

EB-5 Visa Guide: Everything You Need to Know About the EB-5 Visa

This EB-5 visa is a great option for investors and entrepreneurs to get a green card to the United States. With an EB-5 visa, you can live and work in the United States. You can also get a green card for your spouse and your children through the EB-5 visa.

In this guide, I will explain the most important aspects of the EB-5 visa.

If you have any questions, please email me directly at Info@immigrationlawfirmlltd.com. I'm very responsive via email and would be happy to help you.

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1. What is the EB-5 Visa?

The EB-5 visa is an immigrant visa for investors, entrepreneurs, and anyone who is looking to start a business in the USA. To qualify for an EB-5 visa, you are required to invest a minimum of \$1,050,000 in a US business. If your

investment is located in an economically depressed area called a "targeted employment area," you may be eligible to invest a reduced amount of \$800,000.

In addition to investing the minimum amount required, the business invested in must create 10 full-time jobs for US workers. The business must also be a commercial business that is for-profit. Non-profit enterprises do not qualify for EB-5.

To get an EB-5 visa, an investor can make a direct investment or they can invest in a regional center project. Regional centers are specialized companies, regulated by USCIS, that collect investment funds from multiple EB-5 investors to fund large-scale projects such as resorts or sporting arenas. A direct investment is any investment not made in a regional center. Examples of direct investments are if you start your own business or purchase an existing business.

The EB-5 visa is an immigrant visa classification, so it leads to a green card for successful applicants. By getting an EB-5 visa, your spouse and children can also get their green card as well.

The process of getting a green card through the EB-5 visa has 2 main steps. You first become a conditional permanent resident for 2 years. You can remove the condition from your green card after 2 years by showing that you officially created 10 jobs for US workers, and that you kept your capital invested in the US business for the required period of time (this process will be explained in detail down below).

Summary:

- The EB-5 visa is an *immigrant* visa for investors and entrepreneurs.
- To get approved for an EB-5 visa, you are required to make an *investment* in a US company and create jobs for US workers.
- With an EB-5 visa you can get a green card for yourself, your spouse, and children

2. What are the Benefits of an EB-5 Visa?

- The EB-5 visa is an immigrant visa category, so as a successful EB-5 applicant, you can get your green card and be on the path to US citizenship.
- As an EB-5 investor, your spouse and your unmarried children under 21 years old can also qualify to get their green cards.
- Your children have access to a US education.
- As an approved EB-5 visa holder, you do not have to rely on someone else to file a petition for you (such as an employer or family member). Rather, you get to file your immigration petition on your own behalf, through self-petition. Additionally, you are free to work in any lawful capacity.
- You are free to live and work anywhere in the United States.

- You are eligible to work in the US in any lawful capacity.

3. What are the Requirements to get an EB-5 Visa?

To qualify for an EB-5 visa:

- You must invest in a "new commercial enterprise."
- You must invest at least \$1,050,000 in the new commercial enterprise. (You may qualify to make a reduced investment of \$800,000 if the investment is made in a new commercial enterprise that principally does business in a "targeted employment area.")
- Your investment must lead to the creation of at least 10 **full-time** jobs for US workers.
- Your investment funds must be "at risk."
- The funds used for your investment must have been lawfully obtained.
- You must engage in the management of the new commercial enterprise.

4. What is a New Commercial Enterprise?

- A New Commercial Enterprise is a *for-profit* business, conducting lawful activities, that was established after November 29, 1990.

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To qualify for an EB-5 visa, the company you invest in must qualify as a *New Commercial Enterprise*.

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- The activity conducted by a new commercial enterprise must be **commercial**. So owning and operating a piece of residential real estate won't qualify.

Businesses established on or before November 29, 1990 can also qualify as a new commercial enterprise if:

- the investor substantially reorganizes or restructures the business; **or**

- if the investor increases the size of the business so that there is: a 40% increase in the number of employees of the business; or a 40% increase in the net worth of the business.

5. What Types of Businesses Qualify for an EB-5 Investment?

Most types of business entities qualify for the EB-5 visa including:

- sole proprietorships
- limited and general partnerships
- LLCs
- and many more.

