

EB-5 Immigrant Investor

Visa Description

USCIS administers the Immigrant Investor Program, also known as “EB-5,” created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under a pilot immigration program first enacted in 1992 and regularly reauthorized since, certain EB-5 visas also are set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth.

All EB-5 investors must invest in a **new commercial enterprise**, which is a commercial enterprise:

- Established after Nov. 29, 1990, or
- Established on or before Nov. 29, 1990, that is:
 1. Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, or
 2. Expanded through the investment so that a 40-percent increase in the net worth or number of employees occurs

Commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to:

- A sole proprietorship
- Partnership (whether limited or general)
- Holding company
- Joint venture
- Corporation
- Business trust or other entity, which may be publicly or privately owned

This definition includes a commercial enterprise consisting of a holding company and its wholly owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business.

Note: This definition does not include noncommercial activity such as owning and operating a personal residence.

Job Creation Requirements

- Create or preserve at least 10 full-time jobs for qualifying U.S. workers within two years (or under certain circumstances, within a reasonable time after the two-year period) of the immigrant investor's admission to the United States as a Conditional Permanent Resident.
- Create or preserve either direct or indirect jobs:

Direct jobs are actual identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital.

Indirect jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor. A foreign investor may only use the indirect job calculation if affiliated with a regional center.

Note: Investors may only be credited with preserving jobs in a troubled business.

A **troubled business** is an enterprise that has been in existence for at least two years and has incurred a net loss during the 12- or 24-month period prior to the priority date on the immigrant investor's Form I-526. The loss for this period must be at least 20 percent of the troubled business' net worth prior to the loss. For purposes of determining whether the troubled business has been in existence for two years, successors in interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.

A **qualified employee** is a U.S. citizen, permanent resident or other immigrant authorized to work in the United States. The individual may be a conditional resident, an asylee, a refugee, or a person residing in the United States under suspension of deportation. This definition does not include the immigrant investor; his or her spouse, sons, or daughters; or any foreign national in any nonimmigrant status (such as an H-1B visa holder) or who is not authorized to work in the United States.

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. In the case of the Immigrant Investor Pilot Program, "full-time employment" also means employment of a qualifying employee in a position that has been created indirectly from investments associated with the Pilot Program.

A **job-sharing arrangement** whereby two or more qualifying employees share a full-time position will count as full-time employment provided the hourly requirement per week is met. This definition does not include combinations of part-time positions or full-time equivalents even if, when combined, the positions meet the hourly requirement per week. The position must be permanent, full-time and constant. The two qualified employees sharing the job must be permanent and share the associated benefits normally related to any permanent, full-time position, including payment of both

workman's compensation and unemployment premiums for the position by the employer.

Capital Investment Requirements

Capital means cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair-market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

Note: Investment capital cannot be borrowed.

Required minimum investments are:

- Garcia and Phan general. The minimum qualifying investment in the United States is \$1 million.
- Regional Center, Targeted Employment Area (High Unemployment or Rural Area). The minimum qualifying investment either within a high-unemployment area or rural area in the United States is \$500,000.

A **targeted employment** area (TEA) is an area that, at the time of investment, is a rural area or an area experiencing unemployment of at least 150 percent of the national average rate.

A **rural area** is any area outside a metropolitan statistical area (as designated by the Office of Management and Budget) or outside the boundary of any city or town having a population of 20,000 or more according to the decennial census.

EB-5 Immigrant Investor Process

Application Process

1. **Form I-526, Petition by Alien Entrepreneur**
2. Upon approval of the Form I-526 petition, either:
 1. File a **Form I-485, Application to Register Permanent Residence or Adjust Status**, with USCIS to adjust status to conditional permanent resident within the United States, **or**
 2. File a DS-230, Application for Immigrant Visa and Alien Registration, with the Department of State to obtain an EB-5 visa for admission to the United States.

The EB-5 investor (and his or her derivative family members) is granted conditional permanent residence for a two-year period upon the approval of the I-485 application or **upon entry into** the United States with an EB-5 immigrant visa.

1. File **Form I-829, Petition by Entrepreneur to Remove Conditions**, 90 days prior to the two-year anniversary of the granting of the EB-5 investor's conditional resident status (Green Card). If USCIS approves this petition, the conditions are removed from the EB-5 applicant's status and the EB-5 investor and derivative family members will be allowed to permanently live and work in the United States.

Forms are available through our office, our client only website, or by calling us to request an appointment at 714-848-8200. Please see the Immigration section for more information on www.garciaphan.com.

Form I-526 Petition for an Alien Entrepreneur

Requirements

Supporting Documents (Evidence)*

Evidence that you have invested in a “for profit” new commercial enterprise, which is a commercial enterprise:

New Commercial Enterprise

- Established after Nov. 29, 1990, or
- Established on or before Nov. 29, 1990, that is:
 1. Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, or
 2. Expanded through the investment so that a 40-percent increase in the net worth or number of employees occurs

Evidence, if applicable, that your new commercial enterprise has been established and is principally doing business in a targeted employment area (TEA).

Managing the New Commercial Enterprise

Evidence that you will be actively involved in the management of the new commercial enterprise (day-to-day or through policy).

Evidence that you have invested or are in the process of investing the amount required (\$1 million Non Regional Center/TEA or \$500,000 Regional Center).

