

The background of the slide features a photograph of the Statue of Liberty in the foreground on the left, holding a torch aloft and a tablet in her other hand. The tablet is inscribed with the date 'JULY 4 1776'. In the background, the dense skyline of New York City is visible across the water, under a bright blue sky with scattered white clouds.

Global Real Estate Summit 2020

**Visas For Foreign Investors –
Post-U.S. Election 2020
Steve Maggi, Esq.**

Showing Properties: Logistics – How can Foreign Nationals enter the US?

- Right now there is no direct entry into the US from 32 countries (UK, Ireland, Schengen Area, China, Brazil)
- Have to triangulate through a third country or ask for a National Interest Exception through US embassies/consulates – requires proof of economic benefit to the US – not likely with tourist visa or ESTA

National Interest Exceptions

Certain travelers can resume traveling to the United States if, as determined by a Consular Officer, they qualify as a National Interest Exception (NIE) to President Trump's March Presidential Proclamation that suspended routine travel from those restricted countries. Those traveling as students (F1 and M1), researchers (certain J1 programs), investors (E2), or business travel (B1) may be eligible for the exception, as well as EB-5.

The Basic Question: Does a foreign national need a specific visa to buy real estate in the U.S.?

- Foreign nationals can buy U.S. real estate anywhere in the U.S. without actually entering the U.S. or while they are visiting the U.S.
- In order to manage a property, foreign nationals can hire a proxy, individual or company to manage them; They can even set up LLCs to own and manage them
- What they can't do is run a business for profit from the U.S. without authorization – The property ownership itself does not give them any immigration rights

Do foreign nationals from specific countries get preferential treatment?

- Yes! (Ask what passports they hold)
 - Visa Waiver nationals – ESTA – can enter US without a visa because they are nationals from ESTA countries
<https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>
 - **Skilled Worker** (Professionals) – these countries have their own visa categories: Australia (E-3), Canada and Mexico (TN), Singapore/Chile (H1B1)
 - Treaty Investor (E-2) – Nationals from over 80 countries are eligible to launch startup businesses in the US with – eligible for NIE

What is dual intent? Why is this helpful for real estate professionals?

- Dual intent is what is possessed by individuals with visas which are assumed to lead to green cards. This means that these individuals are NOT required to maintain a foreign residence, thus freeing up cash to buy a property in the U.S. – Look out for these magical visa letters:
 - H-1B Skilled Workers (Professionals)
 - L-1 Intra-company transferees (Multinational employees)

Can my clients get a green card directly just from purchasing a property? (The EB-5 Real Estate Myth)

- Generally the answer is NO. EB-5 is an immigrant visa category that requires investors to create 10 full-time jobs within 2 years of receiving their conditional green card and real estate investment by itself does not create full-time jobs.
- A green card CANNOT be obtained simply by buying a residence. If 10 full-time jobs are not created as a direct result of their investment, they will not qualify for a permanent green card. EB-5 massive-scale projects which build out mixed use – residential and commercial MAY work and units may be bought as part of the package, but buying a property for personal use DOES NOT work.

What is EB-5 and how can I incorporate it into my sales?

- EB-5 allows foreign nationals to obtain conditional and then permanent green cards for themselves and spouses/children under 21 based on investment in projects or businesses that create at least 10 full-time jobs per investor
- Investments and green cards can be lost if the investment does not create the requisite jobs
- These investments are generally made SEPARATELY from real estate investment
- Examples - Working with specific Regional Centers Brooklyn Navy Yards (The New York City Regional Center - NYCRC) or Hudson Yards may have been one way to promote the local economy, form alliances and sell properties in the same area

