

GREEN CARDS THROUGH INVESTMENT

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For foreign investors looking for freedom and flexibility to live and work in the United States in a way accommodating to their lifestyles, the EB-5 investor category can provide an excellent opportunity to accomplish this goal through the obtaining of Green Cards.

There are two EB-5 programs. The Regular Program where the individual investment is closely scrutinized by the Immigration Service (US Citizenship and Immigration Services or USCIS); and the Regional Center Program where an investment group submits the plan to USCIS review and allows individual investors to join the investment. Both have three basic requirements:

1. Investment in a new commercial enterprise;
2. Investment of a least \$1,000,000 (\$500,000 in certain cases) into the business, and;
3. Creation of employment for at least 10 full-time U.S. workers.

The investment may consist of the contribution of various forms of capital, including cash, equipment, inventory, property or other tangible equivalents. An investment amount of one million dollars is generally the minimum. However, \$500,000 is acceptable if the business is in a "targeted" employment area where the rate of unemployment is 150% of the national average rate, or in a rural area.

The second program within the EB-5 category, the Regional Center program, is ideal for the retiree or inactive investor due in large part to the "indirect employment" feature of this program. The Regional Center program advantageously removes the 10 full-time employee requirement of the Regular program and substitutes the less restrictive "indirect employment creation" standard which allows the investor to qualify by proving that his investment has created a combination of 10 direct and/or indirect new jobs in the Regional Center. The indirect employees may be those employed as a result of the economic activity of the center and do not have to be on its own payroll.

The EB-5 program requires the investor be engaged in either direct management or policy making activities, or that he be a limited partner with the rights of the same under the Uniform Limited partnership Act. Thus, for those who are not interested in running an active business or being fully employed, Regional Center programs can offer a more acceptable inactive form of investment as compared to most regular program investments.

Another advantage of Regional Center programs that adds to the flexibility of this Green Card category is that the investor is not required to live at the place of investment. He or she can live wherever he or she wishes in the United States.

Under mandate by Congress, Regional Center EB-5 petitions (Form I-526) are given priority by USCIS. This results in a quicker path to approval and since the investment group usually has already prepared documentation of the investment, the investor does not need to assemble the extensive documentation to show the legitimacy of the investment. Each Regional center program must be pre-approved by USCIS in order to be eligible to qualify for EB-5 Green Cards.

The program frequently involves purchasing low-yielding industrial properties with invested funds and converting them into mortgage free higher-value commercial properties. Various programs may feature a hotel, office space, retail shops, farms, or storage space. Investors often participate as limited partners of a limited partnership, and can earn a monthly return from tenant rentals after property renovation, as well as a share of future appreciation, if any, from the project when sold. Investment periods may vary, but the return of any of the investor's funds before he has completed his 2 year conditional permanent resident period would be a ground for termination of his status.

The procedure for filing an EB-5 Investor Green Card petition is relatively straightforward when a Regional Center program is used. The investor must present evidence that traces the funds through bank transfers and other documentation, from the investor directly to the enterprise and any other evidence necessary to show that these funds were lawfully acquired. The money can be acquired through income as documented by tax returns or other records, or in the form of a loan or gift. A parent could make a gift to a son or daughter who could then invest the funds. Alternatively, the money can be acquired through a mortgage on one's home or through any other lawful means.

After the investor completes a thorough business and financial due diligence analysis of the viability of the Regional Center business opportunity, the investment is made and a petition is filed by the foreign investor with the USCIS. It typically takes 12-18 months for the USCIS to find the applicant and investment eligible for EB-5 status.

After approval of the petition (Form I-526). If the investor is already in the United States, he or she then applies for a Green Card by filing Form I-485 to Adjust Status to Permanent Residence. No interview is customarily required, and approval for most cases has been taking approximately 9 to 12 months. If the investor resides abroad, an application for Permanent Residence is made at the U.S. Embassy or Consulate in the investor's home country, where an interview for an immigrant visa is required. Approval in these overseas cases takes an average of about 12 months.

In either of the two scenarios, the entire process takes about 16-18 months in a Regional Center case. This is the situation for most applicants based on current USCIS and State Department processing times. However, times may vary from time to time and depending on the circumstances of each case.

Once USCIS approves the investor's Green Card, it is conditional for a period of two years. Conditional Green Card status confers the same rights as permanent Green Cards.

Between 21 and 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. A Form I-829 application to remove the conditional status is then filed with the USCIS allowing the two-year card to be extended. Once the Form I-829 is approved the investor becomes an unconditional permanent resident.

Once the condition has been removed, a full Green Card is valid as long as the investor resides in the United States (but subject to a routine renewal process every 10 years just as any Green Card is). In most cases from the time of application for the Conditional Green Card until approval of the removal of condition usually takes about 4 years. Thereafter, in approved Regional Center cases, depending on the terms of their agreement, the investor may recoup his investment, and the investor will still maintain the permanent Green Card.

In summary, freedom to live anywhere in the United States, a passive form of investment with no required direct management responsibilities, priority standing within the Immigration process, and an accelerated path to Green Card status are important factors which make the EB-5 Green Card Regional Center category an ideal investment vehicle for the inactive investor or retiree who wishes to live and work in the United States.

As with other U.S. Immigrant Visas, applicants need to take into account U.S. and foreign tax and other business and personal planning considerations.

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