



China City

A perfect storm EB-5 proposal in upstate New York

By David North

The latest EB-5 investor visa controversy is based on the idea of building an all-Chinese residential and commercial development, China City of America (CCOA), about a 90-minute drive northwest of New York City at the southern edge of the Catskill Mountains.

It would be largely financed by funds from immigrant investors, each of whom, in turn, would get a set of green cards for their half-million-dollar checks. It would be on Yankee Lake, in Sullivan County, N.Y.

Unlike most EB-5 schemes, it has created a plethora of different kinds of controversies; in fact, as EB-5 projects go, it is the perfect storm. Everything that could possibly be wrong with such a project is wrong with this one, in spades.

In addition to the usual critical comments about the shaky financial prospects and dubious job-creation claims of the promoters, which so often accompany EB-5 proposals, this one also has generated adverse reactions because of:

- A project budget bordering on the bizarre
- Its planned ecological impact on a previously pristine rural area
- The apparently ignored need to secure environmental permits from state authorities
- The controversial land-development records of two of the proposal's (non-Chinese) local allies, and
- A charge from *within* the Chinese community that China City is a stalking horse for the Chinese communist government in Beijing.

Let's look at each of these controversies in turn, but first at a sketch of what is proposed.

The China City Plan. The first version of the plan to emerge was a grandiose one. It would cover more than 2,000 acres (more than three square miles) spread over the towns of Mamakating and Thompson. It would include a Chinese theme park, a city full of China-related businesses, a high school, a college, and 1,000 residences. Every province in China would have an office there and the place would be replete with symbols of Chinese culture. For more on these plans see CCOA's website, festooned with golden dragons and text in both Mandarin and English.¹ When finished it would be a \$6 billion project, its backers say.

It sounds like a cross between the old urban Chinatowns of the United States and the planned American communities of the last century, such as Reston, Va., and Columbia, Md.

A revised version of the initial offering was proposed later; this would, as a modest start to the broader project, include a college, an urban area, some family housing, and lots of student housing; it would cover less than 600 acres and would all be in the town of Thompson, whose officials, a local lawyer tells me, are somewhat less hostile

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to the plan than those in Mamakating. It should be noted that municipalities called towns in New York are often rural areas and might be called townships elsewhere in America.

The description we have of this smaller version of the China City project is from a local environmental organization, the Basha Kill Area Association (BKAA), a pro-wetlands group that is opposed to the development.² It is based on a report by BKAA activist Paula Medley regarding the August 28, 2013, presentation of the China City plan to Thompson officials.

Both versions would be financed, in large part, by the EB-5 program.

EB-5-Specific Problems. As is often the case with EB-5 proposals, there are both criticisms of the economic model and the genuineness of its job-creation claims.

The anticipated vehicle for the investments is the proposed China City Regional Center. It is not yet a regional center because its application for that status — something to be decided by U.S. Citizenship and Immigration Services (USCIS) — has yet to be approved, though it has been before that agency for about two years. Without USCIS approval of regional center status none of the half-million-dollar investments can lead to green cards for anyone.

The China City Regional Center website, which provides what information is available, is written in the most general of terms and it is hard to tell exactly what the promoters' plans are, but one thing is clear: the presentation, at least in English, is (to be charitable) sloppy, though it carries the name of a Florida law firm. The presentation in Mandarin may be letter perfect.

The first thing one sees on the website is this document:

Department of Homeland Security U.S. Citizenship and Immigration Services		I-797C, Notice of Action
UNITED STATES OF AMERICA		
RECEIPT NUMBER RCW1134750384	CASE TYPE 1924 Application for Regional Center Under the Immigrant Investor Pilot Program	
RECEIVED DATE December 13, 2011	APPLICATION TYPE: A (INITIAL)	REGIONAL CENTER NAME CHINA CITY REGIONAL CENTER LLC
NOTICE DATE December 13, 2011	PAGE 1 of 1	REGIONAL CENTER ID ID1134750384
LARRY J BEHAR BEHAR LAW GROUP RE: CHINA CITY REGIONAL CENTER LLC 888 SOUTHEAST 3 AVENUE STE 400 FORT LAUDERDALE FL 33316		NOTICE TYPE: Receipt Notice
<small>Receipt Notice - This notice confirms that USCIS has accepted your "Application for Regional Center Under the Immigrant Investor Pilot Program" (Form I-824) for processing. This notice does not grant any immigration status or benefit. This notice does not grant any immigration status or benefit.</small>		

