

EB-5 Investor Visa: Complete Guide to the Immigrant Investor Program

A comprehensive guide from EB5 Attorneys

The EB-5 Immigrant Investor Program offers foreign nationals a direct path to U.S. permanent residency through qualifying investments that create American jobs. Established by Congress in 1990 and reformed by the EB-5 Reform and Integrity Act of 2022, the program requires investors to commit capital to a new commercial enterprise that generates at least 10 full-time positions for U.S. workers. With two investment thresholds, two primary pathways, and a multi-stage green card process, the EB-5 program demands careful planning and experienced legal counsel. This guide provides a comprehensive overview of how the program works, what it costs, and what investors should expect at each stage.

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Investment Amounts and TEA Designation

The EB-5 program establishes two investment thresholds based on the location of the project. Investments in Targeted Employment Areas (TEAs), which include rural areas and regions with high unemployment, require a minimum capital commitment of \$800,000. Projects outside TEAs require the standard investment amount of \$1,050,000. TEA designation is determined by the state in which the project is located, based on census data and unemployment statistics. Investors should verify TEA status early in their planning because it directly affects the required capital commitment. Working with counsel who understands TEA certification ensures the investment qualifies at the correct threshold.

Direct Investment vs. Regional Center Pathway

EB-5 investors choose between two pathways: direct investment and regional center investment. In a direct investment, the investor establishes or acquires a business and manages it directly, creating 10 full-time jobs through direct employment. This pathway gives the investor operational control but requires hands-on management and direct hiring. The regional center pathway allows investors to pool capital into larger projects administered by USCIS-designated regional centers. Job creation under this model can include indirect and induced jobs, calculated through economic modeling, which often makes it easier to satisfy the 10-job requirement. Most EB-5 investors choose the regional center pathway because it allows passive investment and leverages broader economic impact calculations. Each pathway carries distinct advantages, risks, and documentation requirements.

Job Creation Requirements

Every EB-5 petition must demonstrate that the investment will create at least 10 full-time positions for qualifying U.S. workers. For direct investments, these must be direct employees of the new commercial enterprise, each working at least 35 hours per week. For regional center investments, job creation can be demonstrated through direct, indirect, and induced employment using accepted economic methodologies such as input-output models. USCIS scrutinizes business plans and economic analyses to ensure projected job creation is reasonable and supported by credible data. If the project fails to create the required jobs, the investor risks denial of the I-829 petition to remove conditions on permanent residency. Legal counsel experienced in EB-5 job creation analysis is essential for structuring investments that meet this critical requirement.

Timeline and Processing Stages

The EB-5 process unfolds over several years and involves multiple government filings. The investor first files Form I-526E, the Immigrant Petition by Alien Investor, which USCIS adjudicates to confirm eligibility. Processing times for the I-526E vary but typically range from 12 to 36 months depending on caseload and complexity. After approval, the investor applies for an immigrant visa through consular processing or adjusts status if already in the United States. Upon admission, the investor receives a conditional green card valid for two years. Before the conditional period expires, the investor must file Form I-829 to demonstrate sustained investment and job creation. The entire process from initial filing to unconditional permanent residency typically spans four to seven years.

Conditional and Permanent Green Card Stages

EB-5 investors initially receive conditional permanent resident status, which is valid for two years. During this period, the investor must maintain the qualifying investment and ensure the required jobs are being created. Within the 90 days before the conditional period expires, the investor files Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status. The I-829 requires evidence that the investment was sustained throughout the conditional period and that the 10 required jobs were created or, for regional center investors, are expected to be created within a reasonable time. Once USCIS approves the I-829, the investor and qualifying family members receive unconditional permanent resident status. This permanent green card does not expire, though it must be renewed every 10 years for travel documentation purposes.

Frequently Asked Questions

1. Can my spouse and children also get green cards through EB-5?

Yes. Your spouse and unmarried children under 21 years of age qualify as derivative beneficiaries on your EB-5 petition. They receive conditional green cards at the same time as the primary investor and are included in the I-829 petition to remove conditions. The Child Status Protection Act may apply to protect children who are approaching age 21 during processing.

2. What happens if the EB-5 project fails?

If the project fails before the I-526E is approved, USCIS will likely deny the petition. If the project fails after conditional residency is granted but before the I-829 is filed, the investor must still demonstrate that the capital was placed at risk and that jobs were created or expected to be created. Project failure does not automatically result in loss of status, but it complicates the I-829 filing and may require additional legal strategy.

3. Is the EB-5 investment refundable?

The investment must be genuinely at risk to qualify for EB-5. USCIS does not permit guaranteed returns or redemption agreements that remove risk from the investment. Some regional center projects offer repayment after the investor's I-829 is approved and the immigration benefit is secured, but repayment terms vary by project and are never guaranteed. Investors should review offering documents carefully with both immigration and securities counsel.

4. How long does the entire EB-5 process take from start to finish?

The timeline typically spans four to seven years. The I-526E petition may take 12 to 36 months for adjudication. Visa processing or adjustment of status adds several months to a year. The conditional residency period lasts two years, followed by I-829 processing, which can take 12 to 24 months or longer. Premium processing is available for certain stages, which can shorten specific wait times.

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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