

Pasted in below are three articles about the EB-5 program published in the Baltimore Sun on Feb. 20.

While the overall series is anti-EB-5, at least the middle article points out the problems facing individual investors. The series certainly will make it harder for us to revive the EB-5 program. Suggestions, anyone?
Steve Yale-Loehr

INS insiders profit on immigrant dreams Cashing in: Former immigration officials siphon millions from a program to entice foreign investors with the promise of green cards.

By Walter F. Roche Jr. and Gary Cohn Sun Staff
Baltimore Sun Feb. 20, 2000

Give me your tired, your poor, Your huddled masses yearning to breathe free. Over more than half a century, 12 million immigrants streamed into America welcomed by the words of Emma Lazarus engraved at the base of the Statue of Liberty. But welcoming the tired and poor was hardly on the minds of a small group of former government officials who helped design an immigration program to attract wealthy foreigners who could obtain prized green cards by investing \$500,000 to \$1 million in U.S. businesses. The investor visa program was a little-noticed part of the Immigration Reform Act, a sweeping law that reshaped the country's immigration policies. President George Bush called the law "the most comprehensive reform of our immigration laws in 66 years." It was, he said as he signed the bill into law on Nov. 29, 1990, "good for families, good for business, good for fighting crime and good for America." While his predictions may yet come true, a review of the decade-old law shows that it has benefited one group not mentioned by the president -- former INS officials and their associates who have pocketed millions in fees from wealthy foreigners willing to invest their savings to join in the American dream. In the rush to cash in on the law, the visa vendors have left a trail of victims -- from families seeking a new beginning in America to struggling companies needing a promised infusion of cash to keep their workers employed. Now, many of those families are facing the threat of deportation, while many troubled companies that were promised a boost from immigrant investors have closed their doors, leaving hundreds of workers unemployed. An investigation by The Sun has found: Some of the former INS officials who have profited most from the visa vending business were instrumental either in formulating the program or lobbying for favorable interpretations of the program rules that aided their businesses, at times working with the same INS staff they once directed. One of the most active participants in the visa vending has been Gene McNary, INS commissioner from October 1989 to January 1993. By his estimate, after leaving the federal government, McNary acted as the attorney on 200 to 250 applications for the program. The immigration act's main sponsor in the House of Representatives, Rep. Bruce A. Morrison of Connecticut, went into business with a California immigration consultant to market the investor

visa program within days after his congressional term ended. Morrison's agreement was dated Jan. 22, 1991, the month he left Congress.

Former officials such as McNary, former INS general counsel Maurice Inman and Diego Asencio, the former U.S. ambassador to Colombia and Brazil, had extraordinary access to and incessantly lobbied former colleagues in the government for preferential treatment and obtained a series of highly favorable but questionable rulings on the requirements for the program that only years later were reversed.

"Diego Asencio, Mike Inman, Gene McNary are allowed to roam the Visa Office and INS whenever they please," lamented one frustrated State Department official in a memo that questioned the propriety of the former officials' activity. "They often just drop in without any warning and they walk about the building like they still worked for the USG [U.S. government]. I feel like a very small but chubby mouse between two very hungry and big tomcats."

The law required that immigrants invest \$1 million in new or troubled U.S. businesses, or \$500,000 in a business located in an area of high unemployment. In many cases, only a small fraction of the total -- often just \$10,000 per investor -- went to the struggling companies.

The intent of the law was that each immigrant's investment would create or preserve at least 10 American jobs. However, some of the faltering companies have closed and laid off workers, with at least one filing for bankruptcy. Elnor Bailey's clothing factory in Alabama was the sort of business the program was designed to help. But she received only \$50,000, not enough to keep the factory from closing last fall. She was never told she was entitled to substantially more money. "It makes me angry," she said. "It really does."

When the INS finally did crack down on program abuses in December 1997, it did so with a vengeance, leaving hundreds of people in limbo -- including many immigrants who had tried to follow rules in effect at the time. As a result of that reversal, hundreds of immigrants who thought they had found a legitimate way to live in the United States are facing not only the loss of their investments, but possible deportation.

"I saw the United States as my final shore," said one immigrant investor, Mario Carbini of Italy. Now, he said, "I don't know if I'm living a nightmare."

Government officials who balked at approving questionable arrangements were ignored, or worse. Instead of having their concerns taken seriously, they were told "just issue the frigging visa," said Melissa Arkley, a State Department official who helped to administer the investor visa program.

Even the former INS official who for years was at the center of the program's implementation acknowledges that it is deeply flawed. "My overall sense is that it's a mess," said Paul W. Virtue, who was general counsel for INS.

