

## **GREEN CARDS IN LESS THAN A YEAR THROUGH INVESTMENT**

Foreign investors looking for freedom and flexibility to live and work in the United States in a way accommodating to their lifestyles, should consider the little-known EB-5 investor category.

Since the regulation first became law in 1993, EB-5 case adjudications have gone through several modifications, withdrawals and other hiccups before the implementation of the latest law in 2002. The program has been running smoothly since October of 2003.

Under the Immigration & Nationality Act (INA), 10,000 immigrant visas per year are available to qualified individuals seeking permanent resident status under this category, on the basis of their engagement in a new commercial enterprise. Of the 10,000 investor visas (i.e. EB-5 visas) available annually, 5,000 are set aside for those who apply under a pilot program involving a CIS-designated “Regional Center”.

There are two EB-5 programs, the Regular and the Regional Center programs. In order for an applicant to qualify under the Regular program an applicant must establish a new business, invest \$1 million (or \$500,000 in certain cases) into the business, and create full-time employment for at least 10 full-time U.S. workers.

An investment amount of \$1 million is generally the minimum; \$500,000 is acceptable on the condition that the business is situated in a “targeted” employment area, one that has experienced unemployment of at least 150 per cent of the national average rate or a rural area as designated by the U.S. Office of Management and Budget. The final requirement is that at least 10 full-time jobs are subsequently created for U.S. workers.

### Regional Center:

The second program within the EB-5 category is the Regional Center program

A “Regional Center”:

- Is an entity, organization or agency that has been approved as such by the Service;
- Focuses on a specific geographic area within the United States; and,
- Seeks to promote economic growth through increased export sales, improved regional productivity, creation of new jobs, and increased domestic capital investment.

This program is ideal for the retiree or passive investor due in large part to the “indirect employment” feature of the regulation. The Regional Center program advantageously removes the 10-employee requirement of the Regular program and substitutes the less-restrictive “indirect employment creation”.

In a nutshell, qualifying under a Regional Center means that CIS is satisfied solely with the job creation potential relieving the applicant of hiring and managing 10 employees. Additionally, for those who are not interested in day-to-day management or running an

actively traded company, Regional Center programs offer a more passive form of investment.

Another advantage of the Regional Center program is that the investor is not required to live in the place of investment; rather, he or she is allowed to live where he/she wishes in the United States. For example, the investor may invest in a Regional Center in the state of Washington, but choose to live in upstate New York.

Moreover, Regional Center EB-5 petitions are given, under mandate by Congress, priority by CIS which, among other benefits, often results in a quicker path to approval.

Currently there are several possibilities of Immigration-approved Regional Center investments including:

- A real estate limited partnership program that offers an investment in industrial properties that will be renovated into commercial offices and stores in a major city.
- Ownership of 80-acre almond farms in California.
- A limited partnership program that makes low interest loans to businesses in a major city.

### Eligibility

Permanent resident status based on EB-5 eligibility is available to investors, either alone or coming with their spouse and unmarried children. Eligible aliens are those who have invested -- or are actively in the process of investing -- the required amount of capital into a new commercial enterprise that they have established. They must further demonstrate that this investment will benefit the United States economy and create the requisite number of full-time jobs for qualified persons within the United States.

In general, “eligible individuals” include those:

1. Who establish a new commercial enterprise by:
  - creating an original business;
  - purchasing an existing business and simultaneously or subsequently restructuring or reorganizing the business such that a new commercial enterprise results; or
  - expanding an existing business by 140 percent of the pre-investment number of jobs or net worth, or retaining all existing jobs in a troubled business that has lost 20 percent of its net worth over the past 12 to 24 months; and
2. Who have invested -- or who are actively in the process of investing -- in a new commercial enterprise:
  - at least \$1,000,000, or
  - at least \$500,000 where the investment is being made in a “targeted employment area,” which is an area that has experienced unemployment of at least 150 per cent of the national average rate or a rural area as designated by OMB; and

3. Whose engagement in a new commercial enterprise will benefit the United States economy and:
  - create full-time employment for not fewer than 10 qualified individuals; or
  - maintain the number of existing employees at no less than the pre-investment level for a period of at least two years, where the capital investment is being made in a “troubled business,” which is a business that has been in existence for at least two years and that has lost 20 percent of its net worth over the past 12 to 24 months.

The procedure for obtaining an EB-5 Investor Green Card is relatively straightforward. The investor must produce 5 years of tax returns to substantiate the source of investment funds. The funds can be in the form of a loan or gift, which would allow a parent to gift a son or daughter. Gift taxes, if required in the investor’s home country, must be paid. He or she must also present evidence that traces the capital, through bank transfers and other documentation, from the investor directly to the enterprise. This provision of the regulation, which requires clear evidence that the source of funds was procured by legal means, arose from earlier concerns of Congress over money laundering issues.

After the investor completes a thorough business and financial due diligence of the viability of the business, the investment is made and a Form I-526 petition is filed by the foreign investor with the CIS, requiring CIS to certify the applicant and the investment are eligible for EB-5 status.

If the investor is already in the U.S. in lawful status or eligible under 245(i) of INA, he or she then applies for a Green Card through CIS. No interview is required for the most part, and approval has been taking approximately 9 months. If the investor resides abroad, an application for the Green Card is at the U.S. embassy or consulate of the home country; however, for consular processing, an interview is necessary. Approval of the Green Card in this case takes on average about 9-12 months. In either scenario, the entire process generally takes less than one year.

Once CIS approves the investor’s Green Card, it is conditional for a period of two years. Between 21-24 months after the conditional Green Card has been approved, the investor must reconfirm that the investment has been made or is still in place and that the employment requirement has been fulfilled or maintained. Conditional green card status confers the same rights as an unconditional green card. An application to remove the conditional Green Card status is then filed with CIS.

Once the condition has been removed, a full Green Card is granted for indefinite permanent resident status and work permission in the United States. From the time the conditional Green Card is approved through the approval of the removal of condition takes about two and a half years. Any time thereafter, the investment may be sold, and the investor will still maintain the permanent Green Card. U.S. Citizenship is possible two and a half years later, five years after the approval of the conditional Green Card, upon satisfaction of residence and other criteria.

In summary, the freedom to live anywhere in the United States, a passive form of investment with no required hands on management responsibilities, priority standing within the Immigration process, and an accelerated path to Green Card procurement, make the little-known EB-5 Green Card category involving a Regional Center program, an ideal investment vehicle for the passive investor or retiree who wishes to live and work in the United States.

Foreign Investors who wish to obtain permanent resident status (Green Card) under EB-5 category must carefully consider the risk involved, ability to manage the business in which investment is made, prospects of success in the business and to demonstrate that the investment is still there at the end of the conditional status period and also meet the requirement of employment of 10 U.S. workers when application for removal of the conditional status is made. With regard to investment in the Regional Center, which is passive and does not require hands on management of the business, the investor should do his or her due diligence, visit the property where investment is to be made, consult an experienced business lawyer to review proposed contract and seek opinion of qualified CPA with regard to the investment and taxation issues and other related questions prior to making investment in the U.S.