at some of the events with us now as well to put some faces to names and get them more acclimated with folks in the EB-5 space.

(18:07):

But a pride that we have here at MCB in the process that we've put together is our data collection and the amount of attention to detail that we have, when it comes to making sure that everything is in order. Before we can move a penny, we want to make sure that everything from a safety and security measure is there, the escrow is being executed out of the four corners of the agreement. That way we keep ourselves in compliance. We try to do the best that we obviously possibly can to keep a project in compliance under the RIA, but our main goal is to really not get in the way of the project. We want to

make sure we can help you raise capital successfully and be able to execute at the quickest timeframe that a project would need to get the money into the developer's hands.

Kate Kalmykov (18:56):

Obviously you're a bank, you're a regulated institution. So we have our EB-5 RIA requirements and our requirements under the INA, but you're also subject to AML requirements, right?

James Sozomenou (19:09):

Yes.

Kate Kalmykov (19:10):

So when an investor is transferring money to put into escrow, what is going on in the background at MCB? And for those of us who have been involved in EB-5, sometimes wires come flying in, people are transferring money from overseas, they want to secure a spot. Perhaps you have an offering for $50 million, it's getting to the end. They're being told to just send wires overseas by their broker dealers overseas, and when it comes in, it doesn't necessarily have identifying information. So what are you doing to comply with banking regulations?

James Sozomenou (19:48):

Sure, it's a good question and something we deal with on a very regular, everyday basis. We have developed a great relationship here with our compliance and BSA teams. I say upstairs because I'm on the 12th floor, they're located on the 13th floor, so we just know them as, oh, we're sending it upstairs.

(20:06):

So when a wire comes in, all banks will have built-in OFAC filters that incoming wires will go through, but we don't just rely on that. What our team does, and it's pretty standard I think across the industry, is we collect information on the investor and the remitter. If there's a third party that perhaps is sending money for somebody that they themselves are not the investor but they're sending money on their behalf, any funds, whether it's a penny or the full 800,000, we need to know who's sending that and that that person is able to transact with US banking institutions. So we run OFAC on every single investor, every single remitter, anyone that is sending money on behalf of someone, they will be put through an OFAC filter. We do collect some identifying documents, like passports. If there's relationships like say you have a minor investor and the parents are sending money on behalf, there are some additional documents.

(21:12):

Nothing outstanding or nothing outlandish, I should say. All things that are pretty standard that the investor and/or the remitter would already have. There's nothing that we would ask to go outside of the scope of something that somebody may already have. We're not going to ask you to create a brand new legal document to send, but the bank takes the AML end of this very seriously and they want to make sure that the folks that are sending money are legitimately allowed to be sending money into the United States.

(21:45):

So, Kate, you and I have spoke endlessly about this and Greenberg has helped us tremendously with understanding some of the harder sanctioned countries, right? Iran and Russia.

Kate Kalmykov (21:58):

You brought up OFAC, and for those not familiar, that's the Office of Foreign Asset Control, and they're in charge of sanctions. So the sanctions regime really varies widely by country.

(22:11):

Obviously, we know when the war in Ukraine broke out, Russia sanctions were imposed and those are imposed on certain activities, on individuals, there are special SDN lists, and on certain businesses. And if money comes or tries to come to the US from one of those individuals or businesses, it's blocked, right? You're not allowed to do it. The sanctions on Iranian nationals differ however, because there with Iranian nationals, what we see is that it's how the money is transferred and whether it goes through Iranian financial government institutions. And another thing to look at there is that there's a general license from OFAC that allows EB-5 investment by Iranian nationals, but it doesn't take out that requirement of where the money can and can't originate.

(23:06):

Ukraine is still under sanction. Many people forget this, that under the Trump Administration he imposed sanctions on Ukraine. And so when you have money being transferred in from there, that's also subject to an OFAC check. Syria, Yemen, a number of other countries. So it's very important when dealing with foreign nationals from these countries to really do an OFAC check. And the bank does it, and when you have a problem, sometimes you'll come to us because we have obviously an international trade group that sits in DC that deals with this, and they've even helped in certain cases get OFAC licenses for certain individuals.