To qualify for an EB-5 visa, you can:

- Start a new business
- Invest in an existing business

- Buy an existing business
- or, Invest in a regional center project

6. What is a Targeted Employment Area?

- **As an EB-5 investor, you can qualify for a reduced investment amount of \$800,000 if the new commercial enterprise you invest in principally does business in a “targeted employment area.”**
- **A targeted employment area** is an area of high unemployment **or** a rural area (as defined by the Immigration and Nationality Act).
- An **area of high-unemployment** is an area that has an unemployment rate of at least 150% of the national average unemployment rate.
- A **rural area** is an area that is not located within a metropolitan statistical area (MSA) **and** is not located within any city or town having a population of 20,000 people or more.
- To qualify for the reduced investment amount, the new commercial enterprise must be *principally* doing business in the targeted employment area.
- A business principally does business in the area where it “regularly, systematically, and continuously provides goods or services that support job creation.”

7. What is a Regional Center?

- A regional center is a business entity regulated by USCIS that is able to pool capital from multiple EB-5 investors to develop a project.
- Regional centers must promote economic growth, regional productivity, and job creation. They usually develop large-scale hotels, resorts, and other real-estate projects.

8. What are the Differences Between Investing in a Regional Center and Making a Direct Investment?

To qualify for an EB-5 visa, an investor can either make a *direct investment* or they can invest in a *regional center project*.

- Examples of **direct investments** include: starting a business, purchasing an existing business, or investing in an existing business.
- An investor can also qualify for an EB-5 visa by investing in a regional center project.
- Regional centers obtain *capital from many investors to develop a large-scale project*.

- The primary differences between direct investments and regional center investments have to do with *the investor's level of control in the investment and the way the jobs get calculated, to meet the EB-5 job creation requirement.*

Control

Direct Investment

- In a direct investment, the investor is usually the sole-owner of the business, or one of a few co-owners.
- With direct investments, the investor usually has significant control of the business and is actively involved in the day-to-day operations of the business.

Regional Center

- In a regional center investment, the investor has much less control.
- The investor is one out of several tens if not hundreds of investors.
- The investor in a regional center investment has very little to no involvement in the day-to-day operations of the business.

- The investor's control of the business is usually limited to basic voting rights.

Job Creation

- One of the main requirements of the EB-5 program is that an investor's investment must lead to the creation of *10 full-time jobs for US workers*.
- How the jobs get calculated *depends on whether an investor makes a direct investment or whether they invest in a regional center project*.
- For **direct investments**, the only jobs that count toward the job creation requirement are the jobs that are directly created by the new commercial enterprise; these are "*direct jobs*."
- A direct job is one where the new commercial enterprise is the employer.
- **Regional centers** can count direct jobs *and* indirect jobs.
- Indirect jobs are jobs "that are held outside of the new commercial enterprise but are created as a result of the new commercial enterprise."
- This means that regional centers are able to take credit for jobs that they don't directly create. This includes jobs created as a result of the project the regional center is developing.

Example of the Job Creation Benefits of a Regional Center:

- If a *regional center* develops a major hotel, it can take credit for all the employees of the hotel. These are ***direct jobs***.
- To build the hotel, the regional center would need suppliers for concrete, furniture, and other goods. These workers may get counted as ***indirect jobs***.
- Also, the development of the hotel would bring hundreds of new workers to the area and hundreds and thousands of guests. This influx of people would benefit surrounding businesses, including local restaurants and stores.
- The regional center can also take credit for the jobs created by surrounding businesses as a result of their increased business. These are also ***indirect jobs***.
- But, if the same hotel investment is made as a *direct investment*, (not through a regional center), then the project cannot take credit for the indirect jobs.
- Instead, the hotel would only be able to take credit for the *direct jobs* they create, like the hotel staff.

Another big difference between regional center investments and direct investments is how the investor *proves* job creation.

- For direct investments, the investor must prove that 10 direct jobs were *actually* created. This means that the investor must submit the *actual* employment documents for **each employee** (including the Form I-9).
- **Regional centers** do not have to prove the actual creation of each individual job.
- Instead, regional centers use ***economic multipliers*** and ***formulas*** that show the creation of the required number of jobs.

9. What are Some Examples of Lawful Sources of Funds for an EB-5 Visa?

One of the key requirements of the EB-5 visa is that the funds used for an EB-5 investment ***must be lawfully obtained***.

- This means that the funds must have been obtained through lawful activity and **cannot** be obtained through any illegal conduct.
- To prove this, you will submit many documents showing **how** the funds were earned, including bank statements and tax returns.