Now, I do not know if the promoters are seeking to mislead anyone, but this USCIS document is misleading by its very nature. It is printed in the style, and on the paper, used for U.S. bonds. It looks very official. It says in large type: **Notice of Action**.

But the *action* is that the government has *received* an application from China City Regional Center LLC; if you read the small type carefully, you'll see:

This notice does not grant any immigration status or benefit.

This form has often been used by fraudsters to mislead, and for this reason some time ago USCIS redesigned it to make it harmless, as the Center for Immigration Studies reported earlier.³ But China City is still using the old form.

Returning to the China City website: In addition to the questionable use of the I-797C, it is replete with typos, offers a wildly optimistic time-line for the processing of the investment-related immigration benefits, and says, in one of its Q&A's:

How is the investment structured?

The investment opportunity is structured as a loan with interest to be paid to the EB-5 investor.

No. EB-5 investments are supposed to be at risk, and cannot be loans, so that part of the website should lead to a USCIS rejection of the application — assuming the application, now secret, agrees with the website on this point.

There are two other basic problems with the proposal, directly related to the EB-5 program. One relates to the control of the land and its development, and the other to the claims of job-creation.

As far as *site control* is concerned, EB-5 projects can move forward only when the developer has either ownership of the land, or the possession of an option, *and* local government planning approval. (Recently an EB-5 project in Vermont died precisely because of, among other things, the lack of such site control, as was reported in the local press.⁴)

In this case, it is not property control, but regulatory control, that is at stake. The land in question seems to be owned by a single individual, Simon Gelb, who has played a controversial role in land development in the region, a subject to which we will return. As far as China City is concerned, he apparently has sold an option to that group or made a similar arrangement and has appeared with the CCOA promoters at a meeting with local officials.

The problem is, will local officials give permission to CCOA for its sweeping plans? Will the local planning officials accept the high-density design for a currently sparsely populated part of Sullivan County? For reasons outlined later in this report, such approval seems unlikely and one can argue that trying to get people to invest in a construction project that *cannot* be built because of local planning decisions borders on fraud.

The other ominous variable for the project is the usually contentious question of *job creation*. Will the program be able to create, directly or indirectly, 10 full-time jobs for legal U.S. residents for each half-million dollars invested? This is a statutory requirement that has been substantially watered down by both a congressional decision that indirect job creation calculated by “any reasonable methodology” can be accepted and by USCIS’s generous interpretation of those words.⁵ But the requirement persists and should be a real obstacle to the approval of this plan.

In this case, the job creation requirements for the first phase of this project come to 2,550; this is the case because CCOA (on its website) said that there would be \$127.5 million raised from 255 investors through the EB-5 program, and 10 jobs would be needed for each investment. The total investment for this phase, from all sources, is placed at \$325 million.

Writing in the *Shawangunk* (N.Y.) *Journal* on September 5, two local critics, Michele Eckerson and Michael Philips, using a methodology unknown to me, pointed out that “This development does not in any way reflect needs of the local community or county. The expected job creation of this regional center is grossly overstated.”⁶

Even without access to the I-924 application (presumably being examined in the USCIS California service center) and only able to secure information from the website, I see several very real problems with reaching the needed 2,550 jobs.

First, no jobs can be created directly or indirectly through the purchase of land — that’s a long-standing (and sensible) EB-5 rule — and there is \$26 million set aside for “land cost and project inception”.

