



EB-5 Briefing Paper:

USCIS Immigration through Investment Program

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In an effort to offer a program to compete with the efforts of such nations as Canada, Australia, and the United Kingdom, the US Congress created the EB-5 (fifth employment-based) immigrant visa category in 1990. This type of immigrant visa was created to spur Foreign Direct Investment (FDI) in the United States by offering foreign nationals permanent residency status in exchange for large investments in commercial enterprises in the United States. Through an iterative process spanning over a decade, the US Congress has occasionally revised EB-5 provisions, creating the framework for a program the US Citizenship and Immigration Services (USCIS) refers to as “Immigration through Investment.”

EB-5 immigrant visas are intended for investors looking for **permanent** residency in the United States. Under current law, which is governed by 203(b)(5) of the Immigration and Nationality Act (INA), 8 U.S.C. §1153(b)(5), 10,000 EB-5 visas are available annually to qualified applicants. Of the 10,000 made available, 5,000 are set aside for foreign nationals investing through a USCIS-designated “Regional Center.” The two avenues to obtaining an EB-5 immigrant visa are 1) the traditional route, and 2) the Regional Center route.

Traditional Route EB-5 Process

In the traditional route, foreign investors are eligible for an EB-5 visa if they invest in a new business that **directly** hires at least 10 U.S. workers. The minimum investment required by each individual applying for an EB-5 visa must be at least \$1 million (if it is not located in a high unemployment area), or \$500,000, provided the investment is in a rural or high unemployment area, where “rural” is defined by the White House’s Office of Management and Budget (OMB) and “high unemployment” means 150 percent of the national average rate.

Successful EB-5 applicants are then are issued a temporary green card good for two years. Upon

expiration of the temporary green card, investors are required to show that their investment money was “at risk” over the two-year timeframe and that 10 additional direct jobs were created for U.S. workers. Upon successfully proving these two stipulations, applicants become regular green card holders.

Regional Center Route EB-5 Process

In 1993, Congress amended EB-5 legislation by adding a pilot program which allows USCIS-designated Regional Centers to apply as applicants for EB-5 immigrant visas. This pilot program is notably different than the traditional EB-5 program. This pilot program has been extended several times, and is currently set to expire on September 30, 2012, but will likely be extended again. According to USCIS, a regional center is defined as:

- An entity, organization or agency that has been approved as such by the Service;
- Focuses on a specific geographical area within the United States; and,
- Seeks to promote economic growth through increased export sales, improved regional productivity, creation of new jobs, and increased domestic capital investment.

A Regional Center obtains its designation by applying for approval from the USCIS. As of this writing, there are 194 Regional Centers in the United States, operating in 40 states including the District of Columbia and Guam. The application must discuss the kinds of the business that will be receiving capital from investors, the jobs that will be created directly or indirectly, and the other positive economic impacts resulting from the investment. To be clear, a Regional Center does not have to be an area of high unemployment or low income, although in applying for designation as one you must identify these areas, if there are any. For more information on the application process for becoming a Regional Center see the later section of the paper.

To invest in a Regional Center, alien investors must:

- Demonstrate that a “qualified investment” is being made in a new commercial enterprise located within an approved Regional Center; and,
- Show, using reasonable methodologies, that 10 or more jobs are actually created either directly or indirectly by the new commercial enterprise through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

Thus, the Regional Center route does not require that the applicant’s investment create 10 “direct” jobs; it is more flexible in that it considers indirect job creation (which includes both “indirect” and “induced”) which isn’t tied to any specific W-2 form, or other quantifiable proof of job creation. Application review guidelines were recently changed to allow for the USCIS to verify employment creation in-house with the use of economic models if necessary.

Before an investor can participate in a Regional Center EB-5 investment, however, they must individually file for an EB-5 visa through the USCIS. The USCIS’ due diligence in reviewing applications includes reviewing sources of investor funds, family history, and other representations of the head of household and immediate family members under the age of 21. The Regional Centers themselves perform this due diligence, not a central authority through the USCIS.

As with the traditional route, a regional center EB-5 investor is issued a two-year conditional visa once they arrive in the U.S. After two years, they have 90 days to submit proof that their money was “at risk” for the preceding two years, and that their investment created jobs. Upon USCIS successfully approving the aforementioned points, the investor and family members, if applicable, are issued regular green cards. Investors can then wait an additional 3 years before applying for U.S. citizenship via the naturalization process.

The entire EB-5 process, from the first application to the granting of permanent residency, takes upwards of 3-5

years, depending on the quality and transparency of submitted materials.

EB-5 Enhancements

The USCIS proposed three changes to the EB-5 program in May 2011, which took effect in June 2011.