Some examples of lawful funds include:

- Income earned from employment
- Income from the sale of a property
- A loan taken against equity in real estate
- Income from the sale of a business
- An inheritance
- A gift

10. Can I Use a Gift for my EB-5 Investment?

- **Yes, the money you use as your EB-5 investment can be gifted to you by someone else.**
- Keep in mind, the funds must be in *your* possession **before** they are invested in the EB-5 business. The person giving the gift cannot invest the funds directly into the EB-5 business on your behalf.
- You will still have to prove that the person that gifted you the funds obtained the funds lawfully. (The same is true if your EB-5 investment comes from an inheritance.)

11. Does my Investment have to be Money or can I Invest Something Else of Value?

- No, an investor does not have to invest money to qualify for an EB-5 visa.
- The EB-5 regulations require investors to make an investment of “**capital**” into a business.

Examples of capital include:

- Cash
- Inventory
- Equipment
- Cash equivalents
- Other tangible property
- Proceeds from a loan

Note: If you are using funds from a loan as your investment capital, the loan may be either secured or unsecured. If the loan is secured, it should be secured by your personal assets **and** you should be personally and primarily responsible for the loan.

Keep in mind: If you choose to invest a form of capital other than cash, such as inventory, the capital will be valued according to its *fair market value*.

12. What does it mean for My Investment to be “At Risk?”

Your EB-5 investment must be "at-risk" for the required sustainment period.

- Basically, what this means is that your investment must be subject to either gain or loss depending on the success of the enterprise. Additionally, the funds should not just sit in your business's operating account.

While the regulations are not very clear, here are a few things to be aware of:

- Your investment must be subject to either **gain** or **loss**.
- You **cannot** receive any guarantee that the capital you invest will be returned to you.

- You *cannot* be granted the *right* to redeem any part of your interest in the business.
- Your funds must resemble an *investment* rather than a loan to the new commercial enterprise.
- Your funds cannot just sit in a bank account.

13. What is the Process of Getting an EB-5 Visa?

Here is a very basic overview of the EB-5 process:

Step 1 - Hire an Immigration Attorney

- The first step in the EB-5 process is to hire an immigration attorney with experience handling EB-5 cases.
- Your attorney can help you determine whether the EB-5 visa is the right option for you *based on your immigration goals and circumstances*.
- Your attorney will work as your partner through the entire EB-5 process. They will analyze your EB-5 investment for immigration compliance. They will also prepare all the necessary documents to make sure that you properly demonstrate that you meet all of the EB-5 visa requirements.

Step 2 - Select an Investment

- Select an EB-5 investment that you are comfortable with (after doing a lot of due diligence).
- Your attorney *should not* provide you with any business related investment advice, unless they are competent to do so.
- If you need investment advice, you should consider using a *Registered Investment Advisor* or a *Broker/Dealer*. Make sure they are competent in the EB-5 program.
- Your attorney **can** help you make sure that the investment is compliant with the immigration requirements of the EB-5 visa program.

Step 3 - Invest Your Funds

- Invest your funds in the new commercial enterprise
- When you file the Form I-526 you must show that you have invested or are actively in the process of investing your capital into the new commercial enterprise.

- In some cases, you **can** transfer the funds into an escrow account. (The release of funds would be conditional on I-526 approval and adjustment of status or visa issuance.) This should be carefully overseen by an experienced EB-5 immigration attorney.
- Evidence of mere intent to invest at a later date is *insufficient*.

Step 4 - File Form I-526

- After putting together all the necessary documentation, your attorney will file the Form I-526 on your behalf.
- The I-526 is the initial EB-5 petition.
- If your I-526 is approved, you are eligible to apply for *conditional* permanent residency (a 2 year conditional green card).
- Your green card is conditional for 2 years to allow for you to *complete the EB-5 requirements*. The requirements include creating 10 full-time jobs for US workers and maintaining an “at risk” investment in the new commercial enterprise for the required period of time.