America for sale

The investor visa program was controversial from the start.

Ten years ago, after the legislation was introduced, Rep. Doug Bereuter, a Nebraska Republican, warned: "If the [Senate] has its way, 4,800 foreign fat cats would be permitted to buy their way into American citizenship, contingent upon their employment of 10 American workers for at least two years.

"The issue goes to the heart of what we, as Americans, and our nation are all about," he told House colleagues. "This member would deeply regret to learn that our principles, our values and, indeed, American citizenship itself, is for sale to the highest bidder."

Former Democratic Sen. Dale Bumpers of Arkansas, a longtime critic, said recently: "Under the best of circumstances this was a terrible idea. It was just an outrageous concept to me."

Under the program, known technically as EB5, up to 10,000 visas a year can be issued to investors and members of their family who invest \$1 million in a U.S. company for the purpose of creating 10 jobs. A smaller investment of \$500,000 qualifies if the investment is made in rural or high unemployment areas.

Investors who qualify get a conditional green card for two years and then a permanent green card if INS is satisfied that the investment is still in place and was not fraudulent.

Although some 80,000 investor visa petitions could have been approved since the law was passed, only 3,547 petitions were approved through 1999, according to INS data.

While the law creating the investor visa program was passed in 1990, the effort to win approval began years before.

"This one provision," declared Illinois Democrat Paul Simon during a 1986 Senate debate, "will generate over \$8 billion annually in new investments in small and independent U.S. businesses, and provide up to 100,000 new jobs for Americans."

The impetus for the visa program came from a similar strategy in Canada that was attracting millions of dollars from wealthy Hong Kong residents. Why not have some of that money come to the United States, supporters argued, especially since the country was suffering through an economic downturn.

Though the legislation failed in 1986, it was renewed in 1989 and in 1990, when the investor visa program was included in a massive immigration bill. A House version was filed by Rep. Bruce Morrison, a Democrat who chaired the subcommittee on immigration. The Senate version was filed by Sen. Edward M. Kennedy, a Massachusetts Democrat.

Changes in the immigration law had been recommended by a commission chaired by the Rev. Theodore M. Hesburgh, former president of Notre Dame University.

"It smacked of being able to buy citizenship," said Hesburgh recently. "I think I was the only one who voted against it. I just didn't feel right about it."

During the brief House debate on the measure, Rep. John W. Bryant, a Texas Democrat, expressed strong objections.

"This provision is an unbelievable departure from our tradition of cherishing our most precious birthright as Americans," said Bryant. "Have we no self-respect as a nation? Are we so broke we have to sell our birthright?"

Even the bill's sponsor expressed reservations. The idea "leaves a bad taste in my mouth," Morrison said. But "there is a lot of foreign investment going on right now. Who do you want, someone who puts down roots or just puts down his money?"

Court records show that Morrison, who was leaving Congress after an unsuccessful bid to become governor of Connecticut, went into business with a California immigration consultant named Maria Hsia. His job was to market the investor visa program to foreign investors.

His contract, dated Jan. 22, 1991, called for payments of \$10,000 per month for six months.

Morrison contends that Hsia owes him \$20,580.50 in salary and expenses.

Morrison, who now heads the Federal Housing Finance Board, said he saw nothing improper about going into the business after his term as long as he did not try to gain preferential treatment based on his former position.

"No, it is not wrong," said Morrison. "What was I supposed to do for a living?"

On March 15, 1991, Morrison's press secretary, Paul Donnelly, set up a company in Hyattsville called Investment Immigration Consulting Co. Its purpose, according to Maryland records, was to provide consulting and other services related to the investor visa program.

Harold Ezell, Western regional INS commissioner from 1983 to 1989, ran an investor visa consulting business in Orange County, Calif., before his death in 1998.

"We've done a great job on boat people. I see no problem with a few yacht people," Ezell said in 1991, soon after the law went into effect.

But the efforts of Morrison, Donnelly, Ezell and other insiders would soon resemble a skiff alongside an ocean liner. The investor visa program was about to get a boost from a major new player called American Immigration Services, a Greenbelt firm formed by a local real estate developer.

State records show AIS was incorporated in Maryland on Feb. 8, 1991. Soon, its board of directors boasted a who's who of the politically connected, including Diego Asencio, a former ambassador and assistant U.S. secretary of state for consular affairs. Bryant, the vehement critic, was recruited as a board member at \$20,000 a year.

Bryant said he was recruited by Asencio precisely because of his opposition.

"Diego thought that since the enterprise was going to ask the investors to put up their money and they would have to trust the company, my having been a critic might help their credibility," said Bryant, who is no longer on the AIS board.