James Sozomenou (23:47):

Yeah, and I think it's, we generally, and we meaning the EB-5 community collectively, not just the projects I have here at MCB, but we typically see the same countries over and over and over again, right? China and mainland China and then Taiwan and India and parts of South America now. But there are projects that have the ability to raise money in more, I'll say for a lack of a better phrase, questionable areas, where maybe there's an enhanced due diligence that need to be done on the investor.

(24:22):

Kate, you've spent a lot of time, I believe in Dubai and the UAE, and there are a lot of nationals from different countries that have gone there and that live there. So it's very interesting that we may get an investor into a project that is living in London but is actually Russian. So it's like, okay, well how is that being treated by USCIS? Where do they look at this individual? They may be living in London for 15 or 20 years by now, but their passport, they're originally from Russia. So, or I'm using that as the example, so the focus on that individual is still going to be that they're Russian, even though that they've been living in the UK or London or somewhere else for the last 10, 15, 20 years.

(25:12):

So these are just things that banks, along with regional centers and the immigration attorneys and broker dealers, we really have to be keen to this and really pay attention to this because there are different requirements and different things from an AML standpoint and due diligence standpoint, as you mentioned, to really focus on to make sure that this investor can be accepted across the board. And we think that we do a really good job at that, where we're able to provide what we think is a level of comfort to a project so that they can know like, okay, there's another set of eyes looking at this. Maybe they have more ability to see something about an investor than I do as a broker dealer or a regional center. So, having an extra set of eyes, especially a heavily regulated set of eyes looking down upon us, I

think really helps a lot of the regional centers give some comfort that they can go out and actively raise money in these areas.

Kate Kalmykov (26:12):

And of course, another factor to consider in all this is that USCIS is also doing its own check. So perhaps the money gets invested and released from escrow, but then when the immigration attorney is submitting the source of funds analysis to USCIS, they're looking at things like, has the individual complied with foreign currency requirements and transferred the money to the US properly, and not in violation of local laws? Huge issue in places like China and Vietnam and India, all the places that have foreign currency restrictions.

(26:51):

They also look at, where does it originate? China is a very big focus right now for the US government for USCIS, they have also focused on that. So if they're looking at funds coming from a state-run Chinese entity, there's going to be a lot of questions there. If there's cash transactions, ton of questions. 10 years ago, perhaps we could explain those types of transactions, now it's extremely difficult to say, "Why was money not in a banking system?" It's very difficult for USCIS to accept that nowadays. And same thing, they're looking to make sure people are compliant with foreign tax filings, right? If somebody hasn't paid taxes or what we see in many countries is that individuals try to evade taxes, so they'll show a tax return with a much lower amount of income than now they want to invest in substantial, and that, of course is problematic for the immigration agency. Those kinds of cases are going to be rejected.

James Sozomenou (27:55):

There's been a, I'll say a better class of investor that have come in since the RIA. I think the overseas agents that have been involved have acclimated pretty well, and I'm not overseas as much as you are nearly, but I think seeing the volume of investors that are coming into these projects, I think there's obviously a learning curve that needed to be educated on here in the United States, but there also needed to be a big education on how things will be done now, transacting business overseas by the immigration agents and the different folks that are helping to raise capital for US projects here. Under the RIA, it obviously it cleaned up a lot of maybe questionable practices that might've happened 10 years ago, in being able to, how people are paid and funded and how this investor was able to source things.

(28:53):

An area years ago that our team started that we brought over to MCB when we came here to help kind of alleviate some headaches. Now, it doesn't alleviate all headaches, but we have the ability here to open non-resident alien bank accounts, which has been very, very impactful and very helpful for a lot of regional centers that have an investor that for one reason or another, may not be able to move funds directly from their name into an escrow, or directly from their name into an account that is not in their name here in the United States.

(29:28):

So to help alleviate that as best as possible, we've created a product per se, or a program, it's really just a personal bank account for a non-resident alien. We have a list of documents that we ask for. Again, nothing that they would not have already, we're just asking for some documentation. We can open an account for an NRA to here in the United States. They don't physically have to be here to come, everything is done through an encrypted email, there's phone calls, things of that nature to be able to open this account in their personal name so that potentially it makes it easier for them to be able to

move money from their own name to their own name, held in a US bank account here. And then we can help move those funds from their account here in the states into a project's escrow account.

