

Getting a Second Opinion on Your EB 5 Case

A comprehensive guide from EB5 Attorneys

An EB 5 investment involves at least \$800,000 of your capital and years of legal process. When something feels wrong, when your attorney is not communicating, when you receive a Request for Evidence you did not expect, or when doubts arise about your regional center project, getting a second opinion from an independent EB 5 attorney is a practical and often necessary step. This guide explains when to seek a second opinion, how to do it without disrupting your pending case, and how to act on the results.

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When a Second Opinion Is Warranted

Not every moment of uncertainty requires a second attorney's review, but several situations strongly suggest that an independent evaluation would be valuable. The most common triggers include: receiving a Request for Evidence (RFE) from USCIS that your current attorney seems unprepared to handle; concern that your regional center is experiencing financial difficulties, compliance problems, or has received a Notice of Intent to Terminate (NOIT) from USCIS under the EB 5 Reform and Integrity Act of 2022; dissatisfaction with your attorney's communication, responsiveness, or apparent level of attention to your case; a sense that your attorney does not fully understand the source of funds issues specific to your country of origin; learning that other investors in the same project have had their petitions denied; questions about whether your current investment project meets the job creation requirements under INA Section 203(b)(5) and 8 CFR 204.6; significant changes in your personal circumstances (divorce, change of business ownership, relocation) that may affect your petition; or a general feeling that you are not receiving competent representation. The decision to seek a second opinion is not disloyal. Attorneys understand that clients in high stakes matters sometimes seek independent advice, and any attorney who objects to a client obtaining a second opinion is raising a red flag about their own confidence in their work.

How to Get a Second Opinion Without Disrupting Your Case

One of the most common concerns investors have about seeking a second opinion is that it will somehow damage their pending case. In practice, obtaining a second opinion is entirely separate from your existing attorney client relationship and has no effect on any USCIS filings. The second opinion attorney does not file anything with USCIS, does not contact your current attorney (unless you authorize it), and does not notify USCIS of their involvement. To get a second opinion: identify one or two experienced EB 5 attorneys who are not affiliated with your current attorney or your regional center; contact them and explain that you are seeking an independent review of your pending EB 5 case; ask about their fee for a second opinion consultation (typically \$500 to \$2,500 depending on the complexity of the review); gather the key documents from your file, including a copy of your filed I 526E petition, any RFEs received, your current attorney's response to RFEs, your retainer agreement, and any correspondence with USCIS; and provide these materials to the second opinion attorney in advance of the consultation so they can review them before your meeting. You do not need your current attorney's permission to seek a second opinion. Your case file belongs to you, and you have the right to share it with another attorney for review purposes. If your current attorney has not provided you with copies of your filed petition and supporting documents, request them. You are entitled to your file under the ethical rules of every state bar.

What a Good Second Opinion Includes

A thorough second opinion is more than a brief phone call with general reassurances. A competent second opinion attorney should review your case materials and provide a substantive assessment that covers: the strength of your I 526E petition as filed, including whether the source of funds documentation adequately traces the lawful path of funds under 8 CFR 204.6(j); whether the business plan and economic impact analysis (typically prepared by an economist) adequately demonstrates job creation under the USCIS methodology; whether your TEA (Targeted Employment Area) designation is properly supported; if you have received an RFE, whether your current attorney's proposed response adequately addresses the USCIS concerns; the current status and compliance posture of your regional center, if applicable; any issues the second opinion attorney identifies that were not addressed in the original petition; and a candid assessment of whether your case is on a reasonable track or whether changes are needed. The second opinion should be provided in writing so you have a record of the analysis and recommendations. A verbal only second opinion, while sometimes useful for initial impressions, does not give you the documentation you need to make informed decisions about your case. Expect the second opinion to be honest, even if the conclusions are uncomfortable. An attorney who tells you everything is fine without providing specific analysis is not giving you a meaningful second opinion. Equally, an attorney who immediately recommends firing your current attorney and hiring them instead may be motivated by self interest rather than your best interests.