Also on the AIS board were William Clark Jr., a former ambassador and State Department official; Prescott S. Bush, the brother of the president who signed the 1990 law; and Jack F. Matlock Jr., a former ambassador. McNary, the former INS commissioner, was signed up as legal counsel. The first INS regulations governing the investor visa program were issued under McNary's signature on Nov. 29, 1991.

The owner of AIS was Donald Laskin, a Maryland developer, who soon after AIS was formed became the subject of a federal investigation. In October 1996, Laskin pleaded guilty to bank fraud in a Prince George's County land deal. He declined to comment for this article.

By all accounts, the investor visa program got off to a slow start. For the first two years there weren't many applications -- nowhere near the 10,000 per year allowed under the law.

But internal memos and other records show it was not long before efforts were under way that would open the floodgates to applications. Leading those efforts was a small group of former INS officials, along with Asencio -- all, at least initially, affiliated with AIS.

According to court records, Maurice Inman, a former general counsel at INS, quickly emerged as an important player. He appeared initially as an adviser to AIS and would reappear as a key figure in a rival company. Two other AIS representatives, Asencio and former INS Commissioner McNary, became familiar figures in government offices dealing with the program.

Wearing his adviser's hat, Inman turned to Paul Virtue, who had been hired by Inman before he left the INS in 1986. Virtue was to emerge as INS' expert and the key administrative decision-maker on the investor visa program.

"Paul Virtue, who I knew extremely well, became the decision-maker, the boss," Inman said.

Every time we put a deal together, Inman said, we'd take it to INS and go over it in detail before formally submitting it. He said someone from INS -- he didn't know who -- had given his name to prospective investors.

The Virtue rulings

Occasionally during discussions with INS, agency officials would recommend a change and "we would comply," Inman said. "You've got to have predictability. People are putting their lives and their savings on the line."

"Predictability" came in the form of two key legal opinions issued by Virtue on Sept. 10, 1993, and June 27, 1995. The memos were to completely change the shape and scope of the investor visa program -- and became a boon to AIS.

The rulings stated that investor visa applicants could pool their money and form limited partnerships. Immigrants could meet investment requirements without putting all the money up in cash. A promissory note could be used.

Making the program more appealing, the rulings allowed investment agreements to include provisions ensuring that investors would not lose money. Initially, applicants need put up only \$125,000 in cash, not the \$500,000 or \$1 million spelled out in the law.

Under Virtue's rulings, investors could get permanent green cards before being required to follow through with the full amount of the investment. The result was that investors could put up \$125,000 and promise to pay the rest, knowing that they would never have to do so.

The effect of the rulings was reflected in INS statistics. In 1995, 417 investor visa petitions were filed. In 1996, the number rose to 801, and in 1997, to 1,496.

The flood of approved investor visa programs included that of a firm called Wall Street Financial Corp., based in Hawaii. According to filings with the Securities and Exchange Commission, the company attracted more than \$1 million in investments through the investor visa program. Wall Street Financial, records show, invested that money in a multimillion-dollar resort in Belize, not in businesses in the United States.

Gerhard Walch, the firm's president, said the program was approved by the INS. He failed to respond to requests for further information, including the number of Wall Street Financial investors who obtained green cards. INS officials declined to comment.

The sudden surge of investor visa applications and approvals triggered concern in the Department of State, where consular officers were required to review the applicants.

A perception was growing among State Department officials that the rules were being bent to accommodate a small group of former INS officials, according to interviews and State Department cables, e-mail and other documents obtained by The Sun. Those memos questioned the legality of the AIS investments, comparing the operation to a Ponzi scheme.

"Bill, you should know that Diego Asencio, Mike Inman, Gene McNary are allowed to roam the Visa Office and INS whenever they please," Sylvia L. Hammond, a State Department official, wrote to William Martin, then a consular officer in Tokyo, on Feb. 14, 1997. "They often just drop in without any warning and they walk about the building like they still worked for the USG [U.S. government]. I feel like a very small but chubby mouse between two very hungry and big tomcats."

Another State Department official, H. Edward Odom, wrote to consular official Wayne G. Griffith: "Everyone in the department and in INS who has come into contact with these cases has immediately detected the odor of them."

"Again, nobody likes the situation, especially having to deal with cases which are pushing the envelope on legality and which also involve the former head of CA [consular affairs]," referring to Asencio. "We are all uncomfortable."

In a Valentine's Day 1997 e-mail to Donna Hamilton, then-principal deputy assistant secretary of state for consular affairs, Griffith complained that INS and the State Department were "caving in" to "heavy political pressure."

