



# U.S. Citizenship and Immigration Services

EB-5 Immigrant Investor Pilot Program  
OLA Congressional Conference  
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# General EB-5 Program Overview

## Background:

- Section 203(b)(5) of the Immigration and Nationality Act (INA), allocates 10,000 “EB-5” immigrant visas per year.
  - 3,000 visas are reserved for aliens who invest in targeted employment areas (TEAs).
  - 3,000 visas are reserved for aliens who invest in commercial enterprises affiliated with Regional Centers.
- The EB-5 regulations may be found at 8 CFR 204.6 and 8 CFR 216.6, respectively.



# EB-5 Capital Investment Structures

EB-5 Investors may be eligible for an EB-5 immigrant visa if they have invested – or are actively in the process of investing - the required amount of capital into one of the following for-profit business-types:

- A new commercial enterprise (created after 11/29/1990);
- An enterprise which will expand to 140% of pre-investment net worth or number of employees, or;
- A troubled business in which jobs will be preserved.



# EB-5 Capital Investment Thresholds

- The standard capital investment requirement for an EB-5 investor is \$1 million.
- The capital investment requirement for an EB-5 investor in a Targeted Employment Area (TEA) which is either in a high unemployment area, (calculated as an area with an unemployment rate that is at least 150% of the national average), or a Rural Area (RA) is \$500,000.



# EB-5 Job Creation Requirements

- Each EB-5 investor must demonstrate that their capital investment will create/preserve at least ten (10) jobs for qualified U.S. workers within the United States.
- A qualified U.S. worker is a U.S. citizen, LPR, or other qualified immigrants (e.g. asylee or refugee).
- Jobs created for nonimmigrant workers and/or members of the EB-5 investor's family are not qualifying.



# Obtaining Lawful Permanent Resident (Green Card) Status through EB-5

There are four steps to becoming a Lawful Permanent Resident (LPR) through the EB-5 program.

1. Form I-526 immigrant petition approval.
2. Obtain immigrant status through adjustment of status (Form I-485) in the United States with USCIS or through an application for immigrant visa (Form DS-230) with the Department of State (DOS).
3. Upon approval of the Form I-485 or admission on an EB-5 immigrant visa, the alien is granted two-years of conditional permanent resident (CPR) status.
4. A Form I-829 petition to remove the conditions on the CPR status must be filed at the end of the two-year conditional period. If the alien has fulfilled the EB-5 requirements in accordance with the business plan in the approved Form I-526 petition, then the conditions on the alien's LPR status will be removed.



# Regional Center Pilot Program

- The Immigrant Investor Pilot Program (“Pilot Program”) was created by Section 610 of Public Law 102-395 (October 6, 1992), and has been extended through September 30, 2012.
- EB-5 requirements for an investor under the Pilot Program are essentially the same as in the basic EB-5 investor program, except the Pilot Program provides for investments that are affiliated with an economic unit known as a “Regional Center”. Investments made through Regional Centers can take advantage of a more expansive concept of job creation including both “indirect” and “direct” jobs.



# Direct v. 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.
- The determination of the number of direct and/or indirect jobs that will be created through an EB-5 investor's capital investment is based upon the evaluation and approval by USCIS of a business plan and associated detailed economic analysis during the Form I-526 petition adjudication.





# Regional Centers

- *A Regional Center* is not merely a defined geographic area but rather is a legally established entity that coordinates foreign investment within that area in compliance with the EB-5 statutory, regulatory and precedent decision framework.
- Regional Centers do not hold exclusive jurisdiction over their geographic region.



# Regional Center Requirements:

A Regional Center must:

- A. Focus on a contiguous geographical region of the United States;
- B. Promote economic growth through:
  - increased export sales (if any),
  - improved regional productivity,
  - job creation, and
  - increased domestic capital investment.



