

THE U.S. "IMMIGRANT INVESTOR" VISA: AN INVESTMENT FOR THE FUTURE

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Now has never been a better time for investors or entrepreneurs seeking to gain permanent residency, or a "Green Card," in the United States. On September 28, 2012, President Obama signed S. 3245 which ratifies the three year reauthorization of the increasingly popular EB-5 "Immigrant Investor" Regional Center Pilot Program. This reauthorization was passed by the House of Representatives in a vote of 412-3 earlier in the month, on September 13, 2012. The EB-5 Pilot Program is, perhaps, the most direct path to acquire a Green Card for those individuals who do not have immediate relatives in the U.S. or a firm job offer from a U.S. employer. This unique program offers benefits for both the foreign investor and the United States, creating a win-win situation for all parties. During the midst of a global recession, this program acts as a magnet for attracting foreign investment into many areas of the U.S. that need it the most, while allowing participating foreign investors the opportunity to become Lawful Permanent Residents and the prospects of a return on their investment. A recent economic impact study spearheaded by the Association to Invest in the USA (IIUSA), the national not-for-profit industry trade association for the EB-5 Regional Center Program (the "Program"), suggests the EB-5 program continues to draw significant employment and economic gains with each passing year. The results from the study show that in 2010-2011 the EB-5 Program supported over 33,000 jobs and contributed \$2.65 billion to the US economy in GDP while generating \$346 million in federal tax revenue and \$218 million in state and local tax revenue.

The significant benefits of the program, most notably its clear path to permanent residency in what normally involves wading through a fluid and bureaucratic maze of immigration laws, have been known for some time by many Asian countries which have made the most proficient use of the program in recent years (South Korea, China, and Taiwan for example). Investors of many other nationalities, on the other hand, are quickly catching on to the unique investment opportunity, as the benefits associated with the EB-5 Pilot Program become more publicized.

The EB-5 Pilot Program is the most recent – and popular – version of the original EB-5 Immigrant Investor visa program. The U.S. Congress created the fifth employment-based preference (EB-5) immigrant visa category in 1990 for immigrants seeking to enter to engage in a commercial enterprise that will benefit the U.S. economy and create at least 10 full-time jobs. The basic amount required to invest is \$1 million, although that amount may be \$500,000 if the investment is made in a "targeted employment area," which is defined as a rural area or area of high unemployment. Of the 10,000 EB-5 investor visas available annually, 3,000 are set aside for those who apply under the Pilot Program established in 1993 involving a United States Citizenship & Immigration Services (USCIS) designated "regional center." Private and governmental agencies may be certified as regional centers if they meet certain criteria. A regional center is an entity, organization or agency that has been approved as such by the Service; focuses on a specific geographical area within the United States; and, seeks to promote economic growth through increased export sales, improved regional productivity, creation of new jobs, and increased domestic capital investment. Practically speaking, regional centers are private businesses that allow many different investors to pool their funds in an effort to further their business objectives. As of the time of writing, there several hundreds of regional centers operating throughout the United States, involving many different business endeavors, including commercial real estate development; agriculture projects; development and operation of retirement communities; motion picture and television production projects; and, construction equipment manufacturing and sales, to name a few.



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Regional centers are located in California, Florida, New York, Pennsylvania, and in nearly every U.S. state and territory, including Guam. While the original EB-5 “Million Dollar” option is available, the process for the regional center Pilot Program is less complex and may be a better fit for those investors who do not want the day-to-day responsibility of managing a business in the United States. By participating in a regional center, the requirement of creating at least 10 new jobs is met by a showing that as a result of the new enterprise, such jobs will be created directly or indirectly. Therefore, the investor receives the Green Card in exchange for his or her investment – not for individual efforts to run a new business. More than 90 percent of all EB-5 investors choose to invest through the regional center Pilot Program. The regional center investor will generally earn a low rate of return with the ability to regain his investment after a certain period of time (at least five years). The investor must manage the business; however, most of the regional centers involve limited partnership investments for which having the rights of a limited partner is considered sufficient to satisfy this legal requirement.

The process for participating in the EB-5 Pilot Program is relatively straightforward. An immigrant petition must be submitted to the U.S. Citizenship and Immigration Services (USCIS) proving that the applicant satisfies the regulatory requirements. Once the petition is granted, the investor must obtain an immigrant visa at the American consulate or, if already in the United States on a separate visa, apply for adjustment of status. Once this is completed, the applicant is granted conditional resident status. One reason for this “conditional” status is to deter fraudulent investments. After 21 but before 24 months later, the applicant must file another petition to remove conditions, verifying that the investment has been maintained and the required jobs have been created or saved. When the second petition has been approved, a permanent “Green Card” is issued to the investor. The investor may file an application for U.S. citizenship after being a Green Card holder for five years.

There are many benefits for an investor in the Pilot Program. For example, in return for the investment, a Green Card will be issued to the investor, spouse and unmarried children under the age of 21. While the immigration process for many individuals takes years and is wildly uncertain – under the EB-5 regional center Pilot Program, the processing time for acquiring the Conditional Green Card is generally between 12 to 18 months, although some cases have been processed in much less time. Investors may live and work anywhere in the U.S., and there are no age, language, education, or previous business experience requirements – the investor must simply have the required net worth and capital. Under the regional center Pilot Program, the investor is not obligated to hire U.S. workers or manage day-to-day business operations. The Pilot Program is most appropriate for investors who see acquiring a Green Card as the real motivating factor for the investment. It may also be a viable option for retirees or successful businessmen and women who wish to reside in the U.S. and provide their children with access to many of the world’s top colleges and universities – taking advantage of much lower in-state tuition fees available to Lawful Permanent Residents. Each of the USCIS designated regional centers are different, and various administrative fees associated with each program normally range from \$20,000 - \$60,000. Therefore, the total cost of the actual program is \$500,000 (investment) + \$20-60,000 (administrative fees) + legal fees. One of the key factors in receiving permanent residency through the EB-5 program is that the source of funds must be obtained through lawful means (specifically, where and how the investor acquired the funds must be carefully shown to USCIS to establish that the investment was earned legitimately). A separate financial accounting prepared by an international accounting firm may be required. Generally, after 5 years, the investor may choose from one of several investment exit strategies. Each program is different and the requirements/exit procedures vary.

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