As one example of how the former INS officials were able to get their way, State Department visa official Melissa Arkley described a September 1997 meeting attended by AIS attorneys William Cook and Gene McNary, the visa office and the INS.

At the meeting, Arkley wrote: "AIS representatives made a number of assertions which INS, led by Paul Virtue, appeared to accept without question. ... Among other statements, Mr. Cook characterized the EB-5/T-5 program as 'selling green cards' with the only problem being the price at which the government was selling them."

Arkley wrote that AIS officials boasted about their conversations with Virtue.

"They have frequently asserted that they had 'just spoken to Paul' or that Paul Virtue had 'promised' them that their investor agreements were in full compliance with the current regulations," she wrote.

Arkley, a consular officer in the State Department's central office for two years ending in mid-1999, said her colleagues failed to respond to concerns about the investor visa program coming from embassies around the world.

"We rolled over and played dead," Arkley said. "Not only did we not advocate [on behalf of consular officers], we put our foot on their throats and told them to shut up. 'Cease and desist! Just issue the frigging visa,' is what we told them."

Finally, though, the drumbeat of opposition within the INS and State Department led then-INS general counsel David Martin to issue a memo on Dec. 19, 1997.

The opinion struck down many of the rules issued by Virtue, including provisions that ensured that final payments would never have to be made, the use of a portion of the immigrant's contribution to pay expenses such as attorney and finder's fees, and the guaranteed return on the cash portion of the investment. The ruling tightly restricted the use of promissory notes.

Even after the Martin ruling, concerns about preferential treatment were raised within INS.

"There continues to be a lack of serious will by this office to address squarely and in a forthright manner the ongoing ethical problem created by providing inordinate access to former INS officials," INS attorney S. Alexander Gisser wrote in a May 15, 1998, memo to his boss, David Dixon. "This type of special accommodation should stop, once and for all."

The memo concluded: "I hope you haven't forgotten that it was the Office of General Counsel which, in large part, created this mess by accommodating these officials inappropriately in the past."

Inman had been warned that rule changes might be in the works, but said the Martin memo caught him by surprise.

"When I heard about the memo, this got my attention in a big way," Inman said. "They [INS] kept telling us to cool it. Don't worry."

He first called Paul Virtue, whom he said had assured him repeatedly that any changes would not be retroactive. Inman said Virtue "reiterated the promises that had been made by him that the rules would not be changed."

But the changes did come. And they were retroactive.

In a series of "precedent rulings" in 1998, INS made the reversal official, striking down applications involving types of promissory notes, guaranteed investment returns and other key elements of the AIS programs.

Inman said he learned around that time that Virtue, who had become the subject of an internal investigation by the INS inspector general's office, had been taken off the investor visa program. Virtue said he has heard nothing since being interviewed by the inspector general's office several months ago about its probe into allegations that he might have been unduly influenced by former INS officials. Virtue said his recusal was voluntary and not related to the investigation.

By the time of Virtue's recusal, Inman had stopped working with AIS and joined another investment visa firm, American Export Partners. Inman said he disagreed with AIS officials' decision to limit the initial investment from visa applicants to \$125,000.

"We parted over the decision to embark on the \$125,000 program -- \$125,000 was not enough. Our clients [firms seeking investment money] needed more," Inman said.

American Export was also hit by the INS rulings, and its lawyers filed suit last spring in U.S. District Court in South Carolina alleging that the new policy contradicted at least four written opinions from the INS administrative appeals office and "promises and representations" made by INS.

Among other documents, the lawsuit cited Paul Virtue's 1993 and 1995 memos.

Asked in an interview how often he received assurances from INS officials that his programs were in compliance, Inman said: "Maybe 30 or 40 times."

But Inman insists that his access was proper and of little consequence compared to that of McNary.

"I knew who to call, but that's the only benefit," Inman said. "McNary had a hell of a lot more contacts than I ever dreamed of ... and more current contacts than I ever dreamed of."

"My connections were current because I left INS after he [Inman] did," McNary said.

The former INS commissioner said he waited more than a year after he left INS in early 1993 before becoming involved in the immigration business. A one-year wait is required under federal law.

"I probably talked to Paul [Virtue] three or four times -- a couple of times about the investor visa program," McNary said. "They were changing the rules and I was just trying to find out what they were doing."

'McNary's baby'

But McNary's efforts on behalf of AIS were not limited to calls and meetings with Virtue. An internal memo written by Dennis Janda, an official at the INS service center in Dallas, recounts a series of key events for AIS and underscores the role McNary had played in shaping the investor visa program while he headed INS.

