

Removing Conditions on Your EB-5 Green Card: I-829 Petition Guide

A comprehensive guide from EB5 Attorneys

After an EB-5 investor's I-526E petition is approved and they obtain conditional permanent resident status, the journey is not over. The investor must file Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status, to convert their two-year conditional green card into unconditional permanent residency. The I-829 is the final major hurdle in the EB-5 process, requiring proof that the investment was sustained and the required jobs were created. Filing errors, insufficient evidence, or missed deadlines at this stage can result in loss of permanent resident status. This guide explains the I-829 process, what evidence you need, and how to prepare for a successful filing.

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The Conditional Residency Period

When an EB-5 investor is admitted to the United States as a permanent resident (or adjusts status), they receive conditional permanent resident status valid for two years. During this period, the investor holds a green card and enjoys nearly all the rights of a permanent resident, including the right to live and work anywhere in the United States. However, the conditional status is temporary and must be converted to unconditional status through the I-829 petition. The two-year conditional period begins on the date of admission as a conditional resident, not the date the I-526E was approved. Throughout this period, the investor must maintain the qualifying investment and ensure the new commercial enterprise is operating as planned.

I-829 Filing Requirements and Timeline

The I-829 petition must be filed during the 90-day window before the conditional residency period expires. Filing too early or too late can result in rejection or complications. The petition is filed with USCIS along with the required filing fee and supporting evidence. Upon receipt of a properly filed I-829, USCIS extends the investor's conditional resident status in one-year increments while the petition is adjudicated. This extension allows the investor to continue living and working in the United States while awaiting a decision. If the I-829 is not filed on time, the investor's conditional status expires and they may be placed in removal proceedings. Setting calendar reminders and working with counsel well in advance of the filing window is essential.

Evidence of Sustained Investment

The I-829 petition requires proof that the investor maintained the qualifying investment throughout the conditional residency period. This includes evidence that the capital remained invested in the new commercial enterprise and was not withdrawn, repaid, or redirected. Supporting documents typically include bank records, financial statements of the enterprise, corporate tax returns, and organizational documents showing the investor's continued ownership interest. For regional center investors, the regional center typically provides documentation confirming the investor's continued participation in the project. USCIS examines whether the investment was sustained in both form and substance, meaning the capital must have been genuinely deployed in the enterprise rather than held in a dormant account.

Proving Job Creation

The I-829 must demonstrate that the investment created (or, for regional center projects, can be expected to create within a reasonable time) at least 10 full-time positions for qualifying U.S. workers. For direct investments, payroll records, tax documents (Forms W-2 and quarterly payroll tax filings), and employee records serve as evidence of direct job creation. For regional center investments, updated economic impact analyses and project financial records demonstrate that indirect and induced job creation meets or exceeds the required threshold. If the project is still underway at the time of I-829 filing, the investor must show that job creation is on track and will be completed within a reasonable period. A shortfall in job creation is one of the most common grounds for I-829 denial.

Processing Timeline and What to Expect

I-829 processing times vary but have historically ranged from 12 to 36 months or longer. During this period, the investor's conditional status is automatically extended as long as the petition was timely filed. USCIS may issue an RFE requesting additional documentation, schedule an interview with the investor, or adjudicate the case based on the written record alone. Interviews are not required in every case but are more common when USCIS identifies issues or inconsistencies. Once approved, the investor receives an unconditional permanent resident card (10-year green card), and any derivative family members also have their conditions removed. The investor can then pursue U.S. citizenship through naturalization after meeting the residency and other eligibility requirements.

Frequently Asked Questions

1. What happens if I miss the 90-day I-829 filing window?

If you fail to file the I-829 within the 90-day window before your conditional residency expires, your conditional status terminates and USCIS may initiate removal proceedings. In some cases, late filing may be excused if you can demonstrate extraordinary circumstances. However, this is a high-risk situation that should be avoided entirely through careful calendar management and attorney coordination.

2. Can I travel outside the United States during the I-829 processing period?

Yes, but with caution. While your conditional status is extended during I-829 processing, extended absences from the United States can raise questions about your intent to maintain permanent residency. If you plan to travel internationally, discuss reentry permits and absence duration with your attorney to avoid complications with your I-829 or future naturalization eligibility.

3. What if the EB-5 project has not created all 10 jobs by the time I file the I-829?

For regional center investments, USCIS may accept evidence that job creation is ongoing and will be completed within a reasonable timeframe, provided the project is progressing as planned. For direct investments, all 10 positions should ideally be filled at the time of filing. A significant shortfall in job creation is a serious issue that could result in denial. Discuss job creation status with your attorney well before the filing window opens.

4. Do my family members need to file separate I-829 petitions?

No. Derivative family members (spouse and children under 21) are included in the principal investor's I-829 petition. When the I-829 is approved, conditions are removed for the investor and all derivative beneficiaries simultaneously. However, if a derivative beneficiary has obtained conditional status separately (for example, through consular processing at a different time), the filing requirements may differ.

Disclaimer: This guide is provided for general informational purposes only and does not constitute legal advice. Every immigration case is unique. Consult a qualified immigration attorney for advice specific to your circumstances.

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