

## **EB-5 IMMIGRANT VISA**

### **Eligibility**

The EB-5 Immigrant Visa, also known as the “Employment Creation” or “Investor” Visa, allows for conditional LPR status for individuals who meet the following criteria:

1. Invest *or* are actively in the process of investing \$1,000,000 (or \$500,000 if the investment is in a “targeted employment area,” ie. a rural area of less than 20,000 people or an area which has experienced high unemployment of at least 150% of the national average);
2. In a new commercial enterprise, ie. a company formed after November 29, 1990, although some exceptions apply;
3. That employs at least 10 US citizen or authorized immigrant workers full-time; and
4. Engage in the business through day-to-day management or policy formation.

In addition, in October 1992 Congress established a pilot program that authorizes investment through regional centers and relaxes the job creation requirements so that jobs may be proven through direct or indirect<sup>1</sup> employment. On September 28, 2012, Congress extended this pilot program until September 30, 2015. Presently, approximately 90-95% of EB-5 applicants participate in the pilot program.

Amongst the regional center projects there is a good mix of those requiring a \$500,000 investment and those requiring a \$1,000,000 investment. Your probability of achieving a successful outcome does not depend on whether you invest in a \$500,000 project or a \$1,000,000 project and it may very well be that you are able to identify a \$500,000 project that will satisfy your needs.

A successful EB-5 applicant receives *conditional* LPR status, which is valid for a period of 2 years. To remove this conditional status, during the 90-day period prior to the expiration of his conditional LPR status, the investor must file a Petition for the Removal of Conditional Resident Status (USCIS Form I-829). If the investor successfully shows that he: (1) invested or was actively investing the required capital and sustained his investment throughout the two-year period; and (2) created or can be expected to create 10 full-time jobs for qualified employees within a reasonable time period, his Petition will be approved and he will no longer be a *conditional* LPR.

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<sup>1</sup> An investor in a regional center is permitted to show that investment in the regional center will create jobs indirectly beyond the commercial enterprise through the use of reasonable economic methodologies.

## **Process for Applying for an EB-5 Immigrant Visa through a Regional Center**

### **Select a Regional Center**

The first step in applying for an EB-5 Immigrant Visa through a regional center is to select the regional center in which you will invest. US Citizenship and Immigration Services (USCIS) has approved approximately 250 regional centers engaged in myriad business ventures throughout the United States. Of these, at any given time there are roughly 20-40 that are open for new EB-5 investors. Naturally you will want to select a regional center that you believe has a high probability of achieving the following goals:

- Creating the requisite 10 jobs within the 2-year period so that you may successfully remove the conditions to your LPR status; and
- Returning your capital to you at term.

**Grossman Law, LLC, its attorneys and employees are not investment advisors. We are not qualified to conduct due diligence on nor analyze the potential risks associated with a particular regional center. We will not advise you in selecting a regional center, nor will we make any representations about your likelihood for successfully removing the conditions on your LPR status after 2 years or your likelihood for recouping your capital at term.**

**For this reason, Grossman Law, LLC strongly urges you to engage an Investment Advisor or Firm to assist you in evaluating and selecting a regional center in which to invest. You are of course free to select the Advisor or Firm of your choice and we encourage you to conduct your own research on Advisors and Firms who evaluate EB-5 regional centers. Grossman Law, LLC can recommend an Advisor, but will work with whichever Advisor or Firm you choose.**

**Grossman Law, LLC is in no way liable for the representations, products, or advice that you receive from the Advisor or Firm that you choose. Grossman Law, LLC is no way liable for the outcome of your investment, including any financial losses that you may sustain. Grossman Law, LLC is only responsible for the competent management of your immigration status.**

Review the Regional Center's Business Documents

After you have identified the regional center in which you would like to invest, the regional center will send you a Subscription Agreement, which you will need to complete and return along with the regional center's subscription fee. All regional centers charge investors a subscription fee, which defrays its own legal, accounting, and other professional costs. The subscription fees can range from \$10,000 to \$100,000, although most are typically from \$35,000 to \$55,000. Your Investment Advisor, however, may be able to negotiate a discount.

After executing the Subscription Agreement and transferring the subscription fee, the regional center will send you a package of materials for your review. We highly recommend that you retain a Corporate or Contracts attorney to review and advise you regarding the legality, accuracy, and completeness of the center's business documents. These documents may include, but are not limited to, the center's Business Plan, Private Placement Memorandum (PPM), Articles of Incorporation, Bylaws, shareholder and investment agreements, minutes of Board of Directors/shareholder meetings, documents provided to investors/directors, certificates and licenses from the state(s) in which it operates, and any other contracts and agreements. We can recommend a Corporate or Contracts attorney to you, if you so desire.

Included in the package that you will receive from the regional center should be a description of the center's escrow account,<sup>2</sup> an escrow agreement, and instructions for depositing your \$500,000/\$1,000,000 investment into the account. In these cases, the escrow agreement typically provides that the investor's capital contribution will be made available for the purpose of job creation immediately and irrevocably upon USCIS' approval of the investor's I-526 Petition *and* issuance of his immigrant visa (see below). In other words, your capital will not actually be invested (and placed at risk) until USCIS grants you LPR status.

