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# EB-5 Investment Green Card

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### EB-5 Eligibility and Filing

The EB-5 category requires an investment of \$500,000 to \$1,000,000 in a new commercial enterprise that will benefit the US economy and produce ten full time jobs for workers unrelated to the EB-5 petitioner. (In certain circumstances the purchase or expansion of an existing business may qualify.) Under section 203(b)(5) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1153(b)(5), 10,000 immigrant visas per year are available to qualified individuals seeking permanent resident status on the basis of their engagement in a new commercial enterprise.

#### Immigrant Investor Regional Centers

Of the 10,000 investor visas available annually, 5,000 are set aside for those who apply under a pilot program involving an CIS-designated Regional Center.

#### A "Regional Center"

1. Is an entity, organization or agency that has been approved as such by the Service;
2. Focuses on a specific geographic area within the United States; and
3. Seeks to promote economic growth through increased export sales, improved regional productivity, creation of new jobs, and increased domestic capital investment.

#### "Alien investors" must

- Demonstrate that a "qualified investment" (see below) is being made in a new commercial enterprise located within an approved Regional Center; and,
- Show, using reasonable methodologies, that 10 or more jobs are actually created either directly or indirectly by the new commercial enterprise through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

Once the EB-5 petition is approved, the investor becomes a conditional resident for two years and once the conditions are removed, a permanent resident.

**[Click here](#)** <sup>[2]</sup>for a list of current EB-5 (Immigrant Investor) Regional Centers by state.

The list is updated periodically. Please note that USCIS approval of an EB-5 Regional Center application does not in any way:

- Constitute USCIS endorsement of the activities of that Regional Center;
- Guarantee compliance with U.S. securities laws; or
- Minimize or eliminate risk to the investor.

Potential investors are encouraged to seek professional advice when making any investment decisions.

## **Eligibility**

Permanent resident status based on EB-5 eligibility is available to investors, either alone or coming with their family (spouse and/or unmarried children). Eligible aliens are those who have invested OR are actively in the process of investing, the required amount of capital into a new commercial enterprise that they have established. The applicants must further demonstrate that this investment will benefit the United States economy and create the requisite number of full-time jobs for qualified persons within the United States. In general, "eligible individuals" include those:

1. Who establish a new commercial enterprise by:
  - creating an original business;
  - purchasing an existing business and simultaneously or subsequently restructuring or reorganizing the business such that a new commercial enterprise results; or
  - expanding an existing business by 140 percent of the pre-investment number of jobs or net worth, or retaining all existing jobs in a troubled business that has lost 20 percent of its net worth over the past 12 to 24 months; and
2. Who have invested -- or who are actively in the process of investing -- in a new commercial enterprise:
  - at least \$1,000,000, or
  - at least \$500,000 where the investment is being made in a "targeted employment area," which is an area that has experienced unemployment of at least 150 percent of the national average rate or a rural area as designated by OMB; and
3. Whose engagement in a new commercial enterprise will benefit the United States economy and:
  - create full-time employment for not fewer than 10 qualified individuals; or
  - maintain the number of existing employees at no less than the pre-investment level for a period of at least two years, where the capital investment is being made in a "troubled business," which is a business that has been in existence for at least two years and that has lost 20 percent of its net worth over the past 12 to 24 months.

## **To Obtain Status as an Immigrant Investor**

In order to seek status as an immigrant investor, you must file CIS Form I-526, Immigrant

Petition by Alien Entrepreneur. The Form I-526 must be filed with supporting documentation that clearly demonstrates the individual's investment meets all requirements, such as:

- establishing a new commercial enterprise,
- investing the requisite capital amount,
- proving the investment comes from a lawful source of funds,
- creating the requisite number of jobs,
- demonstrating that the investor is actively participating in the business; and, where applicable,
- relating employment within a targeted employment area.

## **To Obtain Status as a Conditional Resident**

Once the Form I-526 is approved, immigrant investors may obtain status as a conditional resident by filing Form I-485, Application to Register Permanent Residence or Adjust Status, if residing within the United States (please see our site on I-485);

## **To Become A Permanent Resident Based on Investment**

In order to become a lawful permanent resident, eligible investors must file a Form I-829, Petition by Entrepreneur to Remove Conditions. Form I-829 must be filed within 90 days before the second anniversary of an Alien Investor's admission to the United States as a conditional resident.

## **New Commercial Enterprise**

USCIS published a new EB-5 clarification memo on May 30. Amongst other things, this memo clarifies the definition of "new commercial enterprise" and job creation requirement:

### **2. "New" Defined**

In its effort to spur job creation through a wide variety of businesses and projects, the EB-5 Program has presented a broad definition of what constitutes a "new" commercial enterprise into which the immigrant investor can invest the required amount of capital and help create jobs.

The EB-5 Program defines "new" as "established after November 29, 1990." 8 C.F.R. § 204.6(e). The immigrant investor can invest the required amount of capital in a commercial enterprise that was established after November 29, 1990 to qualify for the EB-5 Program, provided the other eligibility criteria are met.

In addition, in the EB-5 Program a "new" commercial enterprise also means a commercial enterprise that was established before November 29, 1990 if the enterprise will be restructured or expanded through the immigrant investor's investment of capital:

#### **a. The Purchase of an Existing Business That is Restructured or Reorganized**

The immigrant investor can invest in an existing business, regardless of when that business was first created, provided that the existing business is simultaneously or subsequently restructured or reorganized such that a new commercial enterprise results. 8 C.F.R. § 204.6(h)(2). The facts of *Matter of Soffici*—where an investor purchased a Howard Johnson hotel and continued to run it as a Howard Johnson hotel—were not sufficient to establish a

qualifying restructuring or reorganization. 22 I&N Dec. 158, 166 (Assoc. Comm'r 1998) (?A few cosmetic changes to the decor and a new marketing strategy for success do not constitute the kind of restructuring contemplated by the regulations, nor does a simple change in ownership.?). On the other hand, examples that could qualify as restructurings or reorganizations include a plan that converts a restaurant into a nightclub, or a plan that adds substantial crop production to an existing livestock farm.

#### b. The Expansion of An Existing Business

The immigrant investor can invest in an existing business, regardless of when that business was first created, provided that a substantial change in the net worth or number of employees results from the investment of capital. 8 C.F.R. § 204.6(h)(3).

?Substantial change? is defined as follows:

[A] 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees.

8 C.F.R. § 204.6(h)(3)

Investment in a new commercial enterprise in this manner does not exempt the immigrant investor from meeting the requirements relating to the amount of capital that must be invested and the number of jobs that must be created. 8 C.F.R. § 204.6(h)(3).

### Commencement of Job Creation

8 C.F.R. § 204.6(j)(4)(i).

For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526. The business plan filed with the Form I-526 should reasonably demonstrate that the requisite number of jobs will be created by the end of this two-year period.

To see the entire May 30, 2013 USCIS memo, [click here](#) [3]

#### Green Card:

[EB5 Green Card](#) [4]

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[2]

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=d765ee0f4c0142>

[3] [http://www.uscis.gov/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20\(Association%20as%20final%205-30-13\).pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20(Association%20as%20final%205-30-13).pdf)

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