

NAVIGATING THE U.S. FOREIGN INVESTOR PROGRAM



In a time of economic distress, one federal program has successfully married foreign investors with disadvantaged communities throughout America. A growing list of enterprises in agriculture, tourism, renewable energy, real estate, and entertainment have benefited from the EB-5 program, or the immigrant-investor visa.

Unlike many of the other immigrant visa categories that involve excruciatingly long wait times, the EB-5 program provides a conditional green card to a successful applicant and his/her family immediately upon approval by the United States Citizenship and Immigration Services (USCIS).

Section 203(B)(5) of the Immigration and Nationality Act allocates approximately 10,000 immigrant visas each fiscal year for qualified applicants who invest in a new commercial enterprise that employs at least ten full-time workers. The standard EB-5 program requires that an investor contribute \$1 million to a commercial enterprise that creates ten direct jobs in the United States. Of the 10,000 allocated visas, 3,000 are set aside for those who invest at least \$500,000 in a “Targeted Employment Area” (TEA). If the investor meets the investment and job creation requirements, he and his immediate family are rewarded with a “green card,” lawful permanent residency in the United States.

An alternative to direct investment is the Regional Center Pilot Program. This does not require the immigrant investor to directly employ ten workers, as long as the investor can reasonably demonstrate that the regional center has indirectly created or induced ten or more jobs and improved regional productivity per investor. Today, more than 75 percent of all approved cases in the EB-5 category are through Regional Centers.

Evaluating and preparing EB-5 applications is a complex and difficult process. Hurdles one may face include tax planning issues, tracing the source of the investment funds, selecting the appropriate investment or Regional Center, interpreting applicable laws and regulations which at times lack clear guidance, and overcoming restrictive Board of Immigration Appeals (BIA) decisions.

When deciding which program best fits a person’s needs, it is important to weigh the advantages and the disadvantages. A traditional EB-5 visa is generally the best option for investors who wish to invest in a new or existing business, have a desire to maintain an active role in the management of their own operation, have \$1 million to invest and can shoulder the burden of creating ten new full time jobs.

Conversely, for those who prefer only to invest \$500,000 maintain a more passive role in the investment, and do not wish to be directly involved in the creation of ten jobs, then the Regional Center Program is the best option. The lower capital investment means less risk and there is no responsibility to maintain the ten direct employees for over two years.

In either case, the EB-5 visa creates a win-win situation by connecting foreign investors’ international fortunes to depressed economies and high unemployment areas around our country. In exchange for their investments, the investors receive a reasonable rate of return and green cards for themselves and their families. When fully utilized, it is estimated that the program will contribute \$1.5 to \$3 billion in foreign capital to the United States economy each year. Such investments could have a significant impact on our economy. Of equal importance this program will also provide and /or preserve more than 30,000 jobs for U.S. workers each year. ¹²



BY ROGER A. BERNSTEIN
BERNSTEIN OSBERG-BRAUN, LLC
12000 BISCAYNE BLVD, SUITE 106
MIAMI, FL 33181
305-895-0300
RBERNSTEIN@VISAATTORNEYS.COM