

IMMIGRATION LAW OFFICES OF RON KATIRAEI

MANHATTAN, NEW YORK

Phone (212) 760-4400



EB-5 VISA (Immigrant Investor Program)

The EB-5 Visa for Immigrant Investors allows foreign nationals to obtain lawful permanent residency status (green card) in exchange for making investments in the United States economy that stimulate job creation. Congress created the Immigrant Investor Program in 1990. Two years later Congress established the Immigrant Investor Pilot Program, allowing foreign nationals to procure EB-5 Visas by making investments into economic units known as "Regional Centers." Although both programs issue EB-5 Visas, and although both programs have similar requirements, in many ways, the Pilot Program is a more passive option than is the traditional EB-5 Visa process. Both programs are laid out below.

Immigrant Investor Program: Traditional EB-5 Visa Process

The traditional EB-5 Visa Process requires that a foreign national make a substantial investment in the U.S.; in exchange, the foreign national, their spouse, and any unmarried children under the age of 21 are admitted to the U.S. on a two-year conditional period. After the two-year conditional period, the foreign national and their admitted dependents can apply for lawful permanent residence (green card).

General Requirements

An EB-5 investor must:

- Invest in a commercial enterprise:
 - o Established after Nov. 29, 1990; or
 - o Established before Nov. 29, 1990, that is:
 - Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results; or
 - Expanded through the investment so that a 40-percent increase in the net worth or number of employees occurs
- Establish that they will be actively involved in the management of the new commercial enterprise

Job Creation Requirements

An EB-5 investment must create or preserve at least 10 full-time jobs for qualifying U.S. workers within two years of the immigrant investor's admission to the United States. These jobs must be identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital. Investors may only be credited with preserving jobs in a troubled business, which is an enterprise that has been in existence for at least two years and has incurred a net loss during the 12- or 24-month period prior to the priority date on the immigrant investor's Form I-526. The loss for this period must be at least 20 percent of the troubled business' net worth prior to the loss.

Capital Investment Requirements

EB-5 investors must make capital investments, such as cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets that the foreign investor owns. Investment capital cannot be borrowed. The minimum qualifying investment in the United States is \$1 million. However, exceptions exist for Targeted Employment Areas (TEAs: an area that, at the time of investment, is a rural area or an area experiencing unemployment of at least 150 percent of the national average rate) and Rural Areas (Ras: any area outside a metropolitan statistical area, as designated by the Office of Management and Budget, or outside the boundary of any city or town having a population of 20,000 or more, according to the decennial census). The minimum qualifying investment for a TEA or RA is \$500,000.

Application Process

To obtain an EB-5 Visa, you as an investor must follow the steps below:

1. File a Form I-526, Petition by "Foreign National" Entrepreneur
2. Upon approval of the Form I-526 petition, either:
 1. File a Form I-485, Application to Register Permanent Residence or Adjust Status, with USCIS to adjust status to conditional permanent resident within the United States, or
 2. File a DS-230, Application for Immigrant Visa and "Foreign National" Registration, with the Department of State to obtain an EB-5 visa for admission to the United States. You (and your dependents) are granted conditional permanent residence for a two-year period upon the approval of the I-485 application or upon entry into the United States with an EB-5 immigrant visa.
3. File Form I-829, Petition by Entrepreneur to Remove Conditions. If USCIS approves this petition, the conditions are removed from your status and the EB-5 investor dependents will be allowed to permanently live and work in the United States.

Immigrant Investor Pilot Program: Investing in Regional Centers

The EB-5 Regional Center (Pilot) Program provides an opportunity to foreign nationals to establish lawful permanent residency in the United States for themselves, their spouses, and any children under the age of 21, without having to buy or manage a business. The Pilot Program, and its establishment of Regional Centers as points of investment, allows foreign investors to take a more passive approach to obtaining an EB-5 Visa.

EB-5 requirements for an investor under the Pilot Program are essentially the same as in the standard EB-5 investor program: a foreign investment must be \$1 million (or \$500,000 for TEAs and RAs), and it must create or sustain 10 full-time jobs for U.S. citizens. However, the Pilot Program provides for investments that are affiliated with a Regional Center. A Regional Center is defined as any economic entity, public or private, involved in the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment. Under the Pilot program, instead of requiring an investor to create a new commercial enterprise, the investor can simply invest the required capital investment in a USCIS designated Regional Center.

Furthermore, investments made through Regional Centers can take advantage of a more expansive concept of job creation, including both indirect and direct jobs. While the traditional EB-5 process requires that the investor create direct jobs—jobs that are actually identifiable for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital—the Pilot Program allows the investor to satisfy the job creation requirement by creating indirect jobs. When investing in a Regional Center, the foreign investor is only responsible for jobs shown to have been created collaterally, or as a result of, capital invested in a commercial enterprise affiliated with a Regional Center.

Moreover, the Pilot Program represents a more passive approach to obtaining an EB-5 Visa than the traditional procedure. Under the traditional EB-5 procedure, the foreign investor must establish that they will be actively involved in the management of the new commercial enterprise. However, although the Pilot Program does technically require the investor to participate in management or policymaking, this participation is often largely symbolic, with the investor's vote as a limited partner's satisfying the requirement. Therefore, for foreign nationals wishing to take a less hands-on approach, the Pilot Program represents a preferable path towards obtaining lawful permanent residency for themselves and their dependents.

Large metropolitan areas, like New York City, Seattle, Los Angeles, and San Francisco are home to numerous Regional Centers. A complete list of Regional Centers in the United States can be found at www.uscis.gov/eb-5centers.