- 1) **Accelerated Processing:** faster processing times for job-creating projects that are fully developed and ready to implement. A Premium Processing Service guarantees 15 day processing (for a fee) utilizing Form I-907.
- 2) **Specialized Intake Teams:** processing teams with expertise in economic analysis will be available for Regional Center applications for communication via email to streamline the resolution of issues and quickly address questions.
- 3) **Expert Decision Board:** the Decision Board will be composed of an economist and adjudicators, and will be supported by legal council in order to render final decisions regarding Regional Center applications.

Current Regional Centers in the US

The USCIS recently updated their website to provide a current listing of all regional centers in the United States. [The website can be viewed here.](#) According to the USCIS’s January 23 2012 presentation, there are 194 Regional Centers in the US.

Forms and Documents Required

There are three primary forms required in the EB-5 process. The first is form I-526, which is a request for status as an immigrant investor. This form is filled out during the initial stages of the process.

The second form needed for an EB-5 immigrant visa is I-485, which is filled out upon successful approval as an immigrant investor. Form I-485 is required in applying for status as a Conditional Resident (holding a temporary green card).

The third required form in the EB-5 process is the I-829. Form I-829 is a request to drop the conditional status of residency in exchange for permanent residency. This form is filled out after the two year period where the investor's money is "at risk."

Beyond the three forms discussed above, additional materials are required in verifying the source of funds invested, as well as evaluating the general background of the applicant and their immediate family, if applicable.

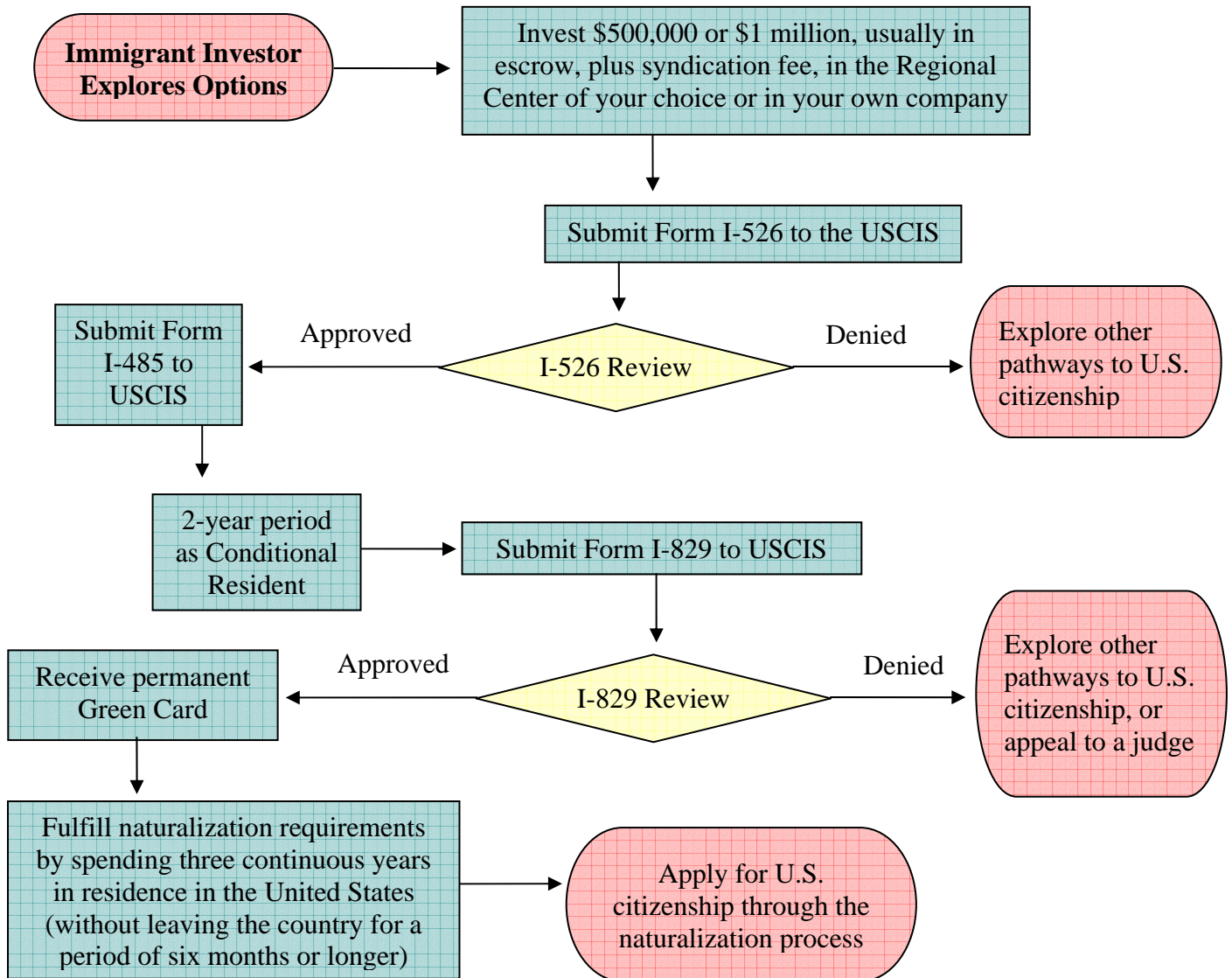
Additional materials commonly required by the USCIS include, but are not limited to, the following:

- Evidence of the existence of the enterprise;
 - Business organization documents; or authorization to do business in a U.S. state or municipality or Articles of Incorporation.
 - Evidence of lawful capital;
 - Corporate, partnership and/or personal tax returns filed within the past 5 years;
 - Foreign business registration records; or evidence identifying other sources of capital;
 - Other proof of the investor's income during previous years;
 - Certified copies of any judgments or evidence of all pending actions involving monetary judgments within the past 15 years;
 - Sales contracts if the source of funds is from the sale of house or business.
 - Evidence of investment;
 - Bank statements; evidence of property transferred from abroad; evidence of purchased assets; stock certificates given for investments; or loan or mortgage agreements.
 - Evidence of the investor's day-to-day operation of the enterprise (does not apply to investors in a Regional Center Program);
 - Title and description of the investor's job duties; or
 - If the enterprise is a partnership, evidence proving the investor-partner's management or policy-making activities.
 - Evidence showing the creation of at least 10 jobs for U.S. workers;
- If investors have hired employees, I-9s forms and tax records; or
 - If investors do not currently hire employees, a business plan demonstrating that 10 U.S. workers will be hired within the next 2 years;
 - If investors are in the category requiring a minimum \$500,000 investment, evidence demonstrating that jobs have been or will be created in the targeted employment area; and
 - Statistical proof that the targeted employment area has high unemployment and a state agency's letter demonstrating that the area is classified as a "high unemployment" area.

Process Flow Chart

The following is a simple flow chart which aims at illustrating the general structure of the EB-5 program.

EB-5 Program – Process Flowchart



Applying for Regional Center Designation

There are several items that are required in applying for Regional Center designation through the USCIS:

- 1) A section clearly identifying the geography of the Regional Center. The geography needs to be identify the contiguous area proposed for designation, identifying Standard Metropolitan Statistical Areas (SMSAs), rural areas (areas outside SMSAs with populations under 20,000), High Unemployment Targeted Areas (TEAs), census tracts, cities, towns, counties, et cetera. This section also needs to identify the mission of the Regional Center, specifically how it will promote economic growth through improved regional productivity, job creation, and increased domestic capital investment.
- 2) Analysis describing the results of an economic impact study (multiplier model). This discussion needs to present the amount of indirect, direct, and induced job creation. Results should be presented by industry. This discussion should likely accompany a brief summarization of the mechanisms which will work to create jobs in different industries for your particular Regional Center. Also suggested for inclusion by the USCIS are predictions or overall regional and national impact, and the effects the Regional Center would have on household earnings, the demand for business services, , utilities, maintenance and repair, and construction activity.
- 3) Detailed statement regarding the amount and source of capital that has been committed to the Regional Center, in addition to the description of the promotional efforts taken and planned by the Regional Center's sponsors.
- 4) A discussion regarding how the proposed Regional Center would perform its due diligence in ensuring alien investor funds are from legitimate and approved sources. This discussion also needs to cover how the investors were identified and approached.
- 5) A discussion of the detailed business aspects of the Regional Center is also required. This

discussion should include a mandatory Business Plan, draft operating agreement, draft partnership agreement, draft subscription agreement, draft escrow agreements, list of reputable financial institutions to serve as escrow agents, draft of an offering letter, memorandum, confidential private placement agreement memorandum, or similar offering made in writing to an alien investor through the Regional Center. Also include a draft memorandum of understanding, interagency agreement, contract, letter of intent, advisory agreement, or similar agreement to be entered into with any other party, agency, or organization to engage in activities on behalf of or in the name of the Regional Center.

- 6) A discussion of the applicant's plan to administer, oversee, and manage the proposed Regional Center. This should include a discussion of whether investment capital will be sought exclusively from alien investor funds, or from a combination also consisting of domestic capital. Also include how the Regional Center would monitor investment activities and keep records on all activities of the Regional Center.

Assuming the application for Regional Center designation is approved, there are then responsibilities that designee must manage in order to maintain favorable status with the USCIS.

Maintaining Regional Center Designation

The USCIS requires all approved Regional Centers to keep quarterly records of all activities of the Regional Center. This data must be made available to the USCIS upon request and should be tracked according to the federal fiscal year (which begins October 1). There is a myriad of information which needs to be tracked. See the full document for a discussion of the auditing process.