Employment-base

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## EB-5 Employment-Based Immigrant Investor Visa

## Law Office Of MICHAEL B. DYE DYE GLOBAL IMMIGRATION

The Law Office of Michael B. Dye (DyeLaw) is a full-service immigration law office located in Southern California. DyeLaw provides immigration assistance to potential investors seeking permanent residency in the United States, entrepreneurs seeking to establish business operations in the United States, and companies looking to expand their presence by establishing new offices in the United States. Mr. Dye is a member of American Immigration Lawyers Association (AILA), and is admitted to practice law in various jurisdictions, including California and the District of Columbia.

In addition to serving individuals and entities with global business interests in the immigration context, the Law Office of Michael B. Dye provides a range of international trade law and compliance services. DyeLaw has affiliate offices (Dye Global Immigration) in Singapore, Indonesia, Dubai, and Doha.

# EB-5 Employment-Based Immigrant Investor Visa

Of the various types of employment-based permanent resident visas, the employment-based fifth preference visa (EB-5) is available to foreign investors who wish to make a capital investment in a commercial enterprise and obtain permanent residence in the United States. The amount of the investment must be at least \$1,050,000 dollars, unless the investment is to be in a targeted employment area, in which case the investment need only be eight hundred thousand dollars. In all cases, the investment must also create full-time employment for at least 10 U.S. citizens or other legal residents, not including the investor or members of the investor's family.

The EB-5 Regional Center Investment Program enables foreign investors to qualify for permanent residence in the U.S. by investing \$800,000 in a federally designated "regional center" or FDRC, designed to stimulate local troubled economies - these are areas of high unemployment or rural (lesser populated) areas. In addition to the \$800,000 investment, the investor must pay participation fees, legal, and government filing fees. A regional center is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment.

There are hundreds of "regional centers" operating throughout the United States, each very unique and with varying goals. While the regional centers often pay a low annual rate of return on the initial investment, many centers have built-in exit strategies allowing the investor to "cash out" after a period of time (at least 5 years). Some centers may pay an annual rate of return of 0.5%, while others may pay more. Many of the centers will refund the money, in full, if the investor is not approved by the U.S. Citizenship & Immigration Services (USCIS) for the conditional green card.

The investor should make sure that any investment includes an agreement to refund the investment and all or part of the program fees if the conditional green card is not issued.

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# Visa Description

The United States Citizenship and **Immigration Services (USCIS) administers** the Immigrant Investor Program

Also known as "EB-5," the program was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under a pilot immigration program first enacted in the early 1990's and regularly reauthorized since, certain EB-5 visas also are set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth. On March 15, 2022 President Biden signed a law that includes authority for a new EB-5 Immigrant Investor Regional Center Program and various implementation effective dates for the program. The program will be in effect through Sept. 30, 2027. The new legislation enacted in March contains many provisions that are beneficial to the investor, including more compliance and protection mechanisms for the investor as well as the ability for investors already living in the United States on other visas to file for work authorization and travel authorization while they wait for their EB-5 petitions to be reviewed.

## All EB-5 investors must invest in a new commercial enterprise, which is a commercial enterprise:

- Established after Nov. 29, 1990, or
- Established on or before Nov. 29, 1990, that is:
- 1. Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, or
- 2. Expanded through the investment so that a 40-percent increase in the net worth or number of employees occurs.

# **Commercial** Enterprise

**Commercial enterprise means any** for-profit activity formed for the ongoing conduct of lawful business including, but not limited to:

- A sole proprietorship
- Partnership (whether limited or general)
- Holding company
- Joint venture
- Corporation
- Business trust or other entity, which may be publicly or privately owned

This definition includes a commercial enterprise consisting of a holding company and its wholly owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business.

Note: This definition does not include noncommercial activity such as owning and operating a personal residence.

### **Job Creation Requirements**

- Create or preserve at least 10 full-time jobs for qualifying U.S. workers within two years (or under certain circumstances, within a reasonable time after the two-year period) of the immigrant investor's admission to the United States as a Conditional Permanent Resident.
- Create or preserve either direct or indirect jobs.
- Direct jobs are actual identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital.
- Indirect jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor. A foreign investor may only use the indirect job calculation if affiliated with a regional center.

A qualified employee is a U.S. citizen, permanent resident or other immigrant authorized to work in the United States. The individual may be a conditional resident, an asylee, a refugee, or a person residing in the United States under suspension of deportation. This definition does not include the immigrant investor; his or her spouse, sons, or daughters; or any foreign national in any nonimmigrant status (such as an H-1B visa holder) or who is not authorized to work in the United States.

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. In the case of the Immigrant Investor Regional Center Program, "full-time employment" also means employment of a qualifying employee in a position that has been created indirectly from investments associated with the Program.

# **Capital** Investment Requirements

Capital means cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair-market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

### **Required minimum** investments are:

- · General. The minimum qualifying investment in the United States is \$1.05 million.
- Targeted Employment Area (High Unemployment or Rural Area). The minimum qualifying investment either within a high-unemployment area or rural area in the United States is \$800,000.

#### A targeted employment area can be, at the time of investment, either:

- A rural area; or
- An area that has experienced high unemployment (defined as at least 150% of the national average unemployment rate).
- A rural area is any area other than an area within a metropolitan statistical area (MSA) decennial census of the United States.
- A high-unemployment area consists of the census tract or contiguous census tracts in any or all directly adjacent census tracts, if the weighted average unemployment for the specified area based on the labor force employment measure for each tract is 150% of the national unemployment average.
- Regional center investors may choose to invest in a new commercial enterprise entity (such as a Federal, State, or local agency or authority) that is the job-creating entity contracting with a regional center or new commercial enterprise to receive commercial enterprise as financing for maintaining, improving, or constructing a public works project.

(as designated by the Office of Management and Budget) or within the outer boundary of any city or town having a population of 20,000 or more according to the most recent

which the new commercial enterprise is principally doing business, which may include

engaged in an infrastructure project. An infrastructure project is a capital investment project in a filed or approved business plan, which is administered by a governmental capital investment under the regional center program from alien investors or the new

### Dye Global Immigration LLC

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