

Latin American Blog

Posted at 5:00 AM on October 12, 2010 by Sheppard Mullin

[EB-5 \(Job Creation\) Investor Green Card Pursuit, Regional Center Approach & TEA Designation Information](#)

By [Albert Lu](#)

EB-5 Investor Visa Basics

Under Section 203(b)(5) of the Immigration and Nationality Act, 10,000 immigrant visas per year are available to qualified individual investors (and accompanying spouse & minor children) seeking to obtain permanent resident "green card" status in the United States on the basis of their qualifying financial investment of at least \$1,000,000 (or under certain circumstances \$500,000 in defined Target Employment Areas) into a new commercial enterprise in USA, as well as their "management" role within the invested commercial enterprise that will create the jobs and employ at least 10 full-time U.S. workers.

Many federal immigration regulations and legal precedents that govern these EB-5 petition filings and underlying eligibilities. They help to define, amongst other things: the nature, size, scope, and origin of the qualifying financial investment; the nature and status of the U.S. commercial enterprise that will serve as the EB-5 vehicle; the "At-Risk" nature of the invested/created commercial enterprise being operated; the direct creation and maintenance of at least 10 full-time jobs for at least two-plus years to qualifying U.S. workers (other than applicant or family); the "management/overseeing" roles/tasks that the investor must be accorded, and the types of business records that must accompany a complete EB-5 immigration filing. Altogether, the initial EB-5 immigrant petition filing (via USCIS Form I-526) and the removal of condition filing (via USCIS Form I-829) two years later are complicated and require ample supporting documentation to achieve USCIS approval, so not only should the foreign investor consult proper business attorneys and related professionals before making the EB-5 investment planning, they are also best served to have immigration attorneys assist/represent them in making the requisite USCIS immigration petition filings.

Initial & Subsequent (Removal-of-Condition) EB-5 Filings Needed

An initial EB-5 (Employment-Based 5th Preference) petition approval by USCIS leads to a two-year conditional resident green card status for the investor and family, then if the investor/investment continues to satisfy all EB-5 requirement, in two years time the investor can again petition the USCIS to remove the "conditional" status of said green card, and finally

succeeds in obtaining permanent resident green card status for self and immediate family members.

For now, EB-5 (initial & subsequent condition-removal) petitions are filed/adjudicated locally by USCIS, and they can easily take 4-6 months of adjudication processing time after initial submission, with additional USCIS request-for-evidence being the norm and adding to overall processing time. There are currently no premium-processing expedited options available for EB-5 filings. Lastly, how to file these case depends on individual case circumstances and whether the investor is already present in USA – and in what type of status. Both consular-processing overseas and local change-of-status filing options are possible for EB-5 petitions – depending on exact individual/case circumstances.

Regional Center Approach of EB-5

Within the general EB-5 Investor Visa program, the U.S. government has created a special "pilot" program allowing qualified intending immigrants to invest in USCIS-approved Regional Centers that relaxes the job-creation (direct creation and maintenance of 10 new full-time jobs) requirements for general EB-5 investors. Instead of each EB-5 investor having to establish their own new U.S. commercial business enterprises (resulting mostly in smaller businesses) and keep them operational for at least two-plus years, the Regional Center approach allows the individual investments to be placed with others into various USCIS-approved Regional Centers (approximately 95+ in USA presently), and the Regional Centers would then put the individually invested capital to use based on its pre-approved and oftentimes ongoing business plan execution. The inherent advantage of the Regional Center option is that, instead of counting solely 10 directly created jobs, depending on the line of business it operates in, a Regional Center can also count indirect and induced jobs in order to meet the 10-jobs-created-per investment requirement. This job count methodology is usually demonstrated to USCIS through detailed economist reports (preferably by established EB-5 economist experts), third party employee contractual documentation (such as commercial malls built allowing contracted chain/local stores to create jobs), other related commercial leases (to vendors, providers, local suppliers, etc.), export commercial data, regional productivity and/or documented local job improvement data, and other acceptable "general predictors" that help to create local jobs and stimulate local/national economy.

Regional Center – More Specifics

USCIS' website maintains and updates a listing of all approved Regional Centers – more than 95 currently listed. A comprehensive Regional Center business establishment plan must be submitted and pre-approved by USCIS before it can be designated as such to allow individual EB-5 filings with USCIS to proceed. A new Regional Center approval process can easily take 4 to 6+ months at USCIS. A Regional Center must comprise of a contiguous and specific geographic area within USA, and its primary goal must be to promote economic growth through export sales, improved local regional productivity, creation of new jobs, and increased domestic capital investment. Regional Centers can be used to "pool together" and support multiple EB-5 individual investments and associated USCIS EB-5 filings through time – as long as the underlying threshold investment amounts (\$1M each) and jobs created (10 per

investor/investment – e.g. 300+ full-time jobs created allows a Regional Center to take on and support 30 individual \$1M EB-5 investors) still can be met by the Regional Center's overall business documentation. Due to the two-year condition-removal requirement, a particular Regional Center's existing business record & future plans – even if successful in supporting EB-5 cases in past years – must be sustainable for at least 2-3 more years when one makes his/her present-day EB-5 investment choice consideration.