Evidence that the investment funds were obtained through lawful means. Evidence that the capital used was legally acquired may be demonstrated by the following:

Investment

- 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 years
- Documents identifying any other source of money
- Certified copies of all pending civil or criminal actions and proceedings, or any private civil actions involving money judgments against the investor within the past 15 years

Job Creation

Evidence that the new commercial enterprise will create at least 10 full-time positions—not including yourself, your spouse, sons or daughters, or any temporary or nonimmigrant workers, or individuals who are not authorized to work in the United States. You will need to submit a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than 10 employees will result. Include approximate dates, within the next two years, and when each

Requirements

Supporting Documents (Evidence)*

employee will be hired.

* Note: Regional center-affiliated cases must show that the capital investment was made in accordance with the regional center's business plan in order to be credited with the creation of indirect jobs.

The same evidence which is mentioned above for job creation except instead of the evidence that the business will create at least 10 new jobs, you must submit evidence that:

Job
Preservation—
Troubled Business

The number of existing jobs is being or will be maintained at no less than the pre-investment level for a period of at least two years. Photocopies of tax records, Forms I-9 (Employment Eligibility Verification), or other relevant documents for the qualifying employees and a comprehensive business plan shall be submitted in support of the petition.

* Note: To be approvable, at least 10 jobs must be maintained.

* Note: Regional center-affiliated cases (\$500,000 investments) must show that the capital investment was made in accordance with the regional center's business plan in order to be credited with the preservation of indirect jobs.

Form I-829 Petition by Entrepreneur to Remove Conditions

You must submit Form I-829 within the 90-day period immediately before the second year anniversary of your admission to the U.S. as a conditional permanent resident.

Requirements	Supporting Documents (Evidence)*
Investment	<p data-bbox="444 474 1357 575">Evidence that you in fact invested in a new commercial enterprise. This evidence may include, but is not limited to, copies of the business' organizational documents and federal tax returns.</p> <p data-bbox="444 621 1390 684">Evidence that you have invested or are actively in the process of investing the total amount of required funds.</p> <p data-bbox="444 730 1383 831">Evidence that you have sustained your investment in the new commercial enterprise throughout your two-year period of conditional permanent residence. This evidence may include, but is not limited to, the following:</p> <ul data-bbox="493 877 1390 1125" style="list-style-type: none">• Business invoices and receipts• Bank statements• Contracts• Business licenses• Audited or reviewed financial statements.• Complete copies of federal or state income tax returns or quarterly tax statements <p data-bbox="444 1176 1432 1276">Evidence that you created or will create within a reasonable time 10 full-time jobs for qualifying employees. Such evidence may include, but is not limited to:</p>
Job Creation	<ul data-bbox="493 1327 854 1428" style="list-style-type: none">• Business payroll records• Relevant tax documents• Employee Forms I-9
Job Preservation— Troubled Business	<p data-bbox="444 1482 1425 1654">The same documentary requirements for job creation mentioned above, except that the investor must show that he or she has maintained (not created) the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident.</p> <p data-bbox="444 1701 1234 1730">*Note: To be approvable, at least 10 jobs must be maintained.</p> <p data-bbox="444 1776 1432 1839">*Note: Regional center-affiliated cases must show that the capital investment was made in accordance with the regional center's business plan in order to</p>

Requirements

Supporting Documents (Evidence)*

be credited with the preservation of indirect jobs.

Dependents

Your spouse and unmarried children under the age of 21 may be admitted to the U.S. with you on a two-year conditional period. If your I-829 petition to remove conditions is approved, the conditions will be removed from your spouse and children's Green Card status. As a lawful permanent residents (Green Card holders) your spouse and children will be authorized to work or attend school in the U.S.

I-526, Application Petition for Alien Entrepreneur

USCIS Filing Fee :

\$1,500. You must make your check payable to Department of Homeland Security.

I-485, Application to Register Permanent Residence or Adjust Status

USCIS Filing Fee :

\$985. (Add \$85 biometric fee for a total of \$1070, where applicable.) You must make your check payable to Department of Homeland Security.

Special Instructions :

There are exceptions in which the applicant is not required to pay the entire \$1070:

- Applicants 79 years of age or older are not charged a biometric fee; the fee total is \$985.
- There is no fee for applicants who are filing Form I-485 based on having been admitted to the United States as a refugee.
- There is no fee if an applicant is filing as a refugee under section 209(a) of the INA.
- For applicants under 14 years of age:
 - Filing with the I-485 application of at least one parent have a fee total of \$635;
 - Not filing with the I-485 application of at least one parent have a fee total of \$985.

I-829, Petition by Entrepreneur to Remove Conditions

Purpose of Form :

For a conditional permanent resident who obtained such status through entrepreneurship to remove the conditions on his or her residence.

Filing Fee :

\$3,750. (Add \$85 biometric fee for a total of \$3,835. An additional biometric services fee of \$85 must be paid for each conditional resident dependent, listed under Part 3 or Part 4 of Form I-829.)

Special Instructions :

A base petition fee of \$3,750 plus \$85 per person fee for biometric services are required for all conditional resident applicants. Each conditional resident child regardless of age who is a dependent seeking to remove their conditional status is required to submit a biometrics fee of \$85.

Garcia and Phan Investor Project Procedure