Common Situations: RFEs, Project Concerns, and Attorney Dissatisfaction

Each second opinion scenario involves distinct considerations. If you received an RFE, the second opinion is most valuable before your current attorney submits the response. Once the RFE response is filed, your options narrow significantly. The second opinion attorney should review the RFE itself (which identifies the specific USCIS concerns), your original petition, and the proposed response. They can identify weaknesses in the response and suggest additional evidence or arguments. If your concern relates to the regional center or investment project, the second opinion attorney should evaluate: whether the regional center is in good standing with USCIS (regional center designation is public information that can be verified on the USCIS website); whether there have been any SEC enforcement actions or state securities violations involving the project; whether the job creation methodology is sound; and whether the project's financial projections are realistic given current market conditions. If your dissatisfaction is with your attorney's communication or responsiveness rather than the substance of the legal work, a second opinion can help you determine whether the underlying legal work is sound despite the poor client experience. Sometimes the petition itself is well prepared even though the attorney's communication practices are lacking. In that case, you might decide to stay with your current attorney but set clearer communication expectations, rather than switching attorneys and incurring the cost and disruption of a transition.

Cost of a Second Opinion

Second opinion consultations for EB 5 cases typically cost between \$500 and \$2,500, depending on the scope of review. A basic consultation that covers a general review of your filed petition and answers specific questions may be on the lower end. A detailed written analysis that includes review of the full petition, source of funds documentation, business plan, and RFE response strategy will be on the higher end. Some attorneys offer a flat fee for second opinion services; others bill by the hour. Ask about the fee structure before engaging the attorney so there are no surprises. While \$500 to \$2,500 may seem like a significant expense, compare it to the amounts at stake: an \$800,000 or \$1,050,000 investment, plus years of processing time, plus the immigration future of you and your family. A second opinion that identifies a fixable problem in your petition is worth many times its cost. A second opinion that confirms your case is on track provides peace of mind that also has real value. Be wary of attorneys who offer free second opinions as a marketing tactic. While some pro bono consultations are genuine, a "free" second opinion may be a sales pitch designed to convince you to switch attorneys rather than a candid assessment of your case.

Acting on the Results: Stay, Fix, or Switch

After receiving a second opinion, you face three possible courses of action. First, you may conclude that your current attorney and case are on track and that no changes are needed. This is the most common outcome. Most EB 5 attorneys are competent, and most cases are proceeding appropriately. The second opinion simply confirms this and allows you to move forward with confidence. Second, you may identify specific issues that need to be addressed while staying with your current attorney. For example, the second opinion might reveal that your source of funds documentation has a gap that can be fixed by supplementing the record. You can share this feedback with your current attorney (without necessarily disclosing that you obtained a second opinion) and work together to strengthen the petition. Third, you may conclude that switching attorneys is necessary. This is the most disruptive option but sometimes the right one, particularly if the second opinion reveals serious deficiencies in the legal work, the attorney's competence, or the attorney's ethical conduct. If you decide to switch, the transition process involves: notifying your current attorney of your decision to terminate representation; requesting a complete copy of your case file; engaging your new attorney and signing a new retainer agreement; having the new attorney file a G 28 (Notice of Entry of Appearance as Attorney) with USCIS to become the attorney of record; and ensuring no deadlines are missed during the transition.