In the memo, written in April 1996, Janda recounted discussions at INS headquarters in 1991 in which top INS officials referred to the investor visa program as "McNary's baby" and said McNary "was basically scripting the direction of this program."

Janda said in the memo that he was not surprised to learn of McNary's involvement when a key AIS investor visa application landed on his desk in the summer of 1995. The case was important because once it was decided, it would determine the fate of hundreds of AIS applications to follow.

Janda, according to the memo, did not believe the application met "the letter or spirit" of the law. At the urging of superiors, he phoned McNary at his St. Louis law offices to discuss it.

Describing McNary as "the moving force" behind the program, Janda wrote that McNary assured him that he had run the proposals by the head of the INS unit that would ultimately hear any appeal in the case.

Even after McNary submitted additional materials, Janda did not believe the AIS application met requirements.

According to Janda's memo, he spoke with the head of the appeals unit, who affirmed McNary's statements.

"I prepared notes to the file at that time regarding that important discussion, and by default, approved the case as there would be no point in subjecting our office to needless criticism," the memo states.

McNary acknowledged speaking with Janda and sending him copies of earlier approvals. He said he was simply doing his job. "I was an immigration lawyer at that point," McNary said.

Asked if he got preferential treatment, McNary, who is running for Congress from Missouri, said: "Absolutely not. To the contrary, not only was it arm's length, it was an extra step I had to go through to ask for a meeting."

As a private attorney, McNary markets the expertise he gained as INS commissioner. A Web site for McNary's law firm states: "Mr. McNary returned to the private practice of immigration law armed with a unique knowledge and understanding of immigration law and the operations of the federal agency which regulates and administers these laws."

Virtue, now in private law practice, strenuously denied giving favored treatment to Inman, McNary, companies they represented or any of the other firms in the investor visa program.

"There were allegations that I was unduly influenced by people representing companies in the program. I certainly deny unequivocally that there was special treatment," he said.

Virtue acknowledged signing the two memos but said he did not prepare them, a task he said was performed by members of his staff.

Virtue acknowledged the meetings with Inman, McNary, Asencio and others, and the frequent phone calls from Inman. "Mike Inman probably called me four or five times a day," Virtue said.

Asked if he assured Inman that any rule changes would not be retroactive, Virtue replied: "To the extent I could assure him at all, I felt we would be publishing new regulations. ... He gives me credit for more authority than I had."

If he were to do it again, Virtue said, "I don't think I would have entertained any direct contact or meetings with people representing those companies. I would have made it clear [that] the general counsel's office is in the business of providing legal advice to our clients. ... While I tried to make that clear, I would have put it in writing on the side of a building somewhere."

Virtue said it was his belief at the time that the AIS programs "technically" complied with the law and regulations.

"Yes, clearly, they were taking advantage of the regulatory scheme as much as they possibly could," he said.

But there were those inside INS who said Virtue's rulings created the problem.

"Virtue's interpretations invited the abuse," said Benedict J. Ferro, former regional director in Baltimore. "They never made sense. They were inconsistent with the law."

Splitting the fees

The companies and their principals were generating lucrative fees for themselves and their associates. In a lawsuit in U.S. District Court in Baltimore, a former AIS employee alleged that the firm's programs provided only \$10,000 per investor to businesses, a small fraction of the \$500,000 and \$1 million required by law.

In a lawsuit alleging that AIS defrauded the government, Joaquin A. Tremols, who worked for the firm from Sept. 25 to Dec. 11, 1995, said investors were required to put up only \$125,000 in cash -- and that only \$10,000 went to troubled companies.

According to the lawsuit, of the \$125,000, \$10,000 went to McNary's law firm for legal fees; \$15,000 was a finder's fee to the person who recruited the immigrant investor; \$25,000 went to AIS for administrative and other fees; \$65,000 went into a trust account; and \$10,000 went to the troubled business.

"The trust account," Tremols' lawsuit states, "guarantees each investor a 10 percent return on their investment per year."

Based on the 120 enrolled investors, the lawsuit estimates that \$58 million that should have been invested in American businesses never was. The lawsuit alleges that McNary acted in a dual role -- as legal adviser to AIS while simultaneously providing legal services to investors who paid him a \$10,000 fee. McNary refused to discuss fees, but acknowledged handling 200 to 250 investor visa applications.

Based on those figures and the fees alleged in the Tremols lawsuit, McNary and his law firm could have collected legal fees of \$4 million to \$5 million.

A copy of McNary's standard contract with investor clients was attached to the Tremols lawsuit. It includes a provision under which clients agreed to allow McNary's firm to represent both parties.

