

# **EB-5 VISA**

**EB-5 INVESTOR GREEN CARD OPTIONS & CONSIDERATIONS**

# EB-5 VISA

## Regional Center vs. Direct Investment

### Regional Center

- Fairly passive investment
- High administration fees with low return
- Risk of projects
- Indirect jobs counted
- Usually in Targeted Employment Areas (with lower required investment)
- Can support more than one EB-5 investor

### Direct Investment

- Only one EB-5 investor
- Control over process, hiring and funds
- Potential for higher return
- Only direct jobs counted
- Program is more stable and not subject to re-authorization
- Funds already invested can count towards investment



# EB-5 VISA Requirements

## EB-5 Visa Requirements

- #1** Investment
- #2** Job Creation
- #3** EB-5 Filing

# EB-5 VISA Requirements

## Investment

- **\$800,000 or \$1,050,000**
  - *New Commercial Enterprise (NCE)*
  - *Targeted Employment Areas (TEAs)*
- **Which investment can be included?**
  - *Investment made over time*
  - *Investment vs. retained earnings*
- **Differences between the E-2 visa and EB-5 visa**
  - *Source of funds (nothing like E-2)*
  - *Equity investment (direct investment)*

# EB-5 VISA Requirements

## Job Creation

- 10 full-time jobs (Direct vs. Indirect Employees)
- Link between investment and job creation
- Detailed business plan
- Documenting full-time positions and qualified workers

## EB-5 Filing

- I-526
- I-485 vs. Consular Processing
- I-829

# EB-5 VISA

## EB-5 Reform and Integrity Act (RIA)

### Key Changes to the Program (2022)

- **Investment Amount**
  - *Standard (non-TEA) investment amount increased to \$1,050,000*
  - *Lower (TEA) investment amount increased from \$500,000 to \$800,000*
- **Program Authorization**
  - *Regional center program reauthorized until Sept. 30<sup>th</sup>, 2027*
  - *Regional center filings filed before Sept. 30<sup>th</sup>, 2026, will be adjudicated to avoid delays and uncertainty*
- **Change of TEA Rules**
  - *U.S. government determines what is a TEA, which makes it harder to qualify for the lower investment amount.*
- **EB-5 Projects Set Aside**
  - *20% of EB-5 visas for rural areas*
  - *10% for high unemployment areas*
  - *2% for infrastructure projects*

# EB-5 VISA

## EB-5 Reform and Integrity Act (RIA)

- **Filing**
  - *Ability to file an I-485 petition concurrently with an I-526*
  - *Ability to file for work authorization*
  - *Ability to file for travel authorization*
- **Documenting the Source of Funds**
  - *Includes administrative fees (legal, regional center, and filing fees)*
  - *Clarification of loans and gifts*
- **Ability to Change Programs (if the regional center fails or closes)**
  - *Good-Faith investors can complete the permanent residence process despite the termination of an EB-5 entity or Regional Center.*
  - *Protects the petitioner in the event that the Regional Center Program expires in the future.*

# EB-5 VISA

## Other Considerations

### What else should I consider?

- **At-risk investment**
  - *Invest or intent to invest*
- **Loans & Gifts**
- **Considerations for purchasing a Business**
- **Investment Structure**
  - *How much do you need to own?*
- **Guaranteed return of investment**
- **Moving from an E-2 to EB-5**
  - *What investment can count?*
  - *Job creation*
  - *Buying a business*



# EB-5 VISA

## Example

### Case Study

- Helen obtained an E-2 visa in 2015 when she purchased shares of a business for \$300,000. The business had 5 full-time employees when she purchased the shares. She paid lawyers \$40,000 in legal fees.
- At the end of 2019, she invested another \$500,000, which was received as a gift. The person who gave the gift obtained the money from the sale of a property they inherited 15 years ago. Instead of giving the money to Helen, they deposited the money directly to Helen's business bank account.
- When the money was invested (\$500,000) she had 10 full-time employees working at the company. (She hired 5 since she bought the company).
- At the end of 2019, she paid herself a bonus of \$100,000 after the company made \$1,000,000.
- On January 1, 2020, she applied for an EB-5 green card showing a total of \$1,800,000 invested (\$300,000, plus \$500,000, plus \$1,000,000 in retained earnings that the company had made over the years). She also included information showing that she had created 10 full-time jobs.
- She plans to hire another 3 or 4 employees going forward but is not committed to this.
- Her business is located in an area where the unemployment rate is 7%.

# EB-5 VISA

## Other Considerations

### What else should I be aware of?

- Timing Considerations
  - *EB-5*
  - *Country-Specific Quotas*
- Travel Considerations & Visa Expiration Dates
- Dual Intent Considerations
- Parallel Green Card Strategies
- Planning is key

**ANY QUESTIONS?**

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