Step 5 - Adjustment of Status/Visa Processing

- There are 2 ways to get your conditional green card. Depending on if you are inside or outside of the US, you will either *adjust status* in the US or you will go through *consular processing* abroad.
- Adjustment of Status is done by by filing a Form I-485
- Consular processing is done by filing a Form DS-260

Step 6 - File Form I-829

- After 21 months of becoming a conditional permanent resident, you are eligible to file a **Form I-829** to remove the condition from your green card.
- The Form I-829 is the application to have the condition removed from your green card. This is so you can become an *unconditional* permanent resident (an unconditional green card holder).
- You are eligible to get the condition removed from your green card if you meet all the requirements of the EB-5 program. This is done by showing that *your investment in the project was sustained* for the required period of time **and** *that you created the required 10 full-time jobs for US workers*.

Step 7 - Naturalization (Optional)

- After you've been a permanent resident for at least 5 years, you may be eligible to apply for Naturalization, to become a US citizen.

14. How Long Does the Entire EB-5 Process Take?

I-526 Processing

- It currently takes about *18 months* on average for USCIS to process an I-526. (The 18 month timeline is expected to improve in the future)

Adjustment of Status or Visa Processing

- Adjustment of Status: takes about *10-14 months*
- Consular Processing: takes about *8 to 12 months*

Conditional Permanent Residency:

- For *2 years* you are a conditional green card holder, until approval of your I-829 petition.
- **During this 2 year period you can live and work in the USA.**

I-829 Processing

- The current processing time for the Form I-829 is roughly *2.5 years*. (This processing time is expected to speed-up in the future)

Permanent Residency (Green Card):

- Once your I-829 is approved, you become an unconditional lawful permanent resident.

Naturalization

- After being a permanent resident for at least *5 years*, you may be eligible to apply for naturalization to become a US citizen.
- The 5 year clock starts from when you become a conditional lawful permanent resident.

15. Will the EB-5 Program Change in the Future and what will the Changes be?

The EB-5 program has been criticized over the years for a variety of reasons. Critics of the program have stated the following complains against the EB-5 visa:

- It is unethical for wealthy individuals to “buy their way into the United States.”
- The investment amount is too low and must be increased.
- The rules for designating a targeted employment areas are too easy. (There have been TEA investments located in wealthy areas such as Manhattan, NY and Beverly Hills, CA.)
- Regional centers need more regulation and oversight based on the instances of fraud and abuse that have taken place with regional centers.

As a result of the criticism, the EB-5 Reform and Integrity Act of 2022 was passed, which addressed many of these issues. The EB-5 Reform and Integrity Act is expected to produce more long term stability with the EB-5 program.

16. What are the Details of the Job Creation Requirement?

- For each EB-5 investment, 10 jobs must be created.

- So, if there are 4 EB-5 investors in a regional center project, at least 40 jobs must be created.
- The new commercial enterprise must create 10 full-time positions for *qualifying employees*.
- Qualifying employees are US citizens, permanent residents, and/or other immigrants authorized to work in the US.
- The EB-5 investor, their spouse, sons, and daughters do **not** count as qualifying employees.
- Non-immigrants and people that are not authorized to work in the US do **not** count as qualifying employees.
- Keep in mind that these workers must be employed on a full-time basis (*at least 35 hours per week*).
- Combining 2 part-time positions will *not* count as 1 full-time job, but you *can* have 2 or more employees share a full-time position (job sharing).
- The jobs are expected to last for at least 2 years and cannot be seasonal, temporary, or intermittent jobs.

17. If I Buy a Business that Already has 10 Employees, will they Count Toward the 10 Jobs I'm Required to Create?

No, the EB-5 program requires your investment to create 10 new full-time jobs for US workers.

- If you buy an existing business, the jobs already in existence *will not* count toward your requirement to create 10 jobs.
- You will have to create 10 jobs *in addition to the jobs existing* at the time you purchased the business.
- **There is an exception to this rule for *troubled businesses*.**
- A **troubled business** is a business that has been in existence for at least 2 years and has experienced a net loss of *at least 20 percent of its net worth* for the 12 or 24 month period before the date the EB-5 investor filed their Form I-526.
- If a business is a troubled business, the investor may count the jobs they are **saving** as part of the 10 jobs they are required to create.
- With a troubled business, you must show that you will at least maintain the level of jobs in existence before your EB-5 investment. The jobs should last for a period of at least 2 years.
- **Keep in mind:** If the troubled business doesn't have 10 employees, you will still have to hire more employees to reach the 10 employee minimum.

- **For example:** if a troubled business only has 5 full-time employees, then you are responsible to preserve those 5 jobs **and** create another 5 full-time jobs.