Second, no jobs beyond short-term construction jobs can be created by building homes for people, which is part of the long-term plan at CCOA.

Third, much of the work to be done on CCOA is to be Chinese-style construction and decoration. It might be hard to recruit U.S. residents with these skills, which might cause the importation of foreign workers and jobs for foreign workers cannot be counted in the EB-5 system as among the 10 jobs to be created for each investment. Further, it is known worldwide that

when mainland China money is invested, there is usually a demand that mainland China workers be employed in the project. (USCIS is not accustomed to policing work sites to see to it that this does not happen.)

Fourth, there is the question of jobs to be created by the introduction of the college. This is a problem because EB-5 is designed to provide funding to for-profit organizations and if the college is a non-profit institution, as most are, no EB-5 monies could be used to create the college and thus no jobs could be counted as being produced by the college.

China City documents and its CEO, Sherry Li, have made a series of conflicting statements about the college. For example, the proposed creation of a college was a major part of the China City presentation, but there is no line item for its construction in the China City budget for its first phase. Further, in some documents the college is noted as foundation-supported. But in a telephone conversation on November 1, Ms. Li said, in response to a direct question of mine, that it would be a for-profit organization.

So will there be a college if the project proceeds? Will it be a for-profit or a non-profit institution? Has USCIS ever accepted EB-5 funding for a private, for-profit college before and, more fundamentally, is investing in a for-profit college a plausible way to create long-term, continuing jobs (at 20 jobs per million invested)? These questions all relate to the job-creation claims of the backers.

For a variety of reasons, then, it appears unlikely that the goal of creating 2,550 jobs in the first phase will be met.

The Bizarre Budget. The unrealistic nature of the job creation claims is buttressed when the CCAO budget is examined, if only briefly.⁷

The image shows a golden dragon on the left side, which is a traditional Chinese symbol. To the right of the dragon is a table titled "One-time investment 一次性投资" (One-time investment 一次性投资). The table lists various project components and their corresponding costs in US dollars. The total budget is listed as \$325,000,000.

美国中国城项目第一期	
One-time investment 一次性投资	
Forbidden City 紫荆城	\$20,000,000
Hotel & Entertainment 酒店	\$24,000,000
Dynasty Shopping Buildings 朝代购物中心	\$32,000,000
Rides 可骑乘公园设施	\$16,000,000
Tian Gan 天干表演台	\$4,000,000
Food Court 美食广场	\$12,000,000
Road 道路	\$18,000,000
landscaping 景观美化	\$5,000,000
Soft Cost 软成本	\$2,500,000
Gaming City 赌城	\$24,000,000
Design and Production of Animation 动漫制作	\$20,900,000
Unpredictable Cost 不可预见费用	\$9,100,000
Land Cost and Project Inception 土地和项目启动费用	\$26,000,000
Advertising 广告	\$4,500,000
Temple of Heaven 天坛	\$10,000,000
Museum & Art Auction Center 博物馆和艺术品拍卖中心	\$4,000,000
Private Clubhouse 私密会所	\$4,000,000
Union Clubhouse 联盟会所	\$4,000,000
Management Investment 管理层投资	\$78,000,000
28 Chinese Horoscope Signs 28星宿	\$7,000,000
Total Budget 总预算	\$325,000,000

Let's start with the three main components of the \$325 million initial investment. In addition to the \$127.5 million from the EB-5 aliens, there is to be \$132.5 million from "equity investor including the management investment institutions and high net-worth individual" and \$65 million from the U.S. government.

One wonders: What arm of the federal government is going to put \$65 million into such a project? If that money fails to appear, what happens to the project? I could find no specifics on what agency, or what funding source, China City had in mind.

Secondly the "management investment" mentioned above as part of the \$132.5 million shows up later in another part of the budget as a \$78 million segment of the "one-time investment", and later, apparently as intangible assets, also valued at \$78 million. One might guess that this is to be the developer's expected profit.

If one subtracts both the \$65 million from the government, and the \$78 million in projected profit, then the actual investment total would be \$182 million, not \$325 million. Hmmmm.