Within the 10,000 immigrant visas allotted to the overall EB-5 program, at least 3,000 are set aside for the Regional Center classification, and within the last decade-plus, neither annual numerical cap has come close to being met, neither has the per-country quota been met yet (not even for Chinese investors – by and large the biggest consumer of EB-5 visas).

\$500,000 Threshold – A Desirable Option to EB-5 Investors

While the EB-5 program is also generally known as "Million Dollar Investment Visa/Green Card", and most EB-5 petitioners and Regional Centers also operate on that minimum investment threshold amount basis, in some cases, a minimum investment of \$500,000 can also suffice and support the entire individual EB-5 permanent resident green card pursuit process. This alternative/lower threshold investment amount is allowed – under both regular EB-5 individual and Regional-Center approaches – if the investment is made and job created are located within a defined Targeted Employment Area ("TEA").

A TEA is most recently defined by USCIS as: 1. a rural area, or 2. an area experiencing a high unemployment rate at the time of the capital investment or the time of filing of the Form I-526 petition whichever occurs first. The term "rural area" means any area that is both outside of a metropolitan statistical area (MSA) and outside of a city or town having a population of 20,000 or more based on the most recent decennial census of the United States. MSA's are designated by the Office of Management and Budget. The term "high unemployment area" means an area which has experienced unemployment of at least 150 percent of the national average rate.

Some Risks Associated with TEA Approach

The EB-5 investor/applicant must demonstrate that, at the time the capital investment is made or when the I-526 petition is filed (whichever occurs first), there has been an unemployment rate of at least 150% of the national unemployment rate within the MSA or other non-rural area in which the commercial enterprise that will create or preserve jobs is located. This information should be based on the most recent information available to the general public from federal or state governmental sources. Within California, a current list of counties/areas that qualify for TEA standing – based on unemployment rate and/or population count – both of which can be volatile (i.e. can change before the subsequent I-829 condition-removal filing is needed in two years time) is maintained by the State of California's Business, Transportation & Housing Agency.

Furthermore, if one intends to construct/operate an EB-5 Regional Center within a TEA to attract EB-5 Investors seeking the lower amount threshold, it is prudent to work closely with the state/municipal government officials beforehand so that a confirmation letter with established

TEA designation & validity dates can be obtained to support each/every EB-5 filings upcoming within , say, the next one-two years.

As EB-5 Investor Visa Pursuits continue to pick up momentum and becomes even better known internationally, local state and municipal governments are often/already willing to cooperate with established and/or brand-new approved EB-5 Regional Center programs created/operated by individual business entrepreneurs. But the individual foreign investors must know that, as the EB-5 applicant – especially in a Regional Center + TEA combined pursuit, he/she still has the burden to establish that the individual EB-5 case filed with USCIS will be approved, and therefore the underlying commercial business enterprise must be indeed conducting business and creating at least 10 jobs presently within the designated TEA. The fact that a business may be registered/located within an area that was once rural, for example, does not mean that the area is still rural to date (as populations may change), nor does it mean that all of the new local jobs created/induced will be credited as within the TEA region. Just because a Regional Center may be connected in name to a municipality, it is no guarantee of continuing EB-5 case success, so individual investors must still investigate all their options carefully.

Conclusion

The EB-5 program, Regional Center approach & TEA designations were all established to attract and utilized foreign capital investments to promote local job creations and stimulate our overall economic growth – especially within the most necessary regions of our country. As with any business financial investment, EB-5 investors with capital at risk must analyze all information carefully, including but not limited to: risk to initial capital invested; potential need for additional investment to sustain EB-5 business activities and jobs created for two-plus years; and most importantly the initial/sustained granting of their desired conditional/ & permanent green card status. While many foreign investors nowadays are not looking for their EB-5 investment to generate a profit over the next few years while waiting out their green cards, they are nevertheless very much relying on the EB-5 business vehicles – and in the case of Regional Centers, the expertise of the business entrepreneur operators – to succeed and sustain itself for a determined amount of time.

With careful planning and professional assistance, EB-5 can be a great tool for those with means and desires to come and live in USA,

For further information, contact [Albert Lu](#) at (619) 338-6526.