

I-526E Petition Guide: Filing the EB-5 Immigrant Investor Petition

A comprehensive guide from EB5 Attorneys

Form I-526E, the Immigrant Petition by Alien Investor, is the foundational filing in every EB-5 case. This petition is where USCIS evaluates whether the investor meets all program requirements: lawful source of funds, qualifying investment amount, appropriate new commercial enterprise, and credible job creation plan. The I-526E petition must be thoroughly documented and strategically prepared because a denial at this stage ends the investor's EB-5 path entirely. Understanding the filing requirements, common pitfalls, and processing realities helps investors and their counsel build the strongest possible case from the outset.

Contents

1. Filing Requirements and Eligibility
 2. Supporting Documents and Evidence Package
 3. Processing Times and Premium Processing
 4. Requests for Evidence and How to Respond
 5. Concurrent Filing and Adjustment of Status
 6. Frequently Asked Questions
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Filing Requirements and Eligibility

To file Form I-526E, the investor must demonstrate that they have invested or are actively in the process of investing the required capital amount (\$800,000 for TEA projects or \$1,050,000 for non-TEA projects) into a qualifying new commercial enterprise. The investment must create or preserve at least 10 full-time jobs for qualifying U.S. workers. The investor must also establish that the capital was obtained through lawful means. For regional center investors, the new commercial enterprise must be associated with a USCIS-designated regional center. The investor must show that the capital is at risk and committed to the enterprise, not merely held in escrow or subject to conditions that eliminate financial risk.

Supporting Documents and Evidence Package

The I-526E petition requires an extensive evidence package. Core documents include proof of the investment (wire transfer records, subscription agreements, operating agreements), source of funds documentation (tax returns, bank statements, employment records, property records, business financials), the business plan for the new commercial enterprise, economic impact analysis demonstrating job creation, and evidence of TEA designation if applicable. For regional center investments, the filing includes the regional center's exemplar documents, including the Form I-956F project approval and organizational documents. Personal documents include the investor's passport, prior immigration filings, and any evidence of prior U.S. presence. Every document in a foreign language must be accompanied by a certified English translation. The evidence package often spans hundreds of pages and requires meticulous organization.

Processing Times and Premium Processing

I-526E processing times have historically varied from under a year to over three years depending on USCIS workload, the complexity of the case, and whether the petition is filed with a regional center or as a direct investment. USCIS publishes estimated processing times on its website, though actual times may differ. Premium processing, which guarantees an initial adjudication within a defined timeframe, has been made available for I-526E petitions on a limited basis. When available, premium processing requires an additional filing fee but can significantly reduce the wait for an initial decision. Investors should confirm current premium processing availability with their attorney, as USCIS policies on this option change periodically.

Requests for Evidence and How to Respond

USCIS issues a Request for Evidence (RFE) when the adjudicator determines that the petition does not contain sufficient documentation to render a decision. Common RFE topics include source of funds tracing, job creation methodology, TEA designation evidence, and proof that the investment is at risk. Receiving an RFE is not unusual and does not mean the petition will be denied. However, the response must be thorough, directly responsive to each issue raised, and submitted within the deadline specified by USCIS. A well-prepared initial filing minimizes the likelihood of RFEs, but even strong petitions sometimes receive them. Your attorney should have experience crafting RFE responses and should treat each one as an opportunity to strengthen the record.

Concurrent Filing and Adjustment of Status

Investors who are already present in the United States on a valid nonimmigrant status may be eligible to concurrently file Form I-485, Application to Register Permanent Residence or Adjust Status, along with the I-526E petition. Concurrent filing allows the investor to remain in the United States while the petition is processed and may provide interim benefits such as employment authorization and advance parole for travel. Eligibility for concurrent filing depends on visa availability in the investor's preference category and country of chargeability. Not all investors qualify for concurrent filing, and the decision to file concurrently involves strategic considerations that your attorney should evaluate based on your specific circumstances, including current immigration status, travel needs, and processing timeline expectations.

Frequently Asked Questions

1. What is the filing fee for the I-526E petition?

USCIS sets the filing fee for Form I-526E, and it is subject to change. As of 2024, the base filing fee is \$3,675, with an additional \$800 integrity fund fee for regional center investors. Premium processing, when available, requires an additional fee. Check the USCIS website or consult your attorney for the most current fee schedule.

2. Can I work in the United States while my I-526E is pending?

The I-526E petition alone does not authorize employment. If you are in the United States on a work-authorized nonimmigrant status, you may continue working under that status. If you file a concurrent I-485 application, you can apply for an Employment Authorization Document (EAD) that permits employment while your case is pending. Investors outside the United States cannot work in the U.S. until they receive their immigrant visa or adjust status.

3. What happens if my I-526E petition is denied?

A denial means USCIS determined that the petition did not meet program requirements. You may file a motion to reopen or reconsider with USCIS, or you may appeal to the Administrative Appeals Office (AAO). Alternatively, you may address the deficiencies and file a new I-526E petition. The decision to appeal, file a motion, or refile depends on the specific grounds for denial, and your attorney should advise you on the best path forward.

4. Can I include my family members on my I-526E petition?

Your spouse and unmarried children under 21 are listed as derivative beneficiaries on your I-526E petition. They do not file separate I-526E petitions. Once the petition is approved, each family member applies separately for an immigrant visa or adjustment of status. The Child Status Protection Act provides certain age-out protections for children approaching 21 during processing.

5. How long do I need to maintain the investment?

The investment must be sustained throughout the conditional residency period, which lasts approximately two years from the date you are admitted as a conditional permanent resident. You must demonstrate sustained investment when filing the I-829 petition to remove conditions. Withdrawing the investment before I-829 approval jeopardizes both your immigration status and your family members' derivative status.

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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