18. What Does it Mean for the EB-5 Investor to Engage in the Management of the Enterprise?

To qualify for an EB-5 visa, you must engage in the management of the new commercial enterprise.

- You can meet this requirement by either forming the policies of the business or by handling the day to day management of the business.
- You cannot be a passive investor in the business.
- If you are investing in a regional center, you will likely be a limited partner in the business. You can meet the management requirement here by showing that you have the rights normally given to limited partners, such as voting rights.
- Another way to show sufficient engagement in the management of the enterprise is by submitting a statement of your job title and duties, with your EB-5 petition.

19. Can I Become a Citizen with an EB-5 Visa?

The EB-5 visa does not directly give you citizenship. But, with an EB-5 visa, you can eventually become a *US citizen*.

- The EB-5 visa is an *immigrant* visa classification. This means that after successfully completing the EB-5 process, you become a lawful permanent resident (a green card holder).
- The process first starts with getting a conditional green card. After having your conditional green card, you can then get the condition removed and become an unconditional permanent resident.
- As a permanent resident, you may apply to become a US citizen after a certain period of time; this process is called ***naturalization***.
- You may apply for naturalization after being a permanent resident for at least 5 years.
- ***Keep in mind*** that your time as a conditional permanent resident counts toward the 5 years.
- To naturalize, you must also be physically present in the US *for at least 2 and a half years during the 5 year period*. During this time, you must maintain continuous residence in the United States.
- There are other requirements to becoming a citizen as well, such as having good moral character and passing a United States civics test.

20. What Documents Do I Need to Include in my EB-5 Application?

The documents included in the EB-5 petition *are very important to get a successful result.*

- An experienced immigration attorney can help you organize and prepare the documents to include in your EB-5 petition.
- This is a very detailed process and the documents that you will need to include depend on the particular facts of your case.
- **The documents that will be included in your petition will center around 3 main categories: 1. the investor; 2. the business; and 3. the source and path of funds.**
- The documents you should include in your application will depend on how you got your investment funds. They will also depend on where your funds went from the time they were earned to the time they were invested in the EB-5 project.
- Example: If you obtained your funds from the sale of a property, you will include different documents than if you obtained your funds by gift.
- **One more important thing to note:** all documents submitted to USCIS should be translated to English.
- **Disclaimer:** the list below is *not* a complete list of all the documents to include in your EB-5 application. The goal of this list is to give you an idea of the documents you should include.

Documents Relating to the Investor:

- copy of the identity page of investor's passport
- copy of the investor's foreign birth certificate
- investor's resume
- copies of all diplomas, degrees, awards, and professional certifications
- copy of marriage certificate (if you have one)
- copy of Social Security card (if you have one)

Documents Relating to the Business:

- comprehensive business plan
- W-2 and I-9 forms for workers already hired

- payroll records
- list of employees and corresponding job descriptions
- business entity documents
- articles of incorporation (for a corporation)
- articles of organization (for an LLC)
- bylaws
- shareholder list
- partnership agreement
- list of limited partners
- operating agreement
- etc.

Documents Relating to Source and Path of Funds:

- individual tax returns for past 5 years
- copy of bank statement before and after investment is made in the new commercial enterprise
- copy of the wire transfer order that sends funds from investor's personal account to the EB-5 business account

If your source of funds is coming from the sale of a property:

- copy of purchase and sale agreement for property
- letter from the party managing the sale which confirms the terms of the sale
- copy of certified check or wire transfer of the buyer (for the purchase)

If your source of funds is coming from owning a business:

- copy of company's balance sheets for last several years

- copy of companies articles of incorporation or articles of organization
- company tax returns for last several years
- letter from company's accountant or letter from company attesting to the income earned by the investor over the last several years
- letter from investor describing their employment history, job duties, position within the company, salary, etc.

If your source of funds is coming from a loan:

- copy of the actual loan document
- letter from the lender to the EB-5 investor describing the loan amount, date of loan, what security or collateral was given in exchange for the loan, etc.
- copy of bank statement of EB-5 investor showing disbursement of loan proceeds
- if lender is a person and not a bank, include all documentation showing the lenders lawful source of funds

If your source of funds is coming from a gift:

- letter from the person giving the gift attesting to the amount of the gift, conditions of the gift (if any), date of the gift, etc.
- bank statement of investor showing disbursement of gift proceeds
- documents demonstrating the gifting party's lawful source of funds

21. What is My Immigration Lawyer's Role in the EB-5 Visa Process?

What your immigration lawyer's role is not:

- An immigration lawyer is **not** your financial advisor nor is he/she your investment advisor.
- Your immigration lawyer should **not** give you advice on which project to invest in unless the advice is about the investment's compliance with the immigration requirements of the EB-5 visa.

