

EB-5 Immigrant Investor Program Overview



12/11/2009

USAINVESTCO

This document explains the EB-5 program and how to qualify. It also includes answers to many of the frequently asked questions concerning the program.

INTRODUCTION TO EB-5 2

QUALIFYING CRITERIA 2

PROCEDURE 3

 To obtain immigrant investor status:..... 3

 To obtain conditional resident status (only after the Form I-526 is approved):..... 3

 To become a lawful permanent resident:..... 3

FREQUENTLY ASKED QUESTIONS ABOUT THE EB-5 PROGRAM..... 4

 Who should immigrate using EB-5? 4

 What are the advantages to families with unmarried children under the age of 21?..... 4

 What is a “conditional” Green Card? 4

 What documents must I prepare to process my investor Green Card petition?..... 4

 Are EB-5 visas available to people from any country in the world?..... 4

 Must I live in the United States? 5

 What issues have been problematic in EB-5 cases? 5

 How long does USCIS take to process my visa petition? 6

 What are the processing procedures?..... 6

 Is EB-5 a passive investment? 6

 How are investments commonly structured? 7

 What are the risks to the immigrant investor?..... 7

 Can the immigrant investment simply loan the money to the new business?..... 7

 What types of investment funds are eligible? 7

 What kind of return can I expect from the investment? 7

 Where can I find the law on EB-5 Green Card?..... 8

 How do I get started?..... 8

 If I don’t qualify, will I get a refund of my full investment/deposit money? 8

 How can I verify that you are a competent company? 8

EB-5 Immigrant Investor Program Overview

INTRODUCTION TO EB-5

- The United States Congress created a new employment-based immigration policy in 1990 to permit alien entrepreneurs to invest in new commercial job-creating enterprises in exchange for an expedited lawful permanent resident immigration status.
- The Immigration and Nationality Act (INA) allocates 10,000 immigrant visas (green cards) each year to qualified individuals seeking to obtain permanent residence in the U.S. on the basis of their investment in a qualified U.S. enterprise.
- In less than a year, the EB-5 Immigrant Investor Program offers a green card for the applicant, their spouse, and all unmarried children under the age of 21.
- If an investor's EB-5 petition is approved, the investor and dependents may apply for two-year conditional resident status. During the conditional period, the investor must continue to satisfy all EB-5 requirements in order to qualify for a removal of conditions.
- Permanent resident status is granted to the investor and dependents when and only if the petition to remove conditions is approved.

THOUGH THIS PROVIDES AN EB-5 PROGRAM OVERVIEW, INVESTORS SHOULD ENGAGE A QUALIFIED INVESTMENT ATTORNEY FOR THEIR GREEN CARD PROCESS.

QUALIFYING CRITERIA

To qualify for a visa under the EB-5 category, an alien investor must satisfy the following criteria:

1. Invest or be actively in the process of investing in a **new commercial enterprise**—meaning a for-profit U.S. business established after November 29, 1990. The business may take various forms such as a corporation, sole proprietorship, or limited partnership.
2. Invest or be actively in the process of investing the **requisite capital** of at least **\$500,000 (USD)** **OR \$1,000,000 (USD)**. The lesser investment requirement of \$500,000 (USD) applies only where the investment is being made in a "targeted employment area," (TEA) which is an area that has experienced unemployment of at least 150% of the national average rate or a rural area as designated by Office of Management and Budget.

3. Make an investment that will benefit the U.S. economy and **create full-time employment for at least 10 (ten) US citizens or authorized immigrant workers for each investment.**
4. Must show that the source of investment funds is lawful and the investor intends to maintain a role in the management of the new commercial enterprise.

PROCEDURE

To obtain immigrant investor status:

The alien investor must submit a completed [Form I-526](#) (Immigrant Petition by Alien Entrepreneur) to U.S. Citizenship and Immigration Services (“USCIS”) along with supporting documentation clearly demonstrating that the investment meets all EB-5 requirements.