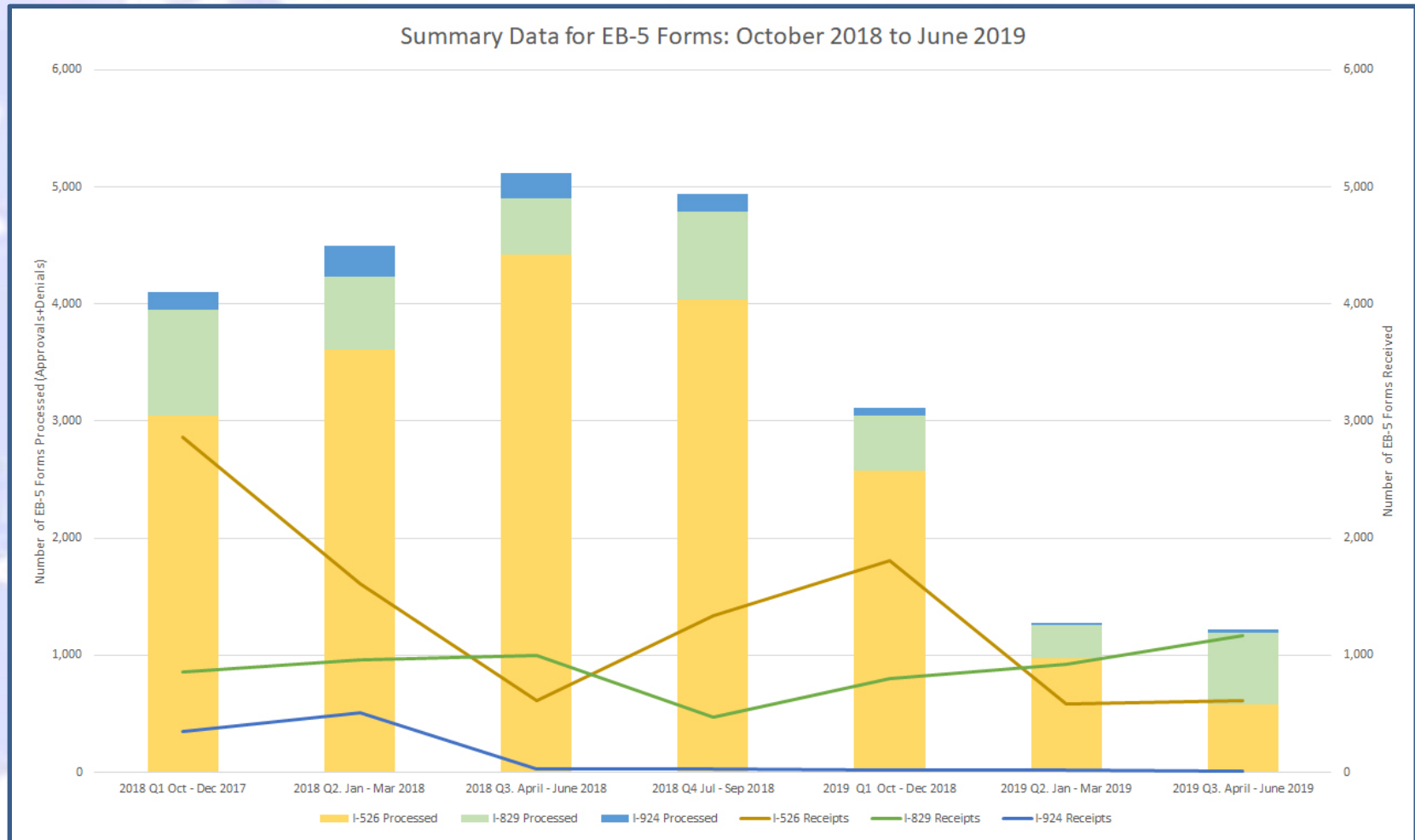
EB-5 (Cont'd)

- Those who work with developers can also form alliances with specific projects through “direct investment”
- EB-5 allows the broker to “package” the property it wants to sell, as a “combo” of sorts, along with the investment.
- There are two separate investments – The EB-5 investment and the property purchase – Working with an EB-5 project allows you to use a global budget which takes into consideration the cost of EB-5, and gives you a ceiling of the remaining funds to work with.

Example: Foreign investor has \$3 million overall to invest and wants a green card for himself, his wife and their three minor children.

- The EB-5 project requires \$900k plus approx. \$100k in administrative/legal/processing fees. This gives you a budget of \$2 million to work with for your property sale.

How many applications have been filed?



EB-5 In Decline

Confluence of Factors have led to the lessened utility of the program:

1. Delays in processing due to lack of personnel – processing times for I-526 approx. 2.5 years!
2. Chinese and Indian nationals (90% of investors) are backlogged three years for visa processing
3. Denial rates spiking!
4. New investment amount defaults to higher end - \$1.8 million because federal government decides which projects qualify at lower amount (\$900k) – makes this inaccessible to many investors
5. Leaves less \$ for foreign nationals to invest in real estate!

What are the international investor profiles and the corresponding visas to keep in mind?

- Retirees: EB-5 or E-2 (passive investment)
- Students: F-1 (Student Visas); H-1B (Post-degree employment); EB-5
- Business owners/Entrepreneurs: L-1 Multinational Visa if own foreign company/E-2 Treaty Investor Visa for startup launch
- Employees: H-1B, E-1/E-2/E-3, TN
- “Rock Stars” – People of Extraordinary Ability

Entrepreneurs/Business Owners (E-2/L-1)

- Entrepreneurs and business owners overseas can launch new US companies and can get visas to run the US operations
- Since they are basing their visas on either investment or expansion of an existing business, they have \$ and make for good potential clients
- E-2 eligibility depends on nationality(ies) of the clients so ask which passport(s) they hold!

Types of Investors: Stars

- “Stars” means anyone who is considered to have extraordinary ability and be at the top of their field
- This can be movie stars, serial entrepreneurs, well-known scientists, researchers, journalists, you name it! (No world-famous criminals!)
- Does not require a sponsor – self-sponsored petition can be fast-tracked and processed very quickly

What immigration questions should I ask my international clients?

- What nationalities do you have? This is governed by the passports they hold. Answers will determine what visas they are eligible for and processing times.
 - e.g. PRC national not eligible for E-2, long processing times for EB-5 with retrogression, but owns foreign company
 - e.g. South African national with Italian passport – E-2 eligible
- Are you an employee or an entrepreneur?
- What are your short and long-term U.S. plans?
- Are you interested in passive investment?
- Do you want a temporary visa, a green card and possibly citizenship? What about for your spouse and children?

Take Home Lessons

- In order to attract more foreign national clients, it is good to be sufficiently familiar with the different options foreign nationals have to procure temporary and permanent residence in the U.S., and the visa classifications that allow them to reside here and get mortgages.
- Make sure to have someone in your wheelhouse who understands these issues thoroughly in order to be able to maximize your chances of closing the deal and opening the door to an unlimited amount of future clients!
- Think outside the EB-5 box – it's not a panacea
- Marketing strategies are crucial - Leverage your cultural background and languages and match it to your clients and the right solutions.

Post – Election Thoughts/Conclusion

QUESTIONS??



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