Prepare and File an "Immigrant Petition by Alien Entrepreneur" with USCIS

Grossman Law, LLC would represent you in preparing and filing an "Immigrant Petition by Alien Entrepreneur," Form I-526, and all supporting documentation with USCIS. This would include ensuring that the regional center that you select provides all necessary supporting documentation, such as its business plan, its economic analysis & job creation plan, and its I-526 Exemplar. It would also include working with you to document that you indeed have the requisite capital available for investment and that it has been placed in an eligible escrow account, and to document the source(s) of this capital.

Something that is critical to a successful I-526 Petition is establishing that the capital that will be invested was obtained through lawful means.<sup>3</sup> Therefore, the I-526 Petition must

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<sup>2</sup> Escrow is a legal instrument that places the funds of one person (called the grantor, promisor, or obligor) in the hands of a third person (called the escrow holder) to be delivered to another party (called the grantee, promisee, or obligee) upon the occurrence of some event or the meeting of some condition.

<sup>3</sup> 8 C.F.R. § 204.6(j)(3) (2011).

be accompanied by documentation that traces the money's origins. Examples of acceptable documentation include foreign business registration records; corporate, partnership, and personal tax returns of any kind filed within five years with any taxing jurisdiction in or outside of the US; certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions involving monetary judgments against the petitioner from any court in or outside of the US within the past 15 years; and/or any other evidence identifying the source(s) of the capital.<sup>4</sup> As mentioned above, Grossman Law will work with you to fully document the source(s) of your funds to USCIS' satisfaction.

Presently USCIS' processing time for Form I-526 is approximately 6 months<sup>5</sup> and unfortunately at this time USCIS' regulations do not allow you to file for your LPR status *until* USCIS approves your Form I-526. Once this happens, you would file either an Application for an Immigrant Visa (Form DS-230), if you are outside of the United States, or an Application for Adjustment of Status (USCIS Form I-485), if you are lawfully present in the United States. (See below.)

While it is generally preferable to file an Application for Adjustment of Status in the United States as opposed to with a US Consulate abroad, in order to be eligible to do so, you must be in lawful immigration status at the time you file your Application for Adjustment. If you are currently in the United States in lawful status, but that status is due to expire, Grossman Law will work with you to explore options for changing status so that you may not have to depart the United States.

#### *Prepare and File an Application for Lawful Permanent Residency*

Once USCIS approves your Form I-526, Grossman Law, LLC would represent you in preparing and filing either an Application for an Immigrant Visa (Form DS-230), if you are outside of the United States, or an Application for Adjustment of Status (USCIS Form I-485), if you are lawfully present in the United States. This would include assisting you in gathering, preparing, and presenting all required supporting documentation, including arranging for any/all necessary document translations as well as accompanying you, if applicable, to an interview with USCIS in the United States. Processing times for Form DS-230 vary depending on the US Consulate, but are roughly 6-12 months. Processing times for USCIS Form I-485 are approximately 9 months.

If/when you are approved for conditional LPR status, your 2-year conditional period will begin to run from either the day you enter the United States as a LPR, if you apply at a US Consulate abroad, or the day USCIS approves your Application for Adjustment of Status, if you apply in the United States.

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<sup>4</sup> Please note that any documents filed with USCIS that are not in English must be accompanied by a certified English translation. At your request, Grossman Law may assist you in arranging for any necessary translations.

<sup>5</sup> USCIS only considers requests to expedite processing of Form I-526 in those rare instances where a failure to do so would result in a severe financial loss to a company or individual.

### **Approximate Time Frames**

In order to provide you with a general idea of how long this process may take, we provide the following estimates. Please be advised, however, that these are merely estimates and are subject to change. The process may be longer or shorter depending on how much time you require on your end to take necessary steps and decisions and to gather and provide necessary documents and information and depending on fluctuations in processing times at USCIS and/or the US Department of State. Grossman Law is not responsible for any delays caused by USCIS, the US Department of State, or any other entity assisting or advising you in this endeavor, such as, but not limited to, Investment Advisors, Corporate/Contracts Attorneys, and translators.

- Select a regional center and execute Subscription Agreement: 30-45 days;
- Review regional center documents, deposit capital into escrow account: 2-4 weeks;
- Prepare and file USCIS Form I-526 and supporting documentation: 4-6 weeks;
- Adjudicate Form I-526 (USCIS): 6 months;
- Prepare and file Form DS-230 or Form I-485: 6-8 weeks (including time for USCIS to forward your approved Form I-526 to the National Visa Center in the event that you will apply for LPR status at a US Consulate); and
- Adjudication of application for LPR (USCIS or Department of State): 6-9 months.

### **Costs**

In addition to Grossman Law's fees, which vary depending on the specifics of each individual case, and the \$500,000/\$1,000,000 investment that is required to be eligible for an EB-5 Immigrant Visa, you should also anticipate the following additional costs (all subject to change):

- Investment Advisor: \$3,000-\$7000 (see p. 2);
- Corporate/Contract Attorney: \$ (prices vary) (see p. 3);
- Regional Center Subscription fee: \$10,000 to \$100,000, although typically from \$35,000 to \$55,000 (see p. 3);
- Immigration Fees:
  - Form I-526 - \$1500;
  - Form DS-230 - \$405 or Form I-485 - \$1070 (including biometrics); and
  - Immigration Medical Examination – approximately \$250
- Miscellaneous Costs: Document translations, travel, etc.