Tremols, who dropped his lawsuit late last year, declined to comment. State Department cables that detail the AIS transactions corroborate the figures in the lawsuit. Had he won the case, Tremols could have received a portion of any damage award assessed against AIS.

William Cook, a former INS general counsel who represents AIS, defended the firm's actions and said that because of uncertainty created by the INS policy shift, further payments from investors to the companies were never made. Asked repeatedly to provide an accounting of how much money was provided to the companies, Cook never responded.

Cook, like other AIS officials, attributes the INS action, in part, to jealousy.

"There were a number of former INS people who made a reasonably large amount of money in this program," said Cook. "McNary made millions. Inman made millions."

Rhetoric and reality

In October 1995, McNary and other AIS representatives held a news conference in Selma, Ala., to announce that up to \$25 million would be invested in local textile companies under the investor visa program. They said the money would give a much-needed financial boost to two Selma companies, Denim Specialists and Dallas Manufacturing, and help preserve 500 jobs. McNary was quoted in a local newspaper as saying that although the initial investments wouldn't be large, "there is a potential for \$25 million over the long haul." Although the program had been slow in getting going, he said, "we're over the hump and will be able to preserve those jobs." That was the rhetoric. This was the reality.

In 1996, Denim Specialists filed for bankruptcy after being evicted from its factory. James Utsey of Selma, the owner of Dallas Manufacturing and two other textile firms, was present at the news conference that day. He said he was repeatedly rebuffed in efforts to get more than the \$100,000 initially provided by AIS, which he said was in the form of a loan. The payments apparently represented the contributions of 10 investors.

"We had a fairly heated argument," said Utsey, outside his now dark and abandoned factory, recalling a conversation with AIS officials. Eventually, AIS wouldn't return his phone calls.

Asked if he was aware of what became of the companies in Alabama, McNary said he did not know.

When Congress established the investor visa program, it was with struggling businesses like Bailey Creations in mind.

Elnor Bailey, now 74, started her company 13 years ago, partly to provide jobs for neighbors in the depressed rural town of York, Ala., near the Mississippi border. By the mid-1990s, she was running out of cash and afraid she might have to close her factory and lay off workers. Then she heard about the investor visa program. A talk with an AIS representative offered encouragement that she'd be able to keep her business going.

Bailey said she received \$50,000, which helped for a while. But bills mounted, and Bailey closed her company last September and laid off its 75 workers.

Her factory sits idle. Patterns for the women's and children's clothing that once poured off the assembly line hang on the walls. Dozens of sewing machines are stacked at one end, covered in cobwebs.

Months after her plant closed, Bailey learned that more than \$500,000 that could have kept her business alive was sitting in escrow in a bank account she couldn't access and hadn't known existed.

"I didn't know there was any rest of the money," she said. "I can promise you if I had gotten \$500,000, I would be in business."

State Department cables show government officials knew in 1997 that only a small fraction of the money was going to Bailey's company, while AIS legal and administrative fees ate up five times that amount.

"My mind keeps going back to 'It's the government,' " said Bailey. "They should have been doing their job. You just can't put a program out there and not monitor it."

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Investors follow INS rules and now fear deportation

By Walter F. Roche Jr. and Gary Cohn Sun Staff

It's not hard to see how Sing-Young Wang and his wife, Chin-Hua Lu, would feel betrayed by America.

Four years ago, Wang gave up his medical practice and sold everything he owned in Taiwan to come to the United States so his 7-year-old son, born with a birth defect, could have a chance at a normal life.

The Wangs pinned their hopes on a little-known American program under which immigrants could get a permanent green card, the ticket to citizenship, in return for investing up to \$1 million in a U.S. business. It is called the investor visa program.

Hard as he tried to follow the rules, Wang, his wife and their three children now face the threat of deportation. They and hundreds like them are caught in a dispute over what Congress intended when it created the program a decade ago. In an abrupt change in policy implemented in 1998, the Immigration and Naturalization Service reinterpreted its rules. Investors now face an almost-certain order to leave the United States.

The INS reversal has spawned legal challenges from Hawaii to South Carolina. For immigrant families, the waiting is painful.

"Sometimes I cannot sleep at night," Wang said. "I never felt so scared in my life."

Jeffrey was born with hydrocephalus -- fluid accumulated inside his skull, pressuring the brain. In Taiwan, he would face a life of institutionalization.

"I took him to every doctor and physical therapist," said Mrs. Wang, who refused to abandon hope. Even her mother disagreed when the Wangs decided that the best chance for their son was to come to America.

Fighting tears, she described how her mother, visiting a few years later, conceded that her daughter had been right -- Jeffrey was markedly improved.

"She said, 'You try your best to stay here,' " Mrs. Wang recalled.

