



**EB-5 IMMIGRANT VISA PROGRAM:
AN OPTION FOR FOREIGN INVESTORS TO INVEST IN THE U.S. AND OBTAIN
PERMANENT RESIDENCE FOR THEMSELVES AND THEIR IMMEDIATE RELATIVES
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The recent collapse in the worldwide economy has led to an increase in violence, instability and crime in many countries across the globe. Wealthy foreign nationals in the Middle East, Africa and Latin America are seeking a safer environment to live and invest their money. Although some European countries, Canada, and Australia offer safer territories to invest, they have very limited immigrant visa programs and the investments are heavily taxed. Meanwhile, the United States has created one of the most beneficial immigrant investor visa programs in U.S. immigration history known as the "EB-5". The EB-5 program allows foreign nationals to invest in the United States and obtain lawful permanent status (green card) for themselves and their immediate family (spouse and unmarried children under 21 years of age), which is the first step to become a U.S. citizen.

Congress created the EB-5 Immigrant Investor Program to attract foreign investors and stimulate the U.S. economy through job creation and foreign capital investment. Because there is no quota backlog or waiting list in the EB-5 preference category, it allows applicants and their immediate relatives to obtain permanent residence status much more quickly than with most other immigrant visa options.

What are the requirements?

An investor may obtain a U.S. green card through the EB-5 category if the investor generally fulfills two major requirements:

1. **Invest at least \$500,000 in "targeted employment areas" or \$1 million in a new commercial enterprise in the United States:** The invested funds must come from a lawful source. The investment must be "at risk", meaning that the capital will be used for job creation and profit-generation activities.

2. **Create 10 full-time jobs for U.S. workers:** U.S. citizens, lawful permanent residents and foreign nationals who are authorized to work count as “U.S. workers.” The investor and the immediate relatives cannot be counted as U.S. workers and the 10 full-time workers must work at least 35 hours a week.

What is the filing procedure?

The applicant must first file the Form I-526, Immigration Petition by Alien Entrepreneur, with U.S. Citizenship and Immigration Services (USCIS). Upon approval of the petition, the investor and the immediate relatives (spouse and single children under 21 years of age) may apply for an immigrant visa at a U.S. consulate or apply for adjustment to permanent resident status at a regional USCIS office if the investor is already in the United States.

The initial resident status is "conditional" for two years. Before the two-year period expires, the investor must file the Form I-829 with USCIS to request removal of the conditions on permanent residence. USCIS normally grants the petition if the investor demonstrates that he/she invested or was actively in the process of investing the requisite capital; the investor maintained the investment throughout the two-year period of conditional residence; and the investment created the requisite employment.

Passive Investor Option - Regional Designated Center Pilot Program

To encourage immigration through the immigrant investor category, the U.S. Congress created the Designated Regional Center Pilot Program in 1993. The Pilot Program sets aside 3,000 visas each year for individuals who invest the required amount of capital in a Designated Regional Center. A Regional Center is an entity, organization or agency that has been approved as such by USCIS, which focuses on a specific geographic zone within the U.S. and aims to promote economic growth. The regional center option is ideal for passive investors who do not want to manage the day-to-day business of the investment.

EB-5 Challenges

Some of the biggest challenges for EB-5 investors typically include:

- 1) Showing that the invested funds came from legitimate sources and were not amassed or transferred in violation of laws.
- 2) Showing that the jobs in a project that takes years to develop really will be created within two years of the approval of the petition.
- 3) Balancing the need to create 10 full-time jobs and have the capital “at risk” with the desire for investment stability, timely return, and profit.

EB-5 Benefits

The EB-5 green card option allows investors to:

- 1) Live anywhere in the U.S. while enjoying a safer investment territory, building retirement funds, attending school, or running the enterprise in which they have invested.
- 2) Become a permanent resident (green card holder) without any quota backlogs and, five years later, become a naturalized U.S. citizen if they meet the requirements.
- 3) Petition for their spouse and children under 21 years old to immigrate with them to the U.S.

Consult an Immigration Attorney

To obtain lawful permanent residence through the EB-5 program, investors must submit evidence and information to USCIS explaining how they meet the requirements. Being granted the EB-5 at the I-526 stage is the less difficult part of the process. Holding on to the EB-5 at the I-821 stage is the more complex part of the process.

For both petitions, investors should consult an experienced attorney to maximize the chance of success and respond properly to requests for evidence (RFE) or notices of intent to deny (NOID) the petition. USCIS may issue an RFE when required evidence is missing. It may further issue a NOID when it has information showing that the applicant does not qualify for the benefit. While the EB-5 program was created to encourage foreign nationals to invest in the United States, USCIS will review petitions with great scrutiny before it makes its decision. A qualified attorney can help the investor determine whether the EB-5 is an appropriate path to becoming a permanent resident of the U.S.