

EB-5 Immigrant Investor

The Immigrant Investor Program, also known as “EB-5”, was created by Congress in 1990 under § 203(b)(5) of the Immigration and Nationality Act (INA) to stimulate the U.S. economy through job creation and capital investment by alien investors. Alien investors have the opportunity to obtain lawful permanent residence in the United State for themselves, their spouses, and their minor unmarried children by making a certain level of capital investments and associated job creation or preservation.

There are two ways to invest under the EB-5 category: creating a new commercial enterprise or investing in a troubled business.

New Business Enterprise

To qualify an investor must:

1. Be in the process of investing at least \$1,000,000. If the investment is in a designated targeted employment area then the minimum investment requirement is \$500,000.
2. Benefit the U.S. economy by providing goods or services to U.S. markets.
3. Create full-time employment for at least 10 U.S. workers. This includes U.S. citizens, Green Card holders (lawful permanent residents) and other individuals lawfully authorized to work in the U.S. (excluding the investor (the immigrant), or his/her spouse, sons or daughters as well as any employees in H-1B, L-1 or E-2 status).
4. Be involved in the day-to-day management of the new business or directly manage it through formulating business policy.

Targeted Employment Area (TEA) is defined by law as “a rural area or an area that has experienced high unemployment of at least 150 percent of the national average.”

Distinctive Programs: Basic Program vs. Regional Center Pilot Program

There are two distinct EB-5 pathways for an alien investor to gain lawful permanent residence, the Basic Program and the Regional Center Pilot Program. Both programs require that the alien investor make a capital investment of either \$500,000 or \$1,000,000 (depending on whether the investment is in a TEA or not) in a new commercial enterprise located within the United States. The new commercial enterprise must create or preserve 10 full-time jobs for qualifying U.S. workers within two years of the alien investor’s admission to the United States as a Conditional Permanent Resident (CPR).

When making an investment in a new commercial enterprise affiliated with a USCIS-designated regional center under the Regional Center Pilot Program, an alien investor

may satisfy the job creation requirements of the program through the creation of either direct or in indirect jobs.

Note: *Direct jobs* are those jobs that establish an employer-employee relationship between the newly established commercial enterprise and the persons that they employ.

Indirect jobs are the jobs held by persons who work outside the newly established commercial enterprise. For example, indirect jobs include employees of the producers of materials, equipment, and services that are used by the commercial enterprise. There is also a sub-set of indirect jobs that are calculated using economic models that are known as induced jobs. *Induced jobs* are those jobs created when direct and indirect employees go out and spend their increased incomes on consumer goods and services.

Troubled Business

To qualify for an EB-5 Immigrant Visa based on a troubled business, the Investor must:

1. Invest in a business that has existed for at least two years.
2. Invest in a business that has incurred a net loss, based on generally accepted accounting principles, for the 12 to 24 month period before you filed the Form I-526 Immigrant Petition by an Alien Entrepreneur.
3. The loss for the 12 to 24 month period must be at least equal to 20 percent of the business's net worth before the loss.
4. Maintain the number of jobs at no less than the pre-investment level for a period of at least two years.
5. Be involved in the day-to-day management of the troubled business or directly manage it through formulating business policy. For example as a corporate officer or board member.
6. The same investment requirements of the new commercial enterprise investment apply to a troubled business investment (\$1,000,000 or \$500,000 in a targeted employment area).

Regional Center Pilot Program Proposal

The Regional Center Pilot Program was first instituted in 1992. Three thousand of the 10,000 total available EB-5 visas are set aside for aliens who invest in a USCIS designated "regional center" in the United States organized "for the promotion of economic growth, including improved regional productivity, job creation, and increased domestic capital investment. A **Regional Center** is defined as any economic unit, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. An alien investing in a new commercial enterprise affiliated with and located in a regional center is not required to demonstrate that the new commercial enterprise itself directly employs ten U.S. workers; a showing of indirect job creation and improved regional productivity will suffice. The organizers of a regional center seeking the regional center designation from USCIS must submit a proposal showing:

- A clearly identified, contiguous geographical area for the regional center. If the regional center proposal bases its predictions regarding the number of direct or indirect jobs that will be created through EB-5 investments in the regional center, in whole or in part, by offering investment opportunities to EB-5 investors with the reduced \$500,000 threshold, then the Targeted Employment Areas (TEAs), Rural areas and areas of high unemployment should be identified:
 - (i) Rural Area. 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. MSAs are designated by the Office of Management and Budget and can be found at www.census.gov;
 - (ii) High Unemployment Area: The term “high unemployment area” means an area which has experienced unemployment of at least 150 percent of the national average rate. The petitioner must demonstrate that, at the time the capital investment is made or the 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 should be based on the most recent information available to the general public from federal or state governmental sources as of the time the I-526 petition is submitted. The Bureau of Labor Statistics (BLS) provides data regarding the national average rate of unemployment at www.bls.gov/cps/. BLS’s **Local Area Unemployment Statistics (LAUS)** program produces monthly and annual unemployment and other labor force data for census regions and divisions, states, counties, metropolitan areas, and many cities, by place of residence. State Designation of a High Unemployment Area. The state government of any state of the United States may designate a particular geographic area or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such a state as an area of high unemployment. Before any such designation is made, an official of the state must notify USCIS of the agency, board, or other appropriate governmental body of the state which shall be delegated the authority to certify that the geographic or political subdivision is a high unemployment area. Evidence of such a designation, including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained, may be submitted in support of the Form I-526 petition in lieu of other documentary evidence of high unemployment in the area where the new commercial enterprise is located. The statistics used in the analysis must

reflect the national and local unemployment rates for these regions at the time of the alien investor's capital investment.

- How the regional center plans to focus on a geographical region within the U.S., and must explain how the regional center will achieve the required economic growth within this regional area.
- That the regional center's business plan can be relied upon as a viable business model grounded in reasonable and credible estimates and assumptions for market conditions, project costs, and activity timelines;
- How in verifiable detail (using economic models in some instances) jobs will be created directly or indirectly through capital investments made in accordance with the regional center's business plan;
- The amount and source of capital committed to the project and the promotional efforts made and planned for the business project.

Immigrant Application Process

Acquiring lawful permanent residence ("Green Card") through the EB-5 category is a three step self-petitioning process.

First Step:

The Investor must obtain approval of his or her Form I-526 Petition for an Alien Entrepreneur.

Second Step:

Once the I-526 has been approved, the Investor must file to adjust status to lawful permanent resident if in the United States in a valid non-immigrant status, or apply for an immigrant visa at a U.S. consulate or embassy outside of the United States. The EB-5 applicant (and he or her derivative family members) are granted conditional permanent residence for a two year period upon the approval of the I-485 application or upon entry into the United States with an EB-5 immigrant visa.

Third Step:

The Investor must file Form I-829 Petition by an Entrepreneur to Remove Conditions of the permanent residence. It must be filed 90 days prior to the two year anniversary as permanent resident. Once the application is approved, the permanent resident will receive a new permanent resident card issued for 10 years and without any further conditions attached to it, and will be allowed to permanently live and work in the United States.