

## **EB-5 Green Card Guidelines**

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US Immigration law provides a yearly maximum of 10,000 permanent green cards for applicants to invest in new commercial enterprises which employ at least 10 full time workers. To qualify under this the new enterprise must be one in which that person has invested either \$1 Million Dollars or \$500,000 if investing in a targeted employment area or investing in a regional center.

The investment must also create employment for at least ten (10) full time US workers.

The Congress has set aside 3,000 green cards for those people who invest in the designated regional centers.

This regional center program has been extended through September 30, 2015. It is anticipated that the regional centers will be made a permanent part of the US Immigration law.

An investment in this program must be made in a commercial enterprise which is geographically located within a regional center which is defined as “any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment.”

Under a 2002 law the Congress has requested the USCIS to approve applications for EB-5 regional centers status so long as the applications are based on a general prediction concerning

- The kinds of commercial enterprises that will receive capital from the investor

- The jobs that will be created directly or indirectly as a result of the investment of capital and

- The other positive economic impact that will result from the investment of the capital.

Todd South has recently filed for the Florida Center for EB5 Investments, LLC as a regional center. Applications are currently being accepted.

An investment made through a Regional Center meets the requirements of creating at least ten (10) new jobs by showing that as a result of the new enterprise such jobs will be created directly or indirectly or induced.

There is substantial initial evidence that must be submitted at the time of the application for the I-526 which is the initial petition for the alien entrepreneur.

The new commercial enterprise investor must show that an investment has been made in a qualified commercial enterprise. The evidence must include the following:

- An organizational document for the new enterprise including Articles of Incorporation, Certificates of Merger and Consolidation or Partnership Agreements

A business license or authorization to transact business in the city or state where the enterprise is located

For investments in an existing business proof that it is the required amount of capital was transferred into the business after November 29, 1990 and that the investment has increased in net worth of employees by 40% or more.

For purposes of showing the capitalization the initial application must be accompanied by the following evidence:

Bank statements showing deposits in the US account of the enterprise.

Evidence of assets purchased for use in the enterprise

Evidence of property transferred from abroad

Evidence of funds invested in enterprise in exchange for stock except for stock redeemable at the holders request or

Evidence of debts secured by the investor's assets and for which the pre-investors are personally and primarily liable.

Please note that the USCIS Administrative Appeals Office has held that merely putting cash into the corporate account of a business does not show that the capital is "at risk" for the purposes of generating a return. The USCIS Administrative Appeals Office has also ruled that the full amount of the required capital must be expended by the enterprise directly toward job creation otherwise the capital is not considered to be at risk.

In addition to the above we must show that the foreign investor has legally acquired the capital. This can be done by the following evidence:

Foreign business registration records

Personal and business tax returns or other tax returns of any kind filed anywhere in the world within the previous five (5) years.

Documents indentifying any other source of money

Certified copies of all pending governmental, civil or criminal actions and proceedings or any private civil actions involving money judgments against the investor within the past fifteen (15) years.

Please note that US Immigration law requires that capital is defined as only those assets required through lawful means.

With respect to creating employment the EB-5 application must show that a new commercial enterprise will create at least ten (10) full time positions for qualified employees. The following evidence must be submitted:

I-9 forms for 10 qualifying employees, 941 returns, W-2 returns, UCT 6 returns or

A comprehensive business plan showing the need for at least 10 qualifying employees and when the employees will be hired. It must be a very specific and detailed job plan with the description of the business, the business' objectives, the market analysis including names of competing businesses and the relative strengths and weaknesses, a comparison of the competition products and pricing structures, a description of the target market and

prospective customers; a description of any manufacturer and production processes, materials required and supply sources; details of any contracts executed; marketing strategy including pricing, advertising and servicing; organizational structure and sales, costs and income projection and details of the basis therefore. Additionally with respect to employment the business plan must set forth the company's personal experience, staffing requirements, job descriptions for all positions and a timetable for hiring.

With respect to a regional center the proof of employment can also be accomplished by an economic study using RIMS formula to determine the multiplier for jobs to be created.

With respect to troubled businesses it is required to show that a new enterprise established through capital investment in a troubled business meets the statutory requirement. We must show that the number of predicted employees will be maintained at no less than the pre-investment level for a period of at least two (2) years. We must also submit the I-9 forms, 941's, W-2's, UCT 6's tax records or payroll records in a comprehensive business plan.

It is also required that the EB-5 investor have a managerial capacity. This can be accomplished by the following:

Comprehensive job description for the position occupied by the investor in the enterprise indicated

Evidence that the petitioner is a corporate officer or on the board of directors or a limited partner.

Evidence that the petitioner is involved in a direct management activities or policy making activities of a general or limited partnership. A limited partner must also show that he has rights, powers and duties commensurate with those normally granted under the Uniform Limited Partnership Act

In order to take advantage of the \$500,000 investment level, the investments must be made within a geographical or political subdivision known as a targeted investment area which means at least 150% of the national average unemployment rate.

Such evidence should include the boundaries of the subdivision, the dated designation and the methods by which the statistics were gathered.

We currently work with the Florida Agency for Workforce Innovation to do a Census Tract Analysis to determine whether a project is within a targeted employment area.

To meet the requirements of the creation of employment and a targeted employment area we must show either that the investment is in a qualified rural area or a high unemployment area.

Additionally, the petitioner can submit a letter from the Florida Workplace Agency which certifies that the new commercial enterprise is located in an area that has been designated as a high unemployment area. This is called the Census Tract Analysis.

In addition to the above the actual application must be in final form as if it were regulated by the Securities and Exchange Commission. Consequently, there are substantial requirements to be met.

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