How to Transition to a New Attorney

Switching EB 5 attorneys mid case is more common than most investors realize, and the process is well established. The key steps are: Send a written termination notice to your current attorney. Keep it professional and brief. You do not need to explain your reasons in detail. Request your complete case file, including all documents you provided, copies of all USCIS filings, copies of all correspondence with USCIS, and any work product prepared on your behalf. Under ABA Model Rule 1.16(d) and equivalent state rules, your attorney must surrender your file promptly and cannot withhold it due to unpaid fees (though the specifics vary by state). Engage your new attorney and provide them with the complete file. The new attorney will review the file, identify any pending deadlines, and develop a plan for continuing the representation. Your new attorney will file Form G 28 (Notice of Entry of Appearance as Attorney or Accredited Representative) with USCIS to replace your former attorney as the attorney of record. This notifies USCIS to send all future correspondence to the new attorney. If an RFE deadline is pending, the transition must be handled urgently. RFE response deadlines are strict (typically 87 days from issuance), and missing the deadline results in denial of the petition. Ensure your new attorney is aware of any pending deadlines from the moment they take over the case. The total cost of transitioning may include: any remaining obligations under your old retainer agreement; the new attorney's fee for taking over the case (which may be higher than a standard new case fee because the attorney must review and familiarize themselves with existing work); and any filing fees for the G 28.

Protecting Yourself Throughout the Process

Whether you ultimately stay with your current attorney, make adjustments, or switch to new counsel, the second opinion process provides valuable protection. Maintain copies of all your immigration documents independently. Do not rely solely on your attorney's file. Keep copies of your filed petition, all supporting documents, all USCIS receipts and notices, all RFEs and responses, and all correspondence between you and your attorney. Keep a written record of all communications with your attorney, including dates, topics discussed, and any commitments made. If important discussions happen by phone, follow up with an email summarizing what was discussed. Know your case timeline. Understand the key dates: when your I 526E was filed, your receipt number, any RFE deadlines, your priority date, and the current status of the Visa Bulletin for your chargeability area. Do not let your attorney be the only person who tracks these details. If your second opinion reveals that your case has serious problems, act promptly. EB 5 cases involve time sensitive deadlines, and delay in addressing identified issues can reduce your options. A second opinion is most valuable when it leads to timely action, not when it sits in a drawer while problems compound.

Frequently Asked Questions

1. Will my current attorney find out that I got a second opinion?

Not unless you tell them. The second opinion attorney has their own duty of confidentiality to you and will not contact your current attorney or disclose the consultation. The second opinion does not generate any filings with USCIS or any other agency. The only way your current attorney would learn about the second opinion is if you choose to share that information.

2. Can I get a second opinion after my I 526E has already been filed?

Yes. In fact, this is the most common timing for a second opinion. Investors often seek an independent review after the petition is filed and either an RFE has been received or concerns have arisen about the case or the regional center project. The second opinion attorney can review the filed petition and all subsequent USCIS correspondence to assess the current status and outlook.

3. How do I get copies of my filed petition from my current attorney?

Simply ask. You are entitled to copies of your case file, including the petition as filed, all supporting documents, and all correspondence with USCIS. Under ABA Model Rule 1.16(d) and state equivalents, your attorney must provide your file upon request. If your attorney resists or delays providing your file, that is itself a significant red flag about the representation.

4. What if the second opinion attorney says my case is fine but I am still uncomfortable?

Trust your instincts, but also consider the specific basis for your discomfort. If the second opinion provides a detailed, substantive analysis that your case is on track and the only issue is your anxiety about the process, you may simply need better communication from your current attorney. If your discomfort stems from specific concerns that the second opinion did not address, seek a third opinion from yet another independent attorney. The goal is to reach a confident, informed conclusion.

5. Will switching attorneys delay my case?

There is typically some delay associated with a mid case transition, usually 2 to 8 weeks for the new attorney to review your file, conduct their own assessment, and file the G 28 with USCIS. However, this delay is modest compared to the multi year EB 5 timeline and is far less costly than continuing with an attorney who is mishandling your case. If an RFE is pending, the transition must be expedited, and most experienced EB 5 attorneys can take over an urgent matter quickly when needed.

6. Can I get a second opinion on my regional center project, not just the legal work?

Yes. Many second opinions focus specifically on the investment project rather than the legal petition. An experienced EB 5 attorney can evaluate the regional center's compliance history, the project's financial structure, the job creation methodology, and whether the project has characteristics associated with higher or lower risk. Some attorneys also work with independent economists or financial analysts who can review the project's economic projections.

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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