To qualify for investor visas, the Wangs were determined to adhere strictly to the law. They'd heard of programs where you could put up \$125,000 instead of \$500,000 or \$1 million, but rejected them.

He abandoned his ophthalmology practice and invested in a California computer business with relatives there. When it failed, the Wangs lost about \$700,000.

Intent on keeping their visas, they invested \$500,000 in a Fresno partnership formed by Spencer Enterprises, which INS had approved for the program. They later learned INS had rejected investor visas for other partners.

Attorneys for Spencer Enterprises have filed suit in U.S. District Court in Fresno alleging that INS violated due process when it reversed itself and revoked the approvals of four immigrant investors and their families.

The Wangs are not plaintiffs in the lawsuit because their visas have not been revoked. Earlier this month, the INS notified the Wangs that the agency intends to revoke its approval.

"The INS is the judge and the jury," Wang said. "You can never fight back and win."

But Jeffrey's parents still believe they did the right thing.

"We lost a lot of money, but it's worth everything," said Wang. "Here, even if you have just one dollar you have a chance. He still has a chance to be independent."

Andy Su came from Taiwan to study at the University of Southern California, where he earned a bachelor's degree in structural engineering.

Su wanted to stay in the United States to get more experience before joining his family's contracting business. He considered staying permanently. In 1996, he heard about the investor visa program.

Backed by money from his family, Su decided to take no chances, sidestepping programs that promised citizenship for only a fraction of the cost under the investor visa law.

He found what seemed an ideal opportunity -- the Hilltop Motor Lodge in Vista, Calif. The owner was deeply in debt and about to close. The 72-unit motel had lost money for two years and accumulated debt of \$1 million.

Su put up nearly \$1.3 million and bought it outright, not taking out a mortgage. He put 10 people to work, the number required under the 1990 investor visa law.

He gained a temporary visa in 1997. Last April, the INS gave notice that it intended to revoke his visa, questioning the source of his funds and whether his investment continued to meet job creation requirements. Su provided further documentation. On Aug. 25, he received final notice of revocation.

Fearing that he would be forced to leave, Su looked for another means of staying in the country. He learned of the investor treaty program, which does not promise a permanent green card, has no set investment levels and is limited to immigrants from countries with trade relations with the United States.

Su went to Texas, crossed into Mexico and returned as a treaty investor, using the motel he had used to qualify for the investor visa program. As a treaty investor, Su will face reviews of his investment every five years and will never get a permanent green card.

"I'm frustrated and feel like I've been cheated," Su said. "I thought that here in America, the rule was the rule. Sometimes you play by the rules and you get burned."

Immigration lawyers say Su, the Wangs and hundreds of others are the victims of an overreaction by the INS to a problem the agency created when it failed to put proper controls on the program in the first place.

"A lot of people are getting hurt," said Lincoln Stone, a California attorney, who represents foreign investors and is a former partner of ex-INS general counsel Maurice Inman. "The INS has closed its ears and closed its mind. Where in this policy is the consideration of people?"

"Was there abuse in the program? Absolutely," said Henry Liebman, a Seattle lawyer who set up an investor visa program. He said firms like American Immigration Services in Maryland "ruined the program for everyone."

Liebman's investment group, the Golden Rainbow Freedom Fund, filed suit last spring in U.S. District Court in Seattle contending that the INS acted arbitrarily and capriciously in changing program rules retroactively. The INS has denied the allegations. The lawsuit is pending. INS officials declined to be interviewed for these articles, citing pending litigation over the program.

Despite the INS reversal, some investors have cut a path through the regulatory thicket. For Ronald Huiskamp, 30, and his wife, Alice, 33, who came to the United States from the Netherlands, it took three applications to get their green cards on track.

"America had great appeal," he said. "It is the land of opportunity."

But the Huiskamps worried about the requirement that an investment produce and maintain 10 jobs. He feared that if the business couldn't support the jobs, he and his wife could face deportation.

An attorney told them about amendments in 1992 that allowed credit for indirect job creation if the money was placed in a federally approved regional center. A \$500,000 investment is required.

"That allowed us to make an investment for the program but still work on our other businesses," Huiskamp said, adding that they learned about the Seattle center via the Internet. Eventually, the Huiskamps invested in a bank being formed in a Seattle suburb.

To avoid further red tape, the Huiskamps invested the full \$500,000 before filing their visa application. Even so, they experienced lengthy delays and repeated INS inquiries.

"INS froze the program in 1998 ... two weeks after we filed our first application," Huiskamp said. "We thought it would take three to four months, but it took over a year."