To obtain conditional resident status (only after the Form I-526 is approved):

If residing within the U.S., the alien investor must submit a completed [Form I-485](#) (Application to Register Permanent Residence or Adjust Status) to USCIS. If residing outside the U.S., the alien investor must apply for an immigrant visa at a US Consulate abroad.

To become a lawful permanent resident:

The alien investor must submit a completed [Form I-829](#) (Petition by Entrepreneur to Remove Conditions) to USCIS, within 90 days before the second anniversary of admission to the U.S. as a conditional resident.

In order to ensure that all requirements of the EB-5 Immigrant Investor program are met, USA Investco works closely with several law firms with extensive experience in immigration law and, in particular, the EB-5 Program. Compliance with the EB-5 program relies heavily on correct and timely filing of applications, forms, and other information concerning both the investor and the project. It is extremely important to deal with an attorney who is familiar with all aspects of the immigration process and the EB-5 program.

FREQUENTLY ASKED QUESTIONS ABOUT THE EB-5 PROGRAM

Who should immigrate using EB-5?

EB-5 investors include people from all walks of life; professionals, business people, parents wanting to facilitate a child's education, and retirees. EB-5 investors may continue to work or operate businesses in their native countries; however, since the EB-5 visa permits employment in the U.S., many EB-5 investors become involved in American businesses. EB-5 investors are not required to work; therefore, some investors choose to travel throughout the United States without restriction, or they maintain dual residences in America and their native home. Simply put, of any employment-based visa, the EB-5 visa gives the investor the greatest flexibility to do what they want in the U.S.

What are the advantages to families with unmarried children under the age of 21?

Children of families who immigrate under EB-5 are permitted to attend public elementary (Kindergarten-8th grades) and secondary (grades nine through twelve) schools without paying tuition. Children who attend college or university in the United States will not be required to pay the international student tuition rate, which is substantially higher. They apply to American universities in the same manner and pay the same tuition as U.S. residents.

What is a "conditional" Green Card?

A conditional Green Card is a temporary Green Card valid for two years. One year and nine months after it is issued, a three-month window opens up during which an individual must file another application with the USCIS to verify that all of the funds have been invested and employment created. When the conditional resident status has been lifted, permanent resident status is granted with the option to pursue U.S. Citizenship.

What documents must I prepare to process my investor Green Card petition?

With the help of an attorney, you must prepare complete biographical information and must prove the source of the investment funds. To prove the source of investment funds, USCIS requires five years of personal and business tax returns (if any), proof of ownership in any businesses, and business licenses. You must present a track record of an honest course of dealing. If your capital came from a specific transaction, such as a sale of a house, inheritance, or gift, you must prove the transaction occurred, by providing an official document, such as a closing statement, contract or other official documents. This is not an exhaustive list. Other documents may be required and vary on a case-by-case basis. For more information, refer to the document [EB-5 Checklist: Personal Documents \(Document08\)](#).

Are EB-5 visas available to people from any country in the world?

Legally, yes. However, people from countries without reliable tax and other financial documentation will find it much more difficult. USA Investco, in conjunction with our Immigration Attorney, understands and may help to resolve these matters.

Must I live in the United States?

The first requirement of any investor after they receive the visa at the United States overseas consulate office is to enter into the United States within 180 days of visa issuance. The investor must then establish residency in the United States. Evidence of intent to reside includes opening bank accounts, obtaining a driver's license or social security number, paying state and federal income taxes, renting or buying a home. Generally, all permanent residents must remain in the U.S. for more than 6 months each year, unless they obtain a re-entry permit, or they may be deemed to have abandoned their permanent residence status.

