

General EB-5 Program Overview

Background:

- Section 203(b)(5) of the Immigration and Nationality Act (INA), allocates 10,000 "EB-5" immigrant visas per year to qualified individuals seeking Lawful Permanent Resident (LPR) status on the basis of their capital investment in a commercial enterprise.
- The EB-5 regulations may be found at 8 CFR 204.6 and 8 CFR 216.6, respectively.

EB-5 Capital Investment Structures:

EB-5 Investors may be eligible for an EB-5 immigrant visa if they have invested – or are actively in the process of investing - the required amount of capital into one of the following for-profit business-types:

- A new commercial enterprise (created after 11/29/1990);
- An enterprise which will expand to 140% of pre-investment net worth or number of employees, or;
- A troubled business in which jobs will be preserved.

EB-5 Capital Investment Thresholds:

- The standard capital investment requirement for an EB-5 investor is \$1 million.
- The capital investment requirement for an EB-5 investor in a Targeted Employment Area (TEA) which is either in a high unemployment area, (calculated as an area with an unemployment rate that is at least 150% of the national average), or a Rural Area (RA) is \$500,000.
- Congress has reserved 3,000 of the 10,000 EB-5 visas for EB-5 investors who invest in TEAs.

EB-5 Job Creation Requirements:

- Each EB-5 investors must demonstrate that their capital investment will create/preserve at least ten (10) jobs for qualified U.S. workers within the United States.
- A qualified U.S. worker is a U.S. citizen, LPR, asylee or refugee.
- Jobs created for nonimmigrant workers and/or members of the EB-5 investor's family are not qualifying.

Obtaining Lawful Permanent Resident (Green Card) Status through EB-5:

There are four steps to becoming a Lawful Permanent Resident (LPR) through the EB-5 program.

1. Form I-526 immigrant petition approval.
2. Application for an immigrant visa either through adjustment of status (Form I-485) in the United States with USCIS, or through an application for immigrant visa (Form DS-230) with the Department of State (DOS).
3. Upon approval of the Form I-485 or admission on an EB-5 immigrant visa, the alien is granted two-years of conditional permanent resident status.
4. A Form I-829 petition to remove the conditions on the LPR status must be filed at the end of the two-year conditional period. If the alien has fulfilled the EB-5 requirements, then the conditions will be removed and the alien will be an unconditional LPR.

Regional Center Pilot Program:

- The Immigrant Investor Pilot Program (“Pilot Program”) was created by Section 610 of Public Law 102-395 (October 6, 1992), and was recently extended through September 30, 2012.
- EB-5 requirements for an investor under the Pilot Program are essentially the same as in the basic EB-5 investor program, except the Pilot Program provides for investments that are affiliated with an economic unit known as a “Regional Center”. These investments allow for a less restrictive job creation requirement based upon the creation of “indirect” and “direct” jobs.

Regional Center Adjudications:

- A Regional Center is not merely a defined geographic area but rather is a business entity that coordinates foreign investment within that area in compliance with the EB-5 statutory, regulatory and precedent decision framework.
- Regional Centers do not hold sole jurisdiction over their geographic region.

Direct v. Indirect Jobs:

- Direct jobs are actual identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital.

- Indirect jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor.
- The number of indirect jobs created through an EB-5 investor's capital investment is based upon a business plan and a detailed economic analysis, which is evaluated and approved by USCIS during the approval and designation of a regional center for participation the Immigrant Investor Pilot Program.

Regional Center Requirements:

A Regional Center must:

- a. Focus on a contiguous geographical region of the United States;
- b. Promote economic growth through:
 1. Increased export sales (if any),
 2. Improved regional productivity,
 3. Job creation, and
 4. Increased domestic capital investment.

EB-5 Visa Usage:

<u>Fiscal Year</u>	<u>Total EB-5 Visas Issued</u>
FY09	4,218
FY08	1,360
FY07	806
FY06	744

EB-5 Expedite Requests:

- Public Law No. 102-395 provides for priority to be given to Regional Center-affiliated individual petitions. However, the statute does not provide criteria for USCIS to use to determine how petitions filed under the regional center program should be given priority over one another.
- USCIS has national expedite criteria for all petitions and applications, which are posted on the USCIS website.
- The petitioner must demonstrate that one or more of the expedite criteria have been met to be granted an expedite.
- The Director of the CSC follows the national expedite criteria when determining whether to grant an expedite request for an EB-5 petition.

- One of the national expedite factors is the “severe financial loss to a company or to an individual.” Most of the EB-5 related expedite requests that CSC receives are based on this factor.
- Most EB-5 petitions contain escrow agreements, which specify that the capital investment may not be released into the investment project until the approval of the Form I-526 petition.
- USCIS would be inundated by expedite requests if expedite requests were granted based upon these self-imposed financing arrangements.
- Expedite requests for EB-5 cases should be directed to the EB-5 program mailbox at: Uscis.immigrantinvestorprogram@dhs.gov .
- USCIS believes that the most equitable approach is to adjudicate EB-5 petitions in accordance with our first-in, first out procedure