

Invest in Your Future: Conditional Green Cards with No Visa Backlog

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The so-called “investor visa” or “EB-5 visa” has been available since 1990 but underutilized. There are 10,000 visas available each year but, to date, the quota has never been reached. Given the serious backlog in the most common employment-based visa categories – United States Citizenship and Immigration Service (USCIS) is currently processing cases filed in 2006 for investors from most countries, 2004 for applicants from China and 2002 for applicants from India – it is time to take another look at the investment-based visa category, otherwise known as EB-5.

What Are the Requirements?

The Regular Program

To qualify under the investor visa category, the immigrant investor must:

1. Invest \$1 million, or \$500,000 if the investment is made in a “Targeted Employment Area”
2. in a new commercial enterprise, which
3. benefits the U.S. economy and
4. creates full-time employment for at least 10 U.S. workers.
5. The investor must be involved in the management of the new commercial enterprise.

The Regional Center Pilot Program

Alternatively, immigrant investors may benefit from the somewhat relaxed requirements of the regional center pilot program implemented by Congress in 1993. The pilot program was created to encourage immigration through the investor visa program. It has been renewed several times and is currently in effect until September 2012. There are proposals to make the program permanent. As of

January 2012 there are 194 approved regional centers, although not all have projects open to investors.

The pilot program differs from the regular program in several important ways. First, it allows for qualifying investments to be made in approved “regional centers.” A regional center is a commercial enterprise dedicated to promoting economic growth, improved regional productivity, job creation or increased domestic capital investment in a specific region.

The second distinction between the regular and the pilot program is that investors who invest in regional centers are not required to show that their investment itself will employ 10 U.S. workers. Rather, it is enough if they can show that 10 or more jobs will be created directly or indirectly as a result of the investment.

Third, the requirements regarding “active management” are somewhat relaxed for investors in regional centers. The requirement will be satisfied if they have a policy-making role in the enterprise.

Finally, the application procedure differs. The regular program requires the petitioner to submit all of the required evidence while the pilot program requires the designated regional center to certify that the investor has met its criteria.

Initial Evidence

Following is a list of the evidence that should be submitted with the petition for investor visa classification under the regular program:

1. Organizational documents for the new commercial enterprise or, for investment in existing businesses, proof that the required amount of capital was transferred to the business and that the investment has increased the net worth or number of employees by more than 40 percent
2. Proof of capitalization including bank statements, evidence of assets purchased or property transferred from abroad, or evidence of debts secured by investor’s assets
3. Proof that capital was acquired by legal means including foreign business registration records, and personal and business tax returns for the last five years
4. Proof that new commercial enterprise has created or will create at least 10 full-time positions including tax records, Forms I-9 or a comprehensive business plan showing the need for at least 10 employees

5. Managerial capacity of the investors including a comprehensive job description setting forth the position occupied by the investors, evidence that the petitioner is a corporate officer or on the board of directors, evidence that the petitioner is or will be involved in direct management activities or policymaking activities in a general or limited partnership
6. If applicable, designation of a targeted employment area including boundaries of the subdivision, the date of the designation and the methods by which the statistics were gathered
7. Benefit to the U.S. economy, including letters from local government officials, chambers of commerce, or regional development agencies

Removing the Conditions

Upon approval of the visa petition, the investor and his or her family members become conditional residents for two years. Prior to the expiration of the two years, the investor must file a petition to remove the conditions. The petition must be accompanied by evidence that the individual invested the required capital, and that the investment created or will create 10 full-time U.S. jobs.

Carlton Fields Is Uniquely Qualified

Qualifying for investor visa status is one of the most complicated areas of immigration law. Carlton Fields EB-5 practice team is highly skilled in assisting investors with the complexities of EB-5 individual and regional center petitions. We have excellent relationships with the top regional centers and can assist you in the selection process. We know which regional centers have an established track record of success and which have yet to obtain petition approvals. We can help identify issues that could result in a failure to obtain conditional residence or to remove the conditions and obtain permanent resident status. Our EB-5 practice team will guide the investor through the entire process from evaluating eligibility for the EB-5 visa, regional center selection, review of offering documents, preparation and submission of the I-526 and I-829 petitions, applications for residency and eventually US citizenship. Investors may be able to come to the United States through other temporary or permanent visa categories such as the E-2 investor, or L-1 intra-company transferee or multinational executive or manager routes. Nevertheless, residency through an investor visa is more and more an attractive option particularly for investors from countries with significant visa backlogs and for those who are not interested in actively managing the day-to-day operations of a new commercial enterprise.

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