



# Business Immigration Reporter

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## H-1B Processing Update:

On May 2, 2016 USCIS announced that it has completed data entry for all fiscal year 2017 H-1B cap-subject petitions. Since then, USCIS has begun returning all petitions which were not selected in its H-1B lottery. USCIS received in excess of 236,000 petitions.

It goes without saying that it is virtually impossible for an employer to make hiring decisions for foreign national professionals when the company is subjected to a nebulous visa lottery which frustrates any planning.

The information disseminated by USCIS to the public and employers in particular is scant and casts doubts. All the USCIS has ever disclosed about its H-1B visa lottery system is that it conducts a computer generated random selection system when it determines it has received a sufficient number of applications.

In light of this confusion, the American Immigration Lawyers Association (AILA) and the American Immigration Council (AIC) have filed an action for declaratory judgment and injunctive relief under the Freedom of Information Act (FOIA), in the United States District Court for the District of Columbia, to obtain the information needed to provide the public with an understanding with the operating procedures and policies USCIS follows in administering the H-1B visa lottery.

Specifically, AILA and AIC are asking the court to compel the Department of Homeland Security and its agent USCIS to release documentation concerning the H-1B visa lottery which it is wrongfully withholding.

## Jay Peak EB-5 Litigation Update:

Congress created the EB-5 Program in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. In 1992, Congress created the Immigrant Investor Program, also known as the Regional Center Program. This sets aside EB-5 visas for participants who invest in commercial enterprises associated with regional centers approved by USCIS based on proposals for promoting economic growth. Jay Peak is such a regional center.

A few weeks ago it came to our attention that the Securities and Exchange Commission (SEC) is investigating Jay Peak, Inc. regarding the company's use of funds obtained under the USCIS EB-5 Immigrant Investor Program. The SEC has filed a complaint with the U.S. District Court for the Southern District of Florida seeking injunctive and other relief on behalf of investors. Many of Jay Peak's businesses have been listed as either defendants or relief defendants in the case. A relief defendant is a person named in civil litigation who is not accused of wrongdoing, but who has received property originally



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obtained illegally, and to which the relief defendant has no legitimate claim. Furthermore, it is not necessary that the relief defendant received the property in question knowingly - just a valid negotiated consideration creates a "legitimate claim".

We have also become aware that the court has appointed a Receiver for Jay Peak. The Receiver is in the process of negotiating with the company to try to keep the projects going. We also learned that attorney Ira Kurzban has been lobbying Congress to implement legislation of a waiver to provide relief for the victims of this scheme.

We have contacted the court-appointed Receiver, Attorney Michael Goldberg and were told by his office that he is currently in Vermont meeting with Jay Peak principals, and that he will be issuing a statement shortly after his return. Attorney Goldberg's firm has set up a website to track the proceedings and provide updates to those affected by the scheme. The website is <https://jaypeakreceivership.com/>.

Furthermore, the Miami law firm of Kozyak Tropin Throckmorton, LLP has filed a class action lawsuit against Jay Peak on behalf of investors. This firm is working closely with Attorney Goldberg to try to make the investors whole. Investors in the various Jay Peak projects can register on the receivership website so that they can get updates on the case and track its progress. They can register at <https://jaypeakreceivership.com/registration-form/>. If you are a Jay Peak investor or if you know someone who is, we recommend registering.

These allegations are serious and shed a bad light on the EB-5 program. Please keep in mind though that in this juncture these are just charges and allegations, there has been no formal finding of any wrong doing by Jay Peak.

**Maney | Gordon | Zeller Outreach:**



We are pleased to announce that we will be exhibiting at the national conference for NAFSA: Association of International Educators in Denver, CO at the Colorado Convention Center located at 700 14th St, Denver, CO 80202, from May 29 to June 3. Our booth number is 1354.



From June 19 to June 22 we will be exhibiting at the SHRM (Society for Human Resource Management) Annual Conference & Exposition in Washington, D.C. at the Walter E. Washington Convention Center located at 801 Mount Vernon Place NW, Washington, DC 20001. Our booth number is 620.

We look forward to seeing many of you at either NAFSA or SHRM.

[Map](#)

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