



A Door To U.S. Citizenship

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Traditional methods of getting U.S. permanent residence—a green card—have not been a good fit for wealthy internationals who may want to retire or have a second home in the U.S. Green cards are available for people with certain family relationships, people with needed skills in the workforce and, in some cases, people starting or buying businesses in the U.S.—but not retirees.

However, in October 2009, President Obama signed into law a long-term extension of a pilot program entitled “Regional Center EB-5.” This program enables a wealthy foreign national to obtain a green card with an investment of \$500,000 in a construction or export-related project within a government-approved regional center, opening the door to eventual U.S. citizenship. The advantages of this program are that the investor does not need to be employed in the U.S., can live anywhere in the U.S., can relocate his family to the U.S., can buy property in the U.S. and can travel internationally.

Here’s how it works: The U.S. government has approved about 70 regional centers, which are business models or development projects in specified geographical areas and industries that economists certify will create significant employment. Examples include hotels, office buildings, condominiums and limited partnerships providing credit to cash-starved enterprises. The investor must invest \$500,000, or \$1 million in some of the regional centers, which cannot be redeemed for five years or longer. The money must be utilized by the limited partnership or other commercial enterprise in a project that will create, directly or indirectly, at least ten full-time jobs for U.S. workers for every investor in the project.

This is not a program for investors who wish to keep the source of their wealth confidential. While the investor does not need to document the source of all his assets, he does need to provide detailed documentation of the lawful source of the \$500,000 or \$1 million being invested. While in some cases tax returns may be sufficient, more substantial documentation will be required where the source of the wealth does not appear on tax returns, such as documentation of real estate transactions, investment gains, inheritance, gifts and corporate dividends.

Assuming all of the legal requirements are met, the investor is able to obtain a U.S. green card—often in one year or less. It is important to note that this green card is conditional and has a two-year validity. Before the end of the two years, the investor must file a “Petition to Remove Conditions” to satisfy the U.S. Immigration Service that the investment has been sustained and not withdrawn, that the investment project described by the regional center has actually taken place and that the requisite employment has been created. Upon approval of the conditional resident’s removal petition, the investor gets a permanent green card. U.S. citizenship is optional, but can be requested five years after the investor obtains his first green card.

The process of obtaining conditional permanent residence occurs in two steps. The first step is the EB-5 petition, which includes documentation of the project in which the investment is made and an economist’s report showing how the investment will create not only direct employment in the project but also indirect or induced employment in the geographical area. In addition, the investor must submit detailed documentation regarding the lawful source of the invested funds and documentation tracing the funds from the investor’s account to the account of the regional center. The normal processing time for the EB-5 petition is approximately two to six months. Upon approval of the petition, the investor can apply for an immigrant visa (green card) at the U.S. consulate in his or her home country. That process may take another four to eight months on average.

Upon approval of the immigrant visa, the investor is able to enter the U.S. as a conditional permanent resident. As a conditional permanent resident, the investor is free to live in the U.S. year round or travel in and out of the U.S. as desired. However, he must maintain a residence in the United States. Generally, if an

loss of residence. If the investor plans on spending less than 50% of his time in the U.S., he should plan a strategy with immigration counsel to ensure that the green card is not lost. Sometimes that strategy will include filing for a re-entry permit, which allows the investor to be outside of the U.S. for up to two years without loss of residence status if he can show a temporary need to be outside of the U.S. for an extended period and an intention to resume residence in the U.S.

At the same time the investor obtains a green card, his spouse and any unmarried children under the age of 21 can also obtain green cards. With these, the spouse and children can work, study or travel as they wish. Generally, in-state tuition is available.

As with any government program, there are many traps for the unwary. The investment in the regional center project is an at-risk investment in a security, which requires the investor to have appropriate counsel regarding issues such as security of the investment, rate of return, expected date of return, feasibility of the project, etc. In addition, U.S. permanent residence may create taxation on worldwide income for which the investor needs appropriate tax advice. Finally, economic conditions may affect the viability and time frame of the anticipated project and the resultant creation of jobs.

The tax advisor may need to advise in at least three areas:

- Tax aspects of the regional center investment that may impact its attractiveness to the investor or its likely financial success.
- Income tax considerations both with respect to income generated in the U.S. and worldwide.
- Gift tax issues, if the source of invested funds is a gift.

Another consideration, which varies country by country, is the issue of restrictions on overseas remittance of funds. If the investor is from a country with currency export restrictions, an advisor knowledgeable on the nuances of such local laws should be a key part of the investor’s team.

In addition to financial and tax advisors, the investor is well advised to work with a U.S. immigration attorney who is experienced in dealing with regional center EB-5 cases. Among other things, such an attorney can assist in helping the investor avoid potential land mines that exist in this program. In addition, the experienced EB-5 attorney should be able to tell the investor which regional centers have a long track record of immigration success and which have had no successful petitions whatsoever. Typically, experienced EB-5 immigration counsel can provide a reasonable number of regional centers with which the attorney has familiarity regarding immigration-related issues and approval history. The financial and tax advisors would then perform due diligence on the specified regional centers in order to advise the investor on all financial aspects of the investment. We provide our clients with a due diligence list of questions at our Web site, www.eb5immigration.com.

The regional center EB-5 program is not the only U.S. investor immigration program. If the investor would prefer to invest in his own business in the U.S., consideration could be given to an individual EB-5. While the amount of the investment would be the same—\$500,000 or \$1 million depending on the location—the employment creation requirement is different. Unlike with a regional center, where indirect employment in the community is sufficient, the individual EB-5 requires proof of direct employment of ten full-time U.S. citizen or permanent resident employees by the business in which the investment is made.

However, it is the regional center EB-5 program that has become extremely popular in attracting wealthy investors from around the world. With appropriate advice from immigration, business, tax and estates advisors, the international investor may get a significant benefit, while at the same time providing a benefit to the U.S. economy.