The Huiskamps seem on their way to U.S. citizenship, but many face an uncertain fate. While a solution could come through the courts, critics say Congress must show the way.

In a report filed with Congress last year, INS urged passage of a law to clarify the program and its intent. INS said the law should require that money be invested in full and set a deadline for its commitment. The INS urged penalties for investor visa marketing firms that misrepresent the program.

Pointing fingers, assigning blame Interbank: A Virginia firm offering a cut-rate investment plan comes under INS scrutiny - with investors trapped in the middle.

By Walter F. Roche Jr. and Gary Cohn Sun Staff

Federal investigators allege that it is a company "permeated with fraud." Its founders say it is a victim of the "meddlesome fervor" of a federal agency.

The Interbank Group of Herndon, Va., quickly became a major player in a little-known federal program that allowed foreigners to become permanent U.S. residents by investing up to \$1 million in an American business. A \$500,000 investment qualified in areas of high unemployment.

Set up four years ago by James F. O'Connor and James Geisler, Interbank promised to create hundreds of jobs in economically depressed West Virginia through its Invest in America program.

Like a rival firm, American Immigration Services of Greenbelt, Interbank told investors they could qualify with an investment not of \$1 million or \$500,000, but as little as \$125,000.

Like AIS head Dennis Laskin, O'Connor had come under the scrutiny of federal law enforcement officials.

O'Connor, then 23, and Bernard J. Coven, 62, were convicted in 1981 of attempted fraud.

O'Connor received a 10-year sentence and a \$44,000 fine, Coven a 10-year term and a \$34,000 fine.

O'Connor told The Sun that he learned of the investor visa program from a client in a currency exchange business, and that he and Geisler spent six months developing investment plans that would qualify for the visa program. They set up business in West Virginia, where unemployment ran high, so visa applicants could qualify with a \$500,000 investment.

Interbank signed up hundreds of visa applicants and began the process of gaining INS approval.

The original application was turned down, but was approved by INS on appeal, O'Connor said.

Interbank officials say they then got caught up in "meddlesome fervor," an INS overreaction to allegations against AIS. Suddenly, all of their applications were in jeopardy.

Interbank had other problems. Federal investigators raided the company's headquarters in September 1998. In an affidavit, INS Special Agent Elizabeth M. Goyer said the agency had reason to believe Interbank was filing false statements with visa applications.

According to the affidavit, Interbank told visa applicants they could put up \$150,000 or less, which would eventually be refunded. Further, the affidavit states, "there is probable cause to believe that Interbank and its related entities are permeated with fraud."

No federal action -- criminal or civil -- has been initiated against the company.

But Interbank is being sued by clients, including Mario Carbini of Santa Barbara, Calif., who filed suit this year in U.S. District Court in Los Angeles, accusing the firm of delaying the filing of his application, ultimately causing it to be rejected. Interbank did not respond to the lawsuit, and a judgment recently was issued in Carbini's favor awarding him a refund.

Carbini, an accountant, sold his apartment in Italy and put up his savings to pursue his dream of becoming a U.S. citizen. He signed up for the Interbank program in August 1997, paying \$20,000 in fees and \$100,000 that was to go to an American business.

Carbini, 55, said he had no illusions that his investment was a good one. He went ahead, he said, because he wanted the chance to move permanently to the United States, eventually to become an American citizen.

"We wanted the green card," he said. "You don't invest with someone you don't know. You can buy shares of Ford or Microsoft."

Carbini said he checked out other Interbank deals, found they were approved, then "gave money to them like it was nothing."

In September 1997, Interbank filed an investor visa petition on Carbini's behalf. He believed it would be approved, he said, because similar petitions had been.

On Nov. 11, 1998, the INS denied his petition.

"I'm very angry with INS, and also with Interbank," Carbini said. Interbank "took advantage of the situation and the INS Š didn't give a damn about us."

He said he invested because of his faith in the U.S. government.

"It's the best democracy in the world. You trust it blindly. I saw the United States as my final shore," Carbini said. Now, "I don't know if I'm living a nightmare."

Other pending lawsuits allege that Interbank officials used millions of dollars in investment funds to keep the firm and its subsidiaries in business. Those funds, up to \$150,000 per investor, were to have been placed in escrow accounts that were not to be used unless the investors obtained green cards.

None received green cards, and the money has been spent, court records show.

In a letter to an investor, company officials attempted to explain their actions: "Interbank was facing a very difficult decision. Businesses cannot survive without cash flow."

In September, the company sought Chapter 11 bankruptcy protection.

Interbank promised to provide hundreds of new jobs in West Virginia, but never opened its doors there. Company officials blame INS.

For investors, recovering their money may be only a dream.

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