

IMMIGRANT INVESTOR— EB-5



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IMMIGRANT INVESTOR--EB-5 CATEGORY

EB-5 IMMIGRANT INVESTOR PROGRAM known as the Million, green card visa, the Employment Creation or Immigrant Investor Visa is formally classified as the EB-5 category.

The EB stands for Employment Based and the 5 is for its placements in the Immigrant visa priority list—thus, the 5th preference in the EB (Employment Based) categories.

EB-5--Employment Creation/Immigrant Investor Program.

Investors, their spouses and unmarried children under 21, are eligible to apply for a Green Card (permanent residence). The investor must make a \$1,050,000 (or \$800,000 if in a rural or high unemployment area) in a commercial enterprise in the United States and create or preserve 10 permanent full-time jobs for qualified U.S. workers. This is not a temporary visa but a permanent residence application. The investor should seek professional tax advice prior to applying, as permanent residence is one of the ways a person becomes a tax resident and possibly subject to Estate Tax issues and world-wide tax reporting requirements. The initial application results in a Permanent Residence for a “conditional 2-years”. Prior to the conclusion of the 2 years, you will required to file additional applications to demonstrate continued compliance with the status requirements. Once approved, the conditions will be lifted and your residence will become fully permanent.

Regional Center Program

Investors may also qualify for EB-5 classification by investing through regional centers designated by USCIS based on proposals for promoting economic growth.

All EB-5 investors must invest in a new commercial enterprise, which is a commercial enterprise established after November 29, 1990 or on or before that date if the purchase was an existing business restructured or reorganized, resulting in a new commercial enterprise, or by expanding the investment, resulting in a 40% net worth or 40% increase in number of employees.

Job Creation Requirements

An EB-5 investor must invest the required amount of capital in a new commercial enterprise that will create full-time positions for at least 10 qualifying employees. In the case of a Regional Center, the full-time positions can be created either directly or indirectly by the new commercial enterprise. If the business is considered a troubled business, the EB-5 investor may rely on job maintenance. The number of existing employees must be kept at no less than the pre-investment level for a period of at least 2 years.

A troubled business is a business that has been in existence for at least two years and has incurred a net loss during the 12- or 24-month period prior to the filing of the immigration application.

Capital Investment Requirements

Capital means cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.

Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital and the immigrant investor must establish that he or she is the legal owner of the capital invested.

Adjustment of Status

The Petition for Immigrant Investor may be filed concurrently with an application for adjustment of status. The application for adjustment of status will give the applicant a lawful status, employment authorization and travel permits while the applications are pending and until the conditional residence is approved.