A Green Card holder is entitled to live and/or be employed permanently in the United States with entitlement to all the protections of its laws. A Green Card holder may travel outside the United States, provided they do not remain outside the United States for more than one year without obtaining a re-entry permit or returning resident visa. As a Green Card holder, you may be found to have abandoned your permanent resident status if you:

- Move to another country intending to live there permanently.
- Remain outside of the U.S. for more than one year without obtaining a re-entry permit or returning resident visa. However, in determining whether your status has been abandoned, any length of absence from the U.S. may be considered, even if it is less than one year.
- Remain outside of the U.S. for more than two years after issuance of a re-entry permit without obtaining a returning resident visa. However, in determining whether your status has been abandoned any length of absence from the U.S. may be considered, even if it is less than one year.
- Fail to file income tax returns while living outside of the U.S. for any period.
- Declare yourself a "nonimmigrant" on your tax returns.

A Green Card holder can travel freely to and from the United States. A passport from the country of citizenship is normally all that is needed. To re-enter the U.S. a Permanent Resident normally needs to present the Green Card for re-admission. The law provides that you are free to travel abroad, provided that your trip is "temporary". Generally, the USCIS views any absence from the United States for longer than six months as not temporary. Thus, it is advisable to obtain a "re-entry permit" before your departure.

What issues have been problematic in EB-5 cases?

The most common problem area has been insufficient documentation of the source of funds. Many people try to disclose the least possible information only to have the file returned with a request for further information. It is better to provide too much information rather than too little information. In this era of terror alerts and suspicions about money laundering, USCIS case examiners require a well-documented source of funds.

How long does USCIS take to process my visa petition?

Processing times vary from as little as a few weeks to as many as six months. After an application has been processed and approved by USCIS, a Green Card is generally issued within one year of the date that the application was first submitted.

What are the processing procedures?

A general outline of the application process follows. USA Investco's Immigration Attorney can provide a more complete description. The following is a basic overview of the steps required.

1. File form I-526 Petition for Alien Entrepreneur with the appropriate USCIS Service Center. This petition requests USCIS to certify the applicant and the investment as eligible for EB-5 visa status.
2. Upon approval of the I-526 petition,
 - a. if you are in the United States you may apply for Adjustment of Status to Permanent Residence by sending form I-485 and supporting documents to the USCIS regional processing center nearest your U.S. residence.
 - b. If you are abroad you must wait for notification from the Embassy in your home country to prepare documents for the visa interview. The purpose of the Adjustment of Status or consular visa interview is to make sure you are not subject to grounds of exclusion, e.g. a criminal past, infectious diseases, etc.
3. Upon approval, you receive a form evidencing the approval as well as a travel document. You will also receive the temporary green card in the mail. If you are abroad you must enter the U.S. within six months of the date of the Embassy approval.
4. After two years, you may file for removal of conditions for your permanent green card using Form I-829. This procedure permits USCIS to verify that you have maintained your approved investment for the required two-year period and the requisite number of jobs was actually created.

Is EB-5 a passive investment?

Unlike traditional work-related green cards, the EB-5 investor does not have to be involved in the day-to-day operation of the new commercial enterprise. Simply, the EB-5 regulations require involvement in management or policy making. The most commonly used business structure is to make the EB-5 investor a limited partner in a limited partnership. Limited partnerships enjoy an extremely high rate of acceptance by the USCIS as an approved vehicle for investing through the EB-5 and grant EB-5 investors well-defined rights into the major decisions of a business. This is why USA Investco's projects use the "limited partnership" structure for its enterprises.

At a minimum, the investor is included in major business decisions, but may let other employees or business partners handle day-to-day operations, as is the case in a typical limited partnership structure.

How are investments commonly structured?

An investor purchases an interest in the limited partnership. The limited partnership is the business entity responsible for creating and operating the new commercial enterprise used to satisfy the requirements of EB-5. The immigrant investor becomes a limited partner in the partnership and the percentage of shares conveyed to the EB-5 depends on the percentage the investment bears to the value of the project. The prospectus for each project will describe the valuation methodology.

What are the risks to the immigrant investor?