(30:22):

We started this a number of years ago. It was pretty quiet when we started it, and we liked it that way at the beginning. It was really only offered directly to regional centers of projects that we have. And then over time, the word kind of got out and spread a little bit, and now, thankfully we do get reach-outs from regional centers or immigration attorneys saying, "Hey, I have someone that could really use your help. It would be greatly appreciated," and I think that's really helped kind of expand MCB's name in the space that we're here to help. We want to help the EB-5 community, we want to be able to help the projects. If it helps someone immigrate here and really help them fulfill what they're trying to fulfill, if we can play a small role in that, whether we are involved in the project or not, we'll do everything in our power to be able to do that.

(31:14):

Now, does it happen every single time? No. There are instances where unfortunately we haven't been able to open an account for one reason or the other, but that's on the very small scale. The far majority of opportunities that are presented to us to be able to help in this instance, we're able to help.

Kate Kalmykov (31:32):

You've helped many of our clients and not just in the EB-5 context, because obviously we also represent clients in various business visas. And so we have many clients coming to the US, they want to do an E-2 treaty investment visa, which is a work visa where they're investing into a US business. It's not a green card, it's a lower investment threshold, but they need a bank account to do that. And you also can help us to open for their new entity's bank accounts, which is great. And the same one for L-1 intracompany transfer Visas, where we have an executive or a manager from a business overseas looking to open a US affiliate, and you're able to assist us there. And that's been wonderful because there's a lot of interest, not just in the EB-5 green card, but in various work visas as well.

James Sozomenou (32:23):

I think when the EB-5 program was on its sunset time and its little hiatus, I think there were other avenues that people started to really explore. Now, I know they've been around, but I think we saw a greater quantity of requests for E-2 during that time period when EB-5 was not as active a couple of years back, or maybe they went the direct route. But people really started to explore different opportunities. E-2 I think primarily being the one that we saw a lot of interest in.

(32:59):

We try to pride ourselves or we do pride ourselves on the ability to understand a lot of these different categories and who the stakeholders are, who the players involved are. Really, what is this person trying to do and how are they trying to do it? What is needed from our end, right? What are we solving for to try to make this happen for the investor or for the petitioner that's coming in? And if it means opening these entity accounts, we're happy to do so. We do have a reliance on the understanding that this is a government run program. So USCIS at the end of the day, will really be looking at these people and these petitioners in a very detailed manner. Now, we don't rely solely on that purpose. If so, we wouldn't be running OFAC, we wouldn't be doing any of those things. Clearly, that's not the case. We as a US institution, banking institution, really do still need to vet and look at the due diligence and make sure that this is a project and a program and an individual that we are comfortable being involved with.

(34:06):

Kate, as you just mentioned, we do a lot of transactions together. The E-2 space is a very interesting one. EB-5 I think certainly is paramount to all for us right now, but with the opportunities that we see in the L-1's the E-2's, all these different areas, thankfully, our team is very well versed in it. We've gotten the bank to understand these different programs. It's not just EB-5, there are plenty of other opportunities inside of this space. And they've been great in working with us, the folks upstairs, in getting an understanding of what these programs really look like and how MCB can play a role.

Kate Kalmykov (34:46):

Absolutely. Now, one final question. We have sometimes individuals who are traveling in temporarily as tourists and they're interested because maybe they want to diversify where they hold their assets. Maybe they want to just secure money here. Can they as visitors on a tourist visa, open a US bank account?

James Sozomenou (35:12):

Technically they can, obviously. We would look at those certainly on case-by-case bases, just to get an understanding of who the individual is. We're always open to looking at different opportunities for things like that. You don't see these as often, but they do pop up from time to time, and the ones that we have seen have been legitimate and they're fine. The people have been great and we converse with them on a fairly regular basis to get those accounts open for them.

(35:39):

So yeah, absolutely, we'd be happy to take a look at those individuals, take a look at the circumstance. And it's not just from a business perspective, does this make the most sense for us? There are other factors that go into decisions sometimes, and I think that speaks to any business across any board. There's always multiple facets as to being able to make a decision.

Kate Kalmykov (36:01):

Well, thank you so much for joining us today, James. It's a pleasure as always.

James Sozomenou (36:05):

Yeah, no, pleasure was all mine. I appreciate it. I look forward to the next thing we do together.

Kate Kalmykov (36:10):

Absolutely. Thank you, everyone.