# Regional Center Requirements, Cont'd:

A Regional Center must:

- C. Demonstrate in verifiable detail how jobs will be created, either indirectly or directly.
- D. Commit sufficient funds to promote and oversee capital investment opportunities in the Regional Center.



# Form I-924

- **The Form I-924 application is used for the filing of both initial RC applications and amended RC applications, has a filing fee of \$6,230, and was implemented to:**
  - **Clarify filing requirements for the RC designation;**
  - **Improve the quality of RC applications;**
  - **Better document eligibility for the Pilot Program;**
  - **Alleviate content inconsistencies among applicants' submissions; and**
  - **Support a more efficient process for adjudication of the RC applications.**



# Form I-924A

- The Form I-924A, Supplement to Form I-924, is the vehicle for a yearly RC reporting requirement.
- Each approved RC is now required to file the I-924A to report RC-related activities for the preceding fiscal year within 90-days of the end of the fiscal year (on or before December 29<sup>th</sup> of the calendar year in which the fiscal year ended.)
- **The filing of Form I-924A will be required for all approved RCs for Fiscal Year 2011 on or before December 29, 2011.**
- There is no filing fee for the Form I-924A.
- USCIS plans to publish summarized RC data in order to be responsive to requests for this information from a broad spectrum of USCIS' external stakeholders, to include members of Congress, other federal agencies, state agencies, and major media outlets.



# Form I-924A, Cont'd

- USCIS plans to publish an aggregation of the data provided each year by all designated regional centers, to include attributes of the RC-affiliated capital investments, such as:
  1. the geographic areas and industry categories receiving investment capital;
  2. The volume of regional center affiliated capital invested, and;
  3. The number of jobs created or maintained as a result of the capital investments.

This summarized data will be published on the USCIS Web site for each fiscal year following the publishing of the Form I-924A.



# Regional Center Statistics

- There are currently 124 approved Regional Centers (RCs), operating in 36 states, including the District of Columbia and Guam.
- A complete list of approved RCs is also available online at <http://www.uscis.gov/eb-5centers> .
- Approximately 90-95% of the individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in RC-affiliated commercial enterprises.
- There are 124 initial RC Proposals pending with USCIS, as well as 30 RC proposals seeking to amend approved RCs.



# Regional Center Proposal Filing Receipts for FY10 and FY11 Q1

Initial RC Proposal Filings FY10	Initial RC Proposal Filings FY11 Q1 (10/01/2010 – 12/31/2010)	FY11 Q1 Filings as a % of FY10 Filings
<b>110</b>	<b>116</b>	<b>105%</b>
Amended RC Proposal Filings FY10	Amended RC Proposal Filings FY11 Q1	FY11 Q1 Filings as a % of FY10 Filings
<b>42</b>	<b>24</b>	<b>57%</b>





# Regional Center Final Case Actions FY10 and FY11 Q1

FY10		FY11 Q1	
Initial Proposal Approvals / Final Action %	Initial Proposal Denials / Final Action %	Initial Proposal Approvals / Final Action %	Initial Proposal Denials / Final Action %
<b>36 / 55%</b>	<b>30 / 45%</b>	<b>13 / 76%</b>	<b>4 / 24%</b>
Amended Proposal Approvals / Final Action %	Amended Proposal Denials / Final Action %	Amended Proposal Approvals / Final Action %	Amended Proposal Denials / Final Action %
<b>42 / 71%</b>	<b>11 / 29%</b>	<b>7 / 78%</b>	<b>2 / 22%</b>



# EB-5 Individual Petition Filing Receipts FY05 – FY10, & FY11 Q1

Fiscal Year and/or Quarter	Form I-526 Petition	Form I-829 Petition
FY11 Q1	701	531
FY10	1955	768
FY09	1028	437
FY08	1257	390
FY07	776	194
FY06	486	89
FY05	332	37



