

V. EB-5 FIFTH PREFERENCE – EMPLOYMENT BASED IMMIGRATION

The immigrant investor must invest or be actively in the process of investing, in most cases, at least One Million U.S. Dollars (US\$1,000,000.00) in capital in a U.S. Business. However, the law gives U.S. Citizenship and Immigration Services (USCIS) flexibility to raise or lower the minimum investment amount. In high employment areas, USCIS can require a minimum investment of up to Three Million US Dollars (US\$3,000,000.00). In targeted areas, the minimum investment can be lowered to Five Hundred Thousand U.S. Dollars (US\$500,000.00). A targeted area is defined to include rural areas (outside of a metropolitan area and in a city or town with less 20,000 people) or an area with an unemployment rate of at least One Hundred Fifty Percent (150%) of the national average rate.

Actual Commitment of Capital

The investment must be placed at risk for the purpose of generating a return on that capital. Therefore the investor's loan to the company or investor's promise to invest in the future are not considered an investment. The investment may be made in cash or other property. Examples of actual commitment of investment include the following: (1) deposit of moneys in the company's bank account without any obligation to pay back; (2) purchase and transfer of needed assets to the company; and (3) deposit of moneys into an escrow account whereby the only condition to being released to the company is USCIS denial of the permanent resident application.

Lawful Means

The invested funds must have been obtained through legal means. The capital may have been acquired by any lawful means, including gifts, and inheritances. Documentation must be submitted to establish that the funds were acquired legally. An example of documents needed include: business records, tax returns, bank statements, proof of ownership of properties, and proof of sale of a business or property. Obtaining the investment amount through a loan is also considered to be lawful. Therefore the investor may obtain the capital through a loan from a third party, such as a bank. But such a loan, to qualify, must be guaranteed with investor's own assets (not company's assets) and must be paid within the two years conditional residence period.

New Enterprise or Troubled Business

The investment must be used to either establish a new commercial enterprise or to rescue a troubled business. The rules describe the various ways a new commercial enterprise can be established, including: (a) by creating an original business (established after November 29, 1990), (b) by buying and reorganizing an existing company, or (c) by investing in an existing business and increasing the number of employees or the net worth of the business by at least forty percent (40%). As stated above, the investment may also be made into a troubled business. A troubled business is defined as a business that has been in existence at least two years and have incurred a net loss of at least twenty percent (20%) of its net worth.

Job Creation

The investment must benefit the U.S. Economy and must create, in most cases, at least ten (10) full time jobs. The jobs can be filled by U.S. Citizens, Permanent Residents and other immigrants lawfully authorized to be employed in the United States, but not immediate family members of the investors. Full time employment requires at least thirty-five (35) hours per week of work. Two exceptions exist to the above requirement. An investment into a troubled business does not require a creation of ten jobs, instead, it merely requires that the number of existing jobs will be maintained at the pre-investment level. Furthermore, the job creation requirement is relaxed for an investment in an area with a regional center designation, where the revenues generated by the enterprise results in exports.

Management

The investor must be engaged in the management of the enterprise, either through day-to-day managerial control or through policy formulation. This requirement can be met if the investor holds a corporate office or holds a seat on the board of directors.

Other Requirements

The investors and their immediate family members must otherwise be qualified to receive permanent resident status. For example the individuals must not have a criminal conviction that makes them ineligible. (Not all criminal convictions make an applicant ineligible).

To apply, you must:

- (a) File the Green Card EB-5 Petition. Once the petition is approved, the USCIS forwards the approved petition to the National Visa Center (NVC), which will contact you when an immigrant visa number becomes available;
- (b) Obtain status as a Conditional Resident. Once the EB-5 investment based green card petition is approved, you may obtain status as a conditional resident: if you reside within the United States, apply for adjustment to Conditional Permanent Resident status and if you reside outside of the United States, apply for an immigrant visa at the American Consulate abroad. To deter fraud, you your spouse, and your children are subject to conditional permanent residence for a two year period; and
- (c) Remove conditions on permanent residence. To remove the two-year conditions on permanent residence, you must file a USCIS Form I-829, Petition by Entrepreneur to Remove Conditions. Form I-829 must be filed within 90 days before the second anniversary of your admission to the U.S. as a conditional resident.

The EB-5 (Green Card) is available for Immigrant Investors and their immediate family members. The immigrant investor must acquire approval for an immigration petition. Once approved, the investor, together with his or her immediate family, must apply for consulate processing (outside of US) or file for adjustment of status (within US). Upon approval, they will receive a conditional residence for two years. Condition must be removed within two years to be able to receive a

permanent status with unlimited time. And those individuals obtaining permanent resident status (including the conditional status), they may remain and get employment in the United States.

To find out more about the procedural steps involved and an estimate of fees, call or email us today for your free in-depth consultation!