What your immigration lawyer's role is:

- You should think of your immigration lawyer as the director of the *entire EB-5 visa process*.

- Your immigration lawyer should first consult with you to see if an EB-5 visa is the best option based on your *immigration goals and your particular circumstances*.
- After deciding that an EB-5 visa is the right option for you, your immigration lawyer should act as your guide through the **entire** process.
- Your immigration lawyer should discuss with you whether the investment you are considering meets the *immigration requirements* of the EB-5 visa.
- Your lawyer should analyze where your investment funds come from. Your lawyer should then determine which documents are needed for your EB-5 application.
- Your immigration lawyer should put together your entire EB-5 application and submit it to USCIS for you.
- If your *I-526* or *I-829* petition gets a request for evidence, your immigration lawyer should prepare a response for you. Your lawyer should include all documents and information requested.
- Once your Form *I-526* gets approved, your immigration lawyer should help you adjust your status or to apply for your immigrant visa.

22. How do I find a Business to Invest in for my EB-5 Visa?

- **Before investing in an EB-5 project, you should do your own due diligence, like you would if you were making any other investment.**
- You should make sure that you've done *a lot of research* on the business or regional center project you are considering.
- Besides your own personal efforts, there are professionals that can help you choose a business or project to invest in.
- The 2 types of professionals that can help you pick an investment are *Registered Investment Advisors* **and** *Broker/Dealers*.
- Registered investment advisors and broker/dealers are regulated by the Financial Industry Regulatory Authority (FINRA).
- **Registered investment advisors** usually provide investment advice in exchange for a fee.
- **Broker/dealers** usually charge a finders fee to the business or regional center for the investors they refer to a particular project.
- You can do a lot of research on your broker/dealer or registered investment advisor using Finra's BrokerCheck resource.
- You can access BrokerCheck here: <https://brokercheck.finra.org/>

- Finra's BrokerCheck site is a great way to make sure that your investment advisor is licensed.
- With BrokerCheck, you can also learn how many years of experience your investment advisor has, which exams they passed, and which state licenses they have.

23. Who Qualifies for an EB-5 Visa?

- **Unlike the E-2 visa, you do not have to be a citizen of a particular country to get an EB-5 visa.**
- As long as you *meet the requirements of the EB-5 visa* and you are *not* barred for some other reason, you should be eligible to apply for an EB-5 visa.

24. What is the "Visa Backlog" and who does it Affect?

- There are currently 10,000 visas issued each year for the EB-5 visa category.
- The Immigration and Nationality Act (INA) sets a maximum amount of EB-5 visas that can go to nationals from each country.

- When the number of approved I-526 petitions for nationals of a particular country **exceeds** the number of visas available, this creates a *backlog* of approved applications.
- When this happens, approved applicants must wait until a visa becomes available.
- Over the last several years, the demand for EB-5 from citizens of *Mainland China* has exceeded the number of visas available.
- The increased demand created a **major backlog**. This is why Chinese investors have to wait many years after their I-526 is approved before they can get an EB-5 visa or adjust status.

25. When do my Investment Funds Need to be Invested in the EB-5 Business?

At the time of I-526 filing, you must show that you have invested or are actively in the process of investing your investment funds in the new commercial enterprise.

- Your future intent to invest, without a present commitment, **will not** be enough.
- You *cannot* hold-off on investing your capital until after your I-526 is approved.

- **However**, before filing your I-526, in certain cases, you **can** deposit the money in the escrow account. You can then make the release of the investment funds *conditional* on I-526 approval and visa issuance or adjustment of status. So, if the I-526 doesn't get approved for any reason, *you would be able to get your investment funds back. It is highly important for this to be overseen by an experienced EB-5 immigration lawyer.*

26. Can my Family Members Come to the US on my EB-5 Visa?

Yes, as a successful EB-5 investor, your spouse and unmarried children under 21 years old are also eligible to get their EB-5 visa and eventually become lawful permanent residents.