## Form I-526 Petition Final Actions and Final Action Percentages for FY05 – FY10 & FY11 Q1

Fiscal Year and/or Quarter	Form I-526 Approvals	Final Action %	Form I-526 Denials	Final Action %
FY11 Q1	190	77%	56	28%
FY10	1369	89%	165	11%
FY09	1262	86%	207	14%
FY08	640	84%	120	16%
FY07	473	76%	148	24%
FY06	336	73%	124	27%
FY05	179	53%	156	47%



## Form I-829 Petition Final Actions and Final Action Percentages for FY05 – FY10 & FY11 Q1

Fiscal Year and/or Quarter	Form I-829 Approvals	Final Action %	Form I-829 Denials	Final Action %
FY11 Q1	39	75%	13	25%
FY10	274	83%	56	17%
FY09	347	86%	56	14%
FY08	159	70%	68	30%
FY07	111	69%	49	31%
FY06	106	64%	59	36%
FY05	184	62%	112	38%



# EB-5 Visa Usage

Fiscal Year and/or Quarter	Total EB-5 Visas Issued
FY11 Q1	1421*
FY10	1885
FY09	4,218
FY08	1,360
FY07	806
FY06	744

\*Preliminary estimate of FY11 Q1 Visas Issued



# FY10 EB-5 Visa Usage by Country of Chargeability

Country of Chargeability	Total EB-5 Visas Issued	% of Visas Issued
China – Mainland Born	772	41%
South Korea	295	16%
Great Britain & N. Ireland	135	7%
China – Taiwan Born	94	5%
India	62	3%
All Other Countries	527	28%



# EB-5 Inquiries

- Reminder: USCIS has published a page entitled “EB-5 Inquiries” on the [www.uscis.gov](http://www.uscis.gov) website that outlines how the public may make inquiries on EB-5 related matters.
- This webpage may be accessed from the USCIS homepage as follows:
- Home > Working in the United States > Permanent Workers > Employment-Based Immigration: Fifth Preference EB-5.



# EB-5 Inquiries, Cont'd

The “EB-5 Inquiries” page clarifies:

- The EB-5 inquiries that are appropriate to send to the EB-5 mailbox at [Uscis.immigrantinvestorprogram@dhs.gov](mailto:Uscis.immigrantinvestorprogram@dhs.gov), and;
- Other avenues that can be used to send questions or inquires to USCIS that are not suitable for the EB-5 mailbox.

**Note:** USCIS has implemented an informational “auto-reply” that is now provided in response to emails that are sent to the EB-5 Mailbox. This auto-reply contains some great information and links to USCIS web-pages and other sites that the public can use to obtain EB-5 related information.





# EB-5 Expedite Requests

- Public Law No. 102-395 permits priority to be given to Regional Center-affiliated individual petitions. However, the statute does not provide criteria for USCIS to use to determine how petitions filed under the regional center program should be given priority over one another.
- USCIS has national expedite criteria for all petitions and applications, which are posted on the USCIS website.
- The petitioner must demonstrate that one or more of the expedite criteria have been met to be granted an expedite.



# EB-5 Expedite Requests, Cont'd

- The Director of the CSC follows the national expedite criteria when determining whether to grant an expedite request for an EB-5 petition.
- One of the national expedite factors is the “severe financial loss to a company or to an individual.” Most of the EB-5 related expedite requests that CSC receives are based on this factor.
- Most EB-5 petitions contain escrow agreements which specify that the capital investment may not be released into the investment project until the approval of the Form I-526 petition.
- USCIS would be inundated by expedite requests if expedite requests were granted based upon these self-imposed financing arrangements.



# EB-5 Expedite Requests, Cont'd

- Expedite requests for EB-5 cases should be directed to the EB-5 program mailbox at:  
[Uscis.immigrantinvestorprogram@dhs.gov](mailto:Uscis.immigrantinvestorprogram@dhs.gov) .
- USCIS believes that the most equitable approach is to adjudicate EB-5 petitions in accordance with our first-in, first out procedures.



# Questions?



U.S. Citizenship  
and Immigration  
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