The breakout of the "one-time investment" that adds to \$325 million includes such items as "28 Chinese Horoscope Signs" for \$7 million, the "Temple of Heaven" for \$10 million, and "Gaming City" for \$24 million. What federal agency would support 20 percent of each of those expenditures? Further, what is the likelihood of a brand new community getting state approval for one of the few gaming facilities authorized statewide?

Other queries might be raised about such budget items as "Soft Cost", \$2.5 million, and "Unpredictable Cost", \$9.1 million.

The budget raises serious questions about the integrity and viability of the whole project.

The Environmental Dispute. Usually EB-5 proposals are spared ecological controversies; they are typically construction projects such as hotels, condos, or office buildings in urban areas, sometimes depressed ones, and no one objects from an environmental perspective.

Not so in this case.

The local critics, Eckerson and Phillips, complained about potential "destruction of our environment and natural habitat of animal life, increased traffic, and pollution".

Similarly, the Yankee Lake Preservation Association, an organization of residents in the Mamakating part of the project area, has started a letter-writing campaign to head off the proposed development for similar reasons. The focus of this group, and its very rural setting, is conveyed in this list of subjects in a recent newsletter:⁸

Bears 'n Trash, Bear Facts, Fishing Tournament Results, Fish Stocking, and China City Update.

Among the topics that concern this organization is the potential impact of the proposed development on "traffic, noise pollution, effects on wildlife, water pollution runoff, light pollution, and the use of aquifer resources". The reference to "light pollution" got to me. Though a term that I have encountered only in recent years, it recalled childhood memories of the family summer place in southern Michigan, of how completely, comprehensively dark it can be at night in an isolated, rural area, particularly when you are beyond the last of the power companies' wires. China City would put an end to that at Yankee Lake!

The Needed Environmental Permits. An environmentalist anywhere in the nation can complain about a noisy, projected development, but in New York, particularly if it involves a wetland, the environmentalist has a formidable ally: the state government.

There are environmental permits required from the state government that are above and beyond the zoning and building permits issued by, or denied by, town governments.

The state guys are on the case. On October 25, apparently not in response to a town of Thompson request of any kind, the Department of Environmental Conservation wrote to the town's planning officials about the China City proposal, saying, among other things:⁹

The site contains several New York State regulated wetlands and their respective 100 foot Adjacent Areas [these are then listed] . . . A Freshwater Wetlands Permit pursuant to Article 24 of the New York State Conservation Law will be required by this office for any physical disturbance within the wetland boundary or within the 100 foot adjacent area.

“Physical disturbances” would be numerous in the planned development.

The letter would seem to indicate that there is lack of such permits — and I suspect they are not issued easily in New York — and that this is yet another unacknowledged obstacle to the China City plans. If there are no permits there can be no construction and, if USCIS is aware of the problem, no approval of these EB-5 plans.

China City’s Local Allies. CCOA has, presumably unwittingly, added a little additional excitement to the controversy by its choice of local (and non-Asian) allies.

Following a presentation¹⁰ to the town of Thompson planning board, on May 15, 2013, local observers said that the CCOA team must have decided that Ms. Li’s English was not up to the challenge so it replaced her as the lead speaker at the next such local session (on August 28, 2013) with Thomas J. Shepstone of Honesdale, Pa. Shepstone is known in the region as a leading defender of the controversial fracking technique for tapping natural gas, which worries environmentalists.¹¹

An even more controversial local ally of CCOA is the previously mentioned Simon Gelb, who is the owner of the 2,000-plus acres that would be used for China City. Gelb’s largest development in the area is Kiryas Joel, a village established in adjacent Orange County for, and apparently almost exclusively occupied by ultra-orthodox Hasidic Jews. Because of the group’s pattern of very large families and low incomes, the village is said to have the highest poverty rate of any American municipality.

According to the Middletown, N.Y., *Times Herald-Record*:¹²

Kiryas Joel is the poorest place in the country.