27. What does it mean for My Child to "Age-Out?"

- As a successful EB-5 investor, your unmarried children that are under 21 years old can also get their green cards.
- **Aging-out** is when your child is *no longer able* to join you through your EB-5 visa, because they are 21 years of age or older.
- This can be an issue when your child is close to 21 years old when you are applying for an EB-5 visa.

- To **avoid** your child aging out, you should know how a child's age is calculated during the EB-5 process.
- Your child's age is determined by taking their age at the time a visa is available, subtracted by the number of days the Form I-526 was processing.
- If you are from a country with a visa backlog (such as Mainland China), your child's age is taken at the time a visa is available minus the number of days the Form I-526 was processing.

This concept is a little confusing, so if you have any questions about it, feel free to email me at Info@immigrationlawfirmlltd.com.

28. Once my Visa is Approved How Soon do I have to Enter the United States?

Your EB-5 immigrant visa is typically valid for 6 months. This means that once the consulate abroad issues your EB-5 visa, you have *6 months to enter the US*. Once you enter the United States, you become a conditional lawful permanent resident and will be issued a conditional green card in the mail.

29. Do I Have to Live in the US Once I have my Green Card?

As a permanent resident, you have to have the intention to permanently reside in the US. That said, you can still leave and re-enter the US.

- Leaving the United States for extended periods of time can potentially jeopardize your lawful permanent resident status.
- If you need to leave the US for an extended period of time, you should consider applying for a re-entry permit.
- A re-entry permit is a travel document that can help to protect your status if you need to leave the United States for extended periods. A reentry permit creates a legal presumption that you do not intend to abandon your status as a lawful permanent resident based on your time spent outside of the United States.
- *A reentry permit is usually valid for 2 years from the date it is issued.*

30. If I Already Have a Business in the US can I Use it as the New Commercial Enterprise for my EB-5 Investment?

Yes, your existing US business can qualify for an EB-5 if it meets all the EB-5 requirements:

- The business must qualify as a new commercial enterprise.
- You will need to invest a minimum of \$1,050,000 in the business (or \$800,000 if the new commercial enterprise principally does business in a targeted employment area).

- The funds that you've already invested in the business may potentially count as part of the \$1,050,000 (or \$800,000) minimum investment amount.
- You will have to show that the invested funds were obtained lawfully.
- You are required to create 10 full-time jobs for US workers. (You may potentially be able to count the jobs that you have already created in your US business as part of the 10 jobs.)
- You will also have to show that the investment funds are "at risk."

31. If I'm in the US on an E-2 Visa, can I Convert to an EB-5 Visa?

Yes, if you are already in the US on an E2 Visa, you can convert to an EB-5 visa.

- The process of going from an E2 visa to an EB-5 visa is called an "adjustment of status."

If you choose to use your E2 business as the new commercial enterprise for your EB-5 visa, there are a few major benefits:

- The funds that you've already invested in the E2 business may potentially count for your EB-5 investment.

- The jobs that you've created with your E2 business may potentially count as part of the 10 full-time jobs you are required to create.

32. How Long Does My Investment Need to Be Sustained?

For EB-5 petitions filed on or after March 15, 2022, an EB-5 investor must expect to maintain their EB-5 investment for at least 2 years, provided that the job creation requirements have been met. There are instances where an investment may need to be sustained for longer than 2 years.

If an investor invested their funds more than 2 years prior to filing their Form I-526, the investment should still be maintained at the time the Form I-526 is filed.

Additionally, applicants who filed their Form I-526 prior to the enactment of the EB-5 Reform and Integrity Act of 2022 (prior to March 15, 2022) must maintain their investment throughout the 2-year period of their conditional permanent residence.

There are many details to the rules regarding the EB-5 investment sustainment period. These rules are complex and differ depending on when the EB-5 petition was filed and whether the investor is subject to the new rules enacted with the passing of the EB-5 Reform and Integrity Act of 2022. If you have any specific questions based on your circumstances, you may email Info@immigrationlawfirmlltd.com.

Conclusion

You should now have a much better understanding of the most important aspects of the EB-5 visa program.

This is **a lot** of information to understand. But don't worry, with the help of a qualified EB5 lawyer, the process can be easier than you think.

If you have any questions about the EB-5 visa or about US immigration, email me directly at Info@immigrationlawfirmlltd.com. I'd be happy to answer your questions.