As with any investment, there is risk of loss. USA Investco provides investors with projects that are compliant with the EB-5 program. The investment, in order to qualify for the EB-5 program, has to be "at risk". It cannot be a loan, but rather must be equity in the project. Our goal is to meet the "at risk" criteria, while at the same time minimizing the risk of loss for all investors. USA Investco seeks projects that achieve this. Ultimately, an investor needs to put a level of trust in the introducing broker, our team, and our proven track record. We also urge all investors to independently verify information contained in a project's business plan and thoroughly review the Offering Package.

OUR GOAL IS TO BUILD A NETWORK OF GLOBAL INVESTORS THAT WILL CONTINUE TO INVEST IN OUR PROJECTS. SUCCESS IS THE BEST WAY FOR ALL OF US TO ENSURE THAT THIS GOAL IS REALIZED.

Can the immigrant investment simply loan the money to the new business?

No. The law requires an "at risk" investment without guarantees or redemption rights. The investor may acquire a loan secured by personal assets to obtain money to invest, but the \$500,000 (if investment is in a TEA) or \$1,000,000 investment may not be a loan to the business.

What types of investment funds are eligible?

Funds for the investment must come from a lawful source. Lawful sources of funds include: earned personal income, profits from the sales of a property, stocks or bonds, profits from business, a loan secured by personal assets of the immigrant investor, business transactions, gifts, and inheritances. To prove the source of investment funds, USCIS requires five years of tax returns, five years of bank records, proof of ownership in any businesses, financial statements for each business, and business licenses. The idea is to present a track record of an honest course of dealing. If your capital came from a specific transaction, such as sale of a house, inheritance or gift, you must prove the transaction occurred by providing an official document, such as a closing statement or contract, or other official documents.

What kind of return can I expect from the investment?

The level of return an investor can expect depends on the business opportunity into which they invest. Therefore, the expected returns are presented on a case-by-case basis. Generally, a higher risk investment will bear a higher return. Likewise, the lower the risk, the smaller the return an investor can expect. Most importantly, the receipt of an EB-5 Green Card does not depend on the return on investment; only that the investment creates the number of required jobs. USA Investco cannot guarantee investments, but does work diligently to maintain the security of the investment at all times, comply with EB-5 guidelines throughout the entire project cycle, as well as maximize the potential return on investment.

Where can I find the law on EB-5 Green Card?

Under section 203(b) (5) of the Immigration and Nationality Act, 8 U.S.C.S 1153 (b) (5), 10,000 immigrant visas per year are available to qualified individuals seeking permanent resident status on the basis of the engagement in a new commercial enterprise. The complete text of the Immigration and Nationality Act can be located at the United State Citizenship and Immigration Services (formerly INS) website: www.uscis.gov

How do I get started?

EB-5 investment opportunities are available on a first-come, first-serve basis. The deposit and/or the full amount of the capital investment plus fees shall be deposited via wire transfer to a bank escrow account to secure your investment opportunity. USA Investco's Immigration Attorney(s) will immediately begin counseling you on the necessary documentation that needs to be organized for your initial visa application.

If I don't qualify, will I get a refund of my full investment/deposit money?

If the I-526 petition, including adjustment of status or consular interview processing, is denied (except a denial based on your failure to disclose a material fact, omission of a material fact or your fraud), the Limited Partnership shall refund the capital investment and any unused fees within ninety days of the applicant's written request. If the denial is based on your failure to disclose a material fact, omission of a material fact or your fraud, the applicant shall receive a return of capital investment only, less a 10% penalty.

How can I verify that you are a competent company?

The individuals comprising USA Investco have over 80 years combined experience in real estate/business development and management. The team demonstrates a proven track record in acquisition, entitlement, development, managing and sales. Accomplishments span all segments of real estate development and brokerage, including commercial, mixed-use, and residential master-planned communities, as well as securities brokerage.

The general partners have raised over 100 million dollars in equity for past projects. The members have developed over 15,000 single family and multi-family lots, and substantial commercial square footage. Past projects have been located in Colorado, Florida, California, North Carolina, Oklahoma, and Texas.