



# Frequently Asked Questions about EB-5 Visas

## **EB-5 Immigration Opportunities Overview**

Prior to the Immigration Act of 1990, a foreign national could not qualify for permanent immigration to the United States based upon an investment, no matter how large. Investors had to qualify as employees of U.S. companies, family members of U.S. citizens or permanent residents or, in the alternative, obtain nonimmigrant (temporary) visas. As a result of this policy, many foreign investors immigrated to other countries which have provided substantial incentives to foreign investors.

Presently, 10,000 immigrant (permanent) visas per year are available to foreign investors and their family members who meet certain, very specific criteria. These criteria are interpreted very strictly by the U.S. Citizenship and Immigration Services (USCIS). The below information will help address how foreign investors can now obtain permanent resident status in the United States.

### **How much is an investor required to invest?**

For investments in areas other than "targeted employment areas," the minimum investment is \$1 million. Investments in "targeted employment areas," including approved regional centers, can qualify with a minimum of \$500,000.

### **What is a regional center?**

An EB-5 Regional Center is a business approved by the USCIS to coordinate and substantiate foreign investments for specific types of job-creating projects within a designated geographic area.

### **What is a "targeted employment area?"**

A targeted employment area is a rural area or a geographical area that has experienced unemployment at a rate of at least 150% of the national average rate. Individual states are authorized to designate geographical areas within the state that qualify as targeted employment areas. Of the 10,000 visas available for investors, 3,000 are reserved for investments in targeted employment areas.

### **Does the investor need to have a relationship with the U.S. business the investment is made in?**

NO, the investor does not need to own any specific percentage of the business, be an officer of the business or be an employee of the business. However, the investor must be engaged in some way in the business, whether through actual day-to-day managerial control, by being a member of the board of directors, by being a limited partner, or the like.

### **Must the investment result in the creation of employment for U.S. workers?**

The investment must create full-time employment for at least 10 U.S. citizens. The required 10 positions cannot include the investor or the investor's spouse or children. The 10 jobs must be for employees of the enterprise in which the investment is made and cannot include independent contractors. However, for approved regional centers, the creation of employment is pre-approved and can include indirect employment.

**When must the employment be created?**

The required 10 jobs must be created within the two- year period immediately following the investor becoming a permanent resident.

**May two or more investors qualify for immigration based upon a pooled investment in a single business?**

There is no limit to the number of investors who may qualify for immigration based upon an investment in a single business. However, each investor must invest the required minimum amount, and the number of jobs created must be equal to ten times the number of qualifying investors. For example, if five investors each invest \$1 million in a business, they can each qualify for immigration if 50 jobs are created in the business.

**Is the immigration status granted to the investor valid indefinitely?**

The permanent resident status granted to the investor is actually a “conditional permanent resident status” that is valid for a period of up to two years. The investor and family members are required to remove the condition by filing an application during the 90 day period preceding the second anniversary of obtaining this status. The petition will be required to demonstrate the establishment of the business, the investment of the requisite amount of capital and the creation of the required number of jobs.

**Is the investor free to travel after obtaining conditional permanent resident status?**

Yes, the investor is free to travel in and out of the United States subject to the rules generally applicable to permanent residents. Specifically, the investor must actually have a residence in the United States and must not be outside the United States for a continuous period of one year or more.

**What is an I-526?**

Form I-526, “Immigrant Petition by Alien Entrepreneur,” must be filed with USCIS. The petition must be supported by a substantial amount of documentation proving that the investor meets all of the requirements.

**What is an I-829?**

The I-829 is the final document submitted by an investor before he/she can become a lawful permanent resident of the United States. This petition includes evidence that the investor successfully met all the USCIS EB-5 requirements.

**What documentation must be presented to prove that the investor’s funds came from a lawful source?**

Generally, the investor will present some combination of individual and/or business tax returns, employment records, documentation regarding sale of a business, documentation regarding gifts or inheritance, and documentation regarding securities or real estate transactions.

### **What is EB-5 Escrow?**

EB-5 escrow is a contractual arrangement formed and controlled by an escrow agreement made between an EB-5 issuer, an EB-5 investor or representative, and an escrow agent. The EB-5 escrow is used to hold the investor's funds while the I-526 petition is being submitted and reviewed by the USCIS. The EB-5 investor subscribes funds to an independent third party (the escrow agent) who receives, holds, and then disburses the money upon satisfaction of mutually agreed upon triggers within the contract.

### **What use Escrow?**

Like many emerging capital sectors, EB-5 lacked specific financial controls and external oversight. Escrowing your funds provides an additional layer of security. This has become a best practice within the industry but is not a legal requirement. Most reputable projects pledge to refund an investor's subscription funds in the event that his/her I-526 petition is denied or withdrawn. An EB-5 escrow is a great way to assure that funds will be available for return should a refund be warranted.

### **When is an Escrow account setup?**

EB-5 escrows are always included in the project offering documents and frequently are part of the exemplar or Regional Center (I-924) application filed with the USCIS. Therefore, an EB-5 escrow account is typically setup during the formation of the project.

### **How do I select and an Escrow provider?**

Regional Centers and developers should always work with experienced professionals within the EB-5 industry. Fundadministration Inc partners with leading banks to deliver the a comprehensive EB-5 escrow solution.