



EB-5 INVESTMENT

For Green Card in the US



Overview



U.S. Congress introduced EB-5 immigrant visa category for foreign investors in 1990. Under this program, prospective investors are offered the opportunity to immigrate to the U.S. Initially, it required investment of \$ 1 million in a new commercial enterprise. The idea behind this program was that the investment will benefit the U.S. economy and create 10 or more full-time jobs for U.S. workers. The investor was expected to be involved in actively running the new commercial enterprise and directly create at least 10 jobs over a period of time.

But due to the onerous requirements and highly restrictive qualifying clauses, EB-5 investor visa program was least utilized. During the first 15 years of this program, the restrictive interpretation of the regulations drastically limited the types of investment permissible under the program. The existence of restrictive clauses in law, and restrictive standards of adjudication in practice became major hurdles for EB-5 program. But as a result of the consistent commitment of U.S. Congress to create investor friendly

regulation, subsequent enactments were introduced to achieve that goal. Such forward-looking new legislations and unprecedented decisions of Administrative Appeals Office on different related issues paved the road and facilitated investor visa program. The EB-5 “Pilot Program” was created in 1993 to broaden the appeal. Even after introducing the pilot program, additional hurdles were noticed. Over a period of time, the Pilot Program eventually evolved in the current form. USCIS designated Regional Centers create and manage business enterprises and the investors are relieved from day-to-day management. Passive forms of investment and the freedom to live anywhere in the U.S. has become motivating factor for the prospective investor and family.

Under the pilot program, the investor has to invest a reduced amount of \$500,000 in a commercial enterprise, located within a designated regional center (RC) and in a Targeted Employment Area (TEA). As opposed to investing in a new commercial enterprise, the regional center can

show that the investor's investment has directly or indirectly created at least 10 full-time jobs.

The United States Citizenship and Immigration Service (USCIS) seem to be showing preference for the investments in regional centers. There are several reports confirming the higher rate of approval for investments made under the pilot program. These developments demonstrate much higher certainty that the petitioners will eventually succeed in obtaining green card through their investment. Under the standard EB-5 program the investor had to directly create at least 10 full-time jobs.

Creation of Investor and Regional Center Unit (IRCU) in January 24, 2005 by USCIS marked another positive development. IRCU provides oversight for policy and regulatory development, field design, case auditing and training on regional center adjudication. This approach reinforces USCIS belief that investing in regional center pilot program will encourage foreign investment and job creation without

damaging integrity of EB-5 program. IRCU is now known as the USCIS Foreign Trader Investor and Regional Center Program (FTIRCP). It ensures that the regional centers maintain certain standard, work in compliance and demonstrate accountability.

Requirements

1. Invest \$ 500,000 (plus administrative expenses) in a USCIS designated "Regional Center".
2. Most Regional Center offer limited partnership to the foreign investors which involves minimal policy making role that meets the engagement criteria.
3. The investment must directly or indirectly create at least 10 full-time jobs for U.S. workers.
4. The investment funds must be obtained through lawful means which may include, but not limited to sale of land, real estate or business, etc. The funds could also be a loan or gift to the investor.

Why EB-5?



EB-5 program offers several advantages over other immigration options. The investor does not need to have any particular background. Successful petitioners include students, young adults, retirees and investors with no entrepreneurial or management skills or experience and with very limited English language ability. Unlike in employment based immigrant visas, EB-5 does not require offer of employment or approved labor certification and immigrant visas are immediately available for prospective investors. EB-5 classification actually minimizes the significance of what the investor will do in the U.S. enterprise and offers greater flexibility to plan a desirable life style.

EB-5 investment in the Regional Center Pilot Program therefore is ideal for prospective investors, who have sufficient funds to invest and are looking for freedom and flexibility to live and work in the U.S. Approximately 90 percent of all EB-5 petitioners are filed through the regional centers. The USCIS appears to show preference for investment in regional centers. There are several reports of expeditious processing and higher rate of approvals for investments in regional center pilot program. This indicates greater certainty for the aspiring immigrant investors.

Comparing “Regular” and “Regional Center Pilot Program”



Regular Program

The prospective investor must invest \$ 1 million in a new commercial enterprise. Under this program, the investor has to start a new business (or acquire existing business) actively run, operate and directly create at least 10 full-time jobs for U.S. workers. The investor must submit all the evidences confirming investment, operation of business and employment of at least 10 U.S. workers.

Note of Caution

Even if this option is available, starting a new successful business in a foreign country is full of challenges. This option therefore should be considered by individuals, who have specific plan, network and the ability to overcome such challenges.

Regional Center Pilot Program

There are several comparative advantages, such as:

1. As the prospective investor invests in a regional center, investor does not need to create new commercial enterprise, or run and operate it. The evidences confirming his/her qualifying investment, employment and such other necessary documents are provided by regional center.
2. The regional centers are professionally managed and their policy on investor`s engagement requirement is minimal. The investor can be a limited partner and still qualify.
3. The regional center pilot program does not require that the investor`s enterprise itself employ 10 full-time U.S. workers. Instead, it will suffice if 10 or more jobs will be created directly or indirectly as a result of the investment.

4. The investor is not required to live in the area of investment and can live anywhere in the U.S.
5. Investors who are not interested in day-to-day management or in running an active business, regional center pilot program offer a more acceptable inactive form of investment opportunity which could be more suitable to their lifestyles.
6. In cases where parents themselves are not interested to immigrate, they could invest for their children and help them obtain green card in the U.S.
7. These investments generate income in the form of dividend.

How does EB-5 Immigration Process work?



The statute requires an EB-5 investor to have invested the funds. The investor must document source of funding and track transfer of funds from the investor to the enterprise (regional center) in the U.S. The money can be investor's own funds or in the form of loan or gift.

Following due diligence and investment of funds, regional center provides evidences demonstrating that EB-5 eligibility criteria have been met. Once the investment is finalized, Application I-526 is filed. The USCIS then makes determination that the investor and the investment meet EB-5 criteria and grants EB-5 classification. This application process takes about 5 to 7 months.

If the investor is in the U.S., he or she can apply for adjustment of status following approval of I-526 application. No interview is required. It takes up to 3-6 months. If the investor is abroad, it will involve consular processing in investor's home country, which might approximately take

6-10 months. Thus, the entire immigration process may take about 10-18 months.

The processing time is based on today's estimate. It may vary from case to case.

Upon approval, investor obtains "Conditional Green Card" for a period of two years which confers same rights as the permanent Green Card. Between 21 to 24 months after obtaining conditional Green Card, another application (I-829) must be filed for removal of condition showing that:

1. The funds has been invested, and
2. 10 full-time jobs have been created for the U.S. workers.

Conclusion



Passive forms of investment and absence of direct management responsibilities are highly motivating factors. Additionally, freedom to live anywhere in the U. S., priority standing within the immigration process, and accelerated path to U.S. Green Card makes EB-5 option desirable for high net worth individuals.

All these factors make EB-5 investment in Regional Center highly desirable for the inactive investor such as retiree, their family members or children who wish to live and/or study/work in the U.S. Several regional centers are professionally managed and very well run private enterprises and they generate income/return on investment in the form of dividend.

In certain cases, even if the high net worth individuals themselves are personally not interested to immigrate to the United States, this category may serve as the gateway to their children to study, work, live and/or immigrate to the U.S.

The Foreign Trader Investor and Regional Center Program (FTIRCP) of USCIS oversee policy and regulatory development, field design, case auditing and training on regional center adjudication. This kind of overseeing mechanism further ensures that the regional centers are regulated and subject to several reporting requirement, which additionally ensures investors that their investments are monitored and regulated.

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