According to the latest round of U.S. Census figures, released late last year [2008], the village has the highest poverty rate in the nation, and the largest percentage of residents who receive food stamps. Only one other place in the 50 states has a lower median income. The median household income in Kiryas Joel is \$15,848; in Carbondale, Ill., it’s \$15,799.

More than two-thirds of Kiryas Joel residents live below the federal poverty line and more than 40 percent receive food stamps, according to the American Community Survey, a U.S. Census Bureau study of every place in the country with 20,000 residents or more.

China City, also to be built on Gelb-owned land, presumably would be another mono-ethnic community, as Kiryas Joel is, although the population would be a different one. Nevertheless, the economic record at Kiryas Joel is not a happy precedent for China City.

A Split within the Chinese Community. And then there is yet another strand to the discussion, floating over everything else, something like the dramatic piccolo solo in “The Stars and Stripes Forever”. It is a sharp dispute over the project within the American Chinese community.

As background to this aspect, Falun Gong is a widespread movement in China that combines “slow-moving exercises and meditation with a moral philosophy”; it is outside the control of the Chinese government, which has persecuted its followers, according to Wikipedia¹³ and many newspaper reports.

The movement has American branches, including Dragon Springs Buddhist, Inc., in Cuddebackville, N.Y., near to the proposed China City, and an affiliate in the Washington, D.C., metropolitan area, Falun Dafa Association.

The latter organization has, I am told by three excellent sources, raised objections with USCIS about the proposed project as a vehicle for expanding the influence of the Beijing government within the United States. It has suggested that at least some of the money funneled through EB-5 investments in all likelihood originally would be from the Chinese government. Falun Gong sees this prospect as a threat to both the security of the United States and to that of its own organization.

Unfortunately Falun Gong — despite some prodding from me — has not yet decided to go public with its side of the issue, which is too bad because that would provide both additional substance and spice to an already interesting controversy.

This proposal, in short, has many more problems than most EB-5 schemes; in fact, it seems to have attracted a world-class collection of them.

Let's see what USCIS, whose leadership loves the EB-5 program, will do with this one.

End Notes

- ¹ See the China Regional Center [website](#).
- ² The description, from an [“Action Alert”](#), was on the website of Basha Kill Area Association in early November, 2013, and was subsequently replaced with more up-to-date text on China City developments.
- ³ David North, [“USCIS Modifies Key Form — But the PR Department Blurs the Achievement”](#), Center for Immigration Studies blog, April 2, 2012.
- ⁴ Nat Rudarakanchana, [“VTDIGGER Exclusive: State Pulls Plus on EB-5 Project”](#), vtdigger.org, April 3, 2013.
- ⁵ David North, [“The Immigrant Investor \(EB-5\) Visa: A Program that Is, and Deserves to Be, Failing”](#), Center for Immigration Studies *Background*, January 2012.
- ⁶ Michele Eckerson & Michael Phillips, [“Making The Case Against China City: Would-Be Neighbors Say Not In Their Backyard”](#), *Shawangunk Journal*, September 5, 2013.
- ⁷ See the China City of America [website](#) and go to “financials”.
- ⁸ See the Yankee Lake [website](#).
- ⁹ For the full text of the letter, signed by Joseph R. Murray of the NY State Division of Environmental Permits, see the Basha Kill Area Association's [website](#), cited in end note 2, as of late November, 2013.
- ¹⁰ Mamakating News, [“China City Introductory Meeting, Town Of Thompson New York”](#), May 15, 2013.
- ¹¹ Tom Shepstone, [“Natural Gas Development Saves the Farm”](#), naturalgasnow.org, September 29, 2013.
- ¹² Matt King, [“KJ highest US poverty rate, census says: Expert on Hasidic communities says large families, poverty linked”](#), *Times Herald-Record* (Middletown, N.Y.), January 30, 2009.
- ¹³ See the Wikipedia entry [“Persecution of Falun Gong”](#).