

EB-5 Immigrant Investors

Overview



The EB-5 immigrant investor category allows a person and his or her family members to get a green card (i.e., live permanently in the US) by investing a certain amount of money in the US and creating or saving 10 US jobs. The minimum amount of money to invest is \$500,000 if you invest in a rural area or high unemployment area. Otherwise you must invest at least \$1 million.

IMMIGRATION PRACTICE GROUP

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Stephen Yale-Loehr is

co-author of *Immigration Law and Procedure*, the leading multi-volume treatise on immigration law published by LexisNexis Matthew Bender. He also teaches immigration and asylum law at Cornell Law School. Mr. Yale-Loehr has been chair, co-chair, or a member of the EB-5 Investors Committee of the American Immigration Lawyers Association (AILA) since 1996. He has set up an EB-5 listserv through AILA that has over 100 attorney members on it. Mr. Yale-Loehr also writes an annual EB-5 update article for the AILA annual conference handbook and has set up an Immigrant Investors Association to promote the EB-5 program and to liaise with the immigration agency. He is also listed in *Who's Who in America* and *An International Who's Who of Corporate Immigration Lawyers*, where he is listed as one of the best immigration lawyers in the world. He is the 2001 recipient of AILA's Elmer Fried Award for Excellence in Teaching and the 2004 recipient of AILA's Edith Lowenstein Award for Excellence in Immigration Law.

Carolyn Lee practices business immigration law. She is a member of the Finger Lakes Entrepreneurs' Forum, Leadership Tompkins



Class of 2002, and American Immigration Lawyers Association. Ms. Lee is a Korean-American immigrant and conversant in Korean.

EB-5 REQUIREMENTS

REGIONAL CENTER INVESTMENTS

1. **The New Commercial Enterprise:**
To qualify for EB-5 classification an investor must show that an investment has been made in a qualified commercial enterprise.
2. **Capitalization:** To show that the petitioner has invested (or is actively in the process of investing) the required amount of money, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital "at risk."
3. **Legal Acquisition of Capital:** The petitioner must have legally acquired the funds invested, including being in legal immigration status if funds are earned or acquired in the US.
4. **Creating Employment:** The investor must show that his or her investment will create at least 10 full-time jobs.
5. **Managerial Capacity of the Investor:**
An EB-5 immigrant must be involved in the management of the new commercial enterprise. The petitioner can either be involved in the day-to-day managerial control of the enterprise or be a limited partner.

To encourage immigration through the EB-5 category, Congress created a separate EB-5 program in 1993. The program sets aside 3,000 green cards each year for foreign investors who invest in "designated regional centers."

The EB-5 regional center program does not require the company in which the investor put his or her money to itself employ 10 US workers. Instead, it is enough if 10 or more jobs will be created directly or indirectly as a result of the investment. This program also differs from the regular EB-5 provisions in that it permits private and governmental agencies to be certified as regional centers if they meet certain criteria. Because of the indirect job creation element, many foreign investors prefer investing in a regional center rather than creating their own company.

ADVANTAGES OF THE EB-5 INVESTOR CATEGORY

No Quota Backlogs

There are multi-year backlogs for many employment and family based green card categories, but there is no quota backlog for the EB-5 investor category.

No Sponsor Needed

Foreign investors use their own personal funds and do not require sponsorship from either an employer or a family member.

Approved Regional Center Investment Programs

Many of the approved EB-5 regional centers allow foreign investors to invest in prearranged programs for only \$500,000, plus administrative fees.

Permanent Residency Life Style

Foreign investors may enter a limited partnership with few or no day-to-day management responsibilities for their investment program. This allows foreign investors to live and work in the United States in any capacity.

EB-5

For more immigration assistance and information, please visit our website at www.millermayer.com, including additional links for information on EB-5 investors:

For general information, see the EB-5 overview article on our website: <http://www.millermayer.com/resources/eb5overview.htm>

For more in-depth information, see: <http://www.millermayer.com/resources/immigrant/eb5.html>

For an article about recent positive trends in the EB-5 program, see: <http://www.millermayer.com/EB5NYLJ0405.html>

Show Me the Money: Proving Lawful Source of Funds for EB-5 Immigrant Investors <http://www.millermayer.com/new/eb5funds.html>