

E-5 Visas for Immigrant Investors

Basic Requirements:

The concept of the EB-5 Program is that certain qualified investments will entitle the investor to receive a visa for “permanent resident” status (“green card”) in the United States. Thus, while other visa programs are based on such factors as a person’s family relationship, special ability, or employment status, the EB-5 Program specifically requires that a person make an investment in the United States.

The EB-5 Program has 3 basic requirements:

- The investment must be made in connection with establishing a “new commercial enterprise”. For purposes of the EB-5 Program, a “new commercial enterprise” can be established by (i) creating an original business, (ii) purchasing an existing business and simultaneously or subsequently restructuring or reorganizing the business such that a “new commercial enterprise”, or (iii) 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” (a business that has lost 20 percent of its net worth over the past 12 to 24 months).
- The “new commercial enterprise” must “benefit the United States economy” and fulfill an “employment” requirement – (i) create full-time employment for not fewer than 10 qualified individuals, or (ii) with respect to a “troubled business” (as described above), maintain the number of existing employees at no less than the pre-investment level for a period of at least two years.
- The investment must meet certain dollar amount and possibly “location” standards. These dollar amount and “location” standards in effect create 3 different ways for persons to qualify for a visa under the EB-5:

Program – the “\$500,000 Regional Center EB-5 Program” (described below), the “\$500,000; Targeted Employment Area EB-5 Program” (described below), and the “\$1,000,000 EB-5 Program” (described below).

\$500,000 Regional Center EB-5 Program:

The “\$500,000 Regional Center EB-5 Program” has both a dollar amount standard and a “location” standard – (i) the investment must be in the amount of at least \$500,000 (U.S.), and (ii) it must be invested in a designated “regional center”. The United States Citizenship and Immigration Services (“USCIS”) has designated certain areas throughout the United States as permitted “regional centers” for purposes of the \$500,000 Regional Center EB-5 Program. The United States EB-5 Immigrant Investor Visa Program State or local government agencies and private business then create specific investments within these “regional centers” for purposes of the \$500,000 Regional Center EB-5 Program. The USCIS updates the list of permitted “regional centers” for purposes of the \$500,000 Regional Center EB-5 Program from time to time.

The \$500,000 Regional Center EB-5 Program has the advantage of simplicity. The State or local government agencies and private business that create specific investments within the permitted “regional centers” for purposes of the \$500,000 Regional Center EB-5 Program

generally specifically structure these investments to satisfy both the “new commercial enterprise” requirement (described above) and the “employment” requirement (described above) of the EB-5 Program. Thus, immigrants in the \$500,000 Regional Center EB-5 Program generally do not have to be concerned with these 2 requirements. On the other hand, the investments in the \$500,000 Regional Center EB-5 Program are generally “passive” investments, managed by other persons. Thus, the \$500,000 Regional Center EB-5 Program may not be appropriate for immigrants looking to “actively manage” their investments.

The United States EB-5 Immigrant Investor Visa Program \$500,000 Targeted Employment Area EB-5 Program:

The “\$500,000 Targeted Employment Area EB-5 Program” is similar to the \$500,000 Regional Center EB-5 Program in that the immigrant also must invest at least \$500,000 (U.S.). However, instead of investing in a designated “regional center”, under the \$500,000 Targeted Employment Area EB-5 Program, the investment must be made in a “targeted employment area”. The term, “targeted employment area”, refers to an area that has experienced unemployment of at least 150 percent of the national average rate or a rural area as designated by the United States Office of Management and Budget. The \$500,000 Targeted Employment Area EB-5 Program does offer immigrants the opportunity to “actively manage” on their own their investments. Therefore, it requires that immigrants independently satisfy the “new commercial enterprise” requirement (described above) and the “employment” requirement (described above) of the EB-5 Program.

\$1,000,000 EB-5 Program:

The “\$1,000,000 EB-5 Program” requires a greater dollar amount of investment than either the \$500,000 Regional Center EB-5 Program or the \$500,000 Targeted Employment Area EB-5 Program – a minimum investment of \$1,000,000 (U.S.). The \$1,000,000 EB-5 Program also offers greater “flexibility” than either the \$500,000 Regional Center EB-5 Program or the \$500,000 Targeted Employment Area EB-5 Program because there is no “location” requirement for the investment; thus, the investment need not be made in either a permitted “regional center” or a “targeted employment area”. Because the investment in the \$1,000,000 EB-5 Program can be made at any location in the United States, investments in the \$1,000,000 EB-5 Program are potentially subject to better economic returns than are investments in the \$500,000 Regional Center EB-5 Program or the \$500,000 Targeted Employment Area EB-5 Program.

Other Considerations.

In contemplating any EB-5 Program investment, immigrants should also consider the following:

- i) Under the EB-5 Program, 10,000 visas per year are available to qualified individuals (of these 10,000 visas available annually, 5,000 visas per year are specifically available under the \$500,000 Regional Center EB-5 Program). Fortunately, at present, unlike for other United States visa categories, there are no quota backlogs under the EB-5 Program.
- ii) Unlike for other United States visa categories, no sponsorship of the immigrant is required under the EB-5 Program.
- iii) With respect to the USCIS, the EB-5 Program process consists of 2 steps.

First, Form I- 526 is filed to establish “conditional resident” status.

Second, Form I-829 is filed within 90 days before the second anniversary of the “conditional resident” status to establish “permanent resident” status.

iv) As it must be established that the funds being invested under the EB-5 Program were legally acquired, the immigrant must provide information concerning the legal source of the investment.

v) Once the immigrant has qualified for a visa under the EB-5 Program, the immigrant’s spouse and unmarried children under age 21 can also file for visas.

vi) Investment returns, and terms of investment, will vary from investment to investment under the EB-5 Program.

vii) One consequence of “permanent resident” status is that the immigrant will then become subject to United States taxation on worldwide income.